

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,     )     Application No. NG-0059/  
on its own Motion, seeking to         )                             PI-149  
investigate and establish             )  
procedural filing requirements       )     ORDER  
for decoupling applications.         )  
  )  
  )     Entered: August 18, 2009

BY THE COMMISSION:

On April 14, 2009, the Commission, on its own motion, opened this docket seeking to investigate and establish procedural filing requirements for decoupling applications after finding that the Petition for Declaratory Ruling filed on March 27, 2009, by Black Hills/Nebraska Gas Utility Company, LLC d/b/a Black Hills Energy (Black Hills) in Application No. NG-0058/DR-0003 presented questions of statewide commercial importance.<sup>1</sup>

The Commission sought comment as to whether a jurisdictional utility may file for approval of a revenue decoupling mechanism that is not intended to request a change in its overall revenue requirement under *Neb. Rev. Stat.* § 66-1808 and related Commission Rules and Regulations without triggering the general rate filing requirements imposed under *Neb. Rev. Stat.* §§ 66-1802(6) and 66-1838 and the Commission's Rules and Regulations related to those general rate filing statutes. Written comments were filed on behalf of NorthWestern Corporation (NorthWestern), SourceGas Distribution LLC (SourceGas), Black Hills, and the Public Advocate. Interventions filed on behalf of the Public Advocate, SourceGas, Black Hills, and NorthWestern were granted by the Hearing Officer.

Hearing on this matter was held on July 14, 2009.

O P I N I O N     A N D     F I N D I N G S

The Commission's authority is broadly defined under the Act having the "full power, authority, and jurisdiction to regulate natural gas public utilities and may do all things necessary and convenient for the exercise of such power, authority, and jurisdiction...."<sup>2</sup> Such "power, authority, and jurisdiction" are to be "liberally construed".<sup>3</sup>

Whether the Commission has the authority to consider a change in rates outside a general rate filing is a question of law.

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<sup>1</sup> Neb. Admin. Code, Title 291, Ch. 1 § 019.05 (1992).

<sup>2</sup> Neb. Rev. Stat. § 66-1804(1).

<sup>3</sup> § 66-1804(2).

Changes in rates are specifically addressed in the Act by *Neb. Rev. Stat.* § 66-1838 and § 66-1808. General rate filings are governed by § 66-1838.<sup>4</sup>

With respect to other changes in rates, § 66-1808(2) states:

Unless the commission otherwise orders, no jurisdictional utility shall make effective any changed rate or any term or condition of service pertaining to the service or rates of such utility, except by filing the same with the commission at least thirty days prior to the proposed effective date. The commission, for good cause, may allow such changed rate or any term or condition of service pertaining to the service or rates of any such utility, to become effective on less than thirty days' notice. If the commission allows a change to become effective on less than thirty days' notice, the effective date of the allowed change shall be the date established in the commission order approving such change or the date of the order if no effective date is otherwise established. Any such proposed change shall be shown by filing with the commission a schedule showing the changes, and such changes shall be plainly indicated by proper reference marks in amendments or supplements to existing tariffs, schedules, or classifications, or in new issues thereof.<sup>5</sup>

The Act clearly contemplates other changes in rates, terms and conditions of service not triggering a general rate filing under § 66-1838 as the provisions of § 66-1808 are specifically exempted from general rate filings.<sup>6</sup> The distinction made between those changes in rates triggering a general rate filing and those made outside of a general rate case centers on the definition of a general rate filing.

A general rate filing means any filing which requests changes in overall revenue requirements for a jurisdictional utility.<sup>7</sup> So long as any rate filing does not change the overall revenue requirements for the jurisdictional utility, such a filing would be governed by § 66-1808 and not trigger a general rate case. Nothing suggests that a decoupling mechanism would be treated any differently.

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<sup>4</sup> *Neb. Rev. Stat.* § 66-1838(1).

<sup>5</sup> *Neb. Rev. Stat.* § 66-1808(2).

<sup>6</sup> *Neb. Rev. Stat.* § 66-1808(1).

<sup>7</sup> *Neb. Rev. Stat.* § 66-1802(6).

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filing would be governed by § 66-1808 and not trigger a general rate case. Nothing suggests that a decoupling mechanism would be treated any differently.

Therefore, based upon the above, the Commission finds that it has the authority to consider a revenue decoupling mechanism that is not intended to request a change in a jurisdictional utility's overall revenue requirement under Neb. Rev. Stat. § 66-1808 and related Commission Rules and Regulations without triggering the general rate filing requirements imposed under Neb. Rev. Stat. §§ 66-1802(6) and 66-1838 and the Commission's Rules and Regulations related to those general rate filing statutes. However, the applicant should have the burden of demonstrating that any decoupling mechanism does not change the overall revenue requirements for the utility.

The Commission further finds that guidelines for the submission of such filings should be included in a future rule and regulation proceeding.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that it has the authority to consider a revenue decoupling mechanism that is not intended to request a change in a jurisdictional utility's overall revenue requirement under Neb. Rev. Stat. § 66-1808 and related Commission Rules and Regulations without triggering the general rate filing requirements imposed under Neb. Rev. Stat. §§ 66-1802(6) and 66-1838 and the Commission's Rules and Regulations related to those general rate filing statutes.

MADE AND ENTERED at Lincoln, Nebraska, this 18th day of August, 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Herald T. Up*

*James J. Sunde*  
Chairman

*Robert J. Hunsen*

*Anne C. Goff*

*Tim Schram*

//s// Frank E. Landis

ATTEST:

*Miss S. J. P.*

Executive Director