

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,) Application No. NG-0063/
on its own Motion, seeking to) PI-173
investigate and refine filing)
requirements and establish) HEARING OFFICER ORDER
further guidelines for) SETTING DEADLINE FOR
prosecution of general rate) COMMENT
applications.)
) Entered: April 6, 2011

BY THE HEARING OFFICER:

The Commission, on its own motion, opened this docket seeking to investigate and establish guidelines for the prosecution of general rate applications filed pursuant to *Neb. Rev. Stat. § 66-1825* (Reissue 2009) in order to increase efficiencies and reduce costs. The Commission conducted a workshop on a variety of issues. During the workshop, the Hearing Officer requested that the jurisdictional utilities provide proposed rules on certain issues. Copies of the proposed language is attached hereto as Appendices A and B.

The Hearing Officer finds that any interested parties wishing to respond to the proposed language shall do so on or before April 18, 2011.

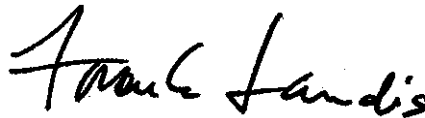
Any interested parties filing a response should provide one (1) original and eight (8) copies on or before **3:00 p.m. on April 18, 2011**. Interested parties should also send one (1) electronic copy by email to **rose.price@nebraska.gov**.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer that any interested parties filing a response should provide one (1) original and eight (8) copies on or before **3:00 p.m. on April 18, 2011**. Interested parties should also send one (1) electronic copy by email to **rose.price@nebraska.gov**.

MADE AND ENTERED at Lincoln, Nebraska, this 6th day of April, 2011.

NEBRASKA PUBLIC SERVICE COMMISSION



By: Hearing Officer

DEFINITIONS —RECORD KEEPING - COST ALLOCATION – AFFILIATE TRANSACTIONS

• DEFINITIONS

Rule 001 – Definitions

Existing 001.01A Affiliate: A person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a Jurisdictional Utility or Competitive Natural Gas Provider. A voting interest of 10 percent or more creates a rebuttable presumption of control.

Existing 001.01C Competitive Natural Gas Provider or “CNGP”: A person who takes title to natural gas and sells it for consumption by a retail end-user in the state of Nebraska, and for purposes of this section also means an aggregator as defined in LB 790 [2003], sec. 48(1). CNGP includes an Affiliate of a Nebraska natural gas public utility. CNGP does not include the following:

001.01C1 A Jurisdictional Utility, as defined in Nebraska Administrative Code, Title 291, Chapter 9, Rule 001.01G;

001.01C2 A city-owned or operated natural gas utility or metropolitan utilities district in areas in which it provides natural gas service through pipes it owns;

001.01C3 A natural gas public utility that is not subject to LB 790 as provided in LB 790, sec. 3 in areas in which it is providing natural gas service in accordance with LB 790, sec. 3 [2003]; or

001.01C4 A Non-Regulated Affiliate, as defined in Nebraska Administrative Code, Title 291, Chapter 9, Rule 001.01A2.

Add the following new definitions to Rule 001.01A Affiliates:

001.01A1 Shared Resources Affiliate

A **Shared Resources Affiliate** is an Affiliate whose primary purpose is to share employees, departments or other physical assets used by the Jurisdictional Utility. A division of a Jurisdictional Utility that operates as a shared resources functional unit within the Jurisdictional Utility shall also be treated as a Shared Resources Affiliate for purposes of the Natural Gas and Pipeline Rules and Regulations. A Jurisdictional Utility shall include a list of its Shared Resources Affiliates as part of its Cost Allocation Manual.

001.01A2 Non-Regulated Affiliate

A **Non-Regulated Affiliate** is an Affiliate that engages regularly in non-regulated market transactions in Nebraska involving the purchase, sale, trade or lease of a good, service, or asset. A Jurisdictional Utility shall include a list of its Non-Regulated Affiliates as part of its Cost Allocation Manual.

001.01A3 Non-Regulated Affiliate Transaction

A **Non-Regulated Affiliate Transaction** is a market transaction involving the purchase, sale, trade or lease of a good, service, or asset from the Jurisdictional Utility to a Non-Regulated Affiliate, or from a Non-Regulated Affiliate to the Jurisdictional Utility.

For the purpose of clarity, a Non-Regulated Affiliate Transaction shall not include transactions involving any of the following: (1) transactions of a Competitive Natural Gas Provider Affiliate of a Jurisdictional Utility providing Nonutility Service as part of a natural gas choice program, (2) transactions of a Shared Resources Affiliate or integrated business unit of a Jurisdictional Utility engaged in private enterprise pursuant to *Neb. Rev. Stat. § 66-1819*, (3) transactions of an integrated function or business unit of the Jurisdictional Utility providing Nonutility transportation or retail sales of natural gas services to high-volume customers as defined by the Nebraska State Natural Gas Regulation Act, or (4) transactions of a Shared Resources Affiliate providing Nonutility Service as an extension of its management of gas supply, interstate transportation and storage capacity activities.

001.01A4 Shared Resources Affiliate Transaction

A Shared Resources Affiliate Transaction is a transaction between the Jurisdictional Utility and a Shared Resources Affiliate. A Jurisdictional Utility shall make its service agreements, if any, between the Jurisdictional Utility and a Shared Resources Affiliate available to the Commission or include it as part of its Cost Allocation Manual.

For the purpose of clarity, a Shared Resources Affiliate Transaction includes the following: (1) transactions of a Shared Resources Affiliate engaged in private enterprise pursuant to *Neb. Rev. Stat. § 66-1819*, (2) transactions of an integrated function or business unit of the Jurisdictional Utility providing Nonutility transportation or retail sales natural gas services to high-volume customers as defined by the Nebraska State Natural Gas Regulation Act, or (3) transactions of a Shared Resources Affiliate providing Nonutility Service, such as an extension of its management of gas supply, interstate transportation and storage capacity activities.

Rule 001 -- Add the following cost Allocation definitions to Rule 001 & renumber existing sections accordingly:

“Allocation,” and its word forms, means the assignment or allocation of costs.

“Cost Allocation Manual” or **“Manual”** means a Jurisdictional Utility’s manual for Allocating costs between the Jurisdictional Utility and its Affiliates.

“FERC” means the Federal Energy Regulatory Commission.

“Filing Threshold” means that the summation of a Jurisdictional Utility’s revenues recorded in FERC USOA Accounts 415 and 417 equals 3 percent or more of the Jurisdictional Utility’s Operating Revenues recorded in FERC USOA Account 400. The revenues in these FERC USOA Accounts will be as recorded in the annual FERC Form 2 or the Jurisdictional Utility’s general ledger.

“Fully Distributed Cost” means a costing approach that fully Allocates all costs. Fully Distributed Cost includes a return on investment in cases where assets are used.

“Net Book Value” means the lower of the original purchase price net of depreciation or any transfer price between Affiliates involving a Non-Regulated Affiliate Transaction.

“Nonutility Service” includes, but is not limited to, the following: (1) private enterprise service pursuant to *Neb. Rev. Stat. § 66-1819*, (2) transportation or retail sales natural gas service to high-volume customers as defined by the Nebraska State Natural Gas Regulation Act, (3) service as an extension of a Shared Resources Affiliate’s management of gas supply, interstate transportation and storage capacity activities, or (4) other services provided by the Jurisdictional Utility and not regulated by the Commission.

“Operating Revenues” are the dollar amounts recorded in FERC USOA Account 400.

“USOA Account” means an account in the Uniform System of Accounts of the Code of Federal Regulations.

“Utility Service” means any Jurisdictional Utility service that is offered as a public utility service and is regulated by the Commission. A Jurisdictional Utility, in its sole discretion, may classify a Nonutility Service, such as natural gas service to high-volume customers as defined by the Nebraska State Natural Gas Regulation Act, as a Utility Service when the service provided is equivalent to a rate-regulated service. For such services, the Jurisdictional Utility shall identify the services in its Manual, and account for such services as if they were Utility Services.

RECORDS**ADD the following to Rule 013 or create new rule:****RECORDS OF NONUTILITY SERVICE.**

Separate records. A Jurisdictional Utility receiving revenues for providing Nonutility Service shall provide to the Commission, upon request, separate records for the Nonutility Service to the extent maintained by the Jurisdictional Utility. The records maintained for each Nonutility Service and made available for inspection, upon request of the Commission, shall include, but not be limited to: documents depicting accounts payable and vouchers; purchase orders; time sheets or other time coding information; journal entries; source and supporting documents for all Non-Regulated Affiliate Transactions; a description of the method(s) used to Allocate revenues, expenses, and investments between Utility Service operations and Nonutility Service operations, including supporting detail.

Method of inspection. The records for Nonutility Service conducted within the State of Nebraska shall be made available to the Commission at the principal place of business of the Jurisdictional Utility. Upon receipt of a formal request in writing from the Commission for information, the Jurisdictional Utility shall produce the requested information within ten business days. Upon a showing of good cause by the Jurisdictional Utility, the Commission may approve additional time for response and production of the requested information. Upon request of the Jurisdictional Utility, the Commission shall protect those transactions designated by the Jurisdictional Utility as "Confidential" pursuant to the Commission's rules on confidentiality.

ADD the following to Rule 005 – Rate Principles

- **COSTING METHODS**

Costing Methodology. Costs shared by Affiliates of a Jurisdictional Utility shall be Allocated between Utility Service and Nonutility Service operations in accordance with the approved Cost Allocation Manual.

Cost Causation for Jurisdictional Utility Assets. Each Jurisdictional Utility shall identify, by Affiliate, each FERC USOA Account wherein assets related, in whole or in part, to the provision of Nonutility Services in Nebraska are recorded, and shall provide, upon request of the Commission, the following information for each such FERC USOA Account: (a) a summary of the type of assets; (b) a summary of the use of the assets; and (c) a general description of the applicability of the assets to Utility Service operations and Nonutility Service operations.

Cost Causation for Jurisdictional Utility Expenses. Each Jurisdictional Utility shall identify, by Affiliate, each FERC USOA Account wherein expenses related, in whole or in part, to the provision of Nonutility Services in Nebraska are recorded, and shall provide, upon request of the Commission, the following information for each such FERC USOA Account: (a) a summary of the function causing the expense to be incurred; and (b) a general description of the applicability of the function to Utility Service operations and Nonutility Service operations.

Add the following to Rule 005 – Rate Principles or Create New Rule

- **COST ALLOCATION MANUAL**

In providing for review of a Jurisdictional Utility's specific cost Allocations in other states and jurisdictions, the rules below merely contemplate methods to allow parties to obtain complete information regarding cost Allocations. These rules do not expressly or implicitly allow the Commission to order a Jurisdictional Utility to revise its cost Allocations in other jurisdictions or states.

Cost Allocation Manuals. Every Jurisdictional Utility equaling or exceeding the Filing Threshold in any calendar year shall file with the Commission a Cost Allocation Manual on or before June 1 of the following year. If the Jurisdictional Utility has not changed its Cost Allocation Manual since the last filing, the Jurisdictional Utility, on or before June 1, shall file a letter with the Commission to that effect. In the event the Jurisdictional Utility has made only minor changes to its Manual regarding new FERC USOA Accounts or new Affiliates, or has modified language, the Jurisdictional Utility may file only the pages affected. The filing shall include a cover letter explaining the pages being filed. The Jurisdictional Utility shall also file an update to the Cost Allocation Manual with the Commission within 60 days of a change in the Jurisdictional Utility's Allocation methodology(ies) required outside the scheduled filing date.

Contents of Manuals. Each Cost Allocation Manual must contain the following information:

- a. **Nonutility Service activities.** A list, the location, and general description of Nonutility Service activities.
- b. **Resource identification.** An identification of each FERC USOA Account by Affiliate wherein assets and expenses are related, in whole or in part, to the provision of Nonutility Services.
- c. **Allocation methodology(ies).** A description of the cost Allocation methodology(ies). This paragraph provides an overview, explanation, and justification of the details provided in paragraphs "d" through g."
- d. **Allocation rationale.** A list showing the cost Allocation method(s) for each FERC USOA Account. The list shall show for each FERC USOA Account and subaccount the basis for Allocating costs in the FERC USOA Account between Utility Service operations and Nonutility Service operations.
- e. **Accounts and records.** A general description of each FERC USOA Account and the records used by the Jurisdictional Utility for Nonutility Services.
- f. **Allocation basis.** A brief explanation of each Allocation basis. This paragraph shall contain, for each Allocation basis contained in paragraph "d," a definition of the basis, an explanation of how the Allocation factor is calculated, a description of the analysis used in developing the Allocation factor, and the frequency with which each Allocation factor is recalculated.
- g. **Time reporting methods.** An explanation of the time reporting methods used, such as time sheets or time coding. This paragraph shall indicate the type of time reporting used for each reporting group, and a description of how the type of time reporting is done in that reporting group.
- h. **Update process for Manual.** As to paragraphs "a through g" above, a description of the procedures used by the Jurisdictional Utility to: (1) determine when an update is needed; (2) develop the update; and (3) provide the update to the Commission.
- i. **Affiliates.** A Jurisdictional Utility shall identify each of its Shared Resources Affiliates, Non-Regulated Affiliates and other Affiliates such as a Competitive Natural Gas Provider.

Filing and approval of Manuals. The following procedure shall be used for the filing and approval of Manuals.

- a. **Filing.** Jurisdictional Utilities meeting the Filing Threshold requirements shall file Manuals on or before June 1 of the year following the year the Filing Threshold requirement was first met.

b. *Objections.* Any interested person may file an objection with the Commission within 60 days of the filing date.

c. *Docketing and Disposition.* If the Commission finds that reasonable grounds exist to investigate the Manual, the Commission will docket the filing as an investigation within 90 days of the date of filing. At the time of docketing, the Commission will set a procedural schedule which includes a date for an oral presentation and an opportunity to file comments. The filed Manual shall be deemed to be approved by the Commission 90 days after the date of the filing, unless the Commission orders otherwise.

d. *Reporting Requirement.* The reporting requirements in this subrule must be accompanied by a signed statement from an officer or controller of the Jurisdictional Utility certifying that, for the year completed, the Jurisdictional Utility has followed its Manual.

ADD the following Cost Allocation Principles to either (1) Rule 005, (2) under a Rule created for Cost Allocation Manuals or (3) create a new Rule

- ***Cost Allocation Principles.*** In a rate proceeding involving the calculation of revenue requirements, a complaint proceeding where cost Allocations are at issue, or a proceeding where approval of a Jurisdictional Utility's Manual is sought, the Jurisdictional Utility or any party may advocate a cost Allocation principle other than that already approved by the Commission. The party requesting the alternative approach shall have the burden of providing the need for an alternative principle and why the particular principle is more appropriate for the particular cost.
- ***Shared Resources Affiliate Allocations.*** The costs of a Shared Resources Affiliate shall be made in accordance with the approved Manual.
- ***Shared Resources Affiliate Allocation versus Non-Regulated Affiliate Allocation.*** A Shared Resources Affiliate Transaction is distinct and will undergo a Commission review and approval that is less stringent than the level of Commission review and approval required for a Non-Regulated Affiliate Transaction.
- ***Shared Resources Affiliate Transaction Presumed Prudent Expenditures.*** The costs assigned or allocated from a Shared Resources Affiliate pursuant to the approved Manual shall have a presumption of prudence in any rate or other regulatory proceeding before the Commission.
- ***Shared Resources Affiliate Departments.*** Such Shared Resources Affiliates may include, but are not limited to, the following types of shared employees, shared departments, or other shared assets: accounting, accounts payable and accounts receivable, treasury, executive, corporate services, tax, legal, utility operations, financial planning and analysis, safety, human resources, technology, communications, gas supply services, gas control services, risk management, call center services, regulatory, load growth, supply chain, demand-side management, electric dispatching, and other business support units and functions identified by the Jurisdictional Utility in its rate or regulatory proceeding.
- ***Integrated Utility and Other Nonutility Services.*** A Shared Resources Affiliate of a Jurisdictional Utility whose primary purpose is to procure, manage, and account for the gas supply for the Jurisdictional Utility, and also engages in (1) private enterprise service pursuant to *Neb. Rev. Stat. § 66-1819* (e.g., appliance repair services), (2) Jurisdictional Utility gas supply procurement, sale, management, and other gas supply Nonutility Services collateral to its primary purpose, (3) Jurisdictional Utility Nonutility Service and gas supply sales to high-volume users as

defined by the Nebraska State Natural Gas Regulation Act, or (4) other incidental Nonutility Service activities identified to the Commission, are not considered Non-Regulated Affiliates and those transactions are not considered to be Non-Regulated Affiliate Transactions.

ADD the following rate principles related to Allocation of Costs between Affiliates to Rule 005 or Create New Rule

005.04 Allowable Expenses: Only those expenses which are prudent may be included in allowable expenses. The rate principles set forth below in this section will apply:

Managers of a Jurisdictional Utility and its Shared Resources Affiliates have broad discretion in conducting their business affairs, and in incurring costs necessary to provide services to customers. In performing the Commission's duty to determine the prudence of specific allowable expenses, the appropriate standard that will be used is whether the costs are costs that a reasonable utility management (or that of another jurisdictional entity) would have made, in good faith, under the same circumstances, and at the relevant point in time.

Good faith on the part of the managers of the Jurisdictional Utility and its Shared Resources Affiliates will be presumed; and in the absence of a showing of inefficiency or improvidence, the Commission will not substitute its judgment for the judgment of the Jurisdictional Utility or its Shared Resources Affiliates as to the measure of a prudent outlay.

Every investment made by the Jurisdictional Utility and its Shared Resources Affiliates shall be assumed to have been made in the exercise of reasonable judgment, unless the contrary is shown.

CLARIFY EXISTING REGULATIONS RELATED TO PAYMENTS BETWEEN JX UTILITY AND NON-REGULATED AFFILIATE TRANSACTION

005.06A3 Payments to **Non-Regulated Affiliates** shall not be allowed as a capital cost to the Jurisdictional Utility except as provided in Rule 005.06.

005.07 Payments to **Non-Regulated Affiliates**: The Jurisdictional Utility has the burden to demonstrate that any cost paid to a **Non-Regulated Affiliate** for any goods or services are prudent. The Jurisdictional Utility has the burden to demonstrate all of the following before any amount paid to any **Non-Regulated Affiliate** either, as a capital cost or an expense, is included in rates except as provided in *Neb. Rev. Stat.* § 66-1825(8):

005.07A Each payment to the **Non-Regulated Affiliate** is prudently incurred for each item or class of items at the time incurred.

005.07B The costs charged by any **Non-Regulated Affiliate** reasonably approximate the market value of service to it.

Rule 17. AFFILIATE Rule Changes.

Revise the existing Commission Regulations to clarify Non-Regulated Affiliate from Shared Affiliate or Jurisdictional Utility conducting Non-utility Services

017 AFFILIATES:

017.01 Scope: The following rules must apply to **Non-Regulated Affiliates**. A division of a Jurisdictional Utility that operates as a shared resources functional unit within the Jurisdictional Utility shall also be treated as a **Shared Resources Affiliate** for purposes of the Natural Gas and Pipeline Rules and Regulations. This section does not apply to **Shared Resources Affiliates and Shared Resource**

Affiliate Transactions, including, but not limited to those Shared Resources Affiliates conducting non-regulated private enterprise business activity.

017.02 All **Non-Regulated Affiliates** must comply with the following:

017.02A The **Non-Regulated Affiliate** must either employ separate personnel and not share any personnel with the Jurisdictional Utility or Allocate shared employee time between the Jurisdictional Utility and the **Non-Regulated Affiliate**.

017.02B The **Non-Regulated Affiliate's** and Jurisdictional Utility's employee incentives must not create a conflict of interest.

017.02C The **Non-Regulated Affiliate** must own or lease its own office space that is reasonably separate from the Jurisdictional Utility. Such office space cannot be acquired from the Jurisdictional Utility except at market based rates.

017.02D If the **Non-Regulated Affiliate** seeks to provide service over the system of the Jurisdictional Utility with which it is affiliated, the Jurisdictional Utility must have adopted a code of conduct approved by the Commission.

017.02E The **Non-Regulated Affiliate** must purchase its own ancillary services related to the delivery of natural gas including, but not limited to, natural gas commodity, pipeline transportation, and pipeline storage. Such assets must not be acquired from the Jurisdictional Utility except at market based rates. A **Non-Regulated Affiliate** must not secure transportation, storage, or commodity from the Jurisdictional Utility on a prearranged, non-posted basis except as otherwise provided in a nondiscriminatory fashion.

017.02F The **Non-Regulated Affiliate** must receive no unduly preferential treatment through a tariff provision or otherwise from the Jurisdictional Utility.

017.02G The **Non-Regulated Affiliate** must receive no jurisdictional services from the Jurisdictional Utility except those that are available per the Jurisdictional Utility's tariff.

017.02H The **Non-Regulated Affiliate** must be responsible for its own bad debt and the collection of such debts.

017.02I The **Non-Regulated Affiliate** must not represent itself as the Jurisdictional Utility.

017.02J The **Non-Regulated Affiliate** must keep separate records from that of the Jurisdictional Utility.

ADD NEW NON-REGULATED AFFILIATE TRANSACTION PAYMENT REGULATIONS

Non-Regulated Affiliate Transaction services provided to the Jurisdictional Utility. Such Non-Regulated Affiliate Transactions shall be priced to the Jurisdictional Utility's operations at the price actually charged non-Affiliates. If no such price is available, the service shall be priced at the lower of Fully Distributed Cost, the price actually charged to Non-Regulated Affiliates, or a market price of comparable services.

Non-Regulated Affiliate Transaction services provided by the Jurisdictional Utility. Such Non-Regulated Affiliate Transactions shall be priced to the Jurisdictional Utility's operations at the tariffed price. If it is not a tariffed service, the service shall be priced at Fully Distributed Cost.

Non-Regulated Affiliate Transaction involving an asset that is a direct cost of Nonutility Service operations becoming a cost of Utility Service operations. Such Non-Regulated Affiliate Transactions shall be valued at the lesser of Net Book Value, the price actually charged to Non-Regulated Affiliates or non-Affiliates, or the market price of comparable assets.

Non-Regulated Affiliate Transaction involving an asset that is a direct cost of Utility Service operations becoming a cost of Nonutility Service operations. Such Non-Regulated Affiliate Transactions shall be valued at the greater of Net Book Value, the price actually charged to Non-Regulated Affiliates or non-Affiliates, or the market price of comparable assets.

Language for Exemption of Jurisdictional Utilities with Negotiated Rates

Sections 004.01E and (new rule for the "COST ALLOCATION MANUAL" under 005) shall not apply to a Jurisdictional Utility when that Jurisdictional Utility's current rates were approved through and following negotiations and agreement with affected cities pursuant to *Neb. Rev. Stat. § 66-1838*.