

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its) Rule and Regulation No. 173
own motion, seeking to amend Title 291,)
Chapter 9, Natural Gas and Pipeline)
Rules and Regulations, to adopt rules)
regarding General Rate Filings; Rate)
Principles; High Volume, Agriculture,) CERTIFICATE OF ADOPTION
and Interruptible Ratepayers;)
Jurisdictional Utilities; Consumer)
Choice Program; Gas Supply Cost)
Adjustments; Seasonal Disconnections;)
Tariff Changes; and the Public)
Advocate.) Entered: November 9, 2010

BY THE COMMISSION:

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

On April 13, 2010, the Commission, on its own motion, opened this proceeding to amend Title 291, Chapter 9, Natural Gas and Pipeline Rules and Regulations, to adopt rules regarding general rate filings; rate principles; high volume, agriculture, and interruptible ratepayers; jurisdictional utilities; consumer choice program; gas supply cost adjustments; seasonal disconnections; tariff changes; and the Public Advocate.

The Commission proposed to amend Title 291, Chapter 9, Natural Gas and Pipeline Rules and Regulations and released proposed amendments for comments due on or before June 11, 2010. On June 2, 2010, Black Hills/Nebraska Gas Utility Company, LLC d/b/a Black Hills Energy (Black Hills) and SourceGas Distribution LLC (SourceGas) filed a Joint Motion to Extend Comment Filing Date for an additional ninety (90) days. The Commission extended the comment filing date to July 23, 2010.

Written comments were filed on behalf of Constellation New Energy (Constellation), the Nebraska Natural Gas Association (NGA), the Public Alliance for Community Energy (PACE), Ag Processing, Inc. (Ag), the Public Advocate (PA), and Seminole Energy Services (Seminole).

A hearing on the proposed rules was held on October 4, 2010. Ms. Laura Demman, director of the Natural Gas department, testified on behalf of Commission staff with recommendations regarding seasonal disconnection, rate change, certification of jurisdictional utilities, gas cost reviews, and the Public Advocate. Ms. Demman recommended that seasonal disconnect ratepayers not be charged for the months that service is disconnected. Ms. Demman also recommended that jurisdictional utilities be required to send written notice of rate changes directly to agricultural or interruptible ratepayers as well as publish notice in a legal newspaper prior to the rate change effective date, indicating that the proposed 10-day advance notice is probably unnecessary.

Regarding certification of jurisdictional utilities, Ms. Demman recommended that certification be limited to public convenience without an additional requirement to prove necessity. Ms. Demman stated that necessity requires a different quality of proof and is not required by statute; therefore, the rule should mirror the statutory language. In regards to gas cost reviews, Ms. Demman stated that the proposed rule would create a requirement for a gas cost review every five (5) years. Citing concerns of

the NGA, Ms. Demman stated that the proposed rule could be eliminated because the Commission currently has statutory authority to perform a gas cost review every year. Finally, Ms. Demman recommended that the Commission adopt the proposed rule defining the location of the Commission as being Lincoln, Nebraska.

Mr. Douglas Law commented on behalf of the NGA and Black Hills. Mr. Law expressed concern regarding seasonal disconnection, stating that allowing customers to disconnect seasonally with no reconnection charge would shift costs to those customers who do not disconnect service. Mr. Law recommended that it could be helpful to define the period of time that would be considered a seasonal disconnect for purposes of the rule. In regards to notice of rate changes, Mr. Law recommended that the proposed 10-day notice period be eliminated because the time frame is not required by statute. In addition, Mr. Law recommended that the scope for published notice be made more specific, as the costs for notice would increase for some customers who do not have access to legal or higher circulation newspapers. Finally, Mr. Law agreed with Ms. Demman's recommendation to eliminate the proposed rule change regarding the time frame for gas cost reviews.

Mr. Russ Westerhold commented on behalf of SourceGas regarding the form of public notice required for rate changes. Mr. Westerhold recommended that providing notice to the Commission of a proposed rate change should constitute sufficient notice, as publishing notice in a legal publication may not give proper notice to ratepayers in western Nebraska who may not have access to legal publications.

Mr. Andy Pollock commented on behalf of Northwestern Energy. Mr. Pollock also commented on the proposed rule regarding public notice of rate changes by jurisdictional utilities, stating that the NGA recommended that the published notice requirement be deleted because of lack of access to legal publications in western Nebraska. Mr. Pollock reiterated the recommendation of Mr. Westerhold that notification to the Commission of a proposed rate change should constitute public notice.

Ms. Chris Dibbern commented on behalf of PACE regarding public notice of rate changes. Ms. Dibbern recommended that public notice include written letters to consumers in addition to publication, which would give jurisdictional utilities options to ensure that all customers receive actual notice of the proposed rate change.

Mr. Richard Haubensak commented for Constellation regarding the confidentiality of negotiated rates between jurisdictional utilities and high-volume ratepayers. Mr. Haubensak stated that there might be confusion as to the definition of the term "rate". Mr. Haubensak stated that, as it is currently used, "rate" only applies to a utility's service charges in tariff filings. He argued that "rate" should also include the cost of the gas itself. Such a definition would allow consumers as well as utilities to compare gas prices being offered by other utilities or marketers in the area as well as eliminate any confusion as to how much a consumer is paying for both service and the gas itself.

Finally, Mr. Roger Cox commented on behalf of the PA. Regarding the proposed rule for utilities submitting their contracts with non-jurisdictional customers to the Commission, Mr. Cox recommended that contracts also be submitted to the Public Advocate so the PA can determine if ratepayers are being assessed the correct costs. Additionally, Mr. Cox recommended that entities be informed that they could be assessed costs to the PA. Finally, Mr. Cox recommended that the Commission consider adding a

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

RULE AND REGULATION No. 173

PAGE 3

section to the rule regarding the PA that lists the authority and powers of the PA.

The Commission has considered all comments submitted by Commission staff, jurisdictional utilities, and the Public Advocate. With respect to the notice provision for rate changes for high-volume and agricultural ratepayers, we have carefully considered all of the comments regarding whether published notice in a legal newspaper has any practical effect. However, the statute requires notice to the public and has made a deliberate distinction between notice to the Commission and notice to the public. Notice to the public is most often accomplished through publication. Until such time as the notice provision in the statute is changed, the Commission finds that the rule as proposed requiring the publication of notice in a legal newspaper should be adopted.

With respect to the remaining proposed rules, based on the recommendations presented, the Commission hereby adopts Title 291, Chapter 9 as amended, attached hereto as Appendix A.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that a certificate of adoption be issued on the amendments to Title 291, Chapter 9 included in Appendix A to this order.

MADE AND ENTERED at Lincoln, Nebraska, this 9th day of November, 2010.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Red Johnson
Aune Doyle
Tim Schram

//s// Frank E. Landis
//s// Gerald L. Vap

Chairman

Gerald L. Vap

ATTEST:

Paul G. J. [Signature]

Executive Director

APPENDIX A

- 1) The following new sections should be added and all sections renumbered accordingly:

001 GENERAL:

001.01K Seasonal Disconnection Charge: A charge imposed applied by a jurisdictional utility onto a ratepayer who disconnects and reconnects service at the same premises within a twelve-month period requiring the ratepayer to pay in whole or in part charges for the months he or she was disconnected.

009 SERVICE TO HIGH VOLUME, AGRICULTURAL AND INTERRUPTIBLE RATEPAYERS:

009.01 High Volume Ratepayers: A jurisdictional utility may provide service at negotiated rates, contracts, and terms and conditions of service under contract to high volume ratepayers.

~~009.01A Service under the contracts shall be provided on such terms and conditions and for such rates or charges as the jurisdictional utility and the high volume ratepayer agree, without regard to any rates, tolls, tariffs, or charges the jurisdictional utility may have filed with the Commission.~~

~~009.01B Upon the request of the Commission, the jurisdictional utility shall file such contracts with the Commission. The contracts are not public records within the meaning of sections 84-712 and 84-712.09 and their disclosure to any other person or corporation for any purpose is expressly prohibited, except that they may be used by the Commission in any investigation or proceeding.~~

~~009.01C Except as provided in this section, high volume ratepayers shall not be subject to the jurisdiction of the Commission.~~

~~009.02 Agricultural and Interruptible Ratepayers: A jurisdictional utility may change any rate or other charge demanded or received from or terms and conditions applicable to its agricultural ratepayers and interruptible ratepayers not otherwise qualifying as high volume ratepayers, upon notice to the Commission and to the public.~~

~~009.02A 009.01 For purposes of Neb. Rev. Stat. sec. 66-1810, A a written notice of any change shall be sent to the Commission and affected agricultural and interruptible rate-payers and published in a legal newspaper at least ten (10) days prior to the effective date of the change.~~

~~009.02B The Commission may not suspend a rate or charge filed by a jurisdictional utility, except that the Commission, after hearing and order, may change any such rate or other charge demanded or received from a jurisdictional utility's agricultural ratepayers upon complaint effective as of the date of the order, if such rate or other charge is found in such complaint proceeding to be unduly preferential or unjustly discriminatory.~~

010 CERTIFICATION OF JURISDICTIONAL UTILITIES

010.01 Except as otherwise provided herein, no jurisdictional utility shall transact business in Nebraska until it has obtained a certificate from the Commission that public convenience will be promoted by the transaction of the business and permitting the applicants to transact the business of a jurisdictional utility in the state. By operation of Neb. Rev. Stat. sec. 66-1853(3), all A jurisdictional utilities y transacting business in this state as of May 31, 2003 were shall be issued a certificate of public convenience based upon its natural gas service as of that date May 31, 2003.

010.01A Every jurisdictional utility shall be required to furnish reasonably adequate and sufficient service and facilities for the use of any and all products or services rendered, furnished, supplied, or produced by such utility.

010.02 Filing Requirements and Application Process: Applications for a certificate of public convenience must contain all of the following information and must include prefiled testimony in support of the application showing:

010.02A The legal name under which the applicant will operate, a description of the business structure of the applicant, evidence of authority to do business in Nebraska, certificates of registration by the Nebraska Secretary of State for all trade names under which the applicant will operate, and the applicant's state of incorporation.

010.02B The names, business addresses and business telephone numbers of the principal officers of the applicant, or its representatives, who can be contacted regarding its operations in Nebraska and telephone number(s) at which the applicant can be contacted 24 hours a day.

010.02C Identification of affiliates, partnerships, political subdivisions, or other joint ventures, including those affiliates, partnerships, political subdivisions or other joint ventures that are certified under this section. and In addition to a listing of the names, addresses, and business purpose of affiliates, partnerships, or other joint ventures required herein, the applicant(s) must also provide a listing of the names and addresses of all the applicant's affiliates, partnerships, political subdivisions, or other joint ventures engaged in the provision of competitive natural gas services in any other state.

010.02D A listing of all legal actions and formal complaints pertaining to the provision of competitive natural gas services filed against the applicant or its affiliates at a public utility regulatory body other than the Commission that were filed or pending in the 12 months five years prior to the date of the request for certificate, including identification of the title and number of applicable proceedings and a copy of the final orders in such proceedings or the citation to the website where the text of the orders can be found. The applicant will also provide any other names under which it does business.

010.02E Identification of the states and jurisdictions in which the applicant or an affiliate, partnership, or other joint venture has had a license or certificate to supply competitive natural gas services suspended, revoked, or denied, or where the applicant, partnership, or other joint venture has voluntarily withdrawn from providing service due to financial or operational reasons. Applicant must include identification of the title, caption, and docket number of any applicable proceedings and either (i) a copy of any final orders and court appeals in such proceedings or (ii) the citation to the website where the text of the orders can be found.

010.02F A demonstration that the applicant is ready, willing and able to provide service under the State Natural Gas Regulation Act and other applicable laws of the state of Nebraska, and not in violations thereof, and that the public convenience in Nebraska will be promoted by the transaction of the business and by permitting allowing the applicants to transact the business of a jurisdictional utility in the state. The applicant will further demonstrate and that the applicant has it possesses the operational and financial capability to furnish reasonably adequate and sufficient service and facilities for the use of any and all products or services rendered, furnished, supplied, or produced by such utility. The applicant must submit a roster of officers and directors, a description of the professional backgrounds of the applicant's principal managerial and technical personnel, an operational flow chart, and a description of the applicant's facilities and the services it intends to render. A request for confidential treatment for information contained within the application may be filed with the Commission, pursuant to Nebraska Administrative Code, Title 291, Chapter 9, Rule 006.

010.02G Applications must be filed with the executive director at the Nebraska Public Service Commission, 1200 "N" Street, Suite 300, Lincoln, Nebraska 68508. An original and eight (8) copies must be filed. An application fee must be included with the application to cover the administrative costs of accepting and processing a filing. In addition, each applicant will be billed costs and expenses reasonably attributable to certification and dispute resolution to applicants and participants to the proceeding, including Commission time, billed on an hourly basis, spent reviewing, analyzing and considering the application-, and any costs incurred by or charges made by the Public Advocate that the Commission may assess with respect to such application.

010.02H An applicant must notify the Commission during the pendency of the certification request of any material change in the representations and commitments required by this subsection within 14 days of such change. Any new legal actions or formal complaints are considered material changes in the request. Once certified, jurisdictional utilities must notify the Commission of any material change in the representations and commitments required for certification within 14 days of such change.

010.03 Assessment for Jurisdictional Utilities: Pursuant to Section 66-1849(3), the Commission shall allocate the costs and expenses reasonably attributable to certification and dispute resolution as authorized in this section to persons identified as parties to such proceeding who are engaged in or who seek to engage in providing natural gas services or other persons identified as participants in such proceeding. The funds received for the costs and expenses of certification and dispute resolution shall be remitted to the State Treasurer for credit to the Public Service Commission Regulation Fund.

- 2) Renumber Section 0016 to Section 018 and amend as follows:

018.02F A supplier participating in a consumer choice program shall report to the ~~jurisdictional utility~~ Commission no later than ~~ten (10)~~ thirty (30) days following the close of the consumer choice supplier selection period the highest and lowest price offered by the supplier during the consumer choice supplier selection period and the rate determined for customers who did not make a selection during the consumer choice supplier selection period.

- 3) Add the following new sections:

021 GAS SUPPLY COST ADJUSTMENTS

021.01 The Commission shall allow jurisdictional utilities to implement and thereafter modify gas supply cost adjustment rate schedules that reflect increases or decreases in the cost of the utility's gas supply such as federally regulated wholesale rates for energy delivered through interstate facilities, direct costs for natural gas delivered, or costs for fuel used in the manufacture of gas.

021.01A Such costs may, in the discretion of the Commission, include:

021.01A1 Costs related to gas price volatility risk management activities;

021.01A2 Costs of financial instruments purchased to hedge against gas price volatility, if prudent; and

021.01A3 Other relevant factors.

021.02 Changes by Utility to Gas Supply Cost Adjustments: Unless the Commission otherwise orders, and except as otherwise provided in this section, no change shall be made by any jurisdictional utility in any purchased gas adjustment schedule, except after thirty (30) days' notice to the Commission and to the public as provided in this section.

021.02A Notice: Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules or supplements stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes will go into effect, and by publication in a newspaper of general circulation of notice to ratepayers affected by such change.

021.02B Less than Thirty (30) Days' Notice: The utility may propose and the Commission, for good cause shown, may allow changes without requiring the thirty (30) days' notice, by an order specifying the changes to be made and the time when they shall take effect and the manner in which they shall be filed and published. When any change is proposed in any rate or other charge to ratepayers, such proposed change shall be plainly indicated on the new schedule filed with the Commission.

021.03 Commission Change of Gas Supply Cost Adjustment: The Commission may modify a jurisdictional utility's gas supply cost adjustment rate schedule under procedures specified in the act for setting rates by order of the Commission.

021.04 Commission Review of Gas Supply Cost Adjustments: Once annually, the Commission may initiate public hearings, upon complaint, to determine whether the gas supply cost adjustment schedule of a jurisdictional utility reflects the costs of the utility's gas supply and whether such costs were prudently incurred and to reconcile any amounts collected from ratepayers with the actual costs of gas supplies incurred by the utility. The Commission shall conduct such a review at least once every five years for each jurisdictional utility.

021.05 Refunds Received by Jurisdictional Utility: Any refund, including interest thereon, if any, received by the jurisdictional utility with respect to services purchased under Federal Energy Regulatory Commission natural gas tariff related to increased rates paid by the utility subject to refund, and applicable to natural gas services purchased for service to Nebraska ratepayers, shall be passed along to presently served Nebraska ratepayers by an appropriate adjustment shown as a credit on subsequent bills during a period selected by the utility, not to exceed twelve months, or by a cash refund at the option of the utility. The utility shall not be required to return such refunds to ratepayers served at competitively set or negotiated rates, or under alternative rate mechanisms, when the ratepayer is paying less than the full rate determined pursuant to the gas supply cost adjustment rate schedule, or under a customer choice or unbundling program.

021.06 The provisions of this section shall not be construed to modify or otherwise restrict the Public Service Commission's authority to establish alternative rate mechanisms as authorized by the State Natural Gas Regulation Act, when such mechanisms modify a utility's recovery of gas supply costs.

022 SEASONAL DISCONNECTIONS

022.01 Seasonal Disconnection Charges Prohibited: Seasonal disconnection charges shall not be permitted. A jurisdictional utility may charge reconnection fees equal to those imposed upon charged to any other rate-payer receiving service.

023 PUBLIC ADVOCATE

023.01 Office of the Public Advocate: The office of the public advocate shall be a separate and independent division within the Commission representing the interests of Nebraska citizens and all classes of jurisdictional utility ratepayers, other than high-volume ratepayers, in matters involving jurisdictional utilities and shall act

~~as trial staff before the Commission. In the exercise of his or her power, the public advocate shall consider all relevant factors, including, but not limited to, the provision of safe, efficient, and reliable utility services at just and reasonable rates.~~

~~023.01A Appointment and Supervision of Public Advocate: Notwithstanding the provisions of section 75-105, the executive director of the Commission, upon consultation with the members of the Commission, shall appoint the public advocate.~~

~~023.01A1 The public advocate shall be an attorney and shall have experience in consumer-related utility issues or in the operation, management, or regulation of utilities. No person owning stocks or bonds in a corporation subject in whole or in part to regulation by the Commission or who has any pecuniary interest in such corporation shall be appointed as public advocate.~~

~~023.01A2 The public advocate shall serve a four-year term and shall be removed only for good cause.~~

~~023.01A3 The executive director shall be responsible for reviewing the performance of the public advocate, for removing the public advocate in accordance with law, and for filling any vacancy in that position in the same manner as the original appointment.~~

~~023.01B Powers of the Public Advocates: The public advocate shall have the power to:~~

~~023.01B1 Investigate the legality and reasonableness of rates, charges, and practices of jurisdictional utilities;~~

~~023.01B2 Petition for relief, request, initiate, and intervene in any proceeding before the Commission concerning such utilities;~~

~~023.01B3 Represent and appear for ratepayers and the public in proceedings before the Commission and in any negotiations or other measures to resolve disputes that give rise to such proceedings;~~

~~023.01B4 Make motions for rehearing or reconsideration, appeal, or seek judicial review of any order or decision of the Commission regarding jurisdictional utilities; and~~

~~023.01B5 Enter into stipulations with other parties in any proceeding to balance the interest of those it represents with the interest of the jurisdictional utilities as a means of improving the quality of resulting decisions in a highly technical environment and minimizing the cost of regulation.~~

~~023.01C The public advocate shall not advocate for or on behalf of any single individual organization, or entity.~~

023.02 Office of the Public Advocate and Administration:

~~023.02A023.01 The office of the public advocate shall be located at the same location as the Commission but shall be kept separate from the Commission's other offices. For purposes of this section Neb. Rev. Stat. sec. 66-1832, the location of the Commission means Lincoln, Nebraska.~~

~~023.02B The public advocate may hire or contract with attorneys, legal assistants, experts, consultants, secretaries, clerks, and such other staff necessary for the full and efficient discharge of the duties of the office as permitted by the budget of the public advocate as approved by the Commission. The public advocate shall employ and supervise personnel as authorized by the budget approved by the Commission. The employees of the public advocate shall not be supervised or directed by the Commission.~~

~~023.02C Funding for the office of public advocate shall be approved by the Commission and collected through the assessment process as provided for in Neb. Rev. Stat. §§ 66-1840 and 66-1841. The Commission shall decide all matters of shared administrative and clerical personnel.~~

~~023.02D The files, records, and documents of the public advocate shall be separately kept, maintained, and controlled by the public advocate.~~

~~0023.03 Access to Information: The public advocate and his or her employees or agents shall have free access to all files, records, and documents of the Commission except:~~

~~023.03A Personal information in confidential personnel records;~~

~~023.03B Records which represent the work product of legal counsel of the Commission, and records of confidential or privileged communications between the members of the Commission and its legal counsel, when the records relate to a proceeding before the Commission in which the public advocate is, or is appearing for, a party; and~~

~~023.03C Records that are designated as confidential pursuant to Commission rules and regulations, except as permitted by a nondisclosure agreement between a specified representative of the public advocate and the Commission and the person who claims the records at issue are confidential.~~