

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its ) RULE AND REGULATION NO. 179  
own motion, seeking to amend Title 291, )  
Chapter 9, Natural Gas and Pipeline ) ORDER RELEASING SECOND  
Rules and Regulations, to adopt rules ) SET OF PROPOSED RULES,  
regarding General Rate Filings; Rate ) SEEKING COMMENT AND  
Principles; Affiliate Transactions and ) SETTING HEARING  
Tariff Filings. )  
) Entered: August 23, 2011

BY THE COMMISSION:

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

On May 24, 2011, the Commission 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; affiliate transactions; and tariff filings. Written comments on the First Set of Proposed Rules were received from the Nebraska Natural Gas Association (NNGA) and the Public Advocate.

Based upon the comments received, the Commission releases for comment a second set of proposed rules set forth in the attached Appendix A, incorporated herein by this reference. The second set of proposed rules includes a new change to Rule 011.04D which eliminates an obsolete reference. Additionally, the previous proposed rules indicated changes to Section 013 and 017. The changes should have been made to Sections 015 and 019 and those corrections are reflected in the second set of proposed rules. Finally, based upon comments received changes have been made to Rules 001.01A and 004.01 and 004.12 have been added.

The Public Advocate opposes the proposed rule which sets forth a rebuttable presumption of prudence with respect to operating expenses. It is well established that a utility is afforded a presumption of prudence in conjunction with its costs. In *West Ohio Gas Co. v. Public Utilities Commission of Ohio*, the United States Supreme Court stated that "Good faith is to be presumed on the part of the managers of a business...In the absence of a showing of inefficiency or improvidence, a court will not substitute its judgment for theirs as to the measure of a prudent outlay."<sup>1</sup> The proposed rule reflects this principle.

The Public Advocate further opposed the adoption of rules related to "shared resource affiliates". The proposed rule is intended to more accurately capture the type of affiliate transactions that may give rise to concerns about shifting costs and subsidization of non-jurisdictional activities by jurisdictional rate payers.

The NNGA suggested that limits on discovery be incorporated into Rule 004.10. The Commission finds inclusion of these limits in the rules and regulations would unduly limit the discretion of the hearing officer and therefore the change was not included. Finally, the NNGA proposed exemptions to the filing requirements for those jurisdictional utilities choosing to pursue negotiations with municipalities.

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<sup>1</sup> *West Ohio Gas Co. v. Public Utilities Commission of Ohio*, 294 U.S. 63, 72, 55 S.Ct. 316, 321 (1935); See also *Potomac Electric Power Company v. Public Service Commission of D.C.*, 661 A.2d 131 (D.C.App. 1995); *State Associated Natural Gas Company v. Public Service Commission of the State of Missouri*, 954 S.W.2d 520 (Mo.Ct.App. 1997).

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Comments on the proposed amendments shall be filed by interested parties on or before 3:00 p.m. on September 23, 2011. Parties filing comments should file one original, five (5) paper copies and one (1) electronic copy in Word emailed to [rose.price@nebraska.gov](mailto:rose.price@nebraska.gov) or [angela.melton@nebraska.gov](mailto:angela.melton@nebraska.gov).

Commission staff will file written testimony regarding the proposed rules and written comments on or before October 7, 2011.

Hearing on the proposed rules is set for October 12, 2011 at 1:30 p.m. in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln.

If auxiliary aids or reasonable accommodations are needed for attendance at the meeting, please call the Commission at (402) 471-3101. For people with hearing/speech impairments, please call the Commission at (402) 471-0213 (TDD) or the Nebraska Relay System at (800) 833-7352 (TDD) or (800) 833-0920 (Voice). Advance notice of at least seven days is needed when requesting an interpreter.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the second set of proposed rules amending Title 291, Chapter 9, Natural Gas and Pipeline Rules and Regulations, regarding general rate filings, rate principles, affiliate transactions and tariff filings are hereby, released for public comment.

IT IS FURTHER ORDERED that interested parties file comments on or before 3:00 p.m. on September 23, 2011. Commenting parties shall file one original, five (5) paper copies along with one electronic copy in Word emailed to [rose.price@nebraska.gov](mailto:rose.price@nebraska.gov) or [angela.melton@nebraska.gov](mailto:angela.melton@nebraska.gov).

IT IS FURTHER ORDERED that Commission staff shall file written testimony regarding the proposed rules and written comments on or before October 7, 2011.

IT IS FINALLY ORDERED that a hearing on this matter is scheduled for October 12, 2011 at 1:30 p.m. in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln.

MADE AND ENTERED at Lincoln, Nebraska, this 23rd day of August, 2011.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Red J. J. J.*  
*Alice Boyle*  
*Gerald L. Up*

*Tim Schram*  
Chairman

ATTEST:

*John Burian*  
Deputy Director

//s//Frank Landis  
//s//Tim Schram

## APPENDIX A

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

001 GENERAL:

001.01 Definitions: As used in this chapter, unless the context otherwise requires, the following definitions shall be used:

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.

001.01A1 Shared Resources Affiliate: A person or entity whose primary purpose is to share employees, departments or other physical assets used by the jurisdictional utility.

001.01A2 Affiliate Transaction: The purchase, sale, trade or lease of a good, service, or tangible or intangible asset from the regulated utility to an affiliate, regulated or unregulated other than a shared resources affiliate, or from an affiliate other than a shared resources affiliate to the regulated utility.

001.01J Prudent: Prudent shall mean that in making a decision a natural gas public utility has acted as any reasonable utility management would have acted in good faith, based upon the facts known or which should have been known at the time the decision was made.

- 2) The following new section 004 shall replace in whole the current section 004:

004 GENERAL RATE FILINGS:004.01 Application:

004.01A Parties filing an application for a general rate increase shall file with the Commission eight copies, plus an electronic copy in PDF format, as well as a copy of all text documents in Microsoft Word and all spreadsheets in Microsoft Excel. Applications must be filed with the Executive Director at the Nebraska Public Service Commission, 1200 "N" Street, Suite 300, Lincoln, Nebraska 68508.

004.01B The application shall include the information and be organized as set forth below in sections 004.02 through and including section 004.08. The application shall also be verified by a statement under oath by an officer of the jurisdictional utility.

004.01C Applicant shall provide all workpapers used to prepare the analysis and data submitted in support of application and any source documents referenced in the application, prefiled

direct testimony, or exhibits including but not limited to contracts, internal reports, summaries of billing and FERC account data. Such workpapers and source documents should also be made available in electronic format. Applicant is not required to provide in its filing documents cited in curriculum vitae.

004.01D A jurisdictional utility shall, beginning on the date the application is filed, provide the Commission and its designees and Formal Intervenors reasonable and convenient access to electronic copies of any documents detailing calculations in support of the rate filing.

004.01E An application fee as established by the Commission on an annual basis must be included with the application to cover the administrative costs of accepting and processing a filing. In addition, pursuant to § 66-1840, each applicant or other participant in the proceeding will be billed costs and expenses reasonably attributable to certification and dispute resolution, including Commission time, billed on an hourly basis, spent reviewing, analyzing and considering the application.

004.02 Section I - General Information: Section I of a general rate filing shall include:

004.02A A description of the base year and test year;

004.02B A description of the proposed revenue increase; number and classifications of affected rate payers; average per rate payer increase; volumes per classification; and reasons for proposed increase;

004.02C A financial summary showing aggregate amounts for rate base, operating expenses, and rate of return for the base year and test year, plus operating revenue calculated using natural gas rates in effect and natural gas rates as proposed;

004.02D Diagram and description of corporate structure, affiliates, and shared resource affiliates;

004.02E Financial statements for the most recent fiscal year;

004.02F The most recent annual report to stockholders, if any;

004.02G A list of witnesses and subjects on which they are to provide testimony.

004.03 Section II - Rate Base Schedules: Section II of a general rate filing shall include:

004.03A Rate-base schedules showing beginning and ending balances for the base year and test year of:

004.03A1 Utility plant and accumulated depreciation and amortization showing the balances by functional account totals;

004.03A2 Working capital, showing the manner in which it is calculated; and

004.03A3 Other rate-base components.

004.03B Allocated rate-base components showing the manner in which the components are calculated; and

004.03C Construction Work in Progress including a description of the nature and location of the project; budgeted cost; actual expenditures to date; expected completion date and any revenue to be generated from the project.

004.04 Section III - Operating Expense Schedules: Section III of a general rate filing shall include:

004.04A Operating expense schedules for the base year and test year;

004.04B Legislative advocacy expenses sought in the application, whether made directly or indirectly, including but not limited to, legislative advocacy expenses included in professional or trade association dues;

004.04C Funds expended in support of or in opposition to political candidates and sought in the application;

004.04D Funds expended in promotion of or in opposition to political or religious causes and sought in the application;

004.04E Funds expended in support of or membership in social, recreational, fraternal, or religious clubs or organizations;

004.04F Schedules detailing all affiliate transactions;

004.04G Cost allocation manual including description of any changes made since the cost allocation was last approved.

004.05 Section IV - Rate of Return and Cost of Capital Schedules: Section IV of a general rate filing shall include:

004.05A Long-term debt, preferred stock, and common equity amounts, ratios, and percentage cost rates for the base year and test year; and

004.05B Long-term debt, preferred stock, and common equity amounts at the beginning and end of the base year and test year; and

004.06 Section V - Revenue Schedules: Section V of a general rate filing shall include operating revenue schedules showing:

004.06A Number and classification of customers, volume of sales, and operating revenue by customer classes for the base year on an unadjusted basis; and

004.06B Number and classification of customers, volume of sales, and operating revenue by customer classes for the test year on a normalized basis:

004.06B1 Using current rates; and

004.06B2 Using proposed rates.

004.07 Section VI - Cost of Service Study: Section VI of a general rate filing shall include a fully-allocated cost of service study including both allocations of jurisdictional and non-jurisdictional activity and allocations between classes of ratepayers to demonstrate compliance with Section 66-1825(10). A jurisdictional utility shall, beginning on the date the application is filed, provide the Commission and its designees and Formal Intervenor reasonable and convenient access to an electronic copy of the cost of service study model to be used by the jurisdictional utility in the rate case. Such access shall be provided subject to a protective order.

004.08 Section VIII - Prefiled Direct Testimony and Exhibits: Prefiled direct testimony and exhibits to be offered at the hearing, except as permitted in Nebraska Administrative Code, Title 291, Chapter 9, Rule 006. Prefiled testimony or exhibits shall not be modified once filed except for typographical errors or mistakes, or where all parties to the proceeding agree to the change or where the Commission permits for good cause shown.

004.09 Alternate Cost of Service Study Models: Any party to the rate case intending to offer evidence on a general rate filing based upon a cost of service study model other than the model utilized by the applicant, shall provide the applicant, the Commission and its designees and other formal intervenors reasonable and convenient access to electronic copies of the cost of the service study model. Such access shall be provided subject to a protective order.

004.10 Use of Discovery in General Rate Filing Proceedings: The Commission may apply, but is not required to apply, the Discovery Rules of the Nebraska Supreme Court in general rate filing proceedings before the Commission. Unless the Commission otherwise orders, the time period for answering data requests in general rate proceedings is up to ten (10) days. For good cause shown, the time period may be extended by the Commission. All parties to a general rate proceeding may object to requests that are not permissible under the rules and regulations of the Nebraska Supreme Court regarding use of depositions and discovery. A responding party shall respond with objections to any data requests within five (5) days. For good cause shown, the time period may be extended by the Commission.

004.11 Notice of Assessment: Upon the filing of any application, including rate filings, or complaint for which the Commission deems it necessary to investigate a jurisdictional utility or make appraisals of the property of a jurisdictional utility, the Commission shall give the jurisdictional utility notice by United States mail of the applicable assessment for expenses reasonably attributable to such investigation or appraisal, including both direct and indirect expenses incurred pursuant to § 66-1840.

004.12 Parties filing testimony and exhibits in response to an application for a general rate increase shall file with the Commission eight copies, plus an electronic copy in PDF format, as well as a copy of all text documents in Microsoft Word and all spreadsheets in Microsoft Excel. Applications must be filed with the Executive Director at the Nebraska Public Service Commission, 1200 "N" Street, Suite 300, Lincoln, Nebraska 68508. Parties shall provide all

workpapers used to prepare the analysis and data submitted in response to the application and any source documents referenced in the prefiled direct testimony, or exhibits including but not limited to contracts, internal reports. Such workpapers and source documents should also be made available in electronic format. Parties are not required to provide documents cited in curriculum vitae. Prefiled testimony or exhibits shall not be modified once filed except for typographical errors or mistakes, or where all parties to the proceeding agree to the change or where the Commission permits for good cause shown. Beginning on the date the testimony and exhibits are filed, parties shall provide the Commission and its designees, the applicant, and all Formal Intervenor reasonable and convenient access to electronic copies of any documents detailing calculations in support of the rate filing.

3) Amend section 005 as follows:

005 RATE PRINCIPLES:

005.04 Allowable Expenses: Only those expenses which are prudent may be included in allowable expenses. Expenses incurred by a jurisdictional utility or a shared resources affiliate shall be presumed to be prudent, unless the contrary is shown.

005.06 Rate Base: The rate of return is applied to the rate base. The rate base includes as a major component the original cost of plant, property, and equipment, less accumulated depreciation, used and useful in rendering service to the public. Components to be included in determining the overall rate base are as follows:

005.06A Original cost, less accumulated depreciation, of utility plant used by and useful to the public utility in providing service except that acquisition adjustments will be examined on a case by case basis.

005.06A3 Payments to affiliated interests shall not be allowed as a capital cost except as provided in Rule 005.067.

005.07 Payments to Affiliates: The jurisdictional utility has the burden to demonstrate that any cost paid to an 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 an affiliate, other than a shared resources affiliate, either, as a capital cost or an expense, is included in rates except as provided in Neb. Rev. Stat. § 66-1825(8):

4) Amend subsection 011.04D as follows:

011.04D Yearly Revenue Report Requirement: No later than September 1<sup>st</sup> of every year, each CNGP shall file with the Commission a report stating the total annual dekatherms delivered and sold to residential customers within each utility rate area in the preceding year beginning July 1 and ending June 30 and the total revenues associated with the sale of natural gas to all jurisdictional customers within each utility rate area in such year. ~~Any CNGP participating in a consumer choice program shall comply with Rule 016.02F.~~ A CNGP shall also provide any other information upon request of the Commission.

- 5) Add subsection 015.02 to section 015 as follows and rename section:

015 ASSESSMENT-RELATED REPORTING AND RECORD KEEPING REQUIREMENTS:

015.01 Each jurisdictional utility must file with the Commission:

015.01A Annual Report: An annual report for the previous year upon issuance of the annual report. Any jurisdictional utility that fails, neglects or refuses to file with the Commission its annual report shall be subject to a civil penalty of not more than five hundred dollars.

015.01B Net Revenues: A statement of the difference between the jurisdictional utility's gross operating jurisdictional revenue less gas cost derived from intrastate natural gas public utility business as reflected in the annual report filed pursuant to Rule 013, together with an explanation of this computation and any supporting documentation of the computation. This statement must be filed with the Commission on or before April 30<sup>th</sup> each year.

015.01C Meters Served: A statement of the number of meters served by each jurisdictional utility, together with verified documentation to support the statement. This statement must be filed with the Commission on or before April 30<sup>th</sup> each year.

015.02 Each jurisdictional utility must maintain the following records of non-utility service:

015.02A Separate Records: A jurisdictional utility receiving revenues for providing non-utility service shall maintain and provide to the Commission, upon request, separate records for the non-utility service. The records 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 affiliate transactions; a description of the method(s) used to allocate revenues, expenses, and investments between utility service operations and non-utility service operations, including supporting detail.

015.02B Method of Inspection: The records for non-utility service shall be made available to the Commission at the principal place of business of the jurisdictional utility.

- 6) Amend section 017 as follows:

017 AFFILIATES:

017.01 Scope: The following rules must apply to affiliates that sell natural gas purchased from a producer or other seller. A division of a jurisdictional utility that operates as a functional unit within the jurisdictional utility shall also be treated as an affiliate for purposes of the Natural Gas and Pipeline Rules and Regulations. This section does not apply to affiliates conducting non-regulated private enterprise business activity or shared resources affiliates.