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LEGISLATIVE BILL 469

Approved by the Governor February 12, 1996

Introduced by Urban Affairs Committee: Hartnett, 45, Chairperson; Abboud, 12; Hall, 7; Preister, 5; Robinson, 16; Schimek, 27

AN ACT relating to public meetings; to amend sections 19-4610, 19-4615, 19-4616, 19-4622, and 84-1411, Reissue Revised Statutes of Nebraska, and section 19-4618, Revised Statutes Supplement, 1994; to change provisions relating to rate filings and hearings under the Municipal Natural Gas Regulation Act; to provide for videoconferencing of meetings of certain organizations; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 19-4610, Reissue Revised Statutes of Nebraska, is amended to read:

19-4610. (1) If a utility desires to change its rates for natural gas service within a municipality other than to reflect an adjustment for natural gas supply costs, the utility shall present to the municipality copies of present and proposed rate schedules, the monthly customer billing cycles and billing schedules for the twelve months following the date of filing, and information supporting the proposed rates for natural gas service within the municipality as required by section 19-4611.

(2) The municipality may charge and collect a filing fee for a rate filing. Such fee shall not exceed: (a) For a city of the primary class, two thousand dollars; (b) for a city of the first class, one thousand dollars; (c) for a city of the second class, three hundred dollars; and (d) for a village, seventy-five dollars.

(3) Within forty-five days after the date of filing, a municipality may reject a rate filing only on the grounds that the information required by section 19-4611 has not been filed with the municipality. The utility shall be given at least seven days' prior written notice of any meeting to consider rejection of the utility's rate filing. Rejection shall be made by resolution of the municipality and shall state the reasons upon which the rejection is based. In the event of any such rejection, a copy of the written resolution shall be delivered to the utility within seven days after final action by the municipality. After receipt of the resolution, the utility shall have fifteen days to remedy the deficiencies stated in such resolution and the time periods under section 19-4607 shall not be suspended during such fifteen-day period. If the municipality has not received the information to cure the deficiencies within the fifteen-day period or within such additional period of time as may be agreed to by the utility and the municipality, the filing shall be deemed to be rejected and the utility shall be required to initiate a new rate filing.

(4) The utility may appeal from the decision of the municipality rejecting a rate filing. The appeal shall be to the district court.

(5) If a rate filing is rejected and the rejection is appealed, the utility may place the interim rates into effect pursuant to the time periods specified in section 19-4607, subject to refund, pending district court determination. If the utility appeals the rejection of the filing and if the court rules that the rejection was unreasonable, the times specified in section 19-4607 shall run from the date of filing.

Sec. 2. Section 19-4615, Reissue Revised Statutes of Nebraska, is amended to read:

19-4615. (1) Notice of filings for any rate increase under the Municipal Natural Gas Regulation Act shall be given within thirty days of filing by publication by placing a notice to the public of the proposed change in a newspaper having general circulation in the municipality, except that a utility may provide notice to the public by mailing such notice by United States mail, postage prepaid, to the billing address of each directly affected customer or by including the notice in such customer's bill in a conspicuous form. An affidavit signed by an official of a utility and describing the method of publication of the notice shall be filed with the office of the clerk of the municipality. The notice shall contain:

(1) (a) The name and address of the utility;

(2) (b) The dollar amount of the increase as it pertains to the typical residential customer;

- (3) (c) The percentage amount of the increase; and
 (4) (d) The name and address of the clerk of the municipality.

(2) No later than twenty days prior to the scheduled date of the area rate hearing provided for in section 19-4616, the utility shall inform affected utility customers of the hearing by mailing notice by United States mail, postage prepaid, to the billing address of each directly affected customer or by including the notice in such customer's bill in a conspicuous form. The notice shall contain a brief statement of the purpose of the hearing and the date, time, and place of the hearing or nearest videoconference site and shall inform the customer of his or her right to attend the hearing and to appear, participate, and present testimony.

Sec. 3. Section 19-4616, Reissue Revised Statutes of Nebraska, is amended to read:

19-4616. (1) A report specifying the reasons supporting any action recommended to the municipality by the municipal staff or any agent or employee employed by or on behalf of the municipality to assist it in rate regulation shall be provided to the municipality and the utility within one hundred twenty countable days of the date of the rate filing. Relevant information requests regarding the report may be made by the utility to the municipality and shall be responded to as soon as reasonably possible prior to the date for the filing of the rebuttal. Not later than seventy-five countable days following the date of the rate filing, the municipality shall set the date, time, and place of the area rate hearing and any sites for videoconference participation and shall provide the utility with notice of its decision. Prior to setting the date, time, and place of the rate area hearing and any sites for videoconference participation, the municipality shall consult with the utility to insure that the utility has sufficient time following its receipt of notice to comply with its duty to notify customers as provided in subsection (2) of section 19-4615.

(2) Within seven countable days after receipt of the report, the utility and the municipality identified in section 19-4617 may mutually agree to discuss resolution of the rate filing issues and may mutually agree to suspend the date of final action and time periods set forth in the Municipal Natural Gas Regulation Act for a period not to exceed thirty days.

(3) Within fourteen countable days after receipt of the report, the utility shall file its rebuttal. Relevant information requests regarding the rebuttal may be made by the municipality to the utility and shall be responded to as soon as reasonably possible prior to the area rate hearing provided for in this section.

(4) No sooner than seven days after the utility files its rebuttal, an area rate hearing shall be held in the municipality having the largest number of customers in the rate area. Such hearing shall be conducted by a hearing officer appointed by the municipality identified in section 19-4617. Such hearing officer shall have experience in the conduct of hearings so as to insure the fair, impartial, and expeditious conduct of the proceedings and the creation of a record of the proceedings. The utility shall be given written notice of such rate hearing by the end of the seventy-fifth countable day after the day of filing and the name of the hearing officer by the end of the one-hundred-twenty-eighth countable day after the date of filing. The municipalities and the utility shall be granted the opportunity at such hearing to call witnesses, present evidence, cross-examine witnesses, and argue the evidence. If the municipalities and the utility reach an agreement upon any or all of the items at issue with regard to the filing by the utility, the terms of any agreement shall be presented in full at the hearing and the proposed findings of fact and conclusions of law presented to the hearing officer shall reflect the terms of the agreement. Customers of the utility attending the hearing shall be provided a full and complete opportunity to appear, participate, and present testimony at the hearing with regard to the agreement or any of its terms. Prior to such hearing, the hearing officer shall establish procedures for the conduct of the hearing to comply with this provision. The utility shall present as evidence at the hearing all the information which it desires to have considered by the municipality in its consideration of the rates to be adopted. Following the hearing, the utility and the municipalities shall provide to the hearing officer their proposed findings of fact and conclusions of law. A certified court reporter shall be present at the hearing and shall prepare a transcript of the proceedings.

(5) When two or more rate areas served by the same utility are conducting area rate hearings on the same date, a consolidated area rate hearing of all the rate areas may be conducted at one single site by videoconference upon the consent of the utility and the municipalities identified in section 19-4617 representing a majority of the affected rate

areas. If a joint area rate hearing is approved, there shall be at least one remote site in each rate area participating from which interested persons may view the proceedings and participate as witnesses. If a joint area rate hearing is held pursuant to this subsection, a separate official record conforming to the requirements of this section shall be created for each rate area.

(6) The official record of the hearing shall consist of the rate filing, all reports, all evidence presented by the utility and the municipalities, all documents and information presented at the hearing, the transcript of the proceedings, and the proposed findings of fact and conclusions of law presented to the hearing officer by the municipalities and the utility. A copy of the official record shall be transmitted by the hearing officer to each municipality in the rate area.

(7) ~~(6)~~ Following the hearing and within one hundred eighty countable days of the date of filing, each municipality within the rate area shall take final action on the rate filing by adopting findings of fact and conclusions of law and a rate ordinance based on such findings and conclusions. If the municipality does not take action within that one-hundred-eighty-countable-day period, the rates filed by the utility in its rate filing shall become final and no longer subject to refund. Notwithstanding any other provision of state law or any local ordinance, the adoption of a rate ordinance shall require no more than a vote of a majority of the elected members of any governing body of a municipality made at one public meeting after compliance with public notice requirements and a public hearing on the proposed ordinance.

(8) ~~(7)~~ Within thirty days of the date of final action by the municipalities within a rate area, a utility may initiate proceedings for judicial review of the decision of any municipality in the rate area to the district court. At the time the utility initiates action for judicial review, it shall join in such action as parties all municipalities in the rate area whose actions are being challenged.

(9) ~~(8)~~ In no event shall the district court render a decision upon a judicial review of municipal action later than one hundred eighty days after the filing of the action.

(10) ~~(9)~~ The utility shall, within thirty days of the date of final action, unless it takes timely action to initiate judicial review, implement the rates established by the action of the municipality and shall, within sixty days of such action, make refunds, if any, with interest as provided in section 19-4607.

Sec. 4. Section 19-4618, Revised Statutes Supplement, 1994, is amended to read:

19-4618. (1) Once in any thirty-six-month period, one or more municipalities in each rate area may initiate a proceeding for a review and possible adjustment in rates to conform such rates to the standards of section 19-4612 by the introduction of a resolution for such purpose. The municipality shall provide to the utility seven days' prior written notice of the meeting at which such resolution is to be considered and a copy of the proposed resolution. Following adoption of the resolution, the clerk of the municipality shall send a copy of the resolution by certified mail to the utility. The municipality may request the information required by section 19-4611 to be provided by the utility within one hundred twenty days of the receipt of the notice unless otherwise agreed. Following filing of the information required in section 19-4611, the municipality may make additional requests as provided in section 19-4614. The utility shall be provided with a copy of any reports and analyses prepared for the municipality in its consideration of a rate adjustment. To the fullest extent possible, the general procedures provided for in subsections (1) through ~~(6)~~ (7) of section 19-4616 shall be followed by the municipality and the utility, except that calculations of time periods shall be from the date on which the municipality receives the information specified in section 19-4611 and not from the date of filing. Nothing in this subsection shall require the participation in the proceedings of every municipality in the rate area. During the pendency of all proceedings under this section and through the period of judicial review of those proceedings, the rates in effect prior to the time the municipality adopts the resolution provided for in this section shall remain in effect. The provisions of subsection (5) of section 19-4607 shall be applicable to this section.

(2) Except as provided in the Municipal Natural Gas Regulation Act, no municipality shall be entitled to any filing fees or assessments against the utility when the municipality initiates a rate adjustment nor shall the municipality receive a loan under section 19-4617 for such purposes. If the utility initiates judicial review of the decision of a municipality under this

section and the court upholds the decision of the municipality, the court may award the municipality litigation expenses to include attorney's fees, expert witness fees, consultant fees, and such other related expenses as the court finds to be properly related to the judicial review. Any action for judicial review shall be initiated in the district court. If appropriate resolutions are adopted by municipalities representing seventy percent or more of the customers in the rate area initiating a proceeding for review and possible adjustment of natural gas rates, the applicant representing the largest number of customers shall be given a loan for such purposes upon the terms of section 19-4617.

(3) After August 1, 1993, any Any municipality or combination of municipalities within a rate area which determines from the filings made by a utility pursuant to section 19-4618.02 that evidence exists that the utility is engaging in subsidization may conduct a review of the utility's rates for natural gas service to customers pursuant to this section for the purpose of determining whether it is necessary to adjust prospectively any portion of the rates.

Sec. 5. Section 19-4622, Reissue Revised Statutes of Nebraska, is amended to read:

19-4622. Customers of the utility in a rate area shall have the right to appear, participate, and present testimony at the hearing provided for in section 19-4616 and shall have such evidence considered by the municipalities in the rate determination. When the interests of any customers are substantially similar, the hearing officer may provide that such class of customers join in presentation of the evidence at the hearing so as to expedite the proceedings. Customers who desire to present testimony and participate at the hearing shall follow the requirements for municipal staff or agents as provided in subsection (1) of section 19-4616. All customers shall be provided with notice of these rights, which notice shall be provided by the utility in the notice required by subsection (2) of section 19-4615.

Sec. 6. Section 84-1411, Reissue Revised Statutes of Nebraska, is amended to read:

84-1411. (1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2) A meeting of a state agency, state board, state commission, state council, or state committee, of an advisory committee of any such state entity, of an organization created under the Interlocal Cooperation Act or the Municipal Cooperative Financing Act, or of the governing body of a public power district having a chartered territory of more than fifty counties in this state may be held by means of videoconferencing if:

- (a) Reasonable advance publicized notice is given;
- (b) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio or visual recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if videoconferencing was not used;
- (c) At least one copy of all documents being considered is available to the public at each site of the videoconference;
- (d) At least one member of the state entity, advisory committee, or governing body is present at each site of the videoconference; and
- (e) No more than one-half of the state entity's, advisory committee's, or governing body's meetings in a calendar year are held by videoconference.

Videoconferencing shall not be used to circumvent any of the public government purposes established in sections 84-1408 to 84-1414.

(3) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(4) When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of subsection (3) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(5) A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment.

(6) It is the intent of the Legislature that on or before January 1, 1997, the Government, Military and Veterans Affairs Committee of the Legislature review the effects of subsections (2) and (5) of this section on openness of meetings, effectiveness of public access arrangements, costs and cost-savings, and any tendency observed to abuse or circumvent the open meeting provisions of sections 84-1408 to 84-1414. The committee shall develop and propose any corrective legislation it deems necessary.

Sec. 7. Original sections 19-4610, 19-4615, 19-4616, 19-4622, and 84-1411, Reissue Revised Statutes of Nebraska, and section 19-4618, Revised Statutes Supplement, 1994, are repealed.