

AMENDMENTS TO LB404

Introduced by Urban Affairs

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Section 66-1865, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 66-1865 (1) Beginning January 1, 2010, a jurisdictional
6 utility may file an application and proposed rate schedules
7 with the commission to establish or change infrastructure system
8 replacement cost recovery charge rate schedules that will allow
9 for the adjustment of the jurisdictional utility's rates and
10 charges to provide for the recovery of costs for eligible
11 infrastructure system replacements. The commission shall not
12 approve any infrastructure system replacement cost recovery charge
13 rate schedules if such schedules would produce, over the course
14 of the sixty-month period referred to in subsection (3) of this
15 section, total annualized infrastructure system replacement cost
16 recovery charge revenue below the lesser of one million dollars
17 or one-half percent of the jurisdictional utility's base revenue
18 level approved by the commission in the jurisdictional utility's
19 most recent general rate proceeding. The commission shall not
20 approve any infrastructure system replacement cost recovery charge
21 rate schedules if such schedules would produce, over the course
22 of the sixty-month period referred to in subsection (3) of this
23 section, total annualized infrastructure system replacement cost

1 recovery charge revenue exceeding ten percent of the jurisdictional
2 utility's base revenue level approved by the commission in the
3 jurisdictional utility's most recent general rate proceeding.
4 Any infrastructure system replacement cost recovery charge rate
5 schedules and any future changes thereto shall be calculated and
6 implemented in accordance with the State Natural Gas Regulation
7 Act. Infrastructure system replacement cost recovery charge revenue
8 shall be subject to a refund based upon a finding and order of
9 the commission to the extent provided in subsections (6) and (8)
10 of section 66-1866 or as approved by the affected cities to the
11 extent provided in subsection (6) and subdivision (7)(c) of section
12 66-1867.

13 (2) The commission shall not approve any infrastructure
14 system replacement cost recovery charge rate schedules for any
15 jurisdictional utility that has not had a general rate proceeding
16 decided or dismissed by issuance of a commission order within
17 the sixty months immediately preceding the application by the
18 jurisdictional utility for an infrastructure system replacement
19 cost recovery charge.

20 (3) A jurisdictional utility shall not collect an
21 infrastructure system replacement cost recovery charge rate for a
22 period exceeding sixty months after its initial approval unless
23 within such sixty-month period the jurisdictional utility has filed
24 for or is the subject of a new general rate proceeding, except that
25 the infrastructure system replacement cost recovery charge rate
26 may be collected until the effective date of new rate schedules
27 established as a result of the new general rate proceeding or until

1 the general rate proceeding is otherwise decided or dismissed by
2 issuance of a commission order without new rates being established.

3 Sec. 2. Section 66-1866, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 66-1866 (1) This section applies to applications for
6 an infrastructure system replacement cost recovery charge by a
7 jurisdictional utility whose last general rate filing was not the
8 subject of negotiations with affected cities as provided for in
9 section 66-1838.

10 (2) When a jurisdictional utility governed by this
11 section files an application with the commission seeking to
12 establish or change any infrastructure system replacement cost
13 recovery charge rate schedules, it shall submit to the commission
14 with the application proposed infrastructure system replacement
15 cost recovery charge rate schedules and supporting documentation
16 regarding the calculation of the proposed infrastructure system
17 replacement cost recovery charge rate schedules, including (a) a
18 list of eligible projects, (b) a description of the projects, (c)
19 the location of the projects, (d) the purpose of the projects,
20 (e) the dates construction began and ended, (f) the total expenses
21 for each project at completion, and (g) the extent to which such
22 expenses are eligible for inclusion in the calculation of the
23 infrastructure system replacement cost recovery charge.

24 (3)(a) When an application, along with any associated
25 proposed rate schedules and documentation, is filed pursuant to
26 subsection (2) of this section, the public advocate shall conduct
27 an examination of the proposed infrastructure system replacement

1 cost recovery charge rate schedules.

2 (b) The public advocate shall cause an examination to
3 be made of information regarding the jurisdictional utility to
4 confirm that the underlying costs are in accordance with the
5 State Natural Gas Regulation Act and to confirm proper calculation
6 of the proposed infrastructure system replacement cost recovery
7 charge rates and rate schedules. The commission shall require a
8 report regarding such examination to be prepared and filed with
9 the commission not later than sixty days after the application
10 is filed. No other revenue requirement or ratemaking issue shall
11 be examined in consideration of the application or associated
12 proposed rate schedules filed pursuant to the act unless the
13 consideration of such affects the determination of the validity of
14 the proposed infrastructure system replacement cost recovery charge
15 rate schedules.

16 (c) The commission shall hold a hearing on the
17 application and any associated rate schedules at which the public
18 advocate shall present his or her report and shall act as trial
19 staff before the commission. The commission shall issue an order
20 to become effective not later than one hundred twenty days after
21 the application is filed, except that the commission may, for good
22 cause, extend such period for an additional thirty days.

23 (d) If the commission finds that an application complies
24 with the requirements of the act, the commission shall enter
25 an order authorizing the jurisdictional utility to impose an
26 infrastructure system replacement cost recovery charge rate that is
27 sufficient to recover appropriate pretax revenue, as determined by

1 the commission pursuant to the act.

2 (4) A jurisdictional utility may apply for a change in
3 any infrastructure system replacement cost recovery charge rate
4 schedules approved pursuant to this section no more than once in
5 any twelve-month period. Any such application for a change shall be
6 pursued in the manner provided for in this section.

7 (5) In determining the appropriate pretax revenue, the
8 commission shall consider the following factors:

9 (a) The net original cost of eligible infrastructure
10 system replacements. For purposes of this section, the net
11 original cost means the original cost of eligible infrastructure
12 system replacements minus associated retirements of existing
13 infrastructure;

14 (b) The accumulated deferred income taxes associated with
15 the eligible infrastructure system replacements;

16 (c) The accumulated depreciation associated with the
17 eligible infrastructure system replacements;

18 (d) The state, federal, and local income tax or excise
19 tax rates at the time of such determination;

20 (e) The jurisdictional utility's actual regulatory
21 capital structure as determined during the most recent general rate
22 proceeding of the jurisdictional utility;

23 (f) The actual cost rates for the jurisdictional
24 utility's debt and preferred stock as determined during the most
25 recent general rate proceeding of the jurisdictional utility;

26 (g) The jurisdictional utility's cost of common equity as
27 determined during the most recent general rate proceeding of the

1 jurisdictional utility; and

2 (h) The depreciation rates applicable to the eligible
3 infrastructure system replacements at the time of the most recent
4 general rate proceeding of the jurisdictional utility.

5 (6) (a) The monthly infrastructure system replacement cost
6 recovery charge rate shall be allocated among the jurisdictional
7 utility's classes of customers in the same manner as costs for
8 the same type of facilities were allocated among classes of
9 customers in the jurisdictional utility's most recent general rate
10 proceeding. An infrastructure system replacement cost recovery
11 charge rate shall be assessed to customers as a monthly fixed
12 charge and not based on volumetric consumption. Such monthly
13 charge shall not increase more than ~~fifty~~ seventy-five cents per
14 residential customer over the base rates in effect at the time
15 of the initial filing for any infrastructure system replacement
16 cost recovery charge rate schedules. Thereafter, each subsequent
17 filing shall not increase the monthly charge by more than ~~fifty~~
18 seventy-five cents per residential customer over that charge
19 in existence at the time of the most recent application for
20 any infrastructure system replacement cost recovery charge rate
21 schedules.

22 (b) At the end of each twelve-month period during
23 which the infrastructure system replacement cost recovery charge
24 rate schedules are in effect, the jurisdictional utility shall
25 reconcile the differences between the revenue resulting from
26 the infrastructure system replacement cost recovery charge and
27 the appropriate pretax revenue as found by the commission for

1 that period and shall submit the reconciliation and any proposed
2 infrastructure system replacement cost recovery charge rate
3 schedules adjustment to the commission for approval to recover or
4 refund the difference, as appropriate, through adjustments of the
5 infrastructure system replacement cost recovery charge rate.

6 (7) (a) A jurisdictional utility that has implemented
7 any infrastructure system replacement cost recovery charge rate
8 schedules pursuant to the act shall cease to collect such
9 charges when new base rates and charges become effective for the
10 jurisdictional utility following a commission order establishing
11 customer rates in a general rate proceeding.

12 (b) In any subsequent general rate proceeding involving
13 a jurisdictional utility which is collecting charges pursuant
14 to any infrastructure system replacement cost recovery charge
15 rate schedules, the commission shall reconcile any previously
16 unreconciled infrastructure system replacement cost recovery charge
17 revenue as necessary to ensure that the revenue matches as closely
18 as possible to the appropriate pretax revenue as found by the
19 commission for that period.

20 (8) In the event the commission disallows, during
21 a subsequent general rate proceeding, recovery of costs
22 associated with eligible infrastructure system replacements
23 previously included in any infrastructure system replacement cost
24 recovery charge rate schedules, the commission shall order the
25 jurisdictional utility to make such rate adjustments as necessary
26 to recognize and account for any such overcollections.

27 (9) Nothing in this section shall be construed to

1 limit the authority of the commission to review and consider
2 infrastructure system replacement costs along with other costs
3 during any general rate proceeding of any jurisdictional utility.

4 Sec. 3. Section 66-1867, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 66-1867 (1) This section applies to applications for
7 an infrastructure system replacement cost recovery charge by a
8 jurisdictional utility whose last general rate filing was the
9 subject of negotiations with affected cities as provided for in
10 section 66-1838.

11 (2) When a jurisdictional utility governed by this
12 section files an application with the commission seeking to
13 establish or change any infrastructure system replacement
14 cost recovery charge rate schedules, it shall submit proposed
15 infrastructure system replacement cost recovery charge rate
16 schedules and supporting documentation regarding the calculation
17 of the proposed infrastructure system replacement cost recovery
18 charge rate schedules with the application and shall provide
19 written notice to each city that will be affected by the proposed
20 infrastructure system replacement cost recovery charge rates
21 simultaneously with the filing with the commission. Such notice
22 shall identify the cities that will be affected by the filing.
23 The jurisdictional utility shall file copies of the notice with
24 the commission and shall file with the affected cities the
25 information prescribed by this section with each city affected by
26 the proposed infrastructure system replacement cost recovery charge
27 in electronic or digital form or, upon request, in paper form.

1 (3) The jurisdictional utility shall file with the
2 cities and the commission the infrastructure system replacement
3 cost recovery charge rate schedules and supporting documentation
4 regarding the calculation of the proposed infrastructure system
5 replacement cost recovery charge rate schedules, including (a) a
6 list of eligible projects, (b) a description of the projects, (c)
7 the location of the projects, (d) the purpose of the projects,
8 (e) the dates construction began and ended, (f) the total expenses
9 for each project at completion, and (g) the extent to which such
10 expenses are eligible for inclusion in the calculation of the
11 infrastructure system replacement cost recovery charge rate.

12 (4) (a) Affected cities shall have a period of thirty days
13 after the date of such filing within which to adopt a resolution
14 evidencing their intent to negotiate an infrastructure system
15 replacement cost recovery charge rate with the jurisdictional
16 utility. A copy of the resolution in support of negotiations
17 adopted by each city under this section or a copy of the resolution
18 of the rejection of the offer of negotiations shall be provided
19 to the commission and the jurisdictional utility within seven days
20 after its adoption.

21 (b) If the commission receives resolutions adopted prior
22 to the expiration of the thirty-day period provided for in
23 subdivision (a) of this subsection evidencing the intent from
24 cities representing more than fifty percent of the ratepayers
25 within the affected cities to negotiate with the jurisdictional
26 utility an infrastructure system replacement cost recovery charge
27 rate, the commission shall certify the case for negotiation between

1 such cities and the jurisdictional utility and shall take no action
2 upon the application and filings regarding such charge until the
3 negotiation period and any stipulated extension has expired or an
4 agreement on rates is submitted, whichever occurs first.

5 (c) If the commission receives copies of resolutions
6 from cities representing more than fifty percent of the ratepayers
7 within the affected cities which expressly reject negotiations, the
8 infrastructure system replacement cost recovery charge rate review
9 shall proceed immediately from the date when the commission makes
10 such a determination in the manner provided for in section 66-1866.

11 (d) If commission certification to pursue negotiations is
12 entered, the cities that have adopted resolutions to negotiate and
13 the jurisdictional utility shall enter into good faith negotiations
14 over the proposed infrastructure system replacement cost recovery
15 charge rate.

16 (e) Negotiations between the cities and the
17 jurisdictional utility shall continue for a period not to
18 exceed thirty days after the date of the commission's certification
19 to pursue negotiations, except that the parties may mutually agree
20 to extend such period to a future date certain and shall provide
21 such stipulation to the commission.

22 (f) If the cities and the jurisdictional utility reach
23 agreement upon the proposed infrastructure system replacement cost
24 recovery charge rate schedules, such agreement shall be put into
25 writing and filed with the commission. If cities representing
26 more than fifty percent of the ratepayers within the cities
27 affected by the proposed infrastructure system replacement cost

1 recovery charge rate schedules enter into an agreement upon such
2 charges and the agreement is filed with and approved by the
3 commission, such infrastructure system replacement cost recovery
4 charge rate schedules shall be effective and binding upon all of
5 the jurisdictional utility's ratepayers within the affected cities.
6 The commission shall enter its order either approving or rejecting
7 such infrastructure system replacement cost recovery charge rate
8 schedules within thirty days after the date of the filing of the
9 agreement with the commission.

10 (g) Any agreement filed with the commission shall be
11 presumed in the public interest, and absent any clear evidence on
12 the face of the agreement that it is contrary to the standards and
13 provisions of the State Natural Gas Regulation Act, the agreement
14 shall be approved by the commission.

15 (h) If the negotiations fail to result in an agreement
16 upon any infrastructure system replacement cost recovery charge
17 rate schedules within the time permitted by this section for such
18 negotiations, the jurisdictional utility may formally notify the
19 commission of this fact and the matter shall be submitted for
20 determination by the commission as a contested proceeding with the
21 affected cities as one party and the jurisdictional utility as the
22 other. The affected cities and the jurisdictional utility shall
23 submit any documents, data, or information in support of the city's
24 or jurisdictional utility's position to the commission in a report
25 to be filed not later than fourteen days after the commission
26 receives notice that negotiations have failed and formally notifies
27 the parties that it will be hearing the matter as a contested case.

1 The commission shall hold a hearing in the case not later than
2 thirty-five days after the receipt of the reports of both parties.
3 In determining the appropriate pretax revenue of the jurisdictional
4 utility, the commission shall consider the factors set out in
5 subsection (5) of section 66-1866. A final determination by the
6 commission shall be rendered by the commission within twenty-one
7 days after the adjournment of the hearing.

8 (i) If information filed pursuant to subdivision (h)
9 of this subsection is not considered a public record within the
10 meaning of sections 84-712 to 84-712.09, such information may
11 be submitted to the commission by the jurisdictional utility or
12 affected cities for the limited purpose of consideration by the
13 commission under this section subject to a protective order issued
14 by the commission.

15 (j) Within thirty days after any infrastructure system
16 replacement cost recovery charge rate schedules approved by the
17 commission pursuant to this section become effective, copies of
18 all documents relating to such infrastructure system replacement
19 cost recovery charge rate schedules, except those determined to be
20 confidential under rules and regulations adopted and promulgated by
21 the commission or that may be withheld from the public pursuant to
22 subdivision (h) or (j) of this subsection, shall be available for
23 public inspection in every office and facility open to the general
24 public of the jurisdictional utility in this state.

25 (5) A jurisdictional utility may apply for a change in
26 any infrastructure system replacement cost recovery charge rate
27 schedules approved pursuant to this section no more than once in

1 any twelve-month period. Any such application for a change shall be
2 pursued in the manner provided for in this section.

3 (6) (a) The monthly infrastructure system replacement cost
4 recovery charge rate shall be allocated among the jurisdictional
5 utility's classes of customers in the same manner as costs for
6 the same type of facilities were allocated among classes of
7 customers in the jurisdictional utility's most recent general rate
8 proceeding. An infrastructure system replacement cost recovery
9 charge rate shall be assessed to customers as a monthly fixed
10 charge and not based on volumetric consumption. Such monthly
11 charge shall not increase more than ~~fifty~~ seventy-five cents per
12 residential customer over the base rates in effect at the time
13 of the initial filing for any infrastructure system replacement
14 cost recovery charge rate schedules. Thereafter, each subsequent
15 filing shall not increase the monthly charge by more than ~~fifty~~
16 seventy-five cents per residential customer over that charge
17 in existence at the time of the most recent application for
18 any infrastructure system replacement cost recovery charge rate
19 schedules.

20 (b) At the end of each twelve-month period during
21 which the infrastructure system replacement cost recovery charge
22 rate schedules are in effect, the jurisdictional utility shall
23 reconcile the differences between the revenue resulting from an
24 infrastructure system replacement cost recovery charge and the
25 appropriate pretax revenue for that period and shall submit the
26 reconciliation and any proposed infrastructure system replacement
27 cost recovery charge rate schedules adjustment to the affected

1 cities for approval to recover or refund the difference, as
2 appropriate, through adjustments of the infrastructure system
3 replacement cost recovery charge rate. Review and approval of
4 such reconciliation or adjustment shall proceed in the manner set
5 out in the commission order on the initial application for an
6 infrastructure system replacement cost recovery charge rate.

7 (7) (a) A jurisdictional utility that has implemented
8 any infrastructure system replacement cost recovery charge rate
9 schedules pursuant to this section shall cease to collect such
10 charges when new base rates and charges become effective for the
11 jurisdictional utility following a commission order establishing or
12 approving customer rates in a subsequent general rate proceeding.

13 (b) In any subsequent general rate proceeding involving
14 a jurisdictional utility which is collecting charges pursuant to
15 any infrastructure system replacement cost recovery charge rate
16 schedules, the new general rates shall reflect a reconciliation of
17 any previously unreconciled infrastructure system replacement cost
18 recovery charge revenue as necessary to ensure that the revenue
19 matches as closely as possible to the appropriate pretax revenue
20 for that period as determined in the general rate proceeding.

21 (c) If, during a subsequent general rate proceeding, the
22 recovery of certain costs associated with eligible infrastructure
23 system replacements are disallowed, the new general rates approved
24 shall include such adjustments as are necessary to recognize and
25 account for any overcollections.

26 (8) Nothing in this section shall be construed to limit
27 the authority of the commission or affected cities engaged in

1 negotiations regarding a general rate filing with a jurisdictional
2 utility to review and consider infrastructure system replacement
3 cost recovery charge rates along with other costs during any
4 general rate proceeding of such jurisdictional utility.

5 Sec. 4. Original sections 66-1865, 66-1866, and 66-1867,
6 Reissue Revised Statutes of Nebraska, are repealed.