

NEBRASKA

PUBLIC SERVICE COMMISSION

COMMISSIONERS:
ERIC KAMLER
CHRISTIAN MIRCH
TIM SCHRAM
KEVIN STOCKER
DAN WATERMEIER



June 25, 2024

TO WHOM IT MAY CONCERN:

RE: RULE AND REGULATION #210: In the Matter of the Commission, on its own motion, seeking to amend Title 291, Chapter 9, Natural Gas and Oil Pipeline, to update, modernize, correct errors, and reorganize the chapter.

CERTIFICATION

I, Thomas Golden, Executive Director of the Nebraska Public Service Commission, hereby certify that the enclosed is a true and correct copy of the original order made and entered in the proceeding docketed Rule and Regulation No. 210 on the 25th day of June, 2024. The original order is filed and recorded in the official records of the Commission.

Please direct any questions concerning this order to Nichole Mulcahy at 402-471-3101.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the Nebraska Public Service Commission, Lincoln, Nebraska, this 25th day of June, 2024.

Sincerely,

A handwritten signature in black ink that reads "Thomas W. Golden".

Thomas Golden
Executive Director



cc: Stevens Berry, Governor's Policy Research Office, via Interoffice mail; via state portal on rules.nebraska.gov

Ben Fry, Secretary of State via state portal on rules.nebraska.gov

Trevor Fitzgerald, Executive Board of the Legislative Council, via state portal on rules.nebraska.gov

All other recipients listed here: <https://psc.nebraska.gov/administration/proposed-rules-regulations>



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M E M O R A N D U M

TO: Railroad Contacts

FROM: Jonathan Smith, Attorney

DATE: June 25, 2024

RE: Rule and Regulation #210
Title 291, Chapter 9, Natural Gas and Oil Pipeline Rules & Regulations

On June 25, 2024, the Commission entered an Order Scheduling Hearing, in the matter of the Commission, on its own motion, seeking to establish Title 291, Chapter 9, Natural Gas and Oil Pipeline Rules and Regulations in its entirety.

Due to the voluminous nature of the rules and service list, we will not distribute hard copies unless specifically requested. A PDF version of the proposed rule is available on the Commission's website at:

<https://psc.nebraska.gov/administration/proposed-rules-regulations>

If you wish to receive a hard copy of the proposed rules, please contact me or the Commission's Paralegal using the information below:

Jonathan Smith	402-471-0245	jon.smith@nebraska.gov
Brittany Seabrooks	402-471-0227	brittany.seabrooks@nebraska.gov

Please call or email if you have any questions regarding the adopted rules.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the)	Rule and Regulation No. 210
Commission, on its own motion,)	
seeking to amend Title 291,)	
Chapter 9, Natural Gas and Oil)	ORDER ADOPTING
Pipeline, to update,)	PROPOSED RULES AND ISSUING
modernize, correct errors, and)	CERTIFICATE OF ADOPTION
reorganize the chapter.)	
)	
)	Entered: June 25, 2024

BY THE COMMISSION:

On October 11, 2023, the Nebraska Public Service Commission ("Commission"), on its own motion, opened the above-captioned docket to amend provisions of the Commission's rules and regulations Chapter 9, Natural Gas and Oil Pipeline Rules and Regulations, release proposed rules, and seek comment. The Commission seeks to modernize and update procedures, correct typographical errors, clarify and reorganize various sections, and conduct an overall cleanup of Section 001 through Section 022 of its Rules.

The Commission received written comments in response to the release of the first set of proposed rules. Comments were filed by Black Hills Nebraska Gas, LLC d/b/a Black Hills Energy ("Black Hills"); the Nebraska Public Advocate ("PA"); and NorthWestern Energy Public Service Corporation d/b/a NorthWestern Energy ("NorthWestern"). The Commission reviewed all filed comments and made minor revisions to the proposed rules to be further discussed at the scheduled hearing, none of which were substantive in nature.

A public hearing on the proposed rules was held on April 30, 2024, in the Commission Hearing Room in Lincoln, Nebraska, and remotely via WebEx. Notice of the hearing was published in The Daily Record, Omaha; the Omaha World-Herald; and the Lincoln Journal-Star. Additional notice of the hearing was sent via email to the Chair of the Executive Board, the Governor's Policy and Research Office, and the Nebraska Secretary of State.

Ms. Nichole Mulcahy and Mr. Jonathan Smith appeared on behalf of the Commission. In addition, Mr. Douglas J. Law appeared on behalf of Black Hills; Mr. Andrew S. Pollock appeared on behalf of NorthWestern; and Ms. Chris Dibbern appeared in her capacity as the Public Advocate. No other appearances were made.

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E V I D E N C E

At the beginning of the hearing, Mr. Smith, staff attorney for the Commission, and Ms. Mulcahy, Director of the Natural Gas Department of the Commission, provided a broad outline of the proposed rule changes in an effort to provide context to both the proposed changes and the filed comments. Mr. Smith began by emphasizing that the vast majority of the proposed changes were primarily made to either clarify and simplify language, reorganize various sections, correct grammatical errors, or modernize outdated section. He re-iterated that many of the proposed changes were not substantive in nature.¹

Mr. Smith then highlighted a few changes in Section 001 through Section 009 of the proposed rules. For example, he discussed the Commission's effort to make definitions consistent throughout the rules, resulting in many typographical corrections. He also described an example of a rule modernization in Proposed Rules 004.01, 004.12, and 006.01A, where the Commission sought to update its rules to provide more flexibility in filing documents in electronic format. He also pointed out an example of where the Commission proposed to codify certain requirement that were already required by prior Commission Order to align those requirements with current practice.² Mr. Smith then turned it over to Ms. Mulcahy, who provided a brief summary of some of the proposed changes in Section 010 through Section 022, the remainder of the proposed rules. She began by highlighting Proposed Rule 11.02H, regarding the certification of Competitive Natural Gas Providers ("CNGPs"), pointing out certain language that was added to codify the current practices of the department.³ Next, she turned to Proposed Rule 013.06, stating the Commission's changes were based on the passage of LB632.⁴ Ms. Mulcahy then referenced a few areas in Sections 015 and 016 where the Commission updated language to add clarity to various rules.⁵ Ms. Mulcahy then highlighted Proposed Rule 017.09C, regarding billing adjustments, where she recommended, based on NorthWestern's filed comments, that the Commission revert back to the original language and strike the Commission's proposed changes.⁶

¹ Hrg. Trans. 9:11-9:24 (April 30, 2024).

² *Id.* at 9:25-13:24.

³ *Id.* at 15:02-16:01.

⁴ *Id.* at 16:12-16:21.

⁵ *Id.* at 17:06-17:24.

⁶ *Id.* at 18:22-19:25.

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Following the close of the Commission Staff's summary of the Proposed Rules, Mr. Douglas Law offered comments on behalf of Black Hills. Mr. Law stated that Black Hills supported the Commission's general effort to modernize and update the current rules. Mr. Law then offered one recommendation to Proposed Rule 017.09C, which covers adjustments to bills for meters failing to register. Black Hills recommended that the time limit for bills estimated under this section should be extended from the current 6 months to 12 months.⁷

Mr. Pollock then offered comments on behalf of NorthWestern. He also commented on Proposed Rule 017.09C, stating that NorthWestern would support the Commission's proposal to go back to the original language. He also expressed support for Black Hills' proposal to extend the estimation period from 6 months to 12 months, but stated it was the Commission's decision on the timeframe.⁸ NorthWestern was then asked how often an adjustment to a bill is made under Rule 017.09C for a meter failing to register. NorthWestern responded by stating that it is an uncommon occurrence but something that the utility runs across occasionally.⁹ The Commission then requested that Black Hills and NorthWestern each file a late-filed exhibit to include the number and total dollar amount listing all bill adjustments due to malfunctioning meters from calendar year 2023.¹⁰

Ms. Dibbern then offered comments in her capacity as the Public Advocate. She began by discussing her position regarding Proposed Rule 017.09C, expressing support for the Commission to move in that direction of extending the timeframe from 6 months to 12 months.¹¹ Ms. Dibbern then offered two supplementary recommendations, in addition to those listed in her written comments. First, she recommended amending Proposed Rule 013.04, disconnection of service, by adding the word Friday before "weekend or legal holiday" to extend the prohibition against disconnection to also include Friday. Second, she recommended adding an additional subsection under Proposed Rule 013.05C. The subsection would be titled 013.05C5, and would state, "A public or private utility company shall not charge a fee for the discontinuance or reconnection of a utility service that exceeds the reasonable cost of providing such service." Ms. Dibbern

⁷ *Id.* at 23:13-25:7.

⁸ *Id.* at 33:06-35:06.

⁹ *Id.* at 35:16-37:06.

¹⁰ *Id.* at 37:07-39:13.

¹¹ *Id.* at 40:08-41:16.

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stated this language was already codified in Neb. Rev. Stat. § 70-1605.¹²

NorthWestern and Black Hills were then asked how quickly service could be restored if a customer's gas line was shut off for nonpayment. Northwestern responded by stating that gas could be restored either later that day or the next day. That decision would be up to the customer on whether they wanted to pay the additional charge for after-hours service or if they preferred to wait until the next business day. Black Hills also stated that restoring service could happen very quickly if a customer pays their bill, as restoring service would be a priority. Upon further questioning, Mr. Law confirmed that customer safety is a paramount concern for Black Hills, and if a safety concern existed, Black Hills would delay that particular disconnection.¹³ Before the close of the hearing, Mr. Law clarified charges for reconnection were based on cost studies from several years ago and if Black Hills were to run new studies those numbers would more than likely increase based on inflation alone.¹⁴ The hearing was then adjourned.

Exhibits 1 through 10 were entered into evidence at the hearing. On May 16, 2024, late filed exhibits listing data on 2023 meter adjustments were filed by Black Hills and NorthWestern. These exhibits will be entered into evidence as Exhibit Nos. 11 and 12, respectively.

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

The final proposed rules, attached as Appendix A, reflect and incorporate every change made after the Commission's review of all written comments and the corresponding discussion at the public hearing. Please find below, a list highlighting most of the changes made to the first set of proposed rules, which are now incorporated in the final proposed rules, found in Appendix A:

- Adding Proposed Rule 001.010, cross-referencing the definition of the term Parties as found in 291 Neb. Admin. Code § 1-001.21.

¹² *Id.* at 42:07-44:01.

¹³ *Id.* at 49:04-51:18.

¹⁴ *Id.* at 62:21-64:07.

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- Adding Proposed Rule 001.01P, cross-referencing the definition of the term Person as found in 291 Neb. Admin. Code § 1-001.22.
- Amending Proposed Rule 004.02A by replacing the word increase with change: "The reasons and explanations for the proposed rate ~~increase~~ change."
- Amending Proposed Rule 004.13 to correct two cross-references by replacing 004.04G with 004.04H.
- Amending Proposed Rule 006.01A to modernize the rule and make it consistent with Proposed Rule 004.01A and 004.12 by adding the following language: "Some portions of the public and/or confidential application may be filed exclusively in electronic format. The Determination on exclusive electronic filing shall be made in consultation between the Parties and the Commission. The date of electronic filing shall be the official filing date with the Commission. Paper copies of the application may be filed up to five (5) business days following electronic filing. Electronic filings shall be submitted either via email to psc.naturalgas@nebraska.gov or other electronic media."
- Amending Proposed Rule 013.06 by replacing the word filed with provided: "...Such health certificate shall be ~~filed~~ provided to the utility within five (5) days of receiving notice of disconnection of service, excluding holidays and weekends..."
- Amending Proposed Rule 017.08B1 by adding the proposed language "with the Utility" to read: "...the customer has not had service disconnected for nonpayment of a bill with the Utility..."
- Amending Proposed Rule 017.09C by reverting back to the original language found in the current rules.

The above changes primarily involve either a modernization to the existing rule, clarification of unclear language, or correcting a mistaken reference, and are not substantive in nature. In addition to the above changes, the Commission also corrected numerous typographical and grammatical errors. An example of a post-hearing typographical error that the Commission corrected was the removal of numerous hyphens throughout the proposed rules. Due to the voluminous nature of these changes, they are not all listed above.

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Certain recommendations from interested parties which were discussed at the hearing or included in written comments will not be made to the final proposed rules at this time. The Commission now seeks to address three recommendations that were not incorporated into the final proposed rules, two from the PA and one from Black Hills. First, the PA recommended a change to Proposed Rule 013.04 to extend the current prohibition against disconnection on holidays and weekends to also include Fridays. Based on information provided to the Commission by the utilities, the Commission finds making this change would not provide a substantial public benefit to ratepayers, as currently, Friday disconnections either are not being performed or are done very rarely. Black Hills provided evidence that they do not disconnect ratepayers on Fridays, and NorthWestern also provided evidence that disconnections on Fridays are only done on rare occasions at the request of the ratepayer. Both utilities only disconnect ratepayers as a last resort once all other avenues of resolution are exhausted.¹⁵ The Commission understands and appreciates the concerns of the PA, however, in this instance, as Friday disconnections are rarely, if ever performed, a rule change at this time would not provide any additional public benefit or protection. If, however, Friday disconnections become more prevalent, the Commission will revisit amending the rule at that time.

Second, the PA recommended adding language to Proposed Rule 013.05C that would re-state a portion of Neb. Rev. Stat. § 70-1605 by adding the following language: "A public or private utility company shall not charge a fee for the discontinuance or reconnection of utility service that exceeds the reasonable costs of providing such service." Natural Gas Utilities are required to adhere to the requirements found in statute, including those found in § 70-1605. Adding additional language that simply restates statute would go against directives to create clear and concise rules by lengthening Chapter 9. The Commission therefore finds that the PA's recommendation would not provide any additional public benefit to ratepayers and making this addition is unnecessary.

Lastly, Black Hills recommended changing Proposed Rule 017.09C, by increasing the time a utility may bill a ratepayer

¹⁵ At the quarterly workshops in Docket Nos. NG-101.1 & NG-101.2, Black Hills and NorthWestern separately prepared presentations before the Commission describing the process and the specific steps each utility takes before disconnecting a ratepayer.

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on an estimated basis when a meter malfunctions from 6 months to 12 months. At hearing, Black Hills expressed its preference for the 12-month timeframe, however, Black Hills also stated it understood if the Commission ultimately decided to stay with the 6-month timeframe.¹⁶ Upon review of the evidence, the Commission supports keeping the current 6-month rule and not changing it to 12 months as advocated by Black Hills. The 6-month limit provides additional protection to ratepayers by restricting the ability of a utility to charge customers when a meter fails to register, which is out of a ratepayer's control. The Commission further finds that the current rule incentivizes utilities to discover and address these meter malfunctions and associated billing errors in a timely fashion. As such, the current rule's 6-month lookback timeframe provides a substantial public benefit to ratepayers. The Commission therefore finds that it will not make the change recommended by Black Hills at this time.

Based on the above, the Commission finds that the proposed rules set forth in Appendix A should be adopted and a Certificate of Adoption issued.

O R D E R

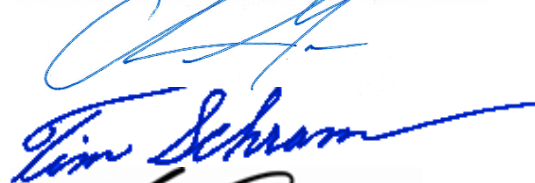
IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that a Certificate of Adoption for the proposed rules set forth in Appendix A be, and is hereby, issued.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 25th day of June, 2024.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


Eric M. Hamler


Tim Schram


Kevin Stocker



Chair

ATTEST:


Thomas W. Golden
Executive Director

¹⁶ Id. at 24:12-26:25.



COMMISSIONERS:
ERIC KAMLER
CHRISTIAN MIRCH
TIM SCHRAM
KEVIN STOCKER
DAN WATERMEIER

CERTIFICATE OF ADOPTION

Office of
NEBRASKA PUBLIC SERVICE COMMISSION
Lincoln, Nebraska

I, Thomas W. Golden, Executive Director and Secretary of the Nebraska Public Service Commission, hereby certify that the attached is a true and correct copy of Rule and Regulation #210 of the Nebraska Public Service Commission, and which has been adopted following a public hearing on Month Day, Year, notification of which was published in a newspaper having general circulation in the State of Nebraska.

Nebraska Administrative Code, Title 291, Chapter 9
Natural Gas and Oil Pipeline Rules and Regulations

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the Nebraska Public Service Commission, Lincoln, Nebraska, this 25th day of June, 2024.

By: 
Thomas W. Golden
Executive Director

Thomas W. Golden, Executive Director
Public Service Commission

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