



**Title 291 NAC, Chapter 6
Private Water Companies
Rules and Regulations**

NEBRASKA ADMINISTRATIVE CODE

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TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 6 - PRIVATE WATER COMPANIES RULES AND REGULATIONS

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<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
GENERAL	75-1002	001
PRIVATE WATER COMPANY	75-1003 to 75-1010	002
VIOLATIONS AND PENALTIES	75-1011 to 75-1012	003

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001 GENERAL.

001.01 DEFINITIONS. As used in this chapter unless the context otherwise requires.

001.01A PRIVATE WATER COMPANY. A privately owned entity organized for the purpose of furnishing water for domestic use, sewer services or both to the public, cities, villages, special districts, or other political subdivisions but shall not include (a) any entity that furnishes water for domestic use or sewer services to a mobile home park; (b) bottled water suppliers; or, (c) any group of property owners who cooperatively own a water well for the sole purpose of providing water for domestic use to their property if each owner has an equal vote in determining the rates charged for the water.

001.01B COMMISSION. The Nebraska Public Service Commission.

001.01C CUSTOMER. Any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency or any other entity provided with water or sewer service by a private water company.

001.01D PROPRIETARY INFORMATION. Any information that is intended solely for the use of persons authorized by a company and not for general disclosure.

001.01E TARIFF. The schedule of rates, charges, classifications, and rules and regulations which are filed with the Commission by the private water company.

002 PRIVATE WATER COMPANY.

002.01. On or before July 1 of each year, each private water company shall file a schedule of its rates and charges with the Commission and shall certify to the Commission the number of customers it serves.

002.02. The Commission and its agents shall be entitled access to all books, records, and other information of a private water company which may be necessary for the Commission to determine whether it may exercise regulatory authority.

002.03. The Commission shall maintain safeguards for the protection of proprietary information, included but not limited to, protective orders and limited distribution of the proprietary information.

002.04 INITIAL RATE REVIEW. Within ninety (90) days after July 1, 1994, a petition may be filed with the Commission requesting a review of the established rates and charges. The petition shall be signed by at least twenty-five percent (25%) of the private water company's customers.

002.05 APPLICATION FOR NEW RATES OR CHARGES OR CHANGES IN EXISTING RATES OR CHARGES FOR WATER OR SEWER SERVICE. A private water company which proposes to change any of its rates or charges shall provide sixty (60) days notice to its customers and the Commission of the proposed rates or charges.

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002.05A. Prior to the effective date of the proposed rates or charges, a petition may be filed with the Commission requesting a review of the proposed rates and charges. The petition shall be signed by at least twenty-five percent (25%) of the private water company's customers.

002.06 APPLICATION PROCESS.

002.06A. An application to increase rates shall include the information set forth below:

002.06A1. Testimony and exhibits of all witnesses to be called in the direct case. Amendments to filed testimony and exhibits may be made only with the permission of the Commission.

002.06A2. Balance sheet and income statement or, in lieu thereof, a statement of the assets and revenues which constitute the jurisdictional rate base and net earnings statement for the test year and any adjustments thereto.

002.06A3. If available, the latest certified audit report.

002.06A4. If available, the latest annual report to stockholders.

002.06B. Notice to the Commission shall be made in writing under the signature of an officer of the private water company and shall include the present and proposed rates, the effective date of the rate increase, a list of customers as of the first day of the month in which the notice is given, and a statement that all subscribers have been notified. Notice to all affected customers shall be in the following form:

002.06B1 FORM FOR NOTICE OF PROPOSED RATE CHANGE. See Exhibit "A", Page 8.

002.06C. The effective date of any rate increase proposed by a private water company shall not fall on a Saturday, Sunday, legal holiday or the day immediately following any of the above. Private water companies will be notified by the Commission by telephone as soon as petitions are filed, with a confirmation by letter, and shall likewise be notified by the effective date if fewer than twenty-five percent (25%) of the customers have submitted petitions.

002.07 HEARING PROCEDURE.

002.07A. Upon receipt of a petition, the Commission shall set a time, place, and date for a public hearing to consider the established rates and charges.

002.07B. The hearing shall be held within ninety (90) days after the filing of the petition.

002.07C. Notice of a hearing shall be served on customers by the Commission at least fifteen (15) days prior to the day of the hearing. This notice shall also be published by the Commission at least once a week for two successive weeks in a newspaper of general circulation in each service area affected by, or to be affected by, the proposed rates or charges with the last date of publication at least ten (10) days prior to the hearing.

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002.07D. At least ten (10) days prior to the hearing, the Commission shall make available for inspection, during regular office hours, all files and information gathered by it and its employees and agents relating to the matter to be heard.

002.07E. Any person may appear at the hearing and present testimony, evidence, exhibits, or other information and may do so in person or by counsel, or both, pursuant to the Rules of Commission Procedure.

002.08 Rate Setting Procedure.

002.08A. Following the conclusion of any hearing held pursuant to Sections 002.04 or 002.05, the Commission shall grant or deny the application considered at the hearing and, if other rates or charges are to be adopted, shall decide on any modifications to the rates or charges that the Commission considers necessary based on the evidence adduced at the hearing.

002.08B. The Commission shall issue a written order outlining its findings and reasoning for its decision. The Commission's order may be appealed according to Neb. Rev. Stat. 75-137.

002.08C. If a hearing is held pursuant to a petition filed under Section 002.05, the proposed rates or charges are to become effective before a decision is made by the Commission, and the Commission ultimately denies the application, then the proposed rates or charges shall be denied retroactively and any amounts collected under the proposed rates or charges shall be refunded by the private water company. If the hearing is held pursuant to a petition filed under Section 002.04, and if the decision of the Commission modifies the established rates or charges, then the established rates or charges shall be modified as of the date of the decision and shall not be retroactive.

002.08D. No rate or charge determined by the Commission may yield more than a fair return on the fair value of property used and useful in rendering service to the public.

002.08E. The Commission shall not include in the basis for establishment of the rate or charge any amounts spent by the private water company for advertising or other public relations expense.

002.08F. Application or tariff filing for rate increases must be based on data submitted for a recently concluded test year or for a test year consisting of at least six (6) months actual experience and not more than six (6) months estimated data, to be subject to correction or verification during the course of the proceeding considering the proposed rate increase.

002.08G. Adjustments will be made to test year data to reflect change in costs occurring during the test year. These changes may include costs adjusted for known and measurable changes occurring within a reasonable time subsequent to the test year, and all known decreases, as well as increases.

002.08H. Adjustments will also be made to eliminate the effects of abnormal or unrepresentative conditions reflected in test year data.

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002.08I. Adjustments for changes in test year costs will not be made unless either the changes are subject to definite computation or reasonable estimation, or in exceptional circumstances, a cost adjustment is dictated by overriding considerations of public policy and should be allowed despite difficulties in estimations. In the case of adjustments falling within the latter category, the Commission may require periodic reporting or impose other protective conditions. In no case will an adjustment be made on the general predictions of future increased costs.

002.08J. The increase is the minimum required to assure continued, adequate, and safe service or to provide for necessary expansion to meet future requirements.

002.08K. Where rate increases are sought to cover future costs associated with safety, expansion of service, improvement of service, or environmental or ecological protection, the increases will not be permitted except in instances where the costs qualify as test year adjustments within the scope of Sections 002.08F through 002.08I.

002.08L. The rate increase will achieve a fair rate of return or the revenue needed to attract capital at reasonable costs, to maintain the integrity of the private water company's investment, and not to impair its credit; such rate of return must also meet all the requirements of the Constitution, statutes of the state of Nebraska, and all decisions of the Nebraska Supreme Court with reference to such matters.

002.08M. In determining an appropriate rate of return, the Commission will consider the capital structure at or near the time the applicant's increased rates will become effective. Costs of various components of capital structure -- interest on bonds, dividends on preferred stock, return on common stock -- will be computed as of that date. Adjustments generally will be made in the capital structure and in the costs of various types of capital in a number of situations as, for example, where adjustments are required to reflect new financings which are known to be imminent.

002.08N. The rate of return or operating ratio allowed by the Commission will not reflect expectations of future inflation, but only cost-justified expense increases.

002.08O. The rate increase takes into account expected and obtainable productivity gains, to the extent that such gains can be measured and verified.

003 VIOLATIONS AND PENALTIES.

003.01. Any private water company that violates any provision of the Water Service Regulation Act or any rule, regulation, or official order of the Commission shall be subject to a civil penalty of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000) for each act of violation and for each day of violation to be recovered as follows:

003.01A. Whenever it appears that a private water company has violated, is violating, or is threatening to violate, any provision of the Water Service Regulation Act or any rule, regulation, or official order of the Commission, the Commission may institute a civil suit in the District Court of Lancaster County for:

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003.01A1. Injunctive relief to restrain the private water company from continuing the violation or threat of violation.

003.01A2. The assessment and recovery of a civil penalty as provided for in Section 003.01 of these rules.

003.01A3. Both injunctive relief and civil penalty.

003.01B. On application for injunctive relief and a finding that a private water company is violating or threatening to violate any provisions of the act or any rule, regulation, or official order of the Commission, the Commission shall request that the District Court grant injunctive relief as the facts may warrant.

003.01C. At the request of the Commission, the county attorney shall institute and pursue a suit in the name of the state of Nebraska for injunctive relief or to recover the civil penalty, or both, as authorized in Section 003.01.

EXHIBIT "A"

(Date)

Private Water Company

, Nebraska

NOTICE OF RATE INCREASE

All affected customers of the _____ Water Company are hereby notified that increased rates will be effective (Date). Present and proposed rates by type of service are as follows:

<u>Type of Service</u>	<u>Present Rate</u>	<u>Proposed Rate</u>
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All affected customers are hereby notified that said rates are not subject to approval by the Nebraska Public Service Commission unless petitions signed by twenty-five percent (25%) or more of the customers are received by the Commission before the effective date shown above. At the present time, the company serves_affected customers. Petitions must be in the following form:

TO THE NEBRASKA PUBLIC SERVICE COMMISSION

The undersigned customers of the _____ Water Company do hereby petition the Nebraska Public Service Commission to determine rates in lieu of those proposed by the water company:

Date	Printed Name	Subscriber's Signature	Address	Telephone Number
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Each signature shall be dated and shall be that of the customer or the customer's spouse. If a business, the name shall be included with the signature of an officer or agent. Each petition may be signed by one or more customers and shall be mailed to the Nebraska Public Service Commission, Post Office Box 94927, Lincoln, NE 68509-4927.