

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of the Application)
)
 of) Application No: OP-003
)
 TransCanada Keystone Pipeline LP,)
 Application for Route Approval of)
 Keystone XL Pipeline Project,)
 Pursuant to *MOPSA*) MOTION TO VACATE, MOTION FOR ORDER
) *NUNC PRO TUNC*, MOTION FOR HEARING *EN*
 v.) *BANC*

Intervenor Sierra Club

The Sierra Club hereby moves the Public Service Commission (“Commission”) to vacate the hearing officer's order of March 31, 2017, and the hearing officer's denial of reconsideration of April 13, 2017, motions the Commission to issue an order *nunc pro tunc* allowing Sierra Club to proceed as a formal intervenor without limitation under 291 Neb. Admin. Code 1 015.01C, and to hear this motion *en banc* as the entire Commission. Sierra Club requests a briefing schedule and oral argument on their Motion before the entire Commission. In support of this Motion to Vacate, Motion for Order *Nunc Pro Tunc* to be heard *en banc* by the entire Commission, the Sierra Club states as follows:

1. That the statutes governing this procedure, Neb. Rev. Stat. § 57-1401 *et. al.* (Cum. Supp. 2016), titled Major Oil Pipeline Siting Act (hereinafter “MOPSA”) do not state that the Public Service Commission proceedings, including the filing of applications and the determination of intervenors, be governed by the Administrative Procedures Act (APA), but rather, Neb. Rev. Stat. § 57-1410, provides that “[t]he commission (PSC) shall adopt and promulgate rules and regulations to carry out the Major Oil Pipeline Siting Act.”
2. The Commission did exactly that, promulgating 291 Neb. Admin. Code Chapter 9 023 *et. al.*, which in pertinent part provides that the “filing of petitions for intervention and protests and the

conduct of the hearing shall be governed by the Rules of Commission Procedure.” 291

Nebraska Administrative Code Chapter 9 023.06. See Appendix 1, attached hereto.

3. That under the Rules of Commission Procedure, any person (defined at 291 Neb. Admin. Code Chapter 1 001.01C as “an individual, firm, organization, corporation, company, association, partnership, joint stock association, body politic, common carrier, society, legal representative, trustee, receiver, assignee, guardian, executor or administrator) may file a Petition of Formal Intervention. Such person shall be designated as “formal intervenor,” and shall become party to the proceeding.” 291 Neb. Admin. Code 1 015.01.
4. That the Sierra Club is an organization which has status to become a formal intervenor to the action at hand. The hearing officer's order of March 31, 2017 correctly recognized Sierra Club as an intervenor, but improperly limited its ability to proceed with its ability to fully participate in the proceeding, by not applying the rules and regulations adopted by the Commission for this proceeding. Such error is subject to reversal by the courts. See *In re Application of Jantzen*, 245 Neb. 81, 511 N.W.2d 504 (1994); *Douglas County Welfare Administration v. Parks*, 204 Neb. 570, 284 N.W.2d 10 (1979).
5. That under 291 Neb. Admin. Code 1 0155.01C “A formal intervenor shall be entitled to participate in the proceeding to the extent of his/her express interest in the matter. Such participation shall include, without limitation, presentation of evidence and argument, cross-examination of witnesses and submission of rebuttal evidence. As a party, a formal intervenor shall have the right of appeal.”
6. That the decision of the hearing officer is improper for the following reasons:
 - a) that the hearing officer has determined without notice and in violation of Sierra Club's substantial right, that the application hearing and determination of intervenor status is governed under the APA instead of the Public Service Commission rules especially adopted per MOPSA to govern this proceeding, and which clearly state that the rules of procedure to be followed are

the Commission rules of procedure, not the APA rules.

b) that the motion to intervene and motion for reconsideration filed by the Sierra Club were requested to be heard by the entire Commission as is provided for under 291 Neb. Admin. Code 1 017.02.

7. That under *Douglas County Welfare Administration v. Parks*, 204 Neb. 570, 284 N.W.2d 10 (1979), “rules and regulations of an administrative agency governing proceedings before it, duly adopted and within the authority of the agency, are as binding as if they were statutes enacted by the Legislature. Likewise, procedural rules are binding upon the agency which enacts them as well as upon the public, and the agency does not, as a general rule, have the discretion to waive, suspend, or disregard, in a particular case, a validly adopted rule so long as the rule remains in force. ... To be valid, the action of the agency must conform to its rules which are in effect at the time the action is taken, particularly those designed to provide procedural safeguards for fundamental rights.” *Id.* at 572.
8. That the Nebraska Supreme Court recognized in *In re Application of Jantzen*, 245 Neb. 81, 511 N.W.2d 504 (1994), that while an agency can waive regulatory rules if it aids the agency, waiver or violation of its rules “which have been promulgated to benefit a party, by entitling the party to a substantive benefit or exemption or to a procedural safeguard, have been invalidated by courts.” *Id.* at 92. The hearing officer's determination to limit Sierra Club's presentation of its case by grouping it only with environmental/natural resource intervenors, when Sierra Club in its petition to intervene alleged economic issues which are required to be considered under MOPSA. Such economic issues may entail, but not be limited to the negative impact upon eco-tourism by the proposed pipeline siting and by the negative effect upon property tax dollars, which effects all of the Sierra Club's more than 2,000 Nebraska members. See Neb. Rev. Stat. § 57-1402(1)(a) (Cum. Supp. 2016). The hearing officer's decision provides a benefit to TransCanada by limiting intervenor's presentation of evidence and argument. Such action

substantially prejudices the Sierra Club as intervenor and violates the Due Process Clause of the of both the U.S. Constitution and the Neb. Constitution, in that it limits Sierra Club's ability to present a full case, and the action to disregard the rules of the agency in effect was without notice and affects fundamental rights of the Sierra Club as intervenor. See *School Dist. No. 8 of Sherman County v. State Bd. Of Ed.*, 176 Neb. 722, 127 N.W.2d 458 (1964). While the Sierra Club is cognizant of the Commission's concern regarding duplicative or cumulative evidence and testimony, and Sierra Club will work with the other intervenors to avoid this, the Sierra Club, as a Nebraska-wide association, brings unique interests in economic issues not shared by the other intervenors, and therefore must be allowed to proceed to advocate for such issues.

WHEREFORE, the Sierra Club respectfully requests that the Commission vacate the hearing officer's order of March 31, 2017, vacate the hearing officer's denial of reconsideration of April 13, 2017, enter an order *nunc pro tunc* allowing the Sierra Club to intervene under the 291 Neb. Admin. Code 1 0155.01C as a formal intervenor entitled to participate in the proceeding to the extent of its express interest in the matter, that this motion be considered *en banc* by the entire Commission and that a briefing schedule and oral argument on this motion be had.

Dated this 24th day of April, 2017.

BY _____

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above foregoing Motion was served on this 24th day of April 2017 upon the following:

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By: _____

EFFECTIVE DATE: May 4, 1992

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TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

001 GENERAL:

001.01 Definitions: As used in Chapter 1 unless the context otherwise requires:

001.01A Legal Representative: For the purpose of administering the act and the rules and regulations promulgated thereunder, the term "legal representative" includes widow and/or widower.

001.01B Parties:

001.01B1 Complainant: A person filing a complaint.

001.01B2 Defendant: A person against whom a complaint is filed.

001.01B3 Applicant: A person filing an application.

001.01B4 Respondent: A person designated in an investigative or show cause proceeding.

001.01B5 Protestant: A person filing a protest to the granting of an application.

001.01B6 Intervenor: A person permitted to intervene.

001.01B7 Petitioner: Any other person seeking relief other than by complaint or application.

001.01B8 Commission Staff: Persons who appear in a proceeding by virtue of their Commission employment.

001.01C Person: An individual, firm, organization, corporation, company, association, partnership, joint stock association, body politic, common carrier, society, legal representative, trustee, receiver, assignee, guardian, executor or administrator.

001.01D Authority: The term includes a certificate, license or

EFFECTIVE DATE: May 4, 1992

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

permit.

001.01E Hearing Officer: The term means either a Commissioner or an Examiner.

001.01F Motion: An oral or written request addressed to a hearing officer or the Commission by any party to a proceeding. Oral motions are entered only during a hearing.

001.01G Holiday: A day or any portion of a day designated by statute or authorized by the Governor during which no business is transacted by the Commission.

001.01H Executive Director: The person in charge of the day-to-day operations of the Commission. Secretary to the Commission is a synonymous term.

002 APPEARANCES:

002.01 Individual: An individual may appear on his/her own behalf before the Commission.

002.02 On Behalf of Another: An individual may appear on behalf of another person and elicit testimony from witnesses if such individual is admitted to practice law before the Nebraska Supreme Court or is admitted to practice law before the Supreme Court of any other state and is accompanied by a person admitted to practice before the Nebraska Supreme Court.

002.03 On Behalf of Another by Limited Appearance: An individual who is neither admitted to practice law before the Nebraska Supreme Court nor the Supreme Court of any other state may appear for a governmental subdivision, corporation, association or partnership for the sole purpose of making a statement on behalf of such person, but shall not elicit testimony from any other person.

002.04 Staff: Nothing in this chapter will prohibit staff members of the Commission, whether or not admitted to practice law in Nebraska, from interrogating witnesses or otherwise participating in proceedings before the Commission.

EFFECTIVE DATE: May 4, 1992

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

002.05 Special Appearance: Objections to the jurisdiction of the Commission will be made by filing a special appearance. A party appearing specially for such purpose shall designate the specific defects upon which he/she relies. If no objection to the jurisdiction of the Commission is made prior to the hearing or at the time appearances are made, jurisdictional defects (except subject matter) are waived. If a special appearance is overruled, the objection to the jurisdiction of the Commission will be preserved in a further pleading, if any is required.

003 TYPES OF PROCEEDINGS:

003.01 Initial Proceedings: The Commission will act only on the following initial pleadings: (1) An application for authority filed pursuant to the Commission's jurisdiction under Article IV, Section 20 of the Nebraska Constitution or Chapters 74, 75 and 88 R.R.S. 1943 as amended; (2) A departmental complaint filed by a director of a Commission department; (3) An order to show cause filed on the Commission's own motion; (4) A formal complaint which may be filed by any person against any person or entity subject to the jurisdiction of the Commission; and, (5) A petition for investigation which may be filed by any person or upon the Commission's own motion.

003.02 Informal Complaints: The Commission may investigate complaints on an informal basis to resolve questions, disputes, develop further information, or otherwise resolve an issue.

004 RESPONSIVE PLEADINGS: The only responsive pleadings the Commission will file are: (1) A protest to an application; and, (2) An answer to a departmental complaint, order to show cause, formal complaint, or petition.

005 FORM OF PLEADINGS: Each pleading shall be filed in the following form:

005.01 Applications on Commission Forms: Applications for motor carrier authority, grain warehouse and grain dealer licenses, itinerant merchant license, transmission line construction change, telephone boundary change, and automatic dialing-announcing device shall be filed on forms provided by the Commission.

EFFECTIVE DATE: May 4, 1992

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

005.02 Applications on Other Forms: Applications for a rate tariff, tariff change, railroad change, or any other matter shall be filed by letter or in such other form that identifies the applicant, provides a clear statement of the facts upon which the matter is being placed before the Commission and clearly states the relief requested.

005.03 Departmental Complaint: A departmental complaint shall contain the name of the complainant, defendant, a clear and concise allegation of each offense in terms of each applicable statute or rule, and be signed by the complainant.

005.04 Order to Show Cause: An order to show cause shall contain the name of the respondent, a clear and concise allegation of each cause for which the Commission requires a showing, and be signed by the Executive Director.

005.05 Formal Complaint: A formal complaint shall contain the name of the complainant, defendant, a clear and concise allegation of each offense, and be signed by the complainant.

005.06 Petition: A petition shall contain the name of the petitioner, a statement of the matter for which investigation is requested, a statement of the relief requested, and signature of the petitioner.

005.07 Protest: A protest shall contain the name and address of the protestant, a statement concerning the interest of the protestant in the application protested, and a request for the relief sought by the protestant.

005.08 Answer to Formal Complaint: An answer to a formal complaint shall be filed and shall admit or deny each material allegation of the formal complaint. The answer shall set forth any affirmative defense which the defense may assert. The Commission shall have the discretion, upon proper showing, to dismiss the formal complaint or require further action.

005.08A Satisfaction of Formal Complaint: A defendant to a formal complaint may file with the Commission a Statement of Satisfaction of the formal complaint. Such Statement of Satis-

EFFECTIVE DATE: May 4, 1992

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

faction shall be filed with the Commission within ten (10) days after service of the complaint upon defendant. Defendant shall serve a copy of Statement of Satisfaction upon the complainant. Within five (5) days after receipt of the Statement of Satisfaction by complainant, complainant may file a Statement of Acceptance, a copy of which shall be served upon defendant. The defendant may then move for dismissal at any time prior to the time set for hearing on the complaint.

005.08B If a Statement of Satisfaction is not filed, the defendant shall have fifteen (15) days from service of the complaint to file an answer.

005.08C If a Statement of Satisfaction is filed by the defendant, but is not accepted by the complainant, then the defendant shall file an answer with the Commission within twenty (20) days from the date of service of the Statement of Satisfaction with a copy thereof being served on complainant.

005.08D Except for good cause shown, and except where a Statement of Satisfaction has been filed and accepted, failure to answer will be construed as an admission of the allegations in the complaint.

005.09 Answer to Departmental Complaint: An answer to a departmental complaint shall be filed and shall admit or deny each material allegation of the departmental complaint. The answer shall set forth any affirmative defense which defendant may assert. The answer shall be filed with the Commission within twenty (20) days after service of the complaint.

005.09A Except for good cause shown, failure to answer will be construed as an admission of the allegations in the complaint.

005.10 Failure to Answer: The fact that a failure to answer will be construed as an admission to the allegations in a formal complaint or a departmental complaint shall be included in the complaint served upon defendant pursuant to 011.

006 SIGNING: Each pleading of a party represented by an attorney shall be signed by at least one attorney of record in his/her individual name, whose

EFFECTIVE DATE: May 4, 1992

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

address and telephone number will be stated. Except where specifically provided by other rules or statutes, pleadings need not be verified or accompanied by an affidavit. The signature of an attorney constitutes a certificate by him/her that he/she has read the pleading; that to the best of his/her knowledge, information and belief there is good ground to support it; and that it is not interposed for delay. The party who is not represented by an attorney shall sign his/her pleading and state his/her address and telephone number.

007 COPIES: Except as otherwise provided in these rules, one copy of each pleading will be filed with the Commission.

008 WITHDRAWAL OF PLEADING: Pleadings filed with the Commission will not be withdrawn without approval of the Commission.

009 SUBSEQUENT APPLICATION: When any application has been denied, in whole or in part, a subsequent application covering substantially the same subject matter will not be considered by the Commission within 90 days from the date of the final denial, in whole or in part, of the previous application, except for good cause shown.

010 HOURS OF OPERATION:

010.01 Office Hours: Commission files are open to public inspection. Office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday. Commission files and/or transcripts may be checked out of the Commission office only with express prior permission of a Commissioner or the Executive Director.

010.02 Computation: In computing any period of time prescribed or allowed by the rules in Title 291, the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than five days, intermediate Saturdays, Sundays and holidays will be excluded in the computation. When the federal government (Post Office) and the Commission observe the same holiday on different days and such prevents a party from acting within the prescribed time, both days observed will be considered

EFFECTIVE DATE: May 4, 1992

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

as holidays.

011 SERVICE AND NOTICE:

011.01 Service and Notice: For the purpose of service, each person subject to the Commission's jurisdiction shall at all times keep on file with the Executive Director his, her or its business address or, in lieu thereof, notify the Executive Director of an agent (name and address) designated to receive documents and notices. Until the Executive Director is notified to the contrary, the address on file with the Commission's various departments will be deemed to be the address to which documents and notices will be mailed or personally delivered. Proof of service that any person subject to Commission jurisdiction was served, or was attempted to be served, at the address on file with the Commission shall be adequate to satisfy any notice requirement imposed by these rules. Any person who does not hold a certificate, permit or license from the Commission, and yet may be subject to the Commission's jurisdiction, may be served wherever such person is found within the state.

011.02 How Served: A complaint, order to show cause, petition for investigation and a subpoena will be served personally by a Commission inspector, or, except a subpoena, by certified mail.

011.03 Return: The inspector serving documents shall make proof of service thereof to the Commission promptly and in any event within the time during which the person served must respond. Failure to make proof of service will not affect the validity of the service.

011.04 Personal Service: The Executive Director will be furnished such copies as are necessary to make service. Service will be made as follows:

011.04A Upon an individual other than an incompetent person, by delivering a copy of the document to him/her personally or by leaving a copy thereof at his/her dwelling, house or other place of abode with some person of suitable age and discretion then residing therein or, if any, at his/her usual place of business; provided however, if an agent has been designated, the document will be served upon the agent in the same manner as service is to

EFFECTIVE DATE: May 4, 1992

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

be made upon the principal.

011.04B Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the document to an officer, a managing or general agent; provided however, if an agent has been designated, the document will be served upon the agent in the same manner as service is to be made upon the principal.

011.04C Upon a legal representative by delivering a copy of the document to him/her personally or by leaving a copy thereof at his/her usual place of business, if any, or his/her dwelling, house or usual place of abode with some person of suitable age and discretion then residing therein. For the purpose of administering the act and the rules and regulations promulgated thereunder, the term "legal representative" includes widow and widower.

011.05 Service by Mail: Service other than personal service will be by certified mail to the address on file with the Commission; provided however, if an agent has been designated, the document will be delivered to the address of the agent by certified mail.

011.05A Date of Service Determined: The date of service of a document which is mailed is the date of mailing plus 3 days.

011.06 Notice of Application: Notice of the filing of all applications will be given to all interested persons by publishing a summary of the authority or relief sought. All interested parties will be given notice of the time and place of the hearing by mail.

011.07 Notice of Complaint Hearing: The Executive Director shall notify, in writing, the defendant and the complainant, including intervenors, of a time and place for a hearing on the complaint by certified mail or personally by a Commission inspector who shall comply with 011.03 and 011.04.

011.08 Official Publication: The legal newspaper is known as The Daily

NEBRASKA ADMINISTRATIVE CODE

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LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

Record and is the official newspaper in which notices will be published by the Commission pursuant to this title.

012 COMMISSION INVESTIGATIONS:

012.01 General: The Commission may, at any time on its own motion, conduct an investigation or order any hearing which the Commission is authorized by law or inherent power to conduct.

012.02 Order to Appear: The Commission may, by order, compel any person to appear in an investigative proceeding. The order will state the purpose or scope of the investigation and the time and place of the hearing.

012.03 Investigation/Penalty: If it shall appear, as the result of an investigative hearing by the Commission, that any person who has been personally served has violated the provisions of any statute over which the Commission has jurisdiction or the rules of the Commission, the Commission may order such person to cease and desist or enter any order justified in the premises.

013 SHOW CAUSE ORDERS:

013.01 Show Cause Order: The Commission may, by order, compel any person to whom it has granted authority to show good cause as to why the authority should not be suspended, changed, revoked in whole or in part, or why the holder of the certificate for such authority should not be subject to an administrative fine as provided for in Commission rules.

013.02 Content: The show cause order shall specifically advise the respondent of the alleged violation or violations and the time and place of the hearing on such order.

013.03 Cease and Desist Order: The Commission may, after proper notice and hearing, enter a cease and desist order or any order the Commission deems just and reasonable.

EFFECTIVE DATE: May 4, 1992

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

014 PROTESTS:

014.01 Content of Protest; Failure to File: In addition to the requirements of Section 005.07, a protest shall set forth specifically the grounds upon which it is made, shall state the interest of the protestant in the proceeding, and shall specify the facts and circumstances relied upon. Except as provided in Section 015, failure to timely file a protest shall be construed as a waiver of opposition and participation in the proceeding.

014.02 Protest Against Application; When Filed: Except as provided in Sections 014.03 and 014.04, and unless otherwise provided in statute, a protest against the granting of any application shall be filed with the Commission within thirty (30) days from the date of publication of said notice. A copy of the protest should be served upon all adverse parties of record, or upon their attorneys of record.

014.03 Protest to Temporary Motor Carrier Authority: A protest to the granting of an application for temporary motor carrier authority, which the Commission is empowered to grant after not less than five (5) days notice and without hearing, shall be filed with the Commission within five (5) days after the date such notice is published. Such protest may be made by telegram or facsimile provided that a formal pleading is forwarded within five (5) days of the expiration of the time to file the protest.

014.04 Protest to an Emergency Rate Order: In certain emergency situations, the Commission has the statutory authority to temporarily alter, amend, or suspend any existing rates in force, or to fix any such rates where none exist by issuing an order which prescribes an emergency rate. After notice of the emergency rate is given to the common carriers affected by such emergency rate, any such affected common carrier or any interested person shall file a protest to the granting of such rate within fifteen (15) days after notice of the emergency rate is given.

014.05 Telegraphic Protest: A person may preserve his/her time to file a formal protest by timely filing a telegram or facsimile which shall set

EFFECTIVE DATE: May 4, 1992

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

forth in general terms the nature of the protest within the statutory time to file provided that a formal pleading is forwarded within five (5) days of the expiration of the time to file the protest.

014.06 Protest to Inter-LATA Interexchange Telecommunications Service Application; When Filed: Except as provided in Section 014.05 and unless otherwise provided in the statutes, a protest against the granting of an application for a certificate authorizing inter-LATA interexchange telecommunications service shall be filed with the Commission within ten (10) days from the date of publication of said notice. A copy of the protest should be served upon all adverse parties of record, or upon their attorneys of record. Such protest may be made by telegram or facsimile provided that a formal pleading is forwarded within five (5) days of the expiration of the time to file the protest.

015 INTERVENTION IN PROCEEDINGS:

015.01 Formal Intervention; Status: Any person who has an interest in any proceeding pending before the Commission, but who does not desire to file a formal protest, may file a Petition of Formal Intervention. Such person shall be designated as a "formal intervenor", and shall become a party to the proceeding.

015.01A Content: A Petition of Formal Intervention shall set forth the name and address of the intervenor, a statement of the interest of the intervenor in the proceeding, the grounds upon which the intervention is made and shall specify the facts and circumstances relied upon for such intervention.

015.01B When Filed; Service: A Petition of Formal Intervention shall be filed with the Commission within the time specified in 014.02 for the filing of a formal protest. A copy of the Petition of Formal Intervention shall be served upon all parties of record to the proceedings or upon their attorneys of record.

015.01C Participation in Proceedings: A formal intervenor shall be entitled to participate in the proceeding to the extent of his/her express interest in the matter. Such participation shall include, without limitation, presentation of evidence and argument, cross-examination of witnesses and

EFFECTIVE DATE: May 4, 1992

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

submission of rebuttal evidence. As a party, a formal intervenor shall have the right of appeal.

015.02 Informal Intervention; Requirement; Status: Without satisfying the requirements of formal intervention, any person may file a Petition of Informal Intervention. Such Petition of Informal Intervention shall set forth the information required in 015.01A above. Any person who shall file a Petition of Informal Intervention shall be designated as an "informal intervenor".

015.02A When Filed: A Petition of Informal Intervention shall be filed not later than fifteen (15) days prior to the date the hearing in the proceeding commences, and shall be accompanied by the statement referred to in 015.02C and any exhibits to be offered by the informal intervenor's witness at the hearing. A copy of the Petition of Informal Intervention and all accompanying pre-filed material shall be served on all parties to the proceeding, or upon their attorneys of record.

015.02B Approval by Commission: Leave to intervene informally shall be granted only if the petitioner addresses issues reasonably pertinent to the issues already presented and does not unduly broaden the scope of the proceeding. If leave is granted by the Commission, the petitioner becomes an informal intervenor but does not become a party to the proceeding.

015.02C Participation in Proceedings: Participation by an informal intervenor shall be limited to the presentation of a pre-filed statement of a single witness together with exhibits by such witness, and participation in oral argument submission of briefs. An informal intervenor shall not be permitted to engage in discovery nor to cross-examine or otherwise interrogate the witnesses in the proceeding called by any party.

015.03 Statements by the Public: Members of the general public unre-presented by counsel shall be allowed to make statements at the hearing in a proceeding without being required to file either a protest or a petition to formally or informally intervene. Such persons shall not be a party to the proceeding and shall have no right to participate in the proceeding

EFFECTIVE DATE: May 4, 1992

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

except to make such statements. The Commission shall have the authority to exclude such statements from the record when such statements are immaterial, irrelevant, disruptive or damaging to the hearing. Any person unrepresented by counsel, including common carriers, may be allowed to make statements at a hearing in a proceeding if, at the discretion of the Commission, such statements are necessary to clarify the record. No such person shall become a party to the proceeding by virtue of making such statements at the hearing.

016 EVIDENCE:

016.01 General: Evidence which is admissible in civil actions under the Revised Statutes of Nebraska will be admissible before the Commission. While the Commission will not be bound to follow the technical rules of evidence, the record will be supported by evidence which possesses probative value commonly accepted by reasonable men in the conduct of their affairs.

016.02 Filing and Serving Exhibits Prior to Hearing: If detailed or complicated exhibits are to be used, the hearing officer may require any party to file and serve a copy of such exhibits, or other necessary information, within a specified time in advance of the hearing.

016.03 Copies of Exhibits: Parties shall furnish accurate copies of all documentary evidence to the official reporter, hearing officer, and the parties of record to the proceeding.

016.04 Official Files: Any party who wants to introduce into evidence any part or parts of official files shall obtain copies thereof in advance of the hearing.

016.05 Cumulative Evidence: The hearing officer may exclude evidence which is cumulative or repetitious.

016.06 Abstracts from Documents: When documents are numerous, such as freight bills or bills of lading, a hearing officer may refuse to receive in evidence more than a limited number alleged and appearing to be representative. The party will abstract in orderly fashion the relevant data from these documents, affording other parties reasonable opportunity to examine both the documents and the abstract, and there-

EFFECTIVE DATE: May 4, 1992

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

upon offer the abstract in evidence in exhibit form.

016.07 Material in Books, Papers or Documents: Relevant portions of books, papers, or documents shall be plainly designated and distinguished from all irrelevant portions before the relevant material may be offered into evidence. Where irrelevant material in a book, paper, or document is voluminous so as to encumber the record, the book, paper, or document may be marked for identification and relevant material read into the record. Upon direction of the hearing officer, a true copy of the relevant matter may be received as an exhibit, provided copies are delivered to all parties of record and provided all parties of record are afforded an opportunity to examine the book, paper, or document, and to offer into evidence in like manner other portions thereof, if found to be material and relevant.

016.08 Prepared Testimony: Testimony of a witness may be adduced by use of a prepared statement, if the witness is present for cross examination.

016.09 Late Filed Exhibits: The hearing officer may authorize any party to furnish and serve designated late filed exhibits within a specified time after the close of the hearing.

016.10 Subpoena and Witness Fees: Subpoenas requiring the attendance of witnesses will be issued upon written request of any party, or on order of the Commission. Any witness who is summoned and responds thereto shall receive the same fee paid for like service in the district courts of Nebraska, such fee to be paid by the party at whose instance the witness' testimony is to be taken. Subpoenas for the production of papers, books, or documents will be issued only upon request in writing, stating specifically which papers, books, or documents are required. All parties directed to produce such books, papers or documents shall furnish and deliver same at the time and place specified in the subpoena to the Executive Director or other designated employee or agent of the Commission.

016.11 Depositions and Discovery: The use of depositions and discovery in proceedings before the Commission is governed by the rules and regulations of the Nebraska Supreme Court.

EFFECTIVE DATE: May 4, 1992

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

016.12 Offer of Proof: An offer of proof may be made by a party or by counsel.

016.13 Applications and Petitions: Unless otherwise directed by the hearing officer, evidence will be received from participants in the following order: (a) applicants or petitioners; (b) protestants; (c) Commission staff; and, (d) rebuttal by applicants or petitioners.

016.14 Complaints: Unless otherwise directed by the hearing officer, evidence will be received from participants in the following order: (a) complainant; (b) defendant; and, (c) rebuttal by complainant.

016.15 Investigative Proceedings: Evidence will be received from participants in the following order: (a) Commission staff; (b) respondents; and, (c) rebuttal by Commission staff.

016.16 Show Cause Orders: Evidence will be received from participants in the following order: (a) Commission staff; (b) respondents; and, (c) rebuttal by Commission staff.

016.17 Order of Intervenor's Evidence: Intervenor's evidence will be received following the case in chief that it supports.

017 MOTIONS:

017.01 Motion: An oral or written request addressed to a hearing officer or the Commission by any party to a proceeding.

017.02 Ruling: Motions made prior to a hearing will be in writing and a copy thereof served on all parties and attorneys of record personally or by mail. Such motions, except a motion constituting final disposition of the proceeding, will be ruled on by the hearing officer assigned to the case in which the motion is filed or by the Commission. The hearing officer shall note his/her ruling on the motion. A copy of the motion with the ruling noted hereon will be mailed to the parties and attorneys of record.

018 CONDUCT OF PROCEEDINGS:

018.01 Hearing Officer; Duties and Powers: A proceeding will be con-

EFFECTIVE DATE: May 4, 1992

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

ducted by a hearing officer who, among other things, shall:

018.01A Open the record and receive appearances.

018.01B Enter the notice of hearing into the record.

018.01C Act on pleadings not previously or timely filed.

018.01D Act on pleadings previously filed but not ruled upon.

018.01E Receive testimony.

018.01F Elicit testimony on behalf of the Commission.

018.01G Rule on objections and motions.

018.01H Close the hearing.

018.02 Hearing Officer; Powers Limited: A hearing officer shall not take any action involving a final determination of the proceedings.

018.03 Testimony; Modified Procedure: An application which is not protested may on applicant's motion, or on the Commission's own motion, be processed by use of affidavits and will be processed administratively. The affidavit will be signed by the applicant or counsel and sworn to before a notary.

018.04 Oral Argument: Ordinarily, no oral argument shall be permitted as a matter of right at the close of a hearing. The hearing officer may request or permit such argument.

018.05 Briefs: Briefs may be required by the hearing officer or the Commission. Any party that wants to submit a brief may do so by request at the close of the hearing. Where two or more parties want to submit briefs, such briefs will be filed simultaneously. The time in which briefs shall be filed and the number of copies required will be fixed at the close of the hearing by the hearing officer or at such time as determined by the Commission.

018.06 Standard of Conduct; Contemptuous Conduct: A hearing officer may

EFFECTIVE DATE: May 4, 1992

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

exclude from the hearing any person who displays contemptuous conduct.

018.07 Change of Hearing Officer: Proceedings will not be affected by the change of a hearing officer.

018.08 Consolidation: Unless any party would be prejudiced, proceedings that are legally or factually related may be heard on a consolidated record.

019 DECLARATORY RULING:

019.01 Petition Content: A petition for declaratory ruling will set forth the rule or statute on which the petitioner seeks a declaratory ruling and the facts which necessitate the ruling.

019.02 Submission: A petition for a declaratory ruling will be filed with the Executive Director who shall cause notice thereof to be given in accordance with these rules. The minimum notice to be given before hearing shall be twenty (20) days.

019.03 Disposition: The Commission or a hearing officer shall hear argument or receive evidence on a petition for a declaratory ruling.

019.04 Ruling: The Commission's ruling shall identify the person to be bound.

019.05 Statewide Commercial Importance: If a petition for declaratory ruling presents a question of statewide commercial importance or such is noted during or after hearing on the petition, the Commission shall not issue a declaratory ruling but will resolve such question in an investigative proceeding.

020 PREHEARING CONFERENCES:

020.01 Purpose: Upon written notice by the Commission in any proceeding, or upon written or oral instruction of a hearing officer, parties or their attorneys may be directed to appear before a hearing officer at a specified time and place for a conference, prior to or during the course of a hearing, to submit suggestions orally or in writing for the purpose

EFFECTIVE DATE: May 4, 1992

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

of formulating issues and considering:

020.01A The simplification of issues.

020.01B The necessity or desirability of amending the pleadings either for the purpose of clarification, amplification or limitation.

020.01C The possibility of making admissions of certain averments of fact or stipulations concerning the use by either or both parties of matters of public record, such as annual reports or the like, or to avoid introduction of foundation.

020.01D The procedure at the hearing.

020.01E The limitation of the number of witnesses.

020.01F The propriety of prior mutual exchange between or among the parties of prepared testimony and exhibits.

020.01G Other matters as may aid in the simplification of the evidence and disposition of the proceeding.

020.02 Facts Disclosed Privileged: Facts disclosed in the course of the prehearing conference are privileged and, except by agreement, will not be used against participating parties either before the Commission or elsewhere unless fully substantiated by other evidence during open hearing.

020.03 Recordation and Order: Action taken at the conference, including a recitation of the amendments allowed at the pleadings, agreements made by the parties as to any matters considered, and defining the issues, will be recorded in an appropriate order, unless the parties enter upon a written stipulation as to such matters or agree to a statement on the record by the hearing officer.

020.04 Objection to the Order; Subsequent Proceedings: If an order is entered, a reasonable time will be allowed for the parties to present objections on the grounds that it does not fully or correctly embody the agreements reached at the conference. Thereafter, the terms of the order

or modification thereof, the written stipulation, or statement of the hearing officer, as the case may be, determine the subsequent course of the proceedings, unless modified to prevent manifest injustice.

020.05 Stipulations: Parties to any proceeding may agree upon any facts involved in the controversy, either by written stipulation entered into the record as an exhibit or by oral agreement stated on the record, provided that the Commission shall not be bound by such stipulation.

021 APPEALS: A party seeking to obtain reversal, modification, or vacation of an order entered by the Commission may seek such review as provided by this section: (1) A party seeking to obtain reversal, modification, or vacation of an order entered by the Commission pursuant to section 75-156

(1) (b) may appeal such order in accordance with the state's Administrative Procedure Act. (2) A party seeking to obtain reversal, modification, or vacation of an order entered pursuant to section 75-156 to 75-158, other than section 75-156(1) (b), may (a) seek review of the Court of Appeals as provided in section 75-137 as set forth in section 021.01 and 021.02 of these rules or (b) seek judicial review of the order under section 75-136.01 as set forth in section 021.04A of these rules. (3) Any interested party seeking to obtain reversal, modification, or vacation of a Commission order entered by the Commission under Neb. Rev. Stat. sections 75-109, 75-604, 75-609, and 75-609.01 or 86-801 to 86-810 may, after all administrative remedies before the Commission have been exhausted, appeal in accordance with the state's Administrative Procedure Act. (4) A party seeking to obtain reversal, modification, or vacation of any other order of the Commission not otherwise provided for in this section may appeal pursuant to section 75-137 using the procedures provided for in 021.01 and 021.02.

021.01 Direct Appeal: On direct appeal, a notice of appeal, statutory docket fee, and seventy-five dollar (\$75.00) cost bond or undertaking shall be filed with the Executive Director within the thirty (30) day period immediately following the day on which a copy of the Commission's order is mailed to the party appealing.

021.02 Indirect Appeal; Motion for Rehearing: On indirect appeal, a motion for rehearing must first be filed within the ten (10) day period immediately following the day on which a copy of the Commission's order is mailed to the party appealing. If the Commission overrules the motion for rehearing, a notice of appeal, statutory docket fee, and seventy-five dollar (\$75.00) cost bond or undertaking must be filed with the Commission within the thirty (30) day period immediately following the day on which a copy of the Commission's order overruling the motion for rehearing to the party appealing is mailed. If the Commission does not enter an order ruling on the motion for rehearing within thirty (30) days after such motion is filed, an appeal may be perfected by filing a notice of appeal,

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

and any statutory docket fee and cost bond or undertaking in an amount pursuant to state law before the Commission enters an order ruling on the motion for rehearing.

021.02A Oral Argument: The Commission shall hear oral argument on motions for rehearing if a request is filed at the time such motion for rehearing is filed by the moving party or by request filed within seven (7) days of the filing of the motion by the opposing party. Unless otherwise ordered by the Commission, the parties of record shall be allowed twenty (20) minutes each for oral argument.

021.03 Procedure: In either a direct or indirect appeal, appellant shall: (A) certify to the Commission that a copy of the notice of appeal was mailed or personally delivered to other parties and attorneys of record; and, (B) shall file a praecipe with the Executive Director specifying the pleadings or other matters to be included in the transcript. The evidence as certified by the official stenographer and the Executive Director as the true bill of exceptions, along with the pleadings and filings, constitutes the complete record. The other parties of record shall, within twenty (20) days of filing of the notice of appeal, inform the Executive Director in writing whether they intend to become parties to the appeal. The Executive Director shall indicate on the transcript the appellant and appellee parties.

021.04 Appeal of Orders:

021.04A Proceedings For Review: The following procedures may be utilized for review pursuant to Rule 021(2):

021.04A1 Proceedings for review of an order entered pursuant to section 021(2) of these rules shall be instituted by filing a petition in the District Court of Lancaster County or in the district court of the county in which the party is domiciled within the thirty (30) day period immediately following the day on which the Commission's order is mailed to the party appealing. All parties of record shall be made parties to the proceedings for review.

021.04A2 Summons shall be served within thirty (30) days

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

of the filing of the petition in the manner provided for service of a summons in a civil action. The court, at its discretion, may permit other interested persons to intervene.

021.04A3 As provided in 021.04B, the Commission may stay enforcement of a decision, upon such terms as it deems proper, and may require the party requesting such stay to give bond in the amount specified in the order entered by the Commission.

021.04A4 Within fifteen (15) days after service of the petition, or within such further time as the court for good cause shown allows, the Commission shall prepare and transmit to the court the verbatim testimony transcribed by the official stenographer, including all exhibits, which shall constitute the bill of exceptions. The pleadings, order appealed and bill of exceptions duly certified to by the Executive Director shall constitute the complete record. In addition, if the defendant requests a stay of the Commission's order, the Commission shall also transfer the cashier's check, money order, electronic transfer or supersedeas bond it received from the defendant. Such transfer shall satisfy the bond requirement of 021.04A3.

021.04A5 A copy of the original order appealed, certified to be a true and correct copy by the Executive Director or a Commissioner, shall be admitted in evidence as prima facie evidence of every fact found and that such order is prima facie just and reasonable.

021.04A6 The review shall be conducted by the court without a jury de novo on the record of the Commission. The court may affirm the decision of the Commission, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the decision is in violation of constitutional provisions; in excess of the statutory authority or jurisdiction of the

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

Commission; or, arbitrary or capricious.

021.04B Stays of a Commission Telecommunications Order: Before a party of record to a telecommunications order commences an appeal, one or more parties may apply to the Commission for a stay of a Commission order. The Commission may order a stay of the Commission order only if the Commission finds that (a) the applicant for the stay is likely to prevail when the matter is finally decided, (b) without relief, the applicant will suffer irreparable injury, and (c) the grant of a stay to the applicant will not substantially harm other parties to the proceeding. The Commission may require the party requesting a stay to give bond in an amount or upon conditions as the Commission may direct. The grant or denial of a stay shall not be considered to be a final order.

021.04B1 For purposes of this section, a telecommunications order shall mean an order entered by the Commission pursuant to the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay System Act, subsection (2) of Neb. Rev. Stat. section 75-109, or sections 75-604 to 75-616, 86-801 to 86-811, 86-1001 to 86-1009, 86-1201 to 86-1222.

021.04C Appeal to the Court of Appeals or to the Supreme Court: The Commission or any party to the proceedings shall have the right to appeal the decision of the District Court or the Court of Appeals under the same rules now provided by law for appeals to the Supreme Court, except that in no case shall security for such appeal be required when security is taken by the Commission.

021.04D Judicial Review and Failure to Perfect Appeal:

021.04D1 If the defendant against whom a penalty is assessed seeks judicial review as authorized by the statute, the defendant shall forward to the Commission a cashier's check or money order payable to the Treasurer of the State of Nebraska for placement in a contingent liability account in the amount of the penalty

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

assessed by the Commission. As an alternative to paying the penalty into a contingent liability account, the defendant may post with the Commission a supersedeas bond approved by the Commission and payable to the Treasurer of the State of Nebraska for the amount of the penalty, which will remain in effect until all judicial review of the order or decision is final. The defendant shall either remit the payment or post an approved supersedeas bond with the Commission within the thirty (30) day period immediately following the day on which the Commission's order is mailed. If the defendant is unable financially to comply with the requirements of this rule, the defendant seeking judicial review shall, within the same thirty (30) day period, file with the general counsel of the Commission an affidavit stating his/her financial inability and shall attach thereto a balance sheet describing, with particularity, the defendant's assets and liabilities. If the general counsel concludes that the balance sheet and affidavit sufficiently show the defendant's financial inability to comply with this rule, the Commission may waive payment of the civil penalty into the contingent liability account or the posting of a supersedeas bond.

021.04D2 (A) Failure to pay the penalty in full, (B) failure to forward the amount of the penalty for placement in a contingent liability account, (C) failure to post a supersedeas bond, or (D) failure to obtain a waiver from the Commission of such requirements within the thirty (30) day period immediately following the day on which the Commission's order is mailed shall result in a waiver of all legal rights to judicial review.

021.04E Unfavorable Appellate Determination: In the event the final appellate determination is against the defendant, within thirty (30) days of the date the decision of the appeals court becomes final, the Commission shall forward to the Treasurer of the State of Nebraska the cashier's check, money order or supersedeas bond held by the Commission, plus any interest

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

which may have accrued, pending the outcome of the appellate process.

021.04F Favorable Appellate Determination: In the event the final appellate determination is in favor of the defendant, said defendant shall be absolved of all liability for payment of the amount of the penalty. Within thirty (30) days of the date the decision of the appeals court becomes final, the Commission shall return the amount of the penalty assessed and paid, plus any interest which may have accrued, with a certificate of its return or shall release the supersedeas bond by Commission order, as shall be required under the circumstances.

022 SECURITY ISSUANCES:

022.01 Applications: Applications for approval of a security issuance will set forth the details surrounding the proposed indebtedness or issuance and will be accompanied by: (A) a certified copy of the Articles of Incorporation with amendments to date; (B) a certified copy of the minutes from the board of directors' or stockholders' meeting, or other proper corporate authority authorizing the action; (C) a certified copy of the by-laws with amendments to date; (D) current balance sheet and supporting profit and loss statement; and (E) sample of proposed stock certificate.

022.02 Notice: In cases of stock increase and consolidation of stock, a hearing will be held only after proof of publication in a legal newspaper published in the city wherein the common carrier has its principal place of business in the State of Nebraska, or, if no legal newspaper is published in such county, then in some legal newspaper published within the state and having general circulation within such county once each week for two consecutive weeks. The first publication shall be at least 60 days prior to the hearing upon the application for the increase or for the consolidation, as the case may be.

023 RULES AND REGULATIONS: An application for the amendment, repeal or adoption of any Commission rule or regulation shall state the purpose of the proposed rule and regulation and shall state briefly the reasons for such amendment, repeal or adoption.

EFFECTIVE DATE: May 4, 1992

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

024 FORMS: The Commission has approved certain forms for use by its departments in connection with proceedings before the Commission. The forms are available upon request and will be used where applicable. These include the following:

024.01 Communications Department:

024.01A Application to Connect Automatic Dialing-Announcing Device

024.02 Engineering:

024.02A Application for Authority to Construct, Operate and Maintain an Electric Transmission Line

024.02B Completion Notice for Transmission Line

024.03 Transportation Department:

024.03A Application for Motor Carrier Authority: To be used to request authority to transport passengers and/or property, or to transfer or lease current operating authority. May be used as original application or as application to extend authority. May be used for Intrastate carriers only.

024.03B Form A Uniform Application for Registration of Operating Authority Issued by Interstate Commerce Commission (ICC) or NPSC Intrastate Application.

024.03C Form B Uniform Application for Registration and Identification of Vehicles or Driveaway Operations Operated or Conducted Under Authority Issued by ICC or NPSC Interstate Application.

024.03D NPSC Application for Itinerant Merchant License.

024.03E Form IR-1 NPSC Interstate Motor Carrier Cab Card: To be used by ICC exempt and Private Carriers only.

NEBRASKA ADMINISTRATIVE CODE

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

- 024.03F Form A-1 Uniform Application for Registration of Interstate Motor Carrier Operations Exempt from ICC Regulation or NPSC Interstate Application.
- 024.03G Form B-1 Uniform Application for Registration and Identification of Vehicles of Driveaway Operations Exempt from ICC Regulation or NPSC Interstate Application.
- 024.03H Form B-2 International Operating Authority Agreement: To be used for Nebraska ICC exempt and ICC regulated carriers.

024.04 Warehouse Department:

- 024.04A Form GW-1 Application for Public Grain Warehouse License: To be used to conduct the business of a public grain warehouseman.
- 024.04B Form GD-1 Application for Grain Dealer License: To be used to conduct the business of a grain dealer.

025 FILING FEES: For each application, complaint or petition filed with the Commission, there shall be a filing fee which shall be established and set forth in the official minutes at least annually.

026 HEARING FEES: For each proceeding before the Commission requiring a hearing, a fee of \$50.00 per half day shall be assessed by the Executive Director unless the proceeding is initiated by the Commission.

027 CIVIL PENALTY PROCEDURES:

027.01 Purpose and Scope:

027.01A The purpose of this section is to establish hearing and related procedures which the Commission will follow when civil penalties are sought against any person as defined in Neb. Rev. Stat. section 75-139.01 pursuant to section 75-156.

027.01B The section establishes procedures to interpret, clarify and supplement requirements, definitions, and proce-

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

dures described in the statutes specified in 027.01A. The Commission will follow the requirements, definitions, and procedures in these statutes and rules.

027.01C For purposes of these rules, civil penalty shall have the same meaning as administrative fine and these terms may be used interchangeably.

027.02 Assessing Civil Penalties:

027.02A Authority of the Commission: In addition to other penalties and relief provided by law, the Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to ten thousand dollars (\$10,000) per day against any person for each violation of: (1) any provision of sections 75-301 to 75-390, or section 75-126 as such section applies to any person or carrier specified in sections 75-301 to 75-390; (2) a Commission order entered pursuant to the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay System Act, subsection (2) of section 75-109, or sections 75-604 to 75-616, 86-801 to 86-811, 86-1001 to 86-1009, or 86-1201 to 86-1222; (3) any interconnection agreement or agreement of a similar nature approved by the Commission pursuant to section 75-109(2); (4) a self-enforcing provision of an interconnection agreement or an agreement of a similar nature approved by the Commission; (5) any term, condition, or limitation of any certificate or permit issued pursuant to sections 75-301 to 75-390; or, (6) any rule, regulation, or order of the Commission issued under authority delegated to the Commission pursuant to sections 75-301 to 75-390.

027.02B The civil penalty assessed under these rules shall not exceed two million dollars (\$2,000,000) per year for each violation. For purposes of section 021 of these rules, year shall mean calendar year which is the period from January 1 to December 31 inclusive.

027.02C Discretion to Determine Penalty: The Commission shall have discretion in determining the appropriate amount of the civil penalty assessed for each violation. In determining the amount of

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

the penalty, the Commission shall consider:

027.02C1 The appropriateness of the penalty in light of the gravity of the violation; and,

027.02C2 The good faith of the violator in attempting to achieve compliance after notification of the violation is given.

027.03 Initiation of Civil Penalty Proceedings Before the Commission:

027.03A Complainants and Complaints: A civil penalty proceeding may be initiated by any person as defined in section 75-139.01 or the person's legal representative. The complaint initiating a civil penalty proceeding shall be filed with the Executive Director and shall conform to the requirements of 005.03 (departmental complaint), 005.05 (formal complaint) or 013.01 (show cause order), as the case may be, and further shall: (1) consist of a written pleading signed by the complainant or his or her legal representative containing the names of the complainant and the alleged violator or violators; (2) set forth the date, facts, and nature of each act or omission upon which each charge of a violation is based; (3) specifically identify the particular statute, certificate, permit, rule, regulation, or order allegedly violated; (4) contain a prayer stating the type of relief, action, or order desired by the complainant; (5) inform the defendant that pursuant to Commission rules, failure to answer will be construed as an admission of the allegations in the complaint; and, (6) that upon failure to pay any civil penalty determined by the Commission, such civil penalty may be collected by civil action in the District Court of Lancaster County.

027.03A1 In the case of a formal complaint, a hearing fee may be assessed against the complainant in the amount established by the Commission and as provided by law for hearing fees. If the defendant is found to have committed the violation or violations named in the formal complaint, the hearing costs assessed, if any, shall be refunded to the complainant. If the defendant is found to have committed the violation or violations named in

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

the formal complaint, the defendant may be assessed the costs of the hearing.

027.03B Delivery of Complaint: Before a civil penalty complaint filed pursuant to an alleged violation of sections 75-301 to 75-390 by anyone other than the Commission can proceed to a hearing, a copy of said complaint shall be delivered to the Executive Director of the Commission. The Director shall have thirty (30) days to intervene in support of said complaint, intervene in opposition to said complaint, or issue a letter advising the complainant that the Commission has taken no position in the proceeding. In the event the Director takes no action after the thirty (30) day period has expired, the complainant may proceed to a hearing on the complaint no earlier than thirty (30) days after notice is served upon the defendant named in the complaint. Nothing contained herein shall preclude the Commission from intervening as otherwise allowed under the rules of the Commission.

027.03C Notice to Defendant: When a complaint is filed with the Executive Director, wherein the defendant may be subject to a civil penalty under state law and these rules, the Commission shall notify such defendant in writing (1) setting forth the date, facts, and nature of each act or omission upon which each charge of a violation is based; (2) specifically identifying the particular statute, certificate, permit, rule, regulation, or order allegedly violated; (3) that a hearing will be held and give notification of the time, date, and place of such hearing; (4) that, in addition to a civil penalty, the Commission may enforce additional penalties and relief as provided by law; (5) that pursuant to Commission rules, failure to answer will be construed as an admission of the allegations in the complaint. Failure to file an answer or to appear at the hearing allows the Commission to enter an order assessing a civil penalty as provided by law for the violation or violations alleged in the civil penalty complaint, or the Commission may proceed with a hearing to receive evidence of the alleged violation or violations and may assess civil penalties as provided by law; and, (6) that upon failure to pay any civil penalty determined by the Commission, such civil penalty may be collected by civil action in the District Court of Lancaster County.

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

027.03D Method For Notice of Civil Penalty Complaint and Hearing:

A copy of the civil penalty complaint described in 027.03A and the notice information specified by 027.03C shall be sent by the Commission to the defendant pursuant to the Service and Notice provisions as contained in Commission rules.

027.03E Supplemental Pleadings; Other Remedies at Law:

Supplemental pleadings filed by a party shall be in writing and be filed with the Executive Director and distributed by him or her to all interested parties under a certificate of service at any time until five (5) days before the hearing date. Supplemental pleadings filed five (5) days or less prior to the hearing date may be allowed by the hearing officer upon a showing of good cause and undue surprise does not disadvantage other parties of record. A civil penalty proceeding shall not be cumulative of all other remedies available under state law and the rules of the Commission. Nothing herein shall be construed so as to preclude the Commission or any other party, person, or entity from seeking any remedy in law or equity not specifically provided for in this section.

027.03F Withdrawal of Complaint:

A civil penalty complaint may be withdrawn by the party who filed the complaint without prejudice to refiling upon the same facts if the Commission approves the withdrawal as provided by these rules.

027.04 Answer:

027.04A Form: The defendant shall submit to the Commission a written answer in the manner required by (1) 005.08 (formal complaint); or, (2) 005.09 (departmental complaint), but in either case the written answer shall be filed no later than twenty (20) days after the date on which notice is given.

027.04B Failure to Properly File Answer: If the defendant fails to timely file an answer as required by this subsection, or fails to appear at the hearing, the Commission may enter an order which assesses a civil penalty as provided by law for the violation or violations alleged in the complaint, or the Commission may proceed with a hearing to receive evidence on the

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

alleged violation or violations and the Commission may assess civil penalties or an administrative fine as provided by law.

027.05 Settlement Orders:

027.05A Compromise Prior to Complaint Hearing: A defendant may enter into a compromise settlement agreement and proposed final order prior to a hearing pursuant to section 75-157 which does not constitute an admission by the defendant of any alleged violation or violations contained in the civil penalty complaint. Such agreement and proposed final order shall be signed by the defendant and all parties to the proceeding and shall reflect that the defendant consents to the assessment of a specific civil penalty or administrative fine. Settlement of the matters raised by the civil penalty complaint in a proposed final order containing a recommended penalty are subject to the approval of the Commission.

027.05B Contingent Liability Account Deposit; Submission of Compromise to Commission: If the defendant and all parties to the proceeding enter into a compromise settlement agreement and proposed final order, the settlement of the complaint may include a recommended penalty to the Commission. If a recommended penalty is included as part of the compromise settlement agreement and proposed final order, simultaneous with the filing of a compromise settlement agreement and proposed final order, the defendant shall remit to the Commission a cashier's check or money order in the amount of the recommended penalty payable to the Treasurer of the State of Nebraska. These funds shall be held in a contingent liability account until appropriately allocated upon final order. The compromise settlement agreement and proposed final order shall be submitted to the Commission by the Commission's counsel. If the Commission approves the agreement and proposed order, the civil penalty proceeding shall cease. If the Commission does not approve the proposed order, a hearing on the civil penalty complaint shall be held.

027.06 Findings of Fact and Conclusions of Law: Every decision and final order rendered by the Commission after a civil penalty hearing is held shall be in writing and accompanied by a finding of facts and conclusions of law. The order entering a civil penalty may, at the discretion of the Commission, provide for a prescribed timetable for the payment of such

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

finer. A copy of the order shall be sent to the parties of record by certified or registered mail.

027.07 Final Commission Order: Except in the event of a compromise settlement agreement entered into pursuant to the provision of 027.05A which specifically provides that there will not be a finding that a defendant is in violation of a provision found in 027.02A, nothing in these rules shall prohibit the Commission from issuing a final order in which the Commission enters a finding that the defendant is found to be in violation of a provision found in 027.02A notwithstanding that such a defendant may already be subject to the annual fine limitation as prescribed in section 027.02B.

027.08 Post Order Requirements:

027.08A Issuance of a Final Order Finding Occurrence of a Violation: On the issuance of a final order finding that the violation or violations have occurred, the Commission shall inform the defendant or the defendant's legal representative no later than five (5) business days of the rendition of the order and of the amount of the penalty, if any.

027.08B Payment of the Administrative Fine: Within the thirty (30) day period immediately following the day on which the Commission's final order is mailed, the defendant who has not previously paid all the civil penalty ordered to be paid shall pay the penalty in full by remitting a cashier's check, electronic transfer or money order to the Commission payable to the Treasurer of the State of Nebraska. The Commission shall then promptly forward the cashier's check or the money order to the State Treasurer as provided by law.

027.08C Judicial Review: Judicial review of a Commission order assessing a civil penalty entered pursuant to 027 shall be conducted pursuant to the appeal procedures found in 021.04.

027.09 Collection of Penalty in Lieu of Payment: A civil penalty assessed pursuant to these rules and unpaid shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of Lancaster County. Any civil penalty collected by the Commission pursuant to such judicial proceedings

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

shall be transmitted within thirty (30) days from receipt to the Treasurer of the State of Nebraska for deposit in the permanent school fund pursuant to section 75-158.

NEBRASKA ADMINISTRATIVE CODE

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

INDEX	PAGE
001 GENERAL	
001.01 Definitions	1-2
002 APPEARANCES	
002.01 Individual.	2
002.02 On Behalf of Another.	2
002.03 On Behalf of Another by Limited Appearance.	2
002.04 Staff	2
002.05 Special Appearance.	3
003 TYPES OF PROCEEDINGS	
003.01 Initial Proceedings	3
003.02 Informal Complaints	3
004 RESPONSIVE PLEADINGS.	3
005 FORM OF PLEADINGS	
005.01 Applications on Commission Forms.	3
005.02 Applications on Other Forms	4
005.03 Departmental Complaint.	4
005.04 Order to Show Cause	4
005.05 Formal Complaint	4
005.06 Petition.	4
005.07 Protest	4
005.08 Answer to Formal Complaint.	4-5
005.09 Answer to Departmental Complaint.	5
005.10 Failure to Answer	5
006 SIGNING	6-7
007 COPIES.	6
008 WITHDRAWAL OF PLEADING.	6
009 SUBSEQUENT APPLICATION.	6

NEBRASKA ADMINISTRATIVE CODE

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

INDEX

PAGE

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

INDEX	PAGE
010 HOURS OF OPERATION	
010.01 Office Hours	6
010.02 Computation	6
011 SERVICE AND NOTICE	
011.01 Service and Notice	7
011.02 How Served	7
011.03 Return	7
011.04 Personal Service	7-8
011.05 Service by Mail	8
011.06 Notice of Application	8
011.07 Notice of Complaint Hearing	8
011.08 Official Publication	8
012 COMMISSION INVESTIGATIONS	
012.01 General	9
012.02 Order to Appear	9
012.03 Investigation/Penalty	9
013 SHOW CAUSE ORDERS	
013.01 Show Cause Order	9
013.02 Content	9
013.03 Cease and Desist Order	9
014 PROTESTS	
014.01 Content of Protest; Failure to File	10
014.02 Protest Against Application; When Filed	10
014.03 Protest to Temporary Motor Carrier Authority	10
014.04 Protest to an Emergency Rate Order	10
014.05 Telegraphic Protest	10
014.06 Protest to Inter-LATA Interexchange Telecommunications Service Application; When Filed	11

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

INDEX	PAGE
015 INTERVENTION IN PROCEEDINGS	
015.01 Formal Intervention; Status	11
015.02 Informal Intervention; Requirement; Status.	12
015.03 Statements by the Public.	12-13
016 EVIDENCE	
016.01 General	13
016.02 Filing and Serving Exhibits Prior to Hearing.	13
016.03 Copies of Exhibits.	13
016.04 Official Files.	13
016.05 Cumulative Evidence	13
016.06 Abstracts from Documents.	13
016.07 Material in Books, Papers or Documents.	13-14
016.08 Prepared Testimony.	14
016.09 Late Filed Exhibits	14
016.10 Subpoena and Witness Fees	14
016.11 Depositions and Discovery	14
016.12 Offer of Proof.	14
016.13 Applications and Petitions.	14
016.14 Complaints.	15
016.15 Investigative Proceedings	15
016.16 Show Cause Orders	15
016.17 Order of Intervenor's Evidence.	15
017 MOTIONS	
017.01 Motion.	15
017.02 Ruling.	15
018 CONDUCT OF PROCEEDINGS	
018.01 Hearing Officer; Duties and Powers.	15-16
018.02 Hearing Officer; Powers Limited	16
018.03 Testimony; Modified Procedure	16
018.04 Oral Argument	16
018.05 Briefs.	16
018.06 Standard of Conduct; Contemptuous Conduct	16

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

INDEX	PAGE
018.07 Change of Hearing Officer	16
018.08 Consolidation	16
019 DECLARATORY RULING	
019.01 Petition Content.	17
019.02 Submission.	17
019.03 Disposition	17
019.04 Ruling.	17
019.05 Statewide Commercial Importance	17
020 PREHEARING CONFERENCES	
020.01 Purpose	17-18
020.02 Facts Disclosed Privileged.	18
020.03 Recordation and Order	18
020.04 Objection to the Order; Subsequent Proceedings.	18
020.05 Stipulations.	18
021 APPEALS	
021.01 Direct Appeal	19
021.02 Indirect Appeal; Motion for Rehearing or Reconsideration.	19-20
021.03 Procedure	20
021.04 Appeal of Orders.	20-24
022 SECURITY ISSUANCES	
022.01 Applications.	24
022.02 Notice.	24
023 RULES AND REGULATIONS	24
024 FORMS	
024.01 Communications Department	25
024.02 Engineering	25
024.03 Transportation Department	25-26
024.04 Warehouse Department.	26

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

INDEX	PAGE
025 FILING FEES	26
026 HEARING FEES.	26
027 CIVIL PENALTY PROCEDURES	
027.01 Purpose and Scope	26
027.02 Assessing Civil Penalties	27
027.03 Initiation of Civil Penalty Proceedings Before the Commission.	28-30
027.04 Answer.	30
027.05 Settlement Orders	30-31
027.06 Findings of Fact and Conclusions of Law	31
027.07 Final Commission Order.	31
027.08 Post Order Requirements	32
027.09 Collection of Penalty In Lieu of Payment.	32

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

INDEX

PAGE

ALPHABETICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
APPEALS	75-122.01; 75-136; 75-136.01; 75-137- 75-139.01; 75-143 75-156 (Cum. Supp. 2000)	021
APPEARANCES	75-110 (Reissue 1996) 75-157; 75-158	002
CIVIL PENALTY PROCEDURES 75-156	027	
COMMISSION INVESTIGATIONS	75-110; 75-111; 75-131 (Reissue 1996)	012
CONDUCT OF PROCEEDINGS	75-110; 75-129	018
COPIES	75-106; 75-110	007
DECLARATORY RULING	75-110	019
EVIDENCE	75-110	016
FILING FEES	75-110	025
FORMS	75-110	024

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

INDEX		PAGE
FORM OF PLEADINGS	75-110; 75-110.01	005
GENERAL	75-110	001
HEARING FEES	75-128 (Reissue 1996)	026
HOURS OF OPERATION	75-110	010

ALPHABETICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
INTERVENTION IN PROCEEDINGS	75-110	015
MOTIONS	75-110	017
PREHEARING CONFERENCES	75-110	020
PROTESTS	75-110	014
RESPONSIVE PLEADINGS	75-110	004
RULES AND REGULATIONS	75-110; 75-119	023
SECURITY ISSUANCES	75-148 - 75-151	022
SERVICE AND NOTICE	75-110; 75-119; 75-121; 75-131; 75-132	011
SHOW CAUSE ORDERS	75-132; 75-133	013
SIGNING	75-110	006
SUBSEQUENT APPLICATION	75-110	009

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

INDEX

TYPES OF PROCEEDINGS	75-110; 75-131; 75-133	003
WITHDRAWAL OF PLEADING	75-110	008

NUMERICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
GENERAL	75-110	001
APPEARANCES	75-110 (Reissue 1996) 75-157; 75-158	002
TYPES OF PROCEEDINGS	75-110; 75-131; 75-133	003
RESPONSIVE PLEADINGS	75-110	004
FORM OF PLEADINGS	75-110; 75-110.01	005
SIGNING	75-110	006
COPIES	75-106; 75-110	007
WITHDRAWAL OF PLEADING	75-110	008
SUBSEQUENT APPLICATION	75-110	009
HOURS OF OPERATION	75-110	010

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

INDEX

SERVICE AND NOTICE	75-110; 75-119; 75-121; 75-131; 75-132	011
COMMISSION INVESTIGATIONS	75-110; 75-111; 75-131 (Reissue 1996)	012
SHOW CAUSE ORDERS	75-132; 75-133	013
PROTESTS	75-110	014
INTERVENTION IN PROCEEDINGS	75-110	015

NUMERICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
EVIDENCE	75-110	016
MOTIONS	75-110	017
CONDUCT OF PROCEEDINGS	75-110; 75-129	018
DECLARATORY RULING	75-110	019
PREHEARING CONFERENCES	75-110	020
APPEALS	75-122.01; 75-136; 75-136.01; 75-137- 75-139.01; 75-143 75-156 (Cum. Supp. 2000)	021
SECURITY ISSUANCES	75-148 - 75-151	022
RULES AND REGULATIONS	75-110; 75-119	023

EFFECTIVE DATE: September 29, 2001

LAST ISSUE DATE: May 4, 1992

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 1 - RULES OF COMMISSION PROCEDURE

INDEX

FORMS	75-110	024
FILING FEES	75-110	025
HEARING FEES	75-128 (Reissue 1996)	026
CIVIL PENALTY PROCEDURES	75-156	027

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

	PAGE
001 GENERAL	
001.01 Definitions	1-4
002 MINIMUM SAFETY STANDARDS FOR PIPELINES	
002.01 Minimum Safety Standards	4
002.02 Scope	4
002.03 Facilities, Inspection and Repairs	4
002.04 Waiving of Rules	4
002.05 Waiver of Temporary Installations.	4
003 DISPUTES BETWEEN JURISDICTIONAL UTILITIES AND METROPOLITAN UTILITIES DISTRICTS	
003.01 Commission Jurisdiction.	4-6
003.02 Protests.	6
003.03 Subpoena and Other Powers.	6
003.04 Hearing.	6-7
003.05 Fees	7
003.06 Procedure.	7
003.07 Determining Considerations	7
003.08 Rebuttable Presumptions.	8
003.09 Commission Orders.	8
003.10 Appeals.	8
003.11 Enforcement.	8
003.12 Scope.	8
004 GENERAL RATE FILINGS	
004.01 Application.	9
004.02 Section I - General Information.	10
004.03 Section II - Rate Base Schedules	10-11
004.04 Section III - Operating Expense Schedules.	11
004.05 Section IV - Rate of Return & Cost of Capital Schedules.	11
004.06 Section V - Revenue Schedules.	12
004.07 Section VI - Cost of Service Study	12
004.08 Section VII - Prefiled Direct Testimony and Exhibits.	12
004.09 Alternate Cost of Service Study Models	12
004.10 Use of Discovery in General Rate Filing Proceedings.	12-13
004.11 Notice of Assessment	13
004.12 Filing of Documents.	13
004.13 Exemption from Rules	13-14
005 RATE PRINCIPLES	
005.01 Rule Provisions.	14
005.02 Cost of Service.	14
005.03 Components of Cost of Service.	14
005.04 Allowable Expenses	14
005.05 Return on Rate Base.	14-15
005.06 Rate Base.	15-17
005.07 Payments to Affiliates	17

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

	PAGE
006 CONFIDENTIAL INFORMATION	
006.01 Confidential Information Filed with Applications	17-18
006.02 Other Confidential Filings	18
007 RATE AREA MAPS	18
008 TARIFF FILINGS	
008.01 Applicability.	18
008.02 Effective Tariff	18
008.03 Tariff Filings	18-19
008.04 Requirements as to Size, Form, Identification and Filing of Tariffs	19
008.05 Composition of Tariffs	19
008.06 Revisions to Tariffs	19
008.07 Number of Copies to be Filed	19
008.08 Availability of Tariffs	19-20
008.09 Rejection of Filings	20
009 SERVICE TO HIGH VOLUME, AGRICULTURAL AND INTERRUPTIBLE RATEPAYERS	
009.01 Written Notice of any Changes.	20
010 CERTIFICATION OF JURISDICTIONAL UTILITIES	
010.01 Certification of Public Convenience.	20
010.02 Filing Requirements and Application Process.	20-22
010.03 Assessment for Jurisdictional Utilities.	22
011 CERTIFICATION OF COMPETITIVE NATURAL GAS PROVIDERS & AGGREGATORS	
011.01 General Requirement to Obtain Certification.	23
011.02 Filing Requirements and Application Process.	23-24
011.03 Assessment for Certification of Competitive Natural Gas Providers and Aggregators.	24-25
011.04 Conditions of Certification.	25-26
012 COMPLAINT HANDLING PROCEDURES	
012.01 Suspension or Termination of Service	26-27
012.02 Complaints from High-Volume Ratepayers	27
013 RESIDENTIAL DISCONNECTION OF SERVICE	
013.01 Notice of Disconnection.	27
013.02 Conference Between Jurisdictional Utility and Customer .	27
013.03 Payment Plans for Delinquent Bills	27
013.04 The Disconnecting Act.	28
013.05 Residential Winter Disconnection	28-29
013.06 Immediate and Serious Health Hazard.	29
014 INFORMATION ON ENERGY ASSISTANCE PROGRAMS	
014.01 Availability	29

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

	PAGE
015 ASSESSMENT-RELATED REPORTING REQUIREMENTS	
015.01 Filings	29-30
015.02 Records on Non-Utility Service	30
016 MUNICIPAL RATE NEGOTIATIONS REVOLVING LOAN FUND	
016.01 Application for Loan	30
016.02 Joint Application for Loans	30
016.03 Fund-use Monitoring and Quarterly Accounting of Fund Use	31-32
016.04 Signature of Verification of Loan	32
016.05 Travel, Lodging and Meal Expenses	32
016.06 Multiple Applicants	32-33
016.07 Application Scoring	33
017 BILLING	
017.01 Billing Basis	33
017.02 Customer Category	33
017.03 Meter Readings	33-34
017.04 Estimated Billing	34
017.05 Information on Bills	34-35
017.06 Ratepayer Payment Records	35
017.07 Meter Testing	35
017.08 Credit and Deposit Policies	35-36
017.09 Billing Adjustments	36-37
018 CONSUMER CHOICE PROGRAMS	
018.01 Code of Conduct	38-39
018.02 Supplier/Aggregator Code of Conduct	39-40
018.03 Annual Report	40
018.04 Examination and Audit Requirements	40
019 AFFILIATES	
019.01 Scope	40
019.02 Affiliate Rules	40-41
020 EMERGENCY CURTAILMENT PLANS	41
021 SEASONAL DISCONNECTIONS	
021.01 Seasonal Disconnection Charges Prohibited	41
022 PUBLIC ADVOCATE	
022.01 Location of Commission	42
023 MAJOR OIL PIPELINES	
023.01 Scope	42
023.02 Major Oil Pipeline Application	42-44
023.03 Procedures After Receipt of an Application	44-45
023.04 Public Meetings	45
023.05 Agency Reports	45
023.06 Petitions for Intervention, Protests and Hearing on the Application	45-46

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

	PAGE
023 MAJOR OIL PIPELINES (Cont.)	
023.07 Burden of Proof	46-47
023.08 Commission Order.	47
023.09 Amendment of Application After Denial	48
023.10 Appeal.	48
023.11 Status Reports.	48
023.12 Assessment of Expenses.	48-50
FORMS	
Application Form.	51
Affidavit of Applicant.	52

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

ALPHABETICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
AFFILIATES	66-1804 to 66-1805	019
ASSESSMENT-RELATED REPORTING REQUIREMENTS	66-1805, 66-1815 and 66-1841	015
BILLING	66-1805	017
CERTIFICATION OF COMPETITIVE NATURAL GAS PROVIDERS AND AGGREGATORS	66-1848 to 66-1849	011
CERTIFICATION OF JURISDICTIONAL UTILITIES	66-1853 (3)	010
COMPLAINT HANDLING PROCEDURES	66-1805	012
CONFIDENTIAL INFORMATION	66-1805	006
CONSUMER CHOICE PROGRAMS	66-1855, 66-1818	018
DISPUTES BETWEEN JURISDICTIONAL UTILITIES AND METROPOLITAN UTILITIES DISTRICTS	57-1301 to 57-1307 75-112, 75-129 75-134 to 75-136	003
EMERGENCY CURTAILMENT PLANS	66-1804	020
GENERAL	81-542, 66-1848	001
GENERAL RATE FILINGS	66-1805, 66-1838	004
INFORMATION ON ENERGY ASSISTANCE PROGRAMS	66-1805	014
MAJOR OIL PIPELINES	57-1401 thru 57-1413	023

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

ALPHABETICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
MINIMUM SAFETY STANDARDS FOR PIPELINES	66-1805	002
MUNICIPAL RATE NEGOTIATIONS REVOLVING LOAN FUND	66-1839, 66-1838	016
PUBLIC ADVOCATE	66-1832	022
RATE AREA MAPS	66-1850	007
RATE PRINCIPLES	66-1825, 66-1838	005
RESIDENTIAL DISCONNECTION OF SERVICE	66-1805	013
SEASONAL DISCONNECTIONS	66-1805	021
SERVICE TO HIGH VOLUME, AGRICULTURAL AND INTERRUPTIBLE RATEPAYERS	66-1810	009
TARIFF FILINGS	66-1805	008

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

NUMERICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
GENERAL	81-542, 66-1848	001
MINIMUM SAFETY STANDARDS FOR PIPELINES	66-1805	002
DISPUTES BETWEEN JURISDICTIONAL UTILITIES AND METROPOLITAN UTILITIES DISTRICTS	57-1301 to 57-1307 75-112, 75-129 75-134 to 75-136	003
GENERAL RATE FILINGS	66-1805, 66-1838	004
RATE PRINCIPLES	66-1825, 66-1838	005
CONFIDENTIAL INFORMATION	66-1805	006
RATE AREA MAPS	66-1850	007
TARIFF FILINGS	66-1805	008
SERVICE TO HIGH VOLUME, AGRICULTURAL AND INTERRUPTIBLE RATEPAYERS	66-1810	009
CERTIFICATION OF JURISDICTIONAL UTILITIES	66-1853(3)	010
CERTIFICATION OF COMPETITIVE NATURAL GAS PROVIDERS AND AGGREGATORS	66-1848 to 66-1849	011
COMPLAINT HANDLING PROCEDURES	66-1805	012
RESIDENTIAL DISCONNECTION OF SERVICE	66-1805	013
INFORMATION ON ENERGY ASSISTANCE PROGRAMS	66-1805	014

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

NUMERICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
ASSESSMENT-RELATED REPORTING REQUIREMENTS	66-1805, 66-1815 and 66-1842	015
MUNICIPAL RATE NEGOTIATIONS REVOLVING LOAN FUND	66-1839, 66-1838	016
BILLING	66-1805	017
CONSUMER CHOICE PROGRAMS	66-1855, 66-1818	018
AFFILIATES	66-1804 to 66-1805	019
EMERGENCY CURTAILMENT PLANS	66-1804	020
SEASONAL DISCONNECTIONS	66-1805	021
PUBLIC ADVOCATE	66-1832	022
MAJOR OIL PIPELINES	57-1401 thru 57-1413	023

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

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.

001.01B Aggregator: A person who combines retail end users into a group and arranges for the acquisition of competitive natural gas services without taking title to those services.

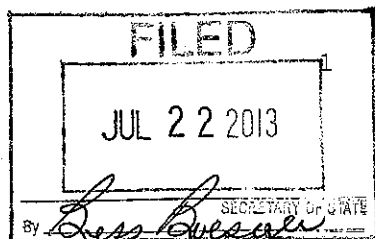
001.01C Competitive Natural Gas Provider or "CNGP": A person who takes title to natural gas and sells it for consumption by a retail end-user in the state of Nebraska, and for purposes of this section also means an aggregator as defined in LB 790 [2003], Sec. 48(1). CNGP includes an affiliate of a Nebraska natural gas public utility. CNGP does not include the following:

001.01C1 A jurisdictional utility, as defined in Nebraska Administrative Code, Title 291, Chapter 9, Rule 001.01G;

APPROVED

JUL 22 2013

Dave Heineman
DAVE HEINEMAN
GOVERNOR



APPROVED
JON BRUNING
ATTORNEY GENERAL

MAY 13 2013

BY *J. Jon Bruning*
ASSISTANT ATTORNEY GENERAL

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

001.01C2 A city-owned or operated natural gas utility or metropolitan utilities district in areas in which it provides natural gas service through pipes it owns; or

001.01C3 A natural gas public utility that is not subject to LB 790 as provided in LB 790, Sec. 3 in areas in which it is providing natural gas service in accordance with LB 790, Sec. 3 [2003].

001.01D Consumer Choice Program: A program offered by a jurisdictional utility that allows ratepayers, other than high-volume ratepayers, to purchase their gas supplies from a person other than the local gas utility.

001.01E Extension or Enlargement of a Service Area: The proposed extension or enlargement of a natural gas service area, natural gas mains, or natural gas services by an investor-owned utility or by a metropolitan utilities district.

001.01F Facility: New and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of liquid or gas or in the treatment of gas during the course of transportation.

001.01G Jurisdictional Utility: A natural gas utility subject to the jurisdiction of the Commission. Jurisdictional utility shall not mean a natural gas public utility not subject to the jurisdiction of the Commission pursuant to LB 790, Sec. 3 [2003].

001.01H Major Oil Pipeline: For purposes of Section 023, a major oil pipeline shall mean a pipeline which is larger than six inches (6") in inside diameter and which is constructed in Nebraska for the transportation of petroleum, or petroleum components, products, or wastes, including crude oil or any fraction of crude oil, within, through, or across Nebraska, but does not include in-field and gathering lines or major oil pipelines otherwise exempt under the Major Oil Pipeline Siting Act.

001.01I Metropolitan Utilities District: A district constituted by an area as defined in Neb. Rev. Stat. Section 14-2101 (Reissue 1997).

001.01J Natural Gas Public Utility: Any corporation, company, individual, or association of persons or their trustees, lessees,

JUL 22 2013

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

or receivers that owns, controls, operates, or manages, except for private use, any equipment, plant, or machinery, or any part thereof, for the conveyance of natural gas through pipelines in or through any part of this state. Natural gas public utility does not mean a natural gas utility owned or operated by a city or a metropolitan utilities district. Natural gas public utility does not include any activity of an otherwise jurisdictional corporation, company, individual, or association of persons or their trustees, lessees, or receivers as to the marketing or sale of compressed natural gas for end use as motor vehicle fuel. Natural gas public utility does not include any gas gathering system or interstate pipeline.

001.01K Pipeline: For purposes of Section 023, pipeline shall mean a pipe used to transport, transmit, convey, or store liquid or gas for hire in Nebraska intrastate commerce other than a major oil pipeline, a gathering pipeline, distribution pipeline, or service line.

001.01L Pipeline Carrier: For purposes of Section 023, pipeline carrier shall mean a person that engages in owning, operating, or managing a major oil pipeline.

001.01M 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.

001.01N Retail End-user: Any person or entity, including any manufacturer or producer of any product, purchasing natural gas for its own consumption, and not for resale or consumption by any other person or entity, without restriction based upon volume of gas consumed.

001.01O Safety Data Sheet: Safety data sheet means written or printed material concerning a hazardous chemical that is prepared in accordance with paragraph 29 C.F.R. § 1910.1200(g) as it existed on October 1, 2012.

001.01P Seasonal Disconnection Charge: A charge applied by a jurisdictional utility to a ratepayer who disconnects and reconnects service at the same premises within a twelve-month period requiring the ratepayer to pay in whole or in part charges for the months he or she was disconnected.

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

001.01Q Test Year: Either a consecutive twelve-month period commencing on the proposed effective date of the rate increase or a base year adjusted for known and measurable changes.

001.01R Supplier: A CNGP that participates in a consumer choice program.

002 MINIMUM SAFETY STANDARDS FOR PIPELINES:

002.01 Minimum Safety Standards: Unless otherwise specified by the Commission, carriers shall use the applicable provisions of the procedures established by the United States Department of Transportation as codified at 49 CFR 192 (revised October 1, 1998). These incorporated materials are available for inspection at the offices of the State Fire Marshal at either of the following locations: 246 South 14th Street, Lincoln, NE 68508-1804; 438 West Market Street, Albion, NE 68620; or, Craft State Office Building, 200 South Silber, North Platte, NE, 69101-4298.

002.02 Scope: These provisions shall apply to all intrastate carriers operating within the state.

002.03 Facilities, Inspection and Repairs: All facilities shall be cleaned when necessary and inspected at such intervals as the Commission shall determine. Any facilities known to be defective so as to endanger life or property shall be promptly repaired, permanently disconnected or isolated until repairs can be made.

002.04 Waiving of Rules: The rules may be modified or waived by the Commission wherever shown to be impractical or where the advantage of uniformity with existing construction is greater than construction in compliance with the rules providing that the existing construction is equivalently safe to the existing rules.

002.05 Waiver of Temporary Installations: These rules may be waived by the Commission in cases of temporary installations for a reasonable length of time provided that such construction is under competent supervision and has been made reasonably safe.

003 DISPUTES BETWEEN JURISDICTIONAL UTILITIES AND METROPOLITAN UTILITIES DISTRICTS:

003.01 Commission Jurisdiction: No jurisdictional utility or metropolitan utilities district proposing to extend or enlarge its natural gas service area or extend or enlarge its natural gas mains or natural gas services shall undertake or pursue such extension or enlargement

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

until the proposal has been submitted to the Commission for its determination that the proposed extension or enlargement is in the public interest. Any enlargement or extension by a metropolitan utilities district within the boundaries of a city of the metropolitan class involving the exercise of the power of eminent domain pursuant to Neb. Rev. Stat. § 14-2116(2) shall, by reason of such exercise, be conclusively determined to be in the public interest.

003.01A Filing and Contents of Proposal: Any proposal for extension or enlargement shall be filed with the Commission, and the Commission shall promptly make such application public in such manner as the Commission deems appropriate. Proposals for multiple extensions or enlargements may be filed in a single document at the discretion of the utility.

003.01A1 The proposal shall contain sufficient information so as to provide reasonable notice to any interested party of the location and nature of the proposed extension or enlargement. Such information shall contain, but not necessarily be limited to:

003.01A1a A description of the location of the extension or enlargement including any cross streets and a statement as to whether the proposed extensions are entirely or partially within a particular zoning jurisdiction;

003.01A1b The municipality and subdivision or development, if any, proposed to be served by the proposed extension or enlargement;

003.01A1c The plat and/or map for the proposed service area depicting the location of known mains of all natural gas utility service within a one-quarter (1/4) mile radius of the area to be served;

003.01A1d A description of the nature of the extension or enlargement including size and length of the main; and

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

003.01A2e The anticipated date the jurisdictional utility or metropolitan utilities district intends to undertake or pursue such extension or enlargement.

003.01B The proposal shall be served on any jurisdictional utility or metropolitan utilities district with natural gas infrastructure in the area of the proposed extension or enlargement.

003.01C The Commission shall make such proposals public by posting them on the Commission website. Such proposals shall be deemed to have been made public three (3) days after the date of filing.

003.02 Protests: If no person or entity has filed with the Commission a protest alleging that the proposed extension or enlargement is not in the public interest within fifteen (15) business days after the date upon which the application was made public, the enlargement or extension shall be conclusively presumed to be in the public interest and the jurisdictional utility or metropolitan utilities district may proceed with the extension or enlargement without further Commission action. If a person or entity files with the Commission a protest, within five (5) business days of the filing of the protest, the jurisdictional utility or metropolitan utilities district proposing the extension or enlargement shall file with the Commission and serve on any party filing a protest a description as to how the proposed extension or enlargement satisfies the criteria set forth in Rule 003.

003.03 Subpoena and Other Powers: The Commission staff may administer oaths, compel the attendance of witnesses, examine any of the books, papers, documents and records of any investor-owned natural gas utility or metropolitan utilities district involved in a determination pursuant to this section. The Commission may have such examination made by any person that the Commission may employ for that purpose. Such person may also compel the production of such books, papers, documents or records or examine under oath or otherwise any officer, director, agent, or employee of any such party to the determination.

003.04 Hearing: Upon protest by an investor-owned natural gas utility or a metropolitan utilities district seeking a determination pursuant to this section, the Commission shall set a hearing date not later than ninety (90) days from the date of application except for good cause shown. In no event shall a hearing be set later than six (6) months from the date of application.

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

003.04A A hearing commenced pursuant to this section shall be held in the county where such extension or enlargement of the natural gas service area is proposed.

003.04B Ratepayers of the investor-owned utility or the metropolitan utilities district shall have the right to appear and present testimony before the Commission and shall have such testimony considered by the Commission in arriving at its determination.

003.05 Fees: There shall be charged to applicants a hearing fee if the application for a determination necessitates such a hearing.

003.06 Procedure: Except as herein provided, all proceedings will be governed by the Rules of Commission Procedure as codified by state law and Nebraska Administrative Code, Title 291, Chapter 1.

003.07 Determining Considerations: In determining whether a proposed expansion or enlargement is in the public interest, the Commission shall consider:

003.07A The economic feasibility of the extension or enlargement;

003.07B The impact the enlargement will have on the existing and future natural gas ratepayers of the metropolitan utilities district or the investor-owned natural gas utility;

003.07C Whether the extension or enlargement contributes to the orderly development of natural gas utility infrastructure;

003.07D Whether the extension or enlargement will result in duplicative or redundant natural gas utility infrastructure; and,

003.07E Whether the extension or enlargement is applied in a non-discriminatory manner.

003.07F Any books, records, vouchers, papers, contracts, designs, or other data not made available to the parties shall not be considered by the Commission in making its determination of whether an extension or enlargement of a service area is in the public interest.

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

003.08 Rebuttable Presumptions: In determining whether an extension or enlargement of a natural gas service area, natural gas mains, or natural gas services is in the public interest, the following rebuttable presumptions shall govern:

003.08A Any enlargement or extension by a metropolitan utilities district within a city of the metropolitan class or its extraterritorial zoning jurisdiction is in the public interest;

003.08B Any enlargement or extension by an investor-owned natural gas utility within a city of the primary, first, or second class or village in which it serves natural gas on a franchise basis or its extraterritorial zoning jurisdiction is in the public interest; and,

003.08C Any enlargement or extension by a metropolitan utilities district within its statutory boundary or within a city of the first or second class or village in which it serves natural gas on a franchise basis or its extraterritorial zoning jurisdiction is in the public interest.

003.09 Commission Orders: Except for good cause shown, the Commission shall enter an order within thirty (30) days after completion of the hearing or after submission of affidavits in non-hearing proceedings.

003.09A All Commission orders shall become operative ten (10) days after the date of mailing a copy of the order to the parties of record unless the Commission prescribes a different effective date.

003.10 Appeals: Any party to a proceeding may appeal to the District Court to reverse, vacate or modify the order of the Commission.

003.11 Enforcement: The Commission is empowered to enforce its order as provided for by law.

003.12 Scope: The provisions of Rule 003 apply only in those geographic areas in Nebraska in which a jurisdictional utility and a metropolitan utilities district each maintain natural gas facilities and compete with each other for natural gas service customers.

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

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.

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

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

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

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

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

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 Intervenors 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 VII - 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

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

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 Filing of Documents: 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 Intervenors reasonable and convenient access to electronic copies of any documents detailing calculations in support of the rate filing.

004.13 Exemption from Rules: A Jurisdictional Utility, whose current rates were approved through and following negotiations and agreement with affected cities and who seeks negotiation of a general rate application with affected cities pursuant to Neb. Rev. Stat. § 66-1838, shall be exempt from the requirements of Sections 004.01C and 004.04G. Should negotiations fail to result in an agreement upon new rates, the Jurisdictional Utility shall file with the Commission the information

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

required in Sections 004.01C and 004.04G within ten (10) days after the date of the expiration of the negotiation period or after the date upon which the jurisdictional utility and the cities file a written agreement that the negotiations have failed, whichever is earlier.

005 RATE PRINCIPLES:

005.01 Rule Provisions: The provisions of Rule 005 apply only to general rate filings governed by § 66-1838. No provision included in Rule 005 shall be construed as prohibiting the Commission from approving a settlement agreement that the Commission finds to be just and reasonable and in the public interest.

005.02 Cost of Service: Except as provided for in any section of the State Natural Gas Regulation Act or these rules dealing with fuel expenses, rates are to be based upon a utility's cost of rendering service to the public during a test year.

005.03 Components of Cost of Service: The two components of cost of service are allowable expenses and return on invested capital.

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.

005.05 Return on Rate Base: The return on rate base is the rate of return multiplied by rate base.

005.05A Rate of Return: The Commission must allow each utility a reasonable opportunity to earn a reasonable rate of return, which is expressed as a percentage of invested capital, and must fix the rate of return in accordance with Neb. Rev. Stat. §§ 66-1825(3) and (5) including:

005.05A1 The rate of return in one rate case shall not be precedential in future rate cases.

005.05A2 In each case, the Commission must consider the utility's cost of capital, which is the weighted average of the cost of the various classes of capital used by the utility:

005.05A2(a) Debt Capital: The cost of debt capital is the actual cost of debt.

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

005.05A2(b) Equity Capital: The cost of equity capital must be based upon a fair return on its value. For companies with ownership expressed in terms of shares of stock, equity capital commonly consists of the following classes of stock.

005.05A2(b)(1) Common Stock Capital: The cost of common stock capital must be based upon a fair return on its value.

005.05A2(b)(2) Preferred Stock Capital: The cost of preferred stock capital is its annual dividend requirement, if any, plus an adjustment for premiums, discounts, and cost of issuance.

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.

005.06A1 Original cost must be the actual money value including any consideration paid other than money, of the property at the time it shall have been dedicated to public use, whether by the utility which is the present owner or by a predecessor.

005.06A2 Accumulated depreciation is the accumulation of allocations of original cost, representing recovery of investment, over the estimated useful life of the asset. Depreciation must be computed on a straight-line basis unless the Commission orders otherwise.

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

005.06A3 Payments to affiliated interests shall not be allowed as a capital cost except as provided in Rule 005.07.

005.06A4 Acquisition adjustments are the difference between the purchase price of an acquired operating unit or system and the depreciated original cost of the acquired property.

005.06B Working capital allowance to be composed of, but not limited to, the following:

005.06B1 Prudent inventories of materials and supplies, held specifically for purposes of permitting efficient operation of the utility in providing normal utility service.

005.06B2 Prudent prepayments for operating expenses.

005.06B3 A prudent allowance for cash working capital.

005.06C Adjustments for certain items, which include, but are not limited to, the following:

005.06C1 Accumulated reserve for deferred federal income taxes;

005.06C2 Unamortized investment tax credit to the extent allowed by the Internal Revenue Code;

005.06C3 Contingency and/or property insurance reserves;

005.06C4 Contributions in aid of construction;

005.06C5 Ratepayer deposits and other sources of cost-free capital;

005.06D Completion and Dedication of Property: The rate base shall ordinarily consist only of those items which are used and useful in providing service to the public. This may include items completed and dedicated to commercial service for which construction will be commenced and completed within one year or less from the end of the test year. The Commission may also determine that property which has not been

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

completed and dedicated to commercial service may be used and useful and included in the rate base. In determining whether construction work in progress should be included in the rate base, the Commission may consider whether projects under construction are prudent.

005.06E Self Insurance Reserve Accounts: Self-insurance plans may be included in the rate base at the discretion of the Commission.

005.06F Requirements for Post Test Year Adjustments: Post test year adjustments are permitted for known and measurable rate base adjustments to test year where the utility accounts for any related impacts on all aspects of the jurisdictional utility's operations. Related impacts are those that reasonably follow as a consequence of the post test year adjustment being proposed, including a related impact of another post test year adjustment.

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 resource affiliate, either, as a capital cost or an expense, is included in rates except as provided in Neb. Rev. Stat. § 66-1825(8):

005.07A Each payment is prudently incurred for each item or class of items at the time incurred.

005.07B The costs charged by an affiliate reasonably approximate the market value of service to it.

006 CONFIDENTIAL INFORMATION:

006.01 Confidential Information Filed with Applications: The party filing documents must indicate any information which is claimed to be confidential and must state the grounds with specificity and cite the legal authority for the claim of confidentiality in a motion for protective order. If the motion for protective order is not filed with the application, any claim of confidentiality of information filed in the application or as prefiled testimony and exhibits shall be deemed waived.

006.01A If an applicant contends any portion of the application, prefiled testimony, or exhibits is confidential, it must file eight copies of the application, prefiled testimony and exhibits without the asserted confidential information, together

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

with the motion for protective order. The applicant must also file under seal and on yellow paper marked "CONFIDENTIAL" six copies of the complete application, prefiled testimony, and exhibits claimed to be confidential and the subject of a motion for protective order. The motion for protective order must be decided within ten calendar days from the date the application is filed. Parties opposing the motion may file a resistance to the motion within five (5) calendar days. If the motion is granted, a protective order shall be issued.

006.02 Other Confidential Filings: Any jurisdictional utility seeking to prevent disclosure of information filed by the Commission must file such information on yellow paper marked "CONFIDENTIAL." Disclosure of confidential information will be governed by Sec. 29 of LB 790 [2003].

007 RATE AREA MAPS: Each jurisdictional utility shall keep on file with the Commission a map of its rate area(s), showing the boundaries of such areas and intervening and adjacent rural territories served within such rate area (s). Each jurisdictional utility operating in Nebraska as of May 30, 2003, shall file a map showing the rate area(s) it served as of May 30, 2003. Each jurisdictional utility must file revised maps of rate area(s) reflecting changes in boundaries. Such changes shall become effective upon filing with the Commission.

008 TARIFF FILINGS:

008.01 Applicability: This section applies to all jurisdictional utilities.

008.02 Effective Tariff: No utility shall directly or indirectly offer a service, collect any rate or charge, give a compensation or discount to a ratepayer, or impose any classification practice, or regulation different from that which is prescribed in its effective tariff filed with the Commission. The tariff may include mathematical formulas that express the pricing terms for service.

008.03 Tariff Filings: Every jurisdictional utility must publish and file with the Commission copies of a tariff showing all schedules of rates and terms and conditions of jurisdictional service to ratepayers, and must furnish the Commission copies of all terms and conditions of service and contracts between jurisdictional utilities pertaining to any and all jurisdictional services to be rendered by such jurisdictional utilities. The provisions of such tariff must be definite and so worded as to minimize the ambiguity or the possibility of misinterpretation.

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

008.03A Authority: If a tariff sheet is issued under specific authority or decision of this Commission, each sheet so affected must show the appropriate citation.

008.04 Requirements as to Size, Form, Identification and Filing of Tariffs: All tariff pages must be formatted to be 8 ½ inches by 11 inches. The cover page of the tariff must contain the name of the utility and the location of its principal office. Each rate schedule must clearly state the rate area and city wherein such rate schedule is applicable. Tariff sheets are to be numbered consecutively per schedule. Each sheet must show an effective date, a revision number, section number, sheet number, name of the utility, name of the tariff, and title of the section in a consistent manner.

008.05 Composition of Tariffs: The tariff must contain sections and subsections setting forth:

008.05A A table of contents;

008.05B A list of the cities in which service is provided;

008.05C A map showing the areas in which service is provided;

008.05D A brief description of the utility's operations;

008.05E The rate schedules; and

008.05F The terms of service, including any service agreement forms.

008.06 Revisions to Tariffs: When a change is proposed on a tariff, attention must be directed to the changes contained therein by the utility filing a new tariff sheet(s) incorporating the changes and also tariff sheet(s) in legislative or redline format.

008.07 Number of Copies to be Filed: An original and one paper copy of each tariff, plus an electronic copy in a Commission approved format, must be filed. The paper copy will be stamped and filed and returned to the utility.

008.08 Availability of Tariffs: Each utility shall make available to the public, at each of its business offices or designated sales offices within Nebraska which provide in-person service to ratepayers, all of its tariffs currently on file with the Commission, and its employees shall lend assistance to persons seeking information on its tariffs and afford inquiring persons an opportunity to examine any tariff upon

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

request. The utility also must provide copies of any portion of its tariffs upon request.

008.09 Rejection of Filings: The Commission may reject any filing under this rule if the jurisdictional utility fails to comply with the provisions as set forth in said rule.

009 SERVICE TO HIGH VOLUME, AGRICULTURAL AND INTERRUPTIBLE RATEPAYERS:

009.01 Written Notice of Any Changes: For purposes of Neb. Rev. Stat. Sec. 66-1810, a written notice of any change shall be sent to the Commission and affected agricultural and interruptible ratepayers and published in a legal newspaper prior to the effective date of the change.

010 CERTIFICATION OF JURISDICTIONAL UTILITIES:

010.01 Certification of Public Convenience: Except as otherwise provided herein, no jurisdictional utility shall transact business in Nebraska until it has obtained a certificate from the Commission that public convenience will be promoted by the transaction of the business and permitting the applicants to transact the business of a jurisdictional utility in the state. By operation of Neb. Rev. Stat. Sec. 66-1853(3), all jurisdictional utilities transacting business in this state as of May 31, 2003 were issued a certificate of public convenience based upon its natural gas service as of that date.

010.01A Every jurisdictional utility shall be required to furnish reasonably adequate and sufficient service and facilities for the use of any and all products or services rendered, furnished, supplied, or produced by such utility.

010.02 Filing Requirements and Application Process: Applications for a certificate of public convenience must contain all of the following information and must include prefiled testimony in support of the application showing:

010.02A The legal name under which the applicant will operate, a description of the business structure of the applicant, evidence of authority to do business in Nebraska, certificates of registration by the Nebraska Secretary of State for all trade names under which the applicant will operate, and the applicant's state of incorporation.

010.02B The names, business addresses and business telephone numbers of the principal officers of the applicant, or its

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

representatives, who can be contacted regarding its operations in Nebraska and telephone number(s) at which the applicant can be contacted.

010.02C Identification of affiliates, partnerships, political subdivisions, or other joint ventures, including those affiliates, partnerships, political subdivisions or other joint ventures that are certified under this section. In addition to a listing of the names, addresses, and business purpose of affiliates, partnerships, or other joint ventures required herein, the applicant(s) must also provide a listing of the names and addresses of all the applicant's affiliates, partnerships, political subdivisions, or other joint ventures engaged in the provision of competitive natural gas services in any other state.

010.02D A listing of all legal actions and formal complaints pertaining to the provision of natural gas services filed against the applicant or its affiliates at a public utility regulatory body other than the Commission that were filed or pending in the five years prior to the date of the request for certificate, including identification of the title and number of applicable proceedings and a copy of the final orders in such proceedings or the citation to the website where the text of the orders can be found. The applicant will also provide any other names under which it does business.

010.02E Identification of the states and jurisdictions in which the applicant or an affiliate, partnership, or other joint venture has had a license or certificate to supply competitive natural gas services suspended, revoked, or denied, or where the applicant, partnership, or other joint venture has voluntarily withdrawn from providing service due to financial or operational reasons. Applicant must include identification of the title, caption, and docket number of any applicable proceedings and either (i) a copy of any final orders and court appeals in such proceedings or (ii) the citation to the website where the text of the orders can be found.

010.02F A demonstration that the applicant is ready, willing and able to provide service under the State Natural Gas Regulation Act and other applicable laws of the state of Nebraska, and not in violations thereof, and that the public convenience in Nebraska will be promoted by the transaction of the business by allowing the applicants to transact the business of a jurisdictional utility in the state. The applicant will further demon-

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

strate that it possesses the operational and financial capability to furnish reasonably adequate and sufficient service and facilities for the use of any and all products or services rendered, furnished, supplied, or produced by such utility. The applicant must submit a roster of officers and directors, a description of the professional backgrounds of the applicant's principal managerial and technical personnel, an operational flow chart, and a description of the applicant's facilities and the services it intends to render. A request for confidential treatment for information contained within the application may be filed with the Commission, pursuant to Nebraska Administrative Code, Title 291, Chapter 9, Rule 006.

010.02G Applications must be filed with the executive director at the Nebraska Public Service Commission, 1200 "N" Street, Suite 300, Lincoln, Nebraska 68508. An original and eight (8) copies must be filed. An application fee must be included with the application to cover the administrative costs of accepting and processing a filing. In addition, each applicant will be billed costs and expenses reasonably attributable to certification and dispute resolution to applicants and participants to the proceeding, including Commission time, billed on an hourly basis, spent reviewing, analyzing and considering the application, and any costs incurred by or charges made by the Public Advocate that the Commission may assess with respect to such application.

010.02H An applicant must notify the Commission during the pendency of the certification request of any material change in the representations and commitments required by this subsection within 14 days of such change. Any new legal actions or formal complaints are considered material changes in the request. Once certified, jurisdictional utilities must notify the Commission of any material change in the representations and commitments required for certification within 14 days of such change.

010.03 Assessment for Jurisdictional Utilities: Pursuant to Section 66-1849(3), the Commission shall allocate the costs and expenses reasonably attributable to certification and dispute resolution as authorized in this section to persons identified as parties to such proceeding who are engaged in or who seek to engage in providing natural gas services or other persons identified as participants in such proceeding. The funds received for the costs and expenses of certification and dispute resolution shall be remitted to the State Treasurer for credit to the Public Service Commission Regulation Fund.

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

011 CERTIFICATION OF COMPETITIVE NATURAL GAS PROVIDERS AND AGGREGATORS:

011.01 General Requirement to Obtain Certificate: A person must not provide competitive natural gas services to a Nebraska retail end-user, including a high volume ratepayer, without a certificate approved by the Commission pursuant to Neb. Rev. Stat. § 66-1849. A certified CNGP shall not be required to obtain a separate certificate as an aggregator in order to perform services as an aggregator.

011.02 Filing Requirements and Application Process: Applications for a certificate to provide competitive natural gas services must contain all of the following information:

011.02A The legal name under which the applicant will operate, a description of the business structure of the applicant, evidence of authority to do business in Nebraska, certificates of registration by the Nebraska Secretary of State for all trade names under which the applicant will operate, and the applicant's state of incorporation.

011.02B The names, business addresses and business telephone numbers of the principal officers of the applicant who can be contacted regarding its operations in Nebraska and telephone number(s) at which the CNGP can be contacted 24 hours a day.

011.02C Identification of affiliates that are certified under this section and a listing of the names and addresses of all the applicant's affiliates engaged in the provision of competitive natural gas services in any other state.

011.02D A listing of all legal actions and formal complaints pertaining to the provision of competitive natural gas services filed against the applicant or its affiliates at a public utility regulatory body other than the Commission that were pending in the 12 months prior to the date of the request for certificate, including identification of the title and number of applicable proceedings and a copy of the final orders in such proceedings or the citation to the website where the text of the orders can be found.

011.02E Identification of the states and jurisdictions in which the applicant or an affiliate has had a license or certificate to supply competitive natural gas services suspended, revoked, or denied, or where the applicant has voluntarily withdrawn from providing service due to financial or operational reasons.

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

Applicant must include identification of the title and number of any applicable proceedings and a copy of any final orders in such proceedings or the citation to the Website where the text of the orders can be found.

011.02F A demonstration that the applicant has the operational and financial capability to obtain and deliver the services it proposes to offer. At a minimum, applicants are required to submit financial statements. The applicant must submit a balance sheet, statement of income, statement of cash flow, and, if applicable, a statement of shareholders' equity and the applicant's debt structure, including bond rating. As a demonstration of the applicant's operational ability, the applicant must submit a roster of officers and directors, a description of the professional backgrounds of the applicant's principal managerial and technical personnel, an operational flow chart, and a description of the applicant's facilities and the services it intends to render. A request for confidential treatment for this information may be filed with the Commission, pursuant to Nebraska Administrative Code, Title 291, Chapter 9, Rule 006.

011.02G Applications must be filed with the executive director at the Nebraska Public Service Commission, 1200 "N" Street, Suite 300, Lincoln, Nebraska 68508. An original and eight (8) copies must be filed. An application fee must be included with the application to cover the administrative costs of accepting and processing a filing. In addition, each applicant will be billed costs and expenses reasonably attributable to certification and dispute resolution to applicants and participants to the proceeding, including Commission time, billed on an hourly basis, spent reviewing, analyzing and considering the application.

011.02H An applicant must notify the Commission during the pendency of the certification request of any material change in the representations and commitments required by this subsection within 14 days of such change. Any new legal actions or formal complaints are considered material changes in the request. Once certified, CNGPs must notify the Commission of any material change in the representations and commitments required for certification within 14 days of such change.

011.03 Assessment for Certification of Competitive Natural Gas Providers and Aggregators: Pursuant to Section 49(3) of LB 790 [2003], the Commission shall allocate the costs and expenses reasonably attributable to certification and dispute resolution as authorized in this section to

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

persons identified as parties to such proceeding who are engaged in or who seek to engage in providing natural gas services or other persons identified as participants in such proceeding. The funds received for the costs and expenses of certification and dispute resolution shall be remitted to the State Treasurer for credit to the Public Service Commission Regulation Fund.

011.04 Conditions of Certification: Failure to comply with the following conditions of certification may result in revocation of the certificate:

011.04A Unauthorized Charges: A CNGP must not charge or attempt to collect any charges from end-users for any competitive natural gas services or equipment used in providing competitive natural gas services not contracted for or otherwise agreed to by the end-user.

011.04B Notification of Emergencies: Upon receipt of information from an end-user of the existence of an emergency situation with respect to delivery service, a CNGP must immediately contact the appropriate natural gas public utility whose facilities may be involved. The CNGP must also provide the end-user with the emergency telephone number of the natural gas public utility.

011.04C Bond Requirement: The Commission may require the applicant to file a bond or other demonstration of its financial capability to satisfy claims and expenses that can reasonably be anticipated to occur as part of operations under its certificate, including the failure to honor contractual commitments. The adequacy of the bond or demonstration shall be determined by the Commission and reviewed by the Commission from time to time. In determining the adequacy of the bond or demonstration, the Commission shall consider the extent of the services to be offered, the size of the provider, and the size of the load to be served, with the objective of ensuring that the Commission's financial requirements do not create unreasonable barriers to market entry.

011.04D Yearly Revenue Report Requirement: No later than September 1st 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

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

gas to all jurisdictional customers within each utility rate area in such year.

011.04D1 All reports required under this section shall be under oath and shall be identified with the name of the CNGP as it appears in the most recent Commission order granting the CNGP certification.

011.04D2 All reports made to the Commission by a CNGP and the contents thereof shall be open to public inspection, unless otherwise ordered by the Commission.

011.04D3 When any report is erroneous or defective or appears to the Commission to be erroneous or defective, the Commission may notify the CNGP to amend that report within 30 days, and before or after the termination of the period the Commission may examine the officers, agents, or employees, and books, records, accounts, vouchers, plant, equipment and property of the CNGPs, and correct items in the report the Commission finds defective or erroneous.

011.04E Restrictions: The Commission may, pursuant to LB 790, Sec. 49 [2003], establish reasonable conditions or restrictions on a certificate as a competitive natural gas provider at the time of issuance.

011.04F Representations: No representation or warranty made by an applicant shall be false or misleading in any material respect when made or when deemed made.

012 COMPLAINT HANDLING PROCEDURES: Customers' complaints about natural gas service or billing issues should first be made to the jurisdictional utility. The jurisdictional utility must allow complaints to be accepted and processed in a simple manner and form. Every complaint shall be promptly investigated in a fair manner and the results reported to the complainant. If the report of the investigation is made orally, the jurisdictional utility must provide the complainant, upon request, a report in writing. If a jurisdictional utility fails to resolve a complaint to the satisfaction of the complainant, the jurisdictional utility must, upon request, inform same of the availability of the Commission to review the jurisdictional utility's investigation, including the Commission's address and telephone number.

012.01 Suspension or Termination of Service: A jurisdictional utility must refrain from suspending or terminating service for non-payment during the pendency of a complaint before the jurisdictional utility or

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

this Commission, unless otherwise provided by the Commission; provided however, that as a condition of continued service during the pendency of such dispute, a customer must pay the undisputed portions of any bill for service.

012.02 Complaints of High-Volume Ratepayers: Subject to Neb. Rev. Stat. § 66-1810, the Commission will take informal complaints and inquiries from high-volume ratepayers, and the jurisdictional utility is required to address the complaint and report to the Commission the form of the resolution applied to the dispute.

013 RESIDENTIAL DISCONNECTION OF SERVICE:

013.01 Notice of Disconnection: A notice of disconnection of service sent by a jurisdictional utility shall comply with the requirements of Neb. Rev. Stat. § 70-1606 (Reissue 1996), and each jurisdictional utility shall have a third-party notice procedure for the notification of a designated third party of any proposed disconnection of service, in accordance with Neb. Rev. Stat. § 70-1607 (1996).

013.02 Conference Between Jurisdictional Utility and Customer: Each jurisdictional utility shall have a procedure to hear and decide any dispute related to a proposed disconnection of service or any other matter affecting the service to a residential customer. A conference will be scheduled and held within 14 days of the residential customer's request and before the jurisdictional utility may disconnect service. The employee of the jurisdictional utility, based on the evidence presented at the conference, may affirm, reverse, or modify any prior decision of the jurisdictional utility. The residential customer may appeal an adverse decision to a management office designated by the jurisdictional utility, with whom a hearing shall be held, or may file a complaint directly with the Commission.

013.03 Payment Plans for Delinquent Bills: If a residential customer asserts inability to pay or extenuating circumstances, the residential customer and the jurisdictional utility serving such customer shall attempt to agree upon reasonable installment payment arrangements for the payment of any account balance and for payment of current charges for utility service. If the residential customer believes that the installment payment arrangements offered by the jurisdictional utility are unreasonable, that residential customer may file a complaint with the Commission, challenging such utility-offered installment payment arrangement terms. A customer may make an informal complaint by contacting the Commission via telephone or correspondence, or may make a formal complaint by completing a form provided by the Commission.

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

013.04 The Disconnecting Act: No jurisdictional utility shall disconnect natural gas service to a residential customer on any Saturday, Sunday, Nebraska legal holiday, or at any time when the jurisdictional utility's business offices are not open to the public.

013.05 Residential Winter Disconnection: In addition to the notice provisions before disconnection of service to a residential customer in Neb. Rev. Stat. § 70-1605 (Reissue 1996), no jurisdictional utility may disconnect residential customer service from November 1 to March 31 without adding to the time for payment of a bill an additional 30 days before disconnecting that service, and it shall notify the residential customer before the normal disconnection date that the residential customer has such additional 30 days until disconnection.

013.05A Temporary Ban on Disconnections: The Commission shall have the authority to order a temporary ban on any or all disconnections for jurisdictional utilities during periods of extremely severe weather or when circumstances exist such that disconnection could create a situation dangerous to the life or health of customers or to property.

013.05B If a resident who is a ratepayer and has been certified as eligible for low income home energy assistance has communicated such eligibility to the jurisdictional utility and has provided acceptable documentation of such eligibility to the utility within a reasonable time, then no disconnection may take place from November 1 through March 31;

013.05C To have service restored during the cold weather period between November 1 and March 31, the following shall apply:

013.05C1 A ratepayer must make payment of one-fourth (1/4) of the total arrearage plus the bill for consumption during the most recent billing period for which service was provided and enter a payment plan for current and future consumption with the remaining arrearage paid in installments over no less than three (3) months or as agreed between the ratepayer and the jurisdictional utility.

013.05C2 A ratepayer must not default on the payment plan. If a ratepayer defaults on the payment plan, the jurisdictional utility may disconnect service after providing the requisite notice.

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

013.05C3 Nothing in Section 011.05C shall preclude a ratepayer from paying an arrearage in full or agreeing to an alternate payment schedule.

013.05C4 Nothing in Section 011.05C shall preclude a jurisdictional utility from collecting the applicable reconnection fee in its tariff or requiring a deposit.

013.06 Immediate and Serious Health Hazard: Consistent with Neb. Rev. Stat. § 70-1606(7) (Reissue 1996), a jurisdictional utility shall postpone the disconnection of natural gas service to a residential customer for a period of 30 days from the date of a duly licensed physician's certificate which certifies that an existing illness or handicap of a residential customer or resident within such residential customer's household would cause such person to suffer an immediate and serious health hazard by the disconnection of service to that household. Only one postponement of disconnection shall be allowed under this provision for each incidence of nonpayment of any past-due account.

014 INFORMATION ON ENERGY ASSISTANCE PROGRAMS: Jurisdictional utilities shall compile and make available to customers a list with the names, addresses, and phone numbers of known payment assistance programs, including information regarding any bilingual services offered, that are applicable to each service area within the utility's areas of operation. The list should include but is not limited to: local, state, federal, and other energy assistance programs and public/private charitable organizations offering or known to offer energy payment assistance, which have given prior consent to their inclusion on this list.

014.01 Availability: The jurisdictional utility shall inform any customer who asserts inability to pay his or her bill of the availability of this list and give a copy of this list to any customer who asks for such assistance. The jurisdictional utility shall also provide the Commission with this list.

015 ASSESSMENT-RELATED REPORTING REQUIREMENTS:

015.01 Filings: 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.

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

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 30th 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 30th each year.

015.02 Records of Non-Utility Service: 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.

016 MUNICIPAL RATE NEGOTIATIONS REVOLVING LOAN FUND:

016.01 Application for Loan: Only one loan shall be made for each rate filing made by a jurisdictional utility, as set forth in Neb. Rev. Stat. § 66-1839. No loan monies shall be distributed until the Commission has certified a rate case for negotiation pursuant to Neb. Rev. Stat. §66-1838(6). Applications will only be accepted from cities which have adopted a resolution evidencing the intent to negotiate with the jurisdictional utility. The application form attached to these rules must be completed and filed with the Commission.

016.02 Joint Application for Loan: Municipalities may jointly apply for loan funds.

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

016.03 Fund-use Monitoring and Quarterly Accounting of Fund Use:

016.03A Once a loan has been approved under the Municipal Rate Negotiations Revolving Loan Fund, the following requirements must be followed by the city or cities and the jurisdictional utility:

016.03A1 The loan proceeds may only be used for the costs and expenses incurred to analyze the rate filing and negotiate a settlement that establishes new area-wide rates;

016.03A2 The costs and expenses may include the cost of rate consultants, attorneys, other advisors, and other necessary costs related to the negotiation and preparation of a settlement agreement;

016.03A3 Every thirty days following the Commission certification of the negotiation, the borrowing city or cities must provide a report to the Commission, in a format to be specified by the Commission, which details the funds expended and the uses of such funds;

016.03A4 Within thirty days after a settlement agreement is filed with the Commission, the borrowing city or cities must provide a final report to the Commission which details the funds expended and uses of such funds;

016.03A5 If the borrowing city or cities and the jurisdictional utility fail to reach a settlement, the borrowing city or cities must file with the Commission, within thirty days of notification to the Commission that such settlement could not be reached, a final report which details the funds expended and the uses of such funds;

016.03A6 A city which receives a loan from the fund shall be responsible to provide for the opportunity for all other cities engaged in the same negotiations with the same jurisdictional utility to participate in the negotiations. Such city shall not exclude any other city from the information or benefits accruing from the use of loan funds;

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

016.03A7 Upon the conclusion of negotiations, regardless of the result, the loan approved by the Commission after audit shall be repaid by the jurisdictional utility to the Commission within thirty days after the date upon which it is billed by the Commission. The jurisdictional utility shall recover the amount paid on the loan by a special surcharge on customers who are or will be affected by the rate increase request. These customers may be billed on their monthly statements for a period not to exceed twelve months, and the surcharge may be shown as a separate item on the statements as a charge for rate negotiation expenses.

016.03B Commission Audit: The Commission will audit each request for payment from the Municipal Rate Negotiations Revolving Loan Fund. In such audit, the Commission shall allow only such fees incurred for professional work reasonably necessary to analyze a utility's rate filing or in the effort to negotiate new area-wide rates for the utility, and such out-of-pocket expenses as are reasonably incurred in the conduct of such activities. Activities that are not subject to financing through a loan include, but are not limited to: activities related to obtaining a loan and disbursements related thereto; activities occurring prior to the utility's rate filing; and activities occurring prior to formal retention of an individual or firm to participate in the negotiation process. The service provider's invoices must detail, at a minimum, a daily description of the work performed by each individual involved in the negotiation process, the hourly rate of such person, and must provide documentation of all expenses included with such invoice.

016.04 Signature of Verification of Loan: Any applicant municipality must sign, under oath, a verification that it will comply with the provisions of the State Natural Gas Regulation Act and applicable rules and regulations. A form affidavit is attached to these rules.

016.05 Travel, Lodging and Meal Expenses: Any travel, lodging or meal expenses reimbursed or paid by the proceeds from a loan from the Municipal Rate Negotiations Revolving Loan Fund must conform to the Nebraska State Accounting Manual published by the Nebraska Department of Administrative Services.

016.06 Multiple Applicants: If more than one loan application is filed on a given rate case, all applicants for funds will be notified of the identity and contact information of other applicants and will be

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

given a limited number of days to coordinate and determine whether to make a joint application.

016.07 Application Scoring: If all applicants do not reach a mutual agreement, the Commission will evaluate applications based upon a budget statement identifying all costs for which loan funds will be used and a proposed timeline for progression of negotiations. Applications will be scored on the following scale:

016.07A Total points possible: 25.

016.07A1 Budget Statement: 15 points total, allocated as follows:

016.07A1a Thoroughness: 10 points; and

016.07A1b Reasonableness: 5 points.

016.07A2 Timeline: 10 points total, allocated as follows:

016.07A2a Thoroughness: 5 points; and

016.07A2a Reasonableness: 5 points.

017 BILLING:

017.01 Billing Basis: Bills for service may be based on meter readings or estimated usage only as permitted by Rule 015.03. Utility may render bills monthly or on some other regular schedule in accordance with tariffs on file with the Commission.

017.02 Customer Category: If a customer is eligible to receive service under more than one rate schedule, the utility, upon notice of this fact, must advise the customer of applicable, prospective alternatives.

017.03 Meter Readings: A utility may schedule readings of all meters used for determining charges for customers in accordance with its meter reading policies and practices, and shall make all reasonable efforts to read the meters on corresponding dates of each meter reading period established by the utility. The utility may permit the customer to supply the meter reading in a form prescribed by the utility. A utility representative must attempt to read a meter at least once every two months, and any billing between actual readings or when the company is unable to read a meter after a reasonable effort has been made will be calculated in accordance with Rule 015.04. A utility representative

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

must also read the meter at the commencement or termination of service unless such termination or commencement of service occurs at the same address as another termination or commencement of service within seven (7) days. Under such circumstances, the utility may estimate the meter reading based upon dates of service for the departing and the new ratepayer, and thereafter pro rate the monthly bill for service provided between the two ratepayers. Access to meters by the utility must be granted by a ratepayer.

017.04 Estimated Billing: When access to a meter cannot be gained, or when the ratepayer fails to supply a meter reading form in time for the billing operation, an estimated bill may be rendered. Estimated bills must be based upon prior usage, adjusted for weather conditions, number of days in the applicable billing cycle, and other known and reasonable factors.

017.05 Information on Bills: The bill sent to the ratepayer must include only information related to the ratepayer's account and bill inserts. The bill may include appropriate charges for non-regulated services, e.g. appliance repair. Bills provided to ratepayer for natural gas service must include the following information:

017.05A The meter reading and the date the meter was read;

017.05B The number and kinds of units metered;

017.05C Identification of the applicable rates;

017.05D The amount of the bill;

017.05E The late fee;

017.05F If an estimated bill, clear and conspicuous language identifying the bill as an estimated bill;

017.05G Tax, tax adjustment, state regulatory assessment, or gas supply cost adjustment amounts separately itemized, if applicable;

017.05H A statement that ratepayer information is available upon request and where it can be obtained.

017.05I A conspicuous notice to ratepayers that should the utility fail to satisfactorily resolve a service or billing dispute that they may refer the matter to the Nebraska Public

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

Service Commission, including current address and telephone number.

017.06 Ratepayer Payment Records: A utility must retain a record showing the data contained on each monthly bill in accordance with its normal record retention policy and practices.

017.07 Meter Testing:

017.07A By Ratepayer Request: Any ratepayer may request its utility to test the ratepayer's natural gas meter. The utility must conduct the test as soon as reasonably possible after receipt of the request. If a particular meter is tested at the request of the same ratepayer more than once in a two-year period, the utility may require a ratepayer to pay a reasonable meter test fee for the cost of testing the meter. The meter test fee must be refunded if the meter is found to have an error of two percent (2%) or more. A ratepayer or a representative of the ratepayer may be present when the meter test is conducted. The utility must supply a report giving the name of the ratepayer requesting the test; the date of the request; the location of the meter; the type, make, size and number of the meter; the date tested; and the result of the test to the ratepayer.

017.07B Random Testing: Each jurisdictional utility must establish a method or plan for verifying the accuracy of meter readings which indicate unusually high or low natural gas usage by a ratepayer in comparison to the ratepayer's past or projected natural gas usage.

017.08 Credit and Deposit Policies:

017.08A Nondiscriminatory Credit Policy Required: Each jurisdictional utility shall fairly, and without discrimination, administer a credit policy which is easily understandable and which extends natural gas service to as many Nebraskans as possible. The credit policy must be based upon the credit risk of the individual as evidenced by the individual's past experiences with residential gas purchases without regard to the collective credit reputation of the area in which the individual lives.

017.08B For purposes of this rule, the following definitions apply:

017.08B1 Satisfactory Credit: Within the last year of service the ratepayer has not had service disconnected

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

for nonpayment of a bill for services rendered and has received less than three disconnection notices. Unless established otherwise in a jurisdictional utility's tariff or other extraordinary circumstances are present, a jurisdictional utility may not require an applicant for service or an existing ratepayer to establish or re-establish credit if that ratepayer or applicant for service exhibits satisfactory credit for twelve (12) consecutive months;

017.08B2 Unsatisfactory Credit: The ratepayer has had one or more disconnections in the last year of service, three or more disconnection notices in the last year of service, or has an undisputed outstanding debt with that jurisdictional utility. A jurisdictional utility may require that a ratepayer with unsatisfactory credit re-establish credit. If a ratepayer is unable to pay the full amount of a deposit, the jurisdictional utility may accept payment of the deposit in installments at the discretion of the jurisdictional utility;

017.08B3 Unknown Credit: The ratepayer has no known energy purchase experience. A jurisdictional utility can require that the applicant establish credit satisfactory to the jurisdictional utility.

017.08C Establishment or Re-establishment of Satisfactory Credit for Residential Service: To establish or re-establish satisfactory credit for residential service, a jurisdictional utility may require an applicant for service or a ratepayer to comply with the following:

017.08C1 Make a deposit of not more than one-sixth of the estimated annual bill or increase an existing deposit to that level; or

017.08C2 Provide a guarantor who has satisfactory credit.

017.09 Billing Adjustments: For all billing adjustments resulting in a charge to the ratepayer, a jurisdictional utility must offer a reasonable amount of time for payment.

017.09A Adjustments of Bills for Slow or Fast Meter Error: Whenever any meter tested by a jurisdictional utility is found to have an error of two percent fast or more, it must refund or

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

credit to the ratepayer the overcharge. Whenever any meter tested by the utility is found to have an error of two percent slow or more, it may charge for the natural gas consumed but not included in the bill previously rendered. The refund for a fast meter will result in a credit for the entire time period that the meter was malfunctioning. The charge for a slow meter must be based on the corrected meter reading for a period equal to one-half of the time elapsed since the most recent test, but not to exceed twelve months. If the period of the slow meter exceeds twelve months and can be fixed with reasonable certainty, any uncollected charges may be included in the jurisdictional utility's next general rate filing, or in a gas cost adjustment filing where uncollectible gas costs are permitted by the Commission to be recovered in such filing, as a bad debt expense subject to a rebuttable presumption that said expense was prudently incurred in the provision of natural gas service.

017.09B Adjustments to Bills for Meters Failing to Register:

If a meter is found not to register or to register intermittently for any period, subject to statutory limits, a utility may charge for an estimated amount of natural gas used, but not to exceed six months. Bills estimated under this section must be based upon prior usage, adjusted for weather conditions, number of days in the applicable billing cycle, and other known and reasonable factors.

017.09C Adjustments to Bills for Other Meter Errors: If a ratepayer has been overcharged or undercharged as a result of an incorrect reading of the meter, incorrect application of a utility tariff, incorrect connection of the meter, application of an incorrect multiplier or constant or other similar reason, the overcharge must be credited or refunded to the ratepayer or the undercharge may be billed to the ratepayer. Any refund or credit shall cover the entire period that the account was overcharged. Any charge shall not exceed twelve months. If the period for the errors described herein exceeds twelve months and can be fixed with reasonable certainty, any uncollected charges may be included in the jurisdictional utility's next general rate filing, or in a gas cost adjustment filing where uncollectible gas costs are permitted by the Commission to be recovered in such filing, as a bad debt expense subject to a rebuttable presumption that said expense was prudently incurred in the provision of natural gas service.

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

018 CONSUMER CHOICE PROGRAMS:

018.01 Code of Conduct: Any jurisdictional utility offering consumer choice programs shall in its tariff approved by the Commission, adopt a code of conduct for jurisdictional utilities, suppliers and aggregators participating in the consumer choice programs.

018.01A Jurisdictional Utility Code of Conduct: Any code of conduct for jurisdictional utilities adopted by a jurisdictional utility offering consumer choice programs shall at a minimum include the following principles:

018.01A1 Separate accounting records for revenue and costs.

018.01B No preferential treatment or advantage be given, either overtly or covertly, to any supplier participating in a choice gas program by the jurisdictional utility operating the choice gas program.

018.01C Any information disclosed by a jurisdictional utility operating a choice gas program shall be made available in a reasonable time and manner to all participating suppliers. This provision does not include disclosure of confidential customer information.

018.01D A requirement that any rule, regulation and/or tariff provision applied by a jurisdictional utility in the administration of a choice gas program be done in a non-discriminatory, equal manner.

018.01E A jurisdictional utility offering a consumer choice program(s) shall not by word or action misrepresent the cost, quality, or reliability of a particular gas supplier or aggregator or represent that the regulated gas service would/could be adversely affected by a customer selection of a particular gas supplier or aggregator.

018.01F A jurisdictional utility offering a consumer choice program(s) shall not misrepresent or misquote the commodity price of any supplier or aggregator.

018.01G A jurisdictional utility offering a consumer choice program(s) shall not market or advertise its services in a misleading or deceptive manner;

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

018.01H A jurisdictional utility offering a consumer choice program(s) shall not engage in any activities under a consumer choice program detrimental to the consumer including, but not limited to, activities such as slamming or cramming;

018.01I A jurisdictional utility offering a consumer choice program(s) shall not unduly discriminate against similarly situated customers.

018.01J In the event the jurisdictional utility also acts as a participant supplier in a choice program shall:

018.01J1 Keep separate accounting records for the activities of the choice gas program and supplier;

018.01J2 Keep separate and distinct all marketing, advertising and other promotional activities.
Regulations.

018.02 Supplier/Aggregator Code of Conduct: Any tariff filed by a jurisdictional utility offering a consumer choice program shall include a code of conduct for participating suppliers and aggregators. The supplier/aggregator code of conduct shall at a minimum include the following principles:

018.02A A supplier or aggregator participating in a consumer choice program shall not misrepresent through word or action the quality or reliability of other gas suppliers and/or aggregators.

018.02B A supplier or aggregator participating in a consumer choice program shall not misrepresent or misquote the commodity price of any supplier or aggregator.

018.02C A supplier or aggregator participating in a consumer choice program shall not market or advertise its services in a misleading or deceptive manner.

018.02D A supplier or aggregator participating in a consumer choice program shall not engage in any activities under a consumer choice program detrimental to the consumer including, but not limited to, activities such as slamming or cramming.

018.02E A supplier or aggregator participating in a consumer choice program shall not unduly discriminate against similarly situated customers.

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

018.02F A supplier participating in a consumer choice program shall report to the Commission no later than thirty (30) days following the close of the consumer choice supplier selection period the highest and lowest price offered by the supplier during the consumer choice supplier selection period and the rate determined for customers who did not make a selection during the consumer choice supplier selection period.

018.03 Annual Report: A jurisdictional utility offering a consumer choice program shall submit a report to the Commission pursuant to this section on an annual basis. The report shall be provided to the Commission no later than thirty (30) days following the close of the consumer choice supplier selection period. The report shall include the following information:

018.03A A list of all suppliers that participated in the choice gas program.

018.03B For each participating supplier the total number of customers that selected that supplier.

018.04 Examination and Audit Requirements: Consistent with Neb. Rev. Stat. § 66-1818, the Commission may require an examination and audit of any jurisdictional utility offering consumer choice programs.

019 AFFILIATES:

019.01 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.

019.02 Affiliate Rules: All affiliates must comply with the following:

019.02A The affiliate must either employ separate personnel and not share any personnel with the utility or allocate shared employee time between the utility and the affiliate.

019.02B The affiliate's and jurisdictional utilities' employee incentives must not create a conflict of interest.

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

019.02C The affiliate must own or lease its own office space that is reasonably separate from the utility. Such office space cannot be acquired from the utility except at market-based rates.

019.02D If the affiliate seeks to provide service over the system of the jurisdictional utility with which it is affiliated, the jurisdictional utility must have adopted a code of conduct approved by the Commission.

019.02E The affiliate must purchase its own ancillary services related to the delivery of natural gas including, but not limited to, natural gas commodity, pipeline transportation, and pipeline storage. Such assets must not be acquired from the utility except at market based rates. An affiliate must not secure transportation, storage, or commodity from the utility on a prearranged, non-posted basis except as otherwise provided in a nondiscriminatory fashion.

019.02F The affiliate must receive no undue preferential treatment through a tariff provision or otherwise from the utility.

019.02G The affiliate must receive no jurisdictional services from the utility except those that are available per the utility's tariff.

019.02H The affiliate must be responsible for its own bad debt and the collection of such debts.

019.02I The affiliate must not represent itself as the utility.

019.02J The affiliate must keep separate records from that of the utility.

020 EMERGENCY CURTAILMENT PLANS: A jurisdictional utility's tariff shall identify the manner of curtailing or limiting natural gas consumption in the event of an emergency.

021 SEASONAL DISCONNECTIONS:

021.01 Seasonal Disconnection Charges Prohibited: Seasonal disconnection charges shall not be permitted. A jurisdictional utility may charge reconnection fees equal to those charged to any other rate-payer receiving service.

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

022 PUBLIC ADVOCATE:

022.01 Location of Commission: For purposes of Neb. Rev. Stat. Sec. 66-1832, the location of the Commission means Lincoln, Nebraska.

023 MAJOR OIL PIPELINES:

023.01 Scope: This section applies only to major oil pipelines. Nothing in Section 023 is intended to regulate safety as to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of major oil pipelines and pipeline facilities.

023.02 Major Oil Pipeline Application: A pipeline carrier proposing to construct a major oil pipeline to be placed in operation in Nebraska and who has submitted a route for an oil pipeline within, through, or across Nebraska but the route is not approved by the Governor pursuant to section 57-1503, shall file an application with the Commission and receive approval prior to beginning construction of the major oil pipeline within Nebraska. A pipeline carrier proposing a substantive change to the route of a major oil pipeline and who has submitted a route for an oil pipeline within, through, or across Nebraska but the route is not approved by the Governor pursuant to section 57-1503, shall file an application for the proposed change with the Commission and receive approval prior to beginning construction relating to the proposed change.

023.02A Content of Application: The application shall be accompanied by written agreement to pay expenses assessed pursuant to subsection 023.12 and written testimony and exhibits in support of the application. The application shall include:

023.02A1 The name and address of the pipeline carrier;

023.02A2 A description of the nature and proposed route of the major oil pipeline including a map of the proposed route and evidence of consideration of alternative routes;

023.02A3 A statement of the reasons for the selection of the proposed route of the major oil pipeline;

023.02A4 A list of the governing bodies of the counties and municipalities through which the proposed route of the major oil pipeline would be located;

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

023.02A5 A description of the product or material to be transported through the major oil pipeline including identification of the product or material; and for informational purposes only hazard(s) identification; composition/information on ingredients; first-aid measures; fire-fighting measures; accidental release measures; handling and storage; exposure controls/personal protection; physical and chemical properties; stability and reactivity; toxicological information; ecological information; disposal considerations; transport information; regulatory information. The requirement can be satisfied through the filing of a representative Safety Data Sheet;

023.02A6 The person who will own the major oil pipeline;

023.02A7 The person who will manage the major oil pipeline;

023.02A8 A plan to comply with the Oil Pipeline Reclamation Act; and

023.02A9 A list of planned methods to minimize or mitigate the potential impacts of the major oil pipeline to land areas and connected natural resources other than with respect to oil spills.

023.02A10 For informational purposes only, a description of the method for state agencies and emergency response personnel to obtain current Safety Data Sheet(s) for the product(s) or material(s) being transported through the pipeline in the event of an incident.

023.02A11 An applicant must notify the Commission during the pendency of the application of any material change in the representations and commitments required by this subsection within fourteen (14) days of such change.

023.02B Filing and Notice: Applications must be filed with the Executive Director at the Nebraska Public Service Commission. Pipeline carriers shall file an original paper copy of the application in addition to an electronic copy and five (5) paper copies.

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

023.02B1 Pipeline carriers shall also file a copy of the application with the following agencies:

<u>023.02B1(a)</u>	Department of Environmental Quality
<u>023.02B1(b)</u>	Department of Natural Resources
<u>023.02B1(c)</u>	Department of Revenue
<u>023.02B1(d)</u>	Department of Roads
<u>023.02B1(e)</u>	Game and Parks Commission
<u>023.02B1(f)</u>	Nebraska Oil and Gas Conservation Commission
<u>023.02B1(g)</u>	Nebraska State Historical Society
<u>023.02B1(h)</u>	State Fire Marshal, and
<u>023.02B1(i)</u>	Board of Educational Lands and Funds

023.02B2 Notice of Application: The applicant shall publish notice of the application in at least one newspaper of general circulation in each county in which the major oil pipeline is to be constructed and forward a copy of such notice to the Commission. The applicant shall serve notice of the application upon the governing bodies of the counties and municipalities specified pursuant to subdivision through which the proposed route of the major oil pipeline would be located. The Commission may provide additional notice to natural resource districts in the area of the proposed pipeline. The Commission may publish a copy of the application on its website.

023.02C Public Review: Any documents or records relating to a major oil pipeline filed with the Commission shall be made available to the public consistent with the Nebraska public records laws, Neb. Rev. Stat. § 84-712 through 84-712.09 and any applicable federal law.

023.03 Procedures After Receipt of an Application: After receipt of an application, the Commission shall:

023.03A Schedule a planning conference to establish a procedural schedule for the application;

023.03B Within sixty (60) days of the date of the filing of the application, schedule a public hearing;

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

023.03C Notify the pipeline carrier of the time, place, and purpose of the public hearing;

023.03D Publish a notice of the time, place, and purpose of the public hearing in at least one newspaper of general circulation in each county in which the major oil pipeline is to be constructed; and

023.03E Serve notice of the public hearing upon the governing bodies of the counties and municipalities through which the proposed route of the major oil pipeline would be located as specified in subsection 023.02B2.

023.04 Public Meetings: The Commission may hold additional public meetings for the purpose of receiving input from the public at locations as close as practicable to the proposed route of the major oil pipeline. The Commission shall make the public input part of the record.

023.05 Agency Reports: Within thirty (30) days of the filing of the application, the agencies referenced in subsection 023.02B1 shall file with the Commission a list of potential issues and an estimated budget for the completion of a report addressing those issues. If requested by the Commission, the agencies referenced in subsection 023.02B1 shall file a report with the Commission, prior to the hearing on the application, regarding information within the respective agencies' area of expertise relating to the impact of the major oil pipeline on any area within the respective agencies' jurisdiction, including in such report opinions regarding the advisability of approving, denying, or modifying the location of the proposed route of the major oil pipeline.

023.05A The report shall be filed with the Commission at least ten (10) days prior to the hearing or as required by the Hearing Officer.

023.05B The agencies may submit a request for reimbursement of reasonable and necessary expenses incurred for any consultants hired pursuant to subsection 023.12.

023.06 Petitions for Intervention, Protests and Hearing on the Application: The filing of petitions for intervention and protests and the conduct of the hearing shall be governed by the Rules of Commission Procedure.

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

023.06A Hearing

023.06A1 Although not a party to the application, the Commission staff may provide evidence during the hearing to ensure a complete record, including but not limited to testimony and/or reports of professionals or experts hired pursuant to Neb. Rev. Stat. sec. 57-1412.

023.07 Burden of Proof: An application under the Major Oil Pipeline Siting Act shall be approved if the proposed route of the major oil pipeline is determined by the Nebraska Public Service Commission to be in the public interest. The pipeline carrier shall have the burden to establish that the proposed route of the major oil pipeline would serve the public interest. In determining whether the pipeline carrier has met its burden, the Commission shall not evaluate safety considerations, including the risk or impact of spills or leaks from the major oil pipeline, but the Commission shall evaluate:

023.07A Whether the pipeline carrier has demonstrated compliance with all applicable state statutes, rules, and regulations and local ordinances;

023.07B Evidence of the impact due to intrusion upon natural resources and not due to safety of the proposed route of the major oil pipeline to the natural resources of Nebraska, including evidence regarding the irreversible and irretrievable commitments of land areas and connected natural resources and the depletion of beneficial uses of the natural resources. Such evidence may include but not be limited to the following:

0023.07B1 an environmental impact study;

0023.07B2 a comprehensive soil permeability study;

0023.07B3 a distance-to-groundwater survey;

0023.07B4 evidence regarding the impact of the pipeline on wildlife; and

0023.07B5 evidence regarding the impact of the pipeline on plants located within and surrounding the proposed route.

023.07C Evidence of methods to minimize or mitigate the potential impacts of the major oil pipeline to natural resources;

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

023.07D Evidence regarding the economic and social impacts of the major oil pipeline. Such evidence may include but not be limited to estimates regarding tax paid by the carrier to local and state government along the route of the proposed pipeline and information regarding impact on employment in Nebraska;

023.07E Whether any other utility corridor exists that could feasibly and beneficially be used for the route of the major oil pipeline;

023.07F The impact of the major oil pipeline on the orderly development of the area around the proposed route of the major oil pipeline;

023.07G The reports of the agencies filed pursuant to subsection 023.05; and

023.07H The views of the governing bodies of the counties and municipalities in the area around the proposed route of the major oil pipeline.

023.08 Commission Order:

023.08A Time to Enter Order: Within seven (7) months after the receipt of the application, the Commission shall enter an order approving the application or denying the application.

023.08A1 The Commission may, for just cause, extend the time for the entry of an order. The extension shall not exceed twelve (12) months after the receipt of the application unless all parties agree to a longer extension, except that no extension shall extend more than eight (8) months after the issuance of a presidential permit authorizing the construction of the major oil pipeline.

023.08A2 For purposes of determining the counting months, one (1) month shall equal thirty (30) days.

023.08B Content of Order: The Commission shall include in the order the findings of the Commission regarding the application and the reasons for approving or denying the application. The order approving the application shall state that the application is in the public interest and shall authorize the pipeline carrier to act under Neb. Rev. Stat. Sec. 57-1101.

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

023.09 Amendment of Application After Denial: If the Commission denies the application, the pipeline carrier may amend the denied application in accordance with the findings of the Commission and submit the amended application within sixty (60) days after the issuance of the order denying the application. Within sixty (60) days after the receipt of the amended application, the Commission shall enter an order approving or denying the amended application after making new findings under subsection 023.07.

023.10 Appeal: Any party aggrieved by a final order of the Commission regarding an application under the Major Oil Pipeline Siting Act, including, but not limited to, a decision relating to the public interest, may appeal. The appeal shall be in accordance with the Administrative Procedure Act.

023.11 Status Reports: If the Commission approves the application, the pipeline carrier shall file a status report with the Commission regarding the construction of the major oil pipeline every six (6) months until the completion of the major oil pipeline within Nebraska. The pipeline carrier shall notify the Commission of the completion of the major oil pipeline within Nebraska within thirty (30) days after such completion.

023.12 Assessment of Expenses: The Commission shall assess the expenses reasonably attributable to investigation and hearing regarding an application filed under subsection 023.02, including expenses billed by agencies filing reports as required in subsection 023.05 and both direct and indirect expenses incurred by the Commission or its staff or consultants, to the applicant as agreed under subsection 023.02.

023.12A Billing of Expenses: The Commission shall ascertain the expenses of any such investigation and hearing and by order assess such expenses against the applicant and shall render a bill therefor, by United States mail, to the applicant, either at the time the order under subsection 023.08 is issued or from time to time during such application process.

023.12A1 Such bill shall constitute notice of such assessment and demand of payment thereof. Upon a bill rendered to such applicant, within fifteen (15) days after the mailing thereof, such applicant shall pay to the Commission the amount of the assessment for which it is billed.

023.12A2 The Commission shall remit the payment to the State Treasurer for credit to the Public Service

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

Commission Pipeline Regulation Fund or shall direct the State Treasurer to credit any reimbursement of expenses billed by agencies pursuant to Section 023.05 to the appropriate fund of the appropriate agency.

023.12A3 The Commission may render bills in one fiscal year for costs incurred within a previous fiscal year.

023.12B Failure to Pay Assessment: If any applicant against which an assessment has been made pursuant to this section, within fifteen (15) days after the notice of such assessment, (a) neglects or refuses to pay the same or (b) fails to file objections to the assessment with the Commission as provided in subsection 023.12C, the Commission shall transmit to the State Treasurer a certified copy of the notice of assessment, together with notice of neglect or refusal to pay the assessment, and on the same day the Commission shall mail by registered mail to the applicant against which the assessment has been made a copy of the notice which it has transmitted to the State Treasurer. If any such applicant fails to pay such assessment to the State Treasurer within ten (10) days after receipt of such notice and certified copy of such assessment, the assessment shall bear interest at the rate of fifteen percent (15%) per annum from and after the date on which the copy of the notice was mailed by registered mail to such applicant.

023.12C Objection to Assessment: Within fifteen (15) days after the date of the mailing of any notice of assessment under subsection 023.12A, the applicant against which such assessment has been made may file with the Commission objections setting out in detail the grounds upon which the applicant regards such assessment to be excessive, erroneous, unlawful, or invalid. The Commission shall determine if the assessment or any part of the assessment is excessive, erroneous, unlawful, or invalid and shall render an order upholding, invalidating, or amending the assessment. An amended assessment shall have in all respects the same force and effect as though it were an original assessment.

023.12C1 Payment of Assessment if Objection Overruled:

If any assessment against which objections have been filed is not paid within ten (10) days after service of an order finding that such objections have been overruled and disallowed by the Commission, the Commission shall give notice of such delinquency to the State Treasurer and to the applicant in the manner provided

JUL 22 2013

EFFECTIVE DATE: July 27, 2013

LAST ISSUE DATE: April 2, 2012

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 9 - NATURAL GAS AND PIPELINE RULES AND REGULATIONS

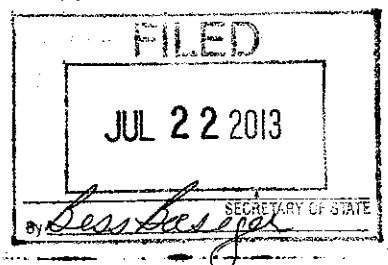
for in subsection 023.12B. The State Treasurer shall then collect the amount of such assessment. If an amended assessment is not paid within ten (10) days after service of the order of the Commission, the Commission shall notify the State Treasurer and the applicant as in the case of delinquency in the payment of an original assessment. The State Treasurer shall then collect the amount of such assessment as provided in the case of an original assessment.

023.12C2 Appeal of Order Overruling Objection to Assessment: Any party aggrieved by a final order of the Commission regarding an assessment under the Major Oil Pipeline Siting Act may appeal. The appeal shall be in accordance with the Administrative Procedure Act.

APPROVED

JUL 22 2013

Dave Heineman
DAVE HEINEMAN
GOVERNOR



50

APPROVED
JON BRUNING
ATTORNEY GENERAL

MAY 13 2013

BY *[Signature]*
ASSISTANT ATTORNEY GENERAL

Nebraska Public Service Commission
Municipal Rate Negotiations Revolving Loan Fund
Application Form

Date:

Applicant City/Cities:

Primary Contact Person:

Please include: Name, Title, Address, Telephone Number, Fax Number and E-mail address.

Jurisdictional Utility Name and Rate Case Docket Number:

Loan Amount Requested:

Budget Statement:

Please include or attach a budget statement identifying all costs for which loan funds will be used, if the loan application is approved. If any consultants, attorneys or other service providers have been selected, please identify them and describe how they were selected. If the applicant has not yet selected any consultants, attorneys or other service providers, please provide a description of the manner in which a selection would be made.

At minimum, please provide the amounts budgeted for the following categories of costs:

- Attorney Fees
- Consultant Fees
- Travel Expenses
- Other Expenses

Timeline for Negotiations:

Please provide a proposed timeline for negotiations, within the parameters of the State Natural Gas Regulation Act.

NOTE: Only one loan may be made for each rate filing made by a jurisdictional utility, pursuant to Neb. Rev. Stat. § 66-1839. If more than one loan application is filed on a given rate case, all applicants for funds will be notified of the identity and contact information of other applicants and will be given a limited number of days to coordinate and determine whether to make a joint application.

If all applicants do not reach a mutual agreement, the Commission will use the following criteria to determine which application will be granted:

Total points possible: 25

Budget Statement (15 points total):

Thoroughness (10 points)

Reasonableness (5 points)

Timeline (10 points total):

Thoroughness (5 points)

Reasonableness (5 points)

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

AFFIDAVIT OF APPLICANT

_____ being duly sworn deposes and says:

1. Affiant's full name and address is:

Full name of Applicant

Address: Street, P.O. Box, City, State, Zip Code

2. Affiant holds the title of _____

3. Affiant is familiar with and will conform with the Nebraska statutes governing natural gas and with the Commission's rules and regulations there under.

I certify that all statements made and matters set forth in the application are true and correct to the best of my knowledge, information and belief.

SUBSCRIBED AND SWORN to before me this ____ day of _____, 20__.

Notary Public