

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1068

Introduced by Haar, 21.

Read first time January 20, 2016

Committee:

- 1 A BILL FOR AN ACT relating to the Public Service Commission; to amend
- 2 section 75-118, Revised Statutes Cumulative Supplement, 2014, and
- 3 section 75-109.01, Revised Statutes Supplement, 2015; to adopt the
- 4 Electric Customer Protection Act; to harmonize provisions; and to
- 5 repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 20 of this act shall be known and may be
2 cited as the Electric Customer Protection Act.

3 Sec. 2. The Legislature finds and declares that:

4 (1) It is the policy of the State of Nebraska to provide its
5 residents with electric service at the lowest possible cost consistent
6 with sound business practices. Maintaining electric rates which are
7 stable and competitive with those of electric utilities in surrounding
8 states is essential to the economic and social well-being of the state
9 and its residents;

10 (2) Nebraska is the only state in the country in which all electric
11 utilities are owned by their customers. There are instances in which the
12 boards of public electric utilities have increased rates in spite of
13 well-founded objections from their customer-owners. There are also
14 instances when the boards of public electric utilities have failed to
15 support investments in efficiency, renewable energy, or other energy
16 choices that could reduce the cost of electric service and provide other
17 environmental, economic, and health benefits to their customer-owners;
18 and

19 (3) The state has a fiduciary responsibility to its residents who
20 are the customer-owners of its electric utilities. Because of this
21 responsibility, it is necessary to establish a regulatory oversight and
22 review process by which to protect the interests of Nebraska residents
23 and ensure that electric rates are fair, reasonable, nondiscriminatory,
24 stable, and competitive.

25 Sec. 3. Notwithstanding any other provision of law, the Public
26 Service Commission is authorized to review electric utility rate
27 increases consistent with the Electric Customer Protection Act in order
28 to provide the public with additional protection against unreasonable and
29 unjust charges. No proposed rate increase under review by the commission
30 shall become effective unless the commission has approved such increase
31 pursuant to section 5 or 6 of this act.

1 Sec. 4. For purposes of the Electric Customer Protection Act:

2 (1) Commission means the Public Service Commission;

3 (2) Customer means any person contracting for or purchasing electric
4 service from a utility;

5 (3) Electric line means any line for conducting electric energy at a
6 design voltage of twenty-five thousand volts phase to phase or less and
7 used for distributing electric energy directly to customers;

8 (4) Electric service means electric service furnished to a customer
9 for ultimate consumption and wholesale electric service furnished by an
10 electric utility to another electric utility for resale;

11 (5) Electric utility means any person operating, maintaining, or
12 controlling in this state equipment or facilities for providing electric
13 service to or for the public, including an electric utility owned by a
14 municipality, a public power district, a political subdivision, or any
15 agency of the State of Nebraska;

16 (6) Municipality means any incorporated town or city in Nebraska;

17 (7) Person has the same meaning as in section 75-139.01;

18 (8) Public power district means a public power district organized
19 under Chapter 70, article 6, and includes, when applicable, a rural
20 public power district organized under Chapter 70, article 8; and

21 (9) Rate means any compensation, charge, or classification demanded,
22 observed, charged, or collected by any electric utility for any purpose,
23 including electric service, transmission, distribution, capacity or fixed
24 charges, and any rules, regulations, practices, or contracts affecting
25 any such compensation, charge, or classification.

26 Sec. 5. A proposed electric rate increase shall be reviewed by the
27 commission upon receipt of a petition or petitions filed by two percent
28 or more of the affected customers. The petition or petitions shall be
29 signed and provided to the commission within sixty days after the date
30 notice of the rate change was sent to affected customers of the electric
31 utility. The commission shall hold a hearing on the rate increase no

1 later than one hundred and twenty days following the receipt of the
2 notice from the electric utility. Not more than sixty days after the
3 close of such hearing, the commission shall enter an order approving or
4 disapproving the proposed rate increase.

5 Sec. 6. (1) When an electric utility proposes to increase its rates
6 by more than two percent in any consecutive twelve-month period, or
7 proposes to increase any component, including fixed charges, of its rates
8 by more than twenty percent in any consecutive twelve-month period, the
9 electric utility shall file an application with the commission and the
10 commission shall conduct a review. If the rate increase for an electric
11 utility is no greater than the wholesale rate increase charged to the
12 electric utility with which it has a contractual agreement to supply at
13 least eighty percent of its electricity, and the wholesale rate increase
14 is subject to review pursuant to this act, the retail rate increase shall
15 not be subject to review.

16 (2) An application by an electric utility to increase its rates
17 shall include the following:

18 (a) A detailed basis for the proposed rate increase;

19 (b) A list of exhibits and all witnesses to be called at hearing.
20 Written testimony may be filed only with the permission of the
21 commission;

22 (c) Balance sheet and income statements or a statement of the assets
23 and revenues which constitute the rate base and net earnings statement
24 for the test year and any adjustments thereto;

25 (d) The latest available certified audited financials;

26 (e) Proposed investment schedule; and

27 (f) Any other information required by the commission pursuant to its
28 adopted and promulgated rules and regulations.

29 (3) The commission shall hold a public hearing to receive evidence
30 concerning the rate increase proposed by the electric utility.

31 (4) Unless an extension is granted, such hearing shall be held

1 within ninety days after the date on which the rate list providing for
2 such increase was filed with the commission or, if the commission
3 requires further documentation to be filed, the commission upon its own
4 motion may grant a one-time, thirty-day extension for the hearing date.

5 (5) If the electric utility presents evidence at the hearing in
6 accordance with the requirements of this section, the commission shall
7 enter an order approving or disapproving the proposed rate increase not
8 more than sixty days after the close of such hearing. If approved, the
9 proposed rate increase shall become effective thirty days after the entry
10 of such order.

11 Sec. 7. (1) When an electric utility proposes to increase its rate
12 and such rate increase has been approved by the governing authority of
13 the public power district or municipality, the electric utility shall
14 notify the commission in writing. The notice shall contain a signature of
15 an officer of the electric utility and shall include the present and
16 proposed rates, the proposed effective date of the rate increase, a list
17 of customers as of the first day of the month in which the notice is
18 given, and a statement that all customers will be notified by mail. The
19 notice to the commission shall include a copy of the proposed notice that
20 will be sent to the electric utility's customers.

21 (2) The electric utility shall notify each of its customers in
22 writing of any change in rates no later than ten business days after
23 notification is provided to the commission. Proper notice shall include:

24 (a) The reasons for the rate increase;

25 (b) A description of the affected service;

26 (c) An explanation of the right of the subscriber to petition the
27 commission for a public hearing on the rate increase;

28 (d) The dates, times, and places for public informational meetings
29 scheduled by the electric utility;

30 (e) A statement of the number of affected subscribers served and the
31 number and percentage of signatures required for a hearing to be held;

1 (f) A statement that the petition must be signed by the customer or
2 customer's spouse, be dated, and include an address and a telephone
3 number. If the customer is a business, the name of the business, an
4 address, a telephone number, and a signature of an officer or an agent of
5 the business must be provided; and

6 (g) Any other information the commission deems necessary and
7 appropriate to reasonably inform the customer.

8 Sec. 8. When reviewing a rate increase under a customer-initiated
9 or an automatic review, the commission shall determine whether the rates
10 are fair, reasonable, and nondiscriminatory. In making such
11 determination, the commission shall consider the following:

12 (1) If the increased rates are not unreasonably preferential or
13 discriminatory and reasonably consistent in application to a class of
14 ratepayers;

15 (2) The capital structure at or near the time the applicant's
16 increased rates will become effective. The rate of return or operating
17 ratio allowed by the commission will not reflect expectations of future
18 inflation but only cost-justified expense increases.

19 (3) The public need for adequate, efficient, and reasonable electric
20 line service and the need of the electric utility for revenue sufficient
21 to enable it to meet the cost of furnishing the service, including
22 adequate provisions for depreciation of its utility property used and
23 useful in rendering service to the public, and to earn a fair and
24 reasonable return;

25 (4) Cost of service, consisting of operating expenses and a fair and
26 reasonable return on rate base less appropriate credits;

27 (5) The rate base of the electric utility consisting of the
28 utility's property, used and useful in providing electric utility
29 service, including the applicable investment in utility plant, less
30 accumulated depreciation and amortization, allowance for working capital,
31 such other items as may be reasonably included, and reasonable

1 allocations of common property less such investment as may be reasonably
2 attributed to it as provided by law; and

3 (6) Operating expenses consisting of expenses prudently incurred to
4 provide electric service.

5 The commission may approve incentive rates to encourage improvement
6 in the efficiency of electric consumption or to encourage investment in
7 renewable energy.

8 Sec. 9. Every electric utility shall file with the commission,
9 within such time and in such form as the commission may prescribe, rates
10 and schedules showing the terms and conditions of service and all rates
11 established by the electric utility and collected or enforced or to be
12 collected or enforced. The electric utility shall keep copies of such
13 rates and schedules open to public inspection under such rules and
14 regulations of the commission. Rates and schedules approved by the
15 commission have the force and effect of law.

16 Sec. 10. The commission may contract for professional services and
17 expert assistance, including, but not limited to, the services of
18 engineers, accountants, attorneys, and economists, to assist in carrying
19 out the purposes of the Electric Customer Protection Act.

20 Sec. 11. (1) The office of customer advocate is created as a
21 separate and independent division within the commission. The customer
22 advocate shall represent the interests of Nebraska residents and all
23 classes of electric utility ratepayers, other than high-volume
24 ratepayers, in matters involving electric utilities and shall act as
25 trial staff before the commission. In the exercise of his or her powers,
26 the customer advocate shall consider all relevant factors, including, but
27 not limited to, the provision of safe, efficient, and reliable electric
28 utility services at just and reasonable rates.

29 (2) Notwithstanding the provisions of section 75-105, the executive
30 director of the commission, upon consultation with the members of the
31 commission, shall appoint the customer advocate. The customer advocate

1 shall serve a four-year term and shall be removed only for good cause.
2 The executive director shall be responsible for reviewing the performance
3 of the customer advocate, for removing the customer advocate in
4 accordance with law, and for filling any vacancy in that position in the
5 same manner as the original appointment.

6 (3) The customer advocate shall be an attorney and shall have
7 experience in consumer-related electric utility issues or in the
8 operation, management, or regulation of electric utilities. No person
9 owning stocks or bonds in a corporation subject in whole or in part to
10 regulation by the commission or who has any pecuniary interest in such
11 corporation shall be appointed as customer advocate.

12 Sec. 12. (1) The customer advocate:

13 (a) May investigate the legality and reasonableness of rates,
14 charges, and practices of electric utilities;

15 (b) May petition for relief, request, initiate, and intervene in any
16 proceeding before the commission concerning such utilities;

17 (c) Shall represent and appear for electric ratepayers and the
18 public in proceedings before the commission;

19 (d) Shall represent and appear for electric ratepayers and the
20 public in any negotiations or other measures to resolve disputes that
21 give rise to proceedings before the commission and make and seek approval
22 of agreements to settle such disputes; and

23 (e) May make motions for rehearing or reconsideration, appeal, or
24 seek judicial review of any order or decision of the commission regarding
25 electric utilities.

26 (2) The customer advocate shall not advocate for or on behalf of any
27 single individual, organization, or entity.

28 (3) The customer advocate may enter into stipulations with other
29 parties in any proceeding to balance the interests of those it represents
30 with the interests of the electric utilities as a means of improving the
31 quality of resulting decisions in a highly technical environment and

1 minimizing the cost of regulation.

2 Sec. 13. The office of the customer advocate shall be located at
3 the same location as the commission but shall be kept separate from the
4 commission's other offices as provided by rules and regulations adopted
5 and promulgated by the commission. The customer advocate may hire or
6 contract with attorneys, legal assistants, experts, consultants,
7 secretaries, clerks, and such other staff necessary for the full and
8 efficient discharge of the duties of the office as permitted by the
9 budget of the customer advocate as approved by the commission. The
10 customer advocate shall employ and supervise personnel as authorized by
11 the budget approved by the commission. The employees of the customer
12 advocate shall not be supervised or directed by the commission. Funding
13 for the office of the customer advocate shall be approved by the
14 commission and collected through the assessment process as provided for
15 in sections 16 and 17 of this act. The commission shall decide all
16 matters of shared administrative and clerical personnel.

17 Sec. 14. The customer advocate and his or her employees or agents
18 shall have free access to all files, records, and documents of the
19 commission except:

20 (1) Personal information in confidential personnel records;

21 (2) Records which represent the work product of legal counsel of the
22 commission and records of confidential or privileged communications
23 between the members of the commission and its legal counsel, when the
24 records relate to a proceeding before the commission in which the
25 customer advocate is, or is appearing for, a party; and

26 (3) Records that are designated as confidential pursuant to
27 commission rules and regulations, except as permitted by a nondisclosure
28 agreement between a specified representative of the customer advocate and
29 the commission and the person who claims the records at issue are
30 confidential.

31 Sec. 15. In any proceeding before the commission in which the

1 customer advocate is a party or is appearing for a party, the customer
2 advocate shall be considered a party for purposes of the restrictions on
3 ex parte communications set forth in sections 75-130.01 and 84-914.

4 Sec. 16. (1) In order to carry out the purposes of the Electric
5 Customer Protection Act, the commission, in any proceeding pursuant to
6 such sections, shall assess the electric utilities as provided under this
7 section.

8 (2) The commission shall determine, within thirty days after each
9 quarter for each fiscal year, the total amount of its expenditures during
10 such period. The total amount shall include the attributed amount of the
11 salaries of commission members and employees and all other lawful
12 expenditures of the commission, including all expenditures in connection
13 with carrying out the provisions of the Electric Customer Protection Act,
14 except that there shall not be included the expenditures during such
15 period of time which are otherwise provided for by fees and assessments
16 under section 17 of this act.

17 (3) The commission shall add such amount as in its judgment may be
18 required to satisfy any deficiency in the prior quarterly period's
19 assessment and to provide for anticipated increases in necessary
20 expenditures for the current quarterly period.

21 (4) The amount determined under this section shall be assessed by
22 the commission against all electric utilities and shall not exceed,
23 during any fiscal year, one hundred dollars or each utility's
24 proportionate share of the total amount determined under this section,
25 whichever is greater, based upon lines served by each utility as a
26 proportion of all lines of electric utilities. Such assessment shall be
27 paid to the commission within fifteen days after the notice of assessment
28 has been mailed to such utilities, which notice of assessment shall
29 constitute demand of payment thereof.

30 Sec. 17. (1) In addition to the assessment prescribed in section 16
31 of this act, the commission shall assess the electric utility for any

1 expenses reasonably attributable to the conduct of hearings, including
2 both direct and indirect expenses incurred by the commission or its
3 staff. Such hearing expenses shall be assessed beginning on the date that
4 the proceeding is filed or beginning three business days after the
5 commission gives the electric utility notice of the assessment by United
6 States mail, whichever is later.

7 (2) If an electric utility contests the assessment by the commission
8 under subsection (1) of this section, the commission shall give the
9 electric utility notice and opportunity for a hearing in accordance with
10 its rules and regulations. At such hearing, the electric utility may be
11 heard and may show cause why the costs thereof should not be assessed
12 against such electric utility. The finding of the commission as to the
13 necessity of the assessment of the expenses shall be conclusive, except
14 that no such electric utility shall be liable for payment of any such
15 expenses incurred by the commission in connection with any proceeding
16 before or within the jurisdiction of any federal regulatory body.

17 Sec. 18. (1) Within fifteen days after mailing of an assessment by
18 the commission to an electric utility, such electric utility shall pay to
19 the commission the amount of the assessment. The commission may render
20 assessments in one fiscal year for costs incurred within a previous
21 fiscal year.

22 (2) If an electric utility within fifteen days after the mailing of
23 such assessment (a) neglects or refuses to pay the same or (b) fails to
24 file objections to the assessment with the commission, the commission
25 shall transmit to the State Treasurer a certified copy of the notice of
26 assessment, together with notice of neglect or refusal to pay the
27 assessment, and on the same day the commission shall send by registered
28 mail to the electric utility against which the assessment has been made a
29 copy of the notice which it has transmitted to the State Treasurer. If
30 any such electric utility fails to pay such assessment to the State
31 Treasurer within ten days after receipt of such notice and certified copy

1 of such assessment, the assessment shall bear interest at the rate of
2 fifteen percent per annum from and after the date on which the copy of
3 the notice was sent by registered mail to such electric utility.

4 Sec. 19. The commission shall remit all money received for
5 assessments imposed under sections 16 and 17 of this act to the State
6 Treasurer for credit to the Public Service Commission Regulation Fund.

7 Sec. 20. The commission may adopt and promulgate rules and
8 regulations to carry out the purposes of the Electric Customer Protection
9 Act.

10 Sec. 21. Section 75-109.01, Revised Statutes Supplement, 2015, is
11 amended to read:

12 75-109.01 Except as otherwise specifically provided by law, the
13 Public Service Commission shall have jurisdiction, as prescribed, over
14 the following subjects:

15 (1) Common carriers, generally, pursuant to sections 75-101 to
16 75-158;

17 (2) Grain pursuant to the Grain Dealer Act and the Grain Warehouse
18 Act and sections 89-1,104 to 89-1,108;

19 (3) Manufactured homes and recreational vehicles pursuant to the
20 Uniform Standard Code for Manufactured Homes and Recreational Vehicles;

21 (4) Modular housing units pursuant to the Nebraska Uniform Standards
22 for Modular Housing Units Act;

23 (5) Motor carrier registration and safety pursuant to sections
24 75-301 to 75-343, 75-369.03, 75-370, and 75-371;

25 (6) Pipeline carriers and rights-of-way pursuant to the Major Oil
26 Pipeline Siting Act, the State Natural Gas Regulation Act, and sections
27 75-501 to 75-503. If the provisions of Chapter 75 are inconsistent with
28 the provisions of the Major Oil Pipeline Siting Act, the provisions of
29 the Major Oil Pipeline Siting Act control;

30 (7) Railroad carrier safety pursuant to sections 74-918, 74-919,
31 74-1323, and 75-401 to 75-430;

1 (8) Telecommunications carriers pursuant to the Automatic Dialing-
2 Announcing Devices Act, the Emergency Telephone Communications Systems
3 Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-Per-Call
4 Regulation Act, the Nebraska Telecommunications Regulation Act, the
5 Nebraska Telecommunications Universal Service Fund Act, the
6 Telecommunications Relay System Act, the Telephone Consumer Slamming
7 Prevention Act, and sections 86-574 to 86-580;

8 (9) Transmission lines and rights-of-way pursuant to sections 70-301
9 and 75-702 to 75-724;

10 (10) Water service pursuant to the Water Service Regulation Act;~~and~~

11 (11) Jurisdictional utilities governed by the State Natural Gas
12 Regulation Act. If the provisions of Chapter 75 are inconsistent with the
13 provisions of the State Natural Gas Regulation Act, the provisions of the
14 State Natural Gas Regulation Act control; and -

15 (12) Electric utilities pursuant to the Electric Customer Protection
16 Act.

17 Sec. 22. Section 75-118, Revised Statutes Cumulative Supplement,
18 2014, is amended to read:

19 75-118 The commission shall:

20 (1) Fix all necessary rates, charges, and regulations governing and
21 regulating the transportation, storage, or handling of household goods
22 and passengers by any common carrier in Nebraska intrastate commerce;

23 (2) Make all necessary classifications of household goods that may
24 be transported, stored, or handled by any common carrier in Nebraska
25 intrastate commerce, such classifications applying to and being the same
26 for all common carriers;

27 (3) Prevent and correct the unjust discriminations set forth in
28 section 75-126;

29 (4) Enforce all statutes and commission regulations pertaining to
30 rates and, if necessary, institute actions in the appropriate court of
31 any county in which the common carrier involved operates except actions

1 instituted pursuant to sections 75-140 and 75-156 to 75-158. All suits
2 shall be brought and penalties recovered in the name of the state by or
3 under the direction of the Attorney General;~~and~~

4 (5) Enforce the Major Oil Pipeline Siting Act and the State Natural
5 Gas Regulation Act; and -

6 (6) Review electric utility rate increases pursuant to the Electric
7 Customer Protection Act.

8 Sec. 23. Original section 75-118, Revised Statutes Cumulative
9 Supplement, 2014, and section 75-109.01, Revised Statutes Supplement,
10 2015, are repealed.