

LEGISLATIVE BILL 663

Approved by the Governor June 3, 1987

Introduced by Withem, 14; Korshoj, 16; Landis, 46;
Hartnett, 45

AN ACT relating to municipalities; to amend section 84-1413, Reissue Revised Statutes of Nebraska, 1943, and sections 59-1617 and 84-1411, Revised Statutes Supplement, 1986; to adopt the Municipal Natural Gas Regulation Act; to exempt municipalities from the application of certain laws; to change provisions relating to public meetings; to eliminate provisions relating to natural gas rate increases; to provide severability; to repeal the original sections, and also sections 18-414 and 18-415, Revised Statutes Supplement, 1986; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 23 of this act shall be known and may be cited as the Municipal Natural Gas Regulation Act.

Sec. 2. As used in the Municipal Natural Gas Regulation Act, unless the context otherwise requires:

(1) Area rate shall mean the rate charged for natural gas service to a class of customers located within a municipality as determined from the cost of service for the rate area;

(2) Base year shall consist of either the most recent calendar year or a consecutive twelve-month period ending not more than six months prior to the date of filing;

(3) Countable days shall mean those calendar days not subject to suspension as provided for in the Municipal Natural Gas Regulation Act;

(4) Customer shall mean any noninterruptible purchaser of natural gas within a municipality with requirements of less than one hundred thousand cubic feet of natural gas per day;

(5) Date of filing shall mean the first day of the month following the date the rate filing is received by the office of the clerk of each municipality in the rate area;

(6) Date of final action shall be the date upon which the last municipality in a rate area adopts

or fails to adopt a rate ordinance under a rate filing or the one hundred eightieth day, counted as provided in section 7 of this act, whichever comes first;

(7) District court shall mean the district court of Lancaster County;

(8) Judicial review shall mean, but shall not be limited to, injunctive relief and other equitable relief;

(9) Interim rates shall mean the newly filed rates charged by a utility for natural gas after the ninetieth countable day following the date of filing but prior to final action by the municipality on the rate filing;

(10) Municipality shall mean any city of the primary class, city of the first class, city of the second class, or village in Nebraska or, when the context requires, any combination of the same acting in concert in a properly created rate area;

(11) Natural gas shall mean either unmixed natural gas or any mixture of natural gas with one or more artificial gases and other hydrocarbons;

(12) Rate shall mean every compensation, charge, fare, toll, tariff, rental, late payment charge, or classification which is demanded, observed, charged, or collected by a utility for natural gas and any rules affecting any such compensation, charge, fare, toll, tariff, rental, late payment charge, or classification;

(13) Rate area shall mean the municipalities within a geographic area within the state which is properly established under section 6 of this act for the purpose of determining an area rate applicable to the customers within the municipalities within the rate area. A rate area shall be served by a single utility through a common pipeline system from the same natural gas supply source within the common system for which the utility has similar costs for serving customers;

(14) Rate filing shall mean the formal application by a utility for a change in rates together with the information required by section 11 of this act;

(15) Test year shall mean 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; and

(16) Utility shall mean any investor-owned utility maintaining and operating a natural gas distribution system within a municipality in this state.

Sec. 3. A utility shall be subject to (1) all rights, powers, and authority now or hereafter possessed by a municipality to regulate rates charged by the

utility for natural gas service to customers within the municipality, (2) all provisions of the Municipal Natural Gas Regulation Act, and (3) when not inconsistent with subdivision (1) or (2) of this section, the provisions of any validly executed franchise agreement.

Sec. 4. (1) Every rate made, demanded, or received by any utility shall be just and reasonable. Rates shall not be unreasonably preferential or discriminatory and shall be reasonably consistent in application to a class of customers and to a rate area. Rates negotiated under subsection (3) of this section shall not be considered discriminatory.

(2) No utility shall, as to rates or service, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage.

(3) A utility may negotiate price and other contract terms with customers whose natural gas requirements exceed fifty thousand cubic feet per day.

Sec. 5. A utility shall provide to each municipality it serves, for informational purposes, copies of rate schedules for all rates charged customers and the requirements for service under such schedules within the municipality. The schedules shall also show the natural gas supply costs and natural gas supply cost adjustments included in the total end rate.

Sec. 6. (1) Except as provided in subsection (5) of this section, each utility providing service to customers within a municipality in this state which intends to include a municipality within a rate area shall file notice of proposed area boundaries with the office of the clerk of each affected municipality. There shall be no filing fee charged for filing the notice. The notice shall include an explanation of how the boundaries of the rate area were determined and a map showing the boundaries of the rate area. Each time a new rate area is established or the boundaries of a rate area are changed, all municipalities in the rate area shall receive notice.

(2) A municipality shall have sixty days after the notice of proposed area boundaries is filed to accept or reject its inclusion within the rate area. Failure of the municipality to accept or reject its inclusion within the boundaries of the proposed rate area within the sixty-day period shall be deemed acceptance. Rejection of the boundaries may be appealed by the utility to the district court. The court shall determine the reasonableness of the inclusion of the

municipality within the rate area or the reasonableness of the boundaries. If more than one municipality within a rate area rejects the boundaries, all appeals by the utility shall be joined in a single action except upon good cause shown by a municipality to have its rejection heard separately. The court may accept or reject the boundaries but may not draft boundaries of its own.

(3) After a rate area has been accepted, (a) all rate filings shall be initiated simultaneously in each municipality within the rate area and (b) area rates shall be deemed appropriate for each municipality within the rate area.

(4) If area rates are applied to municipalities in a rate area which do not have uniform rates for customers on the effective date of this act, the rates in each municipality shall be adjusted in a manner which equalizes the rates in all municipalities in the rate area. Such equalization of rates shall be established by January 1, 1992, or in the first rate case filed after such date by the utility under section 10 of this act.

(5) Any utility proposing to increase rates on an areawide basis within ninety days of the effective date of this act shall be permitted to make a rate filing based on proposed area boundaries before a final determination of area boundaries is made as provided in this section. The requirements of the Municipal Natural Gas Regulation Act shall be complied with fully, except that the time periods provided for proposed rate area boundary determinations in this section and the time periods provided for area rate filings shall run concurrently and not consecutively. In the event that the rate area boundaries are ultimately determined to be other than those that formed the basis for the rate filing, the municipality may request that an amended rate filing based on the final rate area boundaries be provided. In no event shall the filing of the notice of proposed area boundaries provided for in subsection (1) of this section be made later than the date of filing of the rate filing. Nothing in this subsection shall suspend the time periods provided for in section 7 of this act from the date of the rate filing. Rate filings under this subsection shall not be subject to section 8 of this act, except that a utility shall provide as much prior notice of a proposed rate filing as it reasonably can.

Sec. 7. (1) No utility shall impose, charge, or collect any rate upon its customers until such time as any proposed rate has been finally determined, except

that a utility shall have the right to collect interim rates, subject to refund, if the municipality has not taken final action to allow the rate increase within ninety countable days of the date of filing for the increase. The rates requested in the rate filing shall become final and no longer subject to refund if the municipality has not taken final action within one hundred eighty countable days of the date of filing.

(2) If the utility takes timely action to initiate judicial review of the rates adopted by a municipality as provided in section 16 of this act, the utility shall be permitted to continue to collect interim rates from the date the rates are adopted by the municipality until a rate ordinance adopted by the municipality is affirmed by the district court or accepted by the utility subject to refund as provided in this section.

(3) Upon final order of the district court, when no further appeal to the Supreme Court is pursued, or upon acceptance by the utility of a lower rate than that being collected, a utility shall, within sixty days of such final order or acceptance, refund the difference between the rate found proper or agreed to and the rate collected, plus interest on such amount as provided in subsection (4) of this section.

(4) Any amounts refunded pursuant to this section shall bear interest fixed at a rate equal to one and one half percentage points above the rate, calculated pursuant to section 45-103, in effect on the date of final determination of the rates by the municipality.

(5) Upon final determination of rates following the exhaustion of all appeals, the utility shall be permitted to recover the amount of revenue which would have been produced had the finally determined rates been in effect throughout the period following the decision by the district court until the final rates were adopted by the municipality. In the event that the revenue actually collected by the utility through interim rates is less than that which would have been collected had the final rates been effective throughout such period, the utility shall be permitted to recover the deficiency plus interest at the rate provided in this section through a surcharge on customer billings over a reasonable period not to exceed twelve months. In the event that the revenue actually collected by the utility through interim rates exceeds that which would have been collected had the final rates been effective throughout such period, the utility shall

refund the excess with interest as provided in this section.

Sec. 8. The utility shall notify the municipality of its intent to change the rates charged to customers in the municipality under the provisions of the Municipal Natural Gas Regulation Act by filing a notice of proposed filing with the office of the clerk of the municipality at least sixty days prior to the date of filing of any request for change.

Sec. 9. (1) A utility shall be permitted to file and implement natural gas supply-cost-adjustment rate schedules which provide for adjustment and collection of rates to reflect changes in natural gas supply costs for natural gas sold in the municipality.

(2) The municipality may review natural gas supply-cost-adjustment rate schedules. The municipality shall initiate such review by resolution of the governing body and shall provide a copy of the resolution to the utility at least thirty days prior to the hearing on the issue. The municipality may request and the utility shall provide all documents and workpapers supporting the actually purchased natural gas adjustment amounts charged customers. The municipality shall give the utility at least thirty days' prior notice of the time and place of the hearing and a copy of the proposed findings of fact. If after review and hearing the municipality concludes that the utility is charging more than the amount allowed by the natural gas supply-cost-adjustment rate schedule, the municipality shall order the utility to refund excess amounts collected from customers plus interest at the rate provided for in section 7 of this act. The utility may initiate judicial review of such an order by a municipality, and if it does so, the order of the municipality shall not take effect during the pendency of such review. The provisions of subsection (5) of section 7 of this act shall be applicable to this section.

(3) Any refund, including interest thereon, if any, received by the utility with respect to natural gas purchased under a Federal Energy Regulatory Commission natural gas tariff at the border station of a municipality related to increased rates paid by the utility, subject to refund, and applicable to natural gas purchased for resale within the municipality shall be passed on to presently served customers by an appropriate adjustment shown as a credit on subsequent bills during a period selected by the utility, not to exceed twelve months, or by a cash refund at the option

of the utility. Refunds unpaid after sixty days from the date of receipt by the utility shall bear interest at the rate set in section 45-103.

(4) Nothing contained in this section shall change or modify existing natural gas supply-cost-adjustment rate provisions in an ordinance or franchise agreement without the review specified in subsection (2) of this section. The municipality may initiate an action to change the purchased natural gas supply-cost-adjustment rate schedules under section 18 of this act.

Sec. 10. (1) If a utility desires to change its rates for natural gas service within a municipality other than to reflect an adjustment for natural gas supply costs, the utility shall present to the municipality copies of present and proposed rate schedules and information supporting the proposed rates for natural gas service within the municipality as required by section 11 of this act.

(2) The municipality may charge and collect a filing fee for a rate filing. Such fee shall not exceed: (a) For a city of the primary class, two thousand dollars; (b) for a city of the first class, one thousand dollars; (c) for a city of the second class, three hundred dollars; and (d) for a village, seventy-five dollars.

(3) Within forty-five days after the date of filing, a municipality may reject a rate filing only on the grounds that the information required by section 11 of this act has not been filed with the municipality. The utility shall be given at least seven days' prior written notice of any meeting to consider rejection of the utility's rate filing. Rejection shall be made by resolution of the municipality and shall state the reasons upon which the rejection is based. In the event of any such rejection, a copy of the written resolution shall be delivered to the utility within seven days after final action by the municipality. After receipt of the resolution, the utility shall have fifteen days to remedy the deficiencies stated in such resolution and the time periods under section 7 of this act shall not be suspended during such fifteen-day period. If the municipality has not received the information to cure the deficiencies within the fifteen-day period or within such additional period of time as may be agreed to by the utility and the municipality, the filing shall be deemed to be rejected and the utility shall be required to initiate a new rate filing.

(4) The utility may appeal from the decision

of the municipality rejecting a rate filing. The appeal shall be to the district court.

(5) If a rate filing is rejected and the rejection is appealed, the utility may place the interim rates into effect pursuant to the time periods specified in section 7 of this act, subject to refund, pending district court determination. If the utility appeals the rejection of the filing and if the court rules that the rejection was unreasonable, the times specified in section 7 of this act shall run from the date of filing.

Sec. 11. When making a rate filing, the utility shall provide to the municipality three copies of the most recent annual report to the stockholders, or six copies in the case of a filing with a city of the primary class, and three copies of the following information, verified by a statement under oath by an officer of the utility, or six copies in the case of a filing with a city of the primary class:

(1) A description of the base year and test year;

(2) A financial summary showing aggregate amounts for rate base, operating revenue, operating expenses, and rate of return for the base year and test year;

(a) Using natural gas rates currently in effect; and

(b) Using proposed natural gas rates;

(3) Except as provided in subsection (2) of section 13 of this act, rate-base schedules showing beginning and ending balances for the base year and test year of:

(a) Utility plant and accumulated depreciation and amortization showing the balances by functional account totals;

(b) Working capital, showing the manner in which it is calculated;

(c) Other rate-base components; and

(d) Allocated rate-base components showing the manner in which the components are calculated;

(4) Operating expense schedules for the base year and test year;

(5) Rate-of-return and cost-of-capital schedules showing:

(a) Long-term debt, preferred stock, and common equity amounts, ratios, and percentage cost rates for the base year and test year; and

(b) Long-term debt, preferred stock, and common equity amounts at the beginning and end of the base year and test year; and

(6) Operating revenue schedules showing:

(a) Number and classification of customers, volume of sales, and operating revenue by customer classes for the base year on an unadjusted basis; and

(b) Number and classification of customers, volume of sales, and operating revenue by customer classes for the test year on a normalized basis:

(i) Using current rates; and

(ii) Using proposed rates.

Sec. 12. (1) The municipality, in the exercise of its power under the Municipal Natural Gas Regulation Act to determine just and reasonable rates for public utilities, shall give due consideration to the public need for adequate, efficient, and reasonable natural gas service and to the need of the utility for revenue sufficient to enable it to meet the cost of furnishing the service, including adequate provisions for depreciation of its utility property used and useful in rendering service to the public, and to earn a fair and reasonable return upon the investment in such property.

(2) Cost of service shall include operating expenses and a fair and reasonable return on rate base, less appropriate credits.

(3) In determining a fair and reasonable return on the rate base of a utility, a rate of return percentage shall be employed that is representative of the utility's weighted average cost of capital including, but not limited to, long-term debt, preferred stock, and common equity capital.

(4) The rate base of the utility shall consist of the utility's property, used and useful in providing utility service, including the applicable investment in utility plant, less accumulated depreciation and amortization, allowance for working capital, such other items as may be reasonably included, and reasonable allocations of common property, less such investment as may be reasonably attributed to other than investor-supplied capital unless such deduction is otherwise prohibited by law.

(5) Operating expenses shall consist of expenses prudently incurred to provide natural gas service including a reasonable allocation of common expenses.

(6) In determining the cost of service, the municipality shall give effect to all costs and allocations upstream of the town border station of the utility as reflected in the rate schedules approved by the Federal Energy Regulatory Commission or its

successor.

Sec. 13. (1) For utilities using a base year adjusted for known and measurable changes, the utility shall provide at the time of filing explanations of the adjustments used to arrive at known and measurable changes. For utilities using a projected test year, the utility shall provide at the time of filing the assumptions underlying its projected test year.

(2) A municipality may not reject a utility's rate filing for failing to provide beginning balances for the rate base of the base year and test year under subdivision (3) of section 11 of this act if the utility states at the time of filing that the rate base which it proposes to use for ratemaking purposes properly matches the number of customers, sales volume, expenses, and any other relevant factors and provides supporting explanations and data.

Sec. 14. (1) After a rate filing has been filed with a municipality, the municipality may request supplemental information from the utility relevant to the rate filing. As used in this section, relevant or relevance shall relate only to the limitations on information requests that are authorized by this section. Relevant supplemental information shall relate to factors involved in setting appropriate rates. The utility shall not be required to perform analyses or analytical studies of information in responding to requests for supplemental information. Historical data more than one calendar year older than the date of the last general rate filing shall be presumed to be irrelevant except to the extent that such data was utilized by the utility in the rate filing. Requests for data related to the management, operations, and profitability of affiliated businesses or operations of the utility shall be presumed irrelevant except to the extent such requests relate to the question of whether the municipal customer is subsidizing the cost of the affiliate. Data from any reports or records or data required by the Federal Energy Regulatory Commission to be kept by the utility are presumed to be relevant. Any records of the utility used in filings or in the preparation of filings to the Federal Energy Regulatory Commission shall be open for inspection by the municipality or its agents at the utility's principal place of business during regular business hours.

(2) All supplemental information requests shall be made as soon as reasonably possible after the filing. The utility shall respond completely and faithfully to any relevant request for supplemental

information and shall make a good faith effort to respond within twenty days of receipt of such requests. Except as provided in subsection (3) of this section, failure to so respond shall suspend the running of the one-hundred-eighty-day time period provided for in section 7 of this act until the supplemental information is provided. Such suspension shall not affect the calculation of time for the imposition of interim rates.

(3) Requests for supplemental information made by a municipality shall be subject to appeal to the district court. The court shall review the request and enter an order requiring the utility to respond or rejecting the request based on the standards set forth in this section. Any appeal from a supplemental information request shall suspend the running of the one-hundred-eighty-day time period provided for in section 7 of this act during the pendency of such appeal unless the court rules that the request was irrelevant. Such suspension shall not affect the calculation of the time for the imposition of interim rates.

Sec. 15. Notice of filings for any rate increase under the Municipal Natural Gas Regulation Act shall be given within thirty days of filing by publication by placing a notice to the public of the proposed change in a newspaper having general circulation in the municipality, except that a utility may provide notice to the public by mailing such notice by United States mail, postage prepaid, to the billing address of each directly affected customer or by including the notice in such customer's bill in a conspicuous form. An affidavit signed by an official of a utility and describing the method of publication of the notice shall be filed with the office of the clerk of the municipality. The notice shall contain:

- (1) The name and address of the utility;
- (2) The dollar amount of the increase as it pertains to the typical residential customer;
- (3) The percentage amount of the increase; and
- (4) The name and address of the clerk of the municipality.

Sec. 16. (1) A report specifying the reasons supporting any action recommended to the municipality by the municipal staff or any agent or employee employed by or on behalf of the municipality to assist it in rate regulation shall be provided to the municipality and the utility within one hundred twenty countable days of the date of the rate filing. Relevant information requests regarding the report may be made by the utility to the municipality and shall be responded to as soon as

reasonably possible prior to the date for the filing of the rebuttal.

(2) Within seven countable days after receipt of the report, the utility and the municipality identified in section 17 of this act may mutually agree to discuss resolution of the rate filing issues and may mutually agree to suspend the date of final action and time periods set forth in the Municipal Natural Gas Regulation Act for a period not to exceed thirty days.

(3) Within fourteen countable days after receipt of the report, the utility shall file its rebuttal. Relevant information requests regarding the rebuttal may be made by the municipality to the utility and shall be responded to as soon as reasonably possible prior to the area rate hearing provided for in this section.

(4) No sooner than seven days after the utility files its rebuttal, an area rate hearing shall be held in the municipality having the largest number of customers in the rate area. Such hearing shall be conducted by a hearing officer appointed by the municipality identified in section 17 of this act. Such hearing officer shall have experience in the conduct of hearings so as to insure the fair, impartial, and expeditious conduct of the proceedings and the creation of a record of the proceedings. The utility shall be given written notice of such rate hearing and the name of the hearing officer by the end of the one-hundred twenty-eighth countable day after the date of filing. The municipalities and the utility shall be granted the opportunity at such hearing to call witnesses, present evidence, cross-examine witnesses, and argue the evidence. Prior to such hearing, the hearing officer shall establish procedures for the conduct of the hearing to comply with this provision. The utility shall present as evidence at the hearing all the information which it desires to have considered by the municipality in its consideration of the rates to be adopted. Following the hearing, the utility and the municipalities shall provide to the hearing officer their proposed findings of fact and conclusions of law. A certified court reporter shall be present at the hearing and shall prepare a transcript of the proceedings.

(5) The official record of the hearing shall consist of the rate filing, all reports, all evidence presented by the utility and the municipalities, all documents and information presented at the hearing, the transcript of the proceedings, and the proposed findings

of fact and conclusions of law presented to the hearing officer by the municipalities and the utility. A copy of the official record shall be transmitted by the hearing officer to each municipality in the rate area.

(6) Following the hearing and within one hundred eighty countable days of the date of filing, each municipality within the rate area shall take final action on the rate filing by adopting findings of fact and conclusions of law and a rate ordinance based on such findings and conclusions. If the municipality does not take action within that one-hundred-eighty-countable-day period, the rates filed by the utility in its rate filing shall become final and no longer subject to refund. Notwithstanding any other provision of state law or any local ordinance, the adoption of a rate ordinance shall require no more than a vote of a majority of the elected members of any governing body of a municipality made at one public meeting after compliance with public notice requirements and a public hearing on the proposed ordinance.

(7) Within thirty days of the date of final action by the municipalities within a rate area, a utility may initiate proceedings for judicial review of the decision of any municipality in the rate area to the district court. At the time the utility initiates action for judicial review, it shall join in such action as parties all municipalities in the rate area whose actions are being challenged.

(8) In no event shall the district court render a decision upon a judicial review of municipal action later than one hundred eighty days after the filing of the action.

(9) The utility shall, within thirty days of the date of final action, unless it takes timely action to initiate judicial review, implement the rates established by the action of the municipality and shall, within sixty days of such action, make refunds, if any, with interest as provided in section 7 of this act.

Sec. 17. (1) There is hereby created the Municipal Natural Gas Regulation Revolving Loan Fund which shall be used to make loans to municipalities for rate regulation and to pay the costs of administration. The fund shall consist of money appropriated from the Nebraska Energy Resource Fund and money from repayment of loans. The fund shall be administered by the Policy Research Office which shall adopt and promulgate rules and regulations to carry out this subsection. The rules and regulations shall include:

(a) Loan application procedures and forms; and

(b) Fund-use monitoring and quarterly accounting of fund use.

Applicants for a loan from the fund shall provide a budget statement which specifies the proposed use of the loan proceeds. Such proceeds may only be used for the costs and expenses incurred by the municipality to analyze rate filings and establish areawide rates and to finance litigation costs of any appeals. Such costs and expenses may include the cost of rate consultants, attorneys, hearing officers, preparation of transcripts and hearing records provided for by the Municipal Natural Gas Regulation Act, expert witnesses, and any other necessary costs related to the conduct and administration of the hearing provided for in subsection (4) of section 16 of this act. One loan may be made under this subsection to each rate area, and such loan shall be made to the applicant representing the largest number of customers. All loans made under this subsection shall be paid by the utility to the Policy Research Office within thirty days of being billed by the office. The utility may recover the amount paid on a loan through a special surcharge on customers which may be billed on the monthly statements for up to a twelve-month period to be shown on the statements as a charge for rate regulation expense.

(2) The Municipal Natural Gas Regulation Revolving Loan Fund shall be audited as part of the regular audit of the Policy Research Office budget and copies of the audit shall be available to all municipalities and any utility supplying natural gas in this state.

(3) Any money in the Municipal Natural Gas Regulation Revolving Loan Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269. If the fund balance exceeds four hundred thousand dollars, the income on the money in the fund shall be credited to the permanent school fund until the balance of the Municipal Natural Gas Regulation Revolving Loan Fund falls below such amount.

(4) A municipality which receives a loan under this section shall be responsible to provide for the opportunity for all other municipalities to participate in all rate area activities. Such municipality shall not exclude any other municipality in the rate area from the information or benefits accruing from the use of the loan funds.

Sec. 18. (1) Once in any thirty-six-month period, one or more municipalities in each rate area may

initiate a proceeding for a review and possible adjustment in rates to conform such rates to the standards of section 12 of this act by the introduction of a resolution for such purpose. The municipality shall provide to the utility seven days' prior written notice of the meeting at which such resolution is to be considered and a copy of the proposed resolution. Following adoption of the resolution, the clerk of the municipality shall send a copy of the resolution by certified mail to the utility. The municipality may request the information required by section 11 of this act to be provided by the utility within one hundred twenty days of the receipt of the notice unless otherwise agreed. Following filing of the information required in section 11 of this act, the municipality may make additional requests as provided in section 14 of this act. The utility shall be provided with a copy of any reports and analyses prepared for the municipality in its consideration of a rate adjustment. To the fullest extent possible, the general procedures provided for in subsections (1) to (6) of section 16 of this act shall be followed by the municipality and the utility, except that calculations of time periods shall be from the date on which the municipality receives the information specified in section 11 of this act and not from the date of filing. Nothing in this subsection shall require the participation in the proceedings of every municipality in the rate area. During the pendency of all proceedings under this section and through the period of judicial review of those proceedings, the rates in effect prior to the time the municipality adopts the resolution provided for in this section shall remain in effect. The provisions of subsection (5) of section 7 of this act shall be applicable to this section.

(2) Except as provided in the Municipal Natural Gas Regulation Act, no municipality shall be entitled to any filing fees or assessments against the utility when the municipality initiates a rate adjustment nor shall the municipality receive a loan under section 17 of this act for such purposes. If the utility initiates judicial review of the decision of a municipality under this section and the court upholds the decision of the municipality, the court may award the municipality litigation expenses to include attorney's fees, expert witness fees, consultant fees, and such other related expenses as the court finds to be properly related to the judicial review. Any action for judicial review shall be initiated in the district

court. If appropriate resolutions are adopted by municipalities representing seventy per cent or more of the customers in the rate area initiating a proceeding for review and possible adjustment of natural gas rates, the applicant representing the largest number of customers shall be given a loan for such purposes upon the terms of section 17 of this act.

Sec. 19. To the extent not inconsistent with the provisions of the Municipal Natural Gas Regulation Act, the rules of civil procedure and discovery shall apply. Review of the decisions of the district court under the act shall be by appeal to the Supreme Court.

Sec. 20. All actions and proceedings under the Municipal Natural Gas Regulation Act which are heard by the district court or the Supreme Court shall be expedited for hearing and decision by the appropriate court as soon as the issues and parties are properly before such court. Such proceedings and actions shall be preferred over all other civil cases irrespective of position on the calendar.

Sec. 21. (1) Every utility shall be required to keep and render its books, accounts, papers, and records accurately and truthfully in accordance with the system of accounts prescribed by the Federal Energy Regulatory Commission or its successor.

(2) All accounting information provided by utilities to municipalities shall be presented in accordance with the system of accounts prescribed by the Federal Energy Regulatory Commission.

Sec. 22. Customers of the utility in a rate area shall have the right to appear, participate, and present testimony at the hearing provided for in section 16 of this act and shall have such evidence considered by the municipalities in the rate determination. When the interests of any customers are substantially similar, the hearing officer may provide that such class of customers join in presentation of the evidence at the hearing so as to expedite the proceedings. Customers who desire to present testimony and participate at the hearing shall follow the requirements for municipal staff or agents as provided in subsection (1) of section 16 of this act. All customers shall be provided with notice of these rights, which notice shall be provided by the utility in the notice required by section 15 of this act.

Sec. 23. The provisions of the Municipal Natural Gas Regulation Act shall not be enforced retroactively from the effective date of this act. Any rate filing made prior to such date shall be governed by

the law existing on the date the rate filing was made.

Sec. 24. That section 59-1617, Revised Statutes Supplement, 1986, be amended to read as follows:

59-1617. (1) Except as provided in subsection (2) of this section, ~~sections 59-1601 to 59-1622~~ the Consumer Protection Act shall not apply to actions or transactions otherwise permitted, prohibited, or regulated under laws administered by the Director of Insurance, the Public Service Commission, the Federal Energy Regulatory Commission, or any other regulatory body or officer acting under statutory authority of this state or the United States. ~~Sections 59-1601 to 59-1622~~ The Consumer Protection Act and federal antitrust laws shall not extend to or apply to (a) any actions or transactions on the part of any municipality or group of municipalities while engaged in regulating natural gas rates pursuant to the Municipal Natural Gas Regulation Act or section 16-679 or 17-528.02 or as otherwise permitted by law or (b) any actions or transactions on the part of any public power and irrigation district, public power district, electric membership association, or joint authority created pursuant to the Joint Public Power Authority Act or of any agency created pursuant to the Municipal Cooperative Financing Act, cooperative, or municipality engaged in furnishing electrical service to customers at retail or wholesale if such actions or transactions are otherwise permitted by law.

(2) Actions and transactions prohibited or regulated under the laws administered by the Director of Insurance shall be subject to section 59-1602 and all statutes which provide for the implementation and enforcement of section 59-1602. Actions and transactions prohibited or regulated under the laws administered by the Board of Examiners in Embalming and Funeral Directing or administered by the Department of Agriculture and actions and transactions relating to loan brokers which are prohibited or regulated pursuant to sections 45-189 to 45-193 and administered by the Department of Banking and Finance shall be subject to ~~sections 59-1601 to 59-1622~~ the Consumer Protection Act.

No penalty or remedy shall result from a violation of ~~sections 59-1601 to 59-1622~~ the Consumer Protection Act except as expressly provided in such sections.

Sec. 25. That section 84-1411, Revised Statutes Supplement, 1986, be amended to read as follows:

84-1411. (1) Each public body shall give

reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice, or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Except for items of an emergency nature, the agenda shall not be enlarged altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(3) When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of subsection (2) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

Sec. 26. That section 84-1413, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-1413. (1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted, or if the member was absent

or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a municipality ~~city~~ which utilizes an electronic voting device which allows the yeas and nays of each ~~member~~ member of the city council or village board to be readily seen by the public.

(3) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.

(4) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(5) Minutes shall be written and available for inspection within ten working days, or prior to the next convened meeting, whichever occurs earlier.

Sec. 27. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 28. That original sections 84-1413, Reissue Revised Statutes of Nebraska, 1943, and sections 59-1617 and 84-1411, Revised Statutes Supplement, 1986, and also sections 18-414 and 18-415, Revised Statutes Supplement, 1986, are repealed.

Sec. 29. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.