

**DEPARTMENT OF JUSTICE**

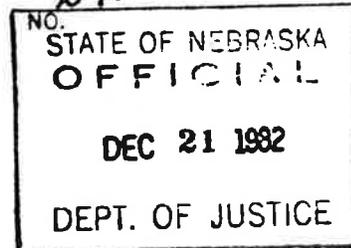
STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

PAUL L. DOUGLAS  
Attorney General  
GERALD S. VITAMVAS  
Deputy Attorney General  
JOHN R. THOMPSON  
Deputy Attorney General

December 14, 1982

Senator William E. Nichol  
Room 1107 State Capitol  
Lincoln, Nebraska 68509



Dear Senator Nichol:

This is in response to your letter of November 8, 1982, in which you state that you are preparing legislation to clarify Nebraska Revised Statute, Section 70-655. In that letter you ask whether Nebraska Public Power District (NPPD) has statutory authority to charge different rates among cities within the District, depending upon whether or not capitol improvements are made to the particular city's electrical distribution system.

We have concluded that NPPD could, under Neb.Rev.Stat. §70-655 (Reissue 1981), vary its rates among cities within the District if there is a just and reasonable basis for doing so.

Neb.Rev.Stat. §70-655 (Reissue 1981) provides that:

The board of directors of any district organized under or subject to Chapter 70, article 6, shall have the power and be required to fix, establish, and collect adequate rates, tolls, rents, and other charges, for electrical energy, water service, water storage, and for any and all other commodities, services, or facilities sold, furnished, or supplied by the district, which rates, tolls, rents, and charges shall be fair, reasonable, nondiscriminatory, and so adjusted as in a fair and equitable manner to confer upon and distribute among the users and consumers of commodities and services furnished or sold by the district the benefits of a successful and profitable operation and conduct of the business of the district.

Although §70-655 requires rates to be "nondiscriminatory," that statute would not absolutely prohibit variable rates among different users, or consumers, within the Nebraska Public Power District.

Assistants  
Bernard L. Packett  
Neil Kammerichr  
Harold J. Mosher

Marilyn B. Hutchinson  
Patrick T. O'Brien  
J. Kirk Brown

Ruth Anne E. Galter  
G. Rodenc Anderson  
Dale A. Comer

Mark D. Starr  
Dale D. Brodkey  
Frank J. Hutfless

Senator William E. Nichol  
November 30, 1982  
Page -2-

As our Supreme Court pointed out in the case of Erickson v. Metro Utilities District, 171 Neb. 654, 107 N.W.2d 324 (1961):

"[T]hose engaged in serving the public cannot make unreasonable and unjust discrimination, either in service or rates, among their patrons. Discriminations between patrons by a public service company, including discriminations as to rates, are invalid, provided the discrimination is an unjust one. . . ."

The charges must be equal to all for the same service under like circumstances.

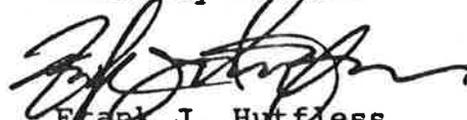
The public duty of a municipal corporation is to furnish a service at reasonable rates to all the inhabitants of the municipal corporation, and to charge each inhabitant the same price it charges every other inhabitant for the same service under the same or similar conditions. American Water Works Company v. State ex rel. Walker, 46 Neb. 194 (1895).

Of course, whether or not cities within the district are sufficiently dissimilar with respect to their power requirements to justify a selective rate, or classification, by NPPD is subject to a case-by-case determination. Nevertheless, such classification would be permissible under the circumstances described above, and under §70-655.

Until such time as we might have an opportunity to review legislation which you may propose pertaining to the herein matter, we are unable to comment regarding the constitutional sufficiency of such legislation, or to determine whether such legislation conflicts with §70-655.

Very truly yours,

PAUL L. DOUGLAS  
Attorney General



Frank J. Hutfless  
Assistant Attorney General

FJH:cw

cc: Patrick J. O'Donnell  
Clerk of the Legislature  
2018 State Capitol  
Lincoln, Nebraska 68509