

**ADOPTED REGULATION OF THE
PUBLIC UTILITIES COMMISSION OF NEVADA**

LCB File No. R110-15

Effective June 28, 2016

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §1, NRS 703.025, 704.210, 704.661, as amended by section 2 of Senate Bill No. 87, chapter 230, Statutes of Nevada 2015, at page 1094, and NRS 704.751, as amended by section 3 of Senate Bill No. 87, chapter 230, Statutes of Nevada 2015, at page 1095; §§2 and 3, NRS 703.025, 704.210 and 704.661, as amended by section 2 of Senate Bill No. 87, chapter 230, Statutes of Nevada 2015, at page 1094; §4, NRS 703.025, 704.210, 704.741, 704.751, as amended by section 3 of Senate Bill No. 87, chapter 230, Statutes of Nevada 2015, at page 1095, and NRS 704.785; §§5 and 7, NRS 703.025, 704.210 and 704.741; §§6 and 8, NRS 703.025, 704.210, 704.7322 and 704.741.

A REGULATION relating to public utilities; providing for the modification by the Public Utilities Commission of Nevada of the action plans and amendments to the action plans of certain utilities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This regulation provides for the modification by the Public Utilities Commission of Nevada of the action plans of certain utilities that furnish water or sewage service or electricity in this State. This regulation further deems the plans and amendments to the plans to be approved by the Commission only as to that portion of the plan or amendment accepted by the Commission as filed or modified with the consent of the utility. (NRS 704.110, 704.661, 704.741, 704.751; NAC 704.5682, 704.5687, 704.9494, 704.9497, 704.9518, 704.9519)

Section 1. NAC 703.801 is hereby amended to read as follows:

703.801 1. A petition for reconsideration must specifically:

(a) Identify each portion of the challenged order which the petitioner deems to be unlawful, unreasonable or based on erroneous conclusions of law or mistaken facts; and

(b) Cite those portions of the record, the law or the rules of the Commission which support the allegations in the petition. The petition may not contain additional evidentiary matter or require the submission or taking of evidence.

2. A petition for rehearing must:

(a) Allege that an order is in error because of an incomplete or inaccurate record.

(b) Specifically set forth the nature and purpose of any additional evidence to be introduced.

(c) Show that such evidence is not merely cumulative and could not have been introduced at the hearing.

3. ~~1A~~ *Except as otherwise provided in this subsection, a* petition for reconsideration or rehearing of an order must be filed with the Commission and served upon all parties of record within 10 business days after the effective date of the order. *If a utility files a notice pursuant to subsection 5 of NRS 704.661, as amended by section 2 of Senate Bill No. 87, chapter 230, Statutes of Nevada 2015, at page 1094, or subsection 1 or 2 of NRS 704.751, as amended by section 3 of Senate Bill No. 87, chapter 230, Statutes of Nevada 2015, at page 1095, a petition for reconsideration or rehearing of an order must be filed with the Commission and served upon all parties of record not later than 10 business days after the date the notice is filed.*

4. An answer to a petition for reconsideration or rehearing may be filed with the Commission by any party of record in the proceeding within 10 business days after the filing of the petition. The answer must be confined to the issues contained in the petition. The answer must be served upon all parties of record. Proof of service must be attached to the answer.

5. The Commission will grant or deny a petition for reconsideration or rehearing within 40 days after the date of its filing. If no action is taken by the Commission within this time, the petition shall be deemed denied.

6. Unless otherwise ordered by the Commission, the filing of a petition for reconsideration or rehearing or the granting of such a petition does not excuse compliance with, or suspend the effectiveness of, the challenged order.

7. If the Commission grants a petition for reconsideration, it will reexamine the record and order with regard to the issues on which reconsideration was granted and issue a modified final order or reaffirm its original order.

8. If the Commission grants a petition for rehearing, it will, within 20 days thereafter, conduct a hearing to allow the parties to present additional evidence and will issue a modified final order or reaffirm its original order.

9. A modified final order of the Commission issued upon reconsideration or rehearing will incorporate those portions of the original order which are not changed or modified by the modified final order. A modified final order is the final decision of the Commission.

Sec. 2. NAC 704.5682 is hereby amended to read as follows:

704.5682 1. The Commission will:

(a) Issue an order approving the action plan of a utility as filed; ~~for~~

(b) *Issue an order modifying the action plan of a utility; or*

(c) Specify those parts of the action plan that the Commission considers inadequate.

2. *An action plan shall be deemed to be approved by the Commission only as to that portion of the action plan accepted as filed or modified with the consent of the utility pursuant to subsection 5 of NRS 704.661, as amended by section 2 of Senate Bill No. 87, chapter 230, Statutes of Nevada 2015, at page 1094.*

3. If the Commission approves the action plan of the utility, the Commission will include in the approval of the action plan its determination that the elements contained in the action plan are

prudent. The Commission will make a determination that the elements of the action plan are prudent if:

- (a) The action plan maximizes the utility's water supply and wastewater treatment capacities for the benefit of the utility's customers; and
- (b) The utility demonstrates that the action plan balances the objectives of minimizing cost, mitigating risk and maximizing reliability of service for the term of the action plan.

~~13.1~~ **4.** If the Commission subsequently determines that any information relied upon when issuing its order approving *or modifying* the action plan was based upon information that was known or should have been known by the utility to be false when the information was presented, the Commission may revoke, rescind or otherwise modify its approval of the action plan.

Sec. 3. NAC 704.5687 is hereby amended to read as follows:

704.5687 1. The Commission will:

- (a) Issue an order approving the amendment to the action plan as filed; ~~for~~
- (b) *Issue an order modifying the amendment to the action plan; or*
- (c) Specify those parts of the amendment that the Commission considers inadequate.

2. *An amendment to the action plan shall be deemed to be approved by the Commission only as to that portion of the amendment to the plan accepted as filed or modified with the consent of the utility pursuant to subsection 5 of NRS 704.661, as amended by section 2 of Senate Bill No. 87, chapter 230, Statutes of Nevada 2015, at page 1094.*

3. If the Commission approves the amendment, the Commission will include in the approval of the amendment its determination that the amendment is prudent. The Commission will make a determination that the amendment is prudent if:

(a) The amendment maximizes the utility's water supply and wastewater treatment capacities for the benefit of the utility's customers; and

(b) The utility demonstrates that the amendment balances the objectives of minimizing cost, mitigating risk and maximizing the reliability of water supply and wastewater treatment for the term of the action plan.

~~13.1~~ 4. If the Commission subsequently determines that any information relied upon when issuing its order approving *or modifying* the amendment was based upon information that was known or should have been known by the utility to be false when the information was presented, the Commission may revoke, rescind or otherwise modify its approval of the amendment.

Sec. 4. NAC 704.9494 is hereby amended to read as follows:

704.9494 1. The Commission will issue an order:

(a) Approving the action plan of the utility as filed; ~~for~~

(b) *Modifying the action plan of the utility; or*

(c) If the plan is not approved as filed ~~is~~ *or modified*, specifying those parts of the action plan the Commission considers inadequate.

2. *An action plan shall be deemed to be approved by the Commission only as to that portion of the plan accepted as filed or modified with the consent of the utility pursuant to subsection 1 of NRS 704.751, as amended by section 3 of Senate Bill No. 87, chapter 230, Statutes of Nevada 2015, at page 1095.*

3. Approval by the Commission of an action plan constitutes a finding that the programs and projects contained in that action plan, other than the energy supply plan, are prudent, including, without limitation, construction of facilities, purchased power obligations, programs for energy efficiency and conservation and impacts of imputed debt calculations associated with renewable

energy contracts or energy efficiency contracts. If the Commission subsequently determines that any information relied upon when issuing its order approving *or modifying* the action plan was based upon information that was known or should have been known by the utility to be untrue or false at the time the information was presented, the Commission may revoke, rescind or otherwise modify its approval of the action plan.

~~13.1~~ 4. If, at the time that the Commission approves the action plan of the utility, the Commission determines that the elements of the energy supply plan are prudent, the Commission will specifically include in the approval of the action plan its determination that the elements contained in the energy supply plan are prudent. For the Commission to make a determination that the elements of the energy supply plan are prudent:

(a) The energy supply plan must not contain any feature or mechanism that the Commission finds would impair the restoration of the creditworthiness of the utility or would lead to a deterioration of the creditworthiness of the utility.

(b) The energy supply plan must optimize the value of the overall supply portfolio for the utility for the benefit of its bundled retail customers.

(c) The utility must demonstrate that the energy supply plan balances the objectives of minimizing the cost of supply, minimizing retail price volatility and maximizing the reliability of supply over the term of the plan.

➔ Failure by a utility to demonstrate that its energy supply plan is prudent in accordance with this subsection does not otherwise affect approval of the action plan, including the energy supply plan, and the utility may subsequently seek a determination that the energy supply plan is prudent in the appropriate deferred energy proceeding.

~~4.4~~ 5. A utility may recover all costs that it prudently and reasonably incurs in carrying out an approved action plan in the appropriate separate rate proceeding. A utility may recover all costs that are prudently and reasonably incurred in carrying out the approved energy supply plan, including deviations pursuant to subsection 1 of NAC 704.9504 approved by the Commission in the appropriate deferred energy application filed pursuant to NAC 704.023 to 704.195, inclusive.

Sec. 5. NAC 704.9496 is hereby amended to read as follows:

704.9496 1. In conjunction with ~~its~~ *the issuance by the Commission of a final* order ~~on~~ *approving or modifying* the action plan, the Commission will issue an order addressing the utility's proposed estimated rates for long-term avoided cost, including the methodology and limits to be used by the utility for its filing pursuant to NAC 704.9492. The Commission will consider the factors listed in 18 C.F.R. § 292.304(a), (b), (c) and (e) in its evaluation of the utility's proposed estimated rates for long-term avoided cost.

2. The utility shall file with the Commission the utility's estimated rates for long-term avoided cost within 60 days after the Commission issues its order pursuant to subsection 1 specifying the methodology for estimating the rates for long-term avoided cost.

3. The estimated rates for long-term avoided cost filed by the utility with the Commission pursuant to subsection 2 must:

(a) Be consistent with the methodology for estimating the long-term avoided cost approved by the Commission and be based upon the resource plan approved by the Commission.

(b) Unless otherwise ordered by the Commission, be consistent with the format set forth in subsections 2 and 3 of NAC 704.9492 and be limited to those rates proposed by the utility pursuant to subsection 5 of NAC 704.9492.

4. If required, the Commission will hold a hearing on the estimated rates for long-term avoided cost within 90 days after the utility files the estimated rates for long-term avoided cost pursuant to subsection 2. If a hearing is held, the Commission will issue an order on the matter within 45 days after the conclusion of the hearing.

5. Within 30 days after the date on which the Commission issues an order pursuant to subsection 4, the utility shall solicit proposals to provide the utility capacity or energy, or both, in a manner that complies with the methodology for estimating long-term avoided cost approved by the Commission.

6. Within 90 days after issuing a solicitation of proposals pursuant to subsection 5, the utility shall file with the Commission a report concerning the results of the solicitation.

7. The utility's rate for long-term avoided cost for each block must be the estimated rate for long-term avoided cost established pursuant to this section or the competitive rate solicited pursuant to subsection 5, whichever is lower.

Sec. 6. NAC 704.9497 is hereby amended to read as follows:

704.9497 1. The Commission will issue an order:

(a) Approving the emissions reduction and capacity replacement action plan of an electric utility that primarily serves densely populated counties as filed; ~~for~~

(b) *Modifying the emissions reduction and capacity replacement action plan of an electric utility that primarily serves densely populated counties; or*

(c) If the emission reduction and capacity replacement action plan of an electric utility that primarily serves densely populated counties is not approved as filed ~~for~~ *or modified*, specifying those parts of the action plan the Commission considers inadequate.

2. The emissions reduction and capacity replacement plan of an electric utility that primarily serves densely populated counties shall be deemed to be approved by the Commission only as to that portion of the plan accepted as filed or modified with the consent of the utility pursuant to subsection 1 of NRS 704.751, as amended by section 3 of Senate Bill No. 87, chapter 230, Statutes of Nevada 2015, at page 1095.

3. Approval by the Commission of an emissions reduction and capacity replacement action plan constitutes a finding that the programs and projects contained in that plan are prudent. If the Commission subsequently determines that any information relied upon when issuing its order approving *or modifying* the emissions reduction and capacity replacement action plan was based upon information that was known or should have been known by the utility to be untrue or false at the time the information was presented, the Commission may revoke, rescind or otherwise modify its approval of the action plan.

Sec. 7. NAC 704.9518 is hereby amended to read as follows:

704.9518 *1.* For amendments filed pursuant to NAC 704.9503 and in accordance with subsection 3 of NAC 704.9504, the Commission will issue an order approving the amendment as filed , *modifying the amendment* or specifying those parts of the amendment the Commission considers inadequate.

2. An amendment to an action plan shall be deemed to be approved by the Commission only as to that portion of the amendment to the plan accepted as filed or modified with the consent of the utility pursuant to subsection 2 of NRS 704.751, as amended by section 3 of Senate Bill No. 87, chapter 230, Statutes of Nevada 2015, at page 1095.

Sec. 8. NAC 704.9519 is hereby amended to read as follows:

704.9519 *1.* For an amendment to an emissions reduction and capacity replacement action plan filed pursuant to NAC 704.95035, the Commission will issue an order approving the amendment as filed , *modifying the amendment* or specifying those parts of the amendment the Commission considers inadequate.

2. An amendment to an emissions reduction and capacity replacement plan shall be deemed to be approved by the Commission only as to that portion of the amendment to the plan accepted as filed or modified with the consent of the utility pursuant to subsection 2 of NRS 704.751, as amended by section 3 of Senate Bill No. 87, chapter 230, Statutes of Nevada 2015, at page 1095.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R110-15

1. A clear and concise explanation of the need for the adopted regulation.

The regulation promulgates provisions which authorize the Public Utilities Commission of Nevada (the "Commission") to modify resource plans submitted by certain public utilities.

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

(a) Copies of the proposed regulation, notice of intent to act upon the regulation and notice of workshop and hearing were sent by U.S. mail and email to persons who were known to have an interest in the subjects of noticing and interventions. These documents were also made available at the Commission's website, <http://puc.nv.gov>, mailed to all county libraries in Nevada, published in the following newspapers:

Ely Times
Las Vegas Review Journal
Nevada Appeal
Reno Gazette Journal
Tonopah Times-Bonanza,

and posted at the following locations:

Public Utilities Commission	Public Utilities Commission
1150 East William Street	9075 West Diablo Drive, Suite 250
Carson City, Nevada 89701	Las Vegas, Nevada 89148

(b) Nevada Power Company d/b/a NV Energy ("Nevada Power") and Sierra Pacific Power Company d/b/a NV Energy ("Sierra" and together with Nevada Power, "NV Energy"); and the Regulatory Operations Staff ("Staff") of the Commission filed comments in the matter. The two participants generally provided comments which were agreeable to and supported the intended function of the proposed regulation, but also suggested additional, clarifying language.

(c) Copies of the transcripts of the proceedings are available for review at the offices of the Commission, 1150 East William Street, Carson City, Nevada 89701 and 9075 West Diablo Drive, Suite 250, Las Vegas, Nevada 89148.

3. The number of persons who:

- (a) Attended each hearing: 3**
- (b) Testified at each hearing: 3**
- (c) Submitted written comments: 2**

4. **For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:**
- (a) **Name;**
 - (b) **Telephone number;**
 - (c) **Business address;**
 - (d) **Business telephone number;**
 - (e) **Electronic mail address; and**
 - (f) **Name of entity or organization represented.**

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5. **A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses in the same manner as they were solicited from the public.

The summary may be obtained as instructed in the response to question 2(c).

6. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

All interested persons who filed written comments and participated in the hearing supported the specific function of the regulation as proposed. However, NV Energy expressed concerns regarding the specific diction used within the proposed regulation,

calling into question whether additional, clarifying language would be needed. However, after reviewing NV Energy's proposed edits and comparing them with the proposed regulation received back from the Legislative Counsel Bureau ("LCB") following its pre-adoption review, the Presiding Officer determined that the difference in the language used between the two proposals is a matter of semantics, and ultimately brought forward the LCB version, unadulterated, to the Commission for a vote regarding this matter. At a utility agenda meeting held on March 30, 2016, the Commission voted to adopt as permanent the LCB-approved proposed regulation.

- 7. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include: both adverse and beneficial effects, and both immediate and long-term effects.**

(a) Estimated economic effect on the businesses which they are to regulate.

The regulation does not impose any economic effect on the businesses the regulation is to regulate.

(b) Estimated economic effect on the public which they are to regulate.

The regulation does not regulate the public.

- 8. The estimated cost to the agency for enforcement of the proposed regulation:**

There will be no additional cost to the Commission for the enforcement of the proposed regulation.

- 9. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

The regulation does not overlap any other local, State, or Federal regulations.

- 10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

N/A

- 11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

N/A

- 12. If the proposed regulation is likely to impose a direct and significant burden upon a small business or directly restrict the formation, operation or expansion of a small business, what methods did the agency use in determining the impact of the regulation on a small business?**

The Regulatory Operations Staff (“Staff”) of the Commission conducted a Delphi Method exercise to determine the impact of this proposed regulation on small businesses. The Delphi Method is a systematic, interactive, forecasting method based on independent inputs of selected experts. In this instance, the participants were members of Staff. Each participant in the exercise used his background and expertise to reflect upon and analyze the impact of the proposed regulation on small businesses. Based upon Staff’s analysis, Staff recommended to the Commission that the Commission find that the proposed regulation is not likely to impose a direct and significant economic burden on small businesses, and is not likely to directly restrict the formation, operation or expansion of a small business. The Commission accepted Staff’s recommendation and found that the proposed regulation is not likely to impose a direct or significant economic burden upon small businesses, and is not likely to directly restrict the formation, operation, or expansion of a small business, and therefore found that a small business impact statement pursuant to NRS 233B.0608(2) is not required. This finding was memorialized in an Order issued in Docket No. 15-06044 on January 22, 2016.