



Docket 19-02624

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Governor's signature

Classification:  PROPOSED  ADOPTED BY AGENCY  EMERGENCY

**Brief description of action:** The adopted regulation amends the Nevada Administrative Code ("NAC") 704.516 *et seq.* to establish additional procedures and guidelines necessary to ensure that a public utility's use of the schedule and contracts contemplated under NAC 704.518 are consistent with Nevada law and do not result in unjust or unreasonable rates

**Authority citation other than 233B:** This matter is being conducted by the Public Utilities Commission pursuant to the Nevada Revised Statutes ("NRS") and the NAC Chapters 703 and 704, including, but not limited to NRS 703.025 and NRS 704.210.

**Notice dates:** March 29, 2021.

**Hearing date:** April 27, 2021.

**Date of Adoption by Agency:** June 16, 2021 (Temporary).

**BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

Investigation and Rulemaking to amend NAC )  
704.516 et seq. to establish additional procedures )  
and guidelines necessary to ensure that a public )  
utility’s use of the schedule and contracts )  
contemplated under NAC 704.518 is consistent with )  
Nevada law and does not result in unjust or )  
unreasonable rates. )  
\_\_\_\_\_ )

Docket No. 19-02024

At a general session of the Public Utilities  
Commission of Nevada, held at its offices  
on June 15, 2021.

PRESENT: Commissioner C.J. Manthe  
Commissioner Tammy Cordova  
Assistant Commission Secretary Trisha Osborne

**ORDER**

The Public Utilities Commission of Nevada (“Commission”) makes the following  
findings of fact and conclusions of law:

**I. INTRODUCTION**

Pursuant to ordering Paragraph 29 of its February 15, 2019, Order in Docket No. 18-05031, the Commission opened the instant Docket to conduct an investigation and rulemaking to amend the Nevada Administrative Code (“NAC”) 704.516 *et seq.* to establish additional procedures and guidelines necessary to ensure that a public utility’s use of the schedule and contracts contemplated under NAC 704.518 are consistent with Nevada law and do not result in unjust or unreasonable rates.

**II. SUMMARY**

The proposed regulations, appended hereto as Attachment 1, are adopted as temporary regulations.

**III. PROCEDURAL HISTORY**

- On February 15, 2019, the Commission issued an Order in Docket No. 18-05031, opening the instant investigation and rulemaking. This matter has been designated by the Commission as Docket No. 19-02024.

- This matter is being conducted in accordance with Chapters 233B, 703, and 704 of the Nevada Revised Statutes (“NRS”) and NAC, including, but not limited to, NRS 703.025 and NRS 704.210.
- On July 31, 2019, the Commission issued a Notice of Rulemaking, Notice of Request for Comments, and Notice of Workshop.
- On September 20, 2019, the Regulatory Operations Staff of the Commission (“Staff”), Southwest Gas Corporation (“SWG”), the Nevada Bureau of Consumer Protection (“BCP”), Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy (together, “NV Energy”), Nevada Cogeneration Associates #1 and #2 (“NCA”), and Northern Nevada Industrial Gas Users (“NNIGU”) filed comments.
- On October 2, 2019, NNIGU submitted supplemental late-filed comments.
- On October 3, 2019, the Commission held a workshop. Staff, SWG, BCP, NV Energy, NCA, and NNIGU made appearances. Comments and a procedural schedule were discussed.
- On October 11, 2019, the Presiding Officer issued Procedural Order No. 1.
- On November 13, 2019, the Presiding Officer issued Procedural Order No. 2.
- On December 13, 2019, BCP filed a legal brief pursuant to Procedural Order No. 1, NNIGU filed comments pursuant to Procedural Order No. 1, NCA and BCP filed comments pursuant to Procedural Order No. 2. Staff, SWG, and NV Energy filed legal briefs and comments pursuant to Procedural Order Nos. 1 and 2.
- On January 9, 2020, NV Energy filed a legal brief and reply comments pursuant to Procedural Order Nos. 1 and 2. NNIGU and NCA filed reply comments pursuant to Procedural Order No. 1. SWG, BCP, and Staff filed reply comments pursuant to Procedural Order Nos. 1 and 2.
- On February 4, 2020, the Commission held a continued workshop. Staff, BCP, SWG, NV Energy, NCA, and NNIGU made appearances.
- On February 10, 2020, the Presiding Officer issued Procedural Order No. 3.
- On March 20, 2020, SWG filed a status update as requested in Procedural Order No. 3.
- On May 14, 2020, Staff filed a status update and draft proposed regulations as requested in Procedural Order No. 3.
- On May 15, 2020, BCP filed draft proposed regulations as requested in Procedural Order No. 3. Separately, SWG, NNIGU, NCA, and NV Energy jointly filed draft proposed regulations as requested in Procedural Order No. 3.

- On June 5, 2020, the Presiding Officer sent proposed regulations to the Legislative Counsel Bureau (“LCB”) for review.
- On June 8, 2020, the Presiding Officer issued Procedural Order No. 4.
- On October 2, 2020, the Legal Case Manager filed on behalf of LCB returned revised proposed regulations, LCB File No. R075-20.<sup>1</sup>
- On February 22, 2021, the Presiding Officer issued Procedural Order No. 5.
- On March 17, 2021, Staff filed a briefing memorandum pursuant to Procedural Order No. 5.
- On March 25, 2021, the Commission issued an Order finding that the proposed regulation is not likely to impose a direct and significant economic burden upon small businesses.
- On March 29, 2021, the Commission issued a Notice of Intent to Act Upon a Regulation, Notice of Workshop, and Notice of Hearing.
- On April 22, 2021, NCA filed comments.
- On April 26, 2021, Staff and BCP filed comments.
- On April 26, 2021, the Commission held a workshop pursuant to NRS 233B.061(2). Staff, BCP, NV Energy, SWG, and NCA made appearances.
- On April 27, 2021, the Commission held a hearing pursuant to NRS 233B.061(3). Staff, BCP, NV Energy, SWG, and NCA made appearances.<sup>2</sup>

#### IV. REGULATIONS

1. The proposed regulations, appended hereto as Attachment 1, amend NAC 704.516 *et seq.*
2. Section two of the regulations require the Commission to open a docket annually to receive notice of certain filings relating to the supplying or transporting of natural gas by a utility.

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<sup>1</sup> The LCB subsequently redesignated the proposed regulations as temporary and assigned them as LCB File No. T006-21P, consistent with NRS 233B.063.

<sup>2</sup> NNIGU did not provide comments responsive to the regulations contained in the March 29, 2021, Notice of Intent to Act Upon a Regulation, Notice of Workshop, and Notice of Hearing, and did not appear or otherwise participate in the April 26, 2021, NRS 233B Workshop or April 27, 2021, NRS 233B Hearing.

3. Section three of the regulations require a utility which supplies natural gas to an alternative fuel capable customer to file a memorandum at least 30 days before the alternative fuel capable customer begins taking service from the utility pursuant to an approved schedule or before the utility makes changes to rates pursuant to a schedule approved by the Commission.

4. Section four of the regulations require a utility which transports natural gas to a transportation customer to seek approval from the Commission for any discounted rate contract at least 60 days before the transportation customer begins taking service from the utility pursuant to the contract.

5. Section five of the regulations authorize a utility which supplies natural gas to file with the Commission for its approval a schedule to be applied to alternative fuel capable customers.

6. Section six of the regulations define “alternative fuel capable customer,” “bona fide alternative,” “contract for special services,” “discount,” “discounted rate contract,” “incremental costs,” “memorandum,” “otherwise applicable rate,” “schedule,” and “transportation customer.”

7. Section seven of the regulation clarifies that NAC 704.516 to 704.528, inclusive, and sections two to five, inclusive, of the apply only to rates for natural gas transported for transportation customers or supplied to alternative fuel capable customers.

8. Section eight of the regulations authorize a utility which transports natural gas to file with the Commission for its approval a schedule to be applied to transportation customers, which may authorize the utility and a transportation customer to enter into a discounted rate contract. Section eight of the regulations also revise provisions authorizing a utility which

transports natural gas to apply to the Commission for approval of a contract for special services between the utility and a transportation customer.

9. Section nine of the regulations provide that the schedules set forth in this regulation do not become effective before being approved by the Commission.

10. Section ten of the regulations require the schedule for transportation customers to include a written justification for each element of the schedule.

11. Section eleven of the regulation requires that a utility supplying natural gas to an alternative fuel capable customer or transporting natural gas for a transportation customer shall notify each customer covered by a schedule filed pursuant to NAC 704.518 or section 5 of this regulation of any change in the rates and charges at least 1 day before the effective date of the change.

12. Section twelve of the regulations authorize Staff and the BCP to audit certain filings made by a utility and to file a complaint based upon the results of such an audit.

13. Section thirteen of the regulations remove the authority of a utility which supplies natural gas to change the level of rates charged to generating, industrial or large commercial customers by filing a memorandum with the Commission.

### **Summary of Public Comments in 233B Workshop and Hearing**

#### **Staff's Comments**

14. Staff filed written comments and subsequently participated in the 233B Workshop and Hearing that took place between April 26-27, 2021. Staff provided numerous edits to the draft regulations. The Commission took Staff's comments into consideration and incorporated some of its recommendations into the draft regulations attached as Attachment 1.

15. Staff states it is supportive of the draft regulations as they came back from LCB. (April 26, 2021, Tr. at 200.)<sup>3</sup> Staff states that if the gas customers are worried about the ten-year term limit for discounted rate contracts, they have the option to enter special services contracts where they can pursue thirty-year contracts. (*Id.* at 200-201.)

### **SWG's Comments**

16. SWG filed written comments and subsequently participated in the 233B Workshop and Hearing that took place between April 26-27, 2021. SWG provided numerous edits to the draft regulations. The Commission considered SWG's comments and incorporated some of its recommendations into the draft regulations attached as Attachment 1. At the workshop, SWG stated that it did not intend to reiterate its previous comments and that it had no comments on the regulations returned by LCB. (April 26, 2021, Tr. at 192.) The following comments below highlight areas where SWG's comments either provide clarification to or diverge from the attached draft regulations.

17. SWG states that it is concerned that the extended time period for consideration, the uncertainty of approval, and the shortened contract duration time allowed through the process could impact generating, industrial, and large commercial customers' consideration of SWG as an energy provider. (SWG's December 13, 2019, Comments at 13.) SWG states that these customers are looking for long-term energy solutions and as more uncertainty is injected into that decision-making process, the customers will likely look more favorably to an investment that bypasses the local distribution company. (*Id.*)

18. SWG states that, to the extent that any party desires to propose new rate schedule(s) in SWG's next general rate case, those proposals can be made in that docket as there

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<sup>3</sup> Transcripts are differentiated by date due to certain volumes being differently paginated.

is no need to order such a requirement in this rulemaking. (SWG's January 9, 2020, Reply Comments at 4.)

19. SWG states that it opposes the proposal from BCP calling for an adjustment to SWG's revenue requirement related to revenues from transportation bypass customers. (SWG's January 9, 2020, Reply Comments at 5.)

20. SWG states that, given that this investigation and rulemaking was opened to provide clarity and avoid the confusion that the parties have historically experienced with evergreen contracts, SWG would welcome guidance from the Commission on how existing contracts should be addressed in conjunction with the new regulations and anticipates that one aspect of this proceeding will include direction from the Commission on existing contracts. (SWG's January 9, 2020, Reply Comments at 5.)

### **NV Energy's Comments**

21. NV Energy filed written comments and subsequently participated in the 233B Workshop and Hearing that took place between April 26-27, 2021. NV Energy provided numerous edits to the draft regulations. The Commission considered NV Energy's comments and incorporated some of its recommendations into the draft regulations attached as Attachment 1. The comments below highlight areas where NV Energy's comments either provide clarification to or diverge from the attached draft regulations.

22. NV Energy states that it is concerned about the ten-year term limit on discounted rate contracts for large commercial customers. (April 26, 2021, Tr. at 193-194.) NV Energy states that the scope and scale of an investment that warrants a discounted rate contract requires a longer term than ten years and at least thirty years. (*Id.* at 194.) NV Energy states that revisiting the analysis required for renewal of a discounted rate contract after a ten-year period is

fundamentally skewed against the approval of a renewal application. (*Id.* at 194.) NV Energy states that it is somewhat comforted that the Commission's proposed regulations would allow NV Energy to request a deviation from the ten-year term limit on discounted rate contracts. (*Id.* at 196.)

23. NV Energy states it is concerned that, by requiring NV Energy to pay general recourse rates, its customers could possibly subsidize the costs associated with SWG's distribution system. (April 26, 2021, Tr. at 194.)

24. NV Energy states it is concerned that forcing it off its negotiated contracts will result in it paying a portion of at least the infrastructure surcharges, which don't bear any relation to the services that are needed for its facilities. (April 26, 2021, Tr. at 195.)

#### **NCA's Comments**

25. NCA filed written comments and subsequently participated in the 233B Workshop and Hearing that took place between April 26-27, 2021. NCA provided numerous edits to the draft regulations. The Commission considered NCA's input and incorporated some of their suggestions into the draft regulations attached as Attachment 1. The comments below highlight areas where NCA's comments either provide clarification to or diverge from the attached draft regulations.

26. NCA states that the restrictions imposed on discounted rate contracts and contracts for special services serve no regulatory purpose and only threaten to eliminate these negotiated contracts, which provide a significant contribution to other customers' margins. (NCA's April 22, 2021, Comments at 1.)

27. NCA states that requiring reverification of a bypass option to renew discounted rate contracts means a customer likely could only enter into such a contract for the initial ten-

year term and would have to acquiesce to paying the recourse rate thereafter because once SWG builds a pipeline, it would be extremely difficult, if not impossible, to prove a legitimate bypass option still exists. (NCA's April 22, 2021, Comments at 1-2.) NCA states that any large industrial or generation customer, building an asset that will likely have a service life exceeding thirty years, would not initiate negotiations under those constraints, and would likely build its own pipeline. (*Id.* at 2.) NCA states that the pipeline would have costs that are readily determined and offer quantifiable risk and little uncertainty for the future; and the costs of constructing and operating a pipeline would likely be less than the recourse rates. (*Id.* at 2.)

28. NCA additionally states that, regarding discounted rate contracts, it is unnecessary to restrict the modifications of rates which can be negotiated. (NCA's April 22, 2021, Comments at 2.) NCA states that the filing of a cost of service study with a contract will establish that the customer is at least covering its cost of service, whatever the rate terms. (*Id.* at 2.) NCA states that replacing a volumetric rate with a fixed charge would benefit SWG and its other customers because if an industrial customer curtails production in a month, its volumetric billings and SWG's revenues decrease; but, if it is paying a fixed monthly transportation charge (as several negotiated rate customers are) such production variances have no effect. (*Id.* at 2.)

29. NCA states that a large customer would likely only consider a contract for special services, however, the reverification of a bypass option remains problematic because it forces the customer to forecast accurately at the inception of its contract how long the asset will be in service. (NCA's April 22, 2021, Comments at 2.) NCA states that, otherwise, the customer may reach the expiration of a thirty-year contract with its plant still operating and Staff will oppose any new contract. (*Id.* at 2.)

30. NCA states, therefore, that the regulations governing discounted rate contracts should be revised to allow flexibility in how rates are modified and to eliminate the need to reverify a bypass option; and the regulations for contracts for special services should be revised to eliminate the need to reverify a bypass option. (NCA's April 22, 2021, Comments at 3.)

31. NCA states that section 8(f) requires the revenues in a proposed discounted rate contract to at least recover the incremental costs to serve the customer, as supported by a class cost of service study. (NCA's April 22, 2021, Comments at 3.) NCA states that, given that costs to serve any individual customer will vary and the costs of an alternate pipeline will vary, this should require a cost of service study of the costs to serve that customer, not to serve the entire class of transportation customers. (*Id.* at 3.)

#### **BCP's Comments**

32. BCP filed written comments and subsequently participated in the 233B Workshop and Hearing that took place on April 26-27, 2021. BCP provided numerous edits to the draft regulations. The Commission considered BCP's input and incorporated some of its suggestions into the draft regulations attached as Attachment 1. The comments below highlight areas where BCP's comments either provide clarification to or diverge from the attached draft regulations.

33. BCP states that it has maintained throughout the investigatory and rulemaking proceeding that there should be three separate sets of regulations for the three types of customers covered by the Commission's proposed regulation. (BCP's April 26, 2021, Comments at 1-2.) BCP states, however, that it is supportive of the Commission's proposed regulation given that the proceeding is now in the formal NRS Chapter 233B rulemaking stage. (*Id.* at 2.)

34. BCP states that it believes that the Commission should clarify in its order adopting the regulations the applicability of each section and/or subsection to the three customer types covered by the regulation. (BCP's April 26, 2021, Comments at 2.)

35. BCP states that it disagrees with the arguments raised by NCA in its April 22, 2021, Comments. (BCP's April 26, 2021, Comments at 1.)

36. BCP states that NCA proposes allowing discounted rate contracts to have rate terms that differ from the minimum and maximum rates in the utility's tariffs. (BCP's April 26, 2021, Comments at 2.) BCP states that a transportation customer who seeks rate terms that differ from the minimum and maximum rates in the utility's tariffs would execute a "contract for special services" and that this substantive change would make meaningless the difference between a "discounted rate contract" and a "contract for special services." (*Id.* at 2.)

37. BCP states that NCA proposes not requiring transportation customers with discounted rate contracts to reprove bypass for contract renewal. (BCP's April 26, 2021, Comments at 2.) BCP states that this substantive change is not necessary because a transportation customer can always negotiate a contract for special services with any length of term it seeks pursuant to the Commission's proposed regulation. (*Id.* at 2.)

38. BCP states that NCA proposes not requiring transportation customers with contracts for special services to reprove bypass for contract renewal. (BCP's April 26, 2021, Comments at 3.) BCP states that this substantive change is not necessary because a transportation customer can always negotiate a contract for special services with any length of term it seeks pursuant to the Commission's proposed regulation. (*Id.* at 3.)

39. BCP states that NCA's comments regarding Section 8(1)(f) of the proposed regulations do not appear to understand the reasoning for the class cost of service study for

discounted rate contracts. (BCP's April 26, 2021, Comments at 3.) BCP states that a class cost of service study is necessary to calculate the minimum and maximum tariff rates for discounted rate contracts because, if a discounted rate contract does not have rates between the minimum and maximum tariff rates, then it is no longer a discounted rate contract, but a contract for special services. (*Id.* at 3.)

40. BCP contends that NCA's assertion that contracts for special services provide a significant contribution to other customers' margins is a comment that is backward looking to 1991. ((BCP's April 26, 2021, Comments at 3.) BCP states that it is highly doubtful that a qualifying facility ("QF") that runs on natural gas will ever be built in the State of Nevada again given the climate initiatives in this state and furthermore, the three gas-fired QFs in Southern Nevada are nearing the end of their contracts with NV Energy. (*Id.* at 3.)

### **Commission Discussion and Findings**

41. Based on the foregoing, the Commission finds that it is in the public interest to adopt as temporary the proposed regulations attached hereto as Attachment 1.

42. Consistent with discussions at the 233B Workshop and Hearing, the Commission identifies the following sections of the attached regulations that apply to each type of customer, as well as applicable statutory authority for each section of the regulation as follows:

- Section 2 – All three customer types; NRS 704.075, 704.100, 704.110, and 704.210.
- Section 3 – Alternative fuel capable customers; NRS 704.075.
- Section 4 – Discounted rate contracts for transportation customers; NRS 704.100, 704.110, and 704.210.
- Section 5 – Alternative fuel capable customers; NRS 704.075.
- Section 6(1) – Alternative fuel capable customers; NRS 704.075.

- Section 6(2) – Discounted rate contracts for transportation customers and contracts for special services for transportation customers; NRS 704.100, 704.110, and 704.210.
- Section 6(3) – Contract for special services for transportation customers; NRS 704.100, 704.110, and 704.210.
- Section 6(4) – Discounted rate contracts for transportation customers; NRS 704.100, 704.110, and 704.210.
- Section 6(5) – Discounted rate contracts for transportation customers; NRS 704.100, 704.110, and 704.210.
- Section 6(6) – Discounted rate contracts for transportation customers and contracts for special services for transportation customers; NRS 704.100, 704.110, and 704.210.
- Section 6(7) – Alternative fuel capable customers; NRS 704.075.
- Section 6(8) – Discounted rate contracts for transportation customers and contracts for special services for transportation customers; NRS 704.100, 704.110, and 704.210.
- Section 6(9) – Discounted rate contracts for transportation customers and contracts for special services for transportation customers; NRS 704.100, 704.110, and 704.210.
- Section 6(10) – Discounted rate contracts for transportation customers and contracts for special services for transportation customers; NRS 704.100, 704.110, and 704.210.
- Section 7 – All three customer types; NRS 704.075, 704.100, 704.110, and 704.210.
- Section 8(1)-(2) – Discounted rate contracts for transportation customers; NRS 704.100, 704.110, and 704.210.
- Section 8(3)-(5) – Contract for special services for transportation customers; NRS 704.100, 704.110, and 704.210.
- Section 9 – Alternative fuel capable customers and discounted rate contracts for transportation customers; NRS 704.100, 704.110, and 704.210.
- Section 10 – Discounted rate contracts for transportation customers; NRS 704.100, 704.110, and 704.210.
- Section 11 – All three customer types; NRS 704.075, 704.100, 704.110, and 704.210.
- Section 12 – All three customer types; NRS 704.075, 704.100, 704.110, and 704.210.

43. Consistent with discussions at the 233B Workshop and Hearing, the Commission specifies that it is always willing to consider appropriately filed requests for deviations from the new regulations pursuant to NAC 703.115. In particular, the Commission believes any requests for deviation related to reliability or resource adequacy may be reason for good cause.

44. In order to make any necessary changes for regulation conformity, the Commission will open new docket to investigate any required changes to gas infrastructure replacement and natural gas expansion regulations given the new definitions adopted in this Docket.

THEREFORE, it is ORDERED:

1. The proposed regulations, attached hereto as Attachment 1, are ADOPTED AS TEMPORARY.

2. The Assistant Commission Secretary SHALL OPEN an investigation and rulemaking docket to make any required changes to gas infrastructure replacement and natural gas expansion regulations.

3. The Assistant Commission Secretary SHALL OPEN a new, annual docket in which Southwest Gas Corporation and Sierra Pacific Power Company d/b/a NV Energy shall file all existing discounted rate contracts, contracts for alternative fuel capable customers, and contracts for special service.

**Compliances:**

4. Southwest Gas Corporation and Sierra Pacific Power Company d/b/a NV Energy shall file schedules that comply with the temporary regulations within 90 days of the effective date of this Order. For existing contracts, within six months of approval of new schedules that comply with the new regulations, a utility must:

a. For any existing contracts that are no longer in a primary term (e.g., are continuing pursuant to an evergreen clause or some other rollover clause):

i. File a new contract pursuant to the revised regulations/schedules, whichever is applicable; or

ii. Inform the Commission that a new contract will not be re-filed and state whether the customer has reverted to an otherwise applicable rate schedule.

b. For all other existing contracts wherein the primary term has not yet expired, a utility shall:

i. On or before the expiration of the primary term, file a new contract pursuant to the revised applicable regulations and/or schedules; or

ii. On or before the expiration of the primary term, inform the Commission that a new contract will not be re-filed and state whether the customer has reverted to an otherwise applicable rate schedule.

5. Any existing contract that has been extended beyond its primary term after the adoption of these regulations and approval of appropriate schedules is invalid.

6. Southwest Gas Corporation and Sierra Pacific Power Company d/b/a NV Energy shall file in the new annual docket within 30 days of the issuance of this Order all existing discounted rate contracts, contracts for alternative fuel capable customers, and contracts for special service. If a utility cannot comply with this provision for any contract, the utility shall inform the Commission in writing that it cannot meet this compliance and list each of the customers for which it cannot file an existing contract.

7. Sierra Pacific Power Company d/b/a NV Energy, the Regulatory Operations Staff of the Commission, and the Bureau of Consumer Protection shall meet to discuss Sierra Pacific

Power Company d/b/a NV Energy’s two alternative fuel contracts to determine that the customers served pursuant to these contracts still qualify pursuant to NRS 704.075, and to establish a process for notification to the Commission, Regulatory Operations Staff of the Commission, and the Bureau of Consumer Protection of rate changes given the repeal of NAC 704.522 in the regulations. Sierra Pacific Power Company d/b/a NV Energy, the Regulatory Operations Staff of the Commission, and the Bureau of Consumer Protection shall report to the Commission regarding results of these discussions.

**Directives:**

8. Both Southwest Gas Corporation and Sierra Pacific Power Company d/b/a NV Energy shall file, in their next general rate cases, otherwise applicable rate schedules that include minimum and maximum rates (for all variable commodity or demand charge rate components and the non-discountable basic service charge applicable to each customer’s otherwise applicable rate class) for the customers taking service pursuant to a discounted rate contract, a contract for an alternative fuel capable customer, or a contract for special services.

9. In their next general rate case, in the rate design or cost of service study section of the filing, Southwest Gas Corporation and Sierra Pacific Power Company d/b/a NV Energy shall also identify any customer-specific facilities whose costs are not yet fully depreciated that are allocable to each contract customer.

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10. If any provision of an existing contract that does not have an expiration date is modified, the contract shall be deemed invalid and the utility shall be required to file a new contract within 60 days or notify the Commission that the applicable customer has reverted to the otherwise applicable rate schedule.

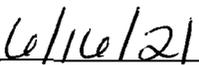
By the Commission,

  
C.J. MANTHE, Commissioner

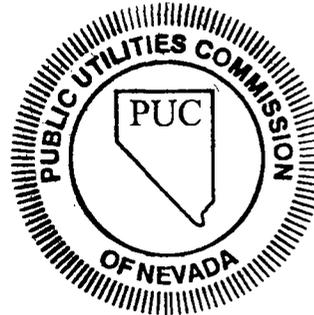
  
TAMMY CORDOVA, Commissioner

Attest:   
TRISHA OSBORNE,  
Assistant Commission Secretary

Dated: Carson City, Nevada

  
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(SEAL)



# **ATTACHMENT 1**

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

**LCB File No. T006-21**

June 10, 2021

EXPLANATION — Matter in *italics* is new; matter in brackets [~~emitted material~~] is material to be omitted.

AUTHORITY: §§1, 2, 6, 7 and 13, NRS 703.025 and 704.210; §§3, 5, 9 and 11, NRS 703.025, 704.075 and 704.210; §§4, 8 and 10, NRS 703.025, 704.050 and 704.210; §12, NRS 703.025, 704.050, 704.075 and 704.210.

A REGULATION relating to natural gas; revising procedures for the approval of a schedule to be applied to alternative fuel capable customers of a utility which supplies natural gas; establishing procedures for the Public Utilities Commission of Nevada to approve a schedule and discounted rate contracts for transportation customers of a natural gas utility; revising provisions governing contracts for special services; authorizing the audit of certain filings with the Commission; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law authorizes utilities to charge concentration, commodity, transit and other special contract rates under the supervision and regulation of the Public Utilities Commission of Nevada. (NRS 704.050) Existing law also requires the Commission to establish standards for the setting, increase or decrease of rates for natural gas to generating, industrial and large commercial customers. (NRS 704.075)

**Section 5** of this regulation authorizes a utility which supplies natural gas to file with the Commission for its approval a schedule to be applied to alternative fuel capable customers, which are defined in **section 6** of this regulation as generating, industrial and large commercial customers who are capable of using a fuel other than natural gas. **Section 3** of this regulation requires a utility which supplies natural gas to an alternative fuel capable customer to file a memorandum at least 30 days before the alternative fuel capable customer begins taking service from the utility pursuant to an approved schedule or before the utility makes changes to rates pursuant to a schedule approved by the Commission. **Section 3** also establishes a procedure for the Regulatory Operations Staff of the Commission, the Bureau of Consumer Protection or an interested and affected person to challenge the contents of the memorandum. **Section 13** of this regulation removes the authority of a utility which supplies natural gas to change the level of rates charged to generating, industrial or large commercial customers by filing a memorandum with the Commission because **section 3** establishes a procedure for making such changes.

**Section 8** of this regulation authorizes a utility which transports natural gas to file with the Commission for its approval a schedule to be applied to transportation customers, which may authorize the utility and a transportation customer to enter into a discounted rate contract. **Section 8** sets forth the requirements for such a schedule. **Section 8** also revises provisions authorizing a utility which transports natural gas to apply to the Commission for approval of a contract for special services between the utility and a transportation customer. **Section 10** of this regulation requires the schedule for transportation customers to include a written justification for each element of the schedule.

**Section 4** of this regulation requires a utility which transports natural gas to a transportation customer to seek approval from the Commission for any discounted rate contract at least 60 days before the transportation customer begins taking service from the utility pursuant to the contract. **Section 4** also establishes a procedure for the Regulatory Operations Staff of the Commission, the Bureau of Consumer Protection or an interested and affected person to challenge the contents of the contract.

**Section 2** of this regulation requires the Commission to open a docket annually to receive notice of certain filings relating to the supplying or transporting of natural gas by a utility.

**Section 9** of this regulation provides that the schedules set forth in this regulation do not become effective before being approved by the Commission.

**Section 12** of this regulation authorizes the Regulatory Operations Staff of the Commission and the Bureau of Consumer Protection to audit certain filings made by a utility and to file a complaint based upon the results of such an audit.

**Sections 7 and 11** make conforming changes.

**Section 1.** Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5 of this regulation.

**Sec. 2.** *The Commission will open a new docket annually to receive notice of all filings relating to NAC 704.516 to 704.528, inclusive, and sections 2 to 5, inclusive, of this regulation. Any filings by the utility which transports natural gas made pursuant to section 4 of this regulation or NAC 704.518 must be made in a new docket, but the utility shall provide notice in the docket opened annually by the Commission pursuant to this section.*

**Sec. 3. 1.** *In the docket opened annually by the Commission pursuant to section 2 of this regulation, a utility which supplies natural gas to an alternative fuel capable customer must file a memorandum at least 30 days prior to the customer taking service from the utility pursuant to a schedule*

*approved by the Commission or before making any changes to rates pursuant to the schedule approved by the Commission. The utility shall simultaneously serve the Regulatory Operations Staff and the Bureau of Consumer Protection with the memorandum filed with the Commission and all supporting documents required by regulation and the schedule approved by the Commission.*

*2. The Regulatory Operations Staff, Bureau of Consumer Protection or any interested and affected person may, not later than 25 days after the memorandum is filed with the Commission pursuant to subsection 1, file with the Commission a protest alleging that the rates in the memorandum do not comply with NAC 704.516 to 704.528, inclusive, and sections 2 to 5, inclusive, of this regulation, or the schedule approved by the Commission. The Commission will not consider protests that are untimely. A protest must include:*

*(a) A statement describing the manner in which the memorandum fails to comply with the requirements of NAC 704.516 to 704.528, inclusive, and sections 2 to 5, inclusive, of this regulation, or the schedule;*

*(b) If applicable, any proposed changes to the memorandum which would bring it into compliance with NAC 704.516 to 704.528, inclusive, and sections 2 to 5, inclusive, of this regulation, and the schedule; and*

*(c) Any other relevant material to support the protest that the memorandum does not satisfy the requirements of NAC 704.516 to 704.528, inclusive, and sections 2 to 5, inclusive, of this regulation, or the schedule.*

*3. Upon receipt of a properly filed and timely protest, the Commission may, not later than 60 days after the filing of the memorandum with the Commission, hold a hearing to determine whether the protest is valid and whether the proposal in the memorandum complies with NAC 704.516 to 704.528, inclusive, and sections 2 to 5, inclusive, of this regulation, and the schedule approved by the Commission. Multiple protests regarding the same memorandum may be consolidated into a single hearing.*

4. *If no protest is filed, any change to rates provided in the memorandum becomes effective as provided in the memorandum.*

5. *If a protest is filed, the Commission will issue an order approving or denying the memorandum within 120 days of the filing of the memorandum with the Commission. Any proposed change to the rate must not go into effect before the date the Commission issues an order approving the rates.*

Sec. 4. 1. *A utility which transports natural gas to a transportation customer and the transportation customer shall jointly file with the Commission an application for approval of any discounted rate contract at least 60 days prior to the transportation customer taking service from the utility pursuant to the discounted rate contract.*

2. *The utility shall simultaneously serve the Regulatory Operations Staff and the Bureau of Consumer Protection with a copy of the application for approval of discounted rate contract and all supporting documents required by regulation and the schedule approved by the Commission.*

3. *The Regulatory Operations Staff, the Bureau of Consumer Protection or any interested and affected person may, not later than 60 days after the application for approval of the discounted rate contract is filed with the Commission, file with the Commission a protest alleging that the contract fails to comply with NAC 704.516 to 704.528, inclusive, and sections 2 to 5, inclusive, of this regulation, or the schedule approved by the Commission. The Commission will not consider protests that are untimely. A protest must include:*

(a) *A statement describing the manner in which the discounted rate contract fails to comply with the requirements of NAC 704.516 to 704.528, inclusive, and sections 2 to 5, inclusive, of this regulation, or the schedule;*

(b) *If applicable, any proposed amendments to the discounted rate contract to bring it into compliance with NAC 704.516 to 704.528, inclusive, and sections 2 to 5, inclusive, of this regulation, and the schedule; and*

*(c) Any other relevant material to support the protest that the discounted rate contract does not satisfy the requirements of NAC 704.516 to 704.528, inclusive, and sections 2 to 5, inclusive, of this regulation, or the schedule.*

*4. Upon receipt of a properly filed and timely protest, the Commission may, not later than 120 days after the filing of the application for approval of the discounted rate contract with the Commission, hold a hearing to determine whether the protest is valid and whether the contract complies with NAC 704.516 to 704.528, and sections 2 to 5, inclusive, of this regulation, and the schedule approved by the Commission. Multiple protests regarding the same contract may be consolidated into a single hearing.*

*5. If no protest is filed, the discount contained in the discounted rate contract becomes effective as provided in the application for approval of the discounted rate contract.*

*6. If a protest is filed, the Commission will issue an order within 150 days of the filing of the application for approval of the discounted rate contract with the Commission approving or denying the discounted rate contract. The discounted rate contract shall not go into effect until the date the Commission issues an order approving the rates.*

*7. If a transportation customer seeks to renew a discounted rate contract which was approved pursuant to this section after the primary term of the contract has ended, the utility and transportation customer must jointly refile the discounted rate contract or file a new discounted rate contract pursuant to subsection 1.*

*Sec. 5. A utility which supplies natural gas may file for approval by the Commission a schedule to be applied to alternative fuel capable customers served by the utility. The schedule:*

*1. Must set forth the terms and conditions of service provided to alternative fuel capable customers.*

*2. May include a standard for setting a discount to the gas cost rate components for the alternative fuel capable customer on less than 30 days' notice and authorize the establishment of different classes of customers or the charging of different rates for customers of the same class.*

Sec. 6. NAC 704.516 is hereby amended to read as follows:

704.516 As used in NAC 704.516 to 704.528, inclusive, *and sections 2 to 5, inclusive, of this regulation*, unless the context otherwise requires:

1. ~~[The words and terms defined in subsection 1 of NRS 704.075 have the meanings ascribed to them in that subsection.]~~ *"Alternative fuel capable customer" means a generating customer, industrial customer or large commercial customer, as defined in NRS 704.075, of a natural gas utility who obtains natural gas from the natural gas utility but has the capability of using a fuel other than natural gas.*

2. *"Bona fide alternative" means an option available to a customer to utilize facilities other than those of the utility that transports natural gas:*

*(a) Which is economically, physically and operationally feasible and imminent; and*

*(b) For which the comparable cost to the customer to bypass the system of the utility is less than the utility's otherwise applicable rate to serve that customer over a specified primary contractual period at issue in an application for approval filed with the Commission.*

3. *"Contract for special services" means a contract between a natural gas utility and a transportation customer other than a contract that complies with an approved schedule that specifies the methods, terms, conditions and rates that are negotiated or differ from the otherwise applicable rate.*

4. *"Discount" means a reduction to the otherwise applicable volumetric or demand components of a transportation customer's otherwise applicable rate. The volumetric or demand rate component must not be equal to or less than zero.*

5. *"Discounted rate contract" means a contract that is filed by a utility for a discount on certain volumetric or demand components of a transportation customer's rate in conformance with the approved schedule the utility has on file with the Commission.*

6. *"Incremental costs" means any direct capital and operating and maintenance costs, including, without limitation, any fixed costs that have not been fully depreciated, incurred by a natural gas utility in serving a transportation customer with a discounted rate contract or a contract for special services.*

7. **"Memorandum"** means a written notice from the utility to the Commission of any change to rates for an alternative fuel capable customer pursuant to a schedule approved by the Commission.

8. **"Otherwise applicable rate"** means the otherwise applicable cost-of-service rate schedules.

9. "Schedule" ~~{means the tariff sheet that identifies the range of rates and charges, or the mechanisms pursuant to which such rates and charges may be determined, filed pursuant to NAC 704.518.}~~ **has the meaning ascribed to it in NRS 704.066.**

10. **"Transportation customer"** means a customer of a natural gas utility who obtains natural gas from a competitive third-party supplier and transports the customer-owned natural gas through the distribution system of the natural gas utility using the facilities of the natural gas utility.

Sec. 7. NAC 704.517 is hereby amended to read as follows:

704.517 NAC 704.516 to 704.528, inclusive, **and sections 2 to 5, inclusive, of this regulation** apply only to rates for natural gas transported for **transportation customers** or ~~{sold to generating, industrial and large commercial customers.}~~ **supplied to alternative fuel capable customers.**

Sec. 8. NAC 704.518 is hereby amended to read as follows:

704.518 1. A utility which ~~{supplies}~~ **transports** natural gas may file ~~{with}~~ **for approval by** the Commission a schedule to be applied to ~~{generating, industrial and large commercial}~~ **transportation** customers served by the utility. **The schedule may authorize the utility and a transportation customer to enter into a discounted rate contract.** The schedule:

(a) Must set forth the terms and conditions of service ~~{and the range of rates, or the mechanisms pursuant to which such rates may be determined; and}~~ **including, without limitation, the following terms governing any discounted rate contract between the utility and a transportation customer:**

*(1) That the utility and transportation customer shall jointly file a discounted rate contract with the Commission at least 60 days prior to the customer taking service from the utility pursuant to the discounted rate contract;*

*(2) That the discounted rate contract will be limited to an initial term of not more than 10 years and must not include any contract provision that permits the discounted rate contract to be renewed or otherwise extended beyond the initial term without first filing and obtaining Commission approval of a new discounted rate contract pursuant to this section and section 4 of this regulation;*

*(3) That the discounted rate contract must conform to the rate design and discount terms as specified in the schedule in accordance with paragraphs (b) to (g), inclusive, of this subsection; and*

*(4) That the discounted rate contract must include a provision that permits the Commission to assess additional charges on the transportation customer at any time during the contract term as determined in an appropriate proceeding before the Commission.*

*(b) May include different rates for customers within the same class ~~[-]~~ upon a showing to the Commission that the different rates are justified.*

*(c) Must specify the rate design applicable to transportation customers taking service pursuant to a discounted rate contract.*

*(d) Must explicitly state which volumetric or demand components of a transportation customer's rates are to be discounted, the criteria to determine whether a customer is eligible for the discounts and the range of discounts that may be offered to the volumetric or demand components of the rate.*

*(e) Must not permit any discounts to the fixed components of a transportation customer's rates.*

*(f) Must require that the discounts included in any rate provided for by a discounted rate contract are supported by the utility's most recent Commission-approved class cost of service study or other evidence sufficient to demonstrate that the transportation customer will pay at least its incremental costs of service, thereby ensuring that the discounted rates recover at least the incremental costs that the*

*utility will incur in serving the transportation customer such that there is no net cost to other customers of the utility.*

*(g) Must require that the discounted rate contract contain a provision for an annual inflation adjustment.*

2. A utility may provide service to a ~~[generating, industrial or large commercial]~~ **transportation** customer pursuant to a schedule filed pursuant to subsection 1 if the customer notifies the utility in writing ~~[in a manner acceptable to the utility]~~ that the customer wishes to be billed pursuant to the schedule and the customer ~~[has demonstrated to the utility]~~ **and the utility jointly file, in a new Commission docket with notice provided in the new docket opened annually pursuant to section 2 of this regulation, evidence demonstrating** that ~~[-~~

~~(a) The customer is capable of using a fuel other than natural gas; or~~

~~(b) A] the customer can bypass the facilities of the utility which transports natural gas using a bona fide alternative [to purchasing service from the utility is available to the customer.] and that bypass of the facilities of the utility is:~~

*(a) Physically feasible and imminent based upon evidence demonstrating the ability of the customer or its agent to construct physical infrastructure for natural gas service from a bona fide alternative within a reasonable amount of time;*

*(b) Economically feasible based upon evidence demonstrating that taking service from a bona fide alternative would be more economical than taking service from the utility during the proposed contractual period, taking into account all of the costs of constructing or using physical infrastructure other than that of the utility; and*

*(c) Operationally feasible and imminent based upon evidence demonstrating that each transportation customer or its agent is operationally capable of constructing and operating natural gas facilities.*

*\* The transportation customer must provide the foregoing evidence to the utility before the utility and the transportation customer jointly file any application for approval of a discounted rate contract pursuant to section 4 of this regulation.*

3. If a utility which seeks to transport natural gas for ~~for sell natural gas to a generating, industrial or large commercial~~ *a transportation customer:*

(a) Does not have a schedule approved by the Commission on file with the Commission pursuant to subsection 1;

(b) Seeks to charge a rate that is outside of the limits established by the schedule of the utility approved for transporting natural gas for ~~for selling natural gas to a generating, industrial or large~~ *a transportation customer; or*

(c) Seeks terms and conditions of service outside those set forth in the schedule of the utility approved for transporting natural gas for ~~for selling natural gas to a generating, industrial or large commercial~~ *a transportation customer,*

\* the utility shall file with the Commission an application for the approval of a contract for special services between the utility and the ~~{generating, industrial or large commercial}~~ *transportation customer. A contract for special services must specify the method, terms, conditions and rates by which the services are to be rendered to the transportation customer. A utility shall not provide service to a {generating, industrial or large commercial} transportation customer pursuant to a contract {of} for special services until the contract is approved by the Commission.*

4. A utility may provide service to a ~~{generating, industrial or large commercial}~~ *transportation customer pursuant to a contract for special services , which shall be supported with cost estimates, studies and other documentary evidence when the contract for special services is filed with the Commission, if the customer notifies the utility in writing in a manner acceptable to the utility that the*

customer wishes to be billed pursuant to such a contract and the customer ~~[has]~~ **and the utility have** demonstrated to the ~~[utility]~~ **Commission** that ~~[-~~

~~(a) The customer is capable of using a fuel other than natural gas; or~~

~~(b) A] the customer can bypass the facilities of the utility which transports natural gas using a bona fide alternative [to purchasing service from the utility is available to the customer.] and that bypass of the facilities of the utility is:~~

*(a) Physically feasible and imminent based upon evidence demonstrating the ability of the customer or its agent to construct physical infrastructure for natural gas service from a bona fide alternative within a reasonable amount of time;*

*(b) Economically feasible based upon evidence demonstrating that taking service from a bona fide alternative would be more economical than taking service from the utility during the proposed contractual period, taking into account all of the costs of constructing or using physical infrastructure other than that of the utility; and*

*(c) Operationally feasible and imminent based upon evidence demonstrating that each transportation customer or its agent is operationally capable of constructing and operating natural gas facilities.*

*\* The transportation customer must provide the foregoing evidence to the utility before the utility and the transportation customer jointly file the application for approval of a contract for special services pursuant to subsection 3.*

5. The rates and charges under a schedule or a contract for special services filed pursuant to this section must be established by the utility which ~~[supplies]~~ **transports** natural gas after consultation with each affected customer. ~~[The utility shall consider the value to the customer of using natural gas as opposed to using an alternative fuel and the cost to the utility of providing the service.~~

~~6. Filings, pursuant to NAC 704.516 to 704.528, inclusive, are exempt from the provisions of NRS 704.100, except that any tariff, schedule or contract for special services that is filed is subject to the provisions of NRS 704.100 and 704.110 governing the time in which the Commission must take action on such filings.~~

~~7. As used in this section:~~

~~(a) "Bona fide alternative" means an option available to a customer:~~

~~(1) Which is economically and operationally feasible; and~~

~~(2) For which the cost to the customer to bypass the system of the utility is less than the marginal cost needed for the utility to serve that customer.~~

~~(b) "Contract for special services" means a contract which is filed by a utility in lieu of a schedule and which specifies the methods, terms, conditions and rates by which services are to be rendered to a generating, industrial or large commercial customer.]~~

**Sec. 9.** NAC 704.519 is hereby amended to read as follows:

704.519 A schedule becomes effective the date specified in the schedule except it may not take effect before it is filed with ***and approved by*** the Commission.

**Sec. 10.** NAC 704.521 is hereby amended to read as follows:

704.521 A schedule filed by a utility ***pursuant to NAC 704.518*** must include or be accompanied by a written justification for each ~~[rate and charge in the schedule.]~~ ***element required by NAC 704.518.***

**Sec. 11.** NAC 704.524 is hereby amended to read as follows:

704.524 ~~[The]~~ A utility supplying natural gas ***to an alternative fuel capable customer or transporting natural gas for a transportation customer*** shall notify each customer covered by ~~[the]~~ a schedule ***filed pursuant to NAC 704.518 or section 5 of this regulation*** of any change in the rates and charges at least 1 day before the effective date of the change.

**Sec. 12.** NAC 704.528 is hereby amended to read as follows:

704.528 *1. The Regulatory Operations Staff and the Bureau of Consumer Protection may audit any filings with the Commission made by the utility which supplies natural gas or any conduct undertaken by the utility which transports natural gas in accordance with NAC 704.516 to 704.528, inclusive, and sections 2 to 5, inclusive, of this regulation. If the Regulatory Operations Staff or the Bureau of Consumer Protection determines that any provision of NAC 704.516 to 704.528, inclusive, or sections 2 to 5, inclusive, of this regulation, or a schedule approved by the Commission has been violated, the Regulatory Operations Staff or the Bureau of Consumer Protection may file a complaint with the Commission at any time.*

2. An investigation and public hearing to determine whether a utility has violated a provision of NAC 704.516 to 704.528, inclusive, *or sections 2 to 5, inclusive, of this regulation, or the schedule approved for the utility by the Commission* may be ordered by the Commission, either upon its own motion or upon receipt of a complaint. If the Commission finds that any of the provisions of NAC 704.516 to 704.528, inclusive, *or sections 2 to 5, inclusive, of this regulation, or the schedule approved by the Commission* have not been followed, it will:

~~1-]~~ (a) Notify the utility that the schedule or list is no longer in effect because of its failure to follow the requirements of NAC 704.516 to 704.528, inclusive ~~2-]~~

~~2-]~~ , *or sections 2 to 5, inclusive, of this regulation or the schedule;*

(b) Require the utility to modify the schedule or list to comply with NAC 704.516 to 704.528, inclusive ~~3-]~~ , *and sections 2 to 5, inclusive, of this regulation or the schedule;* or

~~3-]~~ (c) Take any other appropriate action.

**Sec. 13.** NAC 704.522 is hereby repealed.

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**TEXT OF REPEALED SECTION**

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**704.522 Procedure for changing level of rate. (NRS 703.025, 704.075, 704.210)**

1. The utility may change the level of a rate within an established range of rates pursuant to a schedule approved by the Commission for generating, industrial or large commercial customers by filing a memorandum with the Commission stating the new level of the rate, the name of the affected customer and the effective date of the change.

2. As used in this section, "memorandum" means a written notice from a utility to the Commission of any change to rates or any changes to a schedule approved by the Commission.

## **NOTICE OF ADOPTION OF REGULATION**

On June 16, 2021, the Public Utilities Commission of Nevada adopted a temporary regulation, assigned LCB File No. T006-21 (Docket No. 19-02024), amending the Nevada Administrative Code (“NAC”) 704.516 *et seq.* to establish additional procedures and guidelines necessary to ensure that a public utility’s use of the schedule and contracts contemplated under NAC 704.518 are consistent with Nevada law and do not result in unjust or unreasonable rates. A copy of the adopted temporary regulation is attached.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066**  
**Informational Statement**  
**LCB File No. T006-21**

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

The Public Utilities Commission of Nevada (the “Commission”) opened this Docket – Docket No. 19-02024 (the “Docket”) – pursuant to ordering paragraph 29 of its February 15, 2019, Order in Docket No. 18-05031. The Docket was opened to conduct an investigation and rulemaking to amend the Nevada Administrative Code (“NAC”) 704.516 *et seq.* to establish additional procedures and guidelines necessary to ensure that a public utility’s use of the schedule and contracts contemplated under NAC 704.518 are consistent with Nevada law and do not result in unjust or unreasonable rates.

**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 website of the PUCN, <http://puc.nv.gov>, mailed to all county libraries in Nevada, published in the following newspapers:

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

(b) Nevada Cogeneration Associated #1 and #2 (“NCA”), the Regulatory Operations Staff (“Staff”) of the Commission, and the Attorney General’s Bureau of Consumer Protection (“BCP”) filed comments in the matter. Commenters generally focused on proposed restrictions and limitations imposed on discounted rate contracts and contracts for special services. Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy (together, “NV Energy”), Southwest Gas Corporation (“SWG”), NCA, Staff, and BCP participated in the hearing. Participants discussed particular clarifying language and definitions and the impact of the proposed regulation on particular classes of customers.

(c) The Commission’s final order adopting the regulation in the Docket and copies of the comments filed by interested persons are available for review on the Commission’s website: [puc.nv.gov](http://puc.nv.gov). Transcripts of the proceedings are available for review at the offices of the PUCN, 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 the April 27, 2021, hearing: 6**

- (b) Testified at the April 27, 2021, hearing: 6
- (c) Submitted written comments: 3

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.**

Proposed revisions to the regulation proposed by the commenters and participants were generally incorporated in the 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 is expected to have minimal adverse effects on businesses in both the immediate and long-term.

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

The regulation is expected to have minimal adverse effects on the public in both the immediate and long-term.

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

Any costs associated with the regulation are considered incremental in nature.

- 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 State, governmental agency, or federal regulations. The regulation amends NAC 704.516 to NAC 704.528.

**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?**

Staff 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 will not impose a direct and significant economic burden on small businesses or directly restrict the formation, operation or expansion of a small business. The Commission accepted Staff's recommendation and found that the proposed regulation does not impose a direct or significant economic burden upon small businesses, nor does it directly restrict the formation, operation, or expansion of a small business, and therefore 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. 19-02024 on March 25, 2021.

**BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

Investigation and Rulemaking to amend NAC 704.516 )  
*et seq.* to establish additional procedures and guidelines )  
necessary to ensure that a public utility’s use of the ) Docket No. 19-02024  
schedule and contracts contemplated under NAC )  
704.518 is consistent with Nevada law and does not )  
result in unjust or unreasonable rates )  
\_\_\_\_\_ )

At a general session of the Public Utilities Commission of Nevada, held at its offices on March 22, 2021.

PRESENT: Chair Hayley Williamson  
Commissioner C.J. Manthe  
Commissioner Tammy Cordova  
Assistant Commission Secretary Trisha Osborne

**ORDER**

The Public Utilities Commission of Nevada (“Commission”) makes the following findings and conclusions:

**I. INTRODUCTION**

Pursuant to ordering Paragraph 29 of its February 15, 2019, Order in Docket No. 18-05031, the Commission opened the instant Docket to conduct an investigation and rulemaking to amend the Nevada Administrative Code (“NAC”) 704.516 *et seq.* to establish additional procedures and guidelines necessary to ensure that a public utility’s use of the schedule and contracts contemplated under NAC 704.518 are consistent with Nevada law and do not result in unjust or unreasonable rates.

**II. SUMMARY**

The proposed regulations in Docket No. 19-02024 do not impose a direct and significant economic burden upon small businesses, nor do they directly restrict the formation, operation, or expansion of a small business, and therefore a small business impact statement pursuant to Nevada Revised Statutes (“NRS”) 233B.0608(2) is not required.

**III. PROCEDURAL HISTORY**

- On February 15, 2019, the Commission issued an Order in Docket No. 18-05031 opening the instant Docket.

- On July 31, 2019, the Commission issued a Notice of Rulemaking, Notice of Request for Comments, and Notice of Workshop.
- On September 20, 2019, the Regulatory Operations Staff of the Commission (“Staff”), Southwest Gas Corporation (“SWG”), the Nevada Bureau of Consumer Protection (“BCP”), Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy (together, “NV Energy”), Nevada Cogeneration Associates #1 and #2 (“NCA”), and Northern Nevada Industrial Gas Users (“NNIGU”) filed comments.
- On October 2, 2019, NNIGU submitted supplemental late-filed comments.
- On October 3, 2019, the Commission held a workshop. Staff, SWG, BCP, NV Energy, NCA, and NNIGU made appearances. Comments and a procedural schedule were discussed.
- On October 11, 2019, the Presiding Officer issued Procedural Order No. 1.
- On November 13, 2019, the Presiding Officer issued Procedural Order No. 2.
- On December 13, 2019, BCP filed a legal brief pursuant to Procedural Order No. 1, NNIGU filed comments pursuant to Procedural Order No. 1, NCA and BCP filed comments pursuant to Procedural Order No. 2. Staff, SWG, and NV Energy filed legal briefs and comments pursuant to Procedural Order Nos. 1 and 2.
- On January 9, 2020, NV Energy filed a legal brief and reply comments pursuant to Procedural Order Nos. 1 and 2. NNIGU and NCA filed reply comments pursuant to Procedural Order No. 1. SWG, BCP, and Staff filed reply comments pursuant to Procedural Order Nos. 1 and 2.
- On February 4, 2020, the Commission held a continued workshop. Staff, BCP, SWG, NV Energy, NCA, and NNIGU made appearances.
- On February 10, 2020, the Presiding Officer issued Procedural Order No. 3.
- On March 20, 2020, SWG filed a status update as requested in Procedural Order No. 3.
- On May 14, 2020, Staff filed a status update and draft proposed regulations as requested in Procedural Order No. 3.
- On May 15, 2020, BCP filed draft proposed regulations as requested in Procedural Order No. 3. Separately, SWG, NNIGU, NCA, and NV Energy jointly filed draft proposed regulations as requested in Procedural Order No. 3.
- On June 5, 2020, the Presiding Officer sent proposed regulations to the Legislative Counsel Bureau (“LCB”) for review.
- On June 8, 2020 the Presiding Officer issued Procedural Order No. 4.

- On October 2, 2020, the Legal Case Manager filed on behalf of LCB returned revised proposed regulations, LCB File No. R075-20.
- On February 22, 2021 the Presiding Officer issued Procedural Order No. 5, directing Staff to conduct an investigation pursuant to NRS 233B.0608(1) to determine whether the proposed regulations are likely to impose a direct and significant economic burden upon a small business or likely to directly restrict the formation, operation, or expansion of a small business.
- On March 17, 2021, Staff filed a briefing memorandum (“Staff’s Report”) recommending the Commission find that the proposed regulations are not likely to impose a direct or significant economic burden on a small business, nor likely to restrict the formation, operation, or expansion of a small business.
- On March 22, 2021, the Commission voted to approve the recommendations contained in Staff’s Report.

#### **IV. SMALL BUSINESS IMPACT REPORT**

##### **Staff’s Report**

1. Staff conducted a Delphi Method exercise to determine the impact of these proposed regulations on small businesses. (Staff’s Report at 3.) The Delphi Method is a systematic, interactive, forecasting method based on independent inputs of selected experts. (*Id.*) In this instance, the participants were members of Staff. (*Id.*) Each participant in the exercise used his or her background and expertise to reflect upon and analyze the impact of the proposed regulations on small businesses. (*Id.*)

2. Staff states that the proposed regulations relate to utilities that supply natural gas and apply for approval of a schedule to be applied to alternative fuel capable customers. (*Id.*) Staff further states that the regulations include amendments to NAC 704.516 et seq. (*Id.*) Staff states that the proposed regulations also establish procedures for the Commission to approve a schedule and discounted rate contracts for natural gas transportation customers and revises provisions governing natural gas contracts for special services. (*Id.* at 3-4.) Staff states that contracts similar to those contemplated by the regulations currently exist and that the proposed regulations clarify the distinction between the types of service and contracts under existing

Nevada law (NRS 704.050 and 704.075) and provide specific procedures for the approval of the different contract. (*Id.* at 4.) Staff states that the proposed regulations provide specific procedures for the approval of the different contract types. (*Id.*)

3. Staff states that the proposed regulations will not impose a direct and significant economic burden upon small businesses nor will it directly restrict the formation, operation, or expansion of small business. (*Id.* at 3.) Therefore, Staff states that the proposed regulations will not have immediate direct and significant adverse effects on small businesses. (*Id.*) Staff states that because different forms of the contracts contemplated by the regulations currently exist, clarifying certain procedures and contract requirements should not have an impact on small businesses. (*Id.* at 4.)

4. Staff states that it does not anticipate that the proposed regulations will have direct and significant immediate beneficial effects on small businesses and provides that to the extent that a Nevada utility that provides natural gas service or a contracting party is considered a small business, given that contracts between the utility and customers currently exist, Staff does not see the potential for a direct or significant impact on small businesses as a result of the proposed regulations. (*Id.*)

5. Staff states that, for similar reasons outlined above, it does not anticipate that the proposed regulations will have direct and significant long-term adverse effects on small businesses, nor does Staff anticipate that the proposed regulations will have direct and significant long-term beneficial effects on small businesses. (*Id.*)

6. Staff states that under the proposed regulations, the Commission might incur additional workload to process a proposed contract; however, such additional workload will not be significant. (*Id.*)

7. Staff states that as a result of its investigation, it concluded that the proposed regulations are not likely to a) impose a direct and significant economic burden upon small business; or b) directly restrict the formation, operation, or expansion of small business. (*Id.*) Therefore, Staff provides that a small business impact statement pursuant to NRS 233B.0608(2) is not required. (*Id.*)

8. Based on the foregoing, Staff recommends that the Commission find that the proposed regulations in Docket No. 19-02024 are not likely to impose a direct and significant economic burden on small businesses, or to restrict the formation, operation, or expansion of small businesses. (*Id.* at 5.) Staff recommends that, pursuant to NRS 233B.0608(3), the Commission state that the Delphi method was used in the determination of the impact of the proposed regulations on small businesses. (*Id.*)

**Commission Discussion and Findings**

9. The Commission finds that the proposed regulations are not likely to impose a direct or significant economic burden upon small businesses, nor are they likely to directly restrict the formation, operation, or expansion of a small business, and therefore a small business impact statement pursuant to NRS 233B.0608(2) is not required.

10. The Commission finds that the provisions of NRS 233B.0608 have been met.

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THEREFORE, it is ORDERED that:

1. The proposed regulations in Docket No. 19-02024 DO NOT impose a direct and significant economic burden upon small businesses, NOR DO THEY directly restrict the formation, operation, or expansion of a small business.

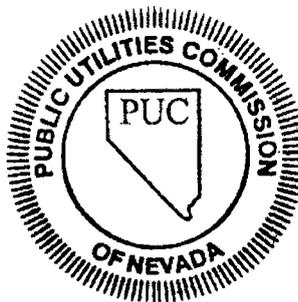
By the Commission,

  
\_\_\_\_\_  
TRISHA OSBORNE,  
Assistant Commission Secretary  
On behalf of the Commissioners

Certified:   /s/  Stephanie Mullen    
STEPHANIE MULLEN,  
Executive Director

Dated: Carson City, Nevada

  3/25/21  



(SEAL)

**STATEMENT REGARDING SMALL BUSINESS IMPACT (NRS 233B.0608)**

**LCB File No. T006-21 (PUCN Docket No. 19-02024)**

- 1. A description of the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.**

N/A. *See* Informational Statement accompanying the Regulation, Question Nos. 2-5 and 12.

Pursuant to NRS 233B.0608 (1), the Regulatory Operations Staff (“Staff”) of the Public Utilities Commission of Nevada (“PUCN”) conducted an investigation to determine whether the proposed regulation is likely to: (a) Impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business. In a Memorandum filed on March 17, 2021, Staff memorialized its conclusion that the proposed regulation is not likely to impose a direct and significant economic burden upon small businesses, nor is it likely to directly restrict the formation, operation or expansion of a small business. *See* Attachment 1 hereto.

On March 25, 2021, the PUCN issued an Order adopting the findings of Staff and specifically found that the proposed regulation does not impose a direct and significant economic burden upon small businesses, nor does it directly restrict the formation, operation or expansion of a small business. *See* Attachment 2 hereto.

NRS 233B.0608 (2)(a) only requires an agency to consult with owners and officers of small businesses “*if* an agency determines pursuant to subsection 1 that a proposed regulation *is* likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business...” (emphasis added). Given the PUCN’s determination that the proposed regulation does not impose a direct and significant economic burden upon small businesses or directly restrict the formation, operation or expansion of a small business, the PUCN is not statutorily mandated to make this inquiry, as no such “affected” small businesses exist.

- 2. The manner in which the analysis was conducted.**

*See* Attachments 1 and 2. Staff used a version of the Delphi method that incorporates elements of the Policy Delphi method to determine the potential impact of a regulation on small businesses.

- 3. The estimated economic effect of the proposed regulation on the small businesses which it is to regulate, including, without limitation:**
  - (a) Both adverse and beneficial effects; and**
  - (b) Both direct and indirect effects.**

See Informational Statement accompanying the Regulation, Question No. 7. See also Attachments 1 and 2.

**4. A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.**

N/A. See Attachments 1 and 2.

Pursuant to NRS 233B.0608 (1), Staff conducted an investigation to determine whether the proposed regulation is likely to: (a) Impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business.

On March 25, 2021, the PUCN issued an Order adopting the findings of Staff, and specifically found that the proposed regulation does not impose a direct and significant economic burden upon small businesses, nor does it directly restrict the formation, operation or expansion of a small business. See Attachment 2.

NRS 233B.0608 (2)(c) only requires an agency to consider methods to reduce the impact of a proposed regulation on small businesses “*if* an agency determines pursuant to subsection 1 that a proposed regulation *is* likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business...” (emphasis added). Given the PUCN’s determination that the proposed regulation does not impose a direct and significant economic burden upon small businesses or directly restrict the formation, operation or expansion of a small business, the PUCN is not statutorily mandated to make this inquiry as there are no impacts on small businesses and no methods were considered for reducing the non-existent impacts.

**5. The estimated cost to the agency for enforcement of the proposed regulation.**

Any costs associated with the regulation are considered incremental in nature. See Informational Statement accompanying the Regulation, Question No. 8. See also Attachment 1.

**6. If the proposed 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. See also Informational Statement accompanying the Regulation, Question No. 11.

**7. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.**

The regulation does not overlap any other State, governmental agency, or federal regulations. The regulation amends NAC 704.516 to NAC 704.528. See Informational Statement accompanying the Regulation, Questions Nos. 9 and 10. See also Attachment 1.

**8. The reasons for the conclusion of the agency regarding the impact of a regulation on small businesses.**

The PUCN complied with NRS 233B.0608 by making a concerted effort to determine whether the proposed regulation imposes a direct and significant economic burden upon small businesses, or directly restricts the formation, operation or expansion of a small business. The PUCN concluded that no such impacts would occur from the adoption of the proposed regulation based upon the well-reasoned investigation of Staff.

I, STEPHANIE MULLEN, Executive Director of the PUCN, certify that, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and the information contained in the statement was prepared properly and is accurate.

DATED this 22 day of July, 2021.



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STEPHANIE MULLEN  
Executive Director  
PUBLIC UTILITIES COMMISSION OF NEVADA

# **ATTACHMENT 1**

**PUBLIC UTILITIES COMMISSION OF NEVADA PUBLIC  
MEMORANDUM**

**DATE:** March 16, 2021

**TO:** The Commission  
**Via:** Anne-Marie Cuneo, DRO

**FROM:** Meredith Barnett, Assistant Staff Counsel, Staff Counsel Division

**SUBJECT:** Small Business Impact Report  
Agenda No. 06-21; Item No. 5A; Docket No. 19-02024;  
Investigation and Rulemaking to amend NAC 704.516 et seq. to establish additional procedures and guidelines necessary to ensure that a public utility's use of the schedule and contracts contemplated under NAC 704.518 is consistent with Nevada law and does not result in unjust or unreasonable rates.

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**I. Summary**

Pursuant to paragraph 29 of the Order in Docket No. 18-05031 issued by the Public Utilities Commission of Nevada ("Commission") on February 15, 2019, the Commission voted to open this Rulemaking to amend, Nevada Administrative Code ("NAC") 704.516 et seq. to establish additional procedures and guidelines necessary to ensure that a public utility's use of the schedule and contracts contemplated under NAC 704.518 is consistent with Nevada law and does not result in unjust or unreasonable rates. This matter was designated as Commission Docket No. 19-02024.

On July 31, 2019, the Commission issued a Notice of Rulemaking, Notice for Request for Comments and Notice of Workshop. On September 20, 2019, the Regulatory Operations Staff of the Commission ("Staff"), Southwest Gas Corporation ("SWG"), the Nevada Bureau of Consumer Protection ("BCP"), Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy ("NV Energy") Nevada Cogeneration Associates 1 and 2 ("NCA") and Northern Nevada Industrial Gas Users ("NNIGU") filed comments.<sup>1</sup>

On October 3, 2019, the Presiding Officer held a Workshop. Staff, SWG, BCP, NV Energy, NCA and NNIGU made appearances.

On October 11, 2019, the Presiding Officer issued Procedural Order No. 1 requesting participants file reply comments on or before January 9, 2020, requesting legal briefs as to whether Nevada Revised Statutes ("NRS") 704.075 applies only to rates for fuel switching customers or applies more broadly to rates for transportation bypass service, and scheduling a continued workshop on February 4, 2020.

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<sup>1</sup> On October 2, 2019, NNIGU filed supplemental late Comments.

On November 13, 2019, the Presiding Officer issued Procedural Order No. 2 with revised draft regulations attached and asked participants to comment on all the proposed changes to the draft regulation, and specifically on the new proposed definition of “recourse rate.”

On February 4, 2020, the Commission held a continued workshop. Staff, BCP, SWG, NV Energy, NCA and NNIGU made appearances.

On February 10, 2020, the Presiding Officer issued Procedural Order No. 3 scheduling an informal workshop on March 12, 2020, and generally ordered the participants to discuss draft regulations regarding discounted rate contracts for fuel switching customers pursuant to NRS 704.075, including, but not limited to, the contract term. Additionally, Procedural Order No. 3 ordered participants in the informal workshop to discuss separate draft regulations addressing discounted rate contracts for transportation bypass service pursuant to NRS 704.100, 704.110 and 704.210. Based upon the discussions during the informal workshop, the Commission ordered the participants to file a status update regarding areas of consensus, areas of non-consensus and any draft regulation language.

On March 20, 2020, SWG filed a status update regarding the March 12, 2020, informal workshop indicating the participants are continuing to work together regarding the draft regulations as requested in Procedural Order No. 3.

On May 14, 2020, Staff filed a status update and draft proposed regulations as required in Procedural Order No. 3.

On June 5, 2020, proposed regulations were sent to the Legislative Counsel Bureau (“LCB”) for pre-adoption review and approval.

On June 8, 2020, the Presiding Officer issued Procedural Order No. 4 indicating that, due to the unique timelines and working structure presented by COVID-19, the Commission will wait to schedule further workshops and hearings until the Commission receives draft regulations back from the LCB.

On October 2, 2020, the Commission’s Legal Case Manager filed on behalf of LCB returned proposed regulations (LCB File No. R075-20) in revised form.

On February 22, 2021, the Presiding Officer issued Procedural Order No. 5 directing Staff to conduct an investigation pursuant to NRS 233B.0608(1) regarding whether the proposed regulation attached as Attachment 1 to that procedural order, are likely to:

- a. Impose a direct and significant economic burden upon a small business; or
- b. Directly restrict the formation, operation or expansion of a small business.

Procedural Order No. 5 directed Staff to conduct an investigation into whether the proposed regulations are likely to affect small businesses as contemplated in NRS 233B.0608(1) and to present a report of the results of this investigation, including all the information required by NRS 233B.0609(1), along with a statement identifying the methodology used in determining the impact on small businesses. Staff was further directed to place this report on an agenda for

Commission consideration no later than the last open agenda meeting of the Commission on March 22, 2021.

NRS 233B.0608(1) requires an agency to make a concerted effort to determine whether a proposed regulation is likely to:

- a. Impose a direct and significant economic burden upon small businesses; or
- b. Directly restrict the formation, operation or expansion of small business.

A Small Business is defined in NRS 233B.0382 as a business conducted for profit which employs fewer than 150 full-time or part-time employees. NRS 233B.0608(1) further requires that the assessment must be made prior to conducting a workshop regarding the proposed regulation.

NRS 233B.0608(3) requires that an agency considering a proposed regulation "shall prepare a statement identifying the methods used by the agency in determining the impact of a proposed regulation on a small business and the reasons for the conclusions of the agency."

One Staff Financial Analyst and three Staff Economists, all of whom were involved in the rulemaking in this Docket and who are most knowledgeable about the proposed regulation, participated in this analysis.

This briefing memo constitutes the Staff Report regarding the Small Business impact of the proposed regulation.

## **II. Investigation and Analysis**

In accordance with NRS 233B.0608(3), Staff used a version of the Delphi method that incorporates elements of the Policy Delphi method to determine the potential impact of a regulation on small businesses. The Delphi method is a systematic interactive forecasting method based on independent inputs of selected experts. It recognizes the value of expert opinion, experience and intuition and allows the use of limited information when full scientific knowledge is lacking.

In this instance, the participants are members of the Staff assigned to the rulemaking and who are familiar with the subject matter. Each participant in the exercise used his or her background and experience to reflect upon and analyze the impact of the regulations on small businesses. The participants noted that:

### Immediate Adverse Effects:

The proposed regulations will not impose a direct and significant economic burden upon small businesses nor will it directly restrict the formation, operation or expansion of small business. Therefore, Staff does not anticipate that the proposed regulations will have an immediate direct and significant adverse effects on small businesses.

The proposed regulations relating to utilities that supply natural gas for approval of a schedule to be applied to alternative fuel capable customers of a utility that supplies natural gas and includes amendments to NAC 704.516 et seq. Additionally, the proposed regulations

establish procedures for the Commission to approve a schedule and discounted rate contracts for natural gas transportation customers and revises provisions governing natural gas contracts for special services.

Currently, similar contracts exist. The proposed regulations clarify the distinction between the types of service and contracts under existing Nevada law (NRS 604.050 and 704.075) and provide specific procedures for the approval of the different contract types.

Given different forms of the contracts contemplated by the regulations currently exist, clarifying certain procedures and contract requirements should not have an impact on small businesses.

Immediate Beneficial Effects:

Staff does not anticipate that the proposed regulations will have direct and significant immediate beneficial effects on small businesses. As discussed previously, the regulations clarifying the different types of service and contracts permitted under existing Nevada law should not impact small businesses. To the extent a Nevada utility that provides natural gas service or contracting party is considered a small business, given that contracts between the utility and customers currently exist Staff does not see the potential for a direct or significant impact on small businesses as a result of these regulations.

Long Term Adverse Effects:

Similar to the immediate adverse effects outlined previously, Staff does not anticipate that the proposed regulations will have direct and significant long-term adverse effects on small businesses.

Long-Term Beneficial Effects:

Similar to the immediate beneficial effects outlined herein, Staff does not anticipate that the proposed regulations will have direct and significant long-term beneficial effects on small businesses.

Cost to the Commission to enforce or administer the proposed regulation, including start-up and ongoing costs:

Under the proposed regulations, the Commission may incur additional workload to process the proposed contract. However, such additional workload will not be significant.

As a result of the investigation, Staff has concluded that the proposed regulations are not likely to: (a) impose a direct and significant economic burden upon small business; or (b) directly restrict the formation, operation, or expansion of small business. Therefore, a small business impact statement pursuant to NRS 233B.0608(2) is not required.

### **III. Notice and Subsequent Action**

On February 22, 2021, the Presiding Officer issued Procedural Order No. 5 directing Staff to conduct an investigation pursuant to NRS 233B.0608(1) to determine whether the proposed regulations are likely to: a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business.

### **IV. Conclusions and Recommendations**

Staff recommends that, in accordance with NRS 233B.0608(1), the Commission find that the proposed regulations are not likely to impose a direct and significant economic burden on small businesses, or to restrict the formation, operation or expansion of small businesses.

Staff further recommends that, pursuant to NRS 233B.0608(3), the Commission state that the Delphi method was used in the determination of the impact of the proposed regulations on small business.

# **ATTACHMENT 2**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

Investigation and Rulemaking to amend NAC 704.516 )  
*et seq.* to establish additional procedures and guidelines )  
necessary to ensure that a public utility’s use of the ) Docket No. 19-02024  
schedule and contracts contemplated under NAC )  
704.518 is consistent with Nevada law and does not )  
result in unjust or unreasonable rates )  
\_\_\_\_\_ )

At a general session of the Public Utilities  
Commission of Nevada, held at its offices  
on March 22, 2021.

PRESENT: Chair Hayley Williamson  
Commissioner C.J. Manthe  
Commissioner Tammy Cordova  
Assistant Commission Secretary Trisha Osborne

**ORDER**

The Public Utilities Commission of Nevada (“Commission”) makes the following  
findings and conclusions:

**I. INTRODUCTION**

Pursuant to ordering Paragraph 29 of its February 15, 2019, Order in Docket No. 18-05031, the Commission opened the instant Docket to conduct an investigation and rulemaking to amend the Nevada Administrative Code (“NAC”) 704.516 *et seq.* to establish additional procedures and guidelines necessary to ensure that a public utility’s use of the schedule and contracts contemplated under NAC 704.518 are consistent with Nevada law and do not result in unjust or unreasonable rates.

**II. SUMMARY**

The proposed regulations in Docket No. 19-02024 do not impose a direct and significant economic burden upon small businesses, nor do they directly restrict the formation, operation, or expansion of a small business, and therefore a small business impact statement pursuant to Nevada Revised Statutes (“NRS”) 233B.0608(2) is not required.

**III. PROCEDURAL HISTORY**

- On February 15, 2019, the Commission issued an Order in Docket No. 18-05031 opening the instant Docket.

- On July 31, 2019, the Commission issued a Notice of Rulemaking, Notice of Request for Comments, and Notice of Workshop.
- On September 20, 2019, the Regulatory Operations Staff of the Commission (“Staff”), Southwest Gas Corporation (“SWG”), the Nevada Bureau of Consumer Protection (“BCP”), Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy (together, “NV Energy”), Nevada Cogeneration Associates #1 and #2 (“NCA”), and Northern Nevada Industrial Gas Users (“NNIGU”) filed comments.
- On October 2, 2019, NNIGU submitted supplemental late-filed comments.
- On October 3, 2019, the Commission held a workshop. Staff, SWG, BCP, NV Energy, NCA, and NNIGU made appearances. Comments and a procedural schedule were discussed.
- On October 11, 2019, the Presiding Officer issued Procedural Order No. 1.
- On November 13, 2019, the Presiding Officer issued Procedural Order No. 2.
- On December 13, 2019, BCP filed a legal brief pursuant to Procedural Order No. 1, NNIGU filed comments pursuant to Procedural Order No. 1, NCA and BCP filed comments pursuant to Procedural Order No. 2. Staff, SWG, and NV Energy filed legal briefs and comments pursuant to Procedural Order Nos. 1 and 2.
- On January 9, 2020, NV Energy filed a legal brief and reply comments pursuant to Procedural Order Nos. 1 and 2. NNIGU and NCA filed reply comments pursuant to Procedural Order No. 1. SWG, BCP, and Staff filed reply comments pursuant to Procedural Order Nos. 1 and 2.
- On February 4, 2020, the Commission held a continued workshop. Staff, BCP, SWG, NV Energy, NCA, and NNIGU made appearances.
- On February 10, 2020, the Presiding Officer issued Procedural Order No. 3.
- On March 20, 2020, SWG filed a status update as requested in Procedural Order No. 3.
- On May 14, 2020, Staff filed a status update and draft proposed regulations as requested in Procedural Order No. 3.
- On May 15, 2020, BCP filed draft proposed regulations as requested in Procedural Order No. 3. Separately, SWG, NNIGU, NCA, and NV Energy jointly filed draft proposed regulations as requested in Procedural Order No. 3.
- On June 5, 2020, the Presiding Officer sent proposed regulations to the Legislative Counsel Bureau (“LCB”) for review.
- On June 8, 2020 the Presiding Officer issued Procedural Order No. 4.

- On October 2, 2020, the Legal Case Manager filed on behalf of LCB returned revised proposed regulations, LCB File No. R075-20.
- On February 22, 2021 the Presiding Officer issued Procedural Order No. 5, directing Staff to conduct an investigation pursuant to NRS 233B.0608(1) to determine whether the proposed regulations are likely to impose a direct and significant economic burden upon a small business or likely to directly restrict the formation, operation, or expansion of a small business.
- On March 17, 2021, Staff filed a briefing memorandum (“Staff’s Report”) recommending the Commission find that the proposed regulations are not likely to impose a direct or significant economic burden on a small business, nor likely to restrict the formation, operation, or expansion of a small business.
- On March 22, 2021, the Commission voted to approve the recommendations contained in Staff’s Report.

#### **IV. SMALL BUSINESS IMPACT REPORT**

##### **Staff’s Report**

1. Staff conducted a Delphi Method exercise to determine the impact of these proposed regulations on small businesses. (Staff’s Report at 3.) The Delphi Method is a systematic, interactive, forecasting method based on independent inputs of selected experts. (*Id.*) In this instance, the participants were members of Staff. (*Id.*) Each participant in the exercise used his or her background and expertise to reflect upon and analyze the impact of the proposed regulations on small businesses. (*Id.*)

2. Staff states that the proposed regulations relate to utilities that supply natural gas and apply for approval of a schedule to be applied to alternative fuel capable customers. (*Id.*) Staff further states that the regulations include amendments to NAC 704.516 et seq. (*Id.*) Staff states that the proposed regulations also establish procedures for the Commission to approve a schedule and discounted rate contracts for natural gas transportation customers and revises provisions governing natural gas contracts for special services. (*Id.* at 3-4.) Staff states that contracts similar to those contemplated by the regulations currently exist and that the proposed regulations clarify the distinction between the types of service and contracts under existing

Nevada law (NRS 704.050 and 704.075) and provide specific procedures for the approval of the different contract. (*Id.* at 4.) Staff states that the proposed regulations provide specific procedures for the approval of the different contract types. (*Id.*)

3. Staff states that the proposed regulations will not impose a direct and significant economic burden upon small businesses nor will it directly restrict the formation, operation, or expansion of small business. (*Id.* at 3.) Therefore, Staff states that the proposed regulations will not have immediate direct and significant adverse effects on small businesses. (*Id.*) Staff states that because different forms of the contracts contemplated by the regulations currently exist, clarifying certain procedures and contract requirements should not have an impact on small businesses. (*Id.* at 4.)

4. Staff states that it does not anticipate that the proposed regulations will have direct and significant immediate beneficial effects on small businesses and provides that to the extent that a Nevada utility that provides natural gas service or a contracting party is considered a small business, given that contracts between the utility and customers currently exist, Staff does not see the potential for a direct or significant impact on small businesses as a result of the proposed regulations. (*Id.*)

5. Staff states that, for similar reasons outlined above, it does not anticipate that the proposed regulations will have direct and significant long-term adverse effects on small businesses, nor does Staff anticipate that the proposed regulations will have direct and significant long-term beneficial effects on small businesses. (*Id.*)

6. Staff states that under the proposed regulations, the Commission might incur additional workload to process a proposed contract; however, such additional workload will not be significant. (*Id.*)

7. Staff states that as a result of its investigation, it concluded that the proposed regulations are not likely to a) impose a direct and significant economic burden upon small business; or b) directly restrict the formation, operation, or expansion of small business. (*Id.*) Therefore, Staff provides that a small business impact statement pursuant to NRS 233B.0608(2) is not required. (*Id.*)

8. Based on the foregoing, Staff recommends that the Commission find that the proposed regulations in Docket No. 19-02024 are not likely to impose a direct and significant economic burden on small businesses, or to restrict the formation, operation, or expansion of small businesses. (*Id.* at 5.) Staff recommends that, pursuant to NRS 233B.0608(3), the Commission state that the Delphi method was used in the determination of the impact of the proposed regulations on small businesses. (*Id.*)

**Commission Discussion and Findings**

9. The Commission finds that the proposed regulations are not likely to impose a direct or significant economic burden upon small businesses, nor are they likely to directly restrict the formation, operation, or expansion of a small business, and therefore a small business impact statement pursuant to NRS 233B.0608(2) is not required.

10. The Commission finds that the provisions of NRS 233B.0608 have been met.

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THEREFORE, it is ORDERED that:

1. The proposed regulations in Docket No. 19-02024 DO NOT impose a direct and significant economic burden upon small businesses, NOR DO THEY directly restrict the formation, operation, or expansion of a small business.

By the Commission,

  
\_\_\_\_\_  
TRISHA OSBORNE,  
Assistant Commission Secretary  
On behalf of the Commissioners

Certified:   /s/  Stephanie Mullen    
STEPHANIE MULLEN,  
Executive Director

Dated: Carson City, Nevada

  3/25/21  

(SEAL)

