

LCB File No. T006-98

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

(Adopted as temporary regulation on September 17, 1998.)

PUCN Docket No. 98-5001

Authority: NRS 703.025, 704.329

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as Sections 2 to 9, inclusive, of this regulation.

Section 2. As used in sections 2 to 9, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in Sections 4 to 6, inclusive, of this regulation have the meanings ascribed to them in those sections.

Section 3. Sections 2 to 9, inclusive, of this regulation apply to mergers, acquisitions, or changes in control of energy utilities for which approval by the commission is required pursuant to NRS 704.329.

Section 4. "Applicant" means any public utility or person seeking to merge with, acquire through a subsidiary or affiliate, or otherwise directly or indirectly obtain control of a public utility doing business in this state or an entity that holds a controlling interest in such a public utility for which approval by the commission is required pursuant to NRS 704.329.

Section 5. "Energy utility" means a public utility which is engaged in the provision of

electric service or natural gas service.

Section 6. "Transaction" means a merger, acquisition, or change in control which requires approval by the commission pursuant to NRS 704.329.

Section 7. Any person who seeks to merge with, acquire through a subsidiary or affiliate, or otherwise directly or indirectly obtain control of an energy utility doing business in this state or an entity that holds a controlling interest in an energy utility, for which approval by the commission is required pursuant to NRS 704.329, must file an application which comports with the requirements of Section 8 of this regulation.

Section 8. An application filed pursuant to NRS 704.329 and Section 7 of this regulation shall include the materials described below.

I. General

1. The name, address, and telephone number of the applicants;
2. A description of the applicants' business activities and corporate affiliations;
3. The number of jurisdictional customers of the energy utility or utilities sorted by class;
4. A general description of all jurisdictional facilities owned, operated, or controlled by the applicants or their parent companies, subsidiaries, or affiliates;
5. A description of the geographic areas affected by the proposed transaction.
6. Organizational charts which show the:

- a. current corporate structure of the applicants prior to consummation of the proposed transaction; and
 - b. planned corporate structure of the surviving entity or entities, as appropriate, following completion of the proposed transaction;
7. The identity of common officers and directors of parties to the proposed transaction;
8. An executed copy of the transaction for which authorization is sought;
9. Any analyses, reports, and assessments conducted by or on behalf of the applicants relating to the transaction;
10. Any analyses conducted by third parties of which the applicants are aware and can obtain assessing the financial, competitive or any other effect of the transaction;
11. A list of all applications filed and, if not filed, the expected date of filing, of all applications required by other regulatory bodies, and a copy of all applications for approval of the transaction required by any other regulatory body, including:
 - (a) a copy of all filings made pursuant to the requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. Section 18a;
 - (b) a statement of the status of all pending applications for approval of the transaction, and
 - (c) a copy of all orders which constitute final rulings on the merits issued by such bodies; and

12. Any other information which the applicants consider relevant to the commission's consideration of the proposed transaction.

With respect to any requirement set forth in this regulation which duplicates a requirement in a filing provided pursuant to this subsection, an applicant may avoid duplication by indicating by cross-reference the location in the filing submitted to another regulatory body where the requirements of this regulation are satisfied.

II. Effects on Costs and Rates

1. A detailed description and explanation of all merger costs including, but not limited to, transaction costs, transition costs, and any acquisition premium, and how applicants propose to treat such costs for rate purposes and for accounting purposes;
2. A detailed explanation of how the proposed transaction will result in efficiency gains and cost reductions, and the magnitude of those efficiency gains and cost reductions. The explanation shall also describe:
 - a. methods to be used to measure the efficiency gains, including references to other mergers which have used such methods and a description and evaluation of the use of such methods in such other mergers;
 - b. how the efficiency gains will be assigned to the ratepayers of each merging entity, including an explanation of the policy reasons for such assignment and examples of the quantitative effect of such

- assignment under realistic scenarios;
3. An analysis of the impact of the merger on customers' rates, and a description of the appropriate measures, if any to protect current rates from cost increases associated with the merger, such as:
 - a. a general hold-harmless provision, such as a commitment from the applicants that they will protect customers from any adverse effects on rates for a significant period of time, and methodology which ensures that the hold-harmless provision, if proposed, is enforceable and administratively manageable;
 - b. a cap on rates whereby the applicants agree to refrain from increasing their rates for customers under certain tariffs for a significant period of time;
 - c. a reduction in rates whereby the applicants agree to file an application to reduce rates for a significant period of time for their customers; or
 - d. any other measure that the applicant proposes to mitigate adverse impacts on customers.
 4. A description of the jurisdictional allocation of costs and benefits related to the merger that will inure to customers whose rates are subject to state jurisdictions and the Federal Energy Regulatory Commission ("FERC");
 5. Concerning the tariffs of the energy utility or utilities:
 - a. a copy of the current tariffs of the energy utility or utilities, and
 - b. any proposed changes to the tariffs following completion of the

transaction; and

6. A description of the likely effects of the transaction on shareholders and bondholders of each company.

III. Effects on Competition

1. An analysis of the competitive effect of the transaction on each energy services or product market in which the merged company intends to do business. Such analysis shall include:
 - a. identification of the relevant products and services sold by the parties to the proposed merger transaction before and after the merger, including specific attention paid to the following markets where applicable:
 - (1) generation services, such as capacity, energy, and coordination services, sold at wholesale or at retail;
 - (2) gas supply
 - (a) baseload, swing (load following) supplies
 - (b) peaking supplies
 - (c) back-up service
 - (d) balancing
 - (3) transmission services;
 - (4) pipeline transportation
 - (a) firm transportation
 - (b) interruptible transportation
 - (c) storage

- (5) generation services necessary to support transmission service
 - (a) regulation and frequency response
 - (b) energy imbalance
 - (c) loss compensation
 - (d) reactive power and voltage control from generation sources
 - (e) operating reserve -- spinning reserve
 - (f) operating reserve -- supplemental reserve
- (6) retail electric services, including
 - (a) arranging for power supplies
 - (b) end-use metering
 - i) meter ownership
 - ii) operation and maintenance
 - iii) meter reading
 - (c) financial arrangements for hedging prices
 - (d) rate design features
 - (e) public good services
 - (f) behind the meter services
 - (g) customer accounting
 - i) account services
 - ii) customer information and data processing
 - iii) billing
 - iv) payment collection and processing

- (7) distribution service (i.e., the physical service)
- (8) retail gas sales;
- b. identification of the current geographical markets into which these products and services are currently being sold, and the geographic markets the Applicants reasonably expect to obtain following the merger;
- c. identification of the present and future customers who may be affected by the proposed transaction;
- d. identification of all potential future suppliers of all customers who must be able to serve customers in each market given both physical and economic constraints; including the amount of capacity, energy, and/or coordination services which each supplier of such services currently has available for delivery to the market(s) (after adjusting for transmission capability or other constraints);
- e. analysis of the potential for entry into the market(s) to be served by the merged entity and the role that entry into the markets by alternative suppliers could play in mitigating adverse competitive effects of the transaction, including a qualitative and quantitative assessment of entry costs likely to be faced by new entrants.
- f. a calculation of market concentration statistics in each market to be served by the new entity as calculated by such measures as the Herfindahl-Hirschman Index ("HHI") or other appropriate measurement methodologies;

2. A description of all actions the applicants intend to take to mitigate or remedy the effects of market power which the merged company would have. Such description should identify the particular market(s) the actions would be directed to, the presumed quality and degree of mitigation effect(s), and alternative mitigation actions that have been considered.

and

3. Any additional information, data, analyses, or studies which consider the effect of the proposed transaction on competition in the energy utility markets.

IV. Miscellaneous Issues

1. Disposition of Facilities

If the proposed transaction involves the disposition of physical facilities, Applicants shall provide the following information:

- a. Maps which show the assets which will be disposed of.
- b. A plan for how the facilities will be disposed of. The plan shall include:
 - (1) a detailed description of the methods to be used to identify and select buyers and determine the purchase price, including a chronology of steps to be taken;
 - (2) an evaluation of whether the disposition will result in a purchase above or below the book cost of the assets disposed of;
 - (3) a proposal for how to allocate, between ratepayers and

shareholders, and among ratepayer groups, any overage or underage of the sales price relative to the book cost of the assets; and

(4) an explanation of the effect of the disposition on bondholders, including a detailed explanation of all bondholder rights affected by the disposition, and how those rights will be honored in the transaction.

c. If approval from any other municipal, state, or federal regulatory body is required, a copy and explanation of all state statutes and rules with which applicants and the purchasers of the disposed assets will be required to comply.

2. Effect on Transmission Facilities

a. The application shall contain the following information related to the applicants' transmission facilities:

(1) Transmission capability data. Transfer capability data for each of the transmission paths, interfaces or other facilities used by suppliers to deliver energy to the destination markets on an hourly basis for the most recent two years. The applicant must report simultaneous transmission capability, if it is available. Transmission capability data must include the following information:

(a) transmission path, interface, or facility name;

- (b) total transfer capability (TTC); and
 - (c) firm available transmission capability (ATC).
- (2) Transmission constraints. For each existing transmission facility that has been constrained during the most recent two years or is expected to be constrained within the planning horizon, the applicant must provide the following information, including information regarding expected changes in loadings on transmission facilities due to the proposed transaction and the consequent effect on transfer capability and, to the extent possible, system maps showing the location of transmission facilities where binding constraints have been known or are expected to occur:
- (a) the name of all paths, interfaces, or facilities affected by the constraint;
 - (b) the locations of the constraint and all paths, interfaces, or facilities affected by the constraint;
 - (c) the hours of the year when transmission constraint is binding; and
 - (d) the system conditions under which the constraint is binding.
- (3) Firm transmission rights. For each potential supplier to a destination market that holds firm transmission rights on a transmission path, interface, or facility necessary to deliver

energy from a potential supplier (including the supplier itself) to that market, the applicant must provide:

- (a) supplier name, name of transmission path interface, or facility;
 - (b) the FERC rate schedule number, if applicable, under which transmission service is provided, and a description of the firm transmission rights held (including, at a minimum, quantity and remaining time the rights will be held, and any relevant time restrictions on transmission use, such as peak or off-peak rights).
- (4) Historical transmission data. The applicant must provide information concerning any denials of transmission service (which shall include any failure to provide transmission service following a request that was not withdrawn), interruptions and curtailments on the merging entities' systems for the most recent two years, including the following information:
- (a) name of the customer or other entity denied, interrupted or curtailed;
 - (b) type, quantity and duration of service at issue;
 - (c) the date and period of time involved;
 - (d) reason given for the denial, interruption or

curtailment;

- (e) the transmission path; and
- (f) the reservations or other use anticipated on the affected transmission path at the time of service denial, curtailment, or interruption.

(5) Effect of transaction. The applicant must provide data or analyses on the effect the proposed transaction is expected to have on the utility's transmission capability including, but not limited to, any dispatch changes, how those dispatch changes will affect transmission use, what new markets might be served by the company and what transmission is planned to reach those markets;

- b. If the systems of the parties to the proposed transaction are not interconnected, documents showing any current plans for an interconnection(s); to the extent that no current plans exist, an analysis showing whether or not an interconnection(s) is physically feasible, and, if so, the magnitude of costs of such interconnection(s).

3. Quality of Service

An assessment of the effects of the transaction on quality of service and system reliability. Such assessment shall include a proposal for (a) measuring and reporting customer satisfaction, service reliability, safety and business office performance, and (b) imposing penalties for shortfalls in

such performance.

4. Commission Jurisdiction

An identification, by types and estimated annual quantities, of inter-affiliate transactions that will occur after the transaction is complete and an explanation of the extent, if any, of federal preemption of state commission authority resulting from approval of the merger.

Section 9. If the Commission finds that a transaction as proposed by the applicants does not satisfy the public interest, the Commission will either (a) deny the application or (b) list the changes in, or additions to, the proposal which the applicants must make so that it does satisfy the public interest. If the Commission chooses the latter approach, the Commission will, in its order listing such changes, establish a deadline by which the applicants shall inform the Commission whether they will make such changes, and a second deadline by which the applicants shall file whatever documents the Commission deems necessary to implement such changes.