

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

LCB File No. R078-00

June 20, 2000

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

AUTHORITY: §§1-32, NRS 703.025; §§33 and 34, NRS 703.025 and 704.979.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 34, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 34, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 18, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Affiliate” has the meaning ascribed to it in NRS 78.412.*

Sec. 4. *“Alternative seller” has the meaning ascribed to it in NRS 704.967.*

Sec. 5. *“Customer” has the meaning ascribed to it in NRS 704.968.*

Sec. 6. *“Distribution function” means the affiliate, division, department, section, part or unit of an electric distribution utility that:*

- 1. Is responsible for facilities for providing distribution and transmission services; and*
- 2. Performs distribution and transmission services.*

Sec. 7. *“Distribution function operation” means the parts of the distribution function of an electric distribution utility that:*

- 1. Operate, direct, organize, provide or plan for distribution or transmission service;*
- 2. Administer distribution or transmission tariffs; or*

3. Process or execute distribution or transmission services transactions.

Sec. 8. "Distribution service" means the service provided over the physical plant of an electric distribution utility delivering electricity from the transmission system to customers.

Sec. 9. "Electric distribution utility" has the meaning ascribed to it in NRS 704.970.

Sec. 10. "Electric service" has the meaning ascribed to it in NRS 704.971.

Sec. 11. "Joint management employee" means an officer, a director or a senior manager of an electric distribution utility who provides joint management services.

Sec. 12. "Joint management services" means senior-level oversight or governance of both the distribution function and the provider of last resort function of an electric distribution utility, but does not include the senior-level oversight or governance of only the distribution function operation or provider of last resort function operation of an electric distribution utility.

Sec. 13. "Joint support employee" means an employee of an electric distribution utility who provides joint support services.

Sec. 14. "Joint support services" means the property, facility, equipment, systems, personnel, activities and functions used to provide administrative support to both the distribution function and the provider of last resort function of an electric distribution utility, including, without limitation, administrative services, financial management services, data processing, shareholder services, human resources, employee benefits and other similar administrative support services. The term does not include any administrative support services provided only to the distribution function operation or to the provider of last resort function operation of the electric distribution utility.

Sec. 15. *“Last resort service” means the electric service provided to customers by an electric distribution utility designated by the commission pursuant to NRS 704.982 to provide such service.*

Sec. 16. *“Provider of last resort” means the entity or entities designated by the commission pursuant to subsection 1 of NRS 704.982 to provide last resort service.*

Sec. 17. *“Provider of last resort function” means the affiliate, division, department, section, part or unit of an electric distribution utility that aggregates the components of electric service that are necessary for the provision of electric service pursuant to NRS 704.982.*

Sec. 18. *“Provider of last resort function operation” means the parts of the provider of last resort function of an electric distribution utility that operate, direct, organize, provide or plan for the provision of last resort service.*

Sec. 19. *1. Before July 1, 2001, an electric distribution utility which has been designated by the commission pursuant to NRS 704.982 to provide last resort service to customers may obtain the services necessary to provide the last resort service from unaffiliated companies or through an affiliate of the electric distribution utility created to provide such services.*

2. On or after July 1, 2001, an affiliate of an electric distribution utility that had been designated by the commission pursuant to NRS 704.982 to provide last resort service to customers shall continue to provide the last resort service to those customers as the provider of last resort until such time as the commission authorizes an alternative method for providing last resort service to those customers.

3. A provider of last resort shall accept additional customers beyond those initially assigned by the commission if:

(a) The license of the alternative seller that was providing service to the customers is suspended or revoked by the commission; or

(b) The customers are new customers who are unable or fail to obtain service from an alternative seller.

4. A provider of last resort shall provide all components of last resort service to its customers receiving last resort service at a rate that is established by the commission pursuant to NRS 704.9823.

5. A provider of last resort shall submit proposed tariffs to the commission within 30 days after the effective date of this regulation or within 30 days after the date on which the commission designates the provider to be the provider of last resort, whichever occurs later. Such a tariff must include the rates, terms and conditions for the provision of last resort service by the provider.

6. A provider of last resort may, at any time, file an application with the commission to reduce the rate charged to a class or classes of customers receiving last resort service.

Sec. 20. *Customers receiving last resort service have all the rights and responsibilities set forth in NAC 704.302 to 704.390, inclusive, and 704.79781 to 704.79849, inclusive.*

Sec. 21. 1. *Not later than 30 days after the effective date of this regulation or 30 days after the date on which the commission designates a provider of last resort pursuant to NRS 704.982, whichever occurs later, the provider of last resort shall file with the commission a detailed proposed implementation schedule pursuant to which the provider of last resort will begin providing last resort service.*

2. The commission will conduct a hearing on a proposed implementation schedule filed by a provider of last resort and will review the proposed schedule, any comments and schedules proposed by other interested parties and any other supporting or contradicting evidence to determine:

(a) The reasonableness of the proposed implementation schedule, in light of the relevant statutes and relevant regulations adopted by the commission;

(b) Whether, and to what extent, the commission will have to make adjustments to the proposed implementation schedule; and

(c) Whether, and to what extent, the commission will have to make adjustments to its regulations based on the proposed implementation schedule.

3. If a provider of last resort fails to file a detailed implementation schedule timely, the provider of last resort must comply with the provisions of sections 23 to 34, inclusive, of this regulation.

4. A provider of last resort shall designate an officer to evaluate and certify that the provider of last resort is in compliance with the provisions of an implementation schedule that has been approved by the commission, or of sections 23 to 34, inclusive, of this regulation, as appropriate.

Sec. 22. The provisions of sections 23 to 34, inclusive, of this regulation apply to an electric distribution utility which the commission has designated as a provider of last resort only:

1. If the utility fails to submit a proposed implementation schedule as required by section 21 of this regulation; or

2. Upon order of the commission.

Sec. 23. 1. Except as otherwise provided in section 24 of this regulation, the employees of an electric distribution utility working in the distribution function of the utility shall operate and function independently of the employees of the utility working in the provider of last resort function of the utility. The employees of an electric distribution utility working in the provider of last resort function of the utility shall operate and function independently of the employees of the utility working in the distribution function of the utility.

2. Except as otherwise provided in section 24 of this regulation:

(a) An employee of an electric distribution utility working in the distribution function of the utility shall not conduct or participate in any operations or activities of the provider of last resort function of the utility.

(b) An employee of an electric distribution utility working in the provider of last resort function of the utility shall not conduct or participate in any operations or activities of the distribution function of the utility.

3. Except as otherwise provided in section 24 of this regulation, the employees of an electric distribution utility working in the distribution function of the utility must be located physically apart from the employees of the utility working in the provider of last resort function of the utility. To ensure its compliance with the provisions of this subsection, an electric distribution utility may, without limitation:

(a) Place such employees in separate secured office buildings; or

(b) Construct and maintain separate and secured access areas and facilities within a shared office building.

4. Except as otherwise provided in section 24 of this regulation:

(a) An employee of an electric distribution utility working in the provider of last resort function of the utility shall not have physical access to:

(1) The system control center for the distribution function of the utility; or

(2) The communication facilities, computer systems, office space, file cabinets, office equipment used for the distribution or transmission system, or any other similar facilities or systems used for the distribution function operation of the utility,

if that physical access differs in any way from the physical access available to, and commonly used by, employees of alternative sellers.

(b) An employee of an electric distribution utility working in the provider of last resort function of the utility shall not have direct or indirect access to information concerning the distribution function operation of the utility which is not generally available to alternative sellers and the public, including, without limitation, information concerning:

(1) Plans for construction or abandonment of transmission or distribution services or facilities;

(2) Planned upgrades, downgrades or modifications of transmission or distribution services or facilities;

(3) Planned transfers or sales of transmission or distribution facilities;

(4) Maintenance of transmission or distribution facilities;

(5) Plans or schedules for outages;

(6) Ratings of transmission or distribution facilities; and

(7) Interconnections for new customers which have been forecasted or scheduled, customer emergency curtailment, and any other market analysis report, survey, research or other type of forecast, planning or strategic report.

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(c) An employee of an electric distribution utility working in the distribution function of the utility shall not directly or indirectly disclose to any employee working in the provider of last resort function of the utility, any information described in paragraph (b) of this subsection unless that information is generally available to alternative sellers and the public.

(d) An employee of an electric distribution utility working in the provider of last resort function of the utility shall not have direct or indirect access to information about a specific customer relating to his billing, usage or load shape, other than information relating to a customer receiving last resort service from the provider of last resort function of the utility, unless that information is acquired:

(1) On terms and conditions that are applicable to all alternative sellers;

(2) With the consent of the customer to whom the information relates; and

(3) In accordance with the applicable rules and standards set forth by the commission for obtaining such information.

(e) An employee of an electric distribution utility working in the distribution function of the utility shall not directly or indirectly disclose to any employee working in the provider of last resort function of the utility, any information about a specific customer relating to his billing, usage or load shape unless that information is provided:

(1) On terms and conditions that are applicable to all alternative sellers;

(2) With the consent of the customer to whom the information relates; and

(3) In accordance with the applicable rules and standards set forth by the commission for providing such information.

(f) An employee of an electric distribution utility working in the distribution function of the utility may directly or indirectly disclose to any employee working in the provider of last resort

function of the utility information concerning customer billing, usage or load shape, including, without limitation, information concerning goods, services, purchases, sales and operations of the distribution function of the utility, if that information is:

(1) Not specific to any one particular customer;

(2) Contemporaneously made available by the distribution function of the utility to all alternative sellers on the same terms and conditions; and

(3) Made available for public inspection by the distribution function of the utility.

Sec. 24. 1. *Except as otherwise provided in this section, joint management employees and joint support employees of an electric distribution utility:*

(a) May provide management services or support services for both functions;

(b) Do not need to be separately located from either function; and

(c) May have access to the facilities of and information in either function.

2. *Except as otherwise provided in this section, a person employed as a joint management employee or joint support employee shall not engage in the provider of last resort function operation or in the distribution function operation of the electric distribution utility. An electric distribution utility:*

(a) Shall not use a joint management employee or joint support employee; and

(b) Shall ensure that such an employee is not used,

FLUSH *to circumvent any provision of sections 2 to 34, inclusive, of this regulation.*

3. *Upon a complaint filed with the commission or its own motion, the commission may, after notice and hearing, limit the use or access of a joint management employee or joint support employee if the commission finds that such a limitation is necessary or appropriate to:*

(a) Mitigate actual or potential discrimination; or

(b) Promote effective competition.

Sec. 25. 1. *An electric distribution utility may transfer an employee of the utility working in the provider of last resort function or the distribution function of the utility to the other function if the transfer is not used as a means, and does not have the foreseeable effect, of:*

(a) Circumventing any provision set forth in sections 2 to 34, inclusive, of this regulation;

or

(b) Adversely affecting effective competition.

2. *An electric distribution utility shall document each transfer of an employee working in the provider of last resort function or distribution function of the utility to the other function. An electric distribution utility shall provide this information to the commission on a quarterly basis.*

3. *An employee working in the distribution function of an electric distribution utility who is transferred to the provider of last resort function of the utility shall not:*

(a) Remove any data or information from the distribution function of the utility relating to the distribution function or customers of the distribution function unless that information is otherwise available to alternative sellers or customers of alternative sellers, or both;

(b) Provide to the provider of last resort function, or any employee working in the provider of last resort function operation, any information relating to the distribution function or customers of the distribution function unless that information is otherwise available to alternative sellers or customers of alternative sellers, or both; or

(c) Use any information relating to the distribution function of the utility, or customers of the distribution function, on behalf of the provider of last resort function of the utility unless

that information is otherwise available to alternative sellers or customers of alternative sellers, or both.

4. Before an employee may transfer from the distribution function of an electric distribution utility to the provider of last resort function of the utility, the employee must sign a statement acknowledging that he:

(a) Has read and will abide by the restrictions set forth in this section; and

(b) Understands that a violation of those restrictions may subject the electric distribution utility to the penalties set forth in section 34 of this regulation.

Sec. 26. 1. *Except as otherwise provided in this section, an electric distribution utility shall not, in any announcement, advertisement, statement or other form of communication to, with or intended for any of its customers or the public, directly or indirectly promote, recommend or otherwise urge or solicit a customer or the public to purchase electric service from the provider of last resort function of the utility.*

2. Nothing in this section prohibits such communication between:

(a) An electric distribution utility and any of its customers or the public if the communication only informs the customer or the public of the availability of last resort services from the utility if a customer does not or is unable to choose to get service from an alternative seller; or

(b) The provider of last resort function of a electric distribution utility and its customers.

Sec. 27. 1. *Except as otherwise provided in this section, the distribution function of an electric distribution utility:*

(a) Shall provide service to the provider of last resort function of the utility only in accordance with the generally applicable distribution tariff, including, without limitation, price and other terms, for the distribution function of the utility.

(b) Shall not discriminate in any manner between the provider of last resort function of the utility and an alternative seller.

(c) When providing or procuring, or declining to provide or procure, any goods, services, facilities or information, or when establishing any standards, shall not provide, attempt to provide or conspire with any other person to provide:

(1) A competitive advantage to the provider of last resort function of the utility; or

(2) A competitive disadvantage to any alternative seller.

(d) Shall offer to all alternative sellers any goods, services, facilities or information that the distribution function offers to the provider of last resort function of the utility.

(e) Shall, at the same time that the distribution function offers to the provider of last resort function of the utility any goods, services, facilities or information, offer such goods, services, facilities or information to all alternative sellers. For the purposes of this paragraph, a distribution function shall provide information relating to its services and discounted services to alternative sellers through the mechanism established pursuant to paragraph (f) of this subsection.

(f) Shall provide a mechanism which is accessible to the public, including, without limitation, an electronic bulletin board, through which an interested entity may promptly obtain pertinent information concerning:

(1) Services provided by the distribution function; and

(2) Any discounted services offered by the distribution function.

(g) With regard to the provision of distribution services, shall not represent that it will treat the provider of last resort function of the utility, or any customer of or provider to the provider of last resort function, differently than it will treat an alternative seller and any customers of and providers to the alternative seller.

(h) Shall not provide the provider of last resort function of the utility, or any customer of or provider to the provider of last resort function, with preferences over any alternative seller, or customers of or providers to an alternative seller, including, without limitation, preferences relating to the terms and conditions of service or pricing, or to the timing of service.

(i) Shall apply any tariff provision that allows for discretion in its application in the same manner to the provider of last resort function of the utility as the distribution function applies the tariff provision to an alternative seller, and the customers of and providers to an alternative seller.

(j) Shall strictly enforce mandatory tariff provisions to the provider of last resort function of the utility.

(k) Shall not condition or otherwise tie the provision of any service or the availability of any discounts, rates, other charges, fees, rebates or waiver of terms and conditions to the taking of any goods or services from the provider of last resort function of the utility.

(l) Shall not give any appearance that a customer or provider will receive preferential treatment if the customer or provider conducts, or will conduct, business with the provider of last resort function of the utility.

(m) Shall make any discount or waiver of all or part of a charge or fee available simultaneously to all market participants.

2. Nothing in this section applies to the joint management services and joint support services of an electric distribution utility, if such services are not used as a means of, and do not have the foreseeable effect of:

(a) Circumventing the standards of conduct set forth in sections 2 to 34, inclusive, of this regulation;

(b) Discriminating in favor of the provider of last resort function of the electric distribution utility or against any alternative seller; or

(c) Adversely affecting effective competition.

Sec. 28. An electric distribution utility:

1. Shall maintain books, records and accounts for its distribution function and its provider of last resort function in accordance with this section.

2. Shall keep the books, records and accounts of its distribution function separate from the books, records and accounts of its provider of last resort function.

3. Shall acquire for its provider of last resort function those distribution services necessary to serve its designated provider of last resort load under the tariff approved by the commission and shall account for all transactions between its distribution function and its provider of last resort function.

4. Shall not allow revenues received by the distribution function of the utility to be used to subsidize or support in any manner the provider of last resort function of the utility or otherwise allow its distribution function to support its provider of last resort function in any manner. To ensure that an electric distribution utility is complying with the provisions of this subsection, the electric distribution utility shall, not later than 10 days after the effective date of this regulation, or upon the order of the commission, submit to the commission for approval

written guidelines consistent with sections 2 to 34, inclusive, of this regulation for allocating revenues and charges between the distribution function of the electric distribution utility and its provider of last resort function. The guidelines must provide, without limitation, for the provider of last resort taking and paying for distribution and transmission services from the distribution function of the utility under the generally applicable tariffs of the distribution function of the utility. Unless the commission otherwise orders, expenses and revenues that are attributable to joint management services and joint support services must be allocated to the distribution function and the provider of last resort function on the basis of a ratio of labor expense that is equal to the proportion that the labor expense directly assignable to the distribution function, or to the provider of last resort function, bears to the total combined labor expense directly assignable to both the distribution function and the provider of last resort function.

Sec. 29. *On or after July 1, 2001, if an alternative seller is selected to provide last resort service, customers receiving last resort service who are not assigned to an alternative seller must be served by an electric distribution utility or its affiliate under the same terms and conditions that existed for the provision of last resort service to those customers immediately before the selection of the alternative seller to provide last resort service.*

Sec. 30. *Any person may complain to the commission or an electric distribution utility in writing, setting forth any act or thing allegedly done or not done by the electric distribution utility, or any employee thereof, which is alleged to be in violation of sections 2 to 34, inclusive, of this regulation.*

Sec. 31. 1. Upon receiving an oral or a written complaint, an electric distribution utility shall forthwith refer the complaint to a designated representative of the electric distribution utility, who shall:

(a) Acknowledge receipt of the complaint in writing to the complainant within 5 business days after receiving the complaint;

(b) Prepare a written summary of the complaint, which includes, without limitation:

(1) The name of the complainant; and

(2) A detailed report of the facts as set forth in the complaint, including, without limitation:

(I) The relevant dates;

(II) The names of the employees alleged to be involved; and

(III) The details of the claim;

(c) Conduct a preliminary investigation of the complaint; and

(d) Communicate the results of the preliminary investigation, including, without limitation, a description of any course of action that was or will be taken as a result of the investigation, in writing to the complainant not more than 20 business days after the designated representative received the complaint.

2. An electric distribution utility shall:

(a) For all new, pending and resolved complaints, maintain a log of the complaints filed with the utility pursuant to this section; and

(b) Make the log available to the commission and the bureau of consumer protection in the office of the attorney general not more than 10 business days after the end of each month.

3. A log maintained by an electric distribution utility pursuant to this section must include, without limitation:

(a) A written summary of each complaint; and

(b) A written summary of the manner in which each complaint was resolved or, if the complaint has not been resolved, an explanation of the reason why the complaint is still pending.

Sec. 32. *1. The commission will investigate any complaint it receives concerning an alleged violation of sections 2 to 34, inclusive, of this regulation.*

2. Upon the request of a complainant who is a current or former employee of an electric distribution utility, the commission will maintain the confidentiality of the identity of the complainant until the end of its investigation, or longer if the commission deems that such confidentiality is necessary or appropriate.

3. If the commission determines that probable cause exists for the complaint, the commission will:

(a) Order that a hearing be held;

(b) Provide notice of the hearing to the parties to the complaint; and

(c) Conduct the hearing as it would conduct any other hearing.

Sec. 33. *After a hearing has been held pursuant to section 32 of this regulation, the commission may, to enforce the provisions of sections 2 to 34, inclusive, of this regulation or an order of the commission:*

1. Assess a penalty in accordance with section 34 of this regulation; or

2. Apply any other appropriate remedy that is available to the commission.

Sec. 34. 1. A penalty assessed by the commission pursuant to section 33 of this regulation will reflect the actual or potential injury, or both, to ratepayers and alternative sellers, and the gravity of the violation.

2. The commission may assess more severe penalties for repeated violations by an electric distribution utility of sections 2 to 34, inclusive, of this regulation or any order of the commission relating thereto.

3. In addition to any other penalties, the commission may assess against an electric distribution utility a penalty of not more than \$20,000 for any violation of sections 2 to 34, inclusive, of this regulation or any order of the commission relating thereto.

4. The commission may deem a violation that continues for more than 1 day to be a separate violation for each day that the violation continues.

5. The availability of a penalty or other remedy imposed by the commission does not preclude the right of any party to pursue a private action in a court of competent jurisdiction.

6. The penalties set forth in this section do not preclude any other penalty or relief from being imposed or awarded pursuant to any other provision of law.