

LCB File No. R188-03

**PROPOSED REGULATION OF THE
PUBLIC UTILITIES COMMISSION**

**Construction of Utility Facilities
Revised January 29, 2003**

Section 1. NAC 703.417 Definitions. As used in NAC 703.415 to 703.428, inclusive, unless the context otherwise requires, the words and terms defined in ~~NRS 704.834~~ NRS 704.830 to 704.860, inclusive, have the meanings ascribed to them in those sections.

Sec. 2 *Water storage facility, transmission main, treatment facility; sewage transmission main and wastewater treatment facility, defined. Unless the context requires otherwise, the following definitions apply:*

- 1. A water storage facility is any structure used to store either raw water or potable water that will be distributed into a utility's distribution system.*
- 2. A water transmission main is any size main that connects to a raw water source, a water storage facility, a treatment facility or the distribution system.*
- 3. A water treatment facility is a facility where surface or groundwater is treated to make water potable prior to distribution to the utility's customers.*
- 4. A sewage transmission main is any size main, including lift station facilities, that connects to another sewage transmission main or a wastewater treatment facility.*
- 5. A wastewater treatment plant is a treatment facility where raw sewage influent is treated to make the sewage effluent meet required water quality standards.*

Sec. 3 *Gas intrastate transmission pipelines, storage plants, and compressor stations, defined. Unless the context requires otherwise, the following definitions apply:*

- 1. A compressor station is any facility that increases the pressure of gas in order to move it into transmission lines, or storage facilities.*
- 2. A gas storage plant is any above-ground facility in which gas is stored for the benefit of a local distribution system.*
- 3. A gas intrastate transmission line is any gas transmission facility as defined in 49 Code of Federal Regulations 192(3).*

Sec. 4 *A person wishing to obtain a permit to construct for a utility facility that also requires an environmental analysis by a federal agency must comply with NRS 704.870 (2), (3), and (4).*

~~[NAC 703.419 Prerequisites for certain persons to participate as parties to proceeding for permit. (NRS 703.025, 704.210, 704.885) Except as otherwise provided in NRS 704.885, to participate as a party in a proceeding for a permit to construct a utility facility, a person must file, as appropriate under NRS 704.885, a petition for leave to intervene as a party, a notice of intent to be a party or a statement of position of a person making a limited appearance as a party within 30 days after the date on which the public notice required by NRS 704.870 is published.]~~

Sec. 5 NAC 703.420 Application ~~[for permit by public utility.] Requirements.~~ A ~~[public utility which]~~ *person who* applies for a permit ~~[for construction of]~~ *to construct* a utility facility must submit ~~[an application with]~~ the following information, *in the application or amended application*, in the order listed:

1. A cover sheet ~~[which]~~ *that* includes:
 - (a) The name of the applicant;
 - (b) The name of the proposed utility facility;
 - (c) The name, address and telephone number of a person who may be contacted for additional information;
 - (d) A one-paragraph abstract of the environmental statement;
 - (e) A copy of the public notice of the application, *with proof of publication*, as required by NRS 704.870;

~~[(f) An affidavit showing the date of public notice of the application; and
(g) The date before which interested persons must notify or petition the commission for intervention in the proceeding.]~~

2. A summary ~~[which]~~ *that* includes:
 - (a) A general description of the proposed utility facility;
 - (b) A general description of the location of the proposed utility facility ~~[with respect to the utility's certificated area of service; and]~~ *That includes a regional facility location map or reference;*
 - (c) ~~[The major conclusions of the environmental statement and areas of controversy.]~~ *A description of the natural resources, such as water, air, and the fuel used to operate the facility, that will be affected by or required by the construction or operation of the proposed utility facility;*

(d) A legal description of the site of the proposed utility facility(s), with the exception of electric and gas transmission lines and water and sewer lines, for which only a detailed description of the utility facility will be submitted; and

(e) An environmental statement that lists the major conclusions of the environmental analysis that has been conducted and a listing of any areas of concern, issues or controversy.

3. A detailed description of the ~~[location of the]~~ proposed utility facility; *that includes:*
 - (a) *Appropriately scaled facility site plan drawings, vicinity maps and routing maps (as required);*
 - (b) *Layout diagrams of the proposed facility and its [a description of any] associated equipment;*
 - (c) *A description of the equipment that will be included in the utility facility; and*
 - (d) ~~[proposed for the facility and its location,]~~ *Scaled* diagrams of the structures ~~[involved in the proposed]~~ *that will be included in the* utility facility. ~~[and appropriately scaled maps of the location of the proposed utility facility.]~~

4. ~~[A description of the proposed utility facility over its expected life and a general description of the need for the proposed utility facility which includes, as appropriate:~~

- ~~—(a) A forecast of the load of the utility;~~
- ~~—(b) A projection of the utility's peak load;~~
- ~~—(c) A schedule for the construction of the utility facility;~~
- ~~—(d) The consequences of delaying construction of the utility facility;~~
- ~~—(e) An analysis and comparison of the costs and benefits associated with the proposed utility facility and alternatives to construction; and~~

~~—(f) A detailed list of the cost of the utility facility.]~~

The applicant shall demonstrate: a) the nature of the probable effect on the environment if the utility facility is constructed, and b) that the facility represents the minimum adverse effect on the environment, considering the state of available technology and the nature and economics of the various alternatives.

The foregoing should include, but is not limited to:

(a) An analysis and comparison of the costs and benefits associated with the construction of the proposed utility facility and alternatives to construction;

(b) A description of the means to mitigate the adverse environmental impacts associated with the proposed facility;

(c) An evaluation and comparison of any reasonable alternative locations and designs for the proposed utility facility. The evaluation must include:

(1) A description of the environmental characteristics of the region in sufficient detail to provide an understanding of the environment existing when the application is made;

(2) The impact, including any mitigation, that each alternative would have on that environment. The data and analyses used to measure the impact must be commensurate with the significance of the anticipated impacts;

(3) An evaluation of the significant effects on the quality of the environment for humans;

(4) A description of the natural resources, such as water, air, and the fuel used to operate the facility, that will be affected by or required by the construction and operation of each alternative;

(5) A list of the reasons that the location and design selected by the applicant are best suited for the utility facility;

(6) An environmental analysis that includes an evaluation and comparison of each reasonable location for the proposed utility facility.

(d) A list, a summary, and a copy of all studies that have been made of the environmental impact of the proposed utility facility;

(e) The name, qualifications and contact information of each person with primary responsibility for the preparation of the environmental statement and of each person who has provided comments or input in the preparation of the statement, and a bibliography of materials used in the preparation of the environmental statement;

(f) An evaluation of the effect of a decision by the commission to deny the application;

(g) Maps to appropriate scale showing all reasonable alternative locations.

~~5. [An environmental statement which includes an evaluation and comparison of all reasonable locations for the proposed utility facility, an evaluation and comparison of all reasonable designs for the proposed utility facility, an evaluation of the effect of a decision by the commission to deny the application and maps of appropriate scale showing all reasonable locations. The evaluation of all locations and designs must include:~~

~~—(a) A description of the environmental characteristics of the region in sufficient detail to provide an understanding of the environment existing when the application is made and the impact that each alternative would have on that environment. The data and analyses in the description must be commensurate with the significance of the anticipated impacts.~~

~~—(b) An evaluation of the significant effects on the quality of the environment for humans, significant environmental impacts, means to mitigate adverse environmental impacts and, as appropriate, requirements for energy and natural or nonrenewable resources.~~

~~—(c) A list of the reasons that the primary location and design selected by the utility are best suited for the utility facility.~~

~~—(d) A list and summary of all studies that have been made of the environmental impact of the proposed utility facility.~~

~~—(e) The name, qualifications and professions of each person with primary responsibility for the preparation of the environmental statement and of each person who has provided comments or input in the preparation of the statement and a bibliography of materials used in the preparation of the environmental statement.]~~

The applicant for a water, sewer or natural gas utility facility shall demonstrate the extent to which the facility is needed to ensure reliable utility service to customers by demonstrating that the facility will provide services for a prolonged period to customers in the state of Nevada.

6. Unless the utility facility is approved in a resource plan or resource plan amendment, the applicant for an electric utility facility shall demonstrate the extent to which the facility is needed to ensure reliable utility service to customers in the state of Nevada. The foregoing should include, but is not limited to:

a) A description of the extent to which the utility facility will provide capacity, energy or ancillary services for a prolonged period to customers in the state of Nevada.

b) A description of the extent to which the utility facility will provide other benefits that will enhance the reliability of the electric system in Nevada, and

c) A description of the extent to which the utility facility is required to ensure the reliability of the western grid.

7. The applicant shall explain how the need for the utility facility is balanced against any adverse effect on the environment, after mitigation. In making a determination of whether the need for the facility is balanced against the adverse effect on the environment, the Commission shall consider the need for the facility that is demonstrated in paragraph 6 above against the probable effect on the environment as demonstrated in paragraph 4 above, the extent to which natural resources will be affected by or required by the construction or operation of the utility facility, the social and economic conditions of the inhabitants of the affected area and the health, safety and welfare of nearby inhabitants.

~~[6.]~~ *8. The applicant shall provide a [A] list of all federal, state, regional and local agencies whose approval of the proposed utility facility is required [and the types of permits required]. The list must:*

(a) Include the name, address, telephone number and contact person for each agency;

(b) Include a description of each permit that is required;

~~[(a)]~~ *(c) Be correct as of the date the application is submitted to the commission;*

~~[(b)]~~ *(d) Include the status of each required approval; and*

~~[(e)]~~ *(e) Be amended as any deletions or additions are required in the list because of changes in federal, state, regional or local laws [; and] or other factors.*

~~[(d) Include copies of permits already obtained and copies of pertinent correspondence with the agencies which issue permits.]~~

9. The applicant shall provide information regarding permitting activity related to the utility facility. Information shall include:

(a) Copies of permit applications and permits;

(b) Copies of any and all agency environmental reviews; and

(c) The date, time and location of any hearing or environmental review.

10. The applicant shall include information demonstrating that the facility will serve the public interest. In determining that the facility will serve the public interest, the Commission shall consider all the information in the application and determine:

- (a) The benefits to the applicant and the state resulting from the proposed facility;***
- (b) Significant effects of the economic activity, if any, resulting from the proposed facility;***
- (c) Significant effects of the proposed facility, if any, on the public health, welfare, and safety; and,***
- (d) Other factors that it considers relevant.***

~~[NAC 703.422 Application for permit by person who is not public utility. (NRS 703.025, 704.210, 704.870) A person who is not a public utility and applies for a permit for construction of a utility facility must submit an application with the following information in the order listed:~~

- ~~—1. A cover sheet which includes:
 - ~~—(a) The name of the applicant;~~
 - ~~—(b) The name of the proposed utility facility;~~
 - ~~—(c) The name, address and telephone number of the person who may be contacted for additional information;~~
 - ~~—(d) A copy of the public notice of the application required by NRS 704.870.~~
 - ~~—(e) An affidavit showing the date of the public notice of the application; and~~
 - ~~—(f) The date before which interested parties must notify or petition the commission for intervention in the proceeding.~~~~
- ~~—2. A summary which includes:
 - ~~—(a) A general description of the proposed utility facility;~~
 - ~~—(b) A general description of the location of the proposed utility facility; and~~
 - ~~—(c) Major points of interest contained in the environmental statement.~~~~
- ~~—3. A detailed description of the proposed utility facility and its location, including a description of any associated equipment proposed for the facility and its location, diagrams of the structures involved in the proposed utility facility and appropriately scaled maps of the location of the proposed utility facility.~~
- ~~—4. A list and summary of all studies that have been made of the environmental impact of the proposed utility facility.]~~

~~[NAC 703.424 Applicant for permit who is not public utility: Proof of certain environmental approvals and permits. (NRS 703.025, 704.210) A person who is not a public utility and applies for a permit for construction of a utility facility shall, at the time of filing the application, demonstrate to the commission that he has acquired or will acquire the types of environmental approvals or permits necessary for the construction of the facility. The applicant may comply with this requirement by submitting a list of all agencies of the state and local governments responsible for the enforcement of environmental laws whose approval is required for the construction of the proposed utility facility and the types of environmental permits or approvals to be issued and the status of each. Copies of permits or approvals already obtained or copies of correspondence with any state agency or local government concerning such permits must be included with the list.]~~

~~[NAC 703.426 Determination of effect on environment; conditional permit for person who is not public utility. (NRS 703.025, 704.210, 704.877, 704.890)~~

~~—1. The commission will accept as a sufficient determination of the nature of the probable effect of the proposed utility facility on the environment, a determination of that effect made by any governmental entity which has the responsibility for making that type of determination.~~
~~—2. If an applicant who is not a public utility certifies that:~~
~~—(a) A governmental entity with proper jurisdiction will determine the nature of the probable environmental impact of the proposed utility facility; and~~
~~—(b) All state and local environmental permits or approvals necessary for the construction of the proposed utility facility have or will be obtained,~~
~~the commission will grant the construction permit required by NRS 704.890 conditioned upon the determination of the nature of the probable environmental impacts of the proposed utility facility and the issuance of the necessary state and local environmental permits or approvals.]~~

Sec. 6 NAC 703.427 Expiration ~~[and renewal] of permit[.]; renewal.~~

1. Any construction permit issued pursuant to NAC 703.415 to 703.428, inclusive, expires 5 years after the date of final action by the commission unless during that period the applicant has commenced to construct the utility facility and has diligently pursued that construction. In computing the 5-year period, the time the construction of the utility facility is delayed or made impractical because of legal action against the applicant will be excluded.

2. The applicant may apply for renewal of a construction permit at any time before its expiration. The commission will renew the permit upon a showing of good cause.

~~[NAC 703.428 Offer of electrical energy or capacity to public utility before exportation. (NRS 703.025, 704.210)~~

~~—1. An applicant for a permit for construction of a utility facility for generating electrical energy shall, before it exports any of the energy or capacity of the facility, demonstrate to the commission that it has made a written offer of the energy or capacity of the utility facility to each public utility primarily engaged in the sale of electrical energy to retail customers in this state. If the utility facility consists of a series of generating units to be constructed in stages, the applicant shall separately offer and reoffer the energy or capacity of each generating unit to each public utility primarily engaged in the sale of electrical energy to retail customers in this state.~~

~~—2. Written offers of electrical energy or capacity to a public utility in this state pursuant to subsection 1 must be made no earlier than 150 days before any written offer of the electrical energy or capacity to any other person and no later than the date of that written offer. The public utilities in this state to whom a written offer is made shall reject the offer or accept the offer and begin negotiations for a final contract within 150 days after the offer is made. A failure to respond to a written offer within the 150 day period shall be deemed a rejection of the offer.~~

~~—3. If an applicant reoffers the energy or capacity of the project to public utilities in this state pursuant to subsection 6 of NRS 704.890, the offer must be made within 150 days after 156 months after the date the utility facility, or the particular generating unit of the utility facility, begins commercial operation. The public utilities in this state to whom such an offer is made must reject the offer or accept the offer and begin negotiations for a final contract within 150 days after the offer is made. A failure to respond to a written reoffer within the 150 day period shall be deemed a rejection of the offer.~~

~~—4. Any written offer of electrical energy or capacity to a public utility in this state pursuant to this section must be on terms and conditions no more favorable to the applicant than the terms and conditions in a written offer for a long term contract made to any other person.~~

~~— 5. Any written reoffer of electrical energy or capacity must be at its fair market value and provide an opportunity for public utilities in this state which primarily serve retail customers to purchase 50 percent of the total capacity of the utility facility or the particular generating unit of the utility facility.~~

~~— 6. Any offer or reoffer of electrical energy or capacity to public utilities in this state and the acceptance of such offer or reoffer must be made by certified mail, return receipt requested, or by personal delivery. The offer, reoffer or acceptance shall be deemed made on the date of its personal delivery or 3 days after its deposit in the mail.~~

~~— 7. If the public utilities in this state to whom written offers or reoffers are made want more electrical energy or capacity than the applicant is required to offer or reoffer, the applicant and the public utilities accepting the written offer or reoffer shall attempt to agree as to the appropriate allocation of the available electrical energy or capacity. If an agreement is not reached, the available electrical energy or capacity must be allocated to each public utility accepting the offer or reoffer in the same proportion as the amount wanted by that public utility bears to the total amount wanted by all public utilities accepting the offer or reoffer.~~

~~— 8. If the public utilities in this state to whom a written offer or reoffer is made want less electrical energy or capacity than the applicant is required to offer or reoffer, the applicant may sell the excess electrical energy or capacity to any person.]~~

Sec. 7 Any person other than a public utility who receives a permit issued by the commission pursuant to NRS 704.820 to 704.900, and NAC 703.415 to 703.429, inclusive, shall comply with the reporting requirements listed in NRS 704.891.