

REVISED REVISED PROPOSED REGULATION OF THE PUBLIC

UTILITIES COMMISSION OF NEVADA

LCB File No. R188-03

May 18, 2004

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

AUTHORITY: §§1, 12-14, 16 and 17, NRS 703.025 and 704.210; §§2 and 15, NRS 703.025, 704.210 and 704.870; §§3-8, NRS 703.025, 704.210 and 704.860; §9, NRS 703.025, 704.210 and 704.825; §§10 and 11, NRS 703.025, 704.210 and 704.890.

A REGULATION relating to utility facilities; revising requirements for permits to construct utility facilities; and providing other matters properly relating thereto.

Section 1. Chapter 703 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

Sec. 2. *“Western Interconnection” means the synchronously operated electric transmission grid located in the western part of North America, including parts of Montana, Nebraska, New Mexico, South Dakota, Texas, Wyoming and Mexico and all of Arizona, California, Colorado, Idaho, Nevada, Oregon, Utah, Washington and the Canadian Provinces of British Columbia and Alberta.*

Sec. 3. *As used in NRS 704.860, the Commission will interpret “compressor stations” to mean facilities that increase the pressure of gas to move it into gas transmission lines or storage facilities.*

Sec. 4. *As used in NRS 704.860, the Commission will interpret facilities “to supply water” or for the “treatment of water” to mean facilities where surface water or ground water is treated to make potable water for distribution to customers.*

Sec. 5. *As used in NRS 704.860, the Commission will interpret “gas transmission lines” to mean gas transmission lines not subject to the jurisdiction of the Federal Energy Regulatory Commission.*

Sec. 6. *As used in NRS 704.860, the Commission will interpret “sewer transmission and treatment facilities” to mean:*

1. Facilities, including lift station facilities, which have a main that connects to other sewage transmission mains or wastewater treatment facilities; or

2. Treatment facilities where raw sewage influent is treated to make the sewage effluent meet required water quality standards.

Sec. 7. *As used in NRS 704.860, the Commission will interpret “storage plants” to mean above-ground facilities where gas is stored for use in a local distribution system.*

Sec. 8. *As used in NRS 704.860, the Commission will interpret “water storage facilities” to mean structures used to store raw water or potable water that will be delivered into the distribution system of a utility.*

Sec. 9. *As used in NRS 704.825, the Commission will interpret “water transmission lines” to mean mains of any size that connect to raw water sources, water storage facilities, facilities to supply water or for the treatment or disposal of wastewater, or water distribution systems.*

Sec. 10. *In determining whether the need for a proposed utility facility balances any adverse effect on the environment, the Commission will consider:*

1. The nature of the probable effect on the environment, after mitigation, caused by the construction or operation of the proposed utility facility;

2. The social and economic conditions of nearby inhabitants;

3. The effect on the public health, welfare or safety if the proposed utility facility is constructed; and

4. Any other factors that the Commission determines to be relevant.

Sec. 11. *In determining whether a proposed utility facility will serve the public interest, the Commission will consider:*

1. The benefits that the proposed utility facility will bring to the applicant and to this State;

2. The economic effects of the proposed utility facility;

3. The effect on the public health, welfare or safety if the proposed utility facility is constructed; and

4. Any other factors that the Commission determines to be relevant.

Sec. 12. NAC 703.175 is hereby amended to read as follows:

703.175 An applicant for a certificate of public convenience and necessity must, in addition to complying with the provisions of NAC 703.530 to 703.615, inclusive, submit the following data, either in the application or as exhibits attached to it:

1. A full description of the proposed construction or extension and the manner in which it will be constructed.

2. The names and addresses of all utilities, corporations, persons or other entities, whether publicly or privately operated, with which the proposed service or construction is likely to compete and of the cities or counties within which service will be rendered under the requested certificate. If a public utility applies to the Commission to extend or establish its water service within a county water district, a public utility or municipal utility district, other water or utility district or any area served by such a district, that district must also be named if it furnishes a

similar service. The application must contain a certification that a copy of the application has been served upon or mailed to each entity named.

3. A legible map of suitable scale indicating townships, ranges and sections, and showing the location or route of the proposed construction or extension and its relation to other public utilities, corporations, persons or entities with which the proposal is likely to compete.

4. A statement identifying the franchise and the permits for health and safety that appropriate public authorities require for the proposed construction or extension. If a construction permit is required under NRS 704.820 to 704.900, inclusive, application must also be made under NAC 703.415 to ~~703.428, inclusive.~~ *703.427, inclusive, and sections 2 to 11, inclusive, of this regulation.*

5. Facts showing that public convenience and necessity requires or will require the proposed construction or extension.

6. A statement detailing the estimated cost of the proposed construction or extension and the estimated annual costs, both fixed and operating, associated with the proposal, including statements or exhibits showing that the proposed construction is in the public interest and that it is economically feasible.

7. Statements or exhibits showing the financial ability of the applicant to render the proposed service and information regarding the manner in which the applicant proposes to finance the cost of the proposed construction or extension, including a copy of its most recent balance sheet and statement of income.

8. A statement of the proposed rates to be charged for service to be rendered by means of the proposed construction or extension, the rules governing service in the form of a tariff, an

estimate of the number of customers to be served and an estimate of the annual revenue to be received from those customers.

9. If the applicant is a corporation, a list of:

(a) The shareholders holding 2 percent or more of the issued shares of stock of the corporation and the number of shares they hold listed by class.

(b) The number of shares of stock, listed by class, held directly by all executive officers of the corporation, including the president, vice president, secretary, treasurer and any other person in a position of similar responsibility, and the number of shares held indirectly by those officers pursuant to an ownership plan for employees.

10. Such additional information as is necessary for a full understanding of the application.

Sec. 13. NAC 703.415 is hereby amended to read as follows:

703.415 The provisions of NAC 703.415 to ~~703.428,~~ **703.427**, inclusive, *and sections 2 to 11, inclusive, of this regulation* apply to an application for a permit to construct a utility facility as defined in NRS 704.860. The requirements of NAC 703.415 to ~~703.428,~~ **703.427**, inclusive, *and sections 2 to 11, inclusive, of this regulation* are in addition to other regulations pertaining to pleadings.

Sec. 14. NAC 703.417 is hereby amended to read as follows:

703.417 As used in NAC 703.415 to ~~703.428,~~ **703.427**, inclusive, *and sections 2 to 11, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NRS 704.834 to 704.860, inclusive, have the meanings ascribed to them in those sections.

Sec. 15. NAC 703.420 is hereby amended to read as follows:

703.420 A public utility *or person* which applies for a permit ~~for construction of~~ to *construct* a utility facility must submit an application *and, if required by subsection 2 of NRS 704.870, an amended 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 a person who may be contacted for additional information;

(d) A one-paragraph abstract of the environmental statement ~~is~~ *required pursuant to subsection 4; and*

(e) A copy of the public notice of the application *and proof of the publication of the public notice,* as required by NRS 704.870 . ~~is~~

~~(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 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~~

~~(e)], including a regional facility map that identifies the location of the proposed utility facility or a reference to any such map;~~

(c) *A description of the natural resources that will be affected by, or required to be used in, the construction or operation of the proposed utility facility;*

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

(e) The major conclusions of the environmental statement required pursuant to subsection 4 and any areas of controversy ~~[.]~~, issue or concern.

3. A detailed description of the ~~[location of the]~~ proposed utility facility ~~[, a description of any]~~ which includes:

(a) Appropriately scaled site plan drawings of the facility site, vicinity maps and routing maps;

(b) Layout diagrams of the proposed utility facility and its associated equipment ~~[proposed for the facility and its location,]~~ ;

(c) A description of the equipment that will be included in the proposed utility facility; and

(d) Scaled diagrams of the structures involved in the proposed 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.~~

~~—5.]~~ 4. An environmental statement ~~[which includes]~~ *that demonstrates the nature of the probable effect on the environment, after mitigation, if the proposed utility facility is constructed and demonstrates that the proposed utility 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 environmental statement must include* an evaluation and comparison of all reasonable *alternative* 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, *the* means to mitigate adverse environmental impacts and, as appropriate, *the* requirements for energy and natural or nonrenewable resources.

(c) A list of the reasons that the primary location and design selected by the ~~[utility]~~ *applicant* are best suited for the *proposed* utility facility.

(d) A list and summary of all studies that have been made of the environmental impact of the proposed utility facility ~~[]~~ *and its alternatives.*

(e) An analysis and comparison of the costs and benefits associated with the proposed utility facility and the various alternatives.

(f) A description of the natural resources that will be:

(1) Required for the construction or operation of the proposed utility facility and its alternatives; or

(2) Otherwise affected by the construction or operation of the proposed utility facility and its alternatives.

(g) The name, qualifications, ~~and~~ professions 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.

5. If the application is for a water, sewer or gas utility facility, an explanation of the extent to which the proposed utility facility will ensure reliable utility service to customers in this State.

6. If the application is for an electric utility facility and the proposed utility facility is not approved in a resource plan or an amendment to a resource plan, an explanation of the extent to which the proposed utility facility will ensure reliable utility service to customers in this State. The explanation must include a description of the extent to which the proposed utility facility:

(a) Will provide capacity, energy or ancillary services to customers in this State for a prolonged period;

(b) Will enhance the reliability of electricity in this State; and

(c) Is required to ensure the reliability of the Western Interconnection.

7. An explanation of how the need for the proposed utility facility balances any adverse effect on the environment.

8. 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 agency's name, address, telephone number and the name of a contact person within the agency;*

(b) Be correct as of the date the application is submitted to the Commission;

~~(b)~~ (c) Include the status of each required approval;

~~(e)~~ and

(d) Be amended as any deletions or additions are required in the list because of changes in federal, state, regional or local laws ~~and~~

~~(d) Include copies of permits already obtained and copies of pertinent correspondence with the agencies which issue permits.] or changes in the requirements of any other permitting entity.~~

9. *Information regarding the permits required for the proposed utility facility, including:*

(a) *A description of each permit required for the proposed utility facility;*

(b) *Copies of permit applications and permits received;*

(c) *The date, time and location of hearings or environmental reviews, if applicable; and*

(d) *Copies of environmental reviews, if applicable.*

10. *Information demonstrating that the proposed utility facility will serve the public interest.*

Sec. 16. NAC 703.427 is hereby amended to read as follows:

703.427 1. Any construction permit issued pursuant to NAC 703.415 to ~~703.428,~~ 703.427, inclusive, *and sections 2 to 11, inclusive, of this regulation* 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.

Sec. 17. NAC 703.419, 703.422, 703.424, 703.426 and 703.428 are hereby repealed.

TEXT OF REPEALED SECTIONS

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.

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.

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.

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.

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.