

Chapter 704 of NAC

LCB File No. T024-05

ADOPTED TEMPORARY REGULATION OF THE
PUBLIC UTILITIES COMMISSION OF NEVADA

Filed with the Secretary of State on June 2, 2005

PUCN DOCKET NO. 04-6022
(PHASE II – GAS UTILITIES)

EXPLANATION – This draft modifies the temporary regulation passed in Phase I and given LCB File No. T021-04. The “new” matter from Phase I is in bold, non-underlined *italic*; deleted matter from Phase I is in brackets and struckthrough ~~omitted matter~~. The Phase II proposed amendments are as follows: New matter is in ***bold underlined italic***; deleted matter is struckthrough but, like Phase I material, is ~~underlined~~. Section 8 is entirely new to Phase II.

AUTHORITY: §§1-7, NRS 703.025, 704.210 and 704.187.

A REGULATION relating to utilities; revising deferred accounting regulations for certain electric utilities; revising the calculation of the base tariff energy rate; revising the procedures for filing base tariff energy rate changes; making technical changes; and providing other matters properly relating thereto.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as Sections 2 and 3 of this regulation.

Sec. 2. *“Base tariff energy rate application” means an application to revise the base tariff energy rate filed pursuant to subsection 2 of Section 3.*

Sec. 3. *Base tariff energy rate change and effective period.*

1. Each electric utility and gas utility shall file with its deferred energy application the base tariff energy rate calculated pursuant to Section 7 or ~~[NAC 704.135]~~ Section 8. Upon providing notice in its deferred energy application, an electric utility may update the base tariff energy rate calculation 60 days after the filing of the deferred energy application.

2. An electric utility may file a base tariff energy rate application if it does not have a deferred energy application pursuant to subsection 2 of Section 5 pending. An electric utility that files a base tariff energy rate application shall:

(a) Submit its base tariff energy rate application 120 days prior to the adjustment date for the deferred energy application filed pursuant to subsection 1 of Section 5 and

(b) Calculate the base tariff energy rate pursuant to Section 7.

3. As set forth in NRS 704.110(6), a gas utility may file an application every 30 days to change its base tariff energy rate.

~~[3]~~ *4. The base tariff energy rate of an electric utility or gas utility remains in effect until an amended rate is authorized by the Commission. If the electric utility files to revise the base tariff energy rate pursuant to subsection 2 of Section 3, the Commission will authorize any amended rate from that proceeding to become effective on the day following the adjustment date for the deferred energy application filed pursuant to subsection 1 of Section 5.*

Sec. 4. NAC 704.032 is hereby amended to read as follows:

704.032 “Base tariff energy rate” means:

1. For an electric utility, the rate determined by dividing the ~~[annualized]~~ cost of fuel for generation and purchased power by applicable sales as described in NAC 704.130; or

2. For a gas utility, the rate determined by dividing the ~~[annualized]~~ cost of purchased gas by applicable sales as described in NAC 704.135.

Sec. 5. NAC 704.116 is hereby amended to read as follows:

704.116 1. Except as otherwise provided in subsection 2, each electric utility and gas utility shall file annually with the Commission a deferred energy application for each of its jurisdictional operating departments in this State setting forth its calculations of the deferred energy accounting adjustment and the base tariff energy rate.

2. An electric utility or gas utility may file with the Commission a semiannual deferred energy application if the net change in revenue necessary to clear the change in the deferred energy account balance at the end of the 6-month period exceeds plus or minus 5 percent of the total revenue at the last authorized rates for fuel for electric generation and purchase power or purchased gas.

3. Each electric utility and gas utility shall file its deferred energy application not later than 45 days after the adjustment date.

4. If an electric utility files a deferred energy application while a general rate application is pending before the Commission, the electric utility shall:

(a) Submit with its deferred energy application information relating to the cost of service and rate design; and

(b) Supplement its general rate application with the same information, if such information was not submitted with the general rate application.

5. The deferred energy accounting adjustment of an electric utility or gas utility must be calculated pursuant to NAC 704.101 and 704.111.

6. ~~[An increased or decreased base tariff energy rate must be based on the volumes as described in NAC 704.130, for electric operations, and NAC 704.135, for gas operations, for the test period at the latest experienced unit costs].~~

~~[7. The base tariff energy rate of an electric utility or gas utility remains in effect until an amended rate is authorized by the Commission.]~~

~~[8.]~~ The deferred energy accounting adjustment of an electric utility or gas utility remains in effect until the end of the designated amortization period or until an amended rate is authorized by the Commission, whichever occurs first.

Sec. 6. NAC 704.118 is hereby amended to read as follows:

704.118 1. ~~[If an]~~ *An* electric or gas utility *that* files ~~[an application for]~~ a deferred energy application pursuant to NAC 704.116, *or an electric utility that files a base tariff energy rate application pursuant to subsection 2 of Section 3, or a gas utility that files a base tariff energy rate application pursuant to subsection 3 of Section 3* ~~[the utility]~~ shall:

(a) Within 10 days after filing the application, make available at each of its business offices a complete copy of the application in such form and place as to be readily accessible to and conveniently inspected by the public;

(b) Within 10 days after filing the application, print in plain type and post at each of its business offices, in such form and place as to be readily accessible to and conveniently inspected by the public, a notice stating that the application has been filed with the Commission, describing briefly the purpose of the application, indicating that the complete application is available for public inspection on the premises and setting forth the locations where additional information may be obtained; and

(c) Within 20 days after filing the application, submit to the Commission affidavits that indicate that the application has been filed and that the utility has complied with the provisions of paragraphs (a) and (b) of this subsection.

2. After the Commission has scheduled a date for a hearing on the application, the applicant shall, at least 10 days before the scheduled date of the hearing, give notice to its customers who

are affected by the proposed increase. The first paragraph of the notice must state the date, time and place of the hearing, the total amount of the proposed increase in dollars, the estimated proposed monthly increase in dollars and the proposed percentage of increase for each class of customer or class of service. The notice must also state that the Commission may set rates which may be higher or lower than the rates proposed in the application and that additional information may be obtained from the Commission or at the offices of the electric or gas utility filing the application. The notice must be given by at least two of the following methods:

- (a) Inclusion in the regular bill of charges transmitted to the applicant's customers.
- (b) Separate mailing to each of the applicant's customers.
- (c) Prominent presentation in one or more forms of the media, including newspapers, television and radio, so that the notice will likely reach the applicant's customers.

3. At or before the hearing, the applicant must submit a verified statement to the Commission that the notice required in subsection 2 has been given. The statement must:

- (a) Set forth the means by which, and the dates and times when, the notice was mailed, published or broadcast; and
- (b) Include, as an attachment, a copy of the notice as mailed, published or transcribed.

Sec. 7. NAC 704.130 is hereby amended to read as follows:

704.130 The base tariff energy rate (BTER) for fuel for electric generation and for purchased power ~~[must be established in the deferred energy application of an electric utility and must be based on the following formula]~~ *shall be calculated by the utility using each of the following methodologies. The electric utility shall provide both calculations and recommend its preferred BTER.*

1. A forecasted BTER for the period the BTER is anticipated to be in effect, using an appropriate production cost model, sales forecast, and fuel and purchase power cost forecast.

2. A historic BTER using the following formula:

~~[Let]~~ *Where:*

MG = Units of fuel used for the test period by each generating station for each type of fuel used.

UG = The latest experienced unit cost, for a reasonably significant volume purchased, for each type of fuel used in each generating station.

FG = Other latest known costs associated with fuel used in electric generation as enumerated in the accounts specified in paragraph (a) of subsection 2 of NAC 704.120.

PPF = Total megawatt-hours purchased under firm obligation and net associated interchanged power for the test period.

UPF = The latest experienced unit energy costs for firm power and associated net interchanged power from each supplier.

PPN = Total megawatt-hours purchased under nonfirm sales and associated net interchange power for the test period.

UPN = The average weighted cost for nonfirm power and associated net interchange power purchased during the test period (recorded cost).

FP = Fixed costs associated with the purchase and net interchange of power as may be enumerated in the account specified in paragraph (b) of subsection 2 of NAC 704.120.

T = Total sales of megawatt-hours which have been sold, exclusive of nonfirm sales, for the test period.

Then:

$$((MG \times UG) + FG) + ((PPF \times UPF) + (PPN \times UPN) + FP)$$

$$BTER = \frac{\quad}{\quad}$$

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Sec. 8. NAC 704.135 is hereby amended to read as follows:

704.135 The base tariff energy rate (BTER) for purchased gas ~~[must be established in the deferred energy application of the gas utility and must be based on the following formula:]~~ shall be calculated by the utility using each of the following methodologies. The gas utility shall provide both calculations and recommend its preferred BTER.

Methodology 1: Forecasted prices.

Where:

PG = Sales volumes of the Utility grossed up for projected distribution system shrinkage and upstream pipeline company use gas to calculate purchases necessary to support the given level of sales for the test period expressed in therms.

UG = The projected average unit price that will be paid for gas to each supplier and during the test period in which the rates will be in effect.

SG = Actual volumes of gas sold for the test period expressed in therms.

FG = Fixed costs associated with the purchase of gas for the period in which the rates will be in effect as may be enumerated in the accounts specified in paragraph (e) of subsection 2 of NAC 704.120.

Then:

$$BTER = \frac{(PG \times UG) + FG}{SG}$$

Methodology 2: Historic prices.

~~Let~~ Where:

PG = Sales volumes of the Utility grossed up for projected distribution system shrinkage and upstream pipeline company use gas to calculate purchases necessary to support the given level of sales ~~[Actual volumes purchased from each pipeline supplier and from each producer in the field,]~~ for the test period expressed in therms.

UG = The latest experienced unit price paid for gas to each ~~[pipeline]~~ gas supplier ~~[and each producer]~~ during the test period.

SG = Actual volumes of gas sold ~~[less excess gas sold]~~ for the test period expressed in therms.

FG = Annualized ~~[F]~~fixed costs associated with the purchase of gas for the test period as may be enumerated in the accounts specified in paragraph (e) of subsection 2 of NAC 704.120.

~~[DSG = Total actual volume of gas sold and delivered into the transmission system of the utility for the test period expressed in therms.]~~

Then:

~~[For distribution utilities:]~~

$$BTER = \frac{(PG \times UG) + FG}{SG}$$

**NOTICE OF ADOPTION OF TEMPORARY REGULATION
LCB File No. T024-05**

The Public Utilities Commission of Nevada adopted regulations assigned LCB File No. T024-05 which pertain to chapter 704 of the Nevada Administrative Code on April 27, 2005.

Notice date: 3/3/2005
Hearing date: 4/13/2005

Date of adoption by agency: 4/27/2005
Filing date: 6/2/2005

INFORMATIONAL STATEMENT

1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

The Regulations concerning adopting the currently effective federal pipeline safety regulations in Public Utilities Commission of Nevada (“Commission”) Docket No. 05-2025 were noticed by a Notice of Intent to Amend/Adopt/Repeal Regulations, Request for Comments, Notice of Workshop and Notice of Hearing issued on March 3, 2005. The Notice was published in the Elko Daily Free Press, Las Vegas Review Journal, Nevada Appeal, Reno Gazette Journal, and Tonopah Times-Bonanza. Additionally, the notice was mailed to county clerks, county libraries and all persons who requested inclusion on the Commission’s service list.

In addition to the public response from affected businesses discussed in #3 below, the following summary represents public responses that were made to the Commission at the Duly-noticed workshop held on April 13, 2005: Andrew Bettwy, representing Southwest Gas Corporation (“SW Gas”), stated that SW Gas did not have any objection to adopting the current pipeline safety Regulations, but wanted to express a concern whether automatically adopting the current federal pipeline safety rules as the Code of Federal Regulations is revised is an unlawful or unconstitutional delegation of authority by the Commission; David Noble, of Commission Staff stated that the regulation is a temporary one and an in-depth discussion should be held with the Legislative Counsel Bureau and discuss the situation with the Federal regulations to alleviate any concerns that have been expressed regarding adopting the regulation.

A copy of the summary may be obtained by calling the Commission at (775) 684-6100 or (702) 486-2600, or by writing to the Commission at 1150 East William Street, Carson City, Nevada 89701 or 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109.

2. The number of persons who:

(a) Attended the workshop:
April 13, 2005: 10

(b) Testified at the workshop:
April 13, 2004: 2

(c) **Attended the hearing:**
April 13, 2005: 11

(d) **Submitted to the agency written comments:**
None

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited by notices placed in the newspapers mentioned in the response to question #1 above, by direct mailings to interested persons on the Commission's mailing list and by posting of notices at county libraries, courthouses and the Commission's website.

Appearances were made at the foregoing workshops and hearings by interested persons, including: Staff and SW Gas.

Transcripts of the workshops and hearings, copies of the comments and this summary are on file and available for public viewing at the office of the Commission. Copies of the transcripts may be obtained by calling the Commission at (775) 684-6100 or (702) 486-2600, or by writing to the Commission at 1150 East William Street, Carson City, Nevada 89701 or 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

Any concerns regarding an unconstitutional or unlawful delegation of authority by the Commission by adopting the current federal pipeline safety regulations automatically would be discussed in depth with the Legislative Counsel Bureau after the 2005 Legislative Session. Before being adopted as a permanent Regulation, discussions concerning any of the above concerns would occur that could result in revisions to the Regulation.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include:

- (a) **Both adverse and beneficial effects; and**
- (b) **Both intermediate and long-term effects.**

The Commission completed a small business impact statement pursuant to Nevada Revised Statute ("NRS") 233B.0608. On March 11, 2005, the Presiding Officer issued a Procedural Order instructing Staff to conduct an investigation into whether the Proposed Regulation is likely to: (i) impose a direct and significant economic burden upon a small business; or (ii) directly restrict the formation, operation or expansion of a small business. Staff was required to present a report on the investigation to the Commission. At the March 30, 2005, general session of the Commission, Staff presented its report. The Commission voted at that general session to accept Staff's recommendation that the Proposed Regulations do not impose a

direct and significant burden on small businesses in Nevada or restrict the formation, operation or expansion of small businesses in Nevada.

6. The estimated cost to the agency for enforcement of the adopted regulation.

At this time, the Commission cannot quantify what, if any, estimated cost it will incur to enforce the adopted Regulations. The regulation does not establish any new fee or increase any existing fees.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The Regulation adopts the currently effective federal pipeline safety regulations in which the State of Nevada, through the Commission, participates in a contract with the United State Department of Transportation, Research and Special Programs Administration, Office of Pipeline Safety, in enforcement of the Code of Federal Regulations, Parts 191, 192, 193, 195 and 199, applicable to natural gas, liquefied natural gas and liquefied petroleum gas pipelines, but does not overlap or duplicate other state and local regulations. The adopted temporary regulations will ensure that Nevada complies with the federal pipeline safety regulations as soon as they become effective.

8. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The Regulation would adopt the same provisions of the currently effective federal safety pipeline regulations.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The Commission does not anticipate any new fees or an increase in any existing fees as a result of the adoption of these Regulations.

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

In re investigation and rulemaking regarding the potential)
Revision of regulations concerning the Base Tariff Energy) Docket No. 04-6022
Rate component of deferred energy filings.)
_____)

At a general session of the Public Utilities
Commission of Nevada, held at its offices
on April 27, 2005.

PRESENT: Chairman Donald L. Soderberg
Commissioner Carl B. Linvill
Commissioner Jo Ann P. Kelly
Commission Secretary Crystal Jackson

ORDER ADOPTING TEMPORARY REGULATIONS

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

1. On July 7, 2004, the Commission voted to open an investigation and rulemaking
concerning the potential revision of regulations concerning the Base Tariff Energy Rate
 (“BTER”) component of deferred energy filings. The Commission designated this matter as
Docket No. 04-6022.

2. This matter is being conducted by the Commission pursuant to Chapters 233B, 703
and 704 of the Nevada Revised Statutes (“NRS”) and the Nevada Administrative Code.

3. On July 19, 2004, the Commission issued a Notice of Investigation and Rulemaking
and Notice of Workshop requesting comments in this matter in accordance with state law and the
Commission’s Rules of Practice and Procedure.

4. On September 2, 2004, the Commission received Comments from the Regulatory
Operations Staff of the Commission (“Staff”), the Attorney General’s Bureau of Consumer
Protection (“BCP”), Southwest Gas Corporation (“Southwest”), and Joint Comments from

Nevada Power Company and Sierra Pacific Power Company (collectively “NPC/SPPC”). On September 16, 2004, Staff filed Reply Comments.

5. On September 22, 2004, the Presiding Officer held a workshop in this matter. That workshop was continued until November 8, 2004.

6. On October 7, 2004, the Presiding Officer issued a Procedural Order requesting the filing of Additional Comments in this matter.

7. On October 28, 2004, the Commission received Additional Comments from Staff, BCP, Southwest and NPC/SPPC.

8. On November 18, 2004, the Commission issued a Notice of Intent to Amend/Adopt/Repeal Regulations, Notice of Workshop and Notice of Hearing in accordance with state law and the Commission’s Rules of Practice and Procedure.

9. On November 22, 2004, the Presiding Officer issued a Procedural Order bifurcating the proceeding into two phases to address issues related to electric utilities and gas utilities separately.

10. On November 30, 2004, the Presiding Officer issued a Procedural Order directing Staff to conduct an investigation and prepare a Small Business Impact Statement Report for the proposed temporary regulation in Phase I of this Docket relating to the calculation of the BTER Component of deferred energy filings for electric utilities.

11. On December 28, 2004, the Commission voted to adopt Staff’s Small Business Impact Statement Report on the proposed temporary regulation in Phase I, finding no direct or significant impact upon small businesses.

12. On January 5, 2005, BCP filed Additional Comments on the proposed temporary regulation for Phase I of this Docket.

13. On January 5, 2005, the Commission held a workshop and a hearing in Phase I in this matter.

14. During the hearing in Phase I, the Presiding Officer presented a proposed regulation incorporating clarification comments made during the workshop. Two additional edits to clarify the intent of the proposed regulation were incorporated during the hearing.

15. On January 27, 2005, the Commission adopted the proposed temporary regulation for Phase I of this Docket relating to the calculation of the BTER Component of deferred energy filings for electric utilities.

16. On March 11, 2005, the Presiding Officer issued a Procedural Order directing Staff to conduct an investigation and prepare a Small Business Impact Statement Report for the proposed temporary regulation in Phase II of this Docket relating to the calculation of the BTER Component of deferred energy filings for gas utilities.

17. On March 30, 2005, the Commission voted to adopt Staff's Small Business Impact Statement Report on the proposed temporary regulation in Phase II, finding no direct or significant impact upon small businesses.

18. On April 12, 2005, the Commission held a workshop and a hearing in Phase II in this matter.

19. During the workshop, the proposed regulation, attached hereto as Attachment 1, was discussed.

20. During the hearing, the Presiding Officer proposed to incorporate a comment that had been suggested during the workshop to clarify the regulation. This additional edit to clarify the intent of the proposed regulation is attached hereto as Attachment 2 and incorporated herein by reference.

21. The Commission finds that it is in the public interest to adopt the proposed temporary regulation, attached hereto as Attachment 1 and Attachment 2 and incorporated herein by reference.

THEREFORE, based upon the foregoing findings of fact and conclusions of law, it is hereby ORDERED that:

1. The proposed temporary regulation in Phase II of Docket No. 04-6022 regarding the calculation of the Base Tariff Energy Rate Component of deferred energy filings for gas utilities, attached hereto as Attachment 1 and Attachment 2, and incorporated herein by reference, is ADOPTED.

2. The Commission retains jurisdiction for the purpose of correcting any errors that may have occurred in the drafting or issuance of this Order.

By the Commission,

DONALD L. SODERBERG, Chairman

CARL B. LINVILL, Commissioner and
Presiding Officer

JO ANN P. KELLY, Commissioner

Attest: _____
CRYSTAL JACKSON, Commission Secretary

Dated: Carson City, Nevada

(SEAL) _____