

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

LCB File No. R020-13

Effective February 26, 2014

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

AUTHORITY: §§1-10, 12-16 and 19-24, NRS 703.025 and 704.210; §§11, 17 and 18, NRS 703.025, 704.185 and 704.210.

A REGULATION relating to gas utilities; providing for the recovery by a gas utility of certain costs relating to the replacement of existing natural gas pipelines and related infrastructure; 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 to 24, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 24, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 13, inclusive, of this regulation, have the meanings ascribed to them in those sections.*

Sec. 3. 1. *“Early-vintage plastic pipe” means any natural gas pipeline which is composed of a material that the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation has prohibited from future use as a material in newly constructed pipeline, including, without limitation:*

(a) Pipeline composed of acrylonitrile butadiene styrene, cellulose acetate butyrate, polybutylene, polyvinyl chloride or any other nonpolyethylene plastic used as a material for pipeline before January 1, 1990; and

(b) Century Utility Products medium-density polyethylene produced after January 1, 1970, and before January 1, 1975, DuPont Aldyl A medium-density polyethylene and 3306 high-density polyethylene.

2. The term does not include any natural gas pipeline which is composed of a material that is identified by the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation as an acceptable material pursuant to 49 C.F.R. §§ 192.7 and 192.59.

Sec. 4. “Early-vintage steel pipe” means any natural gas pipeline composed of steel which was installed in a natural gas system before January 1, 1971.

Sec. 5. “Gas infrastructure replacement” means the proposed replacement of any nonrevenue-producing natural gas pipeline through a gas infrastructure replacement mechanism, including, without limitation, the replacement of master meter systems, early-vintage plastic pipe, early-vintage steel pipe or any other gas infrastructure replacement project authorized by the Commission for the purpose of addressing a safety and reliability concern that justifies replacement on an accelerated basis and that would otherwise serve the public interest.

Sec. 6. “Gas infrastructure replacement advance application” or “advance application” means an application filed by a gas utility seeking a determination by the Commission authorizing the recovery of the cost of one or more gas infrastructure replacement projects through a gas infrastructure replacement mechanism.

Sec. 7. “Gas infrastructure replacement mechanism” or “replacement mechanism” means the accounting procedure through which a gas utility may, between general rate cases,

recover the revenue requirement associated with one or more gas infrastructure replacement projects.

Sec. 8. *“Gas infrastructure replacement project” or “replacement project” means a project:*

- 1. To engage in gas infrastructure replacement; and*
- 2. That is incremental in nature and that is not undertaken by the utility as a project to replace existing infrastructure during the normal course of business.*

Sec. 9. 1. *“Gas infrastructure replacement project revenue requirement” or “revenue requirement” means an amount equal to depreciation expense plus carrying costs, less the depreciation expense and carrying costs associated with the capital retirement of each gas infrastructure replacement project.*

2. As used in this section:

(a) “Carrying costs” means the return on a gas infrastructure replacement project, adjusted for accumulated depreciation and accumulated deferred income taxes, utilizing the gas utility’s authorized pretax rate of return.

(b) “Depreciation expense” means the return on a gas infrastructure replacement project utilizing the gas utility’s authorized rate of depreciation.

Sec. 10. *“Gas infrastructure replacement rate” or “replacement rate” means the rate established by the Commission for the purpose of recovering the following amounts:*

- 1. The revenue requirement associated with the cumulative uncollected net book value of each gas infrastructure replacement project included in a gas infrastructure replacement rate application less the income taxes which are deferred for each such replacement project,*

calculated as of August 31 of the year in which a gas infrastructure replacement rate application is filed; and

2. The difference between the costs and revenues recorded in the gas infrastructure replacement regulatory asset account for each gas infrastructure replacement project included in a gas infrastructure replacement rate application, calculated as of August 31 of the year in which a gas infrastructure replacement rate application is filed.

Sec. 11. “Gas infrastructure replacement rate application” or “rate application” means an application filed by a gas utility to establish or adjust a gas infrastructure replacement rate.

Sec. 12. “Gas infrastructure replacement regulatory asset account” or “regulatory asset account” means an account in which a gas utility records the gas infrastructure replacement project revenue requirement for one or more new gas infrastructure replacement projects, less the revenue the utility receives from the gas infrastructure replacement rate.

Sec. 13. “Master meter system” has the meaning ascribed to it in 49 C.F.R. § 191.3.

Sec. 14. The provisions set forth in sections 2 to 24, inclusive, of this regulation apply to any public utility that operates a natural gas system. The Commission may, upon the request of a public utility that operates a liquid petroleum gas system and for good cause shown, apply the provisions set forth in sections 2 to 24, inclusive, of this regulation to such utility.

Sec. 15. A gas infrastructure replacement advance application must be:

1. Filed on or before June 1 of each calendar year or as otherwise provided by the Commission.

2. Deemed denied if the Commission has not acted within 135 days after the date on which the advance application is filed.

Sec. 16. 1. A gas infrastructure replacement advance application must provide sufficient evidence and be supported by sworn testimony to estimate the revenue requirement associated with each replacement project proposed in the advance application. The evidence must include, without limitation:

(a) The number of miles of pipeline proposed to be replaced;

(b) A detailed map of the proposed early-vintage steel pipeline to be replaced that includes mileposts or other relevant local and specific information, and a general map of the areas where early-vintage plastic pipe will be replaced during the next subsequent calendar year;

(c) The type of pipeline that is being replaced and the type of pipeline to be used in the replacement;

(d) The estimated cost of the materials to be used in each replacement project;

(e) The estimated labor costs of the gas utility for each replacement project;

(f) The estimated contractor costs for each replacement project;

(g) The estimated cost of loadings;

(h) The estimated costs of any permits, rights-of-way, studies or other governmental mandates required to replace the pipeline; and

(i) Any other estimate of costs incurred as a result of the replacement project.

↪ An applicant who does not provide an estimate required by paragraphs (d) to (i), inclusive, shall provide a statement in the advance application as to the reasonableness of the exclusion of the estimate.

2. The advance application must include:

(a) A description, supported by sworn testimony, of each replacement project that provides sufficient evidence to support a conclusion that:

(1) A safety and reliability concern exists justifying replacement on an accelerated basis; and

(2) The completion of the replacement project is in the public interest;

(b) A description of the gas utility's plan for supplying gas throughout the utility's service territory during the next 10 calendar years, including, without limitation, the known and projected gas supply during the next 10 calendar years, and any projected changes in supply that may occur during the next 10 calendar years;

(c) An integrated plan for gas infrastructure replacement that balances the existing need for replacement as described pursuant to paragraph (a) with the plan for gas supply described pursuant to paragraph (b);

(d) A description of each alternative studied by the gas utility in lieu of the proposed replacement projects identified in the advance application, if any, including, without limitation, a statement explaining why each alternative for replacement was rejected for the upcoming calendar year; and

(e) An integrated analysis that establishes priorities among the gas utility's options for replacement projects during the next 5 calendar years. Such analysis must take into account safety and reliability risks and benefits in addition to the plans for future gas supply in a manner sufficient to enable the Commission to determine the extent to which the utility's advance application balances the objectives of minimizing cost, mitigating risk and maximizing reliability of service during the next 5 calendar years.

↪ An applicant who does not provide all of the information required pursuant to this subsection shall provide a statement in the gas infrastructure replacement advance application as to the reasonableness of the exclusion of such information.

3. The advance application must include an analysis to demonstrate that each replacement project proposed is incremental in nature and not a project that the gas utility is currently undertaking in the normal course of business with respect to replacement of its existing gas pipeline infrastructure. For the purpose of establishing that the proposed replacement project is incremental in nature, the gas utility shall file:

(a) A description of each replacement project the gas utility is currently undertaking in the normal course of business or to which the utility is committed in a public document or filing; and

(b) A statement explaining why each replacement project proposed in the advance application is incremental in nature and not undertaken during the normal course of business of the gas utility.

↳ Each replacement project that is considered to be a project undertaken during the normal course of business and that is not undertaken incrementally will be evaluated at each general rate case of the gas utility where the cost of such project is proposed for incorporation into rates by the gas utility.

4. The advance application must be accompanied by a summary that is suitable for distribution to the public. The summary must include:

(a) A brief introduction, addressed to the public, describing the gas utility, its facilities and the purpose of the advance application and replacement mechanism;

(b) A description of each replacement project;

(c) A statement explaining the necessity of each replacement project; and

(d) The estimated costs and the estimated revenue requirement associated with each replacement project.

Sec. 17. The calculation for the gas infrastructure replacement regulatory asset account for a replacement project that is approved as part of an advance application begins on the last day of the month following the in-service date of the project and ends on the date on which the project is accounted for in the rate base of the gas utility.

Sec. 18. All costs of a replacement project proposed in an advance application submitted to the Commission must be accounted for in the books and records of a gas utility separately from amounts attributable to any other activity. Each regulatory asset account must be maintained in a manner that will allow costs to be readily identified.

Sec. 19. 1. The gas infrastructure replacement rate application must:

(a) Be filed:

(1) On or before October 1 of the next subsequent calendar year after a decision of the Commission regarding a gas infrastructure replacement advance application; or

(2) As otherwise provided by the Commission.

(b) Provide a comparison of each estimate provided pursuant to section 16 of this regulation with the recorded costs of each replacement project and an explanation of any significant differences between estimated and recorded costs.

2. For the purpose of calculating the gas infrastructure replacement rate, the gas utility shall submit evidence in support of the recorded costs for each replacement project undertaken in the immediately preceding calendar year through August 31 of the year in which the application is filed. Such evidence must include, without limitation:

(a) The number of miles of pipeline replaced;

(b) The location of the pipeline replaced;

(c) The type of pipeline that was replaced and the type of pipeline used in the replacement;

- (d) The actual cost of the materials used in the replacement project;*
- (e) The actual labor costs of the gas utility for the replacement project;*
- (f) The actual contractor costs for the replacement project;*
- (g) The actual costs of loadings;*
- (h) The actual costs of any permits, rights-of-way, studies or other governmental mandates required to replace the pipeline; and*
- (i) Any other costs incurred as a result of the replacement project.*

Sec. 20. The replacement rate becomes effective on January 1 of the first calendar year after a rate application is filed and approved.

Sec. 21. After the Commission has acted upon an advance application, a gas utility may deviate from one or more replacement projects approved by the Commission in the advance application if such deviation does not result in a change of more than 20 percent in the total estimated costs of the replacement projects approved by the Commission in the underlying advance application. For any such deviation, a gas utility shall provide a statement with the rate application explaining why the deviation is in the public interest.

Sec. 22. 1. A gas utility that has filed and received approval by the Commission for three gas infrastructure replacement rate applications is not eligible to file another gas infrastructure replacement advance application until such time as the utility has filed a general rate application pursuant to NRS 704.110, unless the gas utility:

- (a) Not earlier than 120 days before the date on which an applicant may file the advance application, requests a waiver of the requirement to file a rate case; and*

(b) Provides proof satisfactory to the Commission demonstrating that the applicant is not earning more than its authorized rate of return and that approval of the waiver request by the Commission is in the public interest.

2. The Commission shall, not later than 90 days after receiving a request for a waiver, issue an order approving or denying the request.

3. In considering whether to approve or deny a request for a waiver, the Commission shall determine whether approval of the waiver is in the public interest. Such determination must include, without limitation, consideration of whether the applicant is earning more than its authorized rate of return.

4. The Commission shall not approve a request for a waiver if the Commission has not issued a final order on a general rate application filed by the gas utility pursuant to subsection 3 of NRS 704.110 during the immediately preceding 6 years.

Sec. 23. *1. A Commission order approving or denying an advance application or a rate application is not a determination of prudence with respect to any replacement project set forth in such an application.*

2. A gas utility shall seek a determination of prudence in the first general rate application filed pursuant to NRS 704.110 after the costs of each replacement project are accounted for in a replacement rate. In the general rate application, the gas utility shall submit evidence in support of the recorded cost for each replacement project completed since the last general rate application filed by the gas utility, including, without limitation:

(a) Each invoice for each replacement project, including invoices segregated at the project level if blanket contracts or invoices were used by the gas utility;

(b) Each work order for each replacement project, including work orders segregated at the project level if blanket contracts or work orders were used by the utility;

(c) An accounting of the labor performed by outside contractors and the gas utility for each replacement project undertaken; and

(d) Any other evidence which demonstrates that the incurred costs of a replacement project were prudent, just and reasonable.

Sec. 24. 1. *With the exception of negotiated rate customers, the replacement rate must be collected from all customers of the gas utility based upon consumption of gas by each customer class during the 12 months immediately preceding the filing of the rate application.*

2. A negotiated rate customer may be required to pay a rate calculated separately that represents the costs associated with replacement of a pipeline segment or segments that benefit the negotiated rate customer. For the purpose of determining whether a negotiated rate customer will be required to pay the applicable replacement rate, a gas utility shall file with each advance application:

(a) A list identifying each negotiated rate customer that would benefit from the replacement of a specific pipeline segment or segments proposed in the advance application;

(b) A list identifying each negotiated rate customer that should be exempt from paying the replacement rate pursuant to a contract with the negotiated rate customer, and any evidence or legal arguments supporting any exemption claimed pursuant to this paragraph;

(c) For any negotiated rate customer other than a customer identified pursuant to paragraph (b), any evidence or legal arguments which may qualify the negotiated rate customer for an exemption from paying the replacement rate calculated pursuant to this

subsection, including, without limitation, whether the negotiated rate customer has bypass options;

(d) A proposed rate for each negotiated rate customer that would benefit from replacement of a specific pipeline segment or segments proposed in the advance application;

(e) For each negotiated rate customer identified pursuant to this subsection, the consumption of gas by each negotiated rate customer during the 3 years immediately preceding the filing of the advance application received through the specific pipeline segment or segments proposed for replacement in the advance application that benefit the negotiated rate customer; and

(f) Any other relevant evidence supporting the proposed rate to be charged to each negotiated rate customer.

↳ The rate for a negotiated rate customer identified pursuant to this subsection must be calculated based upon a rolling 3-year average consumption by the negotiated rate customer from the specific pipeline segment or segments proposed for replacement in the gas infrastructure replacement advance application that benefit the negotiated rate customer. The rolling 3-year average consumption will be utilized to calculate an average consumption figure and will be compared to the percentage of consumption on the same pipeline segment or segments for all remaining gas utility customers as calculated pursuant to subsection 1.

3. Unless a negotiated rate customer is determined to be exempt in a proceeding to review an advance application, the rate for a negotiated rate customer as determined pursuant to this section must be charged to the negotiated rate customer after the gas utility has submitted a rate application that reflects the recorded costs of replacing the pipeline segment or segments that benefit the negotiated rate customer. If the gas utility's costs as reflected in the rate

application deviate by more than 10 percent from the estimates set forth in the advance application, the gas utility shall file any information necessary for the recalculation of the rate in the rate application. A party to a rate application shall not address whether a negotiated rate customer should or should not be required to pay a replacement rate.

4. If the Commission determines that a negotiated rate customer is exempt from paying a replacement rate, the gas utility is not required in any subsequent advance application proceeding to address the applicability of this section to the negotiated rate customer, unless the contract between the gas utility and the negotiated rate customer is modified or renegotiated. A gas utility shall continue to identify each exempt negotiated rate customer pursuant to paragraph (b) of subsection 2, but shall state that such a negotiated rate customer is exempt pursuant to this subsection and affirm that the contract with the negotiated rate customer has not been modified or renegotiated.

5. As used in this section, “negotiated rate customer” means a customer that contracts for negotiated rates with a gas utility pursuant to a utility tariff.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R020-13

1. A clear and concise explanation of the need for the adopted regulation.

Recent requests for establishment of regulatory asset accounts to facilitate the accelerated replacement of natural gas pipeline have been made via petitions on a case-by-case basis. The regulation would provide a comprehensive means to propose accelerated natural gas pipeline replacement to address safety and reliability concerns via an advance application process. Eligible costs actually incurred to accomplish the accelerated replacement of pipeline may be recovered between general rate cases via a replacement rate established through the use of regulatory asset accounts as set forth in the regulation.

2. 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.

(a) Copies of the proposed regulation, notice of intent to act upon the regulation and notice of workshop and hearing were sent by U.S. mail and email to persons who were known to have an interest in the subjects of noticing and interventions. These documents were also made available at the website of the Public Utilities Commission of Nevada (“PUCN”), <http://puc.nv.gov>, mailed to all county libraries in Nevada, published in the following newspapers:

Ely Times
Las Vegas Review Journal
Nevada Appeal
Reno Gazette Journal
Tonopah Times-Bonanza,

and posted at the following locations:

Public Utilities Commission
1150 East William Street
Carson City, Nevada 89701

Public Utilities Commission
9075 West Diablo Drive, Suite 250
Las Vegas, Nevada 89148

First Judicial District Court
885 East Musser Street
Carson City, Nevada 89701

Second Judicial District Court
75 Court Street
Reno, Nevada 89501

Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

(b) The AARP, the Attorney General’s Bureau of Consumer Protection, the Federal Executive Agencies, Nevada Cogeneration Associates #1 and #2, Saguaro Power Company, the Regulatory Operations Staff of the Commission, Sierra Pacific Power

Company d/b/a NV Energy, and Southwest Gas Corporation filed comments in the matter. The participants generally provided comment regarding review of proposed accelerated pipeline replacement, the accounting treatment of approved pipeline replacement projects, and rate applicability as to negotiated rate customers.

(c) Copies of the transcripts of the proceedings are available for review at the offices of the PUCN, 1150 East William Street, Carson City, Nevada 89701 and 9075 West Diablo Drive, Suite 250, Las Vegas, Nevada 89148.

- 3. The number of persons who:**
 - (a) Attended each hearing: 6**
 - (b) Testified at each hearing: 6**
 - (c) Submitted written comments: 4**

- 4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:**
 - (a) Name;**
 - (b) Telephone number;**
 - (c) Business address;**
 - (d) Business telephone number;**
 - (e) Electronic mail address; and**
 - (f) Name of entity or organization represented.**

Christopher Hilén
Sierra Pacific Power Company d/b/a NV Energy
6100 Neil Road
P.O. Box 10100
Reno, Nevada 89520
(775) 834-5696
chilen@nvenergy.com

Kyle Stephens
Southwest Gas Corporation
5421 Spring Mountain Road
Las Vegas, Nevada 89146
(702) 876-7293
kyle.stephens@swgas.com

Paul Stuhff
Attorney General's Bureau of Consumer Protection
10791 West Twain Avenue, Suite 100
Las Vegas, Nevada 89135
(702) 486-3490
pstuhff@ag.nv.gov

Samuel Crano
Regulatory Operations Staff of the PUCN
1150 East William Street
Carson City, Nevada 89701
(775) 684-6151
scrano@puc.nv.gov

Kathleen Drakulich
Saguaro Power Company
100 West Liberty Street, 10th Floor
Reno, Nevada 89501
(775) 788-2000
kdrakulich@mcdonaldcarano.com

Donald Brookhyser
Nevada Cogeneration Associates #1 and #2
1300 SW Fifth Avenue, Suite 1750
Portland, Oregon 97201
deb@a-klaw.com

5. 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 from affected businesses in the same manner as they were solicited from the public.

The summary may be obtained as instructed in the response to question 2(c).

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

Various clarifying changes were made to the regulation based upon comments of the participants.

7. **The estimated economic effect of the regulation on the business which it is to regulate and on the public.**
- (a) Estimated economic effect on the businesses which they are to regulate.**
 The regulation does require additional filing and recordkeeping obligations on utilities that choose to seek accelerated replacement of natural gas pipelines; however, those obligations are no more expansive than have occurred over the past two years in the individual regulatory asset proceedings the gas utilities have filed. In the long-term, utilities that replace pipeline in accordance with the regulation will have safer and more reliable systems reducing the potential for gas incidents (explosions or leaks), which can be dangerous and expensive.
- (b) Estimated economic effect on the public which they are to regulate.**
 The regulation does not regulate the public. Notwithstanding, any rate increases associated with the accelerated replacement of gas pipeline are expected to be incremental and minor. In the long-term, if utilities replace pipeline in accordance with the regulation they will have safer and more reliable systems benefitting the public at-large by reducing the potential for gas incidents (explosions or leaks), which can be dangerous and expensive.
8. **The estimated cost to the agency for enforcement of the proposed regulation:**
 Ongoing costs include review by the Commission and Staff of the additional filings (including additional information and calculations) required by the proposed regulation. However, one gas utility has already been filing annual petitions for the establishment of regulatory assets to facilitate the replacement of gas infrastructure, so such costs would be considered incremental in nature.
9. **A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**
- The regulation does not overlap or duplicate any federal, state, or local regulations.
10. **If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**
 N/A
11. **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.**
 N/A
12. **If the proposed regulation is likely to impose a direct and significant burden upon a small business or directly restrict the formation, operation or expansion of a small business, what methods did the agency use in determining the impact of the regulation on a small business?**
 The Regulatory Operations Staff (“Staff”) of the Commission conducted a Delphi Method exercise to determine the impact of this proposed regulation on small businesses. The

Delphi Method is a systematic, interactive, forecasting method based on independent inputs of selected experts. In this instance, the participants were members of Staff. Each participant in the exercise used his background and expertise to reflect upon and analyze the impact of the proposed regulation on small businesses. Based upon Staff's analysis, Staff recommended to the Commission that the Commission find that the proposed regulation will not impose a direct and significant economic burden on small businesses or directly restrict the formation, operation or expansion of a small business. The Commission accepted Staff's recommendation and found that the proposed regulation does not impose a direct or significant economic burden upon small businesses, nor does it directly restrict the formation, operation, or expansion of a small business, and therefore a small business impact statement pursuant to NRS 233B.0608(2) is not required. This finding was memorialized in an Order issued in Docket No. 12-11010 on October 21, 2013.