

# PROPOSED REGULATION OF THE PUBLIC UTILITIES COMMISSION OF NEVADA

LCB File No. R110-15

Docket No. 15-06044

September 25, 2015

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

AUTHORITY: Nevada Revised Statutes 704.661 and 704.751; Senate Bill 87 of the 78<sup>th</sup> Session of the Nevada Legislature.

A REGULATION relating to public utilities; authorizing the Public Utilities Commission of Nevada to modify resource plans submitted by certain public utilities; authorizing a public utility to consent to or reject some or all of such modifications; and providing other matters properly relating thereto.

**Section 1.** Chapters 703 and 704 of the Nevada Administrative Code, specifically, NAC 703.801, NAC 704.5682, NAC 704.5687, NAC 704.9494, NAC 704.9496, NAC 704.9497, NAC 704.9518, and NAC 704.9519, are hereby amended by amending existing provisions as set forth in Sections 2- 9 below.

**Section 2. NAC 703.801 Petition for reconsideration or rehearing.**

1. A petition for reconsideration must specifically:
  - (a) Identify each portion of the challenged order which the petitioner deems to be unlawful, unreasonable or based on erroneous conclusions of law or mistaken facts; and
  - (b) Cite those portions of the record, the law or the rules of the Commission which support the allegations in the petition. The petition may not contain additional evidentiary matter or require the submission or taking of evidence.
2. A petition for rehearing must:
  - (a) Allege that an order is in error because of an incomplete or inaccurate record.
  - (b) Specifically set forth the nature and purpose of any additional evidence to be introduced.
  - (c) Show that such evidence is not merely cumulative and could not have been introduced at the hearing.
3. A petition for reconsideration or rehearing of an order must be filed with the Commission and served upon all parties of record within 10 business days after the effective date of the order, *except that in a proceeding resulting in the modification of an action plan pursuant to NAC 704.5682, 704.5687, 704.9494, or 704.9497, a petition for reconsideration or rehearing must be filed with the Commission and served upon all parties of record within 10 days after the utility's notice pursuant to subsection 5 of NRS 704.661 or subsections 1 and 2 of NRS 704.751.*
4. An answer to a petition for reconsideration or rehearing may be filed with the Commission by any party of record in the proceeding within 10 business days after the filing of the petition.

The answer must be confined to the issues contained in the petition. The answer must be served upon all parties of record. Proof of service must be attached to the answer.

5. The Commission will grant or deny a petition for reconsideration or rehearing within 40 days after the date of its filing. If no action is taken by the Commission within this time, the petition shall be deemed denied.

6. Unless otherwise ordered by the Commission, the filing of a petition for reconsideration or rehearing or the granting of such a petition does not excuse compliance with, or suspend the effectiveness of, the challenged order.

7. If the Commission grants a petition for reconsideration, it will reexamine the record and order with regard to the issues on which reconsideration was granted and issue a modified final order or reaffirm its original order.

8. If the Commission grants a petition for rehearing, it will, within 20 days thereafter, conduct a hearing to allow the parties to present additional evidence and will issue a modified final order or reaffirm its original order.

9. A modified final order of the Commission issued upon reconsideration or rehearing will incorporate those portions of the original order which are not changed or modified by the modified final order. A modified final order is the final decision of the Commission.

### **Section 3. NAC 704.5682 Action plan: Action by Commission.**

1. The Commission will:

(a) Issue an order approving the action plan of a utility as filed; or

*(b) Issue an order modifying the action plan of a utility; or*

~~1(b)~~ *(c) Specify those parts of the action plan that the Commission considers inadequate.*

2. If the Commission approves the action plan of the utility, the Commission will include in the approval of the action plan its determination that the elements contained in the action plan are prudent. The Commission will make a determination that the elements of the action plan are prudent if:

(a) The action plan maximizes the utility's water supply and wastewater treatment capacities for the benefit of the utility's customers; and

(b) The utility demonstrates that the action plan balances the objectives of minimizing cost, mitigating risk and maximizing reliability of service for the term of the action plan.

*3. If the Commission issues an order modifying the action plan, the utility may consent to or reject some or all of the modifications by filing with the Commission a notice to that effect. Any such notice must be filed not later than 30 days after the date of issuance of a final order or modified final order. If such a notice is filed, any petition for reconsideration or rehearing of the order must be filed with the Commission not later than 10 business days after the date the notice is filed.*

*4. A plan shall be deemed to be accepted by the Commission only as to that portion of the plan accepted as filed or modified with the consent of the utility pursuant to subsection 3.*

~~13.1~~ **5.** If the Commission subsequently determines that any information relied upon when issuing its order approving the action plan was based upon information that was known or should have been known by the utility to be false when the information was presented, the Commission may revoke, rescind or otherwise modify its approval of the action plan.

**Section 4. NAC 704.5687 Amendment to action plan: Action by Commission.**

1. The Commission will:

(a) Issue an order approving the amendment to the action plan as filed; or

*(b) Issue an order modifying the amendment to the action plan; or*

~~[(b)]~~ (c) Specify those parts of the amendment that the Commission considers inadequate.

2. If the Commission approves the amendment, the Commission will include in the approval of the amendment its determination that the amendment is prudent. The Commission will make a determination that the amendment is prudent if:

(a) The amendment maximizes the utility's water supply and wastewater treatment capacities for the benefit of the utility's customers; and

(b) The utility demonstrates that the amendment balances the objectives of minimizing cost, mitigating risk and maximizing the reliability of water supply and wastewater treatment for the term of the action plan.

*3. If the Commission issues an order modifying the amendment to the action plan, the utility may consent to or reject some or all of the modifications by filing with the Commission a notice to that effect. Any such notice must be filed not later than 30 days after the date of issuance of a final order or modified final order. If such a notice is filed, any petition for reconsideration or rehearing of the order must be filed with the Commission not later than 10 business days after the date the notice is filed.*

*4. An amendment to the action plan shall be deemed to be accepted by the Commission only as to that portion of the amendment accepted as filed or modified with the consent of the utility pursuant to subsection 3.*

~~[(3)]~~ 5. If the Commission subsequently determines that any information relied upon when issuing its order approving the amendment was based upon information that was known or should have been known by the utility to be false when the information was presented, the Commission may revoke, rescind or otherwise modify its approval of the amendment.

**Section 5. NAC 704.9494 Approval of action plan; determination that elements of energy supply plan are prudent; recovery of costs to carry out approved plans.**

1. The Commission will issue an order:

(a) Approving the action plan of the utility as filed; or

*(b) Issue an order modifying the action plan; or*

~~[(b)]~~ (c) If the plan is not approved as filed, specifying those parts of the action plan the Commission considers inadequate.

2. Approval by the Commission of an action plan constitutes a finding that the programs and projects contained in that action plan, other than the energy supply plan, are prudent, including, without limitation, construction of facilities, purchased power obligations, programs for energy efficiency and conservation and impacts of imputed debt calculations associated with renewable energy contracts or energy efficiency contracts. If the Commission subsequently determines that any information relied upon when issuing its order approving the action plan was based upon information that was known or should have been known by the utility to be untrue or false at the time the information was presented, the Commission may revoke, rescind or otherwise modify its approval of the action plan.

*3. If the Commission issues an order modifying the amendment to the action plan, the utility may consent to or reject some or all of the modifications by filing with the Commission a notice to that effect. Any such notice must be filed not later than 30 days after the date of*

*issuance of a final order or modified final order. If such a notice is filed, any petition for reconsideration or rehearing of the order must be filed with the Commission not later than 10 business days after the date the notice is filed.*

*4. An action plan shall be deemed to be accepted by the Commission only as to that portion of the action plan accepted as filed or modified with the consent of the utility pursuant to subsection 3.*

~~13-1~~ 5. If, at the time that the Commission approves the action plan of the utility, the Commission determines that the elements of the energy supply plan are prudent, the Commission will specifically include in the approval of the action plan its determination that the elements contained in the energy supply plan are prudent. For the Commission to make a determination that the elements of the energy supply plan are prudent:

- (1) The energy supply plan must not contain any feature or mechanism that the Commission finds would impair the restoration of the creditworthiness of the utility or would lead to a deterioration of the creditworthiness of the utility.
- (2) The energy supply plan must optimize the value of the overall supply portfolio for the utility for the benefit of its bundled retail customers.
- (3) The utility must demonstrate that the energy supply plan balances the objectives of minimizing the cost of supply, minimizing retail price volatility and maximizing the reliability of supply over the term of the plan.

Failure by a utility to demonstrate that its energy supply plan is prudent in accordance with this subsection does not otherwise affect approval of the action plan, including the energy supply plan, and the utility may subsequently seek a determination that the energy supply plan is prudent in the appropriate deferred energy proceeding.

~~14-1~~ 6. A utility may recover all costs that it prudently and reasonably incurs in carrying out an approved action plan in the appropriate separate rate proceeding. A utility may recover all costs that are prudently and reasonably incurred in carrying out the approved energy supply plan, including deviations pursuant to subsection 1 of NAC 704.9504 approved by the Commission in the appropriate deferred energy application filed pursuant to NAC 704.023 to 704.195, inclusive.

## **Section 6. NAC 704.9496 Estimated rates for long-term avoided cost: General requirements; action by Commission; solicitation of proposals.**

1. In conjunction with its order on the action plan, the Commission will issue an order addressing the utility's proposed estimated rates for long-term avoided cost, including the methodology and limits to be used by the utility for its filing pursuant to NAC 704.9492. The Commission will consider the factors listed in 18 C.F.R. § 292.304(a), (b), (c) and (e) in its evaluation of the utility's proposed estimated rates for long-term avoided cost.

2. The utility shall file with the Commission the utility's estimated rates for long-term avoided cost within 60 days after the Commission issues its order pursuant to subsection 1 specifying the methodology for estimating the rates for long-term avoided cost, *except that if a utility files a notice pursuant to subsection 3 of NAC 704.9494, the utility shall file with the Commission the utility's estimated rates for long-term avoided cost within 60 days of the Commission's final order or modified final order.*

3. The estimated rates for long-term avoided cost filed by the utility with the Commission pursuant to subsection 2 must:

- (a) Be consistent with the methodology for estimating the long-term avoided cost approved by the Commission and be based upon the resource plan approved by the Commission.

(b) Unless otherwise ordered by the Commission, be consistent with the format set forth in subsections 2 and 3 of NAC 704.9492 and be limited to those rates proposed by the utility pursuant to subsection 5 of NAC 704.9492.

4. If required, the Commission will hold a hearing on the estimated rates for long-term avoided cost within 90 days after the utility files the estimated rates for long-term avoided cost pursuant to subsection 2. If a hearing is held, the Commission will issue an order on the matter within 45 days after the conclusion of the hearing.

5. Within 30 days after the date on which the Commission issues an order pursuant to subsection 4, the utility shall solicit proposals to provide the utility capacity or energy, or both, in a manner that complies with the methodology for estimating long-term avoided cost approved by the Commission.

6. Within 90 days after issuing a solicitation of proposals pursuant to subsection 5, the utility shall file with the Commission a report concerning the results of the solicitation.

7. The utility's rate for long-term avoided cost for each block must be the estimated rate for long-term avoided cost established pursuant to this section or the competitive rate solicited pursuant to subsection 5, whichever is lower.

#### **Section 7. NAC 704.9497 Approval of emissions reduction and capacity replacement plan.**

1. The Commission will issue an order:

(a) Approving the emissions reduction and capacity replacement action plan of an electric utility that primarily serves densely populated counties as filed; or

*(b) Issue an order modifying the emissions reduction and capacity replacement action plan of an electric utility that primarily serves densely populated counties; or*

~~[(b)]~~ (c) If the emission reduction and capacity replacement action plan of an electric utility that primarily serves densely populated counties is not approved as filed, specifying those parts of the action plan the Commission considers inadequate.

2. Approval by the Commission of an emissions reduction and capacity replacement action plan constitutes a finding that the programs and projects contained in that plan are prudent. If the Commission subsequently determines that any information relied upon when issuing its order approving the emissions reduction and capacity replacement action plan was based upon information that was known or should have been known by the utility to be untrue or false at the time the information was presented, the Commission may revoke, rescind or otherwise modify its approval of the action plan.

*3. If the Commission issues an order modifying the emissions reduction and capacity replacement action plan, the utility may consent to or reject some or all of the modifications by filing with the Commission a notice to that effect. Any such notice must be filed not later than 30 days after the date of issuance of a final order or modified final order. If such a notice is filed, any petition for reconsideration or rehearing of the order must be filed with the Commission not later than 10 business days after the date the notice is filed.*

*4. An emissions reduction and capacity replacement plan shall be deemed to be accepted by the Commission only as to that portion of the plan accepted as filed or modified with the consent of the utility pursuant to subsection 3.*

**Section 8. NAC 704.9518 Approval of amendment to action plan or energy supply plan.** For amendments filed pursuant to NAC 704.9503 and in accordance with subsection 3 of NAC 704.9504, the Commission will issue an order approving the amendment as filed, *modifying the amendment*, or specifying those parts of the amendment the Commission considers inadequate.

**Section 9. NAC 704.9519 Approval of amendment to emissions reduction and capacity replacement action plan.** For an amendment to an emissions reduction and capacity replacement action plan filed pursuant to NAC 704.95035, the Commission will issue an order approving the amendment as filed, *modifying the amendment*, or specifying those parts of the amendment the Commission considers inadequate.