

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

LCB File No. R031-19

August 8, 2019

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

AUTHORITY: §§1-6, NRS 703.025, 704.097 and 704.210.

A REGULATION relating to liquefied petroleum gas; providing for the establishment of margin rates which may be assessed by an operator of a system for the distribution of liquefied petroleum gas to recover the cost of service of the operator; authorizing an operator to apply to the Public Utilities Commission of Nevada for the approval of margin rates established using an alternative method in lieu of a general rate application proceeding; establishing procedures for the review and disposition by the Commission of an application for the approval of margin rates established using an alternative method; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Public Utilities Commission of Nevada to adopt regulations which provide simplified procedures for obtaining certificates of public convenience and necessity and for changing rates for those public utilities which furnish only liquefied petroleum gas. (NRS 704.097) Existing regulations authorize an operator of a system for the distribution of liquefied petroleum gas, in addition to the price charged for liquefied petroleum gas, to assess a charge for owning, maintaining and operating the system which does not exceed the lowest residential base tariff general rate for natural gas in effect during the billing period or any other general rate established by the Commission. (NAC 704.536) **Section 6** of this regulation authorizes an operator to assess reasonable margin rates to recover the cost of owning, maintaining and operating the system. **Section 6** provides that the margin rates which an operator is authorized to assess must be established through a general rate application proceeding before the Commission, unless the operator obtains approval from the Commission to adopt and use an alternative method to determine the margin rates.

Section 3 of this regulation requires an operator who elects to use an alternative method to determine the margin rates to submit an application to the Commission for approval of the margin rates assessed by the operator during the operator's immediately preceding fiscal year, which must include certain monthly billing data and any other documentation or information necessary to demonstrate that the margin rates were just and reasonable.

Section 4 of this regulation requires the Regulatory Operations Staff of the Commission to analyze the documentation and information provided by an operator and file with the

Commission and serve on the parties a memorandum setting forth the determinations and recommendations of the Regulatory Operations Staff with respect to the operator's application for approval of the margin rates. **Section 4** authorizes the operator or any interested person to file a response to the memorandum or request a hearing. **Section 4** establishes a time limit for the Commission to issue a written order on the application or set the matter for a hearing, and authorizes the Commission to issue certain orders if the Commission determines that the margin rates assessed by the operator were not just and reasonable.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *The provisions of NAC 704.531 to 704.537, inclusive, and sections 2, 3 and 4 of this regulation apply to each public utility whose rates are subject to the jurisdiction of the Commission pursuant to NRS 704.097.*

Sec. 3. *1. An operator who pursuant to subsection 3 of NAC 704.536 obtains the consent of the Commission to use an alternative method shall submit to the Commission, on or before January 31 of each calendar year, an application for approval of the margin rates assessed by the operator during the operator's immediately preceding fiscal year. An operator who submits an application to the Commission pursuant to this section may request that the application and information included with the application not be disclosed and be made confidential pursuant to NAC 703.5274.*

2. An application submitted pursuant to this section must include, without limitation:

(a) Monthly billing data for the immediately preceding fiscal year for the captive customers of the operator with service addresses in Nevada in the same customer class for which the operator is seeking to use an alternative method;

(b) Monthly billing data for the immediately preceding fiscal year for non-captive customers of the operator with service addresses in Nevada that have liquefied petroleum gas tanks with a combined nominal capacity of not less than 250 gallons and not more than 3,000

gallons and who are in the same customer class for which the operator is seeking to use an alternative method; and

(c) Such information as is necessary to demonstrate that the margin rates assessed by the operator were just and reasonable, which may include, without limitation, information which justifies disparities in the margin rates, if any.

Sec. 4. 1. Upon receipt of an application submitted to the Commission pursuant to section 3 of this regulation, the Regulatory Operations Staff of the Commission shall analyze the documentation and information provided by the operator to determine whether the margin rates assessed by the operator during the operator's immediately preceding fiscal year were just and reasonable.

2. Following the analysis conducted pursuant to subsection 1 and not later than 90 days after the operator submitted the application to the Commission pursuant to section 3 of this regulation, the Regulatory Operations Staff shall file with the Commission and serve on the parties a memorandum setting forth the determinations and recommendations of the Regulatory Operations Staff with respect to the application and recommending any other action by the Commission that the Regulatory Operations Staff may deem reasonable under the circumstances. The memorandum of the Regulatory Operations Staff must include documentation to support the recommendations contained therein, including, without limitation, an explanation of the analysis performed and any other information determined by the Regulatory Operations Staff to be relevant to the determinations and recommendations of the Regulatory Operations Staff. Information and documentation included in or with the memorandum filed with the Commission pursuant to this subsection may be made confidential in accordance with NAC 703.5274.

3. Not later than 10 business days after the Regulatory Operations Staff files with the Commission the memorandum required by subsection 2, the operator or any interested person may file with the Commission a response to the memorandum or request a hearing on the application submitted pursuant to section 3 of this regulation, or both. Upon the request of the operator or the Regulatory Operations Staff, the Commission will hold a hearing on the application. If no request for a hearing is received by the Commission, the Commission will dispense with the hearing and take action upon the application, unless the Commission finds that a hearing is necessary or otherwise required by statute.

4. Not later than 60 days after the Regulatory Operations Staff files with the Commission the memorandum required by subsection 2, the Commission will issue a written order setting the application for hearing pursuant to subsection 3 or a written order approving the application and finding that the margin rates assessed by the operator during the immediately preceding year were just and reasonable in accordance with the requirements of subsection 1. At a hearing, the operator has the burden of proving that its margin rates were just and reasonable.

5. If the Commission determines that the margin rates assessed by the operator during the operator's immediately preceding fiscal year were not just and reasonable, the Commission may order the operator to:

(a) File a general rate application pursuant to NRS 704.110 within the time frame set forth by the Commission; or

(b) Make changes to the alternative method within the time frame set forth by the Commission.

6. If an operator is ordered by the Commission to make changes to the alternative method pursuant to paragraph (b) of subsection 5, the operator may elect to make such changes or may instead file a general rate application pursuant to NRS 704.110.

Sec. 5. NAC 704.531 is hereby amended to read as follows:

704.531 As used in NAC 704.531 to 704.537, inclusive, *and sections 2, 3 and 4 of this regulation*, unless the context otherwise requires:

1. *“Alternative method” means a method used by an operator to determine the margin rates in lieu of filing a general rate application pursuant to NRS 704.110.*

2. *“Captive customers” means customers who:*

(a) Purchase liquefied petroleum gas for consumption in this State from an operator who operates a system for the distribution of liquefied petroleum gas to 10 or more users at rates that are regulated by the Commission; and

(b) Do not have an economically feasible and practical alternative for bypassing the system.

3. *“Cost of service” means the costs incurred by an operator to own, maintain and operate the system and includes, without limitation, operating and maintenance expenses, depreciation expenses, operating and income taxes, debt service coverage and a return on invested capital to shareholders.*

4. *“Margin rates” means any fixed charges and any charges per sales unit assessed by an operator to recover the cost of service of an operator.*

5. *“Non-captive customers” means customers who purchase liquefied petroleum gas for consumption in this State at rates that are not regulated by the Commission.*

6. “Operator” means a person who operates one or more systems under common ownership and control, with a combined capacity to serve 10 or more users in a contiguous area.

~~{2.}~~ 7. “Reporting period” means January 1 through December 31 of the year preceding the filing of an annual report.

~~{3.}~~ 8. “System” means a network of pipes, valves, regulators, meters, containers and their appurtenances, and other physical facilities used by an operator for the distribution of liquefied petroleum gas.

Sec. 6. NAC 704.536 is hereby amended to read as follows:

704.536 1. An operator shall not charge a price for liquefied petroleum gas which exceeds ~~{his or her}~~ *its* average inventory price for the billing period.

2. In addition to the price charged for liquefied petroleum gas ~~{}~~ *and except as otherwise provided in this subsection*, an operator may assess ~~{a charge for owning, maintaining, and operating the system which does not exceed the lowest residential base tariff general rate for natural gas in effect during the billing period or any other general rate established by the Commission.}~~ *just and reasonable margin rates. Except as otherwise provided by subsection 3, the margin rates which an operator is authorized to charge must be established in a general rate application proceeding before the Commission pursuant to NRS 704.110.*

3. With the consent of the Commission, an operator may adopt *and use* an alternative method to ~~{recover the charge for owning, maintaining, and operating the system if the}~~ *determine its margin rates in lieu of filing a general rate application pursuant to NRS 704.110. An operator {submits} who elects to use an alternative method shall submit an application {for a rate adjustment and demonstrates that such an adjustment is} pursuant to section 3 of this regulation for determination by the Commission as to whether the margin*

rates charged by the operator during the immediately preceding fiscal year were just and reasonable. ~~{Both the application and the procedure must be substantially similar to that required for small water and sewer facilities in NAC 704.570 to 704.628, inclusive, and must be approved by the Commission.}~~

4. A customer is entitled to a refund of any overcharge. The operator shall refund the amount of the overcharge plus interest as established by the Commission pursuant to NRS 704.655 from the date the overcharge was paid by the customer. The refund must, at the election of the operator, be made by cash payment or by a reduction in the next billing after the overcharge is discovered.

5. As used in this section, “average inventory price” means the total cost of liquefied petroleum gas available for sale, divided by the amount of liquefied petroleum gas available for sale as calculated for each billing period. For the purpose of this section, the liquefied petroleum gas available for sale is the amount on hand at the beginning of the operator’s billing period, plus the amount of liquefied petroleum gas purchased by the operator during that period.