

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

LCB FILE NO. R062-201

**The following document is the initial draft regulation proposed
by the agency submitted on 06/05/2020**

DRAFT REGULATION OF

THE PUBLIC UTILITIES COMMISSION OF NEVADA

Docket No. 19-06029

May 27, 2020

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

AUTHORITY: Senate Bill 547 of the 80th (2019) Nevada Legislature

A REGULATION relating to public utilities

Chapter 704B of NAC is hereby amended by adding thereto the provisions set forth in Sections 1, 2, and 7 below and amending existing provisions as set forth in Sections 3-6 and 8-13 below.

Section 1. Exemption from Commission authorized annual limits of energy and capacity sales

1. The annual limits proposed pursuant to NAC 704.925(2) shall not apply to energy and capacity sales to an eligible customer if the eligible customer:

(a) Was not an end-use customer of the electric utility at any time before June 12, 2019; and

(b) Can demonstrate through electrical load calculations and electrical single-line diagrams that it will have a peak load of ten megawatts or more in the service territory of an electric utility within two years of initially taking electric service from its provider of new electric resources.

2. Whether an eligible customer was an end-use customer of the electric utility at any time before June 12, 2019, is based on whether the electric utility has provided fully bundled electric service to the premises of the eligible customer to power a facility at any time in the past, except for temporary construction service.

3. An eligible customer shall demonstrate in an application filed pursuant to NAC 704B.340 that it qualifies as exempt from the Commission authorized annual limits of energy and capacity sales.

4. An eligible customer exempted from the Commission authorized annual limits of energy and capacity sales pursuant to NAC 704B.340 and subsection 3 of this Section and who is seeking to purchase energy, capacity or ancillary services from a provider of new electric resources shall file an application with the Commission between January 2 and February 1 of any year and not later than 280 days before the date on which the eligible customer intends to begin purchasing service from the provider of new electric resources.

5. An eligible customer exempted from the Commission authorized annual limits of energy and capacity sales pursuant to NAC 704B.340 and subsection 3 of this Section shall pay costs, fees, charges or rates which apply to current and ongoing legislatively mandated public policy programs, as determined by the Commission.

6. Not later than twenty-four months after initially taking electric service from a provider of new electric resources, an eligible customer that is approved to take electric service from a provider of new electric resources pursuant to NAC 704B.340 and subsection 3 of this Section shall demonstrate that it has achieved a peak load of ten megawatts or more within two years of taking electric service from a provider of new electric resources. The eligible customer will demonstrate that it has achieved the requisite peak load by filing with the Commission and serving on the relevant electric utility, Regulatory Operations Staff and Bureau of Consumer Protection its peak load data achieved to date. If the peak load data submitted demonstrates usage below ten megawatts, within 15 days of the filing, the eligible customer, the relevant electric utility, and the Regulatory Operations Staff shall meet to discuss the information included in the filing. The Bureau of Consumer Protection must be notified of each such meeting and may participate fully in each such meeting and in any exchange of information. No later than five business days after the meeting, Staff shall file a written summary of the meeting with the Commission. The Commission will schedule a hearing within sixty days of the filing of Staff's meeting summary to determine whether the eligible customer has failed to prove that it has achieved a peak load of ten megawatts or more within twenty-four months after initially taking electric service from a provider of new electric resources. If the Commission determines that the eligible customer has failed to prove that it has achieved a peak load of ten megawatts or more within twenty-four months after initially taking electric service from a provider of new electric resources, the Commission shall determine the appropriate remedy, including, but not limited to:

(a) Requiring the eligible customer to pay the transition period charges using the net base tariff energy rate determined pursuant to Section 2 applicable at the time of application plus carrying charges at the electric utility's authorized rate-of-return from the date of initially taking electric service from the eligible customer's provider of new electric resource;

(b) Requiring the eligible customer to transition to taking service from the electric utility pursuant to an incremental pricing tariff or other arrangement;

(c) Requiring the eligible customer to file a new application under NRS Chapter 704B subject to the annual limits established pursuant to NRS 704.741 if the eligible customer wishes to take service from a provider of new electric resources; or

(d) Mandating any other appropriate remedy that is not contrary to the public interest.

Sec. 2. Calculation of transition period charges/credits

1. In determining the charges and credits applicable to annual limits established pursuant to NAC 704.9494, the electric utility shall calculate the net base tariff energy rate and the impact to the base tariff general rate. To perform such calculations, the electric utility shall:

(a) Use the electric utility's production cost modeling software to perform a three-year production cost simulation for the applicable three-year action plan period;

(b) Perform two sets of production cost simulations under the guidelines provided below for the Base Case Expansion Plan and the Exit Impact or "Change Case" Plan:

(1) Base Case Expansion Plan

(I) Use the electric utility's load, fuel and purchase power forecasts from the electric utility's preferred plan in the current NRS 704.741 resource plan filing that includes the proposed amount of energy and capacity that eligible customers may be authorized to purchase from providers of new electric resources subject to the annual limits set pursuant to NAC 704.925(2);

(II) Exclude all energy and capacity needs associated with the placeholder resources, which are generating facilities that have not yet been identified, proposed or approved as a part of the electric utility's resource plan, and assume all energy and capacity needs are fulfilled with market purchases at the prices contained in the fuel and purchase power forecast;

(2) Change Case Plan

(I) Use the electric utility's load, fuel and purchase power forecasts from the electric utility's preferred plan in the current NRS 704.741 resource plan filing with the proposed amount of energy and capacity that eligible customers may be authorized to purchase from providers of new electric resources subject to the annual limits set pursuant to NAC 704.925(2) removed;

(II) Use January 1 of the second year of the applicable three-year action plan period as the departure date for the analyses; and

(III) Perform the production costs simulations with external non-firm power sales turned off.

(c) The net base tariff energy rate is determined in the course of a triennial resource plan proceeding filed pursuant to NRS 704.741 and will be held fixed for the duration of any three-year transition period initiated pursuant to an NRS 704B.310 application filed during the applicable action plan period. To calculate the net base tariff energy rate:

(1) Use the system cost difference between the Base Case Expansion Plan and the Change Case Plan to determine the impact to the base tariff energy rate;

(2) After the base tariff energy rate system impact is calculated pursuant to subparagraph (1), calculate the portion of the base tariff energy rate system impact associated with the current and ongoing legislatively mandated public policy programs that affect the base tariff energy rate, which include but are not limited to:

(I) Calculate the out-of-the-money portion of the costs of long-term renewable energy contracts. To calculate such costs, the electric utility shall identify in its resource plan filing made pursuant to NRS 704.741, for Commission determination, the long-term renewable energy contracts that contain out-of-the-money costs. The out-of-the-money costs are calculated by substituting the electric utility's projected average monthly system costs for the contractual prices of each of the out-of-the-money long-term renewable energy contracts, multiplying these projected average monthly system costs by the projected generation of the underlying renewable resources, and subtracting that cost from the projected costs of the renewable energy contracts. As used in this Section, the out-of-the-money portion of the costs of long-term renewable energy contracts calculated for the three-year production cost simulation period shall be known as the Proposed Action Plan R-BTER; and

(II) Calculate the non-bypassable costs stemming from other public policies that are applicable to eligible customers;

(3) Subtract the portion of the Proposed Action Plan R-BTER costs and other non-bypassable costs stemming from other public policies attributable to the annual limits from the base tariff energy rate system impact cost to determine the net base tariff energy rate cost; and

(4) Divide the net base tariff energy rate cost by the energy consumption in kilowatt-hours attributed to the annual limits in the production costs modeling to derive the net base tariff energy rate.

(d) To calculate the impact to the base tariff general rate, determine the net impact to the variable operations and maintenance costs attributable to eligible customers by using the difference in variable operations and maintenance costs between the Base Case Expansion Plan and Change Case Plan.

2. In addition to all charges payable by distribution-only service customers, each eligible customer authorized to take service from a provider of new electric resources shall pay:

(a) For a three-year transition period commencing when the eligible customer begins to take service from a provider of new electric resources, the eligible customer's otherwise applicable base tariff general rates, with a credit or charge for the eligible customer's open access transmission tariff costs and variable operations and maintenance as determined pursuant to paragraph (d) of subsection 1 of this Section, multiplied by the amount of energy delivered to the customer. The base tariff general rate will be updated to reflect the rates in effect during the three-year transition period;

(b) For a three-year transition period commencing when the eligible customer begins to take service from a provider of new electric resources, the net base tariff energy rate multiplied by the amount of energy delivered to the customer;

(c) A non-bypassable charge, paid monthly, of an amount at least equal to the customer's share of the ongoing out-of-the-money portion of the costs of long-term renewable energy contracts, other public policy programs for which eligible applicants are required to pay, as well as decommissioning and remediation costs of any generation resource used to provide service to the eligible customer. The ongoing out-of-the-money portion of the costs of long-term renewable energy contracts payments pursuant to this subsection shall be known as the Actual R-BTER and shall:

(1) Include the out-of-the-money costs of the long-term renewable energy contracts identified by the Commission pursuant to subparagraph (2)(I) of paragraph (c) of subsection 1 of this Section or entered into by the electric utility to provide service to, or to meet the renewable portfolio standard on behalf of, the eligible customer;

(2) Be updated quarterly by the electric utility; and

(3) Assessed over the life of the underlying renewable energy contracts.

(d) An amount at least equal to the customer's load share of any regulatory asset, or receive a credit equal to the customer's load share of any regulatory liability that was established before the eligible customer applies to take service from a provider of new electric resource. For the regulatory assets or liabilities with amortization schedules beyond the eligible customer's three-year transition period, the eligible customer shall continue to pay, or receive a credit, for its load share of the regulatory assets or liabilities for the full duration of the amortization schedules.

(e) If applicable, a one-time recapture payment of all incentive payments or credits the eligible customer received from the electric utility in the five years preceding the date the eligible customer applies to take service from a provider of new electric resources:

(1) Energy efficiency measures installed or implemented by the electric utility's demand side management program; and.

(2) Behind-the-meter generation and storage facilities funded pursuant to NRS Chapter 701B.

(f) An eligible customer shall not receive any energy efficiency and renewable energy portfolio credits that are:

(1) Classified as surplus at the time of their departure, or

(2) Earned from the renewable energy systems identified in subparagraph (1) of paragraph (c) of this subsection for the entire duration of the long-term renewable energy contracts or from public policy program charges for the period during which public policy charges are assessed.

(g) Other costs, fees, charges or rates the Commission may determine to be appropriate.

↪ Regardless of the date of the analysis used pursuant to part II of subparagraph (2) of paragraph (b) of subsection 1, the three-year transition period applicable to paragraphs (a) and (b) of this subsection 2 begins on the date of actual departure with no credits or changes to the impact calculation. All payments made under this section, unless otherwise provided, will be billed monthly by the electric utility and sent directly to the eligible customer.

3. If the Commission deviates from subsection 3 of section 17 and approves annual limits on the total amount of energy and capacity that eligible customers may be authorized to purchase from providers of new electric resources to cumulatively exceed 50 percent of projected large commercial and industrial load growth for the three-year action period, the three-year transition period set forth in paragraphs (a) and (b) of subsection 2 and the three-year analysis period set forth in subsection 1 shall be extended to ensure that remaining customers receive the benefit of at least 50 percent of the growth of the large commercial and industrial load during the extended transition and analysis periods.

Sec. 3.

~~[NAC 704B.060 – “Electric utility that primarily serves densely populated counties” defined. (NRS 704B.200) – “Electric utility that primarily serves densely populated counties” has the meaning ascribed to it in NRS 704B.060.~~

~~NAC 704B.100 – “Impact fee” defined. (NRS 704B.200) – “Impact fee” means an amount assessed by the Commission against an eligible customer pursuant to subsection 7 of NRS 704B.310, but does not include any payment required by subparagraph (2) of paragraph (b) of subsection 7 of NRS 704B.310.~~

~~NAC 704B.104 – “Letter of intent” defined. (NRS 704B.200) – “Letter of intent” means a letter of intent that an eligible customer submits pursuant to NAC 704B.320.~~

~~NAC 704B.138 – “Ten-percent contract” and “10-percent contract” defined. (NRS 704B.200) – “Ten-percent contract” or “10-percent contract” means the contract required to be offered to an electric utility pursuant to subsection 2 of NRS 704B.320.]~~

Sec. 4.

~~[NAC 704B.320—Letter of intent to file application: General requirements; contents; limitations on use of certain information by electric utility. (NRS 704B.200)~~

~~—1. Not later than 30 calendar days before the date on which an eligible customer files an application, the eligible customer shall submit a letter of intent to file the application to:~~

~~—(a) The electric utility that is serving the eligible customer;~~

~~—(b) The Regulatory Operations Staff; and~~

~~—(c) The Bureau of Consumer Protection.~~

~~—2. The letter of intent submitted pursuant to this section must include the following information:~~

~~—(a) The name of the eligible customer, the address and other contact information for the eligible customer, and information demonstrating that the applicant is an eligible customer.~~

~~—(b) The name of the provider, the address and other contact information for the provider, and information demonstrating that the provider will provide energy, capacity or ancillary services from one or more identifiable new electric resources, including the location of the new electric resource or identification of the market for the new electric resource. If the provider intends to build a new electric resource, the letter of intent must also include a description of the proposed new facility and of how the total electricity requirements of the eligible customer will be met.~~

~~—(c) Each point of delivery at which the eligible customer intends to purchase energy from the provider and, for each such point of delivery:~~

~~—(1) The physical location of the point of delivery; and~~

~~—(2) The current account number for the point of delivery, the name on each such account and the current billing address and final billing address for each such account.~~

~~—(d) A description of the proposed transaction in the executed underlying contract between the provider and the eligible customer or, if no executed underlying contract exists when the letter of intent is submitted, a description of the terms that the eligible customer reasonably expects to be included in an executed underlying contract between the eligible customer and the provider for the purchase of energy, capacity or ancillary services from the provider. The description must include:~~

~~—(1) The date of commencement and the duration of the proposed transaction;~~

~~—(2) The amount of energy, capacity and ancillary services, if any, to be purchased by the eligible customer;~~

~~—(3) The identity of any scheduling coordinator as required by the OATT of the electric utility to be used by the eligible customer in scheduling the delivery of energy to the eligible customer and written confirmation from the scheduling coordinator;~~

~~—(4) The point or points of receipt;~~

~~—(5) The maximum number of megawatts or megawatt hours to be delivered under the proposed transaction and any load forecasts developed to determine the maximum number of megawatts or megawatt hours to be delivered under the proposed transaction;~~

~~—(6) Information regarding the nature of the product being purchased, including, without limitation, information regarding whether the energy or capacity is firm;~~

~~—(7) Information regarding termination provisions and notice provisions; and~~

~~—(8) Information regarding load ramps, both increases and decreases, over the term of the proposed transaction.~~

~~—(e) Information specifying which ancillary services will be taken from which entities.~~

~~—(f) Information indicating whether the new electric resources will be delivered from within or outside of the control area of the electric utility.~~

~~—3. In addition to the information required by subsection 2, if an eligible customer is a governmental entity, the eligible customer shall include with the letter of intent information sufficient to establish that:~~

~~—(a) The eligible customer is a governmental entity; and~~

~~—(b) The facilities and other locations that will be served by the provider are operated by the eligible customer under a common budget and common control.~~

~~—4. The electric utility may use information regarding submission of the letter of intent, information included with the letter of intent or information otherwise provided in connection with a proposed transaction governed by this chapter only for the performance of analyses required by this chapter, and the electric utility shall not use such information when conducting its sales or marketing activities. An electric utility shall adhere to the written standards, policies and procedures filed by the electric utility with the Commission to ensure compliance with this subsection.]~~

Sec. 5

~~[NAC 704B.330 Letter of intent to file application: Meetings and discussions; duty to provide and update certain data and information. (NRS 704B.200)~~

~~—1. Approximately 15 calendar days before the date on which an eligible customer files an application, the eligible customer, the electric utility and the Regulatory Operations Staff shall meet, in person or telephonically, to discuss the information included with the letter of intent and to identify any issues of concern with respect to the proposed transaction. Not later than 5 working days before the date of the meeting, the Bureau of Consumer Protection must be notified of the meeting, and the Bureau of Consumer Protection may participate fully in the meeting.~~

~~—2. The provisions of this section do not preclude the eligible customer, the electric utility, the Regulatory Operations Staff or the Bureau of Consumer Protection from meeting or conferring as often as they deem necessary to accomplish the objectives of this section.~~

~~—3. The Regulatory Operations Staff shall identify any additional data and information that it will need from the electric utility and the eligible customer to carry out the provisions of this section and the format that the electric utility and the eligible customer must use to provide and update the data and information. The electric utility and the eligible customer shall provide and update the data and information in such manner and at such times as the Regulatory Operations Staff may request.]~~

Sec. 6.

NAC 704B.340 Contents of application; protective orders; confidentiality.

1. If an eligible customer files an application, the eligible customer shall include with the application all ~~[the information that the eligible customer included with the letter of intent and all]~~ the following items:

(a) The name of the eligible customer, the address and other contact information for the eligible customer, and information demonstrating that the applicant is an eligible customer.

(b) The name of the provider, the provider's license number, the address and other contact information for the provider, and information demonstrating that the provider will provide energy, capacity or ancillary services from one or more identifiable new electric resources, including the location of the new electric resource or identification of the market for

the new electric resource. If the provider intends to build a new electric resource, the application must also include a description of the proposed new facility and of how the total electricity requirements of the eligible customer will be met.

(c) Each point of delivery at which the eligible customer intends to purchase energy from the provider and, for each such point of delivery:

(1) The physical location of the point of delivery; and

(2) The current account number for the point of delivery, the name on each such account and the current billing address and final billing address for each such account.

(d) A description of the proposed transaction in the executed underlying contract between the provider and the eligible customer or, if no executed underlying contract exists when the application is submitted, a binding term sheet listing specific terms and conditions of the proposed transaction, which must include:

(1) The date of commencement and the duration of the proposed transaction;

(2) The amount of energy, capacity and ancillary services, if any, to be purchased by the eligible customer, including the amount of energy, capacity and ancillary services expected to serve reasonably foreseeable load growth over the applicable action plan period;

(3) The identity of any scheduling coordinator as required by the OATT of the electric utility to be used by the eligible customer in scheduling the delivery of energy to the eligible customer and written confirmation from the scheduling coordinator;

(4) The point or points of receipt;

(5) The maximum number of megawatts or megawatt-hours to be delivered under the proposed transaction and any load forecasts developed to determine the maximum number of megawatts or megawatt-hours to be delivered under the proposed transaction;

(6) Specific information regarding the nature of the product being purchased, including, without limitation, information regarding whether the energy or capacity is firm;

(7) Specific information regarding termination provisions and notice provisions; and

(8) Specific information regarding load ramps, both increases and decreases, over the term of the proposed transaction.

(e) Specific information specifying which ancillary services will be taken from which entities.

(f) Specific information indicating whether the new electric resources will be delivered from within or outside of the control area of the electric utility.

(g) Specific information identifying transmission requirements associated with the proposed transaction and the extent to which the proposed transaction requires transmission import capacity.

(h[a]) Specific information demonstrating that the eligible customer or the provider has the ability to enter into all transmission service agreements necessary for the provider to deliver energy to the distribution system of the electric utility, and the proposed rates, terms and conditions of each such agreement. The eligible customer shall be deemed to have met the requirements of this subsection if:

(1) The eligible customer or the provider demonstrates that transmission service agreements with the electric utility will not be necessary for the provider to deliver energy to the distribution system of the electric utility; or

(2) The eligible customer demonstrates that it is an eligible customer under the OATT of the electric utility and the eligible customer agrees, to the extent applicable, to pay all costs for system impact studies, costs for construction and other costs required under the OATT of the electric utility to obtain the necessary transmission service.

~~(i)(b)~~ Specific information demonstrating that all energy delivered to the eligible customer will be metered through one or more time-of-use meters for each point of delivery.

~~(i)(e)~~ Any applicable system impact studies or facilities studies completed for the transmission service request.

~~(d) Any information required to update or complete the information the eligible customer included with the letter of intent.~~

(k). If applicable, evidence that the eligible customer qualifies as exempt from the Commission authorized annual limits of energy and capacity sales pursuant to Section 1.

~~(f)~~ Any other information deemed necessary by the Regulatory Operations Staff and requested in writing.

2. In addition to the information required by subsection 1, if an eligible customer is a governmental entity, the eligible customer shall include with the application information sufficient to establish that:

(a) The eligible customer is a governmental entity; and

(b) The facilities and other locations that will be served by the provider are operated by the eligible customer under a common budget and common control.

~~(f) If the eligible customer is a nongovernmental commercial or industrial end-use customer whose load is in the service territory of an electric utility that primarily serves densely populated counties:~~

~~(1) Information demonstrating that the eligible customer has obtained the 10 percent contract in accordance with subsection 2 of NRS 704B.320;~~

~~(2) A binding offer, in the form of a separate contract, to assign the 10 percent contract to the electric utility; and~~

~~(3) All the information reasonably foreseen to be necessary to enable the Regulatory Operations Staff or any party of record to perform an analysis of the 10 percent contract.]~~

3[2]. The eligible customer may request from the Commission a protective order to protect the confidentiality of any information the eligible customer believes to be commercially sensitive. The Commission will determine whether the requested information is commercially sensitive under Nevada law and requires confidential treatment. If the Commission determines that the information is commercially sensitive, the Commission:

(a) Will grant a protective order at least with respect to all information concerning the price of the energy, capacity and ancillary services to be purchased by the eligible customer.

~~(b) Will grant a protective order with respect to all information concerning the price of the energy, capacity and ancillary services associated with the 10 percent contract offered by the eligible customer pursuant to subsection 2 of NRS 704B.320.]~~

~~(b)(e)~~ Will not grant a protective order with respect to the information described in paragraphs (a) and (b) of subsection ~~[2]~~ 1 of NAC 704B.340 ~~[NAC 704B.320].~~

3. If information is protected by a protective order, the Regulatory Operations Staff, the Bureau of Consumer Protection, the electric utility and any intervener authorized by the

Commission to participate in the matter pursuant to NAC 703.578 to 703.600, inclusive, may have access to such information upon execution of a confidentiality agreement and subject to the terms of the protective order and the confidentiality agreement. Information protected by a protective order must not be disclosed on the public record or otherwise in any proceeding governed by this chapter, except as provided in the protective order.

Sec. 7.

Proposed NAC 704B.341 Application sufficiency and eligibility determination.

1. On or before February 15 of the year in which an eligible customer files an application pursuant to NRS 704B.310, the Regulatory Operations Staff, the Bureau of Consumer Protection or the electric utility may file a motion to dismiss of an application which any of those persons deem insufficient or which fails to establish the eligible customer's eligibility pursuant to NRS 704B.080.

2. The Commission shall grant or deny a motion to dismiss within 45 days after the date of its filing.

3. Nothing in this section precludes the Regulatory Operations Staff, the Bureau of Consumer Protection, the electric utility or any other party from challenging the application sufficiency or customer eligibility on the same or different grounds subsequently in the proceeding.

Sec. 8.

NAC 704B.350 Analysis of applicable credits and charges ~~proposed underlying contract;~~ meetings and discussions; duty to provide and update certain data and information; ~~methodology~~ used by Regulatory Operations Staff.

1. On or before April 15 of the year in which an eligible customer subject to the annual limits files an application pursuant to NRS 704B.310, the electric utility shall file with the Commission and release to the parties of record:

(a) A list of all known rates for recurring charges and credits applicable to the eligible customer during the three-year transition period, including rates established in the NRS 704.741 resource plan filing that authorized the annual limits;

(b) A list of renewable energy contracts identified by the Commission pursuant to subparagraph (2)(I) of paragraph (c) of subsection 1 of NAC 704B.XXX (Section 2. Calculation of transition charge or credit) or entered into by the electric utility to provide service to, or to meet the renewable portfolio standard on behalf of, the eligible customer;

(c) A list of rates of legislatively mandated public policy programs identified by the Commission pursuant to NAC 704.XXX (Section 14.1 Determination of public policy programs);

(d) A list of electric utility-owned generation resources used to provide service to the eligible customer;

(e) A list of regulatory assets and liabilities established before the eligible customer submitted the application; and

(f) A calculation of the one-time recapture payment of all incentive payments and credits listed in paragraph (e) of subsection 2 of NAC 704B.XXX (Section 2. Calculation of transition charge or credit).

2. On or before March 30 of the year in which an eligible customer not subject to the annual limits files an application pursuant to NRS 704B.310, the electric utility shall file with the

Commission and release to the parties a list of rates for public policy programs identified by the Commission pursuant to NAC 704.XXX (Section 14.1 Determination of public policy programs).

3. Not later than 15 calendar days after the date on which the electric utility makes the filing pursuant to subsection 1 or 2, the parties of record shall meet at least once to discuss the accuracy of the information filed by the electric utility and, if necessary, exchange information, including without limitation, the exchange of any suggested additions, modifications or deletions to the materials filed by the electric utility. The Bureau of Consumer Protection must be notified of each such meeting and may participate fully in each such meeting.

4. Not later than 10 calendar days after the date on which the parties of record meet pursuant to subsection 3, the electric utility shall file with the Commission and release to the parties of record any updates to the information filed pursuant to subsections 1 or 2.

5. Not later than 20 calendar days after the date on which the parties of record meet pursuant to subsection 3, any party of record may file with the Commission the materials identified in subsection 1 or 2 which it deems to be inaccurate. Each alternative filing must:

(a) Identify the bases for concluding that the information submitted by the electric utility is erroneous or deficient; and

(b) Include objective information supporting the party's alternative filing and, if applicable, demonstrating that the methodology used by the party is valid.

6. The provisions of this section do not preclude the parties of record from meeting or conferring as often as they deem necessary.

~~[1. Not later than 45 calendar days after the date on which the eligible customer files an application, the Regulatory Operations Staff shall:~~

~~—(a) Perform its initial analysis of the proposed underlying contract to estimate the potential impacts of the proposed underlying contract on the electric utility and its remaining customers; and~~

~~—(b) Release the results of its initial analysis to the eligible customer, the provider, the electric utility and the Bureau of Consumer Protection.~~

~~—2. Not later than 55 calendar days after the date on which the eligible customer files an application, the Regulatory Operations Staff, the eligible customer and the electric utility shall meet, in person or telephonically, at least once to discuss the results of the initial analysis performed by the Regulatory Operations Staff and, if necessary, to exchange information, including, without limitation, the exchange of any suggested additions, modifications or deletions to the initial analysis performed by the Regulatory Operations Staff. The Bureau of Consumer Protection and the provider must be notified of each such meeting, and each may participate fully in each such meeting and in any exchange of information.~~

~~—3. Not later than 65 calendar days after the date on which the eligible customer files an application, the Regulatory Operations Staff shall:~~

~~—(a) Finalize its analysis of the proposed underlying contract. In finalizing its analysis, the Regulatory Operations Staff shall incorporate any information obtained from the eligible customer, the provider, the electric utility and the Bureau of Consumer Protection that the Regulatory Operations Staff determines will most accurately estimate the potential impacts of the proposed underlying contract.~~

~~—(b) Release the results of its finalized analysis to the eligible customer, the provider, the electric utility and the Bureau of Consumer Protection.~~

~~—(c) Submit its finalized analysis to the Commission.~~

~~— 4. Not later than 80 calendar days after the date on which the eligible customer files an application, any party of record may file with the Commission an alternative analysis to the analysis performed by the Regulatory Operations Staff. Each alternative analysis must:~~

~~— (a) Identify the bases for concluding that the analysis performed by the Regulatory Operations Staff is deficient; and~~

~~— (b) Include objective information demonstrating that the methodology used by the party is valid under the range of circumstances included in the alternative analysis performed by the party.~~

~~— 5. The provisions of this section do not preclude the Regulatory Operations Staff, the eligible customer, the provider, the electric utility or the Bureau of Consumer Protection from meeting or conferring as often as they deem necessary to accomplish the objectives of this section.~~

~~— 6. The Regulatory Operations Staff shall identify the data and information that it will need from the electric utility and the eligible customer to carry out the provisions of this section and the format that the electric utility and the eligible customer must use to provide and update the data and information. The electric utility and the eligible customer shall provide and update the data and information in such manner and at such times as the Regulatory Operations Staff may request.~~

~~— 7. The Regulatory Operations Staff shall provide the Commission and other interested parties with a detailed description of the methodology that it will use to estimate the potential impacts of the proposed underlying contract on the electric utility and its remaining customers. The description must include, without limitation:~~

~~— (a) The methodology for analyzing net costs or benefits to the electric utility and its remaining customers and for ensuring that there are no net negative impacts to the electric utility and its remaining customers. The description must identify the commercial model or algorithm for the methodology and must contain a narrative description of that commercial model or algorithm.~~

~~— (b) The assumptions to be used with the methodology, including, without limitation, the time frame for analyzing net costs or benefits to the electric utility and its remaining customers and the categories of costs to be used with the methodology.~~

~~— (c) The sources of information to be used with each category of costs identified in paragraph (b), including, without limitation, sources of information regarding:~~

~~— (1) Capacity and energy, including energy from renewable resources;~~

~~— (2) Transmission;~~

~~— (3) Distribution; and~~

~~— (4) Natural gas commodity and capacity.~~

~~— (d) Other external inputs necessary for the operation of the commercial model or algorithm identified in paragraph (a).~~

~~— (e) Any data and information obtained from the electric utility, including any updated data and information.~~

~~— 8. The Regulatory Operations Staff shall provide the Commission and other interested parties with a detailed description of the information that must accompany any request by a third party to perform an independent analysis of the potential impacts of the proposed underlying contract on the electric utility and its remaining customers. The description must include, without limitation, the cost, if any, to perform such an independent analysis.]~~

Sec. 9.

~~[NAC 704B.360 Additional analysis of 10 percent contract; meetings and discussions; determination of best interest by Commission; consequences of determination. (NRS 704B.200, 704B.320)~~

~~— 1. In addition to the requirements of NAC 704B.350, if the eligible customer is a nongovernmental commercial or industrial end-use customer whose load is in the service territory of an electric utility that primarily serves densely populated counties, not later than 15 calendar days after the date on which the eligible customer files a completed and fully executed underlying contract between the eligible customer and provider, the Regulatory Operations Staff shall:~~

~~— (a) Perform its initial analysis of the 10-percent contract identified in the application pursuant to paragraph (f) of subsection 1 of NAC 704B.340. In its initial analysis, the Regulatory Operations Staff shall indicate whether the 10-percent contract will be beneficial or detrimental to the remaining customers of the electric utility and shall include a recommendation regarding whether the 10-percent contract should be assigned to the electric utility.~~

~~— (b) Provide its initial analysis to the eligible customer, the provider, the Bureau of Consumer Protection and the electric utility.~~

~~— 2. Not later than 20 calendar days after the date on which the eligible customer files the completed and fully executed underlying contract, the Regulatory Operations Staff, the eligible customer and the electric utility shall meet, in person or telephonically, at least once to discuss the results of the initial analysis on the 10-percent contract performed by the Regulatory Operations Staff and, if necessary, to exchange information, including, without limitation, the exchange of any suggested additions, modifications or deletions to the initial analysis performed by the Regulatory Operations Staff. The Bureau of Consumer Protection and the provider must be notified of each such meeting, and each may participate fully in each such meeting and in any exchange of information.~~

~~— 3. Not later than 30 calendar days after the date on which the eligible customer files the completed and fully executed underlying contract, the Regulatory Operations Staff shall:~~

~~— (a) Finalize its analysis of the 10-percent contract identified in the application. In finalizing its analysis, the Regulatory Operations Staff shall incorporate any information obtained from the eligible customer, the provider, the electric utility and the Bureau of Consumer Protection that the Regulatory Operations Staff determines will most accurately indicate whether the 10-percent contract will be beneficial or detrimental to the remaining customers of the electric utility.~~

~~— (b) Release the results of its finalized analysis to the eligible customer, the provider, the electric utility and the Bureau of Consumer Protection.~~

~~— (c) Submit its finalized analysis to the Commission.~~

~~— 4. Not later than 40 calendar days after the date on which the eligible customer files the completed and fully executed underlying contract, the electric utility, Bureau of Consumer Protection, eligible customer or provider may file with the Commission an alternative analysis to the analysis performed by the Regulatory Operations Staff. Each alternative analysis must:~~

~~— (a) Identify the bases for concluding that the analysis performed by the Regulatory Operations Staff is deficient; and~~

~~— (b) Include objective information demonstrating that the methodology used by the party is valid under the range of circumstances included in the alternative analysis performed by the party.~~

~~— 5. After evaluating the analysis performed by the Regulatory Operations Staff and any alternative analysis filed pursuant to subsection 4, the Commission will determine whether it is in the best interest of the remaining customers of the electric utility to have the eligible customer assign the 10-percent contract to the electric utility.~~

~~— 6. If the Commission determines that it is in the best interest of the remaining customers of the electric utility to have the eligible customer assign the 10-percent contract to the electric utility:~~

- ~~—(a) The eligible customer shall assign the 10-percent contract to the electric utility.~~
- ~~—(b) The electric utility shall accept the assignment and, upon the effective date of the 10-percent contract, include the 10-percent contract in its portfolio to supply its remaining customers. The 10-percent contract:~~
- ~~—(1) Shall be deemed to be prudent;~~
- ~~—(2) Is not subject to the provisions of NAC 704.9005 to 704.9525, inclusive, for the purposes of including the 10-percent contract as an option for supply; and~~
- ~~—(3) Is not an amendment to the action plan of the electric utility for the purposes of NAC 704.9503, and the electric utility shall not apply for permission to amend its action plan pursuant to that section with regard to the 10-percent contract.~~
- ~~—(c) In its subsequent filing for recovery of the cost of the 10-percent contract, the electric utility shall, to the extent possible, assign the cost of the 10-percent contract to those classes of customers who are not eligible for choice pursuant to this chapter, with the preference to be given to residential customers.~~
- ~~—7. If the Commission determines that it is not in the best interest of the remaining customers of the electric utility to have the eligible customer assign the 10-percent contract to the electric utility, the eligible customer is entitled to the 10-percent contract.]~~

Sec. 10.

NAC 704B.370 Duty to file and serve certain agreements; limited review and use of certain underlying contracts; confidentiality; terms, conditions and compliance items; petition to reopen consideration of application; limitations on actions of Commission after approval of application.

1. Not later than 30 days before the eligible customer begins purchasing energy, capacity or ancillary services from the provider, ~~[Except as otherwise provided in this section, not later than 40 calendar days after the date on which the eligible customer files an application,]~~ the eligible customer shall file with the Commission the following agreements:

(a) A completed and fully executed distribution service agreement between the eligible customer and the electric utility. The distribution service agreement must include, without limitation:

(1) A list of each point of delivery at which the eligible customer intends to purchase energy from the provider and, for each such point of delivery:

(I) The physical location of the point of delivery; and

(II) The current account number for the point of delivery, the name on each such account and the current billing address and final billing address for each such account; and

(2) A detailed plan for the avoidance of involuntary curtailments of energy or capacity to the remaining retail customers of the electric utility in the event that:

(I) The eligible customer is unable to secure supply for 100 percent of its load;

(II) The eligible customer is no longer being served by operating reserves; and

(III) The electric utility in good faith determines that it is unable to provide replacement resources to the eligible customer without negatively impacting system reliability.

↪ The detailed plan may include provisions for standby service, load shedding, recourse to reliably available market resources and any other measures or combination of measures reasonably designed to avoid involuntary load curtailments by the electric utility.

(b) A completed and fully executed transmission service agreement and operating agreement with the electric utility meeting all requirements of its OATT.

(c) A completed and fully executed underlying contract between the eligible customer and the provider for the purchase of energy, capacity or ancillary services from the provider.

~~[2.—If the eligible customer does not file the agreements pursuant to subsection 1 and the Commission approves the application, the Commission will condition its order approving the application on the filing of the agreements with the Commission.~~

~~—3]2.~~ Each agreement filed with the Commission pursuant to subsection 1 ~~[or 2]~~ must be served on each party of record.

~~[4]3.~~ ~~[If the Commission approves an application of an eligible customer which is not subject to subsection 2 of NRS 704B.320 and the eligible customer has not submitted a copy of a completed and fully executed underlying contract between the eligible customer and the provider for the purchase of energy, capacity or ancillary services from the provider, the Commission will condition its order approving the application on submission to the Regulatory Operations Staff of one copy of such a completed and fully executed underlying contract between the eligible customer and the provider.]~~ Upon receipt of the agreements filed with the Commission pursuant to subsection 1 ~~[underlying contract]~~, the Regulatory Operations Staff shall:

(a) Review the underlying contract to verify that the terms of the underlying contract are the same as the terms that the eligible customer submitted with its application ~~[provided to the Regulatory Operations Staff when the Regulatory Operations Staff performed its final analysis of the proposed transaction];~~

(b) Review the distribution agreement, and the transmission service agreement and operating agreement to verify the terms of the agreements are consistent with the eligible customer's application; and

(c) [b] Inform the Commission and each party of record whether the terms are the same or whether the terms differ. If the terms differ, the Commission will issue an order identifying the terms that differ and providing the eligible customer with an opportunity to resolve the differences. If the eligible customer fails to resolve the differences within 7 days, the application shall be deemed to be rescinded.

~~→ An underlying contract that is submitted to the Regulatory Operations Staff pursuant to this subsection shall be deemed to be submitted for verification purposes only and must not be included as part of the record of the case. The contents of the underlying contract shall be deemed to be commercially sensitive and must not be disclosed on the public record or otherwise in any proceeding governed by this chapter. The Regulatory Operations Staff shall protect the confidentiality of the underlying contract and shall not disclose the contents of the underlying contract to any person or entity, unless authorized by the Commission.~~

~~—5.—If the Commission approves the application of an eligible customer which is subject to subsection 2 of NRS 704B.320 and the eligible customer has not submitted a copy of a completed and fully executed underlying contract between the eligible customer and the provider for the purchase of energy, capacity or ancillary services from the provider, the Commission will condition its order approving the application on submission of a copy of the completed and fully executed underlying contract to the Commission, the Regulatory Operations Staff, the Bureau of Consumer Protection and the electric utility. Upon receipt of the underlying contract, the Regulatory Operations Staff shall:~~

~~—(a) Review the underlying contract to verify that the terms of the underlying contract are the same as the terms that the eligible customer provided to the Regulatory Operations Staff when the Regulatory Operations Staff performed its final analysis of the proposed transaction; and~~

~~—(b) Inform the Commission and each party of record whether the terms are the same or whether the terms differ. If the terms differ, the Commission will issue an order identifying the terms that differ and providing the eligible customer with an opportunity to resolve the differences. If the eligible customer fails to resolve the differences within 7 days, the application shall be deemed to be rescinded.~~

~~→ Except for the review process performed by the Regulatory Operations Staff pursuant to this subsection to verify the terms of the underlying contract, the underlying contract may be used only to evaluate the 10-percent contract required pursuant to NRS 704B.320 and is subject to any protective order issued pursuant to paragraph (b) of subsection 2 of NAC 704B.340.~~

~~—6]4.~~ In addition to the terms, conditions and compliance items required by subsections ~~1]2, 4] and 3]5],~~ the Commission may condition its order approving an application with any other terms, conditions and compliance items it deems necessary to ensure that the proposed transaction is not contrary to the public interest.

~~5]7].~~ The Commission will provide in each order approving an application that the eligible customer must comply with all terms, conditions and compliance items imposed pursuant to this section, if any, not later than 120 calendar days after the date on which the Commission issues the order.

~~6]8].~~ A party of record may petition the Commission to reopen consideration of an application. A party of record must file such a petition not later than 15 calendar days after the date on which the Commission determines that the eligible customer has complied with all terms, conditions and compliance items imposed pursuant to this section.

~~7]9].~~ Except upon a petition to reopen consideration of an application that is filed by a party of record pursuant to this section and except as otherwise provided in this section ~~[and NRS 704B.360],~~ or as may be needed to address any objections raised pursuant to NAC 704B.405, the Commission will not, after it issues an order approving an application:

- (a) Rescind or amend its approval of the application; or
- (b) Add to or modify the terms, conditions and compliance items set forth in the order approving the application.

Sec. 11.

NAC 704B.380 Proposed transaction between eligible customer and provider which relies exclusively on new electric resources currently in operation.

1. If a proposed transaction between an eligible customer and a provider relies exclusively on new electric resources currently in operation or by way of market purchases:

(a) Not later than 20 calendar days after the date on which the Commission determines that the eligible customer has complied with all terms, conditions and compliance items imposed pursuant to NAC 704B.370, the eligible customer shall notify the electric utility and the Commission in writing as to whether the eligible customer intends to proceed with the proposed transaction and, if so, the date of commencement.

(b) The date of commencement must not be sooner than:

- (1) Sixty calendar days after the date on which the eligible customer notifies the electric utility pursuant to this subsection; and

(2) *Two hundred and eighty* [~~One hundred eighty~~] calendar days after the date on which the eligible customer files the application,

↳ unless the Commission authorizes an earlier date of commencement.

~~{2. If the eligible customer notifies the electric utility and the Commission in writing that the eligible customer intends to proceed with the proposed transaction not later than 30 days after the Commission issues a compliance order approving the application of the eligible customer, the impact fee approved by the Commission will not be updated or adjusted unless the actual date of commencement occurs before the estimated date of commencement.~~

~~—3}2.~~ If the eligible customer notifies the electric utility and the Commission in writing pursuant to subsection 1 [~~2, or reconfirms to the electric utility and the Commission in writing pursuant to subsection 5,~~] that the eligible customer intends to proceed with the proposed transaction:

(a) The electric utility:

(1) May plan to discontinue procuring for the eligible customer the energy, capacity and ancillary services that the eligible customer will be purchasing from the provider pursuant to the proposed transaction; and

(2) Shall install or implement, or cause to be installed or implemented, all systems, operations, equipment and other modifications necessary to accommodate the proposed transaction.

~~{(b) Except as otherwise provided in subsection 2, not later than 15 calendar days after the date on which the eligible customer files its estimated date of commencement pursuant to subsection 1, the Regulatory Operations Staff shall update its calculation of the impact fee that will be assessed by the Commission against the eligible customer. The updated calculation must:~~

~~—(1) Be based on the estimated date of commencement; and~~

~~—(2) Have sufficient detail so that if the actual date of commencement occurs before the estimated date of commencement, the impact fee can be adjusted accordingly.~~

~~—4. Upon completion of the updated calculation of the impact fee required by paragraph (b) of subsection 3, the Regulatory Operations Staff shall provide the eligible customer with an analysis of the updated calculation and, on that date, shall provide a copy of the analysis to the provider, the electric utility, the Bureau of Consumer Protection, the Commission and all other parties of record. The analysis must include a listing of the major assumptions used and a listing of any inputs that were changed from the original analysis that served as the basis for the determination by the Commission that the assessment of the impact fee was necessary so that the proposed transaction would not be contrary to the public interest. A party of record may file an objection with the Commission to the analysis of the updated calculation of the impact fee not later than 15 calendar days after the Regulatory Operations Staff provides that analysis to the party of record pursuant to this subsection. The objection must identify the basis for concluding that the analysis was deficient, including, without limitation, an identification of each contested assumption and input.~~

~~—5. Not later than 30 calendar days after receiving a copy of the analysis of the updated calculation of the impact fee pursuant to subsection 4, the eligible customer shall:~~

~~—(a) If no objections to the updated calculation of the impact fee are filed pursuant to subsection 4:~~

~~—(1) Reconfirm to the Commission, electric utility and parties of record in writing that the eligible customer intends to proceed with the proposed transaction; or~~

~~— (2) Inform the Commission, electric utility and parties of record in writing that the eligible customer will not proceed with the proposed transaction.~~

~~— (b) If objections to the updated calculation of the impact fee are filed pursuant to subsection 4:~~

~~— (1) Reconfirm to the Commission, electric utility and parties of record in writing that the eligible customer intends to proceed with the proposed transaction;~~

~~— (2) Inform the Commission, electric utility and parties of record in writing that the eligible customer will not proceed with the proposed transaction; or~~

~~— (3) Inform the Commission, electric utility and parties of record in writing that the eligible customer will defer the decision of whether to proceed with the proposed transaction until the Commission issues its decision on the objections. Not later than 30 calendar days after the date on which the Commission issues its decision on the objections, the eligible customer shall:~~

~~— (I) Reconfirm to the Commission, electric utility and parties of record in writing that the eligible customer intends to proceed with the proposed transaction; or~~

~~— (II) Inform the Commission, eligible customer and parties of record in writing that the eligible customer will not proceed with the proposed transaction.~~

~~— 6}3. If the actual date of commencement occurs after the date of commencement provided to the electric utility in the final notice of intent to proceed pursuant to this section, the electric utility may require the eligible customer, or the eligible customer may elect, to begin taking electric service under the provisions of the incremental pricing tariff of the electric utility.~~

~~1}4. Notwithstanding the provisions of subsection 1 of this section and subsection 6}8] of NAC 704B.370, if the Commission determines that all terms, conditions and compliance items imposed pursuant to NAC 704B.370 have been satisfied more than 120 calendar days after the date on which the Commission issues its order approving the application, the Commission may adjust the period in which the eligible customer must notify the electric utility of its intent to proceed with the proposed transaction and the date of commencement.~~

Sec. 12.

NAC 704B.385 Proposed transaction between eligible customer and provider which relies on new electric resources that will be constructed after application granted by Commission.

1. If a proposed transaction between an eligible customer and a provider relies on new electric resources that will be constructed after the Commission has issued its order granting the application:

(a) The Commission will establish reasonable time intervals by which:

(1) The eligible customer must file, and the electric utility must process, documents required to determine if the eligible customer is in compliance with all the terms, conditions and compliance items imposed pursuant to NAC 704B.370; and

(2) The Regulatory Operations Staff must review and verify whether the eligible customer has complied with the order issued by the Commission.

(b) Not later than 20 calendar days after the date on which the Commission determines that the eligible customer has complied with all the terms, conditions and compliance items imposed pursuant to NAC 704B.370, the eligible customer shall notify the electric utility and the Commission in writing as to whether the eligible customer intends to proceed with the proposed transaction and, if so, the estimated date of commencement.

2. If the eligible customer notifies the electric utility and the Commission pursuant to subsection ~~1}3, or reconfirms to the electric utility and the Commission pursuant to subsection 6,]~~ that the eligible customer intends to proceed with the proposed transaction, the electric utility:

(a) May plan to discontinue procuring for the eligible customer the energy, capacity and ancillary services that the eligible customer will be purchasing from the provider pursuant to the proposed transaction; and

(b) Shall install or implement, or cause to be installed or implemented, all systems, operations, equipment and other modifications necessary to accommodate the proposed transaction.

~~{3.— If the eligible customer notifies the electric utility and the Commission in writing that the eligible customer intends to proceed with the proposed transaction not later than 50 days after the Commission issues a compliance order approving the application of the eligible customer, the impact fee approved by the Commission will not be updated or adjusted unless the actual date of commencement occurs before the estimated date of commencement.~~

~~—4.— Except as otherwise provided in subsection 3, not later than 15 calendar days after the date on which the eligible customer notifies the electric utility and the Commission of its estimated date of commencement pursuant to paragraph (b) of subsection 1, the Regulatory Operations Staff shall update its calculation of the impact fee that will be assessed by the Commission against the eligible customer. The updated calculation must:~~

~~—(a) Be based on the estimated date of commencement; and~~

~~—(b) Have sufficient detail so that if the actual date of commencement occurs before the estimated date of commencement, the impact fee can be adjusted accordingly.~~

~~—5.— Upon completion of the updated calculation of the impact fee required by subsection 4, the Regulatory Operations Staff shall provide the eligible customer with an analysis of the updated calculation and, on that date, shall provide a copy of the analysis to the provider, the electric utility, the Bureau of Consumer Protection, the Commission and all other parties of record. The analysis must include a listing of the major assumptions used and a listing of any inputs that were changed from the original analysis that served as the basis for the determination by the Commission that the assessment of the impact fee was necessary so that the proposed transaction would not be contrary to the public interest. A party of record may file with the Commission an objection to the analysis of the updated calculation of the impact fee not later than 15 calendar days after the Regulatory Operations Staff provides that analysis to the party of record pursuant to this subsection. The objection must identify the basis for concluding that the analysis was deficient, including, without limitation, the identification of each contested assumption and input.~~

~~—6.— Not later than 30 calendar days after receiving a copy of the analysis of the updated calculation of the impact fee pursuant to subsection 5, the eligible customer shall:~~

~~—(a) If no objections to the updated calculation of the impact fee are filed pursuant to subsection 5:~~

~~—(1) Reconfirm to the Commission, electric utility and parties of record in writing that the eligible customer intends to proceed with the proposed transaction; or~~

~~—(2) Inform the Commission, electric utility and parties of record in writing that the eligible customer will not proceed with the proposed transaction.~~

~~—(b) If objections to the updated calculation of the impact fee are filed pursuant to subsection 5:~~

~~—(1) Reconfirm to the Commission, electric utility and parties of record in writing that the eligible customer intends to proceed with the proposed transaction;~~

~~—(2) Inform the Commission, electric utility and parties of record in writing that the eligible customer will not proceed with the proposed transaction; or~~

~~—(3) Inform the Commission, electric utility and parties of record in writing that the eligible customer will defer the decision of whether to proceed with the proposed transaction until the~~

~~Commission issues its decision on the objections. Not later than 30 calendar days after the date on which the Commission issues its decision on the objections, the eligible customer shall:~~

~~—(I) Reconfirm to the Commission, electric utility and parties of record in writing that the eligible customer intends to proceed with the proposed transaction; or~~

~~—(II) Inform the Commission, electric utility and parties of record in writing that the eligible customer will not proceed with the proposed transaction.~~

~~—7]3.~~ An eligible customer must comply with all terms, conditions and compliance items imposed pursuant to NAC 704B.370 not later than 70 days before the estimated date of commencement. Upon the request of the eligible customer, the Commission may approve a revised estimated date of commencement.

~~4[8].~~ If, as of the estimated date of commencement:

(a) The eligible customer is not capable of receiving energy, capacity or ancillary services from the provider of new electric resources pursuant to the proposed transaction; and

(b) The eligible customer is otherwise eligible to take electric service under the electric utility's incremental pricing tariff for the electric utility,

↳ the electric utility may require the eligible customer, or the eligible customer may elect, to take electric service under the incremental pricing tariff of the electric utility until the actual date of commencement.

Sec. 13.

NAC 704B.410 Criteria for determining whether proposed transaction ~~will be contrary to~~ is in ~~the~~ public interest.

In determining whether a proposed transaction for an existing eligible customer is in ~~{will be contrary to}~~ the public interest:

1. The Commission will base its determination on the criteria set forth in subsections 5 and 6 of NRS 704B.310. To approve the application, the Commission must determine that the proposed transaction does not subject the electric utility or its remaining customers to increased costs as a result of the proposed transaction or causes the remaining customers to forego the benefit of a reduction of costs.

~~{2. In addition to the criteria set forth in subsection 1, the Commission may consider, without limitation, and give due weight to:~~

~~—(a) The potential impacts of the proposed transaction on the electric utility and its remaining customers as set forth in the analysis performed by the Regulatory Operations Staff pursuant to NAC 704B.350.~~

~~—(b) The potential impacts of the proposed transaction on the electric utility and its remaining customers as set forth in any alternative analysis filed by a party of record pursuant to NAC 704B.350.~~

~~—(c) The potential impacts of the proposed transaction on the electric utility and its remaining customers which are of a qualitative nature or of a quantitative nature and which were not included in the analysis performed by the Regulatory Operations Staff pursuant to NAC 704B.350.~~

~~—(d) The opportunity or ability of the electric utility to mitigate costs that would otherwise be assigned to its remaining customers, provided that any such mitigation must not alter, diminish or otherwise affect any rights or obligations arising under any contract which requires the electric utility to purchase energy, capacity or ancillary services from another party and which was in existence on July 17, 2001.~~

- ~~— (e) The extent to which the proposed transaction increases or decreases existing subsidies to the remaining customers of the electric utility in the same rate class or in other rate classes.~~
- ~~— (f) Factors that affect system reliability of the electric utility, including, without limitation, whether approval of the application will result in:~~
- ~~— (1) Construction of additional generation, transmission or distribution assets without cost to the remaining customers of the electric utility;~~
- ~~— (2) Location of generation assets where they may improve or degrade system reliability;~~
- ~~and~~
- ~~— (3) Availability of generation assets which may be dispatched by the electric utility or which may be capable of providing ancillary services such as regulation.~~
- ~~— (g) Factors that affect the general welfare of the residents and communities of this State, including, without limitation, employment, economic development and the quality of life.]~~

Chapter 704 of NAC, and more specifically NAC 704.9005 to 704.9525 is hereby amended by adding thereto the provisions set forth in Sections 14, 14.1 and 14.2 below and amending existing provisions as set forth in Sections 15-17 below.

Sec. 14.

NAC 704.XXX Annual limits carryover.

1. Any amount of energy and capacity set in an annual limit for the first or second year of the applicable action plan period that remains unused for that year may be added to the annual limit established for the subsequent year.

2. No amount of energy and capacity allocated to annual limits within the applicable action plan period is added to the annual limits established for the subsequent action plan period.

Sec. 14.1

NAC 704.XXX. Determination of applicable public policy programs

The Commission shall determine the legislatively mandated public policy programs for which both eligible applicants and exempted eligible customers are required to pay in each triennial integrated resource plan. The Commission shall consider on a case-by-case basis public policy programs and costs, fees charges or rates not previously or finally determined in the triennial integrated resource plan.

Sec. 14.2

NAC 704X.XXX Qualifying for annual limits.

1. If, for any year of the applicable action plan period, the cumulative load of eligible premises identified by customers in applications filed pursuant to NRS 704B.310 exceeds the applicable annual limit, the Regulatory Operations Staff shall identify the applications authorized to proceed through a randomized, fair, impartial and open selection process.

2. Prior to conducting a randomized, fair, impartial and open selection process, the Regulatory Operations Staff shall notify the Commission of the methodology chosen to conduct the selection process.

3. The Regulatory Operations Staff shall conduct the selection process on or before April 1 of the applicable action plan year.

4. For each applicant, the load stated for eligible premises in the application must include a reasonably foreseeable load growth over the applicable action plan period.

Sec. 15.

NAC 704.9225 Forecasts of peak demand and annual energy consumption: General requirements.

1. A utility's resource plan must contain a series of forecasts of the peak demand and annual energy consumption that represent the range of future load which its system may be required to serve. The range of future peak demand and energy consumption must be based upon and consistent with the upper and lower limits of expected economic and demographic change in the utility's service territory in the next 20 years, commencing with the year following the year in which the resource plan is filed, as follows:

- (a) A forecast of high growth;
- (b) A forecast of base growth; and
- (c) A forecast of low growth.

↪ The forecasts of the future retail electric demands of the utility or utilities described in subsection 1 must contain versions which both include and exclude the amount of energy and capacity for new eligible customers described in section 1 and proposed pursuant to subsection 2 of NAC 704.925 as annual limits on the total amount of energy and capacity that eligible customers may be authorized to purchase from providers of new electric resources through transactions approved by the Commission pursuant to an application submitted pursuant to NRS 704B.310;

2. In each of the forecasts described in subsection 1, the utility shall account for customer response to changes in the prices of electric energy and substitute energy sources and to the impacts of existing and proposed programs undertaken by the utility or required by governmental regulation to alter current energy use patterns.

3. To the extent data is available, peak demand must be forecasted before accounting for the effects of cogeneration.

4. The utility shall maintain internal consistency among its forecasts. The forecast of peak demand must be consistent with the forecast of energy consumption and must be based on data which is normalized for weather pursuant to NAC 704.9245.

Sec. 16.

NAC 704.925 Resource plan: Inclusion, contents and evaluation of forecasts of energy consumption and peak demand; consideration of certain impacts; identification of change in methodology of forecasting.

1. A utility's resource plan must include forecasts of energy consumption and the peak demand for summer and winter for the system, disaggregated by rate schedule, for the 20-year period beginning with the year following the year in which the resource plan is filed. The utility may combine rate schedules if necessary to protect the confidentiality of individual customers.

2. *The utility shall include in the plan a proposal for annual limits on the total amount of energy and capacity that eligible customers may be authorized to purchase from providers of new electric resources through transactions approved by the Commission pursuant to an application submitted pursuant to NRS 704B.310.*

(a) In developing the proposal for annual limits on the total amount of energy and capacity that eligible customers may be authorized to purchase from providers of new electric

resources and the forecasts in the plan, the utility or utilities must conduct a sensitivity analysis that addresses: load growth, import capacity, system constraints, and the effect of eligible customers purchasing less energy and capacity than authorized by the proposed annual limit. The utility or utilities may conduct additional sensitivity analyses including additional factors to be considered by the Commission. Any such analyses must be clearly explained and supported by the utility or utilities.

(b) The proposal for annual limits in the plan shall not cumulatively exceed 50 percent of projected large commercial and industrial load growth for the applicable three-year action plan period projected in the load forecast and must include, without limitation:

(1) A forecast of the load growth of the utility or utilities;

(2) The number of eligible customers that are currently being served by or anticipated to be served by the utility or utilities;

(3) Information concerning the infrastructure of the utility or utilities that is available to accommodate market-based new electric resources;

(4) Proposals to ensure the stability of rates and the availability and reliability of electric service; and

(5) For the annual limits, the proposed charges and credits to account for costs reflected in the base tariff general rate and base tariff energy rate paid by end-use customers of the utility.

~~3~~³. The utility shall identify components of residential and commercial energy and demand for which initiatives for energy efficiency and conservation are applicable. The utility shall include in its forecast an assessment of the impacts of such initiatives on the identified components and on overall levels of energy consumption and demand by residential and commercial customers.

~~4~~³. The utility's forecast must include:

(a) Estimated annual losses of energy on the system for the 20-year period of the resource plan; and

(b) Estimated annual energy to be used by the utility for the 20-year period of the resource plan.

~~5~~⁴. The utility shall consider the impact of applicable new technologies and the impact of applicable new governmental programs or regulations.

~~6~~⁵. The utility shall consider the impact of distributed generation and customers who acquire energy pursuant to NRS 704.787 or chapter 704B of NRS.

~~7~~⁶. The utility shall provide a reasonable estimate of the demand from interruptible loads and the total demand of each type of interruptible load.

~~8~~⁷. The utility shall identify all standby loads and the total demand of each type of standby load and include an analysis of the likelihood and effect of incurring such demands at the time of the system peak of the utility.

~~9~~⁸. All forecast values for the entire system of the utility must be reported. The utility shall separately estimate the contribution to peak demand and energy consumption for the components of the system located within the State of Nevada and for the components of the system located outside the State of Nevada.

~~10~~⁹. A resource plan must contain a graphical representation of projected load duration curves for the year following the year in which the resource plan was filed and every fifth year thereafter for the remainder of the period covered by the resource plan.

~~11[10]~~. To verify and complete the final forecasts, the utility may evaluate the forecasts with the results of alternative forecasting methods.

~~12[11]~~. Any change in the methodology of forecasting used by the utility from that used in the utility's previous resource plan must be identified in the current resource plan of the utility.

Sec. 17.

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; ~~for~~

(b) Modifying the plan; or

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

2. In considering whether to accept or modify a proposal for annual limits on the total amount of energy and capacity that eligible customers may be authorized to purchase from providers of new electric resources through transactions approved by the Commission pursuant to an application submitted pursuant to NRS 704B.310, which is included in the plan pursuant to subsection 6 of NRS 704.741, the Commission shall consider whether the proposed annual limits:

(a) Further the public interest, including, without limitation, whether the proposed annual limits promote safe, economic, efficient and reliable electric service to all customers of electric service in this State;

(b) Align an economically viable utility model with state public policy goals;

(c) Encourage the development and use of renewable energy resources located in this State and, in particular, renewable energy resources that are coupled with energy storage; and

(d) Do not increase costs, or remove benefits, from customers of the utility that are not eligible customers.

3. In approving or modifying the action plan filed by the utility, the Commission shall not approve annual limits on the total amount of energy and capacity that eligible customers may be authorized to purchase from providers of new electric resources that cumulatively exceed 50 percent of projected large commercial and industrial load growth for the applicable three-year action plan period projected in the approved load forecast.

~~4[3]~~. 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.

~~5[4]~~. 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:

(a) 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.

(b) The energy supply plan must optimize the value of the overall supply portfolio for the utility for the benefit of its bundled retail customers.

(c) 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.

~~6[5]~~. 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.