

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

LCB FILE NO. R075-201

**The following document is the initial draft regulation proposed
by the agency submitted on 06/10/2020**

ATTACHMENT 1

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

Docket No. 19-02024

June 5, 2020

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

AUTHORITY: NRS 703.025, 704.050, 704.070, 704.075, 704.100, 704.110, 704.210

Sec. 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as Sections 2 and 3 of this regulation below and amending existing provisions of NAC as set forth in Sections 4-10 below.

Sec. 2. 1. *The Commission shall open a new docket annually to receive notice of all filings related to NAC 704.516 to 704.528, as amended by these regulations. Any filings made by the utility which transports natural gas pursuant to this Section and subsections 1 to 4 of NAC 704.518 shall be made in a new docket, but the utility will provide notice in the docket opened annually by the Commission pursuant to this Section.*

2. *In the docket opened annually by the Commission pursuant to subsection 1 of this Section, the utility which supplies natural gas to an alternative fuel capable customer must file a memorandum at least 30 days prior to the customer taking service from the utility pursuant to the approved schedule or before making any changes to rates pursuant to the approved schedule. Regulatory Operations Staff and the Bureau of Consumer Protection shall be served simultaneously with the memorandum filed with the Commission, along with all supporting documents required by regulation and the schedule.*

- (a) Upon the filing of the memorandum, Regulatory Operations Staff, Bureau of Consumer Protection or any interested and affected person will have up to 25 days to protest the rates in the memorandum as non-compliant with NAC 704.516 to 704.528 or the schedule filed by the utility that supplies natural gas. Untimely protests will not be considered by the Commission.*
- (b) Contents of a protest shall include:
 - (1) The stated reasons of how the utility or customer has not satisfied the requirements of NAC 704.516 to NAC 528 or the utility's schedule;*
 - (2) If applicable, any proposed recommendations to the memorandum to bring it into compliance with NAC 704.516 to 704.528 and the schedule of the utility; and*
 - (3) Any other relevant material to support the protest that the memorandum does not meet the requirements of Section 3 of this regulation or the utility's schedule;**
- (c) Upon receipt of a properly filed and timely protest, the Commission may hold a hearing within 60 days of the filing of a memorandum to determine whether a protest is valid and whether the proposal in the memorandum complies with NAC 704.516 to 704.528 and the schedule filed by the utility. Multiple protests may be consolidated into one hearing.*
- (d) If no protest is filed, the change to rates provided in the memorandum become effective*

as provided in the memorandum.

- (e) If a protest is filed, the Commission shall issue an order within 120 days of the filing of a memorandum approving or denying the memorandum. Any changes approved by the Commission shall not go into effect before the date the Commission issues an order.*

3. In accordance with subsection 1 of this Section, the utility which transports natural gas to a transportation customer must jointly file with that customer an application for approval of a discounted rate contract at least 60 days prior to the customer taking service from the utility. Regulatory Operations Staff and the Bureau of Consumer Protection shall be served simultaneously with the discounted rate contract filed with the Commission, along with all supporting documents required by regulation and the schedule pursuant to which the contract was entered.

- (a) Upon the filing of the discounted rate contract, Regulatory Operations Staff, the Bureau of Consumer Protection or any interested and affected person, will have 60 days to protest the contract as non-compliant with NAC 704.516 to 704.528 or the schedule filed by the utility that transports natural gas. Untimely protests will not be considered by the Commission.*

- (b) Contents of a protest shall include:*

- (1) The stated reasons of how the utility or customer has not satisfied the requirements of NAC 704.518 or the utility's schedule;*
- (2) If applicable, any proposed recommendations to the contract to bring the contract into compliance with NAC 704.516 to 704.528 and the schedule of the utility; and*
- (3) Any other relevant material to support the protest that the contract does not meet the requirements of NAC 704.516 to 704.528 or the utility's schedule.*

- (c) Upon receipt of a properly filed and timely protest, the Commission may hold a hearing within 120 days of the filing of the contract to determine whether a protest is valid and whether the contract complies with NAC 704.516 to 704.528 and the Commission approved schedule. Multiple protests may be consolidated into one hearing.*

- (d) If no protest is filed, the filed discounted rate contract becomes effective as provided in the contract.*

- (e) If a protest is filed, the Commission shall issue an order within 150 days of the filing of a contract approving or denying the discounted rate contract. The contract shall not go into effect until the Commission issues an order.*

Sec. 3. A utility which supplies natural gas may file for approval with the Commission a schedule to be applied to alternative fuel capable customers served by the utility. The schedule shall set forth the terms and conditions of service. The schedule may include a standard for setting a discount to the gas cost rate components for the alternative fuel capable customer on less than 30-days' notice and authorize the establishment of different classes of customers or charging different rates for customers of the same class.

Sec. 4. NAC 704.516 is hereby amended to read as follows:

As used in NAC 704.516 to 704.528, inclusive, unless the context otherwise requires:

1. ~~[The words and terms defined in subsection 1 of NRS 704.075 have the meanings ascribed to them in that subsection.]~~ **"Alternative fuel capable customer" means a generating, industrial or large commercial customer, as defined in NRS 704.075, of a natural gas utility who obtains natural gas from the natural gas utility but has the capability of using a fuel other than natural**

gas.

2. *“Bona fide alternative” means an option available to a customer that utilizes facilities other than those of the utility that transports natural gas:*

- (a) Which is economically, physically, and operationally feasible and imminent; and*
- (b) For which the cost to the customer to bypass the system of the utility is less than the utility’s otherwise applicable rate to serve that customer.*

3. *“Contract for special services” means a contract between a natural gas utility and a transportation customer other than a contract that complies with an approved schedule that specifies the methods, terms, conditions, and rates that are negotiated or differ from the otherwise applicable rate.*

4. *“Discount” means a reduction to the otherwise applicable volumetric or demand components of a transportation customer’s otherwise applicable rate. The volumetric or demand rate component must not be equal to or below zero.*

5. *“Discounted rate contract” means a contract that is filed by a utility for a discount on certain volumetric or demand components of a transportation customer’s rate in conformance with the approved schedule the utility has on file with the Commission.*

6. *“Incremental costs” means any direct capital and operating and maintenance costs, including any fixed costs that have not been fully depreciated, incurred by a natural gas utility to serve a transportation customer with a discounted rate contract or a contract for special services.*

7. *“Memorandum” means a written notice from the utility to the Commission of any change to rates for an alternate fuel capable customer pursuant to a Commission approved schedule.*

8. *“Otherwise applicable rate” means the otherwise applicable cost-of-service rate schedules.*

9. ~~[2.]~~ *“Schedule” has the meaning ascribed to it in NRS 704.066.*

10. *“Transportation customer” means a customer of a natural gas utility who obtains natural gas from a competitive third-party supplier and transports the customer-owned natural gas through the distribution system of the natural gas utility using the facilities of the natural gas utility.*

Sec. 5. NAC 704.517 is hereby amended to read as follows:

NAC 704.516 to 704.528, inclusive, apply only to rates for natural gas transported for *transportation customers* or ~~[sold]~~ *supplied* to alternative fuel capable customers. *The statutory authority for rates for natural gas transported for transportation customers is NRS 704.050 and 704.210. The statutory authority for rates for natural gas supplied to alternative fuel capable customers is NRS 704.075.*

Sec. 6. NAC 704.518 is hereby amended to read as follows:

1. A utility which *transports* ~~[supplies]~~ natural gas may file *for approval* with the Commission a schedule to be applied to *transportation* ~~[generating, industrial and large commercial]~~ customers served by the utility. *The schedule may permit a discounted rate contract between a utility and a transportation customer.* The schedule:

- (a) Must set forth the terms and conditions of service, including: [and the range of rates or the mechanisms pursuant to which such rates may be determined; and]*

(1) That the utility and transportation customer shall file a discounted rate contract with the Commission at least 60 days prior to the customer taking service from the

utility;

- (2) *That the discounted rate contract between the utility and transportation customer will be limited to an initial term of not more than 10 years and shall not include any contract provision that permits the discounted rate contract to be renewed or otherwise extended beyond the initial term without first filing and obtaining Commission approval of a new contract pursuant to this Section and Section 2;*
- (3) *That the discounted rate contract between the utility and transportation customer conform to the rate design and discount terms as specified in the schedule in accordance with paragraphs (b) through (g) of this subsection; and*
- (4) *That the discounted rate contract between the utility and transportation customer must include a provision that permits the Commission to assess additional charges on the customer at any time during the contract term as determined in an appropriate proceeding before the Commission.*

↪ *After the initial Commission approved contract term has run, if the transportation customer is seeking to renew a discounted rate contract, the utility and transportation customer must jointly refile the discounted rate contract or file a new discounted rate contract and demonstrate that the rates in the discounted rate contract meet the terms of subsections 1 of this Section and the associated requirements of the utility's schedule. Alternatively, the utility and transportation customer may file a contract for special services in accordance with subsection 3 and 4 of this Section.*

- (b) *May include different rates for customers within the same class upon a showing of justification to the Commission.*
- (c) *Must specify the rate design applicable to transportation customers taking service pursuant to a discounted rate contract.*
- (d) *Must explicitly state which volumetric or demand components of a transportation customer's rates are to be discounted, the criteria that applies that makes a customer eligible for the discounts and the range of discounts that may be offered to the volumetric or demand components of the rate.*
- (e) *Shall not permit any discounts to the fixed components of a transportation customer's rates.*
- (f) *Shall require that any discount included in a discounted rate contract rate for each transportation customer is supported by the utility's most recent Commission approved class cost of service study or other evidence sufficient to demonstrate that the customer will pay at least its incremental costs of service, thereby ensuring that the discounted rates recover at least the incremental costs that the utility will incur to serve the transportation customer so that there is no net cost to other customers.*
- (g) *Must require that the discounted rate contract filed by the utility which transports natural gas contains a provision for an annual inflation adjustment.*

↪ *In a new Commission docket opened pursuant to subsection 1 of Section 2, the utility shall be required to file the supporting data or other evidence as required in paragraph (f) of subsection 1 of this Section with the Commission when it files the discounted rate contract in accordance with Section 2.*

2. A utility may provide service to a **transportation** ~~[generating, industrial or large commercial]~~ customer pursuant to a schedule filed pursuant to subsection 1, **which shall be supported with**

cost estimates, engineering studies or other documentary evidence when the discounted rate contract is filed with the Commission, if the customer notifies the utility in writing [~~in a manner acceptable to the utility~~] that the customer wishes to be billed pursuant to the schedule and the customer *and the utility provide support to the Commission in accordance with Section 2 of this regulation* [~~has demonstrated to the utility~~] that [:

- ~~(a) The customer is capable of using a fuel other than natural gas; or~~
- ~~(b)]the customer can bypass the facilities of the utility which transports natural gas using a [A] bona fide alternative [to purchasing service from the utility is available to the customer.] that satisfies the following:~~
 - (a) *Bypass of the utility's facilities is physically feasible and imminent based upon evidence of the ability of the customer or its agent to construct physical infrastructure for natural gas service from a bona fide alternative within a reasonable amount of time;*
 - (b) *Bypass of the utility's facilities is economically feasible based upon evidence demonstrating that taking service from a bona fide alternative to the utility would be more economical than taking service from the utility during the proposed contractual period, taking into account all of the costs of constructing or using physical infrastructure other than that of the utility; and*
 - (c) *Bypass of the utility's facilities is operationally feasible and imminent based upon evidence that demonstrates that each transportation customer or its agent is operationally capable of constructing and operating natural gas facilities.*

↪ *A transportation customer is required to provide such information, along with all supporting documents, to the utility prior to the utility and the customer jointly filing the discounted rate contract with the Commission.*

3. If a utility which seeks to transport natural gas for [~~or sell natural gas to a generating industrial or large commercial~~] *a transportation* customer:

- (a) Does not have a schedule approved by the Commission on file with the Commission pursuant to subsection 1;
- (b) Seeks to charge a rate that is outside of the limits established by the schedule of the utility approved for transporting natural gas for [~~or selling natural gas to a generating, industrial or large commercial~~] *a transportation* customer; or
- (c) Seeks terms and conditions of service outside those set forth in the schedule of the utility approved for transporting natural gas for [~~or selling natural gas to a generating, industrial or large commercial~~] *a transportation* customer,

↪ the utility shall file with the Commission an application for approval of a contract for special services between the utility and the [~~generating, industrial or large commercial~~] *transportation* customer. A contract for special services must specify the method, terms, conditions and rates by which the services are to be rendered to the customer. A utility shall not provide service to a [~~generating, industrial or large commercial~~] *transportation* customer pursuant to a contract *for* [~~of~~] special services until the contract is approved by the Commission.

4. A utility may provide service to a [~~generating, industrial or large commercial~~] *transportation* customer pursuant to a contract for special services, *which shall be supported with cost estimates, studies and other documentary evidence when the contract for special services is*

filed with the Commission, if the customer notifies the utility in writing in a manner acceptable to the utility that the customer wishes to be billed pursuant to such a contract and the customer [has] and the utility have demonstrated to the [utility] **Commission** that [:

- ~~(a) The customer is capable of using a fuel other than natural gas; or~~
- ~~(b)]the customer can bypass the facilities of the utility which transports natural gas using a [A] bona fide alternative [to purchasing service from the utility is available to the customer.] that satisfies the following:~~
 - ~~(a) Bypass of the utility's facilities is physically feasible and imminent based upon evidence of the ability of the customer or its agent to construct physical infrastructure for natural gas service from a bona fide alternative within a reasonable amount of time;~~
 - ~~(b) Bypass of the utility's facilities is economically feasible based upon evidence demonstrating that taking service from a bona fide alternative to the utility would be more economical than taking service from the utility during the proposed contractual period, taking into account all of the costs of constructing or using physical infrastructure other than that of the utility; and~~
 - ~~(c) Bypass of the utility's facilities is operationally feasible and imminent based upon evidence that demonstrates that each transportation customer or its agent is operationally capable of constructing and operating natural gas facilities.~~

↪ *A transportation customer is required to provide such information, along with all supporting documents, to the utility prior to the utility and the customer jointly filing the contract for special services with the Commission.* The rates and charges under a schedule or a contract for special services filed pursuant to this section must be established by the utility which *transports* [supplies] natural gas after consultation with each affected customer. [~~The utility shall consider the value to the customer of using natural gas as opposed to using an alternative fuel and the cost to the utility of providing the service.~~

~~6. Filings, pursuant to NAC 704.516 to 704.528, inclusive, are exempt from the provisions of NRS 704.100 and 704.110, except that any tariff, schedule or contract for special services that is filed is subject to the provisions of NRS 704.100 and 704.110 governing the time in which the Commission must take action on such filings.~~

~~7. As used in this section:~~

- ~~(a) "Bona fide alternative" means an option available to a customer:~~
 - ~~(1) Which is economically and operationally feasible; and~~
 - ~~(2) For which the cost to the customer to bypass the system of the utility is less than the marginal cost needed for the utility to serve that customer.~~
- ~~(b) "Contract for special services" means a contract which is filed by a utility in lieu of a schedule and which specifies the methods, terms, conditions and rates by which services are to be rendered to a generating, industrial or large commercial customer.]~~

Sec. 7. NAC 704.519 is hereby amended to read as follows:

A schedule becomes effective the date specified in the schedule except it may not take effect before it is filed *and approved* with the Commission.

Sec. 8. NAC 704.521 is hereby amended to read as follows:

A schedule filed by a utility must include or be accompanied by a written justification for each ~~[rate and charge]~~ *element required by NAC 704.518* ~~[in the schedule]~~.

Sec. 9. NAC 704.528 is hereby amended to read as follows:

1. Regulatory Operations Staff and the Bureau of Consumer Protection are permitted to audit any filings made by the utility which supplies natural gas or any conduct undertaken by the utility which transports natural gas in accordance with NAC 704.516 to 704.528 as amended by these regulations. If the Regulatory Operations Staff or the Bureau of Consumer Protection determine that any provision of NAC 704.516 to 704.528 or a Commission approved schedule may have been violated, the Regulatory Operations Staff or the Bureau of Consumer Protection may file a complaint with the Commission at any time.

2. An investigation and public hearing to determine whether a utility has violated a provision of NAC 704.516 to 704.528, *inclusive or its Commission approved schedule*, may be ordered by the Commission, either upon its own motion or upon receipt of a complaint. If the Commission finds that any of the provisions of NAC 704.516 to 704.528, inclusive, have not been followed, it will:

- (a)** ~~[1]~~ Notify the utility that the schedule or list is no longer in effect because of its failure to follow the requirements of NAC 704.516 to 704.528, inclusive;
- (b)** ~~[2]~~ Require the utility to modify the schedule or list to comply with NAC 704.516 to 704.528, inclusive; or
- (c)** ~~[3]~~ Take any other appropriate action.

Sec. 10. NAC 704.522 is hereby repealed.

TEXT OF REPEALED SECTION

NAC 704.522 Procedure for changing level of rate.

1. The utility may change the level of a rate within an established range of rates pursuant to a schedule approved by the Commission for generating, industrial or large commercial customers by filing a memorandum with the Commission stating the new level of the rate, the name of the affected customer and the effective date of the change.
2. As used in this section, “memorandum” means a written notice from a utility to the Commission of any change to rates or any changes to a schedule approved by the Commission.