

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

LCB FILE NO. T006-21P

**The following document is the proposed temporary regulation submitted
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**PROPOSED REGULATION OF THE
PUBLIC UTILITIES COMMISSION OF NEVADA**

LCB File No. R075-20

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

AUTHORITY: §§1, 2, 6, 7 and 13, NRS 703.025 and 704.210; §§3, 5, 9 and 11, NRS 703.025, 704.075 and 704.210; §§4, 8 and 10, NRS 703.025, 704.050 and 704.210; §12, NRS 703.025, 704.050, 704.075 and 704.210.

A REGULATION relating to natural gas; revising procedures for the approval of a schedule to be applied to alternative fuel capable customers of a utility which supplies natural gas; establishing procedures for the Public Utilities Commission of Nevada to approve a schedule and discounted rate contracts for transportation customers of a natural gas utility; revising provisions governing contracts for special services; authorizing the audit of certain filings with the Commission; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes utilities to charge concentration, commodity, transit and other special contract rates under the supervision and regulation of the Public Utilities Commission of Nevada. (NRS 704.050) Existing law also requires the Commission to establish standards for the setting, increase or decrease of rates for natural gas to generating, industrial and large commercial customers. (NRS 704.075)

Section 5 of this regulation authorizes a utility which supplies natural gas to file with the Commission for its approval a schedule to be applied to alternative fuel capable customers, which are defined in **section 6** of this regulation as generating, industrial and large commercial customers who are capable of using a fuel other than natural gas. **Section 3** of this regulation requires a utility which supplies natural gas to an alternative fuel capable customer to file a memorandum at least 30 days before the alternative fuel capable customer begins taking service from the utility pursuant to an approved schedule or before the utility makes changes to rates pursuant to a schedule approved by the Commission. **Section 3** also establishes a procedure for the Regulatory Operations Staff of the Commission, the Bureau of Consumer Protection or an interested and affected person to challenge the contents of the memorandum. **Section 13** of this regulation removes the authority of a utility which supplies natural gas to change the level of rates charged to generating, industrial or large commercial customers by filing a memorandum with the Commission because **section 3** establishes a procedure for making such changes.

Section 8 of this regulation authorizes a utility which transports natural gas to file with the Commission for its approval a schedule to be applied to transportation customers, which may authorize the utility and a transportation customer to enter into a discounted rate contract. **Section 8** sets forth the requirements for such a schedule. **Section 8** also revises provisions authorizing a utility which transports natural gas to apply to the Commission for approval of a contract for special services between the utility and a transportation customer. **Section 10** of this regulation requires the schedule for transportation customers to include a written justification for each element of the schedule.

Section 4 of this regulation requires a utility which transports natural gas to a transportation customer to seek approval from the Commission for any discounted rate contract at least 60 days before the transportation customer begins taking service from the utility pursuant to the contract. **Section 4** also establishes a procedure for the Regulatory Operations Staff of the Commission, the Bureau of Consumer Protection or an interested and affected person to challenge the contents of the contract.

Section 2 of this regulation requires the Commission to open a docket annually to receive notice of certain filings relating to the supplying or transporting of natural gas by a utility.

Section 9 of this regulation provides that the schedules set forth in this regulation do not become effective before being approved by the Commission.

Section 12 of this regulation authorizes the Regulatory Operations Staff of the Commission and the Bureau of Consumer Protection to audit certain filings made by a utility and to file a complaint based upon the results of such an audit.

Sections 7 and 11 make conforming changes.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5 of this regulation.

Sec. 2. *The Commission will open a new docket annually to receive notice of all filings relating to NAC 704.516 to 704.528, inclusive, and sections 2 to 5, inclusive, of this regulation. Any filings by the utility which transports natural gas made pursuant to section 4 of this regulation or NAC 704.518 must be made in a new docket, but the utility shall provide notice in the docket opened annually by the Commission pursuant to this section.*

Sec. 3. 1. *In the docket opened annually by the Commission pursuant to section 2 of this regulation, a 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 a schedule approved by the Commission or before making any changes to rates pursuant to the schedule approved by the Commission. The utility shall simultaneously serve the Regulatory Operations Staff and the Bureau of Consumer Protection with the memorandum filed with the Commission and all supporting documents required by regulation and the schedule approved by the Commission.

2. The Regulatory Operations Staff, Bureau of Consumer Protection or any interested and affected person may, not later than 25 days after the memorandum is filed with the Commission pursuant to subsection 1, file with the Commission a protest alleging that the rates in the memorandum do not comply with NAC 704.516 to 704.528, inclusive, and sections 2 to 5, inclusive, of this regulation, or the schedule approved by the Commission. The Commission will not consider protests that are untimely. A protest must include:

(a) A statement describing the manner in which the memorandum fails to comply with the requirements of NAC 704.516 to 704.528, inclusive, and sections 2 to 5, inclusive, of this regulation, or the schedule;

(b) If applicable, any proposed changes to the memorandum which would bring it into compliance with NAC 704.516 to 704.528, inclusive, and sections 2 to 5, inclusive, of this regulation, and the schedule; and

(c) Any other relevant material to support the protest that the memorandum does not satisfy the requirements of NAC 704.516 to 704.528, inclusive, and sections 2 to 5, inclusive, of this regulation, or the schedule.

3. Upon receipt of a properly filed and timely protest, the Commission may, not later than 60 days after the filing of the memorandum with the Commission, hold a hearing to determine

whether the protest is valid and whether the proposal in the memorandum complies with NAC 704.516 to 704.528, inclusive, and sections 2 to 5, inclusive, of this regulation, and the schedule approved by the Commission. Multiple protests regarding the same memorandum may be consolidated into a single hearing.

4. If no protest is filed, any change to rates provided in the memorandum becomes effective as provided in the memorandum.

5. If a protest is filed, the Commission will issue an order approving or denying the memorandum within 120 days of the filing of the memorandum with the Commission. Any change to rates approved by the Commission must not go into effect before the date the Commission issues such an order.

Sec. 4. 1. A utility which transports natural gas to a transportation customer and the transportation customer shall jointly file with the Commission an application for approval of any discounted rate contract at least 60 days prior to the transportation customer taking service from the utility pursuant to the discounted rate contract.

2. The utility shall simultaneously serve the Regulatory Operations Staff and the Bureau of Consumer Protection with a copy of the discounted rate contract and all supporting documents required by regulation and the schedule approved by the Commission.

3. The Regulatory Operations Staff, the Bureau of Consumer Protection or any interested and affected person may, not later than 60 days after the discounted rate contract is filed with the Commission, file with the Commission a protest alleging that the contract fails to comply with NAC 704.516 to 704.528, inclusive, and sections 2 to 5, inclusive, of this regulation, or the schedule approved by the Commission. The Commission will not consider protests that are untimely. A protest must include:

(a) A statement describing the manner in which the discounted rate contract fails to comply with the requirements of NAC 704.516 to 704.528, inclusive, and sections 2 to 5, inclusive, of this regulation, or the schedule;

(b) If applicable, any proposed amendments to the discounted rate contract to bring it into compliance with NAC 704.516 to 704.528, inclusive, and sections 2 to 5, inclusive, of this regulation, and the schedule; and

(c) Any other relevant material to support the protest that the discounted rate contract does not satisfy the requirements of NAC 704.516 to 704.528, inclusive, and sections 2 to 5, inclusive, of this regulation, or the schedule.

4. Upon receipt of a properly filed and timely protest, the Commission may, not later than 120 days after the filing of the discounted rate contract with the Commission, hold a hearing to determine whether the protest is valid and whether the contract complies with NAC 704.516 to 704.528, and sections 2 to 5, inclusive, of this regulation, and the schedule approved by the Commission. Multiple protests regarding the same contract may be consolidated into a single hearing.

5. If no protest is filed, the discount contained in the discounted rate contract becomes effective as provided in the discounted rate contract.

6. If a protest is filed, the Commission will issue an order within 150 days of the filing of the discounted rate contract with the Commission approving or denying the discounted rate contract. The discounted rate contract must not go into effect until the Commission issues such an order.

7. If a transportation customer seeks to renew a discounted rate contract which was approved pursuant to this section after the initial term of the contract has ended, the utility

and transportation customer must jointly refile the discounted rate contract or file a new discounted rate contract pursuant to subsection 1.

Sec. 5. *A utility which supplies natural gas may file for approval by the Commission a schedule to be applied to alternative fuel capable customers served by the utility. The schedule:*

1. Must set forth the terms and conditions of service provided to alternative fuel capable customers.

2. 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 the charging of different rates for customers of the same class.

Sec. 6. NAC 704.516 is hereby amended to read as follows:

704.516 As used in NAC 704.516 to 704.528, inclusive, *and sections 2 to 5, inclusive, of this regulation,* 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 customer, industrial customer 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 to utilize 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 less than 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, without limitation, any fixed costs that have not been fully depreciated, incurred by a natural gas utility in serving 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 alternative fuel capable customer pursuant to a schedule approved by the Commission.*

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

9. *“Schedule” ~~means the tariff sheet that identifies the range of rates and charges, or the mechanisms pursuant to which such rates and charges may be determined, filed pursuant to NAC 704.518.~~ 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. 7. NAC 704.517 is hereby amended to read as follows:

704.517 NAC 704.516 to 704.528, inclusive, *and sections 2 to 5, inclusive, of this regulation* apply only to rates for natural gas transported for *transportation customers* or ~~sold to generating, industrial and large commercial customers.~~ *supplied to alternative fuel capable customers.*

Sec. 8. NAC 704.518 is hereby amended to read as follows:

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

(a) Must set forth the terms and conditions of service ~~and the range of rates, or the mechanisms pursuant to which such rates may be determined; and~~ *including, without limitation, the following terms governing any discounted rate contract between the utility and a transportation customer:*

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

(2) That the discounted rate contract will be limited to an initial term of not more than 10 years and must 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 discounted rate contract pursuant to this section and section 4 of this regulation;

(3) That the discounted rate contract must conform to the rate design and discount terms as specified in the schedule in accordance with paragraphs (b) to (g), inclusive, of this subsection; and

(4) That the discounted rate contract must include a provision that permits the Commission to assess additional charges on the transportation customer at any time during the contract term as determined in an appropriate proceeding before the Commission.

(b) May include different rates for customers within the same class ~~+~~ upon a showing to the Commission that the different rates are justified.

(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 to determine whether a customer is eligible for the discounts and the range of discounts that may be offered to the volumetric or demand components of the rate.

(e) Must not permit any discounts to the fixed components of a transportation customer's rates.

(f) Must require that the discounts included in any rate provided for by a discounted rate contract are supported by the utility's most recent Commission-approved class cost of service study or other evidence sufficient to demonstrate that the transportation 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 in serving the transportation customer such that there is no net cost to other customers of the utility.

(g) Must require that the discounted rate contract contain a provision for an annual inflation adjustment.

2. A utility may provide service to a ~~{generating, industrial or large commercial}~~ *transportation* customer pursuant to a schedule filed pursuant to subsection 1 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 ~~{has demonstrated to the utility}~~ *and the utility jointly file, in a new Commission docket opened pursuant to section 2 of this regulation, evidence demonstrating* that ~~†~~:

~~—(a) The customer is capable of using a fuel other than natural gas; or~~

~~—(b) A† the customer can bypass the facilities of the utility which transports natural gas using a bona fide alternative {to purchasing service from the utility is available to the customer.}~~ *and that bypass of the facilities of the utility is:*

(a) Physically feasible and imminent based upon evidence demonstrating 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) Economically feasible based upon evidence demonstrating that taking service from a bona fide alternative 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) Operationally feasible and imminent based upon evidence demonstrating that each transportation customer or its agent is operationally capable of constructing and operating natural gas facilities.

↳ The transportation customer must provide the foregoing evidence to the utility before the utility and the transportation customer jointly file any application for approval of a discounted rate contract pursuant to section 4 of this regulation.

3. If a utility which seeks to transport natural gas for ~~for 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 ~~for selling natural gas to a generating, industrial or large~~ *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 ~~for selling natural gas to a generating, industrial or large commercial~~ *a transportation* customer,

↳ the utility shall file with the Commission an application for the 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 *transportation* customer. A utility shall not provide service to a ~~generating, industrial or large~~ *transportation* customer pursuant to a contract ~~of~~ *for* 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) A] the customer can bypass the facilities of the utility which transports natural gas using a bona fide alternative {to purchasing service from the utility is available to the customer.}~~
and that bypass of the facilities of the utility is:

(a) Physically feasible and imminent based upon evidence demonstrating 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) Economically feasible based upon evidence demonstrating that taking service from a bona fide alternative 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) Operationally feasible and imminent based upon evidence demonstrating that each transportation customer or its agent is operationally capable of constructing and operating natural gas facilities.

↪ The transportation customer must provide the foregoing evidence to the utility before the utility and the transportation customer jointly file the application for approval of a contract for special services pursuant to subsection 3.

5. 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 ~~supplies~~ *transports* 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. 9. NAC 704.519 is hereby amended to read as follows:

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

Sec. 10. NAC 704.521 is hereby amended to read as follows:

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

Sec. 11. NAC 704.524 is hereby amended to read as follows:

704.524 ~~[The]~~ *A utility supplying natural gas to an alternative fuel capable customer or transporting natural gas for a transportation customer shall notify each customer covered by the a schedule filed pursuant to NAC 704.518 or section 5 of this regulation of any change in the rates and charges at least 1 day before the effective date of the change.*

Sec. 12. NAC 704.528 is hereby amended to read as follows:

704.528 *1. The Regulatory Operations Staff and the Bureau of Consumer Protection may audit any filings with the Commission 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, inclusive, and sections 2 to 5, inclusive, of this regulation. If the Regulatory Operations Staff or the Bureau of Consumer Protection determines that any provision of NAC 704.516 to 704.528, inclusive, or sections 2 to 5, inclusive, of this regulation, or a schedule approved by the Commission has 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 sections 2 to 5, inclusive, of this regulation, or the schedule approved for the utility by the Commission 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, or sections 2 to 5, inclusive, of this regulation, or the schedule approved by the Commission have not been followed, it will:

~~11~~ (a) 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 ~~1~~

~~2~~ , *or sections 2 to 5, inclusive, of this regulation or the schedule;*

(b) Require the utility to modify the schedule or list to comply with NAC 704.516 to 704.528, inclusive ~~1~~ , *and sections 2 to 5, inclusive, of this regulation or the schedule;* or

~~13~~ (c) Take any other appropriate action.

Sec. 13. NAC 704.522 is hereby repealed.

TEXT OF REPEALED SECTION

704.522 Procedure for changing level of rate. (NRS 703.025, 704.075, 704.210)

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.