

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

LCB File No. R087-98

Effective February 3, 1999

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

AUTHORITY: §§ 2-31, NRS 703.025, 704.980, 704.981 and 704.998.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 31, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 31, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Affiliate” means a company that is a branch, division or subsidiary of a distribution company that:*

- 1. Provides a potentially competitive or discretionary electric or natural gas service; or*
- 2. Is a provider of last resort as described in NRS 704.982.*

Sec. 4. *“Customer” means the retail purchaser of electric or natural gas service.*

Sec. 5. *“Distribution company” includes:*

- 1. An electric distribution utility as defined in NRS 704.970; and*
- 2. A seller of any noncompetitive component of natural gas service.*

Sec. 6. *“Noncompetitive service” means any electric or natural gas service determined by statute or by the commission to be unsuitable for purchase by customers from alternative*

sellers.

Sec. 7. *"Potentially competitive service" means a component of electric or natural gas service determined by the commission to be suitable for purchase by customers from alternative sellers. The term includes any potentially competitive electric service that is deemed to be effectively competitive pursuant to NRS 704.976.*

Sec. 8. *1. Sections 2 to 31, inclusive, of this regulation:*

(a) Apply to the provision of services as set forth in NRS 704.961 to 704.999, inclusive.

(b) Do not apply to a public utility that supplies natural gas which is not regulated under an alternative plan established pursuant to NRS 704.997.

2. The provisions of sections 2 to 31, inclusive, of this regulation are not in any way restricted by the provisions of NAC 704.270 to 704.2725, inclusive.

Sec. 9. *1. A distribution company may not provide any potentially competitive or discretionary electric or natural gas service.*

2. An affiliate of a distribution company may provide a potentially competitive or discretionary electric or natural gas service upon approval by the commission and in accordance with sections 2 to 31, inclusive, of this regulation.

Sec. 10. *A distribution company shall designate an officer to evaluate and certify compliance with sections 2 to 31, inclusive, of this regulation.*

Sec. 11. *1. An affiliate shall:*

(a) Be a separate corporate entity from the distribution company;

(b) Operate independently from the distribution company;

(c) Maintain books, records and accounts in the manner prescribed by the commission;

(d) Keep its books, records and accounts separate from the books, records and accounts kept by the distribution company;

(e) Not have officers, directors or employees in common with the distribution company, except that the chairman of the distribution company or of the holding company of the distribution company may serve on the board of directors of the affiliate;

(f) Not have any member on its board of directors who is also an employee or officer of the distribution company, except as otherwise provided in paragraph (e);

(g) Not obtain credit pursuant to an arrangement that would allow a creditor, upon default, to have recourse to the assets of the distribution company; and

(h) Not use office space, office equipment or office services provided by the distribution company, unless the affiliate executes with the distribution company a contract that is approved by the commission. The affiliate and the distribution company must:

(1) File the contract with the commission as a joint application not later than 6 months before the effective date of the contract; and

(2) Demonstrate to the commission that the contract:

(I) Does not circumvent the provisions of sections 2 to 31, inclusive, of this regulation;

(II) Preserves an arm's length business relationship between the affiliate and the distribution company;

(III) Does not interfere with the development of effective competition;

(IV) Will result in minimal risk of anticompetitive behavior by the affiliate or distribution company; and

(V) Will result in minimal regulatory expenses to prevent anticompetitive behavior.

The contract must not become effective until the commission approves the contract. Unless the commission determines otherwise, all office space, office equipment and office services provided by the distribution company pursuant to the contract are subject to the provisions of section 12 of this regulation.

2. A distribution company shall document and report quarterly to the commission each occasion that:

(a) An employee of the distribution company becomes an employee of an affiliate; or

(b) An employee of an affiliate becomes an employee of the distribution company.

3. An employee of a distribution company who is hired by an affiliate:

(a) Shall not remove proprietary property or information from the distribution company;

(b) Shall not provide the affiliate with proprietary property or information of the distribution company;

(c) Shall not use proprietary property or information of the distribution company on behalf of the affiliate; and

(d) Shall, before he becomes an employee of the affiliate, sign a statement indicating that the employee has read and will abide by the restrictions set forth in this section and understands that a violation of a provision of this section could subject him to the penalties set forth in section 30 of this regulation.

Sec. 12. *When dealing with an affiliate, a distribution company:*

1. Shall not discriminate between the affiliate and another entity that competes with the affiliate in the provision or procurement of goods, services, facilities and information, or in the

establishment of standards.

2. Shall not refuse to provide an entity that is in competition with an affiliate with goods, services, facilities or information which the commission determines the distribution company is reasonably capable of providing to its affiliate, regardless of whether the distribution company currently offers such goods, services, facilities or information to an affiliate.

3. Shall not, when providing or procuring, or declining to provide or procure, goods, services, facilities or information, or when establishing standards, provide, attempt to provide or conspire with another person, including, without limitation, an affiliate, to provide:

(a) A competitive advantage to an affiliate; or

(b) A competitive disadvantage to a competitor of an affiliate.

4. Shall account for all transactions with each affiliate in accordance with accounting principles designated or approved by the commission.

5. Shall, if it offers to an affiliate a good or service other than a good or service provided by a contract pursuant to paragraph (h) of subsection 1 of section 11 of this regulation, offer the same service to all similarly situated nonaffiliated entities.

6. Shall, at the same time it offers to an affiliate a good or service other than a good or service provided by contract pursuant to paragraph (h) of subsection 1 of section 11 of this regulation, offer the same service to nonaffiliated entities by using the mechanism described in subsection 7.

7. Shall provide a mechanism that is accessible to the public, such as an electronic bulletin board, for all interested entities to receive promptly pertinent information concerning:

(a) Services which the distribution company provides;

(b) Any discounted services which the distribution company offers to an affiliate; and

(c) Any transaction between the distribution company and an affiliate.

8. Shall not represent that it will provide an affiliate or a customer of an affiliate with different treatment regarding the provision of services as a result of affiliation with the distribution company than the treatment the distribution company provides a nonaffiliated provider of service and its customers.

9. Shall not provide an affiliate or a customer of an affiliate with preferences over a nonaffiliated supplier or its customers, including, without limitation, preferences in terms and conditions of service or pricing, or in timing of service.

10. Shall apply a tariff provision that allows for discretion in its application in the same manner for an affiliate and customers of the affiliate as it does for another market participant and its customers.

11. Shall strictly enforce mandatory tariff provisions.

12. Shall not condition or otherwise tie the provision of a utility service or the availability of discounts, rates, other charges, fees, rebates or waivers of terms and conditions to the taking of any goods or services from an affiliate.

13 Shall not:

(a) Refer a potential customer to an affiliate;

(b) Provide information to an affiliate regarding a potential business arrangement between a potential customer and the affiliate;

(c) Except as otherwise prescribed by the commission, acquire information on behalf of or to provide to an affiliate;

(d) Share with an affiliate a market analysis report, survey, research or any other type of report that is proprietary or not available to the public, including, without limitation, a forecast, planning or strategic report;

(e) Give an appearance that the distribution company speaks on behalf of an affiliate or that a customer will receive preferential treatment as a consequence of conducting business with an affiliate; or

(f) Give an appearance to a third party that an affiliate speaks on behalf of the distribution company.

Nothing in this subsection prohibits an affiliate from billing for distribution services in a manner consistent with sections 2 to 31, inclusive, of this regulation.

14. Shall make any discount or waiver of all or a part of a charge or fee available to all market participants.

15. Shall not share the office space, equipment or services of an affiliate or access the computer information systems of an affiliate, unless the affiliate executes a contract with the distribution company that has been approved by the commission pursuant to the procedures set forth in paragraph (h) of subsection 1 of section 11 of this regulation.

Sec. 13. *A distribution company shall provide information about specific customers to its affiliates and to nonaffiliated entities:*

- 1. On a strictly nondiscriminatory basis;*
- 2. Only with the consent of a customer; and*
- 3. In accordance with the rules or standards required by the commission.*

Sec. 14. *Information that is not specific to a customer, including, without limitation,*

information concerning the goods, services, purchases, sales or operations of the distribution company, may be made available to an affiliate only if the distribution company:

1. Makes such information contemporaneously available to all alternative sellers at the same price, terms and conditions; and

2. Keeps the information open to public inspection.

Sec. 15. *Except as otherwise authorized by the commission, a distribution company shall not provide a person with a list of alternative sellers.*

Sec. 16. *Except as otherwise provided in sections 2 to 31, inclusive, of this regulation, a distribution company shall not offer or provide a customer with advice or assistance of any kind regarding an affiliate or another service provider.*

Sec. 17. *A distribution company shall:*

1. Keep for at least 3 years a record documenting a transaction with an affiliate, including, without limitation, a record documenting:

(a) A waiver of a tariff;

(b) A waiver of a contract provision;

(c) A discount given by the distribution company to the affiliate;

(d) Contracts or related bids for the provision of work, products or services for or from an affiliate.

2. Make the records that the distribution company is required to maintain pursuant to subsection 1 available for review by third parties upon notice of at least 72 hours, unless the distribution company makes a different agreement with a third party concerning the review of the record.

Sec. 18. *1. If a distribution company provides an affiliate with a discount, rebate or other waiver of a charge or fee, the distribution company shall, at the time the service for which the distribution company is giving the discount, rebate or other waiver of a charge or fee is first provided, post on the electronic bulletin board of the distribution company a notice which includes, without limitation:*

- (a) The name of the affiliate involved in the transaction;*
- (b) The actual rate charged by the distribution company;*
- (c) The maximum rate that the distribution company may charge pursuant to its tariff;*
- (d) The period during which the discount or waiver applies;*
- (e) The quantities involved in the transaction;*
- (f) The delivery points involved in the transaction;*
- (g) Any conditions or requirements applicable to the discount or waiver; and*
- (h) The procedures through which a nonaffiliated entity may request and receive a*

comparable discount, rebate or other waiver of a charge or fee.

2. This section does not provide a distribution company with any authority not otherwise existing to grant a discount, rebate or other waiver of a charge or fee.

Sec. 19. *1. A distribution company that provides an affiliate with a discounted rate, rebate or other waiver of a charge or fee for a service shall, for each billing period, maintain in its records:*

- (a) The name of the affiliate to which the distribution company is providing services pursuant to the transaction;*
- (b) A description of the role of the affiliate in the transaction, including, without limitation,*

whether the affiliate will act as a transporter, marketer, supplier or seller;

(c) The duration of the discount or waiver;

(d) The maximum rate that the distribution company may charge pursuant to its tariff;

(e) The rate or fee that the distribution company charges during the billing period; and

(f) The quantity of products or services scheduled at the discounted rate during the billing period for each delivery point.

2. All records maintained pursuant to this section must also conform to rules of the Federal Energy Regulatory Commission, where applicable.

3. This section does not provide the distribution company with any authority not otherwise existing to grant such discount, rebate or other waiver of a charge or fee.

Sec. 20. *1. Unless the commission specifies otherwise, a distribution company with an affiliate shall obtain and pay for an audit 6 months after the affiliate first provides service to customers and once every year thereafter.*

2. The audit required pursuant to subsection 1 must be conducted by an independent auditor selected by the commission.

3. The auditor shall determine whether a distribution company has complied with all pertinent regulations, including, without limitation, whether the distribution company has:

(a) Complied with the separate accounting requirements set forth in section 11 of this regulation; and

(b) Provided information or services to affiliated and nonaffiliated entities on a nondiscriminatory basis.

4. The auditor shall submit the results of the audit to the commission.

5. *The commission will make the results of the audit available for public inspection.*

6. *Any person may submit comments on the final audit report.*

Sec. 21. *For purposes of conducting an audit pursuant to section 20 of this regulation, the distribution company and its affiliates shall provide the independent auditor, the commission staff, the bureau of consumer protection in the office of the attorney general and the commission access to:*

1. *Financial accounts and records which:*

(a) *Verify that the transactions conducted between the distribution company and its affiliates are authorized by and conducted in accordance with the provisions of NRS 704.961 to 704.999, inclusive, and sections 2 to 31, inclusive, of this regulation; and*

(b) *Relate to the regulation of rates;*

2. *All records in any form relating to the provision of information or services to affiliated or nonaffiliated entities; and*

3. *The working papers and supporting materials of any auditor who performed an audit pursuant to section 20 of this regulation.*

Sec. 22. *Except as otherwise stated in its approved tariff, a distribution company:*

1. *Shall fulfill a request from an nonaffiliated entity for service within a period no longer than the period in which it fulfills such a request for itself or for an affiliate;*

2. *Shall charge each affiliate an amount for service that is no less than the amount charged to any nonaffiliated entity for the same service;*

3. *May, in accordance with the provisions of paragraph (h) of subsection 1 of section 11 of this regulation, provide an affiliate with facilities, services and information if the distribution*

company makes such facilities, services and information available to all nonaffiliated entities at the same rates and on the same terms and conditions and the costs are allocated in a manner acceptable to the commission;

4. May not market or sell services that are provided by an affiliate; and

5. May not state that it is an affiliate of a potentially competitive or discretionary service unless the statement complies with the requirements set forth in subsection 6 of section 24 of this regulation.

Sec. 23. *1. If a distribution company transfers goods or services to an affiliate, the distribution company must price the goods or services at fair market value or fully loaded cost, whichever is higher.*

2. If an affiliate transfers goods or services to the distribution company, the affiliate shall price the goods or services at fair market value or fully loaded cost, whichever is less.

3. As used in this section, "fully loaded cost" means the direct costs of goods and services plus all applicable indirect charges and overhead costs, including, without limitation, a reasonable rate of return.

Sec. 24. *An affiliate:*

1. Shall not market or otherwise sell services jointly with the distribution company;

2. Shall not have a name, logo, trademark, service mark or trade name that is deceptively similar to that of the distribution company, except that an affiliate which has been designated by the commission as a provider of last resort service pursuant to NRS 704.982 may have a name, logo, trademark, service mark or trade name that is similar or identical to that of the distribution company if the affiliate has been specifically authorized to do so by the

commission, subject to any conditions that the commission deems necessary;

3. Shall not have the logo, trademark or other corporate identification of the distribution company appear on documents of the affiliate or on goods or merchandise sold by the affiliate, unless the commission:

(a) Designates the affiliate to be the provider of last resort service pursuant to NRS 704.982; and

(b) Specifically authorizes, subject to any conditions that the commission deems necessary, the affiliate to use the name, logo, trademark, service mark or trade name;

4. Shall not use the name of the distribution company in any material that the affiliate circulates, unless the affiliate provides with the material the information described in subsection 6;

5. Shall not use space in the correspondence of the distribution company or any other form of information about the distribution company for the purpose of advertising the services of the affiliate; and

6. Shall not advertise its affiliation with the distribution company, unless the affiliate includes each of the following statements in a manner no less prominent than the statement of affiliation:

(a) (Name of the affiliate) is not the same corporation as (name of distribution company). (Name of affiliate) has separate management and separate employees.

(b) (Name of affiliate)'s affiliation with (name of distribution company) does not entitle (name of affiliate) to any special endorsement of the public utilities commission of Nevada.

(c) The safety, reliability and cost of distribution service received by customers of (name of

affiliate) will be equivalent to that received by customers of nonaffiliated companies.

Sec. 25. *An affiliate of a distribution company shall not offer goods or services until the affiliate satisfies any applicable requirements set forth in sections 2 to 31, inclusive, of this regulation, except the appointment of an auditor pursuant to section 20 of this regulation.*

Sec. 26. *Each transaction that violates the provisions of sections 2 to 31, inclusive, of this regulation, will be considered a separate violation.*

Sec. 27. *1. A person or business may complain to the commission or distribution company in writing, setting forth any act or thing allegedly done or not done by a distribution company or affiliate in violation of sections 2 to 31, inclusive, of this regulation.*

2. Upon request of a complainant who is a current or former employee of a distribution company or an affiliate, the commission will maintain the confidentiality of the complainant until the end of any resulting investigation or longer if the commission deems it necessary.

3. The distribution company shall refer all complaints, whether written or oral, to a designated representative of the distribution company, who shall:

(a) Acknowledge receipt of the complaint in writing to the complainant within 5 working days after receiving the complaint;

(b) Prepare a written summary of the complaint which must include, without limitation:

(1) The name of the complainant; and

(2) A detailed factual report of the complaint, including, without limitation:

(I) The relevant dates;

(II) The names of the companies involved;

(III) The names of the employees involved; and

(IV) The details of the claim;

(c) Conduct a preliminary investigation; and

(d) Communicate the results of the preliminary investigation, including, without limitation, a description of any course of action that was taken as a result of the investigation, in writing to the complainant not more than 20 business days after the designated representative received the complaint.

4. The distribution company shall:

(a) Maintain a public log of all new, pending and resolved complaints; and

(b) Make the public log available to the commission and the bureau of consumer protection in the office of the attorney general not more than 10 business days after the end of each month, which must include, without limitation:

(1) A written summary of each complaint; and

(2) A written summary of the manner in which each complaint was resolved or, if applicable, an explanation of the reason why a complaint is still pending.

Sec. 28. *1. The division of consumer complaint resolution shall investigate any complaint concerning a violation of the provisions of sections 2 to 31, inclusive, of this regulation in the manner set forth in NRS 703.310.*

2. If the division transmits a complaint to the commission and the commission determines that probable cause exists for the complaint, the commission will:

(a) Order that a hearing be held;

(b) Provide notice of the hearing to the parties; and

(c) Conduct the hearing as it would any other hearing.

Sec. 29. *After a hearing has been held pursuant to section 28 of this regulation, the commission, when enforcing the provisions of sections 2 to 31, inclusive, of this regulation or an order of the commission that relates to sections 2 to 31, inclusive, of this regulation, may, without limitation:*

- 1. Terminate a transaction if the violation caused material harm to the competitive market;*
- 2. Prospectively limit or restrict the amount, percentage or value of transactions entered into between a distribution company and its affiliates;*
- 3. Assess a penalty pursuant to the provisions of section 30 of this regulation; or*
- 4. Apply any other remedy which is available to the commission.*

Sec. 30. *1. A penalty assessed by the commission must reflect the actual or potential injury, or both, to ratepayers and competitors, and the gravity of the violation.*

- 2. Repeated violations will require more severe penalties.*
- 3. In addition to any other penalties, the commission may subject a distribution company to a penalty of not more than \$20,000 for each time the distribution company:*

- (a) Violates a provision of sections 2 to 31, inclusive, of this regulation;*
- (b) Fails to perform a contractual duty; or*
- (c) Fails, neglects or refuses to obey an order, regulation, directive or requirement of the commission.*

4. Penalties for a supplier of a noncompetitive natural gas distribution service are limited pursuant to the provisions of NRS 703.380.

5. The commission may deem a violation that continues for more than 1 day to be a separate violation for each day the violation continues.

6. *A penalty or other remedy imposed by the commission will in no manner preclude the right of a party to pursue a private action in a court of competent jurisdiction.*

7. *A fine or penalty collected pursuant to the provisions of sections 2 to 31, inclusive, of this regulation, must be deposited in the state treasury pursuant to NRS 703.147 for the purposes identified therein.*

8. *For each violation of the provisions of sections 2 to 31, inclusive, of this regulation, the affiliate shall include in one monthly billing packet a notice, written by the commission, that informs the public of the substance of the violation and explains how members of the public can report similar violations in the future.*

9. *The penalties set forth in this section do not preclude any other penalty from being imposed pursuant to sections 2 to 31, inclusive, of this regulation or any other provision of law.*

Sec. 31. *1. If the commission finds in two separate orders that a distribution company has materially violated the provisions of sections 2 to 31, inclusive, of this regulation more than twice in a period of 12 months, the distribution company may not, for 1 year after the date of the findings by the commission, enter into a transaction with an affiliate that was involved in the violations.*

2. If a distribution company violates the provisions of subsection 1 by entering into a prohibited transaction with an affiliate, the commission may:

(a) Extend the period in which the distribution company is prohibited from entering into a transaction with the affiliate; or

(b) Permanently prohibit the distribution company from entering into a transaction with the

affiliate.

3. The penalties set forth in this section do not preclude any other penalty from being imposed pursuant to sections 2 to 31, inclusive, of this regulation or any other provision of law.