

LCB File No. R087-98

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

In Re Proposed Rulemaking to establish)
standards of conduct and related)
requirements for distribution companies) Docket No. 97-5034
and affiliates.)

NOTICE OF HEARING FOR THE ADOPTION OF REGULATIONS
OF THE PUBLIC UTILITIES COMMISSION OF NEVADA

The Public Utilities Commission of Nevada (“Commission”) will hold a public hearing at 10:00 a.m. on Tuesday, June 30, 1998, at the office of the Commission, 1150 East William Street, Carson City, Nevada 89701. In the event that the Commission has not moved its offices by this date, the hearing will be held at 727 Fairview Drive, Carson City, Nevada 89710. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of regulations that pertain to Chapter 704 of the Nevada Administrative Code (“NAC”).

The following information is provided pursuant to the requirements of NRS 233B.060:

NRS 704.976 requires the creation of affiliates for potentially competitive electric services. Similarly, NRS 704.997 requires the Commission to establish an alternative plan of regulation of public utilities which supply natural gas. Pursuant to these statutory requirements, this proposed regulation is intended to apply to the competitive provision of both electric and natural gas service. The proposed regulation is available upon request from the Commission.

The proposed regulation sets forth the terms under which an affiliate of an electric distribution utility or of a supplier of noncompetitive natural gas distribution service may provide certain services. The estimated economic effect of this proposed regulation cannot be accurately quantified at this time. The Commission does not envision that the proposed regulation will result in increased costs associated with enforcement. This proposed regulation does not overlap or duplicate any regulations of other state or local governmental agencies.

This proposed regulation does not establish any new fees or increase any existing fees.

The provisions of the proposed regulation potentially affect all electric distribution utilities or suppliers of noncompetitive natural gas distribution service. At this time, the Commission cannot quantify the adverse economic effects on the entities affected by the regulation, either immediate or long-term, which can be expected to result from the regulation.

To adverse economic effects on the public, either immediate or long-term, are expected at this time. Any beneficial economic effects on the entities affected by these regulations, both immediate and long-term, cannot be quantified at this time. Any beneficial economic effects which may inure to the public cannot be quantified at this time.

Persons wishing to comment upon the proposed action of the Commission may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Secretary of the Public Utilities Commission of Nevada, 1150 East William Street, Carson city, Nevada 89701, or at 727 Fairview Drive, Carson City, Nevada 89710 if the Commission's

offices have not moved, or the Sawyer Office Building, 555 East Washington Avenue, Suite 4500, Las Vegas, Nevada 89101. Written submissions must be received by the Commission on or before Thursday, June 25, 1998. The Commission specifically solicits comments concerning whether the penalties authorized by NRS 704.979 are restricted by NRS 703.380 in terms of the amounts which may be imposed. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Commission may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted will be available at the Public Utilities Commission of Nevada, 727 Fairview Drive, Carson City, Nevada 89710 or 1150 East William Street, Carson city, Nevada 89701, and the Sawyer Office Building, 555 East Washington Avenue, Suite 4500, Las Vegas, Nevada, 89101 and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the state of Nevada Register of

Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the Commission, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reasons for overruling the consideration urged against its adoption.

This notice has been posted at the county courthouses in Carson City, Reno, and Las Vegas.

By the Commission,

Jeanne Reynolds /s/ _____

JEANNE REYNOLDS, Commission Secretary

Dated: Carson City, Nevada

(SEAL) 5/28/98

LCB File No. R087-98

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

PUCN Docket No. 97-5034

LCB File No. _____

AUTHORITY: NRS 703.025, 704.976, 704.979, 704.980, and 704.997

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as Sections 2 to 29, inclusive, of this regulation.

Section 2. As used in sections 2 to 29, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in Sections 4 to 6, inclusive, of this regulation have the meanings ascribed to them in those sections.

Section 3. Sections 2 to 29, inclusive, of this regulation apply to the competitive provision of utility services as set forth in NRS 704.961 to 704.999, inclusive. These sections do not apply to a public utility that supplies natural gas which has not been granted an exemption, pursuant to NRS 704.997, from the strict application of one or more provisions of Chapter 704 of NRS.

Section 4. "Distribution company" means an electric distribution utility as defined in NRS 704.970, or a supplier of noncompetitive natural gas distribution service, as appropriate.

Section 5. "Noncompetitive service" has the meaning ascribed to it in NRS 704.973.

Section 6. "Potentially competitive service" has the meaning ascribed to it in NRS 704.974 or 704.996, as appropriate.

Section 7. A distribution company may not provide any potentially competitive, discretionary or other competitive services so declared by the Commission. An affiliate of a provider of a noncompetitive service may provide a potentially competitive, competitive or discretionary service only upon approval by the Commission and only in accordance with Sections 2 to 24, inclusive, of this regulation. This standard is in addition to and is not restricted in any way by NAC 704.270 through 704.2725, Reports of Material Transactions Between Public Utilities and Their Subsidiaries and Affiliates.

Section 8. A distribution company shall designate a person to evaluate and certify compliance with Sections 2 to 24, inclusive, of this regulation.

Section 9. The separate affiliate required by section 7 of this regulation:

1. shall be a separate corporate entity from the distribution company;
2. shall operate independently from the distribution company;
3. shall maintain books, records, and accounts in the manner prescribed by the Commission, which shall be separate from the books, records, and accounts maintained by the distribution company of which it is an affiliate;
4. shall not share office space, office equipment, services, and systems with the

distribution company, unless a specific service contract is executed with the distribution company. Such contracts must contain all terms and conditions for the provision of the shared support functions and must be filed with the Commission no later than six months before their stated effective date, and may not go into effect until approved by the Commission. Such contracts shall not circumvent the provisions of this regulation and shall comply with NRS 704.980.

5. shall have no officers, directors, or employees in common with those of the distribution company of which it is an affiliate, except that a single officer, which officer is either the chairman of the holding company or the distribution company, may serve on the board of the affiliate;
6. shall not have any directors who are also employees or officers of the distribution company of which it is an affiliate, except as otherwise provided in subsection (5) of this section;
7. shall permit any employee movement between a distribution company and its affiliates only in accordance with the following provisions:
 - a. A distribution company shall track and report to the Commission all situations in which an employee of the distribution company has become an employee of an affiliate providing potentially competitive, competitive, or discretionary services, and vice versa;
 - b. Any employee of a distribution company hired by an affiliate providing potentially competitive, competitive, or discretionary services shall not remove or otherwise provide or use proprietary property or information to or within

such affiliates. Employees must sign a statement indicating that they are aware of, and understand, the restrictions set forth in these rules and the attendant consequences; and

8. may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the distribution company.

Section 10. In its dealings with its affiliate, a distribution company:

1. may not discriminate between its affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards;
2. shall account for all transactions with an affiliate described in subsection 1 in accordance with accounting principles designated or approved by the Commission;
3. shall, if it offers a service to an affiliate, offer the same service to all similarly situated nonaffiliated entities;
4. shall, at the same time the service for the affiliate is offered, notify all interested nonaffiliated entities via the mechanism described in subsection 5 of this section;
5. shall provide a mechanism, such as a publicly-accessible electronic bulletin board, for all interested entities to receive promptly all pertinent information about services provided by the distribution company, discounted services offered to its affiliate or transactions between the distribution company and any affiliates;
6. shall not represent that its affiliate or customers of the affiliate will receive any different treatment with regard to the provision of services than other non-affiliated providers of

- service as a result of affiliation with the distribution company;
7. shall not provide its affiliate or customers of the affiliate with any preference (including but not limited to terms and conditions, pricing or timing) over non-affiliated suppliers or their customers in the provision of services;
 8. shall apply any tariff provision that allows for discretion in its application in the same manner for the affiliate and other market participants and their respective customers;
 9. shall strictly enforce any tariff provision for which it has no discretion in the application of the tariff provision;
 10. shall not condition or otherwise tie the provision of any utility service, nor the availability of discounts, rates, other charges, fees, rebates, or waivers of terms and conditions to the taking of any goods or services from its affiliates;
 11. shall not:
 - (a) provide leads to its affiliates;
 - (b) solicit business on behalf of its affiliates;
 - (c) acquire information on behalf of or to provide to its affiliate, except as mandated by the Commission;
 - (d) share market analysis reports or any other types of proprietary or non-publicly available reports, including but not limited to market, forecast, planning or strategic reports, with its affiliates;
 - (e) give any appearance that the distribution company speaks on behalf of the affiliate or that a customer will receive preferential treatment as a consequence of conducting business with the affiliate; or

- (f) give any appearance that the affiliate speaks on behalf of the distribution company (nothing shall prohibit an affiliate of the distribution company from billing for distribution services);
- 12. shall make all discounts or waivers of all or any part of any other charge or fee available to all market participants; and
- 13. shall not access the computer or information systems of any affiliates or allow any affiliates to access its computer or information systems, unless a specific service contract is executed with the distribution company. Such contracts must contain all terms and conditions for the provision of the shared support functions and must be filed with the Commission no later than six months before their stated effective date, and may not go into effect until approved by the Commission. Such contracts shall not circumvent the provisions of this regulation and shall comply with NRS 704.980.

Section 11. A distribution company shall provide customer information to its affiliate or affiliates and non-affiliated entities on a strictly non-discriminatory basis, and only with a customer's consent, in accordance with all rules or standards required by the Commission.

Section 12. Information which is not specific to a customer, including but not limited to information about a distribution company's goods, services, purchases, sales, or operations, shall be available to the distribution company's affiliate or affiliates only if the distribution company makes that information contemporaneously available to all other service

providers and keeps the information open to public inspection.

Section 13. Except as authorized by the Commission, the distribution company shall not provide any list of service providers which includes or identifies the distribution company's affiliate, regardless of whether such list also includes or identifies the names of unaffiliated entities.

Section 14. Except as otherwise provided in Sections 2 to 24, inclusive, of this regulation, the distribution company shall not offer or provide customers advice or assistance of any kind with regard to its affiliate or other service providers.

Section 15. The distribution company shall maintain contemporaneous records documenting all transactions with its affiliate or affiliates, including but not limited to, all waivers of tariff or contract provisions and all discounts. Such records shall be maintained for three years and be made available for review by third parties upon 72 hours' notice, unless some other agreement is reached between a distribution company and a third party with respect to review. The distribution company shall maintain a record of all contracts and related bids for the provision of work, products or services to and from the distribution company to its affiliate or affiliates for a period of not less than three years.

Section 16. If the distribution company provides its affiliate a discount, rebate, or other waiver of any charge or fee, the distribution company shall, at the time at

which the service is first provided, post a notice on its electronic bulletin board providing the following information:

1. the name of the affiliate involved in the transaction;
2. the rate charged;
3. the maximum rate;
4. the time period for which the discount or waiver applies;
5. the quantities involved in the transaction;
6. the delivery points involved in the transaction;
7. any conditions or requirements applicable to the discount or waiver; and
8. procedures by which a nonaffiliated entity may request a comparable offer.

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

Section 17. A distribution company that provides an affiliate a discounted rate, rebate or other waiver of a charge or fee associated with a service shall maintain, for each billing period, the following information:

1. the name of the entity being provided services in the transaction;
2. the affiliate's role in the transaction (i.e., transporter, marketer, supplier, seller);
3. the duration of the discount or waiver;
4. the maximum rate;
5. the rate or fee actually charged during the billing period; and
6. the quantity of products or services scheduled at the discounted rate during the billing

period for each delivery point.

All records maintained pursuant to this section shall also conform to rules of the Federal Energy Regulatory Commission, where applicable. This section does not provide the distribution company with any authority not otherwise existing to grant such discount or waiver of any charge or fee.

Section 18. A distribution company that has a separate affiliate or affiliates that have been authorized by the Commission to offer potentially competitive, competitive or discretionary services shall obtain and pay for an audit six months after the affiliate first provides service to customers and every year thereafter. The audit shall be conducted by an independent auditor selected by the Commission to determine whether such company has complied with this section and all other pertinent regulations, and particularly whether such company has:

1. complied with the separate accounting requirements set forth in Section 9 of this regulation; and
2. provided information or services to affiliated and nonaffiliated entities on a non-discriminatory basis.

Section 19. The auditor described in section 18 of this regulation shall submit the results of the audit to the Commission, which shall make such results available for public inspection. Any party may submit comments on the final audit report.

Section 20. For purposes of conducting audits and reviews under section 18 of this regulation:

1. the independent auditor, the Commission Staff, the Bureau of Consumer Protection in the Office of the Attorney General and the Commission shall have access to the financial accounts and records of each distribution company and of its affiliates that are necessary to verify that the transactions conducted between the companies are permitted and conducted in accordance with the requirements of Sections 2 to 24, inclusive, of this regulation, and that are necessary for the regulation of rates;
2. the independent auditor, the Commission Staff, the Bureau of Consumer Protection in the Office of the Attorney General and the Commission shall have complete access to all records in any form relating to the provision of information or services to affiliated or nonaffiliated entities; and
3. the independent auditor, the Commission Staff, the Bureau of Consumer Protection in the Office of the Attorney General and the Commission shall have access to the working papers and supporting materials of any auditor who performed an audit under Section 18 of this regulation.

Section 21. A distribution company subject to the requirements of Sections 2 to 29, inclusive, of this regulation, except as otherwise stated in its open access tariff:

1. shall fulfill any requests from an unaffiliated entity for service within a period no longer than the period in which it provides such service to itself or to its affiliates;
2. shall not provide any facilities, services, or information concerning its provision of

- service to its affiliate unless such facilities, services, or information are made available to other providers of services in that market on the same terms and conditions;
3. shall charge its affiliate described in Section 7 of this regulation, or impute to itself (if using the facilities for its provision of its own services) an amount for service that is no less than the amount charged to any unaffiliated entity for such service;
 4. may provide any facilities or services to its affiliate if such services or facilities are made available to all nonaffiliated entities at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated; and
 5. may not market or sell services provided by an affiliate.

Section 22. The transfer of goods and services between distribution companies and their affiliates shall be accomplished in accordance with the following provisions:

1. Transfers from a distribution company to its affiliates of goods or services produced, purchased or developed for sale on the open market shall be priced at fair market value.
2. Transfers from an affiliate to the distribution company of goods or services produced, purchased or developed for sale on the open market shall be priced at the lower of cost or fair market value.
3. Goods and services produced, purchased or developed for sale on the open market by the distribution company shall be provided to its affiliates and unaffiliated companies on a nondiscriminatory basis.
4. Transfers from a distribution company to its affiliates of goods or services not generally

meant for sale on the open market shall be priced at fully loaded cost.

5. Transfers from an affiliate to the distribution company of goods or services not generally meant for sale on the open market shall be priced at the lower of fully loaded cost or fair market value.
6. 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 a reasonable rate of return.

Section 23. Affiliates of a distribution company:

1. may not market or sell services provided by 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, unless such affiliate is designated by the Commission, pursuant to NRS 704.982, to be the provider of last resort service and the Commission, in the order making such designation, specifically authorizes the use of such name, logo, trademark, service mark or trade name;
3. shall not have the logo, trademark, nor other corporate identification of the distribution company or affiliate appear on documents or property of the other, or on goods or merchandise sold by the other, unless such affiliate is designated by the Commission, pursuant to NRS 704.982, to be the provider of last resort service and the Commission, in the order making such designation, specifically authorizes the use of such name, logo, trademark, service mark or trade name;
4. shall not trade upon, promote, or advertise its affiliation with the distribution company,

- nor use the name of the distribution company in any material circulated; and
5. shall not use any space in any correspondence of the distribution company, or any other form of information about the distribution company, for the purpose of advertising its services.

Section 24. No affiliate of a distribution company may offer services or goods until the requirements set forth in Sections 2 to 23, inclusive, of this regulation are met, with the exception of the appointment of an auditor.

Section 25. The Commission shall strictly enforce the provisions of Sections 2 to 29, inclusive, of this regulation. Each transaction in violation of the provisions of Sections 2 to 24, inclusive, of this regulation, will be considered a separate occurrence.

Section 26.

Any person or business may complain to the Commission in writing, setting forth any act or thing done or omitted to be done by any distribution company or affiliate in violation of Sections 2 to 25, inclusive, of this regulation.

Section 27.

1. The distribution company shall establish a complaint procedure that preserves the privacy rights of the complainant. All complaints, whether written or verbal, shall be referred to the distribution company's designated representative. The designated representative shall acknowledge such complaint in writing to the complainant within

five working days of receipt. The designated representative shall prepare a written statement of the complaint which shall contain the name of the complainant and a detailed factual report of the complaint, including all relevant dates, companies involved, employees involved, and the specific claim. The designated representative shall communicate the results of the preliminary investigation to the complainant, in writing, within thirty days after the complaint was received, including a description of any course of action which was taken.

2. The distribution company shall maintain a public log of all new, resolved and pending complaints and shall make that log available to the Commission and the Bureau of Consumer Protection in the office of the Attorney General within ten working days after the end of each month. The log shall include, at a minimum, a written statement of all complaints and how the complaints were resolved or the reason why the complaints are still pending.

Section 28. If the Commission determines that probable cause exists for the complaint, it shall order a hearing, give notice of the hearing and conduct the hearing as it would any other hearing.

Section 29.

1. When enforcing the provisions of Sections 2 to 25, inclusive, of this regulation, or any order of the Commission which relates to these provisions, the Commission may do any of the following:

- (a) terminate the transaction;
 - (b) prospectively limit or restrict the amount, percentage, or value of transactions entered into between a distribution company and its affiliate or affiliates as a remedy for a violation of these standards;
 - (c) assess such penalties as described in subsections 2 and 3 of this section; or
 - (d) apply any other remedy available to the Commission.
2. Penalties shall reflect the actual or potential injury, or both, to ratepayers and competitors, and the gravity of the violation. Repeated violations will require more severe penalties. Specifically, in addition to any other penalties, if any distribution company found by the Commission to have violated the provisions of Sections 2 to 25, inclusive, of this regulation, fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, regulation, directive, or requirement of the Commission, such distribution company shall be subject to a penalty of no less than \$5,000 nor more than \$20,000 for each separate violation. For any supplier of a noncompetitive natural gas distribution service, penalties shall be limited as specified in NRS 703.380. The Commission may deem a violation which continues for more than one day to be separate violations for each day a violation described herein continues.
3. Any penalties assessed by the Commission will in no manner preclude any party's right to pursue damages in a court of competent jurisdiction.
4. Fines and penalties collected pursuant to the provisions of Sections 2 to 29, inclusive, of this regulation, shall be deposited in the state treasury, pursuant to NRS 703.147, for the purposes identified therein.

5. If the Commission, in two separate orders, finds that a distribution company has violated these standards more than twice in a period of twelve months, such finding will trigger a prohibition for one year on the distribution company's entry into any transactions with the affiliate or affiliates involved in such violations. In the event that such prohibition is not honored, the Commission may consider extension of the prohibition period as appropriate or may permanently preclude the distribution company from dealing with the affiliate or affiliates in the distribution company's service territory. The mandatory minimum penalties set forth in subsection (2) of this section do not preclude an other penalties set forth in these rules or in Nevada statutes.
6. For each violation of the provisions of Sections 2 to 24, inclusive, of this regulation, the distribution company will be obligated to place in one monthly billing packet a notice, written by the Commission, which informs the public of the substance of the violation and which explains how similar violations can be reported by members of the public.