

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

**LCB File No. R087-98**

June 29, 1998

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

AUTHORITY: §§ 2-8, NRS 703.025, 704.980 and 704.998; §§ 9-22, NRS 703.025, 704.980, 704.981 and 704.998; §§ 23 and 24, NRS 703.025, 704.980 and 704.998; §§ 25-31, 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 6, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Customer” means the retail purchaser of natural gas or electric service.*

**Sec. 4.** *“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. 5.** *“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. 6.** *“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 competitive pursuant to subsection 5 of NRS 704.976.*

**Sec. 7.** *1. Sections 2 to 31, inclusive, of this regulation 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. 8.** *1. A distribution company may not provide any potentially competitive, competitive or discretionary component of electric or natural gas service.*

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

**Sec. 9.** *A distribution company shall designate a person to evaluate and certify compliance with sections 2 to 31, inclusive, of this regulation.*

**Sec. 10.** *1. If an affiliate of a distribution company wishes to provide a potentially competitive, competitive or discretionary component of electric or natural gas service, the affiliate must:*

- (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 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 share office space, equipment, services or systems with the distribution company, unless the affiliate company executes with the distribution company a service contract that:*

*(1) Contains the terms and conditions for the provision of the shared support functions;*

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

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

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

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

*(6) Will result in minimal regulatory expenses to prevent anticompetitive behavior. The affiliate company must file the service contract with the commission not later than 6 months before the effective date of the contract. The service contract must not become effective until the commission approves the contract.*

*2. A distribution company shall document and report to the commission each time:*

*(a) An employee of the distribution company becomes an employee of an affiliate providing*

*a potentially competitive, competitive or discretionary component of electric or natural gas service; or*

*(b) An employee of an affiliate providing a potentially competitive, competitive or discretionary component of electric or natural gas service becomes an employee of the distribution company.*

*3. An employee of a distribution company who is hired by an affiliate providing a potentially competitive, competitive or discretionary component of electric or natural gas service:*

*(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 within the affiliate; and*

*(d) Shall sign a statement indicating that the employee is aware of and understands the restrictions of and the consequences of violating the provisions of this section.*

**Sec. 11.** *When dealing with one of its affiliates, a distribution company:*

*1. Shall not discriminate between the 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 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 it offers a service to an affiliate, offer the same service to nonaffiliated entities by using the mechanism described in subsection 5;*
5. *Shall provide a mechanism, such as an electronic bulletin board that is accessible to the public, for all interested entities to receive promptly all pertinent information about:*
  - (a) *Services that the distribution company provides;*
  - (b) *Any discounted services that the distribution company offers to an affiliate; and*
  - (c) *Any transaction between the distribution company and an affiliate;*
6. *Shall not represent that the distribution company will provide its affiliate or customers of the affiliate different treatment with regard to the provision of services as a result of affiliation with the distribution company than the treatment the distribution company provides non-affiliated providers of service and their customers;*
7. *Shall not provide its affiliate or customers of the affiliate with any preference over non-affiliated suppliers or their customers, including, without limitation, preferences in terms and conditions of service, pricing or timing of service;*
8. *Shall apply any 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 other market participants and their customers;*
9. *Shall strictly enforce any tariff provision for which the distribution company does not have discretion in the application of the tariff provision;*
10. *Shall not condition or otherwise tie the provision of any 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 its affiliates;*

*11. Shall not:*

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

*(e) Give any 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 any appearance that the affiliate speaks on behalf of the distribution company;*

*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 an affiliate or allow an affiliate to access the computer or information systems of the distribution company, unless the affiliate executes a service contract with the distribution company that:*

*(a) Contains the terms and conditions for the provision of the shared support functions;*

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

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

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

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

*(f) Will result in minimal regulatory expenses to prevent anticompetitive behavior. The affiliate company must file the service contract with the commission not later than 6 months before the effective date of the contract. The service contract must not become effective until the commission approves the contract.*

**Sec. 12.** *A distribution company shall provide customer information to its affiliates and 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. 13.** *If a distribution company makes information that is not specific to a customer, including, without limitation, about the goods, services, purchases, sales or operations of the distribution company, available to one of its affiliates, the distribution company shall contemporaneously make such information available to all other service providers and keep such information open to public inspection.*

**Sec. 14.** *Except as authorized by the commission, a distribution company shall not provide any person with a list of service providers that includes or identifies an affiliate of the distribution company, regardless of whether the list also includes or identifies the names of unaffiliated entities.*

**Sec. 15.** *Except as otherwise provided in sections 2 to 31, inclusive, of this regulation, a distribution company shall not offer or provide customers with advice or assistance of any kind*

*regarding one of its affiliates or other service providers.*

**Sec. 16.** *A distribution company shall:*

*1. Keep for at least 3 years any record documenting a transaction with its affiliates, including, without limitation, any record documenting:*

*(a) A waiver of a tariff;*

*(b) A waiver of a contract provision;*

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

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

*2. Make the records it 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 reaches some other agreement with a third party concerning the review of a record.*

**Sec. 17.** *1. If a distribution company provides one of its affiliates 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 offer.*

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

**Sec. 18.** *1. A distribution company that provides one of its affiliates 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) 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 or waiver of any charge or fee.*

**Sec. 19.** *1. A distribution company that has a separate affiliate which the commission has authorized to offer potentially competitive, competitive or discretionary services 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 10 of this regulation; and*

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

*4. The auditor described in subsection 2 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. 20.** *For purposes of conducting an audit pursuant to section 19 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. Any financial accounts and records which:*

*(a) Verify that the transactions conducted between the distribution company and its affiliates*

*are allowed 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 19 of this regulation.*

**Sec. 21.** *Except as otherwise stated in its approved tariff, a distribution company:*

*1. Shall fulfill a request from an unaffiliated entity for service within a period no longer than the period in which it fulfills such a request for itself or for one of its affiliates;*

*2. Shall not provide any facilities, services or information concerning its provision of services to an affiliate unless the distribution company makes such facilities, services, or information available to other providers of services in that market on the same terms and conditions;*

*3. Shall charge one of its affiliates, or, if the distribution company is using the facilities of one of its affiliates to provide service, impute to itself an amount for service that is no less than the amount charged to any unaffiliated entity for the same service;*

*4. May provide facilities or services to one of its affiliates if the distribution company makes such services or facilities 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; and*

*5. May not market or sell services that are provided by an affiliate.*

**Sec. 22.** *1. If a distribution company transfers to one of its affiliates any goods or services that the distribution company produces, purchases or develops for sale on the open market, the distribution company must price the goods or services at fair market value.*

*2. If an affiliate transfers to the distribution company goods or services produced, purchased or developed for sale on the open market, the affiliate shall price the goods or services at cost or fair market value, whichever is less.*

*3. A distribution company shall provide goods and services produced, purchased or developed for sale on the open market to its affiliates and unaffiliated companies on a nondiscriminatory basis.*

*4. If a distribution company transfers to one of its affiliates goods or services not generally meant for sale on the open market, the distribution company shall price the goods or services at fully loaded cost.*

*5. If an affiliate transfers to the distribution company goods or services not generally meant for sale on the open market, the affiliate shall price the goods or services at fully loaded cost or fair market value, whichever is less.*

*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, without limitation, a reasonable rate of return.*

**Sec. 23.** *An affiliate of a distribution company:*

*1. Shall 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, 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;*

*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) In making such a designation, specifically authorizes the affiliate to use the name, logo, trademark, service mark or trade name;*

*4. Shall not trade upon, promote or advertise its affiliation with the distribution company;*

*5. Shall not use the name of the distribution company in any material that the affiliate circulates; and*

*6. Shall not use space in any 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.*

**Sec. 24.** *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 19 of this regulation.*

**Sec. 25.** *1. The commission will strictly enforce the provisions of sections 2 to 31, inclusive, of this regulation.*

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

**Sec. 26.** *A person or business may complain to the commission in writing, setting forth the act or thing done or not done by a distribution company or affiliate in violation of sections 2 to 31, inclusive, of this regulation.*

**Sec. 27.** 1. *A distribution company shall establish a complaint procedure that preserves the privacy rights of the complainant.*

2. *The distribution company shall refer all complaints, whether written or verbal, 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 in writing to the complainant not more than 30 days after the designated representative received the complaint, including, without limitation, a description of any course of action that was taken.*

3. *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 working 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.** *If the commission determines that probable cause exists for a complaint, the commission will:*

1. *Order that a hearing be held;*

2. *Provide notice of the hearing to the parties; and*

3. *Conduct the hearing as it would any other hearing.*

**Sec. 29.** *When enforcing the provisions of sections 2 to 31, inclusive, of this regulation or any order of the commission that relates to these provisions, the commission may, without limitation:*

1. *Cancel a transaction;*

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 less than \$5,000 or 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 one day to be a separate violation for each day the violation continues.*

*6. A penalty assessed by the commission will in no manner preclude the right of a party to pursue damages 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 distribution company shall place 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 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.*