

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

LCB File No. R128-98

October 12, 1999

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

AUTHORITY: §§1-12, NRS 703.025 and 704.210.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

Sec. 2. As used in sections 2 to 12, 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. “Applicant” means a person seeking to merge with, acquire through a subsidiary or affiliate, or otherwise directly or indirectly obtain control of an energy utility doing business in this state or of an entity that holds a controlling interest in such an energy utility that has submitted an application to the commission pursuant to NRS 704.329 and sections 2 to 12, inclusive, of this regulation.

Sec. 4. “Energy utility” means a public utility that is engaged in the provision of electric service or natural gas service.

Sec. 5. “Parties to the proposed transaction” means the persons that are the subjects of the proposed merger, acquisition or change in control of an energy utility, including the applicant, the energy utility and, if applicable, the entity that holds a controlling interest in the energy utility.

Sec. 6. “*Transaction*” means a merger, an acquisition or a change in control of an energy utility that requires authorization by the commission pursuant to NRS 704.329.

Sec. 7. 1. A person who seeks to merge with, acquire through a subsidiary or affiliate, or otherwise directly or indirectly obtain control of an energy utility doing business in this state or of an entity that holds a controlling interest in such an energy utility, must submit an application to the commission pursuant to NRS 704.329 that complies with sections 2 to 12, inclusive, of this regulation.

2. If any requirement set forth in sections 2 to 12, inclusive, of this regulation duplicates a requirement in a filing submitted by an applicant to a regulatory body other than the commission, the applicant may satisfy the requirement set forth in sections 2 to 12, inclusive, of this regulation by providing a cross-reference to the location of the duplicated requirement in the filing submitted to the other regulatory body.

Sec. 8. An application for authorization of a proposed transaction must include general information regarding the parties to the proposed transaction, including, without limitation:

- 1.** The names, addresses and telephone numbers of the parties to the proposed transaction.
- 2.** A description of the business activities and corporate affiliations of the parties to the proposed transaction.
- 3.** The number of customers, sorted by class, of the parties to the proposed transaction that are within the jurisdiction of the commission, if any.
- 4.** A general description of any facilities owned, operated or controlled by the parties to the proposed transaction, or by a parent company, a subsidiary or an affiliate of any of the parties, that are within the jurisdiction of the commission.

5. A description of the geographic areas that will be affected by the proposed transaction.
6. Organizational charts that show:

 - (a) The current corporate structure of the parties to the proposed transaction before the completion of the proposed transaction; and
 - (b) The planned corporate structure of the surviving entity or entities, as applicable, after the completion of the proposed transaction.
7. The identity of the officers and directors of the surviving entity or entities, as applicable.
8. An executed copy of the transaction for which authorization is sought.
9. Any analyses, reports and assessments conducted by or on behalf of the parties to the proposed transaction relating to the transaction.
10. Any analyses, which assess the financial, competitive or any other effect of the proposed transaction, that were conducted by third parties of which the parties to the proposed transactions are aware and can obtain.
11. A list of, and a statement concerning, the status of each application for the authorization of the proposed transaction which the parties to the proposed transaction have filed or are required to file with a regulatory body other than the commission, the date or expected date of such a filing and a copy of each application that has been filed, including, without limitation:

 - (a) Filings made pursuant to the requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a; and
 - (b) Orders that constitute final rulings on the merits issued by such a regulatory body.

12. Any other information that the parties to the proposed transaction consider to be relevant to the consideration of the proposed transaction by the commission.

Sec. 9. An application for the authorization of a proposed transaction must include information relating to the anticipated effect of the proposed transaction on the costs and rates, including, without limitation:

- 1. A detailed description and explanation of all of the costs related to the proposed transaction, including, without limitation:**
 - (a) The cost of the transaction, the cost for transition and any premium for the acquisition; and**
 - (b) The manner in which the parties to the proposed transaction propose to treat such costs for the purposes of accounting and determining rates.**

2. A detailed explanation of the manner in which the proposed transaction will result in gains in efficiency and reductions in costs, and the magnitude of those gains and reductions.

The explanation must describe:

- (a) The methods which the parties to the proposed transaction will use to measure the gains in efficiency that will result from the proposed transaction, including, without limitation, references to other transactions in which the methods have been used, and a description and an evaluation of the use of the methods in those transactions; and**
- (b) The manner in which the parties to the proposed transaction will assign the gains in efficiency to the ratepayers of each party, including, without limitation, an explanation of the policy reasons for the assignment and examples, using realistic scenarios, of the qualitative effect of the assignment.**

3. An analysis of the effect of the proposed transaction on the rates of the customers of the parties to the proposed transaction and a description of the appropriate measures, if any, that will be taken to protect the current rates from increases associated with the proposed transaction, including, without limitation:

- (a) If the parties to the proposed transaction intend to protect the current rates of its customers, a general provision pursuant to which the parties will hold the customers of the resulting energy utility harmless, such as a commitment from the parties that they will protect the customers from any adverse effects on rates for a significant period as determined by the parties, which is acceptable to the commission, and the methodology that will be used to ensure that the hold-harmless provision is enforceable and administratively manageable;*
- (b) A cap on rates pursuant to which the parties to the proposed transaction agree to refrain from increasing rates for their customers under certain tariffs for a significant period as determined by the parties, that is acceptable to the commission;*
- (c) A reduction in rates pursuant to which the parties to the proposed transaction agree to file an application to reduce rates for their customers for a significant period as determined by the parties, that is acceptable to the commission; and*
- (d) Any other measure that the parties to the proposed transaction will use to mitigate any adverse effects of the proposed transaction on their customers.*

4. A description of the jurisdictional allocation of the costs and benefits related to the proposed transaction that will inure to the customers of the parties to the proposed transaction whose rates are subject to the jurisdiction of a regulatory agency of another state and the Federal Energy Regulatory Commission.

5. A copy of the current tariffs of the parties to the proposed transaction filed with the commission and any proposed changes to the tariffs that will be needed upon the completion of the proposed transaction.

Sec. 10. An application for the authorization of a proposed transaction must include information relating to the effect of the proposed transaction on competition in the markets for energy services and products in which the resulting energy utility will do business, including, without limitation:

1. An analysis of the competitive effect of the transaction on competition in the market for each energy service or product in which the resulting energy utility intends to do business. The analysis must include, without limitation:

(a) An identification of the relevant products and services that are sold and will be sold by the parties to the proposed transaction before and after the completion of the proposed transaction, including, without limitation, an identification of:

- (1) Generation services sold at wholesale or retail, including, without limitation, capacity, energy services and coordination services;
- (2) Services relating to the supply of gas, including, without limitation, services for:
 - (I) Baseload/swing (load following) supplies;
 - (II) Peaking supplies;
 - (III) Back-up; and
 - (IV) Balancing of supplies when customers take delivery of gas from the distribution system or pipeline that is not equal to the amount of gas scheduled to be delivered to the customers;
- (3) Transmission services;

(4) Pipeline transportation, including, without limitation:

- (I) Firm transportation;*
- (II) Interruptible transportation; and*
- (III) Storage;*

(5) Generation services necessary to support transmission service, including, without limitation, services for:

- (I) Regulation and frequency response pursuant to which adequate response capability is provided to balance the supply resources continually with the load and to maintain scheduled interconnection frequency within a control area over a single hour;*
- (II) Energy imbalance to be provided when a difference occurs between the scheduled energy to be delivered and the amount of energy actually delivered to a load located within a control area over a single hour;*
- (III) Loss compensation pursuant to which capacity and energy losses are compensated when power is delivered for transmission or to distribution customers, or both;*
- (IV) Reactive power and voltage control pursuant to which reactive power from generation resources will be provided to support the transmission system;*
- (V) Operating reserve – spinning reserve, pursuant to which generation capacity will be synchronized to the transmission system; and*
- (VI) Operating reserve – supplemental reserve, pursuant to which generation capacity will be provided that is not necessarily synchronized to the transmission system but is capable of serving demand within 10 minutes;*

(6) Retail electric services, including, without limitation:

- (I) Arranging for power supplies;*

(II) End-use metering, including, without limitation:

- (i) Ownership of meters;**
- (ii) Operation and maintenance of meters; and**
- (iii) Reading of meters;**

(III) Financial arrangements for hedging prices;

(IV) Public good services, including, without limitation, financial, technical and other services that are performed to further public policies related to the provision of electric service;

(V) Services which are provided behind the meter that are provided to end-use customers relating to appliances that use natural gas, including, without limitation, sale, hook-up, repair and maintenance of those appliances;

(VI) Customer accounting, including, without limitation:

- (i) Account services;**
- (ii) Customer information and data processing;**
- (iii) Billing; and**
- (iv) Collection and processing of payments;**

(VII) Distribution services; and

(VIII) Services related to the retail sale of gas;

(b) An identification of the current geographic markets into which the products and services are currently being sold and the geographic markets that the parties to the proposed transaction have a reasonable expectation of obtaining after the completion of the proposed transaction;

- (c) An identification of the present and future customers of the parties to the proposed transaction that may be affected by the completion of the proposed transaction;
- (d) An identification of all potential future suppliers of the present and future customers which must be able to serve those customers in each market, considering the physical and economic restraints on the future suppliers in serving those customers, including, without limitation, the amount of capacity, energy or coordination services that each supplier of the services currently has available for delivery to the market after adjustment for transmission capability or any other constraint;
- (e) An analysis of the potential for entry by alternative suppliers into any market that will be served by the resulting energy utility and the role that entry into such a market by the alternative suppliers could play in mitigating any adverse competitive effects resulting from the completion of the proposed transaction, including, without limitation, a qualitative and quantitative assessment of the cost for the alternative sellers to enter the market; and
- (f) A calculation, using an appropriate methodology, of statistics relating to market concentration for each market to be served by the resulting energy utility, such as a calculation of statistics relating to market concentration using the Herfindahl-Hirschman Index.

2. A description of any action that the parties to the proposed transaction intend to take to mitigate or remedy the effects of the market power that the resulting energy utility would possess upon the completion of the transaction. The description must identify each market in which the parties to the proposed transaction would take such action, the presumed quality and degree of mitigation or remediation, and any other alternative actions of mitigation or remediation that have been considered by the parties to the proposed transaction.

3. Any additional information, data, analyses and studies that consider the effect of the proposed transaction on competition in the general market for energy utilities.

Sec. 11. An application for authorization of a proposed transaction must include information relating to the facilities of the parties to the proposed transaction, including, without limitation:

1. If the proposed transaction involves the disposal of physical facilities:

(a) Maps that show the assets which will be disposed.

(b) A plan that sets forth the manner in which the facilities will be disposed. The plan must include, without limitation:

(1) A detailed description of the methods that the parties to the proposed transaction will use to identify and select buyers, and to determine the purchase price, including a chronology of the steps that the parties to the proposed transaction will take;

(2) An evaluation of whether the disposition of the assets will result in a purchase that is above or below the book cost of the assets;

(3) A proposal regarding the manner in which the parties to the proposed transaction will allocate any overage or underage of the sales price, in relation to the book cost of the assets, between ratepayers and shareholders of the parties and among classes of ratepayers of the parties; and

(4) An explanation of the effect of the disposition on bondholders of the parties to the proposed transaction, including, without limitation, a detailed explanation of any of the rights of the bondholders that will be affected by the disposition and the manner in which those rights will be honored.

(c) If authorization of the proposed disposal by any municipal, state or federal regulatory body other than the commission is required, a copy and an explanation of all state statutes and rules with which the parties to the proposed transaction and the purchasers of the disposed assets will be required to comply.

2. Information relating to the transmission facilities of the parties to the proposed transaction, including, without limitation:

(a) Data concerning the transmission capability for each of the transmission paths, interfaces or other facilities used by suppliers to deliver energy to the destination markets. The data must be on an hourly basis for the 2 years immediately preceding the date of the application and include, without limitation:

- (1) The name of the transmission path, interface or facility;*
- (2) The total transfer capability; and*
- (3) The firm available transmission capability.*

FLUSH *If simultaneous transmission capability is available, the application must include that fact.*

(b) For each existing transmission facility which was constrained during the 2 years immediately preceding the date of the application or which is expected to be constrained within the 3 years immediately following the date of the application, the parties to the proposed transaction must provide, without limitation:

(1) Information regarding expected changes in loadings on transmission facilities as a result of the proposed transaction and the consequent effect on transfer capability; and

(2) To the extent possible, system maps showing the location of transmission facilities where binding constraints have been known or are expected to occur that include:

- (I) The name of each path, interface or facility affected by the constraint;*

(II) The locations of the constraint and each path, interface or facility affected by the constraint;

(III) The hours of the year in which the constraint is binding; and

(IV) The system conditions under which the constraint is binding.

(c) For each potential supplier to a destination market that holds firm transmission rights on a transmission path, interface or facility necessary to deliver energy from a potential supplier, including the supplier itself, to the destination market, the application must include:

(1) The name of the supplier and transmission path, interface or facility; and

(2) The number of the rate schedule filed with the Federal Energy Regulatory Commission under which transmission service is provided, if applicable, and a description of the firm transmission rights held, including, without limitation, quantity and remaining time that the rights will be held and any relevant time restrictions on transmission use, such as peak or off-peak rights.

(d) Information concerning any interruptions, curtailments and denials of transmission service, including, without limitation, failures to provide transmission service after a request for service that was not withdrawn, on the systems of the parties to the proposed transaction for the 2 years immediately preceding the date of the application. The information must include, without limitation:

(1) The name of the customer or entity whose transmission service was interrupted, curtailed or denied;

(2) The type, quantity and duration of the service provided to the customer or entity;

(3) The date and length of time during which the transmission service was interrupted, curtailed or denied;

- (4) *The reason given for the interruption, curtailment or denial;*
 - (5) *The transmission path; and*
 - (6) *The reservations or other use anticipated on the affected transmission path at the time when the service of the customer or entity was interrupted, curtailed or denied.*
- (e) *Data or analyses on the effect that the proposed transaction is expected to have on the transmission capability of the resulting energy utility, including, without limitation, data and analyses on:*
- (1) *Any dispatch changes, and the manner in which such changes will affect transmission use; and*
 - (2) *The new markets that may be served by the resulting energy utility and the transmission services planned to reach those markets.*
3. *If the systems of the parties to the proposed transaction are not interconnected, documents showing any current plans for interconnection and, to the extent that no current plans exist, an analysis showing whether interconnection is physically feasible and, if so, the magnitude of the costs of the interconnection.*
4. *An assessment of the effects of the proposed transaction on the quality of service and reliability of the system of the resulting energy utility. The assessment must include a proposal for:*
- (a) *Measuring and reporting on the performance of the resulting energy utility relating to customer satisfaction, reliability of service, the safety of the system and the business office of the resulting energy utility; and*
 - (b) *Imposing penalties for any shortfalls in such performance.*

5. An identification, by types and estimated annual quantities, of inter-affiliate transactions that will occur after the transaction is completed and an explanation of the extent, if any, of federal preemption of the authority of the commission which will result upon the completion of the proposed transaction.

Sec. 12. 1. If the commission finds that a proposed transaction is not in the public interest, the commission:

(a) Will not authorize the proposed transaction; or
(b) Will issue an order that specifies the changes in or additions to the proposed transaction that the parties to the proposed transaction must make before the commission will authorize the proposed transaction.

2. If the commission issues an order that specifies required changes in or additions to the proposed transaction, the commission will include in the order:

(a) A deadline by which the parties to the proposed transaction must inform the commission as to whether the parties will make the changes or additions; and
(b) A deadline by which the parties to the proposed transaction must file such documents as the commission deems necessary to carry out the changes or additions.