

ADOPTED REGULATION OF THE PUBLIC UTILITIES

COMMISSION OF NEVADA

LCB File No. R172-99

~~[Effective September 25, 2000] Not filed or effective because the Legislative Commission deferred action until the next meeting, in December~~ *Placed on hold*

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

AUTHORITY: §§1-10, NRS 703.025 and 704.983.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 10, inclusive, of this regulation, unless the context otherwise requires, “electric utility” means a vertically integrated electric utility or its successor electric distribution utility, as appropriate.*

Sec. 3. *Upon application by an electric utility, the commission will:*

1. Determine the total amount, if any, of the costs which the electric utility may recover; and

2. Approve a mechanism for the recovery of those costs on or before October 1, 2000, or 60 days before the date on which customers may begin receiving the potentially competitive service for which the recovery of costs is sought, whichever occurs later, to ensure that the utility can immediately begin recovering those costs on the date on which customers may begin receiving the potentially competitive service for which recovery of costs is sought.

Sec. 4. *1. Unless otherwise determined by the commission, not later than 8 weeks after the effective date of this regulation, or not later than the date for the submission of*

applications for recoverable costs established by the commission pursuant to subsection 2, an electric utility must file an application for recoverable costs in accordance with sections 2 to 10, inclusive, of this regulation, for the recovery of costs associated with aggregation, generation, billing, metering and other potentially competitive services.

2. Based upon this initial application, the commission will, after notice and a hearing, determine the initial amount, if any, of costs that may be recovered by the electric utility and the initial charge to be collected to recover such costs, or refund to be credited to customers, as appropriate. The commission will include these determinations in an interim order which will be issued not later than 30 days after the date on which the initial application is filed.

3. Upon the determination by the commission that any additional service has become a potentially competitive service, the commission will, in its order making such a determination, outline a schedule pursuant to which an electric utility may file an application for recoverable costs for those services in accordance with sections 2 to 10, inclusive, of this regulation.

4. Within 90 days after the date on which NRS 704.9823 expires by limitation or is repealed, an electric utility which has filed an initial application for recoverable costs relating to a potentially competitive service shall update the information contained in its initial application for recoverable costs. The updated information must include data relating to those recoverable costs associated with the assets and obligations used by the electric utility in the provision of the potentially competitive service that have been accepted by the commission as recoverable costs.

5. Within 4 weeks after the close of the sale for the disposition of an asset or obligation of an electric utility used to provide the potentially competitive service for which the recovery of

costs is sought, the electric utility shall update the recoverable costs associated with the asset or obligation.

Sec. 5. 1. *In its application for recoverable costs filed with the commission pursuant to section 4 of this regulation, an electric utility shall:*

(a) Estimate the amount of its recoverable costs as of August 31, 2000, and calculate the extent to which those recoverable costs are included in the total rate established pursuant to NRS 704.9823. The electric utility shall update its estimate of recoverable costs as of the date on which customers may begin receiving potentially competitive services in its final application.

(b) Indicate the unrecovered portion of the book cost of the recoverable costs that is attributable to each potentially competitive service, updated with the most recent data available.

(c) Indicate the estimate of the unrecovered portion of the book cost that will be attributable to each potentially competitive service as of the date on which alternative sellers may begin providing that service to customers.

(d) Indicate, where applicable, the level of the book cost that is unrecovered for each year until the level of the book cost equals zero.

(e) Include a full description and explanation of any assets or obligations that the electric utility expects to acquire between the date on which it files its application for recoverable costs and the date on which alternative sellers may begin providing the potentially competitive service to customers.

2. *The amount of costs sought to be recovered by an electric utility must be based on the statements and schedules which the electric utility has included in its plan for compliance filed*

with the commission pursuant to NRS 704.986, or in the statements and schedules required to be filed by an order of the commission deeming a service to be potentially competitive. An electric utility shall update such statements and schedules in accordance with subsection 3 of section 4 of this regulation to reflect any changes to the book costs originally proposed by the electric utility in its plan of compliance that are made by the commission in its order relating to that plan of compliance.

Sec. 6. *An application for recoverable costs filed by an electric utility must include, without limitation, the following information:*

1. For each potentially competitive service, an itemized list of all assets and contractual obligations used by the electric utility to provide the potentially competitive service, including a listing of the individual account numbers, including subaccounts if necessary, that are attributable to each asset or obligation, with separate columns provided for all recorded amounts, adjustments and allocations, including:

(a) For each asset:

- (1) The date on which the asset was originally acquired.*
- (2) A statement of the original and continuing need for the asset.*
- (3) The original cost of the asset.*
- (4) The accumulated depreciation and associated depreciation rate on the asset.*
- (5) The net book value of the asset.*
- (6) The associated deferred taxes that have accumulated on the asset, by account and vintage year.*
- (7) The current market value of the asset, unless the market value of the asset is to be determined by the sale of the asset in the open market.*

(8) All costs that are properly associated with and allocable to the asset which are not included elsewhere in the application.

(9) The tax base of the asset used to calculate capital gains or losses for the purpose of federal taxes.

FLUSH *Information for each asset from a generating facility must be indicated by individual unit for each generating facility of the electric utility. For all other assets used by the electric utility in the provision of potentially competitive services, the electric utility shall, when possible, report information pursuant to this subsection separately for each potentially competitive service.*

(b) For each contract, obligation or other recoverable cost:

(1) A copy of the contract, or a description of the obligation or other recoverable cost.

(2) A statement of the original and continuing need for the contract, obligation or other recoverable cost.

(3) For contracts and obligations, the amount of the deferred taxes that have accumulated on the contract or obligation, by account and vintage year, as applicable.

(c) For each obligation, the remaining life of the obligation and a projection of the amount of the obligation, on an annual basis, over the remaining life of the obligation and brought to present value, including a description of all assumptions used to make the projection.

(d) For each contract, unless the market value of the contract was determined by sale in the open market, the current market value of the services or products, or both, to be provided under the contract, projected on an annual basis over the remaining life of the contract and brought to present value, including a description of all assumptions used to make the projection, to ensure that a comparison of the contract with other similar contracts is in similar terms and conditions.

(e) A list of all embedded debt and preferred stock issues, including:

(1) For embedded debt and preferred stock issues, the initial principle balance, the current principle balance, the interest rate, the unamortized gain or loss on any reacquisition of the stock issues and the timing and prices pursuant to which each issue may be called before maturity, if applicable; and

(2) For debt issues, whether the issue is a debenture issue or a mortgage bond, and if the debt issue is a mortgage bond, a description of the assets that are encumbered by the mortgage bond.

2. For each asset, contract or obligation used for the provision of a potentially competitive service that was sold by the electric utility:

(a) A description of the method by which the asset, contract or obligation was disposed of, the price or other consideration given and received for the asset, contract or obligation, and the names of the persons who acquired the asset, contract or obligation; and

(b) A copy of each letter of interest concerning the disposition of the asset, contract or obligation, and the response thereto, and a copy of the contract of the sale or disposition of each asset, contract or obligation, including all terms and conditions, such as put or call options upon the generation or purchased power, and a copy of all information provided to potential bidders. An electric utility may, in accordance with NRS 703.190 and 703.196, and NAC 703.527 to 703.5282, inclusive, request that the information which the electric utility provides pursuant to this paragraph be deemed confidential and not subject to disclosure.

3. For the expenses incurred by the electric utility associated with minimizing layoffs of employees and other adverse effects to the employees of the utility resulting from the transition to a competitive market:

- (a) The number of employees, by function, for whom these expenses were incurred;*
- (b) To the extent that any employees are in an administrative function or subfunction where the electric utility has previously identified merger savings, the number of such employees and information showing that the positions to be lost in that department for which the employee-related expenses are requested are a result of the transition to a competitive market and not the merger;*
- (c) A copy of the plans and programs for severance, retraining, job placement, early retirement and any other plan or program undertaken by the electric utility to minimize the adverse effects of the transition on its employees; and*
- (d) The total cost to carry out and administer these plans and programs by departments, to the extent available.*

Sec. 7. 1. *Except as otherwise provided in subsection 2 and unless the market value of an asset or obligation has been or will be determined by the sale of the asset or obligation on the open market, an electric utility shall, in determining the market value of an asset or obligation identified in its application for recoverable costs pursuant to section 6 of this regulation, include in its application at least three estimates of the market value of the asset or obligation, using multiple techniques for determining value that consider:*

- (a) The market power derived from the nature of the load pocket of the system of the electric utility;*
- (b) The market power derived from the locations of the sites of the asset, such as contracts for fuel supply and the proximity of the asset to gas pipelines, sources of water and transmission lines;*

(c) Any mitigation of the market power resulting from the actions of the commission or the Federal Energy Regulatory Commission;

(d) For generating facilities, the state of maintenance of the generation facilities;

(e) Projected revenue streams;

(f) All expenses related to ongoing operation and maintenance;

(g) Possible debt responsibility for specific assets;

(h) Possible additional investments that the electric utility may make to increase market value; and

(i) Other possible relevant factors.

2. An electric utility may, for billing, metering and customer services only, provide fewer than three estimates upon a showing, submitted by the electric utility with its application, that the development of estimates additional to those estimates which the electric utility is actually providing are impractical or infeasible.

3. In determining which costs are recoverable, the commission will consider the efforts of an electric utility to minimize its federal taxes resulting from offsetting gains and losses of the assets and obligations of the electric utility that are properly allocable to a potentially competitive service.

Sec. 8. *In addition to any other information required by sections 2 to 10, inclusive, of this regulation, to be included in an application for recoverable costs, an electric utility shall include, without limitation:*

1. For each element of cost identified by an electric utility in its application for recoverable costs pursuant to sections 6 and 7 of this regulation, a description of all significant efforts that the electric utility made to mitigate the recoverable costs by reducing

that element of cost, or increasing the value and realizing the increase in value, of its assets and obligations. The electric utility shall provide information indicating if and how the efforts by the electric utility to mitigate its recoverable costs actually reduced those costs, including, without limitation:

(a) The refinancing efforts of the electric utility to reduce capital costs or facilitate the disposition of the associated assets, or both;

(b) The efforts of the electric utility to identify entities willing to pay amounts exceeding book costs for the rights and obligations associated with the costs sought to be recovered;

(c) The efforts of the electric utility to increase its operating efficiency;

(d) The efforts of the electric utility to reduce its costs of input;

(e) The efforts of the electric utility to find other more economical uses for the asset;

(f) The efforts of the electric utility to find new markets for the output of the asset;

(g) The efforts of the electric utility to extend the economic life of the asset;

(h) The extent to which the electric utility may be able to fulfill its obligations with no further outlays of cash;

(i) The curtailment of pension and employee benefit plans arising from the divestiture by the electric utility of its generation services and other employee-related changes;

(j) The costs and benefits of exercising any options that the electric utility has to renegotiate a contract or an obligation, including a description of all overtures concerning these options for renegotiation, including:

(1) Overtures made by the electric utility to a seller; and

(2) Overtures made by a seller to the electric utility; and

(k) The possibility of exercising any other contractual clause to mitigate the cost of the contract.

FLUSH *The electric utility shall include the effects of its efforts to mitigate its recoverable costs in its calculation of the recoverable costs.*

2. For all other costs, expenses and revenues included by an electric utility in its application for recoverable costs pursuant to sections 5 and 6 of this regulation, a description of the efforts of the electric utility to mitigate the recoverable costs, or maximize and realize the value of the assets, through:

- (a) Maximizing tax deductions that result in the least cost to the ratepayers;*
- (b) Renegotiating contracts for fuel and transportation of fuel; and*
- (c) Exercising clauses for cancellation and termination in its contracts for fuel that are uneconomic to avoid incurring uneconomic costs.*

3. For each element of cost that an electric utility has included in its application for recoverable costs, all information which indicates whether the electric utility was legally required to incur the cost as a result of the actions or statements of the commission or by state or federal law. If the electric utility indicates that it was legally required to incur the cost, the electric utility must provide all information, including descriptions of the actions and statements of the commission and citations to the state or federal law, that support its claim that it was legally required to incur the cost. A claim by an electric utility that it incurred a cost because of its general legal obligation to serve its customers that is filed without supporting information will be considered to be an insufficient justification for the recovery of such costs.

4. For each element of cost that an electric utility includes in its application for recoverable costs which the electric utility had the discretion to incur or to mitigate, an identification of all information which indicates that the conduct of the electric utility was, with respect to such a cost, similar to the conduct of other similarly situated utilities.

5. For each element of cost that an electric utility includes in its application for recoverable costs, information indicating if, and to what extent, the rates previously established by the commission have compensated the shareholders of the electric utility for the risk of not recovering the full cost of the assets or obligations.

Sec. 9. *In its application for recoverable costs, an electric utility shall include a calculation of a rate of recovery for the mechanism pursuant to which costs will be recovered as follows:*

1. The total recoverable cost calculated based on the information provided by the electric utility pursuant to section 8 of this regulation must be converted in a rate or rates that best reflect the nature of the costs to be recovered. The initial rates must be further divided into a rate to be applied during the period starting on the date on which customers may begin obtaining the potentially competitive rate until March 1, 2003, and a rate that will be applied after March 1, 2003. For services subsequently determined by the commission to be potentially competitive, the rates must be applied to the periods as required by the commission in its order making the determination that the service is potentially competitive. The total recoverable cost must be calculated as a per kilowatt-hour rate. To the extent that other rates are proposed, the electric utility must identify both the other proposed rate and the resulting effect of that rate on the per kilowatt-hour rate calculated for the total recoverable cost. Rates calculated pursuant

to this section must be designated to recover or refund the amount of the recoverable costs within 10 years.

2. The electric utility shall identify all tax consequences associated with the recovery of the costs.

3. The electric utility shall propose and support a return on the unrecovered portion of recoverable costs sought to be recovered for which the electric utility is receiving a return under current ratemaking practices, taking into account the security of recovery assumed in the other elements of its application for recoverable costs.

4. The electric utility shall calculate a projected annual total cost to ratepayers for the period during which the electric utility will recover costs until all costs have been reduced to zero, taking into account the various periods proposed by the electric utility for recovering costs and any tax consequences associated with the recovery of those costs.

5. The electric utility shall propose tariffs for the mechanisms for recovering costs preferred by the electric utility, and identify and provide support for:

(a) The extent to which the costs sought to be recovered are currently being recovered in rates determined in accordance with NRS 704.982 and 704.9823;

(b) Any mechanism for truing up the amount of the costs to be recovered, if so desired by the electric utility;

(c) An annual projection of the proposed charges to be assessed against a typical residential customer resulting from the recovery of the costs;

(d) The treatment by the electric utility of customers who:

(1) Take service at transmission voltage rather than at distribution voltage;

(2) Self-generate; or

(3) Were not customers of the electric utility before a mechanism for the recovery of costs is initiated, but who have moved into the service territory of the electric utility after the mechanism is initiated;

(e) The treatment by the electric utility of customers, if any, who wish to prepay the portion of recoverable costs for which they are responsible, including an identification of whether the electric utility or the customer will bear the risk if the amount prepaid by the customer turns out to be insufficient to recover the costs of the electric utility; and

(f) All reasons why the proposed mechanism:

(1) Is consistent with NRS 704.983, including the requirement set forth in subsection 2 of that section that the recovery of costs be direct and unavoidable; and

(2) Achieves the goals of economic efficiency, competitive neutrality, administrative feasibility and the orderly implementation of effective competition.

Sec. 10. 1. *If the amount determined as the total recoverable costs is a positive amount, all distribution customers and providers of last resort shall pay or collect from their customers the recovery rate to be paid to the electric utility. Monthly payments must be based on the monthly kilowatt-hour consumption of electricity by the customer, multiplied by the recovery rate, or be consistent with such other recovery mechanisms accepted by the commission.*

2. If the amount determined as the total recoverable costs is a negative amount, the electric utility shall pay the recovery rate to all distribution customers and providers of last resort. A distribution customer or provider of last resort which receives a recovery payment pursuant to this subsection shall provide monthly credits to their customers based on the monthly kilowatt-hours sales of energy multiplied by the recovery rate.

3. The recovery rate remains in effect until, but not later than, the time at which the total recoverable cost is fully collected. The electric utility shall record all amounts received or expended under each recovery mechanism in a separate account and retain all proofs of receipt to be accessible for a possible audit. The electric utility shall submit quarterly reports to the commission showing the balances and account activity for the recoverable costs.

NOTICE OF ADOPTION OF REGULATION

The Public Utilities Commission of Nevada adopted regulations assigned LCB File No. 172-99 which pertain to chapter 704 of the Nevada Administrative Code on September 18, 2000. A copy of the regulations as adopted is attached hereto.

INFORMATIONAL STATEMENT

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY THE ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066 PUBLIC UTILITIES COMMISSION DOCKET NO. 97-8001 (PAST COSTS) LCB FILE NO. 172-99

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 704.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

On April 3, 2000, the Legislative Commission voted to return the Past Costs regulations in Docket No. 97-8001, to the Public Utilities Commission ("Commission") in order to revise the regulations and return them to the LCB.

The regulations were noticed up to five (5) times in the: Elko Daily Free Press (April 16, May 31, July 8, and August 18, 2000); Ely Daily Times (April 14, May 19, June 9, July 6, and August 16, 2000); Humboldt Sun (April 14, May 19, June 5, July 7, and August 15, 2000); Las Vegas Review Journal (April 13, May 18, June 1, July 5, and August 11, 2000); Mineral County Independent (April 16, 2000); Nevada Appeal (May 21, June 4, July 9, and August 13, 2000); Reno Gazette Journal (April 14, May 19, June 9, July 7, and August 18, 2000); Tonopah Times-Bonanza (April 20, May 25, June 8, July 13, and August 17, 2000).

The regulations represented a consensus among most of the parties. The public comments focused on the concern that the regulations not impede competition in the form of further delays or additional effort on the part of the potential customers. Also, most wanted Q.F. contracts to be classified as past costs. One respondent was concerned that the regulations may interfere with Q.F. contracts.

A copy of the written comments may be obtained by calling the Public Utilities Commission of Nevada at (775) 687-6001 or (702) 486-2600, or writing to the Commission at 1150 East William Street, Carson City, Nevada 89701 or 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109.

2. The number persons who:

May 12, 2000 workshop-

(a) Attended: 18

(b) Testified: 8

(c) Submitted written comments: Comments were submitted by Mandalay Resort Group, Newmont Gold Company ("Newmont"), Shell Energy, LLC ("Shell"), and Barrick Goldstrike Mines, Inc. ("Barrick").

June 9, 2000 workshop-

(a) Attended: 14

(b) Testified: 10

(c) Submitted written comments: Comments were submitted by the Commission's Regulatory Operations Staff ("Staff"), Sierra Pacific Power Company and Nevada Power Company ("SPPC and NPC"), Barrick, Newmont, Shell, NewEnergy, Inc. ("NewEnergy"), and Southern Nevada Water Authority.

June 29, 2000 hearing-

(a) Attended: 17

(b) Testified: 11

(c) Submitted written comments: Comments were submitted by Newmont, Nevada Independent Energy Coalition ("NIEC"), Staff, Utility Shareholders Association Network, and SPPC and NPC.

July 25, 2000 workshop-

(a) Attended: 9

(b) Testified: 6

(c) Submitted written comments: Comments were submitted by NewEnergy and SPPC and NPC.

August 9, 2000 hearing-

Cancelled

September 18, 2000 hearing-

(a) Attended: 20

(b) Testified: 8

(c) Submitted written comments: Comments were submitted by NIEC, Staff, Barrick Newmont and Shell.

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1 and by direct mail to interested persons subscribing to the Commission's mailing list.

The regulations represented a consensus among most of the parties. With regards to affected businesses, they wanted Q.F. contracts to be treated as purchase power obligations and not past costs. While recovering as much past costs as possible, they also wanted to keep as much gain from the sale of their generation assets.

A copy of the written comments may be obtained by calling the Public Utilities Commission of Nevada at (775) 687-6001 or (702) 486-2600, or writing to the Commission at 1150 East William Street, Carson City, Nevada 89701 or 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulations were adopted by the Commission on September 18, 2000, adopting alternative A of the proposed language because it reflected an easier and more simple procedure for determining recoverable costs.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects; and
- (b) Both immediate and long-term effects.

(1) At this time the Commission cannot quantify either the adverse or beneficial effects on the businesses affected by the regulations, either short or long term. The regulations may potentially affect all entities which offer or which will offer electric services, with a more likely and direct effect seen for vertically integrated electric utilities and their successor electric distribution utilities.

(2) No adverse economic effects are expected to inure to the public in the long term; however, in the short term, it is anticipated that recoverable costs, if any, will be paid by utility ratepayers under the provisions of NRS 704.983. The public may experience beneficial economic effects in that the procedure by which a vertically integrated electric utility may seek recoverable costs pursuant to NRS 704.965 to 704.990, inclusive, will become standardized and the restructuring of the electric industry will be facilitated.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the Commission for enforcement of this regulation.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

N/A.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

N/A.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

N/A.