

ADOPTED REGULATION OF THE PUBLIC

UTILITIES COMMISSION OF NEVADA

LCB File No. R078-00

Effective January 30, 2001

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

AUTHORITY: §§1-33, NRS 703.025; §34, NRS 703.025 and 704.979.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 34, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 34, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 19, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Affiliate” has the meaning ascribed to it in NRS 78.412.*

Sec. 4. *“Alternative seller” has the meaning ascribed to it in NRS 704.967.*

Sec. 5. *“Customer” has the meaning ascribed to it in NRS 704.968.*

Sec. 6. *“Distribution function” means the affiliate, division, department, section, part or unit of an electric distribution utility that:*

- 1. Is responsible for facilities for providing distribution and transmission services; and*
- 2. Performs distribution and transmission services.*

Sec. 7. *“Distribution function operation” means the parts of the distribution function of an electric distribution utility that:*

- 1. Operate, direct, organize, provide or plan for distribution or transmission service;*
- 2. Administer distribution or transmission tariffs; or*

3. Process or execute distribution or transmission services transactions.

Sec. 8. "Distribution service" means the service provided over the physical plant of an electric distribution utility delivering electricity from the transmission system to customers.

Sec. 9. "Electric distribution utility" has the meaning ascribed to it in NRS 704.970.

Sec. 10. "Electric service" has the meaning ascribed to it in NRS 704.971.

Sec. 11. "Joint management employee" means an officer, a director or a senior manager of an electric distribution utility who provides joint management services.

Sec. 12. "Joint management services" means senior-level oversight or governance of both the distribution function and the provider of last resort function of an electric distribution utility, but does not include the senior-level oversight or governance of only the distribution function operation or provider of last resort function operation of an electric distribution utility.

Sec. 13. "Joint support employee" means an employee of an electric distribution utility who provides joint support services.

Sec. 14. "Joint support services" means the property, facilities, equipment, systems, personnel, activities and functions used to provide administrative support to both the distribution function and the provider of last resort function of an electric distribution utility, including, without limitation, administrative services, financial management services, data processing, shareholder services, human resources, employee benefits and other similar administrative support services. The term does not include any administrative support services provided only to the distribution function operation or to the provider of last resort function operation of the electric distribution utility.

Sec. 15. *“Last resort service” means the electric service provided to customers by an electric distribution utility or alternative seller designated by the commission pursuant to NRS 704.982 or 704.9829, respectively, to provide such service.*

Sec. 16. *“Provider of last resort” means the entity or entities designated by the commission pursuant to NRS 704.982 or 704.9829 to provide last resort service.*

Sec. 17. *“Provider of last resort function” means the affiliate, division, department, section, part or unit of an electric distribution utility that aggregates the components of electric service that are necessary for the provision of electric service pursuant to NRS 704.982.*

Sec. 18. *“Provider of last resort function operation” means the parts of the provider of last resort function of an electric distribution utility that operate, direct, organize, provide or plan for the provision of last resort service.*

Sec. 19. *“Utility provider of last resort” means an electric distribution utility that has been designated by the commission pursuant to NRS 704.982 to provide last resort service to customers.*

Sec. 20. 1. *Before July 1, 2001, a utility provider of last resort may provide the last resort service or may obtain the services necessary to provide the last resort service from unaffiliated companies or through an affiliate of the utility created to provide such services.*

2. *On or after July 1, 2001, a utility provider of last resort shall continue to provide the last resort service to those customers as the provider of last resort until such time as the commission authorizes an alternative method for providing last resort service to those customers.*

3. *A provider of last resort shall accept additional customers beyond those initially assigned by the commission if:*

(a) The license of the alternative seller that was providing service to the customers is suspended or revoked by the commission; or

(b) The customers are new customers who are unable or fail to obtain service from an alternative seller.

4. *A provider of last resort shall provide all components of last resort service to its customers receiving last resort service at a rate that is established by the commission pursuant to NRS 704.9823.*

5. *Not later than 45 days before a class of customers may begin taking last resort service from a utility provider of last resort, and in any event, not later than June 1, 2001, the utility provider of last resort shall file proposed tariffs with the commission to provide last resort service to the class of customers. All other providers of last resort shall file proposed tariffs with the commission within 30 days after the date on which the commission designates the provider to be the provider of last resort. Such a tariff must include the rates, terms and conditions for the provision of last resort service by the provider.*

6. *A provider of last resort may, at any time, file an application with the commission to reduce the rate charged to a class or classes of customers receiving last resort service. The commission will approve such an application only if the commission makes a finding on the record that the approval of the application will not have any detrimental impact on the development of the competitive market and that the application to reduce rates is not based, in whole or in part, on any purpose that will or would likely have an anticompetitive effect on the*

competitive market in violation of the purposes set forth in NRS 703.151 and 704.979, or any regulations adopted pursuant thereto, relating to the establishment of a competitive market.

Sec. 21. *Customers receiving last resort service have all the rights and responsibilities set forth in NAC 704.302 to 704.390, inclusive, and 704.79781 to 704.79849, inclusive.*

Sec. 22. *1. Not later than March 1, 2001, or 30 days after the date on which the commission designates a utility provider of last resort pursuant to NRS 704.982, whichever occurs later, the utility provider of last resort shall file with the commission a detailed proposed implementation schedule pursuant to which the utility provider of last resort will begin providing last resort service.*

2. The commission will conduct a hearing on a proposed implementation schedule filed by a utility provider of last resort and will review the proposed schedule, any comments and schedules proposed by other interested parties and any other supporting or contradicting evidence to determine:

(a) The reasonableness of the proposed implementation schedule, in light of the relevant statutes and relevant regulations adopted by the commission;

(b) Whether, and to what extent, the commission will have to make adjustments to the proposed implementation schedule; and

(c) Whether, and to what extent, the commission will have to make adjustments to its regulations to accommodate the proposed implementation schedule.

3. If a utility provider of last resort fails to file a detailed proposed implementation schedule in accordance with subsection 1, the utility provider of last resort must comply with the provisions of sections 24 to 29, inclusive, of this regulation, upon the opening of the competitive market for the electric service.

4. A utility provider of last resort shall designate an officer to evaluate and certify that the utility provider of last resort is in compliance with the provisions of an implementation schedule that has been approved by the commission, or with the provisions of sections 24 to 29, inclusive, of this regulation, as appropriate.

Sec. 23. The provisions of sections 24 to 29, inclusive, of this regulation apply to a utility provider of last resort only:

1. If the utility provider of last resort fails to file with the commission a detailed proposed implementation schedule as required by section 22 of this regulation; or

2. Upon order of the commission.

Sec. 24. 1. Except as otherwise provided in section 25 of this regulation, the employees of a utility provider of last resort working in the distribution function of the utility shall operate and function independently of the employees of the utility working in the provider of last resort function of the utility. The employees of a utility provider of last resort working in the provider of last resort function of the utility shall operate and function independently of the employees of the utility working in the distribution function of the utility.

2. Except as otherwise provided in section 25 of this regulation:

(a) An employee of a utility provider of last resort working in the distribution function of the utility shall not conduct or participate in any operations or activities of the provider of last resort function of the utility.

(b) An employee of a utility provider of last resort working in the provider of last resort function of the utility shall not conduct or participate in any operations or activities of the distribution function of the utility.

3. Except as otherwise provided in section 25 of this regulation, the employees of a utility provider of last resort working in the distribution function of the utility must be located physically apart from the employees of the utility working in the provider of last resort function of the utility. To ensure its compliance with the provisions of this subsection, a utility provider of last resort may, without limitation:

(a) Place such employees in separate secured office buildings; or

(b) Construct and maintain separate and secured access areas and facilities within a shared office building.

4. Except as otherwise provided in section 25 of this regulation:

(a) An employee of a utility provider of last resort working in the provider of last resort function of the utility shall not have physical access to:

(1) The system control center for the distribution function of the utility; or

(2) The communication facilities, computer systems, office space, file cabinets, office equipment used for the distribution or transmission system, or any other similar facilities or systems used for the distribution function operation of the utility,

if that physical access differs in any way from the physical access available to, and commonly used by, employees of alternative sellers.

(b) An employee of a utility provider of last resort working in the provider of last resort function of the utility shall not have direct or indirect access to information concerning the distribution function operation of the utility which is not generally available to alternative sellers and the public, including, without limitation, information concerning:

(1) Plans for construction or abandonment of transmission or distribution services or facilities;

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(2) Planned upgrades, downgrades or modifications of transmission or distribution services or facilities;

(3) Planned transfers or sales of transmission or distribution facilities;

(4) Maintenance of transmission or distribution facilities;

(5) Plans or schedules for outages;

(6) Ratings of transmission or distribution facilities; and

(7) Interconnections for new customers which have been forecasted or scheduled, customer emergency curtailment, and any other market analysis report, survey, research or other type of forecast, planning or strategic report.

(c) An employee of a utility provider of last resort working in the distribution function of the utility shall not directly or indirectly disclose to any employee working in the provider of last resort function of the utility, any information described in paragraph (b) of this subsection unless that information is generally available to alternative sellers and the public.

(d) An employee of a utility provider of last resort working in the provider of last resort function of the utility shall not have direct or indirect access to information about a specific customer relating to his billing, usage or load shape, other than information relating to a customer receiving last resort service from the provider of last resort function of the utility, unless that information is acquired:

(1) On terms and conditions that are applicable to all alternative sellers;

(2) With the consent of the customer to whom the information relates; and

(3) In accordance with the applicable rules and standards set forth by the commission for obtaining such information.

(e) An employee of a utility provider of last resort working in the distribution function of the utility shall not directly or indirectly disclose to any employee working in the provider of last resort function of the utility, any information about a specific customer relating to his billing, usage or load shape unless that information is provided:

- (1) On terms and conditions that are applicable to all alternative sellers;*
- (2) With the consent of the customer to whom the information relates; and*
- (3) In accordance with the applicable rules and standards set forth by the commission for providing such information.*

(f) An employee of a utility provider of last resort working in the distribution function of the utility may directly or indirectly disclose to any employee working in the provider of last resort function of the utility information concerning customer billing, usage, load shape, goods, services, purchases, sales or operations of the distribution function of the utility if that information is:

- (1) Not specific to any one particular customer;*
- (2) Contemporaneously made available by the distribution function of the utility to all alternative sellers on the same terms and conditions; and*
- (3) Made available for public inspection by the distribution function of the utility.*

Sec. 25. 1. *Except as otherwise provided in this section, joint management employees and joint support employees of a utility provider of last resort:*

- (a) May provide management services or support services for both functions;*
- (b) Do not need to be separately located from either function; and*
- (c) May have access to the facilities of and information in either function.*

2. Except as otherwise provided in this section, a person employed as a joint management employee or joint support employee shall not engage in the provider of last resort function operation or in the distribution function operation of the utility provider of last resort. A utility provider of last resort shall ensure that such an employee is not used to circumvent any provision of sections 2 to 34, inclusive, of this regulation.

3. Upon a complaint filed with the commission or its own motion, the commission may, after notice and hearing, limit the use or access of a joint management employee or joint support employee if the commission finds that such a limitation is necessary or appropriate to:

- (a) Mitigate actual or potential discrimination; or*
- (b) Promote effective competition.*

Sec. 26. 1. A utility provider of last resort may transfer an employee of the utility working in the provider of last resort function or the distribution function of the utility to the other function if the transfer is not used as a means, and does not have the foreseeable effect, of:

- (a) Circumventing any provision set forth in sections 2 to 34, inclusive, of this regulation;*
- or*
- (b) Adversely affecting effective competition.*

2. A utility provider of last resort shall document each transfer of an employee working in the provider of last resort function or distribution function of the utility to the other function. A utility provider of last resort shall provide this information to the commission on a quarterly basis.

3. An employee working in the distribution function of a utility provider of last resort who is transferred to the provider of last resort function of the utility shall not:

(a) Remove any data or information from the distribution function of the utility relating to the distribution function or customers of the distribution function unless that information is otherwise available to alternative sellers or customers of alternative sellers, or both;

(b) Provide to the provider of last resort function, or any employee working in the provider of last resort function operation, any information relating to the distribution function or customers of the distribution function unless that information is otherwise available to alternative sellers or customers of alternative sellers, or both; or

(c) Use any information relating to the distribution function of the utility, or customers of the distribution function, on behalf of the provider of last resort function of the utility unless that information is otherwise available to alternative sellers or customers of alternative sellers, or both.

4. Before an employee may transfer from the distribution function of a utility provider of last resort to the provider of last resort function of the utility, the employee must sign a statement acknowledging that he:

(a) Has read and will abide by the restrictions set forth in this section; and

(b) Understands that a violation of those restrictions may subject the utility to the penalties set forth in section 34 of this regulation.

Sec. 27. 1. Except as otherwise provided in this section, a provider of last resort shall not, in any announcement, advertisement, statement or other form of communication to, with or intended for any of its customers or the public, directly or indirectly promote, recommend or otherwise urge or solicit a customer or the public to purchase electric service from the provider of last resort unless the provider of last resort, not later than 15 calendar days before its dissemination of such information, provides the information to the staff of the commission,

the bureau of consumer protection in the office of the attorney general, all licensed alternative sellers and all other providers of last resort.

2. Nothing in this section prohibits such communication between:

(a) An electric distribution utility and any of its customers or the public if the communication only informs the customer or the public of the availability of last resort services from the utility if a customer does not or is unable to choose to get service from an alternative seller; or

(b) The provider of last resort and its existing customers.

Sec. 28. 1. *Except as otherwise provided in this section, the distribution function of a utility provider of last resort:*

(a) Shall provide service to the provider of last resort function of the utility only in accordance with the generally applicable distribution tariff, including, without limitation, price and other terms, for the distribution function of the utility.

(b) Shall not discriminate in any manner between the provider of last resort function of the utility and an alternative seller.

(c) When providing or procuring, or declining to provide or procure, any goods, services, facilities or information, or when establishing any standards, shall not provide, attempt to provide or conspire with any other person to provide:

(1) A competitive advantage to the provider of last resort function of the utility; or

(2) A competitive disadvantage to any alternative seller.

(d) Shall offer to all alternative sellers any goods, services, facilities or information that the distribution function offers to the provider of last resort function of the utility or any affiliate of the utility.

(e) Shall, at the same time that the distribution function offers to the provider of last resort function of the utility any goods, services, facilities or information, offer such goods, services, facilities or information to all alternative sellers. For the purposes of this paragraph, a distribution function shall provide information relating to its services and discounted services to alternative sellers through the mechanism established pursuant to paragraph (f) of this subsection.

(f) Shall provide a mechanism which is accessible to the public, including, without limitation, an electronic bulletin board, through which an interested entity may promptly obtain pertinent information concerning:

(1) Services provided by the distribution function; and

(2) Any discounted services offered by the distribution function.

(g) With regard to the provision of distribution services, shall not represent that it will treat the provider of last resort function of the utility, or any customer of or provider to the provider of last resort function, differently than it will treat an alternative seller and any customers of and providers to the alternative seller.

(h) Shall not provide the provider of last resort function of the utility, or any customer of or provider to the provider of last resort function, with preferences over any alternative seller, or customers of or providers to an alternative seller, including, without limitation, preferences relating to the terms and conditions of service or pricing, or to the timing of service.

(i) Shall apply any tariff provision that allows for discretion in its application in the same manner to the provider of last resort function of the utility as the distribution function applies the tariff provision to an alternative seller, and the customers of and providers to an alternative seller.

(j) Shall strictly enforce mandatory tariff provisions to the provider of last resort function of the utility.

(k) Shall not condition or otherwise tie the provision of any service or the availability of any discounts, rates, other charges, fees, rebates or waiver of terms and conditions to the taking of any goods or services from the provider of last resort function of the utility.

(l) Shall not give any appearance that a customer or provider will receive preferential treatment if the customer or provider conducts, or will conduct, business with the provider of last resort function of the utility.

(m) Shall make any discount or waiver of all or part of a charge or fee available simultaneously to all market participants.

2. Nothing in this section applies to the joint management services and joint support services of a utility provider of last resort, if such services are not used as a means of, and do not have the foreseeable effect of:

(a) Circumventing the standards of conduct set forth in sections 2 to 34, inclusive, of this regulation;

(b) Discriminating in favor of the provider of last resort function of the utility provider of last resort or against any alternative seller; or

(c) Adversely affecting effective competition.

Sec. 29. 1. A utility provider of last resort:

(a) Shall maintain books, records and accounts for its distribution function and its provider of last resort function in accordance with this section.

(b) Shall keep the books, records and accounts of its distribution function separate from the books, records and accounts of its provider of last resort function.

(c) Shall acquire for its provider of last resort function those distribution services necessary to serve its designated provider of last resort load under the tariff approved by the commission and shall account for all transactions between its distribution function and its provider of last resort function.

2. In accordance with its implementation schedule approved by the commission pursuant to section 22 of this regulation, or upon order of the commission, as appropriate, a utility provider of last resort shall submit to the commission for approval written guidelines consistent with sections 2 to 34, inclusive, of this regulation for allocating revenues and charges between the distribution function of the utility and its provider of last resort function. The guidelines must provide, without limitation, for the provider of last resort function of the utility taking and paying for distribution and transmission services from the distribution function of the utility under the generally applicable tariffs of the distribution function of the utility. Unless the commission otherwise orders, expenses and revenues that are attributable to joint management services and joint support services must be allocated to the distribution function and the provider of last resort function on the basis of a ratio of labor expense that is equal to the proportion that the labor expense directly assignable to the distribution function, or to the provider of last resort function, bears to the total combined labor expense directly assignable to both the distribution function and the provider of last resort function.

3. A utility provider of last resort shall comply with the provisions of subsection 1 not later than June 1, 2001.

Sec. 30. If an alternative seller is selected to provide last resort service, customers receiving last resort service who are not assigned to the alternative seller selected to provide last resort service must be served by a utility provider of last resort under the same terms and

conditions that existed for the provision of last resort service to those customers immediately before the selection of the alternative seller to provide last resort service.

Sec. 31. *Any person may complain to the commission or a provider of last resort in writing, setting forth any act or thing allegedly done or not done by the provider of last resort, or any employee thereof, which is alleged to be in violation of sections 2 to 34, inclusive, of this regulation.*

Sec. 32. 1. *Upon receiving an oral or a written complaint, a provider of last resort shall forthwith refer the complaint to a designated representative of the provider of last resort, who shall:*

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

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

(1) The name of the complainant; and

(2) A detailed report of the facts as set forth in the complaint, including, without limitation:

(I) The relevant dates;

(II) The names of the employees alleged to be involved; and

(III) The details of the claim;

(c) Conduct a preliminary investigation of the complaint; and

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

2. A provider of last resort shall:

(a) For all new, pending and resolved complaints, maintain a log of the complaints filed with the provider of last resort pursuant to this section; and

(b) Make the log available to the commission and the bureau of consumer protection in the office of the attorney general not more than 10 business days after the end of each month.

3. A log maintained by a provider of last resort pursuant to this section must include, without limitation:

(a) A written summary of each complaint; and

(b) A written summary of the manner in which each complaint was resolved or, if the complaint has not been resolved, an explanation of the reason why the complaint is still pending.

Sec. 33. 1. *The commission will investigate any complaint it receives concerning an alleged violation of sections 2 to 34, inclusive, of this regulation.*

2. Upon the request of a complainant who is a current or former employee of a provider of last resort, the commission will maintain the confidentiality of the identity of the complainant until the end of its investigation, or longer if the commission deems that such confidentiality is necessary or appropriate.

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

(a) Order that a hearing be held;

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

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

Sec. 34. After a hearing has been held pursuant to section 33 of this regulation, the commission may, to enforce the provisions of sections 2 to 34, inclusive, of this regulation or any order of the commission relating thereto:

1. For a utility provider of last resort, assess a penalty against the utility pursuant to NAC 704.7919;

2. For any other provider of last resort, assess a penalty against the provider pursuant to NAC 704.79757; and

3. Apply any other appropriate remedy to, or assess any other appropriate penalty against, the utility provider of last resort or other provider of last resort that is available to the commission.

LCB File No. R078-00

NOTICE OF INTENT TO ACT UPON REGULATIONS

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

In Re Investigation of issues to be considered as)
a result of the restructuring of the electric industry) Docket No. 97-8001
(pursuant to NRS 704.965 to 704.990, inclusive).)
_____)

**NOTICE OF HEARING FOR THE ADOPTION OF REGULATIONS
(PROVIDER OF LAST RESORT)
AND NOTICE OF INTENT TO ADOPT**

NOTICE IS HEREBY GIVEN that the Public Utilities Commission of Nevada (“Commission”) will hold a public hearing **at 10:00 a.m. on Wednesday, June 21, 2000**, at the offices of the Commission, 1150 E. William Street, Carson City, Nevada 89701, Hearing Room A, at which time interested persons may appear and be heard. This hearing may continue from day to day as necessary. At this time, the Commission has reserved the morning and afternoon of Wednesday, June 21, 2000 for this hearing. The purpose of this hearing is to receive comments from all interested persons regarding the adoption of a regulation that pertains to Chapter 704 of the Nevada Administrative Code (“NAC”).

The following information is provided pursuant to the requirements of Nevada Revised Statute (“NRS”) 233B.0603:

The Commission is required to adopt a regulation pursuant to the provisions of NRS 704.965 to 704.990, inclusive, which provides for the restructuring of the electric industry. At this time, the Commission proposes to adopt a regulation which concerns the provision of electric services by a provider of last resort (NRS 704.982). The purpose of the proposed regulation is to establish how the Commission will select providers of last resort and the standards that potential providers must meet, and to define the relationship between an electric distribution utility and a provider of last resort. The proposed regulation is available upon request from the Commission.

The provisions of the proposed regulation potentially affect all entities which offer or which will order electric services, as well as all customers of such entities. At this time the Commission cannot quantify either the adverse or beneficial economic effects on the entities affected by the regulation, either immediate or long-term, which may result from the regulation. No adverse economic effects, either immediate or long-term, are expected to inure to the public. The public may experience beneficial economic effects in that the process by which providers of last resort will be selected and the standards they must meet in order to provide service will become standardized.

LCB File No. R078-00

NOTICE OF ADOPTION OF REGULATION

January 8, 2001

Legislative Counsel Bureau
401 Carson Street
Carson City, Nevada 89701-4747

RE: LCB File No. R078-00 (Docket No. 98-7004 of the Public Utilities Commission of Nevada ("Commission"))

Dear Legislative Counsel Bureau:

Enclosed please find the Commission's Provider of Last Resort regulations in LCB File No. R078-00, which were approved by the Commission as permanent regulations at its agenda meeting on November 30, 2000. As per our discussion this afternoon, I have also faxed you copies of the Secretary of State Cover Sheet, the Commission's Order, and the regulation as adopted.

The Commission respectfully requests that this regulation be filed as soon as possible by your office with the Secretary of State in accordance with NRS 233B.075(5). Thereafter, please return a copy to the Commission, bearing the stamp of the Secretary of State, which indicates that it has been so filed. The Commission will then be able to comply with NRS 233B.070(5) which directs the agency to submit a filed-stamped copy to the state library and archives.

Please let me know if you have any questions or concerns. I apologize for any inconvenience the delay in your receipt of these documents may have caused you. I appreciate your assistance in this matter. I can be reached at 687-6085.

Sincerely,

Susan E. Lee
Administrative Attorney to
Commissioner Richard M. McIntire

LCB File No. R078-00

INFORMATIONAL STATEMENT

**LEGISLATIVE REVIEW OF ADOPTED REGULATION
AS REQUIRED BY THE ADMINISTRATIVE PROCEDURES ACT
NRS 233B.066
PUBLIC UTILITIES COMMISSION OF NEVADA
LCB FILE NO. R-078-00
DOCKET NO. 97-8001 (PROVIDER OF LAST RESORT)**

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.

The Provider of Last Resort (“PLR”) regulation in Public Utilities Commission of Nevada (“Commission”) Docket No. 97-8001 was noticed eleven (11) times: April 23, 1998, September 9, 1998, November 20, 1998, February 1, 1999, January 1, 2000, January 18, 2000, February 8, 2000, May 3, 2000, June 28, 2000, August 3, 2000, and August 9, 2000, in the Elko Daily Free Press, Ely Daily Times, Humboldt Sun, Las Vegas Review Journal, Mineral County Independent, Nevada Appeal, Reno Gazette Journal, and Tonopah Times-Bonanza. Additionally, the notice was mailed to county clerks in Reno, Carson City and Las Vegas, Nevada, and all persons who requested inclusion on the Commission’s service list. There was no public response except from the affected organizations discussed in #3 below. A copy of the summary may be obtained by calling the Commission at (775) 687-6001 or (702) 486-2600, or by 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 of persons who:

(a) Attended the workshop:

June 15 and 16, 1998: 28
October 19, 1998: 18
November 8 and 9, 1999: 18
February 1 and 2, 2000: 16
March 2, 3 and 10, 2000: 23
July 24, 27, and August 1, 2000: 13

(b) Testified at the workshop:

June 15 and 16, 1998: 21
October 19, 1998: 7
November 8 and 9, 1999: 14
February 1 and 2, 2000: 14
March 2, 3 and 10, 2000: 18
July 24, 27, and August 1, 2000: 7

- (c) **Attended the hearing:**
October 19, 1998: 18
December 30 and 31, 1998: 20
April 26, 1999: 16
June 21, 2000: 15
September 26, 2000: 20
November 16, 2000: 9

(d) **Submitted to the agency written comments:** Written comments were submitted to the Commission by Avistar, Inc. d/b/a Phaser Advanced Metering Services (“Phaser”), Barrick Goldstrike Mines, Inc. (“Barrick”), Bureau of Consumer Protection (“BCP”), Citizens Energy Services Project (“Citizens Energy”), eMeter Corporation (“eMeter”), Enron Corporation (“Enron”), City of Henderson, Idaho Power Company, International Brotherhood of Electrical Workers Local Union 1245 (“IBEW”), Mandalay Resort Group (“Mandalay”), Nevada Cogeneration Associates #1 and #2 (Nevada Cogen”), Nevada Power Company (“NPC”), Nevada Resort Association, Newmont Gold Company (“Newmont”), Northern Nevada Industrial Energy Users, the Regulatory Operations Staff (“Staff”) of the Commission, Saguaro Power Company (Saguaro”), Shell Energy Services Co., LLC (“Shell”), Sierra Pacific Power Company (“Sierra”), Utility.com, Inc. (“Utility.com”), Utility Consumers Advocate, and Washoe County Senior Law Project (“Senior Law Project”). Legal Briefs were submitted by eMeter, Newenergy, Inc. (“Newenergy”), NPC, Shell, Sierra, Staff, and Senior Law Project.

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 notices placed in the newspapers mentioned in the response to question 1 above, by direct mailings to interested persons on the Commission’s mailing list and by posting of notices at county libraries, courthouses and the Commission’s website.

Appearances were made at the foregoing workshops and hearings by interested persons, including the American Association of Retired Persons, Barrick, BCP, Citizens Energy, Constellation Power, Desert Generation and Transmission, Dynergy, eMeter, Engage Energy, Enron, City of Henderson, Idaho Power Company, IBEW, ITRON, Mandalay, Mount Wheeler Power, Nevada Cogen, Nevada Consumer Advocates, NPC, Nevada Resort Association, Nevada State AFL-CIO, Newenergy, Newmont, Northern Nevada Industrial Energy Users, Phaser, Saguaro, Shell, Sierra, Southern Nevada Water Authority, Staff, Utility.com, Utility Shareholders of Nevada (“Utility Shareholders”), and Senior Law Project.

Written responses were received as set forth in the response to question 2(d) above. Comments were filed by the various participating persons in 17 groupings in response to procedural orders and/or notices issued by the Commission.

The first group of comments were filed in response to specific questions posed by the Commission in Procedural Order No. 3, issued on April 23, 1998. The Commission asked the participating persons to address four groups of preliminary questions: General Questions on PLR Service; Who Should Provide PLR Services; Questions Pertaining to PLR Service if Provided by the Utilities; and Questions Pertaining to PLR Services if Provided by Alternative Sellers. Comments addressing these issues were filed by Barrick, Citizens Energy, Enron, Nevada Cogen, NPC, Nevada Resort Association, Newmont, Saguaro, Sierra, Staff, Utility Consumers Advocate, and Senior Law Project.

Barrick and Newmont filed joint comments. In addition to addressing the Commission's specific questions, the Companies suggested that: (1) affiliates of the incumbent utilities should not be allowed to serve as a PLR without divesting generation and foregoing stranded costs; (2) the PLR should be chosen from among qualified licensees by auction; and (3) the role of PLR should be periodically rotated among qualified and willing providers.

Citizens Energy took the position that there are two primary objectives that should be achieved under any PLR regulation: (1) potentially competitive services to customers who do not choose an alternative seller represents an asset currently held by the vertically integrated utility that must be valued in any transition cost/benefit analysis related to the transition to competition; and (2) whatever process is used to value such potentially competitive services, that process must result in optimizing competition, the outcome of which would ideally be the phasing out of the PLR role as it becomes unnecessary.

Enron addressed the questions posed by the Commission concluding, among other things, that the PLR service should be provided indefinitely, with no predetermined expectation of termination; PLR services should be available to residential and small commercial customers only; a Comprehensive Education Program targeted at residential and small commercial customers should be established; customers requiring PLR services should be split into groups for identification purposes, and one seller should not be required to serve all of the customer groupings; alternative sellers should compete for the opportunity and obligation to provide PLR services using a competitive bid (or auction) process; and the provider of PLR service should be regulated by the Commission and should meet more stringent requirements than those necessary to obtain and maintain a license.

Nevada Cogen and Saguaro filed joint comments. The Companies took the position that the Commission should not prescribe an alternative method for PLR service that would obligate all alternative sellers to provide PLR services.

NPC, in addition to addressing the Commission's specific questions, took the position that customers in Nevada would best be served if the Electric Distribution Utility ("EDU") were appointed to provide PLR service. However, NPC pointed out that such a result was not mandated by AB 366, nor was the Company's conclusion an indication that it would seek to be the PLR.

Nevada Resort Association addressed the questions posed by the Commission concluding, among other things, that the PLR service should truly be a service of last resort and consumers should affirmatively utilize alternative sellers for service; in order to encourage competition, some mechanism should be in place to ensure that consumers are adequately educated; PLR service should be for a predetermined amount of time necessary to choose an alternative seller; types of PLR service should vary between customer groups; the public interest would not be served by designating utility affiliates as the PLR; a bidding approach should be used to grant PLR status; all licensed alternative sellers should be eligible to serve as the PLR;

the requirements should not be more stringent than licensing requirements; and after a transition period, PLR customers should be required to elect an alternative seller and move out of the PLR.

Sierra, in addition to addressing the Commission's specific questions, concluded that customers would be benefited by the distribution utilities initially being selected as to provide PLR service, and that such a designation would provide the simplest, most cost effective transition to competition in the Nevada electric industry. Sierra took the position that the provider of PLR services should be viewed as a transitional entity, and should be providing service to a very limited number of customers.

Staff, in addition to addressing the Commission's specific questions, recommended that the Commission use a balloting and assignment process as allowed by NRS 704.982(2). Under this process, alternative sellers would apply to become a "common carrier." The common carrier would be eligible for placement on a ballot used by customers to select their retail provider. Customers failing to choose would be then assigned to one of the common carrier alternative sellers. Alternative sellers not part of the common carrier class could be chosen by customers as a "write-in" on their ballot. Under this process, all customers would be required to participate in the potentially competitive market place, and therefore, no PLR should be necessary.

Utility Consumers Advocate, in addition to addressing the Commission's specific questions, took the position that residential and small commercial customers would not be attractive energy service accounts to alternative sellers if existing horizontal and vertical market power are not mitigated; unbundled transmission costs are loaded into distribution; duplicative metering and billing costs were not discouraged by the regulatory environment; transition costs were inappropriately calculated and recovered; and smaller customer must operate as individual buying units. Utility Consumers Advocate also stated that the Commission's use of the word "non-chooser" to describe customers who fail to select an alternative seller is misleading because in some cases a customer may fail to choose an alternative seller because there are no alternative sellers to choose from. Utility Consumers Advocate suggested two regulatory actions in order to ensure that large numbers of residential and small commercial customers are not consigned to the PLR: (1) PLRs should be required to offer more than one energy portfolio; and (2) "opt-out" provisions should be developed to enable local governments to compete for PLR status in the future.

Senior Law Project, in addition to addressing the Commission's specific questions, stated that the competitive system should be structured to reduce the need for PLR service by prohibiting alternate providers from refusing service to persons because of bad credit, low income, small loads or geographic location,. The Senior Law Project argued that such structuring would be in conformity with the "consumer bill of rights" codified at NAC 704.303 through 704.390.

The second group of comments were filed in response to a request by the Commission made at a duly-noticed Workshop held on June 15 and 16, 1998. The Commission asked NPC and Sierra to: (1) provide additional information on costs of alternative proposals for PLR service in the event that the utility was not selected as the PLR, specifically, identifiable costs for an auction model of PLR as proposed by Enron, and a ballot and assignment PLR model as proposed by Staff, (2) additional information on issues pertaining to the phase-in alternative PLR proposed by NPC and Sierra; and (3) information on the Year 2000 ("Y2K") issue and its potential affect, if any, on the introduction of retail competition.

NPC's response stated the importance of distinguishing between the costs that may be borne by PLR customers and the costs that would be borne by all customers. NPC also stated that an estimated \$7 million dollars could be avoided initially if the PLR remains with the EDU. NPC maintained that if it were not the PLR, under either the auction or ballot alternatives, costs in addition to those associated with moving to retail competition would be incurred. In addition, NPC declared its support for customer education, acknowledging that the process would likely be costly and take time. NPC also discussed potential jurisdiction issues regarding Commission jurisdiction and FERC jurisdiction.

Sierra concluded that: (1) transitional PLR service could be provided most efficiently by the EDU; (2) the preferred approach to transferring non-choosing customers to alternative sellers would be through balloting; and (3) a transition period would benefit customers as well as relieve the burden on Sierra caused by conflicting simultaneous demands on resources at the start of retail choice. Sierra asked the Commission to note the fact that Sierra did not currently have sufficient internal expertise and resources to implement all of the proposed changes simultaneously.

Enron also filed comments at this time, discussing Enron's view of how transitional standard customers should be identified.

The third group of comments were filed in response to a Notice of Workshop and Notice of Hearing for the Adoption of Regulations issued by the Commission on September 9, 1998. The BCP, Henderson, NPC, Senior Law Project, Sierra and Staff filed comments.

The BCP stated that it strongly supported the proposal to seek a per-customer fee from bidders for PLR service; the effort to obtain multiple providers of last resort service in each distribution utility's service territory; and the proposal requiring that PLRs comply with the Consumer Bill of Rights. However, the BCP expressed concerns regarding the issues of universal last resort service, customer privacy, a rate cap, the term of last resort service, how the proceeds from the per-customer fee would be used, procedural and bid specifications, market power, and the applicability of the renewables portfolio requirement.

The City of Henderson requested that the Commission provide for regulations which would empower the City to consider participation as a PLR.

NPC's position was that the transition to competition would be smoother for customers if an affiliate of the EDU were chosen as the sole PLR for the transition period.

Senior Law Project supported providing PLR services through a bidding process, but disagreed that PLR services should be divided into categories based on customers who do not choose an alternative seller and customers who are unable to secure an alternative seller. Senior Law Project also discussed what it perceived as problems associated with the Universal PLR rule as proposed, and offered suggestions on how the Commission could help "payment-troubled" customers.

Sierra took the position that the proposed regulations were inconsistent with the provisions of NRS 704.982, and suggested ways in which the proposed rule could be changed.

Staff recommended changes to the language of specific portions of the proposed regulation.

The fourth group of responses were legal briefs filed in response to Procedural Order No. 6. issued by the Commission on October 20, 1998. The Commission asked the participating interested persons to address three legal questions: (1) whether an EDU, if designated a PLR, is

required under NRS 704.982 to create an affiliate to perform this service; (2) whether the Commission can authorize subsidization of the costs associated with serving customers with less than satisfactory credit; and (3) whether Staff's proposed schedule for enrollment into PLR service allowed for a smooth transition into PLR service. Legal briefs were filed by Enron, NPC, Senior Law Project, Sierra, and Staff.

Enron supported developing an enrollment schedule for PLR service, but suggested extending the actual date to permit commencement of PLR service by an alternative seller from the statutory deadline of December 31, 1999 to October 1, 2000.

NPC concluded that: (1) NRS 704.982(2) (Sec. 45 of AB 366) does not require, that when the Commission directly assigns customers to a utility, the utility must form a separate affiliate to provide last resort service; (2) there is no specific statutory authority which would allow the Commission to establish subsidized rates for those with less than satisfactory credit; and (3) Staff's proposed schedule for PLR enrollment was too expedited.

Senior Law Project argued that: under NRS 704.982(2) the Commission has the authority to designate any entity, including a distribution utility, to be a PLR without requiring the distribution utility to form an affiliate to perform that function; and the Commission has the legal authority to subsidize costs for some customers for some purposes. Senior Law Project also expressed concern about creating a customer class to be served under that system based on arrearages or credit rating.

Sierra concluded that: (1) based on the statutory definitions of "electric distribution utility" and "alternative seller," these entities are not required to create an affiliate to provide the PLR service; and (2) Staff's proposed schedule for enrollment into PLR service could create two difficulties: (a) the release of customer information to all pre-qualified bidders, and (b) the proposed "accelerated" schedule would result in customers having less time to observe the market before choosing an alternative seller, which could lead to an erosion in public confidence.

Staff maintained that: (1) NRS 704.982(4) requires that, if the Commission designates a vertically integrated electric utility ("VIEU") as the PLR, the VIEU must create an affiliate through which to provide the PLR service; Staff concluded that the only difference between a VIEU and an EDU is that the EDU is a successor in interest to the VIEU, and therefore, is bound by the same obligations as the VIEU; (2) NRS 704.982(2) requires that, whether through direct assignment or competitive bidding, if an alternative seller is selected as a PLR, it must create an affiliate to provide the service; and (3) NRS 703 and 704 do not grant the Commission the explicit authority to subsidize costs associated with serving customers with less than satisfactory credit.

The fifth group of comments were filed in response to a Notice of Request for Comments and Notice of Workshop issued by the Commission on October 5, 1999. Comments were filed by Barrick, eMeter, Mandalay, NPC, Newmont, Senior Law Project, Sierra, Staff, and Utility Shareholders.

Barrick's comments focused on the specific language of several sections of the proposed regulation.

eMeter generally supported the proposed regulation, recommending two language changes to specific sections.

Mandalay supported the regulation as drafted, emphasizing the importance of separating the potentially competitive service components (generation and metering) from the

noncompetitive PLR function, as well as the importance of the minimal code of conduct rules intended to separate the Distribution Function Operations from the PLR Function Operations.

NPC and Sierra filed joint comments. The Companies contended that the proposed regulation contradicted SB 438, and their comments were intended to get the proposed regulation “back on track.”

Newmont expressed its general support of the proposed regulation, noting its particular support for the proposed “code of conduct” rules intended to govern the operating relationship between the PLR, a provider of potentially competitive services, and the EDU, the non-competitive service provider.

Senior Law Project stated that the proposed regulation did not comprehensively define Last Resort Services as required.

Staff maintained that SB 438 establishes the EDU as the PLR and deems PLR service to be non-competitive prior to July 1, 2001. Staff stated that because much of the proposed regulation requires the establishment of separate organizations, it has the effect of imposing restrictions on internal transactions as if the PLR and EDU were affiliates, which may be in conflict with the intent of SB 438. Staff concluded that after June 30, 2001, the PLR must be a separate affiliate. Staff also suggested changes to the proposed language.

Utility Shareholders comments focused on the specific language of several sections of the proposed regulation.

The sixth group of comments were filed in response to a Notice of Hearing for the Adoption of Regulations issued by the Commission on November 20, 1998. Comments were filed by BCP, Enron, NPC, Senior Law Project, Sierra, and Staff.

The BCP stated that there was no way of knowing whether the PLR proposal would work or not, and that the Commission must remain flexible and develop a contingency plan in the event that the regulation did not lead to the hoped for result. The BCP also argued that, if there are no reasonable bidders and the Utility Distribution Company becomes the PLR, the rules regarding other aspects of Nevada’s deregulated industry may need to be reexamined. Finally, the BCP addressed market structure issues related to the transitional PLR, and issues regarding universal and transitional PLRs.

Enron stated its general support for the adoption of the PLR rule, but expressed concern that the proposed auction schedule was unnecessarily ambitious. Enron suggested a nine-month extension to the schedule.

NPC reiterated its position that the public interest would not be served by initially prescribing an “alternative method” for PLR service, nor by beginning the process of accepting bids. NPC restated its contention that the transition to retail open access would be more difficult if the EDU were not designated as the PLR at the onset of competition. NPC concluded that an affiliate of the EDU should be the sole provider of PLR service for at least a one-year transition period, providing both universal and transitional last resort services. NPC also stated that it was unnecessary to determine at that point what process should be used at the end of the transition period to designate the PLR.

Senior Law Project argued that two PLR systems (a transitional PLR and a universal PLR) would hinder rather than encourage competition. Senior Law Project also reiterated its position that separating customers into categories based on customers who do not choose a PLR and customers with less than satisfactory credit would be undesirable, unnecessary, potentially contrary to statute, and discriminatory.

Sierra expressed concern that the proposed PLR regulation would not facilitate a smooth market transition nor build consumer confidence, and recommended that the Commission adopt a regulation emphasizing consumers' interests by developing a transition to retail competition that builds public confidence and avoids costly processes that do not provide offsetting consumer benefits. Sierra suggested several principles to serve as a guide in achieving this goal.

Staff's comments were limited to changes to language in specific sections of the proposed regulation.

Pursuant to the Chairman's direction at the Hearing held on December 30, 1998, on January 29, 1999, Staff filed with the Commission compromise provisions to the regulation addressing sub grouping of customers for the PLR auction. The revisions represented a compromise between Staff and the BCP.

The seventh group of comments were filed in response to a Notice of Hearing for the Adoption of Regulations issued by the Commission on February 1, 1999. Joint comments were filed by Sierra and NPC. The Companies opposed the proposed rule generally as to its approach and particularly as to its details. The Companies expressed the opinion that the proposed regulation was inconsistent with the legislative intent of AB 366 in that it hindered customer choice by selling customers to the highest bidder. The Companies offered some guiding principles with the hope that they would be used by the Commission in the PLR decision process.

The eighth group of comments were filed in response to a Notice of Hearing for the Adoption of Regulations issued by the Commission on March 16, 1999. Comments were filed by Barrick, BCP, Newmont, NPC, and Sierra.

Barrick and Newmont ("the Mines") filed joint comments. The Mines noted that it appeared that they would likely become customers of the Sierra affiliated PLR until they migrated their loads to other alternative sellers. The Mines also stated that due to the introduction of SB 438, transitional service might need to be reconsidered. The comments focused on suggested modifications to the proposed rule to accommodate the Mines becoming customers of the PLR.

The BCP recognized that SB 438 might change the PLR framework and proposed that the Commission postpone adopting the rule as currently written.

Sierra and NPC filed joint comments. The Companies expressed concern that the proposed regulation was not commercially viable and there existed a risk of failure with respect to the PLR performance. The Companies also stated that potential PLRs not affiliated with the Companies may avoid performing the role of PLR, and that the Companies would be compelled to perform the role of PLR indefinitely to serious financial detriment.

The ninth group of comments were filed in response to Procedural Order No. 11. Procedural Order No. 11 was issued in response to Sierra's and NPC's joint comments discussed in the paragraph above. The Commission sought comment on whether the PLR service, as currently proposed, would likely be commercially unviable or financially detrimental for providers, or customers, or both. Comments were filed by Barrick, Enron, and Staff.

Barrick acknowledged that, in the absence of thoughtful management, the PLR may not be commercially viable. However, Barrick concluded that it was premature to reach such a

conclusion at that time. Barrick suggested that the terms and conditions of the PLR tariff could mitigate the risk of customer departure, and the rate regulation protocols of the PLR could mitigate somewhat the risks arising from corporate restructuring.

Enron continued to support the proposed regulation and stated that the Companies concerns were driven in large measure by issues falling outside the scope of the proposed regulation.

While Staff agreed with the general observation that the financial structure of a company providing unbundled retail electric services would differ from that of a traditional vertically integrated monopoly, Staff expressed the opinion that the Companies claims were not supported by actual experience in retail markets.

The tenth response was filed pursuant to questions raised at the Workshop held on September 2, 1999, NPC and Sierra filed a legal brief in support of its position that the EDU could self-provide electric service.

The eleventh group of comments were filed in response to a Notice of Request for Comments and Notice of Workshop issued by the Commission on January 12, 2000. Comments were filed by eMeter, Newmont, NPC, Shell, Sierra, and Senior Law Project.

eMeter noted that the proposed regulation was not fully consistent with previous suggestions and comments submitted by eMeter, but recognized that the time had come for the Commission to finalize its decision in the matter.

Newmont stated that it continued to generally support the proposed regulation with certain exceptions pertaining to the sections governing the standards of conduct for the PLR.

NPC and Sierra filed joint comments. The Companies stated that the proposed regulation had been only slightly modified from the previous version, and the Companies position as stated in their last comments remained unchanged. The Companies specifically referenced their position on the need to include the PLR shortfall calculation, and their opposition to the proposed Standards of Conduct and requirement that the utilities divest their metering and generation assets.

Shell expressed its general support of the proposed regulation. However, Shell stated that all potentially competitive services should be obtained by the distribution utilities from alternative suppliers for the first phase of PLR service.

Senior Law Project focused on what it characterized as “public goods” services, such as energy usage reduction programs and rate relief programs for lower income Nevadans. Senior Law Project stated that the Commission had not yet discussed how such services could and/or should be associated with PLR services.

The twelfth group of comments were filed in response to a Notice of Hearing for the Adoption of Regulations issued by the Commission on January 18, 2000. Comments were filed by Phaser, Shell, and Utility.com.

Phaser and Utility.com filed joint comments generally supporting the proposed regulation with a few exceptions.

Shell supported the proposed framework for PLR services with the exception that PLR service should be eliminated as a distribution utility function as soon as possible after the implementation of retail choice.

The thirteenth group of comments were filed in response to a Notice of Workshop, Request for Comments and Notice of Hearing for the Adoption of Regulations issued by the Commission on February 8, 2000. Comments were filed by Barrick, BCP, Mandalay, NPC, Newmont, Northern Nevada Industrial Energy Users, Shell, Sierra, and Staff.

Barrick had no specific comments on the most recent draft of the proposed rules, but reserved the right to comment at future proceedings.

BCP offered additional language to the proposed regulation which it stated would help to clarify which tariff is to be used by the PLR in obtaining distribution service to serve its load.

Mandalay stated that the latest version of the proposed regulation had struck two key provisions pertaining to the separation of potentially competitive service components (generation and metering) from the noncompetitive PLR function, and the importance of minimal code of conduct rules.

NPC and Sierra filed joint comments. The Companies discussed what they characterized as two “overwhelming conditions” on which the Companies position, that the standards of conduct should not be adopted at that time, was based. First, the Companies stated that they would seek to terminate their PLR responsibilities as soon as possible due to recent decisions which the Companies stated limited the recovery of expenditures, as well as serious concerns about the financial viability of the PLR. Second, the Companies stated that due to current serious financial constraints, the Companies could not spend additional money on the implementation of restructuring without assured cost recovery.

Newmont offered comments pertaining to the language of specific sections of the proposed regulation.

Northern Nevada Industrial Energy Users expressed concern that absent a well defined and nondiscriminatory power source allocation methodology allowing the EDU/PLR to self provide generation serve, the ability of alternative sellers to compete might be reduced.

Shell had no additional comments.

Staff’s comments focused on the specific language of sections in the proposed regulation.

The fourteenth group of comments were filed in response to a Notice of Hearing for the Adoption of Regulations and Notice of Intent to Adopt issued by the Commission on May 3, 2000. Comments were filed by Barrick, BCP, NPC, Sierra, and Shell.

Barrick suggested that language regarding a prohibition on exclusionary conduct by an electric distribution utility that had been removed, be restored with some modifications.

BCP suggested new sections be added regarding metering options.

NPC and Sierra filed joint comments. The Companies suggested modifications which would allow the Companies 90 days to prepare the required filing detailing the implementation schedule for the proposed regulation.

Shell offered suggestions and modifications to specific sections of the proposed regulation.

The fifteenth group of comments were filed in response to a Notice of Workshop and Request for Comments issued by the Commission on June 28, 2000. Some of the interested person also filed legal briefs in response to a Procedural Order issued on the same day. The Procedural Order asked the interested persons to address five issues: (1) whether the Commission has sufficient authority to adopt a regulation requiring the transfer of metering facilities between the PLR and alternative sellers; (2) could the Commission require that the PLR

and/or the EDU to offer metering services to alternative sellers on a non-discriminatory basis; (3) by what mechanism could or should the Commission determine a just and reasonable rate for the transfer of metering facilities or services; (4) to what extent may an EDU in its role as a PLR reduce the total rate for any class of customers or employ innovative pricing; and (5) to what extent, if any, is a PLR permitted to encourage customers to use its services or those of an affiliate, or to discourage customers from using competitors. Comments and legal briefs were filed by eMeter, NPC, Shell, Sierra, and Staff. Newenergy filed a legal brief.

eMeter and Shell filed a joint brief and comments. eMeter and Shell concluded that: (1) the Commission has the authority to adopt a regulation requiring the transfer of metering facilities between the EDUs and alternative sellers; (2) through June 30, 2001, to the extent that the EDUs retain the PLR function, the EDUs should be permitted to provide metering service; on and after July 1, 2001, when the EDUs are relieved of the PLR function, the EDUs should possess no metering facilities or equipment; (3) when metering facilities and equipment are transferred, they should be sold at auction and the proceeds applied to the depreciated book value of the assets; (4) legally the EDU PLR has the ability to reduce PLR rates and employ innovative pricing, however, public policy requires that the EDU PLR must be precluded from reducing rates for purposes likely to have a negative impact on the development of the competitive market, or when reductions are effectuated for anti-competitive purposes; and (5) because the PLR is a safety net, the use of any method either to encourage customers to remain PLR customers, or to discourage such customers from switching to alternative sellers, is contrary to the intent of the legislature.

NPC and Sierra filed a joint brief and comments. The Companies concluded that: (1) the appropriate proceeding in which to deal with the further use or transfer of ownership of meters is in the recoverable cost application to be filed by the Companies pursuant to NRS 704.983; (2) the Commission does not have authority to require that the PLR and/or the EDU offer metering services to alternative sellers on a non-discriminatory basis; (3) no comment; (4) there are no statutory constraints on the Utilities capacity to seek Commission authority to reduce rates for PLR service to a particular customer class; and (5) there is no statutory prohibition on the PLR taking steps to retain customers through ratemaking, marketing or other means.

Staff concluded that: (1) the Commission has the authority to require the transfer of metering facilities between the PLR and alternative sellers; (2) the Commission cannot require that the PLR and/or EDU offer metering services to alternative sellers on a non-discriminatory basis; (3) the Commission should conduct rulemakings and/or hold hearings to determine what a just and reasonable rate would be for the transfer of metering facilities and services; (4) the PLR may apply to reduce rates, but such an application should be evaluated by the Commission for any unfair or uncompetitive effects; and (5) a PLR may not encourage customers to use its services or those of an affiliate, or discourage customers from using competitors.

Newenergy addressed only to what extent may an EDU in its role as a PLR reduce the total rate for any class of customers or employ innovative pricing. Newenergy concluded that an EDU serving as a PLR has the right to petition for a decrease in rates for any customer class, however, Commission approval would have to ensure that granting the petition would not harm the successful implementation of competition.

On August 1, 2000, a Stipulation regarding the regulation was filed by the participating parties.

The sixteenth group of comments were filed in response to a Notice of Intent to Act Upon a Regulation and Notice of Rescheduled Hearing for the Adoption of Regulations issued by the Commission August 8, 2000. Comments were filed by IBEW, NPC, Sierra, and Staff.

IBEW expressed serious concern with regard to the Business Code of Conduct portion of the proposed regulation, stating that it would have a serious impact on the electrical consumers in Nevada as well as employees at Sierra Pacific Resources.

NPC and Sierra filed joint comments. The Companies suggested a change regarding the phase-in of last resort service extending the time that the PLR was required to submit proposed tariffs to the Commission.

Staff suggested some corrections to language in the proposed regulation.

The final comments were filed in response to a Notice of Intent to Act Upon a Regulation and Notice of Hearing for the Adoption of Regulations issued by the Commission on September 28, 2000. NPC and Sierra filed joint comments. The Companies summarized the comments they had previously offered on the regulation.

Transcripts of the workshops and hearings, copies of the comments and this summary are on file and available for public viewing at the offices of the Commission. A copy of the summary may be obtained by calling the Commission at (775) 687-6001 or (702) 486- 2600, or by writing to the Commission at: 1150 East William Street, Carson City, Nevada 89701 and 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.

Substantive changes were made to the proposed regulation before it was adopted by the Commission on November 30, 2000 at a duly-noticed general session.

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 intermediate and long-term effects.**

The provisions of the proposed regulation potentially affects all alternative sellers who provide electric serves to end-use customers in Nevada, especially those that will supply provider of last resort services, as well as all customers of such alternative sellers in Nevada. At this time the Commission cannot quantify either the adverse or beneficial economic effects on the entities affected by the regulation, either immediate or long-term, which may result from the regulation.

The Commission does not anticipate any adverse intermediate adverse economic effect on the public. The long-term economic effect on the public is expected to be beneficial.

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

The Commission does not anticipate any additional costs associated with the 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.

The Commission is not aware of any overlap or duplication by this regulation of any regulation of any other local, state or federal government agencies.

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

The Commission is not aware of any provision in this regulation that is more stringent than a federal regulation which regulates the same activity.

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.

The Commission does not anticipate any new fees or an increase in any existing fees as a result of the adoption of this regulation.