

**ADOPTED REGULATION OF THE PUBLIC**

**UTILITIES COMMISSION OF NEVADA**

**LCB File No. R124-01**

Effective December 14, 2001

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

AUTHORITY: §§1-33, section 26.75 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3233 (NRS 702.170).

**Section 1.** Chapter 702 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 33, inclusive, of this regulation.

**Sec. 2.** *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Calendar quarter” has the meaning ascribed to it in section 26.15 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3231 (NRS 702.020).*

**Sec. 4.** *“Commission” means the public utilities commission of Nevada.*

**Sec. 5.** *“Fund” has the meaning ascribed to it in section 26.25 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3231 (NRS 702.040).*

**Sec. 6.** *“Housing division” means the housing division of the department of business and industry.*

**Sec. 7.** *“Person” has the meaning ascribed to it in section 26.4 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3231 (NRS 702.070).*

**Sec. 8.** *“Retail customer” has the meaning ascribed to it in section 26.5 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3231 (NRS 702.090).*

**Sec. 9.** *“Universal energy charge” has the meaning ascribed to it in section 26.55 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3232 (NRS 702.100).*

**Sec. 10.** *“Welfare division” means the welfare division of the department of human resources.*

**Sec. 11.** *As used in sections 11 to 33, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 12, 13 and 14 of this regulation have the meanings ascribed to them in those sections.*

**Sec. 12.** *“Municipal utility” means a municipal utility that is required to collect the universal energy charge from retail customers pursuant to section 26.7 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3232 (NRS 702.160).*

**Sec. 13.** *“Public utility” means a public utility that is required to collect the universal energy charge from retail customers pursuant to section 26.7 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3232 (NRS 702.160).*

Sec. 14. *“Regulatory operations staff” means the regulatory operations staff of the commission.*

Sec. 15. 1. *For the purposes of section 26.7 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3232 (NRS 702.160), and sections 11 to 33, inclusive, of this regulation, “any therm of natural gas used as a source of energy to generate electricity” means any therm of natural gas that is:*

*(a) Delivered to an electric generating plant or unit; and*

*(b) Consumed to generate electricity at that plant or unit by being used as a source of energy for:*

*(1) An engine, turbine or other device which drives an electric generator; or*

*(2) A boiler, heat recovery steam generator or other device whose thermal output is used to generate electricity.*

FLUSH *The term does not include any therm of natural gas which is delivered to an electric generating plant or unit and which is consumed exclusively as a source of energy to support an activity other than the generation of electricity occurring at or adjacent to that plant or unit, including, without limitation, production of steam or thermal energy which is used exclusively in heating, cooling or industrial processes that do not generate electricity.*

*2. If a person both consumes therms of natural gas as a source of energy to generate electricity and consumes other therms of natural gas exclusively as a source of energy to support an activity other than the generation of electricity, the person shall apply to the commission for approval to use a methodology to allocate the therms of natural gas consumed by the person between:*

*(a) Those therms of natural gas consumed as a source of energy to generate electricity;  
and*

*(b) Those therms of natural gas consumed exclusively as a source of energy to support an activity other than the generation of electricity.*

**Sec. 16. 1.** *For the purposes of section 26.7 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3232 (NRS 702.160), and sections 11 to 33, inclusive, of this regulation, “any kilowatt-hour of electricity used in industries utilizing electrolytic-manufacturing processes” means any kilowatt-hour of electricity that is:*

*(a) Delivered to a manufacturing facility at which one or more electrolytic processes are used; and*

*(b) Actually consumed directly in the operation of the electrolytic processes at that manufacturing facility.*

**2.** *As used in this section:*

*(a) “Electrolytic process” means a process in which electricity is passed through an ionized solution or molten metallic salt to complete an electric circuit between two electrodes.*

*(b) “Manufacturing facility” means a factory or other physical location in which tangible personal property is created, produced or processed for the purpose of physically incorporating the tangible personal property into a product to be sold, including, without limitation, any operation which results in the creation or production of tangible personal property or which is a step in a process or series of operations resulting in the creation or production of tangible personal property. The term does not include any factory or other*

*physical location in which the activities constitute merely the repair or reconditioning of tangible personal property to refit it for the use for which it was originally produced.*

**Sec. 17. 1.** *For the purposes of section 26.7 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3232 (NRS 702.160), and sections 11 to 33, inclusive, of this regulation, “multiple retail customers under common ownership and control” means a combination of two or more retail customers in which a single person possesses:*

*(a) Directly or indirectly, a legal ownership interest of at least 5 percent in each of the retail customers; and*

*(b) Control over each of the retail customers.*

**2.** *As used in this section, “control” means the possession, direct or indirect, of the power and authority to direct the management and major policies of a retail customer, whether through ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services or otherwise, unless the power and authority is the result of an official position with or corporate office held by the retail customer. Mere management of or administrative authority over routine operations does not, without more, constitute control.*

**Sec. 18. 1.** *The United States or an agency or instrumentality of the United States is not required to pay the universal energy charge.*

**2.** *An Indian tribe, Indian band or group of Indians that is recognized by the United States as possessing a government-to-government relationship with the United States is not required to pay the universal energy charge.*

**3.** *An enrolled member of an Indian tribe, Indian band or group of Indians that is recognized by the United States as possessing a government-to-government relationship with*

*the United States is not required to pay the universal energy charge on any therm of natural gas or kilowatt-hour of electricity that is delivered to and consumed on the reserved lands of that Indian tribe, Indian band or group of Indians.*

**Sec. 19.** *1. In calculating the universal energy charge on each therm of natural gas, 3.30 mills equals \$0.0033.*

*2. In calculating the universal energy charge on each kilowatt-hour of electricity, 0.39 mills equals \$0.00039.*

**Sec. 20.** *1. The amount of the universal energy charge due from a retail customer must be based on the quantity of natural gas and the quantity of electricity as measured by a meter read on a date within the calendar quarter.*

*2. The bill from a public utility, municipal utility or other provider or transporter of natural gas or electricity is the primary evidence of the metered quantity of natural gas, the metered quantity of electricity and the date on which the meter was read.*

**Sec. 21.** *1. Except as otherwise provided in subsection 2, a public utility or municipal utility shall use the phrase “Universal Energy Charge” to set forth the universal energy charge as a separate item or entry on the bill of each retail customer as required by section 26.7 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3232 (NRS 702.160).*

*2. If it is not reasonably possible for a public utility or municipal utility to use the phrase “Universal Energy Charge” to set forth the universal energy charge as a separate item or entry on the bill of each retail customer, the public utility or municipal utility may apply to the commission for approval to use an alternative phrase.*

*Sec. 22. Any money remitted to the commission pursuant to sections 26.7 and 26.75 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at pages 3232 and 3233, respectively (NRS 702.160 and 702.170), and sections 11 to 33, inclusive, of this regulation must be remitted to the commission by a money order, bank draft or check that is made payable to the commission.*

*Sec. 23. Not later than 30 calendar days after the end of each calendar quarter, each public utility and municipal utility shall:*

- 1. Complete a utility collection report on the appropriate form obtained from the commission;*
- 2. Submit the completed utility collection report to the commission; and*
- 3. Remit with the completed utility collection report the amount due from retail customers for the universal energy charge for that calendar quarter.*

*Sec. 24. 1. Except as otherwise provided in subsection 2, a public utility is required to pay the universal energy charge on any therm of natural gas or any kilowatt-hour of electricity that the public utility consumes in conducting its utility business.*

*2. A public utility is not required to pay the universal energy charge on:*

*(a) Any kilowatt-hour of electricity consumed by the public utility at an electric generating plant or unit.*

*(b) Any therm of natural gas consumed by the public utility at an electric generating plant or unit.*

*(c) Any therm of natural gas consumed by the public utility to directly support the delivery of natural gas to retail customers, including, without limitation, any therm of natural gas consumed by the public utility for pressure regulation.*

*3. Except as otherwise provided in section 26 of this regulation, not later than 30 calendar days after the end of each calendar quarter, a public utility that is required to pay the universal energy charge pursuant to this section shall:*

*(a) Complete a retail customer report on the appropriate form obtained from the commission;*

*(b) Submit the completed retail customer report to the commission; and*

*(c) Remit with the completed retail customer report the amount due from the public utility for the universal energy charge for that calendar quarter.*

**Sec. 25.** *Except as otherwise provided in section 26 of this regulation, not later than 30 calendar days after the end of each calendar quarter, each retail customer which does not use the distribution services of a public utility or municipal utility to acquire natural gas or electricity that is subject to the universal energy charge shall:*

*1. Complete a retail customer report on the appropriate form obtained from the commission;*

*2. Submit the completed retail customer report to the commission; and*

*3. Remit with the completed retail customer report the amount due from the retail customer for the universal energy charge for that calendar quarter.*

**Sec. 26.** *1. A single retail customer or multiple retail customers under common ownership and control may prepay in the amount of \$25,000 the maximum universal energy charge for any calendar quarter. To prepay the maximum universal energy charge for any calendar quarter, not later than 15 calendar days before the first day of the calendar quarter, the single retail customer or multiple retail customers under common ownership and control must:*



*(a) Complete a prepayment report on the appropriate form obtained from the commission;*  
*(b) Submit the completed prepayment report to the commission; and*  
*(c) Remit with the completed prepayment report the maximum universal energy charge in the amount of \$25,000.*

*2. If the single retail customer or multiple retail customers under common ownership and control prepay the maximum universal energy charge for the calendar quarter in accordance with this section:*

*(a) The commission will provide notice to each affected public utility or municipal utility and direct that each such utility not collect the universal energy charge from each such retail customer for that calendar quarter; and*

*(b) Each such retail customer:*

*(1) Is excused from further liability for the universal energy charge for that calendar quarter; and*

*(2) Is not entitled to a refund of any portion of the prepaid \$25,000 on the basis that the actual consumption of natural gas and electricity by the single retail customer or multiple retail customers under common ownership and control did not result in liability for the maximum universal energy charge for that calendar quarter.*

*3. If a single retail customer or multiple retail customers under common ownership and control have prepaid the maximum universal energy charge for the current calendar quarter but do not timely prepay the maximum universal energy charge for the next calendar quarter, the commission will provide notice to each affected public utility or municipal utility and direct that each such utility collect the universal energy charge from each such retail customer*

*beginning with the calendar quarter for which the maximum universal energy charge was not timely prepaid.*

*Sec. 27. 1. Except as otherwise provided in section 26 of this regulation, a single retail customer or multiple retail customers under common ownership and control that have paid the universal energy charge may:*

*(a) Request a refund of any amount paid for the universal energy charge which exceeds \$25,000 for a calendar quarter;*

*(b) Request a refund of any amount paid for the universal energy charge on:*

*(1) Any therm of natural gas used as a source of energy to generate electricity; or*

*(2) Any kilowatt-hour of electricity used in industries utilizing electrolytic-manufacturing processes; or*

*(c) Request a refund of the universal energy charge for any other lawful reason.*

*2. To request a refund pursuant to this section, not later than 90 calendar days after the end of the calendar quarter for which the refund is requested, the single retail customer or multiple retail customers under common ownership and control must:*

*(a) Complete a request for refund on the appropriate form obtained from the commission; and*

*(b) Submit the completed request for refund to the commission and include with the completed request for refund all the following:*

*(1) A statement setting forth the amount of the refund requested based upon quantities of natural gas and electricity billed during the calendar quarter.*

*(2) A statement setting forth all grounds upon which the request for refund is based.*

*(3) All evidence relied upon to support the request for refund, including copies of bills, documents and affidavits, evidence of full payment of bills and any other information or documentation requested by the commission.*

*(4) A signed release authorizing the commission or its regulatory operations staff to request and receive a payment history for the affected accounts for the relevant calendar quarter or calendar quarters from any public utility, municipal utility or other provider or transporter of natural gas or electricity.*

*(5) A statement, signed under penalty of perjury, that:*

*(I) The request for refund is made in good faith;*

*(II) The person submitting the request for refund is authorized to make the request for refund on behalf of the single retail customer or multiple retail customers under common ownership and control; and*

*(III) The request for refund does not duplicate or seek a refund on the same ground as or of the same payment as any previously submitted request for refund, unless the request for refund is expressly identified as an amendment of or otherwise relates directly to a previously submitted request for refund.*

*3. If a request for refund is submitted properly, the commission will:*

*(a) Review and make a determination on the request for refund;*

*(b) Certify the amount of the refund, if any; and*

*(c) Provide a written copy of its determination and any certification to:*

*(1) The person submitting the request for refund on behalf of the single retail customer or multiple retail customers under common ownership and control; and*

*(2) The welfare division to process payment of the refund, if any.*

*4. All refunds certified by the commission must be paid from the fund without interest.*

*Sec. 28. 1. A single retail customer or multiple retail customers under common ownership and control which claim that they are exempted from paying the universal energy charge may make a request for exemption.*

*2. To make a request for exemption, the single retail customer or multiple retail customers under common ownership and control must:*

*(a) Complete a request for exemption on the appropriate form obtained from the commission; and*

*(b) Submit the completed request for exemption to the commission and include with the completed request for exemption sufficient evidence, legal support and information to support the request for exemption.*

*3. The single retail customer or multiple retail customers under common ownership and control have the burden of proving that they are entitled to the exemption under Nevada law.*

*4. If a request for exemption is submitted properly, the commission will:*

*(a) Review and make a determination on the request for exemption as soon as practicable;*

*(b) Certify the exemption, if any; and*

*(c) Except as otherwise provided in this paragraph, at least 7 calendar days before the first day of the next calendar quarter, provide a written copy of its determination and any certification to:*

*(1) The person submitting the request for exemption on behalf of the single retail customer or multiple retail customers under common ownership and control; and*

*(2) Any public utility or municipal utility affected by the exemption, if certified.*

*If the commission is unable to make a determination on the request for exemption or provide a written copy of its determination and any certification on the request for exemption at least 7 calendar days before the first day of the next calendar quarter, the commission will take those actions at least 7 calendar days before the first day of the calendar quarter immediately following the next calendar quarter.*

*5. If the commission certifies an exemption pursuant to this section, each affected public utility or municipal utility shall apply the exemption only to billings issued during calendar quarters following the calendar quarter in which the exemption is certified. The single retail customer or multiple retail customers under common ownership and control may request a refund pursuant to section 27 of this regulation of any amounts billed by a public utility or municipal utility during the calendar quarter in which the exemption is certified.*

*6. If the commission certifies an exemption, in whole or in part, for any therms of natural gas used as a source of energy to generate electricity or any kilowatt-hours of electricity used in industries utilizing electrolytic-manufacturing processes, each retail customer receiving the certified exemption is required to pay the universal energy charge on any therms of natural gas or kilowatt-hours of electricity consumed by the retail customer which are not subject to the certified exemption and which are not otherwise exempt from the universal energy charge for any other lawful reason.*

*7. If the nature or scope of the operation or business of any retail customer receiving a certified exemption changes in any material manner which may affect the nature or scope of the certified exemption, not later than 15 calendar days after the changes occur, the retail customer shall submit to the commission a written report identifying the nature and scope of*

*the changes. After receiving the written report, the commission will determine whether to reconsider the nature and scope of the certified exemption.*

*Sec. 29. 1. If a person submits to the commission a remittance, report, request for refund or request for exemption that is materially incomplete, erroneous, internally inconsistent or otherwise inadequate, the commission will:*

*(a) Hold the remittance or document without processing; and*

*(b) Provide notice of the deficiency to the person submitting the remittance or document and inform the person that the deficiency must be cured not later than 14 calendar days after the date on which the commission issues the notice or on or before the due date for the remittance or document, whichever is later.*

*2. If the person cures the deficiency within 14 calendar days after the date on which the commission issues the notice or on or before the due date for the remittance or document, whichever is later:*

*(a) The remittance or document shall be deemed to have been submitted properly to the commission as of its original date of submission; and*

*(b) The commission will process the remittance or document.*

*3. If the person does not cure the deficiency within 14 calendar days after the date on which the commission issues the notice or on or before the due date for the remittance or document, whichever is later:*

*(a) The remittance or document shall be deemed to have been submitted improperly and untimely to the commission;*

*(b) The commission will not process the remittance or document and, if appropriate, will return the remittance or document to the person; and*

*(c) The commission may initiate against the person any enforcement or collection action pursuant to law that the commission deems appropriate.*

**Sec. 30. 1.** *A person may submit a remittance, report, request for refund or request for exemption to the commission:*

*(a) By personal delivery to an office of the commission;*

*(b) By use of the United States mail;*

*(c) By use of a messenger or delivery service; or*

*(d) If approved by the commission in advance, by use of an electronic transfer or other electronic means.*

**2.** *Any remittance or document submitted to the commission by use of the United States mail shall be deemed to have been received by the commission on:*

*(a) The date shown on the post office cancellation mark stamped on the envelope containing the remittance or document or, if the remittance or document is submitted by certified or registered mail, the date shown on the post office receipt acknowledging the use of certified or registered mail, whichever date is earlier; or*

*(b) If the information described in paragraph (a) is not available, the date the remittance or document was mailed, if the person submitting the remittance or document presents proof satisfactory to the commission which establishes that the remittance or document was deposited timely in the United States mail, postage prepaid, and was properly addressed to the commission.*

**3.** *Any remittance or document submitted to the commission by use of a messenger or delivery service shall be deemed to have been received by the commission on the date the remittance or document was tendered to the messenger or delivery service.*

**Sec. 31. 1.** *A copy of any form that is required to be used pursuant to sections 11 to 33, inclusive, of this regulation may be:*

*(a) Obtained at the Internet website of the commission at <<http://www.puc.state.nv.us>>;*

*(b) Obtained at an office of the commission; or*

*(c) Obtained from the commission by a written request sent to the principal office of the commission in Carson City, Nevada, by United States mail or other messenger or delivery service.*

**2.** *The available forms include:*

*(a) Utility collection report;*

*(b) Retail customer report;*

*(c) Prepayment report;*

*(d) Request for refund; and*

*(e) Request for exemption.*

**Sec. 32. 1.** *The commission delegates to the regulatory operations staff the authority and duty to do all things necessary and proper to carry out and administer the provisions of sections 26.7 and 26.75 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at pages 3232 and 3233, respectively (NRS 702.160 and 702.170), and sections 11 to 33, inclusive, of this regulation, including, without limitation, the authority and duty to:*

*(a) Receive, accept and process any remittance, report, request for refund or request for exemption submitted to the commission; and*

*(b) Investigate, make a determination on and certify, as appropriate, any request for refund or request for exemption submitted to the commission.*



*2. A person may seek review or reconsideration of any decision, action or inaction of the regulatory operations staff by filing a petition with the commission.*

**Sec. 33.** *1. On its own initiative or at the direction of the commission, the regulatory operations staff may conduct an audit or investigation of any public utility, municipal utility or retail customer that is required to collect or remit money for the universal energy charge.*

*2. After completing an audit or investigation, the regulatory operations staff shall report its findings to the commission and recommend any enforcement or collection action.*

**LEGISLATIVE REVIEW OF ADOPTED REGULATION  
AS REQUIRED BY THE ADMINISTRATIVE PROCEDURES ACT  
NRS 233B.066  
PUBLIC UTILITIES COMMISSION OF NEVADA  
LCB FILE NO. R124-01  
DOCKET NO. 01-6003**

The following statement is submitted for adopted amendments to Nevada Administrative Code ( NAC ) 702.

**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 regulations concerning the universal energy charge (“UEC”) in Nevada in Public Utilities Commission of Nevada (“Commission”) Docket No. 01-6003 were noticed twice: a Notice of Workshop was issued on August 1, 2001, and a combined Notice of Intent to Amend/Adopt/Repeal Regulations, Notice of Workshop and Notice of Hearing was issued on September 21, 2001, 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, county libraries and all persons who requested inclusion on the Commission’s service list. The Commission also sought public comment in two (2) procedural orders: Procedural Order #1 which was issued September 5, 2001, and Procedural Order #2 which was issued September 26, 2001. Both procedural orders were sent to county libraries and all persons who requested inclusion on the Commission’s service list.

In addition to the public response from affected businesses discussed in #3 below, the following summary represents public responses that were made to the Commission at the duly-noticed Workshop held on August 24, 2001: Steven D. King, Esq., Assistant City Attorney for the City of Fallon, who suggested that an advisory opinion from the Commission might be sought for guidance as to how the universal energy charge regulations should be written with regard to municipals like the City of Fallon; Ernie Nielsen, Attorney for the Washoe County Senior Law Project, who stated that he generally agreed with the comment and views of the Regulatory Operations Staff (“Staff”) of the Commission and suggested that some information should go out to the public explaining and underscoring the need for the UEC; Thelma Clark, a senior advocate, raised her concern over the master metered residential complexes and how the landlords of such complexes should not be allowed to take a tax deduction from the tenants and still charge the tenants the UEC, and that there might need to be a consumer session held which would explain more about Commission procedures to confused tax payers; Bob Cooper, Attorney with the Bureau of Consumer Protection (“BCP”), discussed federal funding for energy programs within Nevada; Don LaConto, Clark County School District, stated concern over a ‘double taxation’ where tax payers pay their own UEC and then have to pay for the school district UEC in higher school taxes; John Edwards, from the Las Vegas Review Journal, questioned why exempted individuals status might be kept confidential; and James Salo, a consultant to the Commission, and Harry Butz, a Staff member of the Commission, presented an outline of the various topics that Staff felt should be included in the proposed regulation.

In addition to the public response from affected businesses discussed in #3 below, the following summary represents public responses that were made to the Commission at the duly-noticed Workshop held on October 16, 2001: Thelma Clark, a senior advocate, questioned what would happen to people that did not pay the UEC, whether the customer would then be charged a late fee by the utility, whether the utility would pay the amount into the Commission that its customer refused to pay, and various questions regarding the Consumer Bill of Rights; Bob Cooper, from the BCP, stated that the BCP supports the draft regulations promulgated by Staff on September 21st and proposed several alternative names for the UEC to be known as; Jim Salo, a consultant for the Commission, and Harry Butz, a member of Staff, suggested various corrections to the Legislative Counsel Bureau (“LCB”) version of the regulations and generally fielded questions from the other participants.

In addition to the public response from affected businesses discussed in #3 below, the following summary represents public responses that were made to the Commission at the duly-noticed Hearing held on October 30, 2001: Thelma Clark, a senior advocate, expressed concern that the UEC name might be confusing to some tax payers; Bob Cooper, from the BCP, added support for Staff’s proposed language of October 23rd; and Jim Salo, a consultant for the Commission, and Harry Butz, a member of Staff, went over Staff’s proposed regulations filed with the Commission on October 23rd.

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:**

August 24, 2001: 24

October 16, 2001: 14

**(b) Testified at the workshop:**

August 24, 2001: 21

October 16, 2001: 13

**(c) Attended the hearing:**

October 30, 2001: 15

**(d) Submitted to the agency written comments:**

Written comments were submitted to the Commission by Jim Salo, a consultant to the Commission and Harry Butz, a member of Staff; Newmont Mining Corporation; Nevada Independent Energy Coalition; Barrick Goldstrike Mines, Inc.; and Northern Nevada Industrial Electric Users.

Correspondence regarding this matter was received by the Commission from Shell Energy, LLC and Timet.

**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 Staff; BCP; Sierra Pacific Power Company and Nevada Power Company; Southwest Gas Corporation; Newmont Mining Corporation ("Newmont"); Barrick Goldstrike Mines, Inc. ("Barrick") & Round Mountain Gold Corporation; Northern Nevada Industrial Electric Users; the City of Fallon; Thelma Clark; Nevada Energy Buyers Network; LCB; Shell Energy Services, LLC; Clark County School District; Washoe County Senior Law Project; Nevada Manufacturers Association; Nevada Independent Energy Coalition ("NIEC"), Cogeneration Association Southern Nevada, BMI Industries, Titanium Metals Corporation (TIMET) and Pioneer Chlor Alkali.

Written responses were received as set forth in the response to question 2(d) and are summarized below.

The first written comments received by the Commission on August 24, 2001, were submitted by Jim Salo and Harry Butz on behalf of Staff. These comments included an outline of the four (4) major areas of the UEC: Applicability of the UEC Charge; Certification of Exemptions from UEC Charge; Collection, Reporting and Enforcement of UEC; and Requests for Refund for Overpayment of UEC Charge.

Shortly thereafter, on September 14, 2001, the Commission received comments from NIEC. NIEC stated that the Commission could not impose the UEC upon natural gas consumed in a cogeneration mode of operation as it would be within the statutory exemption for natural gas 'used to generate electric energy'. Further, NIEC submitted draft regulations which it proposed that the Commission adopt.

Similarly, on September 14, 2001, Jim Salo and Harry Butz submitted proposed regulations for the Commission's adoption. Mr. Salo stated that these proposed regulations were the product of workshops and other communications with interested parties. Newmont filed comments with the Commission on September 14, 2001, voicing concerns that customers that pay in the calendar quarter substantially more than the \$25,000 "cap" not lose the time value of its money. Instead, Newmont proposed that customers be allowed to pay the \$25,000 UEC ceiling at the beginning of the calendar quarter. Those monies, Newmont stated, would not be subject to refund if the customer's usage for that quarter would not have resulted in the maximum liability.

On October 8, 2001, Barrick submitted its comments to the Commission. Concerned with the amount of time it would take to seek a refund, Barrick requested that the Commission issue an Interim Order adopting portions of the draft regulations which, according to Barrick, would minimize the procedural costs of customers getting refunds, as well as, the burden of an interest-free loan to the State while the customers are waiting for the refunds.

NIEC filed its Reply to the Comments of Barrick with the Commission on October 11, 2001. In its comments, NIEC urged the Commission to continue forward with its established schedule and not to issue an Interim Order which, NIEC stated, would deprive the participants their due process rights.

On October 12, 2001, Newmont filed its Pre-Workshop Comments with the Commission. Newmont stated that the proposed regulations submitted to the Legislative Counsel Bureau (“LCB”) with the Notice of Intent to Amend/Adopt/Repeal Regulations were well suited to implementing the UEC. However, Newmont did suggest that the Commission’s proposed definition of ‘control’ be clarified. Newmont, likewise, expressed concern over the term ‘multiple retail customers under common ownership and control’. According to Newmont, the definition of ‘multiple retail customers under common ownership and control’ should be broadly interpreted to include any number of retail customers where a single entity possesses, directly or indirectly, an ownership interest of 5% or more and where the same possesses control. Finally, Newmont suggested that the Commission change phrases that read ‘amounts billed’ to read ‘amounts paid’.

Newmont submitted Supplemental Pre-Workshop Comments on October 15, 2001, due to the release of the LCB revised proposed regulations (“LCB Draft”). According to Newmont, its previous Pre-Workshop Comments were affected such that Section 28.2(b)(4) of the LCB Draft should be modified to limit the release of customer information to cover only that which is actually needed. In addition, Newmont stated that it felt Section 28.2(b)(5) was overly restrictive. NIEC also submitted Supplemental Comments to the Commission on October 15, 2001. In its comments, NIEC disagreed with Staff’s characterization of the UEC exemption being “solely” for natural gas used to support the generation activity. Instead, NIEC argued that any natural gas used to provide energy or heat to the non-generation activity of a Qualifying Facility (“QF”) is not divisible because all natural gas used by NIEC’s QFs is used directly as a source of energy to generate electricity.

On October 23, 2001, Jim Salo and Harry Butz filed with the Commission revisions to the LCB Draft. In addition, Mr. Salo stated that two (2) issues of conflict remained among the participants. According to Mr. Salo, some participants do not support the requirement for allocation of the natural gas consumption exemption between electric generation and all other types of consumption. Further, Mr. Salo asserted that some participants do not support the current language addressing the exclusion or exemption of electricity used in industries utilizing electrolytic-manufacturing processes.

NIEC submitted its Petition for the Commission to Adopt Proposed Regulations (“Petition”) with the Commission on October 29, 2001. The Commission treated the Petition as comments filed by NIEC. In the Petition, NIEC reiterated its request that ‘all terms of natural

gas used as a source of energy to generate electricity' be exempt from the UEC. NIEC disagreed with Staff's proposal that natural gas which is not used exclusively to generate electricity be subject to the UEC.

On October 30, 2001, Jim Salo and Harry Butz filed with the Commission an Answer to Petition of NIEC for the Commission to Adopt Proposed Regulations which the Commission also treated as comments. Mr. Salo asserted that NIEC had admitted in its Petition that natural gas consumed in the generation component of the QF which is not producing electricity would be subject to the UEC. Further, Mr. Salo stated that the need for allocating the UEC exemption between exempt and non-exempt natural gas consumption does not arise from the operation of 'traditional' power plants since a self-correcting mechanism exists.

Correspondence regarding this matter was received from Shell Energy, LLC and Timet.

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.**

Changes were made to the proposed regulation before it was adopted by the Commission on November 1, 2001, at a duly-noticed general session. The Commission received LCB revisions to its regulation on November 13, 2001. On November 15, 2001, the Commission voted to adopt the LCB revisions 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 Commission has found that the regulation does not impose a direct and significant burden upon businesses and the public in Nevada based on the following facts: (1) the regulation reflects Assembly Bill 661 and thus does not impose additional burdens; and (2) the effect of the requirement is not discriminatory nor does it restrict the formation, operation, or expense of businesses.

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

The Commission at this time envisions an increase in costs associated with enforcement of these adopted regulations. However, up to 3% of the fund is dedicated to reimbursing the Commission for carrying out this responsibility.

**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 regulations do provide for a new fee, the UEC, however, the Commission cannot quantify the amount it expects to collect. The monies collected will be used by low income members of the public who meet the criteria established by the Welfare Division and the Housing Division for eligible households paying for natural gas and electricity and for energy conservation, weatherization and energy efficiency, respectively. A portion of the monies, not more than 3%, may also be used to reimburse the Commission, as stated in #6 above.

**BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

In re Commission investigation and rulemaking )  
regarding the universal energy charge pursuant to )  
AB 661, including but not limited to Sections 26.1 )  
through 26.95. )  
\_\_\_\_\_ )

Docket No. 01 -6003

At a general session of the Public Utilities  
Commission of Nevada, held at its offices  
on November 15, 2001.

PRESENT: Chairman Donald L. Soderberg  
Commissioner Richard M. McIntire  
Commissioner Adriana Escobar Chanos  
Commission Secretary Crystal Jackson

**ORDER ADOPTING REGULATIONS**

The Public Utilities Commission of Nevada ("Commission") makes the following  
findings of fact and conclusions of law:

1. On July 17, 2001, Nevada Governor Kenny C. Guinn signed Assembly Bill No. 661 ("AB 661") into law. AB 661, Sec. 26.75(1) requires the Commission to adopt regulations to carry out and enforce the provisions of Sec. 26.7 of AB 661.
2. On June 14, 2001, the Public Utilities Commission ("Commission") voted to open Docket No. 01-6003, an investigation and rulemaking regarding the universal energy charge pursuant to Assembly Bill 661, including but not limited to Sections 26.1 through 26.95.
3. This matter is being conducted by the Commission pursuant to the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code Chapters 703 and 704.
4. On September 21, 2001, the Commission issued a Notice of Intent to Amend/Adopt/Repeal Regulations and Notice of Workshop and Notice of Hearing, in order to



receive comments from all interested persons regarding the Commission's proposed universal energy charge regulations.

5. Pursuant to NRS 233B.0608, before conducting the workshop, the Commission ordered the Regulatory Operations Staff ("Staff") of the Commission to investigate the impact of the proposed regulation on small business.

6. On October 4, 2001, the Commission voted to accept Staff's recommendation and find that the proposed regulation does not: (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business.

7. A duly noticed workshop was held on October 16, 2001, and a duly noticed hearing was held on October 30, 2001.

8. Appearances were made at the foregoing workshop and hearing by interested persons, including Staff, the Bureau of Consumer Protection, the State of Nevada Legislative Counsel Bureau, Sierra Pacific Power Company, Nevada Power Company, Newmont Mining Corporation, Barrick Goldstrike Mines, Nevada Independent Energy Coalition, Nevada Manufacturers Association, and the Senior Advocate.

9. On November 1, 2001, the Commission voted to adopt the regulations at a duly noticed agenda meeting.

10. The Commission delivered the adopted regulations along with the Order Adopting Regulations, the Informational Statement and a Cover Sheet to the Legislative Counsel Bureau on November 9, 2001.

11. The Legislative Counsel Bureau ("LCB") submitted its revisions to the regulations with the Commission on November 13, 2001.

12. The Commission finds that no substantive changes have been made and that it would be in the public interest to adopt the LCB revisions to the regulations, attached hereto as Attachment 1 and incorporated herein by reference.

13. The Commission also finds that it would be prudent to direct the Director of Regulatory Operations to informally examine these regulations in the summer of 2003, and to have the Director of Regulatory Operations report to the Commission at a regularly scheduled agenda meeting any findings as to the effectiveness and applicability of these regulations to existing law.

THEREFORE, based on the foregoing findings of fact and conclusions of law, it is hereby ORDERED that:

1. The Legislative Counsel Bureau revisions to the Commission's regulations, which are attached hereto as Attachment 1 and incorporated herein by reference, are ADOPTED.

2. The Director of Regulatory Operations will informally EXAMINE these regulations in the summer of 2003, and REPORT to the Commission at a regularly scheduled agenda meeting any findings as to the effectiveness and applicability of these regulations to existing law.

3. The Commission retains jurisdiction for the purpose of correcting any errors that may have occurred in the drafting of this Order.

///

///

///

///

///

By the Commission,

---

DONALD L. SODERBERG, Chairman and  
Presiding Officer

---

RICHARD M. MCINTIRE, Commissioner

---

ADRIANA ESCOBAR Commissioner

Attest: \_\_\_\_\_

CRYSTAL JACKSON, Commission Secretary

Dated: Carson City, Nevada

11/26/01

(SEAL)