

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

LCB File No. R124-01

October 12, 2001

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

AUTHORITY: §§1-34, 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.

Section 1. Chapter 702 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 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.*

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.*

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.*

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.*

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.*

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

Sec. 11. *As used in sections 11 to 34, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 12 to 15, inclusive, 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.*

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.*

Sec. 14. *“Qualifying facility” means a facility that is a qualifying facility pursuant to 18 C.F.R. Part 292.*

Sec. 15. *“Regulatory operations staff” means the regulatory operations staff of the commission.*

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, and sections 11 to 34, 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) Actually consumed solely to support the generation activity occurring at that plant or unit.

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 primarily to support a nonelectric generating activity occurring at that plant or unit, including, without limitation, a steam or heat host at a qualifying facility.*

2. *A qualifying facility may apply to the commission for approval to use a methodology to allocate the therms of natural gas used by the qualifying facility between:*

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

(b) Those therms of natural gas used for other purposes.

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, and sections 11 to 34, 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. 18. 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, and sections 11 to 34, inclusive, of this regulation, “multiple retail customers under common ownership and control” means a single retail customer and one or more other retail customers in which the first retail customer possesses a legal ownership equity interest of at least 5 percent and over which the first retail customer possesses the power and authority to exercise control.*

2. As used in this section, “control” means the possession, direct or indirect, of the power and authority to direct or cause the direction of 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.

Sec. 19. 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.

Sec. 20. 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. 21. 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. 22. 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.*

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. 23. 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, and sections 11 to 34, 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. 24. 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. 25. 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 27 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. 26. Except as otherwise provided in section 27 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. 27. 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:

(a) Not later than 30 calendar days before the first day of the calendar quarter, the single retail customer or multiple retail customers under common ownership and control must provide written notice of the intent to prepay the maximum universal energy charge to the commission and to each public utility or municipal utility that is required to collect the universal energy charge from each such retail customer; and

(b) Not later than 5 business days after the first day of the calendar quarter, the single retail customer or multiple retail customers under common ownership and control must:

(1) Complete a prepayment report on the appropriate form obtained from the commission;

(2) Submit the completed prepayment report to the commission; and

(3) 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.

Sec. 28. 1. *Except as otherwise provided in section 27 of this regulation, a retail customer that has 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 retail customer 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 that the retail customer relies 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 and the regulatory operations staff to request and receive a payment history for the affected accounts 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 the request for refund is made in good faith, that no other request for refund has been submitted which addresses the same universal energy charge amounts or period of payment, and that the person submitting the request for refund is authorized to make the request for refund on behalf of the retail customer.

3. After a retail customer submits a request for refund pursuant to this section and until the commission makes a determination on the request for refund, all correspondence from the retail customer regarding the request for refund must be directed to the regulatory operations staff.

4. 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 retail customer that submitted the request for refund; and

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

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

Sec. 29. 1. A retail customer which claims that it is exempted from paying the universal energy charge may make a request for exemption.

2. To make a request for exemption, the retail customer 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 retail customer has the burden of proving that the retail customer is 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;

(b) Certify the exemption, if any; and

(c) 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 retail customer that submitted the request for exemption; and

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

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 retail customer may request a refund pursuant to section 28 of this regulation of any amounts billed by a public utility or municipal utility during the calendar quarter in which the exemption is certified.

Sec. 30. 1. Except as otherwise provided in this section, if a person does not properly submit a remittance or report to the commission on or before the due date for the remittance or report, the regulatory operations staff shall notify the commission and provide the commission with a recommended enforcement or collection action.

2. 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 10 business 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.

3. If the person cures the deficiency within 10 business 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.

4. If the person does not cure the deficiency within 10 business 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; and

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

Sec. 31. 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. 32. 1. *A copy of any form that is required to be used pursuant to sections 11 to 34, 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 an office of the commission 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. 33. 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, and sections 11 to 34, 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, determine 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. 34. 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.*