

ADOPTED REGULATION OF THE PUBLIC

UTILITIES COMMISSION OF NEVADA

LCB File No. R125-01

Effective December 14, 2001

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

AUTHORITY: §§1-34, section 26 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3230 (NRS 704B.200).

Section 1. Chapter 704B 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 19, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Ancillary services” has the meaning ascribed to it in section 4 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3223 (NRS 704B.020).*

Sec. 4. *“Application” means an application filed pursuant to this chapter and chapter 704B of NRS for approval from the commission to purchase energy, capacity or ancillary services from a provider of new electric resources.*

Sec. 5. *“Bureau of consumer protection” means the bureau of consumer protection in the office of the attorney general.*

Sec. 6. *“Commission” means the public utilities commission of Nevada.*

Sec. 7. *“Date of commencement” means the date on which an eligible customer begins or intends to begin purchasing energy, capacity or ancillary services from a provider of new electric resources pursuant to a proposed transaction.*

Sec. 8. *“Electric utility” has the meaning ascribed to it in section 7 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3223 (NRS 704B.050).*

Sec. 9. *“Electric utility that primarily serves densely populated counties” has the meaning ascribed to it in section 8 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3224 (NRS 704B.060).*

Sec. 10. *“Eligible customer” has the meaning ascribed to it in section 10 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3224 (NRS 704B.080).*

Sec. 11. *“Energy” has the meaning ascribed to it in section 11 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3224 (NRS 704B.090).*

Sec. 12. *“Existing eligible customer” means an eligible customer in the service territory of an electric utility that is purchasing energy, capacity or ancillary services from the electric utility or a provider of new electric resources.*

Sec. 13. *“FERC” means the Federal Energy Regulatory Commission of the United States Department of Energy.*

Sec. 14. *“Letter of intent” means a letter of intent that an eligible customer submits pursuant to section 23 of this regulation.*

Sec. 15. “New electric resource” has the meaning ascribed to it in section 13 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3224 (NRS 704B.110).

Sec. 16. “OATT” means the open access transmission tariff of an electric utility that is on file with FERC.

Sec. 17. “Provider of new electric resources” and “provider” have the meaning ascribed to them in section 15 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3224 (NRS 704B.130).

Sec. 18. “Regulatory operations staff” means the regulatory operations staff of the commission.

Sec. 19. “Time-of-use meter” has the meaning ascribed to it in section 16 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3225 (NRS 704B.140).

Sec. 20. The provisions of this chapter do not alter in any manner the terms and conditions of any existing contract between an eligible customer and an electric utility.

Sec. 21. 1. If an end-use customer is a new end-use customer or has been an end-use customer for less than 12 months in the service territory of an electric utility, the commission will consider the end-use customer to have an average annual load of 1 megawatt or more in the service territory of the electric utility only if the commission determines the end-use customer will consume, during the 12 months immediately following the date of commencement, 8,760,000 kilowatt-hours or more of energy in the service territory of the electric utility.

2. For all other end-use customers in the service territory of the electric utility, the commission will consider the end-use customer to have an average annual load of 1 megawatt or more in the service territory of the electric utility only if the end-use customer has consumed, during the most recent 12-month period, 8,760,000 kilowatt-hours or more of energy in the service territory of an electric utility.

3. The commission will treat each service location of a nongovernmental commercial or industrial entity as a separate end-use customer.

4. As used in this section, “service location” means:

(a) A single point of delivery;

(b) Multiple points of delivery on contiguous property; or

(c) Multiple points of delivery that, as of the date on which the application is filed, have been treated as a single service location by the electric utility.

Sec. 22. *1. An eligible customer may not file an application unless the eligible customer complies with all applicable provisions of this chapter and chapter 704B of NRS.*

2. Multiple eligible customers within a single service territory may file a single application. If such an application is filed, each eligible customer named as an applicant must comply with all applicable provisions of this chapter and chapter 704B of NRS.

3. If an application is filed:

(a) Each eligible customer named as an applicant, each provider named in the letter of intent, the electric utility and the bureau of consumer protection shall be deemed to have a direct and substantial interest in the proceedings on the application; and

(b) No other person or entity shall be presumed to have a direct and substantial interest in the proceedings on the application.

Sec. 23. 1. Not later than 30 calendar days before the date on which an eligible customer files an application, the eligible customer shall submit a letter of intent to file the application to:

- (a) The electric utility that is serving the eligible customer;*
- (b) The regulatory operations staff; and*
- (c) The bureau of consumer protection.*

2. The letter of intent submitted pursuant to this section must include the following information:

(a) The name of the eligible customer, the address and other contact information for the eligible customer, and information demonstrating that the applicant is an eligible customer.

(b) The name of the provider, the address and other contact information for the provider, and information demonstrating that the provider will provide energy, capacity or ancillary services from a new electric resource.

(c) Each point of delivery at which the eligible customer intends to purchase energy from the provider and, for each such point of delivery:

- (1) The physical location of the point of delivery; and*
- (2) The current account number for the point of delivery, the name on each such account and the current billing address and final billing address for each such account.*

(d) A description of the proposed transaction in the executed agreement between the provider and the eligible customer or, if no executed agreement exists when the letter of intent is submitted, a description of the terms that the eligible customer reasonably expects to be included in an executed agreement between the eligible customer and the provider for the

purchase of energy, capacity or ancillary services from the provider. The description must include:

- (1) The date of commencement and the duration of the proposed transaction;*
 - (2) The amount of energy, capacity and ancillary services, if any, to be purchased by the eligible customer;*
 - (3) The identity of any scheduling coordinator as required by FERC to be used by the eligible customer in scheduling the delivery of energy to the eligible customer and written confirmation from the scheduling coordinator;*
 - (4) The point or points of receipt;*
 - (5) The maximum number of megawatts or megawatt-hours to be delivered under the proposed transaction and any load forecasts developed to determine the maximum number of megawatts or megawatt-hours to be delivered under the proposed transaction;*
 - (6) Information regarding the nature of the product being purchased, including, without limitation, information regarding whether the energy or capacity is firm;*
 - (7) Information regarding termination provisions and notice provisions; and*
 - (8) Information regarding load ramps, both increases and decreases, over the term of the proposed transaction.*
- (e) Information specifying which ancillary services will be taken from which entities.*
- (f) Information indicating whether the new electric resources will be delivered from within or outside of the control area of the electric utility.*

3. In addition to the information required by subsection 2, if an eligible customer is a governmental entity, the eligible customer shall include with the letter of intent information sufficient to establish that:

(a) The eligible customer is a governmental entity; and

(b) The facilities and other locations that will be served by the provider are operated by the eligible customer under a common budget and common control.

4. The eligible customer may designate as commercially sensitive any information regarding submission of the letter of intent and any information included with the letter of intent. If the eligible customer designates such information as commercially sensitive, the regulatory operations staff, the bureau of consumer protection and the electric utility shall protect the confidentiality of such information and shall not disclose the information to any other person or entity.

5. The electric utility may use information regarding submission of the letter of intent, information included with the letter of intent or information otherwise provided in connection with a proposed transaction governed by this chapter only for the performance of analyses required by this chapter, and the electric utility shall not use such information when conducting its sales or marketing activities. Not later than 60 calendar days after the effective date of this regulation, each electric utility shall file with the commission written standards, policies and procedures to ensure compliance with this subsection.

Sec. 24. *1. Approximately 15 calendar days before the date on which an eligible customer files an application, the eligible customer, the electric utility and the regulatory operations staff shall meet, in person or telephonically, to discuss the information included with the letter of intent and to identify any issues of concern with respect to the proposed transaction. Not later than 5 working days before the date of the meeting, the bureau of consumer protection must be notified of the meeting, and the bureau of consumer protection may participate fully in the meeting.*

2. The provisions of this section do not preclude the eligible customer, the electric utility, the regulatory operations staff or the bureau of consumer protection from meeting or conferring as often as they deem necessary to accomplish the objectives of this section.

3. The regulatory operations staff shall identify any additional data and information that it will need from the electric utility and the eligible customer to carry out the provisions of this section and the format that the electric utility and the eligible customer must use to provide and update the data and information. The electric utility and the eligible customer shall provide and update the data and information in such manner and at such times as the regulatory operations staff may request.

Sec. 25. *1. If an eligible customer files an application, the eligible customer shall include with the application all the information that the eligible customer included with the letter of intent and all the following items:*

(a) Information demonstrating that the eligible customer or the provider has the ability to enter into all transmission service agreements necessary for the provider to deliver energy to the distribution system of the electric utility, and the proposed rates, terms and conditions of each such agreement. The eligible customer shall be deemed to have met the requirements of this subsection if:

(1) The eligible customer or the provider demonstrates that transmission service agreements with the electric utility will not be necessary for the provider to deliver energy to the distribution system of the electric utility; or

(2) The eligible customer demonstrates that it is an eligible customer under the OATT of the electric utility and the eligible customer agrees, to the extent applicable, to pay all costs for

system impact studies, costs for construction and other costs required under the OATT of the electric utility to obtain the necessary transmission service.

(b) Information demonstrating that all energy delivered to the eligible customer will be metered through one or more time-of-use meters for each point of delivery.

(c) Any applicable system impact studies or facilities studies completed for the transmission service request.

(d) Any information which is required to update or complete the information that the eligible customer included with the letter of intent.

(e) Any other information deemed necessary by the regulatory operations staff and requested in writing.

(f) If the eligible customer is a nongovernmental commercial or industrial end-use customer whose load is in the service territory of an electric utility that primarily serves densely populated counties:

(1) Information demonstrating that the eligible customer has obtained the required contractual rights in accordance with subsection 2 of section 21 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3228 (NRS 704B.320); and

(2) A binding offer to assign such contractual rights to the electric utility.

2. The eligible customer may request from the commission a protective order to protect the confidentiality of any information deemed by the eligible customer to be commercially sensitive or to otherwise require such protection. The commission will grant a protective order at least with respect to all information concerning the price of the energy, capacity and ancillary services to be purchased by the eligible customer. The regulatory operations staff, the

bureau of consumer protection and the electric utility may have access to such information upon execution of a confidentiality agreement and subject to the terms of the protective order and the confidentiality agreement. Information protected by a protective order must not be disclosed on the public record or otherwise in any proceeding governed by this chapter, except as provided in the protective order.

Sec. 26. 1. *Not later than 15 calendar days after the date on which the eligible customer files an application, the regulatory operations staff shall:*

(a) Perform its initial analysis of the proposed transaction to estimate the potential impacts of the proposed transaction on the electric utility and its remaining customers; and

(b) Release the results of its initial analysis to the eligible customer, the provider, the electric utility and the bureau of consumer protection.

2. *Not later than 25 calendar days after the date on which the eligible customer files an application, the regulatory operations staff, the eligible customer and the electric utility shall meet, in person or telephonically, at least once to discuss the results of the initial analysis performed by the regulatory operations staff and, if necessary, to exchange information, including, without limitation, the exchange of any suggested additions, modifications or deletions to the initial analysis performed by the regulatory operations staff. The bureau of consumer protection and the provider must be notified of each such meeting, and each may participate fully in each such meeting and in any exchange of information.*

3. *Not later than 35 calendar days after the date on which the eligible customer files an application, the regulatory operations staff shall:*

(a) Finalize its analysis of the proposed transaction. In finalizing its analysis, the regulatory operations staff shall incorporate any information obtained from the eligible

customer, the provider, the electric utility and the bureau of consumer protection that the regulatory operations staff determines will most accurately estimate the potential impacts of the proposed transaction.

(b) Release the results of its finalized analysis to the eligible customer, the provider, the electric utility and the bureau of consumer protection.

(c) Submit its finalized analysis to the commission.

4. Not later than 50 calendar days after the date on which the eligible customer files an application, any party of record may file with the commission an alternative analysis to the analysis performed by the regulatory operations staff. Each alternative analysis must:

(a) Identify the bases for concluding that the analysis performed by the regulatory operations staff is deficient; and

(b) Include objective information demonstrating that the methodology used by the party is valid under the range of circumstances included in the alternative analysis performed by the party.

5. The deadlines established in subsections 1 to 4, inclusive, may be modified by stipulation or by order of the commission on a case-by-case basis for any proceeding governed by this chapter. Upon the request of a party of record, the commission may waive noncompliance with the deadlines established in subsections 1 to 4, inclusive.

6. The provisions of this section do not preclude the regulatory operations staff, the eligible customer, the provider, the electric utility or the bureau of consumer protection from meeting or conferring as often as they deem necessary to accomplish the objectives of this section.

7. The regulatory operations staff shall identify the data and information that it will need from the electric utility and the eligible customer to carry out the provisions of this section and the format that the electric utility and the eligible customer must use to provide and update the data and information. The electric utility and the eligible customer shall provide and update the data and information in such manner and at such times as the regulatory operations staff may request.

8. The regulatory operations staff shall provide the commission and other interested parties with a detailed description of the methodology that it will use to estimate the potential impacts of the proposed transaction on the electric utility and its remaining customers. The description must include, without limitation:

(a) The methodology for analyzing net costs or benefits to the electric utility and its remaining customers and for ensuring that there are no net negative impacts to the electric utility and its remaining customers. The description must identify the commercial model or algorithm for the methodology and must contain a narrative description of that commercial model or algorithm.

(b) The assumptions to be used with the methodology, including, without limitation, the time frame for analyzing net costs or benefits to the electric utility and its remaining customers and the categories of costs to be used with the methodology.

(c) The sources of information to be used with each category of costs identified in paragraph (b), including, without limitation, sources of information regarding:

- (1) Capacity and energy, including energy from renewable resources;*
- (2) Transmission;*
- (3) Distribution; and*

(4) Natural gas commodity and capacity.

(d) Other external inputs necessary for the operation of the commercial model or algorithm identified in paragraph (a).

(e) Any data and information obtained from the electric utility, including any updated data and information.

9. The regulatory operations staff shall provide the commission and other interested parties with a detailed description of the information that must accompany any request by a third party to perform an independent analysis of the potential impacts of the proposed transaction on the electric utility and its remaining customers. The description must include, without limitation, the cost, if any, to perform such an independent analysis.

Sec. 27. 1. In addition to the requirements of section 26 of this regulation, if the eligible customer is a nongovernmental commercial or industrial end-use customer whose load is in the service territory of an electric utility that primarily serves densely populated counties, not later than 15 calendar days after the date on which the eligible customer files an application, the regulatory operations staff shall:

(a) Perform its initial analysis of the contractual rights identified in the application pursuant to paragraph (f) of subsection 1 of section 25 of this regulation. In its initial analysis, the regulatory operations staff shall indicate whether the contractual rights will be beneficial or detrimental to the remaining customers of the electric utility and shall include a recommendation regarding whether the contractual rights should be assigned to the electric utility.

(b) Provide its initial analysis to the eligible customer, the provider, the bureau of consumer protection and the electric utility.

2. Not later than 25 calendar days after the date on which the eligible customer files an application, the regulatory operations staff, the eligible customer and the electric utility shall meet, in person or telephonically, at least once to discuss the results of the initial analysis performed by the regulatory operations staff and, if necessary, to exchange information, including, without limitation, the exchange of any suggested additions, modifications or deletions to the initial analysis performed by the regulatory operations staff. The bureau of consumer protection and the provider must be notified of each such meeting, and each may participate fully in each such meeting and in any exchange of information.

3. Not later than 35 calendar days after the date on which the eligible customer files an application, the regulatory operations staff shall:

(a) Finalize its analysis of the contractual rights identified in the application. In finalizing its analysis, the regulatory operations staff shall incorporate any information obtained from the eligible customer, the provider, the electric utility and the bureau of consumer protection that the regulatory operations staff determines will most accurately indicate whether the contractual rights will be beneficial or detrimental to the remaining customers of the electric utility.

(b) Release the results of its finalized analysis to the eligible customer, the provider, the electric utility and the bureau of consumer protection.

(c) Submit its finalized analysis to the commission.

4. Not later than 50 calendar days after the date on which the eligible customer files an application, any party of record may file with the commission an alternative analysis to the analysis performed by the regulatory operations staff. Each alternative analysis must:

(a) Identify the bases for concluding that the analysis performed by the regulatory operations staff is deficient; and

(b) Include objective information demonstrating that the methodology used by the party is valid under the range of circumstances included in the alternative analysis performed by the party.

5. The deadlines established in subsections 1 to 4, inclusive, may be modified by stipulation or by order of the commission on a case-by-case basis for any proceeding governed by this chapter. Upon the request of a party of record, the commission may waive noncompliance with the deadlines established in subsections 1 to 4, inclusive.

6. After evaluating the analysis performed by the regulatory operations staff and any alternative analysis filed by a party of record, the commission will determine whether it is in the best interest of the remaining customers of the electric utility to have the eligible customer assign the contractual rights to the electric utility.

7. If the commission determines that it is in the best interest of the remaining customers of the electric utility to have the eligible customer assign the contractual rights to the electric utility:

(a) The eligible customer shall assign the contractual rights to the electric utility.

(b) The electric utility shall accept the assignment and, upon the effective date of the contract, include the contract in its portfolio to supply its remaining customers. The contract:

(1) Shall be deemed to be prudent;

(2) Is not subject to the provisions of NAC 704.9005 to 704.9525, inclusive, for the purposes of including the contract as an option for supply; and

(3) Is not an amendment to the plan of action of the electric utility for the purposes of NAC 704.9503, and the electric utility shall not apply for permission to amend its plan of action pursuant to that section with regard to the contract.

(c) In its subsequent filing for recovery of the cost of the contract, the electric utility shall assign the cost of the contract to those classes of customers who are not eligible for choice pursuant to this chapter.

8. If the commission determines that it is not in the best interest of the remaining customers of the electric utility to have the eligible customer assign the contractual rights to the electric utility, the eligible customer is entitled to the contractual rights.

Sec. 28. *1. Except as otherwise provided in subsection 2, not later than 40 calendar days after the date on which the eligible customer files an application, the eligible customer shall file with the commission the following agreements:*

(a) A completed and fully executed distribution service agreement between the eligible customer and the electric utility. The distribution service agreement must include, without limitation, a list of each point of delivery at which the eligible customer intends to purchase energy from the provider and, for each such point of delivery:

(1) The physical location of the point of delivery; and

(2) The current account number for the point of delivery, the name on each such account and the current billing address and final billing address for each such account.

(b) A completed and fully executed transmission service agreement and operating agreement with the electric utility meeting all requirements of its OATT.

2. If the eligible customer does not file the agreements pursuant to subsection 1 and the commission approves the application, the commission will condition its order approving the application on the filing of the agreements with the commission.

3. Each agreement filed with the commission pursuant to subsection 1 or 2 must be served on each party of record.

4. If the commission approves an application, the commission will condition its order approving the application on submission to the regulatory operations staff of one copy of the completed and fully executed agreement between the eligible customer and the provider for the purchase of energy, capacity or ancillary services from the provider. The regulatory operations staff shall:

(a) Review the agreement to verify that the terms of the agreement are the same as the terms which the eligible customer provided to the regulatory operations staff for use in its finalized analysis of the proposed transaction; and

(b) Inform the commission and each party of record whether the terms are the same or whether the terms differ. If the terms differ, the order of the commission approving the application shall be deemed to be rescinded.

5. An agreement that is submitted to the regulatory operations staff pursuant to subsection 4 shall be deemed to be submitted for verification purposes only and must not be included as part of the record of the case. The contents of the agreement shall be deemed to be commercially sensitive and must not be disclosed on the public record or otherwise in any proceeding governed by this chapter. The regulatory operations staff shall protect the confidentiality of the agreement and shall not disclose the contents of the agreement to any person or entity, unless authorized by the commission.

6. In addition to the terms, conditions and compliance items required by subsections 2 and 4, the commission may condition its order approving an application with any other terms, conditions and compliance items it deems necessary to ensure that the proposed transaction is not contrary to the public interest.

7. The commission will provide in each order approving an application that the eligible customer must comply with all terms, conditions and compliance items imposed pursuant to this section not later than 100 calendar days after the date on which the commission issues the order.

8. A party of record may petition the commission to reopen consideration of an application. A party of record must file such a petition not later than 15 calendar days after the date on which the commission determines that the eligible customer has complied with all terms, conditions and compliance items imposed pursuant to this section.

9. Except upon a petition to reopen consideration of an application that is filed by a party of record pursuant to this section and except as otherwise provided in subsection 4, the commission will not, after it issues an order approving an application:

(a) Rescind or amend its approval of the application; or

(b) Add to or modify the terms, conditions and compliance items set forth in the order approving the application.

Sec. 29. 1. *Not later than 20 calendar days after the date on which the commission determines that the eligible customer has complied with all terms, conditions and compliance items imposed pursuant to section 28 of this regulation, the eligible customer shall notify the electric utility of whether the eligible customer intends to proceed with the proposed transaction and, if so, the date of commencement.*

2. The date of commencement must not be sooner than:

(a) Sixty calendar days after the date on which the eligible customer notifies the electric utility pursuant to subsection 1; and

(b) One hundred eighty calendar days after the date on which the eligible customer files the application.

3. After receiving notification pursuant to subsection 1, the electric utility:

(a) May plan to discontinue procuring for the eligible customer the energy, capacity and ancillary services that the eligible customer will be purchasing from the provider pursuant to the proposed transaction; and

(b) Shall install or implement, or cause to be installed or implemented, all systems, operations, equipment and other modifications necessary to accommodate the proposed transaction.

Sec. 30. *If the commission approves an application, the commission will order the eligible customer to pay:*

1. Its share of the annual assessment levied pursuant to NRS 704.033 to the commission and to the bureau of consumer protection; and

2. Any other tax, fee or assessment that would be due a governmental entity had the eligible customer continued to purchase energy from the electric utility.

Sec. 31. *1. If the commission approves an application, the commission will order the eligible customer to pay its actual load-share portion of any unrecovered positive balance in the deferred accounts of the electric utility existing as of the date of commencement. The amount to be paid by the eligible customer must be calculated by the electric utility and approved by the commission.*

2. *Not later than 60 calendar days before the date of commencement, the electric utility shall provide the eligible customer and the commission with:*

(a) An estimate of the amount to be paid by or refunded to the eligible customer based upon estimates by the electric utility of the load-share portion of the eligible customer and of the balances that will be in the deferred accounts of the electric utility as of the date of commencement; and

(b) All supporting data and calculations.

3. *The estimated amount that is calculated pursuant to subsection 2 must be paid by or refunded to the eligible customer, as appropriate, in a manner agreed to by the eligible customer and the electric utility. Except as otherwise provided in the agreement between the eligible customer and the electric utility, the payments or refunds must be made in monthly installments for the remainder of the deferral period.*

4. *After the estimated amount is calculated pursuant to subsection 2, the electric utility, in its most immediately following application to clear its deferred accounts pursuant to NRS 704.110, shall establish the actual amount that should have been paid by or refunded to the eligible customer. After the actual amount has been established by the electric utility and approved by the commission with any necessary adjustments, the difference between the estimated amount and the actual amount must be paid by or refunded to the eligible customer, as appropriate.*

5. *As used in this section, “actual load-share portion” means the proportion determined from the ratio of the annual energy load of the eligible customer (numerator) to the total annual retail energy load of the electric utility (denominator).*

Sec. 32. In determining whether a proposed transaction for an existing eligible customer will be contrary to the public interest:

1. The commission will base its determination on the criteria set forth in subsections 5 and 6 of section 20 of Assembly Bill No. 661 of the 71st session of the Nevada Legislature, chapter 604, Statutes of Nevada 2001, at page 3226 (NRS 704B.310). To approve the application, the commission must determine that the proposed transaction does not subject the electric utility or its remaining customers to increased costs as a result of the proposed transaction.

2. In addition to the criteria set forth in subsection 1, the commission may consider, without limitation, and give due weight to:

(a) The potential impacts of the proposed transaction on the electric utility and its remaining customers as set forth in the analysis performed by the regulatory operations staff pursuant to section 26 of this regulation.

(b) The potential impacts of the proposed transaction on the electric utility and its remaining customers as set forth in any alternative analysis filed by a party of record pursuant to section 26 of this regulation.

(c) The potential impacts of the proposed transaction on the electric utility and its remaining customers which are of a qualitative nature or of a quantitative nature and which were not included in the analysis performed by the regulatory operations staff pursuant to section 26 of this regulation.

(d) The opportunity or ability of the electric utility to mitigate costs that would otherwise be assigned to its remaining customers, provided that any such mitigation must not alter, diminish or otherwise affect any rights or obligations arising under any contract which

requires the electric utility to purchase energy, capacity or ancillary services from another party and which was in existence on July 17, 2001.

(e) The extent to which the proposed transaction increases or decreases existing subsidies to the remaining customers of the electric utility in the same rate class or in other rate classes.

(f) Factors that affect system reliability of the electric utility, including, without limitation, whether approval of the application will result in:

(1) Construction of additional generation, transmission or distribution assets without cost to the remaining customers of the electric utility;

(2) Location of generation assets where they may improve or degrade system reliability;
and

(3) Availability of generation assets which may be dispatched by the electric utility or which may be capable of providing ancillary services such as regulation.

(g) Factors that affect the general welfare of the residents and communities of this state, including, without limitation, employment, economic development and the quality of life.

Sec. 33. 1. *If the date of commencement of a proposed transaction is before July 1, 2003, and the load of the eligible customer is in the service territory of an electric utility that primarily serves densely populated counties, the commission will not approve an application filed by the eligible customer if the amount of energy to be purchased from the provider pursuant to the proposed transaction will result in the 50 percent cap being exceeded when that amount of energy is added to the aggregate amount of energy that will be purchased from providers before July 1, 2003, by all other eligible customers in the same service territory whose proposed transactions have been approved by the commission.*

2. The electric utility shall provide to the commission any information necessary for the commission to carry out the provisions of this section.

3. As used in this section, "50 percent cap" means 50 percent of the difference between:

(a) The forecasted annual energy consumption of the retail customers of the electric utility, as adopted by the commission; and

(b) The amount of energy, as forecasted by the regulatory operations staff, to be produced by the electric utility from electric resources which are located in this state and which:

(1) Are owned by the electric utility; or

(2) Were under contract to the electric utility on or before June 4, 2001, for a term that extends 10 years or more beyond the date of commencement of the proposed transaction.

Sec. 34. The regulatory operations staff of the public utilities commission of Nevada shall carry out the provisions of subsections 8 and 9 of section 26 of this regulation on or before November 15, 2001, or the 15th calendar day following the effective date of this regulation, whichever is later.

**LEGISLATIVE REVIEW OF ADOPTED REGULATION
AS REQUIRED BY THE ADMINISTRATIVE PROCEDURES ACT
NRS 233B.066
PUBLIC UTILITIES COMMISSION OF NEVADA
LCB FILE NO. R125-01
DOCKET NO. 01-7021**

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

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 eligible customers and providers of new electric resources in Nevada in Public Utilities Commission of Nevada ("Commission") Docket No. 01-7021 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 three (3) procedural orders: Procedural Order #1 which was issued September 7, 2001, Procedural Order #2 which was issued September 27, 2001, and Procedural Order #3 which was issued on October 19, 2001. All of the 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: Alaina Burtenshaw, Assistant Staff Counsel, suggested that, due to the relatively short time the Commission had to adopt the regulations in this docket, a small group be established to work on drafting consensus regulations to be submitted to the Commission on September 7, 2001; Eric Witkowski, Senior Deputy Attorney General with the Bureau of Consumer Protection, agreed with Ms. Burtenshaw's suggestion of a small group drafting consensus regulations, however, Mr. Witkowski proposed that the September 7, 2001, deadline might be a bit aggressive; and Thelma Clark, a senior advocate, also agreed with Ms. Burtenshaw's proposal and further questioned Staff to determine if the small business impact statement that Staff would propose to the Commission would also take into account the impact on residential customers.

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 continued Workshop held on September 7, 2001: Richard Hinckley, Staff Counsel, and Richard Burdette, Manager of Resource and Market, instructed the Commission that the participants at the last workshop had broken up into groups, including the governmental group, the utility group, a supplier group, a provided group, and a customer group, with one representative from

each group working up a draft of the regulations; and Kevin C. Powers, Principal Deputy of the Legislative Counsel Bureau ("LCB"), stated that, as long as the changes made to the proposed regulations by the agency at the point of adoption fall within the scope of the notice of intent, then the LCB consider them to be within the realm of authority for the agency to act on at the time of the hearing.

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: Richard Hinckley, Staff Counsel, and Richard Burdette, Manager of Resource and Market, disagreed with the critique that the regulations regarding eligible customers and providers of new electric resources are too detailed or too burdensome, Mr. Hinckley further discussed information required in the application, Staff's analysis, and confidentiality issues; Bob Cooper, Senior Regulatory Analyst with the Bureau of Consumer Protection, stated that it would be unprecedented to shift the burden and equally unprecedented to shift the amount of work to Staff when Staff has so many other matters it is involved in; Thelma Clark, a senior advocate, expressed concern that, once the larger user of energy left the system, the prices would be increased dramatically and stated that the companies leaving the system should have to prove that there will be no adverse impact on the rest of the customers to the system; and Deyanira Flores, from Clark County Administrative Services, requested clarification on a local government's ability to aggregate its load.

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: 22
September 7, 2001: 24
October 16, 2001: 29

(b) Testified at the workshop:

August 24, 2001: 20
September 7, 2001: 21
October 16, 2001: 18

(c) Attended the hearing:

October 30, 2001: 21

(d) Submitted to the agency written comments:

Written comments were submitted to the Commission by Staff; Newmont Mining Corporation; Nevada Independent Energy Coalition; Barrick Goldstrike Mines, Inc. ("Barrick"); Reliant Resources Inc., Nevada Energy Buyers Group and MGM Mirage ("the Reliant Group"); Enron Power Marketing, Inc. and Enron Energy Services, Inc.; Sempra Energy Solutions ("Sempra"); Nevada Power Company and Sierra Pacific Power Company; Calpine Corporation

("Calpine"), APS Energy Services, PG&E NEG and Mirant Americas ("Nevada New Resource Providers"); Dynegy Marketing and Trade and Dynegy Energy Services, Inc. ("Dynegy"); and Northern Nevada Industrial Electric Users ("NNIEU").

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

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; Newmont Mining Corporation ("Newmont"); Barrick Goldstrike Mines, Inc. ("Barrick") & Round Mountain Gold Corporation; NNIEU; Placer Dome, PO&E, NEG; Nevada Independent Energy Coalition ("NIEC"); Enron Power Marketing, Inc. and Enron Energy Services, Inc. ("Enron"); Reliant Energy; Mirant; Nevada Energy Buyers Network; Shell Energy Services, LLC; Sprint/Central Telephone-Nevada; Alrus Consulting, LLC; Dynegy and Entergy; Williams Companies; Calpine Corporation; MGM Mirage; AES Newenergy; Sempra Energy; Legislative Counsel Bureau; Thelma Clark; Clark County Administrative Services; Nevada New Resource Providers and Nevada Senior Coalition.

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

The first series of written comments were received by the Commission on September 14, 2001. Staff submitted its comments and included a Composite Draft of the regulations, which was not a consensus document, and a Summary of Additions, Deletions, and Alternative Language that came out of the representative group discussions.

The Commission also received comments from the Reliant Group. The Reliant Group's comments were based on the Composite Draft submitted by Staff and stated that the Commission should not give Staff overly broad discovery rights of the eligible customer. Further, the Reliant Group suggested that the Commission eliminate references made to system impact studies and submitted draft regulations which incorporated these changes.

Enron submitted comments raising concerns of confidentiality issues with regard to the information that must be given to Staff. Further, Enron recommended that the price disclosure to any other party necessary to implement AB 661 be consistent with the contractual relationship between the customer and its provider, including disclosure provisions. In its comments, NNIEU stated that it supports a version of the regulations which will limit the regulatory obstacles to

eligible customers leaving the utility system. NIEC stated in comments filed with the Commission that it was the duty of the Commission to ensure that customer load departs under conditions and regulations that guarantee that the utilities recover the full cost of their existing QF contracts from the pool of retail ratepayers, even if eligible customers under AB 661 depart as utility customers. Sempra argued against Staff's proposal for any price or pricing information to be given to Staff during the 180-day processing period. According to Sempra, there would be no commercially feasible way to enter into a contract with a sales price with a minimum of six months in advance of service without creating substantial unnecessary risk.

Nevada Power Company and Sierra Pacific Power Company likewise submitted comments and proposed that an eligible customer have a signed network transmission service agreement in place prior to its departure. In addition, their comments recommended that the Commission delete any reference to "existing" before the phrase "eligible customer". Nevada Power Company and Sierra Pacific Power Company also included draft regulations with their comments.

The Commission also received comments from Barrick. Barrick stated that the statute does not require that confidential or commercially-sensitive information be provided to Staff. In addition, Barrick suggested that the Commission require eligible customers to demonstrate that they have the ability to enter into transmission service agreements and not that they are already entering into them. Calpine, filing comments with the Commission, stated that the definition of "provider of new electric resources" should include those power generators who have filed for the necessary permits to construct new generating facilities. Further, Calpine argued that the utility should be required to provide the load-share information in a timely manner, with Calpine suggesting a three (3) day time frame.

Finally, Newmont also submitted its comments to the Commission. In these comments, Newmont suggested that the letter of intent itself be treated as confidential. Newmont also included with its comments its own draft of the proposed regulations.

The second series of comments were filed with the Commission immediately following September 14, 2001. On September 17, 2001, Dynegy submitted its comments to the Commission. Dynegy suggested adding a safe guard to the regulations so as to prevent an electric utility from misusing any information it obtains from an eligible customer's application. Dynegy stated that it had reviewed the comments of Enron and agrees with them regarding the Composite Draft submitted by Staff.

On September 19, 2001, Staff, Nevada Power Company, Sierra Pacific Power Company and Newmont filed a Joint Motion to Establish Procedural Schedule ("Joint Motion") with the Commission. The Joint Motion recommended that the Commission file a Notice of Intent to Adopt Regulations on or about October 9, 2001, conduct a workshop on October 16, 2001, and hold a hearing on October 25, 2001.

The third series of written comments were submitted to the Commission just prior to the October 16, 2001, Workshop. Newmont submitted its Pre-Workshop Comments on Proposed Regulation on October 12, 2001. According to Newmont, the proposed regulations which the

Commission submitted to the LCB may lose sight of the statutory balance by imposing detailed requirements that are not necessary to protect the public interest but that are likely to inhibit the transactions that the Legislature intended to encourage. Newmont also included a copy of its proposed regulations with its comments.

On October 15, 2001, Newmont filed with the Commission its Supplemental Pre-Workshop Comments on Proposed Regulation ("Supplement"). In its comments, Newmont stated that this Supplement is the product of reviewing the LCB revised draft ("LCB Draft") of the proposed regulations submitted to the LCB by the Commission. Newmont stated that LCB Draft Sections 23.6 and 24.4 appear to be new provisions that expressly excuse new customers from the requirements of a letter of intent and pre-application consultation. Further, Newmont asserted that the Commission should not make these provisions mandatory for any customer. Included with its comments, Newmont submitted another copy of its proposed regulations.

NNIEU filed its comments with the Commission on October 15, 2001. In these comments, it is stated that the development of a predetermined methodology to evaluate the impact on the utility and remaining ratepayers is not practical, shortsighted and unnecessarily restrictive. The comments also asserted that the requirement that the eligible customer performs and presents an analysis of the impact on the utility and remaining ratepayers is not practical. Further, NNIEU included with its comments proposed regulations.

The fourth series of comments was received after the October 16, 2001, Workshop but prior to the October 30, 2001, Hearing. On October 23, 2001, NNIEU filed additional comments with the Commission. NNIEU stated that it was extremely concerned with Section 31(2)(e) of the LCB Draft which gives, according to NNIEU, the Commission the discretion to determine whether elimination of subsidies from the departing customer to other customer classes is contrary to public interest.

Nevada Power Company and Sierra Pacific Power Company submitted its comments to the Commission on October 23, 2001. These comments agree with the LCB Draft proposal which mandates that the eligible customer file a Notice of Intent thirty (30) days prior to the filing of its application to depart. However, the comments deviate from the LCB Draft proposal in that Nevada Power Company and Sierra Pacific Power Company recommended deleting the reference to "are located in this state" from LCB Draft Section 25(5)(b).

Comments were also submitted on October 23, 2001, by Nevada New Resource Providers ("NNRP"). NNRP raised concern over the confidentiality of information deemed to be commercially sensitive. In its comments, NNRP also proposed that Section 25 be amended to allow an eligible customer to file for a protective order at the time of the filing of the application if such eligible customer did not request a protective order at the time it filed its letter of intent. NNRP submitted proposed regulations with its comments to the Commission.

Barrick filed comments and proposed regulations with the Commission on October 23, 2001. According to Barrick, the letter of intent must be kept confidential. Barrick also suggested that the Commission eliminate the opportunity to revisit a Commission order based upon any compliance filing.

Similarly, Enron filed comments and proposed regulations with the Commission on October 23, 2001. Enron asserted that the Commission should determine that the commercial interests between the eligible customer and its provider are confidential and establish clear and certain requirements that are to be included in the application submitted by the eligible customer. Staff submitted its comments and proposed regulations to the Commission on October 23, 2001. In its comments, Staff stated the areas of contention still left to be resolved in order for its proposed regulations to be a consensus document.

Newmont submitted its comments and proposed regulations on October 23, 2001, to the Commission. According to Newmont, the information required in the referenced sections from the letter of intent requirements in Section 23 should be deleted. Newmont further proposed that the Commission strike Section 31(2)(e).

On October 23, 2001, NIEC filed its comments and proposed regulations with the Commission. Among other things, NIEC recommended that the Commission revise Section 31(2)(e) to read "Will determine that a proposed transaction does not subject the electric utility or their remaining customers to increased costs as a result of the proposed transaction".

Finally, Dynegy filed its comments with the Commission on October 29, 2001. Dynegy recommended that the proposed regulations identify that the information in the system impact study be provided by the utilities when such studies are completed as part of the ongoing application process at the time the application is filed. Further, Dynegy stated that the "actual load-share portion" of deferred energy should be determined on a monthly basis and not on an annual basis.

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

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 does not impose a significant burden nor does it restrict the formation, operation, or expense of businesses.

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

At this time, the Commission cannot quantify what, if any, estimated cost it will incur to enforce the adopted 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 that 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.

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

In re investigation and rulemaking to promulgate)
and adopt regulations pursuant to AB 661.) Docket No. 01-7021
_____)

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 requires, among other things, that the Commission
adopt regulations governing the purchase by eligible customers of new electric resources.

2. On July 26, 2001, the Public Utilities Commission ("Commission") voted to open
Docket No. 01-7021, an investigation and rulemaking to promulgate and adopt regulations
pursuant to Assembly Bill 661.

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 eligible
customers purchasing new electric resources 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, AngloGold North America, Inc., Northern Nevada Industrial Electric Users, Nevada Independent Energy Coalition, Enron Marketing, Inc. and Enron Energy Services, Inc., Reliant Energy, Nevada Energy Buyers Network, Calpine C Power & APS Energy Services, Dynegy Energy Services, Inc., the Senior Advocate, Clark County Administrative Services, Nevada Senior Coalition, Mirant, Nevada New Resource Providers and MGM/Mirage.

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 the Cover Sheet to the Legislative Counsel Bureau ("LCB") on November 9, 2001.

11. The 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, with slight modifications in Section 28, subsections 4 and 5, 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.

14. The Commission further finds that this docket should remain open as there may be issues with regard to governmental entities that still need to be resolved.

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 with modifications to Section 28, subsections 4 and 5.

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. This docket shall remain open.

4. 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)