

ADOPTED REGULATION OF THE PUBLIC

UTILITIES COMMISSION OF NEVADA

LCB File No. R122-02

Effective October 24, 2002

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

AUTHORITY: §§1 and 2, NRS 704B.200.

Section 1. NAC 704B.320 is hereby amended to read as follows:

704B.320 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 December 17, 2001, each electric utility shall file with the commission written standards, policies and procedures to ensure compliance with this subsection.

Sec. 2. NAC 704B.340 is hereby amended to read as follows:

704B.340 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 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 *believes* to be commercially sensitive. ~~[or to otherwise require such protection.]~~ The commission will *determine whether the requested information is commercially sensitive under Nevada law and requires confidential treatment. The commission:*

(a) *May* 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]~~

(b) *Will not grant a protective order with respect to the information described in paragraphs (a) and (b) of subsection 2 of NAC 704B.320.*

3. *If information is protected by a protective order, the* regulatory operations staff, the bureau of consumer protection ~~[and]~~, the electric utility *and any intervenor authorized by the commission to participate in the matter pursuant to NAC 703.580 to 703.600, inclusive,* 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.

**NOTICE OF ADOPTION OF REGULATION
LCB File No. R122-02**

PUC DOCKET NO. 01-7021

The Public Utilities Commission adopted regulations assigned LCB File No. R122-02, which pertain to Chapter 704B of the Nevada Administrative Code on September 12, 2002. A copy of the regulations as adopted is attached hereto.

Notice date: 7/2/2002
Hearing date: 8/16/2002

Date of adoption by agency: 9/16/2002
Filing date: 10/24/2002

INFORMATIONAL STATEMENT

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

The revisions to NAC 704B regarding the issue of confidentiality in Public Utilities Commission (“Commission”) Docket No. 01-7021 were noticed on three occasions: one Notice of Filing on January 23, 2002, one Notice of Workshop on April 8, 2002, and one combined Notice of Intent to Amend/Adopt/Repeal Regulations; Notice of Workshop and Notice of Hearing on July 2, 2002, published 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 notices were 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 a Request for Comments issued February 20, 2002, that was sent to 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 represents a summary of the public responses that were made to the Commission at the duly-noticed workshop held on June 3, 2002: The Regulatory Operations Staff of the Commission (“Staff”) suggested that changing the regulation to have the letter of intent filed with the Commission could relieve some of the concerns around the confidentiality of the letter of intent. Further, Staff stated that it believed that as the regulations were applied and tested, the evolution was towards more traditional ways of applying confidentiality. Therefore, Staff stated its belief that the rest of the provisions regarding the confidentiality of the application were fine. The Attorney General’s Bureau of Consumer Protection (“BCP”) stated that the Commission should apply a balancing test, with a combination of the Public Records Act with the Nevada Uniform Trade Secrets Act, to determine whether material is confidential. The Nevada Energy Buyers Group (“NEBG”) stated that it felt a much softer stance on confidentiality was appropriate at this time, but that it still wanted the letter of intent and any pricing and business terms to be confidential. The Nevada New Resource Providers (“NNRP”) agreed with NEBG, and stated that the confidentiality of pricing was critical to maintaining a competitive environment. Barrick Goldstrike Mines (“Barrick”) testified that information that is not generally available to the public, that would put the applicant at a competitive disadvantage,

should be kept confidential. Sierra Pacific Power Company and Nevada Power Company (“Sierra Pacific and Nevada Power”) stated that it wanted kept confidential certain customer specific information, such as the calculation and analysis of the impact fee in a given case. Further, Sierra Pacific and Nevada Power indicated that it believed that the confidentiality of the letter of intent was no really an issue before the Commission, since the letter of intent is not filed with the Commission.

In addition to the public response from affected businesses discussed in #3 below, the following represents a summary of the public responses that were made to the Commission at the duly-noticed workshop held on August 16, 2002: Staff and BCP both asserted their support for the revisions to the regulations. The Las Vegas Review-Journal stated its intent in participating in this matter was to ensure that the public had access to information about matters before the Commission. Reliant Energy Renewables, Inc. (“Reliant”) stated its belief that the proposed regulation was very workable. Further, Reliant expressed its concern at any changes to the most commercially sensitive issue, price. The Nevada Independent Energy Coalition (“NIEC”) proposed an addition to the regulation that would allow any authorized intervenor in a proceeding to access confidential information upon execution of an appropriate confidentiality agreement. Sierra Pacific and Nevada Power expressed its support for the proposed regulation.

In addition to the public response from affected businesses discussed in #3 below, the following represents a summary of the public responses that were made to the Commission at the duly-noticed hearing held on August 16, 2002: The NIEC reiterated its proposal regarding intervenors having access to confidential information upon execution of an appropriate confidentiality agreement. Staff, BCP, Reliant, and Sierra Pacific and Nevada Power all expressed their support for the revised regulation, as well as the modification proposed by NIEC.

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

2. The number of persons who:

(a) Attended the workshop:

June 3, 2002: 10

August 16, 2002: 9

(b) Testified at the workshop:

June 3, 2002: 6

August 16, 2002: 6

(c) Attended the hearing:

August 16, 2002: 7

(d) Submitted to the agency written comments:

Written Comments were submitted to the Commission by Staff; Calpine Corporation; Sierra Pacific and Nevada Power; Barrick; APS Energy Services; Mirant Americas; NIEC; and the Nevada Press Association, Inc.

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of 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 hearing by interested persons, including Staff, BCP, Sierra Pacific and Nevada Power, Barrick, NEBG, NNRP, Clark County, Reliant, NIEC and the Las Vegas Review-Journal.

Written responses were received as set forth in the response to question 2(d) above.

The first series of written comments were filed with the Commission from February 12 through February 14, 2002. Calpine stated in its comments that information deemed confidential under the current regulation is necessarily protected in order to allow a competitive market to flourish. Calpine asserts that highly sensitive commercial information must be protected from public disclosure. Staff's comments stated that in the regulation the Commission appropriately balanced the need for public access with the appropriate business interests. Further, Staff highlighted the need for Staff's investigation files containing sensitive business information to remain private. Sierra Pacific and Nevada Power indicate that the regulations adopted by the Commission mirror provisions already contained in Nevada Administrative Code Chapter 703 and Nevada Rule of Civil Procedure 26.

The second series of comments was filed on April 17, 2002 following the Commission's Request for Comments. The NNRP stated in its comments that the letter of intent was not a formal Commission filing, therefore any release on information contained therein would not be appropriate. Additionally, at a minimum, highly sensitive commercial information regarding pricing, capacity and ancillary services in the application should be protected from public disclosure. The NNRP supported a standard to determine if information is commercially sensitive that analyses whether the release of the information provides a competitive advantage, placing the burden on the party challenging the confidential treatment to show that the information should be released to the public. Barrick proposed the use of a standard similar to the federal Freedom of Information Act to determine what information should be kept confidential. Barrick further supported keeping confidential any information not in the public domain at the time application is made. The NIEC stated in its comments that upon the issuance of a protective order by the Commission, any authorized party to the proceeding should have access to the protected information upon execution of an appropriate confidentiality agreement. Staff continued to assert in its comments that the discretion to disclose information in the letter of intent appropriately rests with the applicant because the letter of intent is not filed with the

Commission. With the application, the Staff supported the application of other provisions of the NAC and NRS that address this issue. Any information kept with confidential would be listed with specificity, and the protected information could only be that which would provide a competitor a commercial advantage. With this, Staff outlined a three-part test to apply.

On June 12, 2002, Barrick filed Supplemental Comments following the June 3, 2002 Workshop. Barrick requested the Commission consider protecting confidential terms in contracts between potential suppliers and eligible customers, so as to not interfere with those agreements and discourage the interaction of these parties.

On August 14, 2002, the Nevada Press Association filed a letter indicating its support for the proposed regulation.

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

The Commission received LCB revisions to its regulation on August 8, 2002. Changes were made to the proposed regulation before it was adopted by the Commission at a duly noticed general session on September 12, 2002.

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 allows the public additional access to Commission proceedings, 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 which regulates the same activity.

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

The Commission is not aware of any provision in this regulation that provides for a new fee, or increases an existing fee.