

LCB File No. R018-04

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

(This draft replaces the one posted 1/30/2004)

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.
Commission additions in GREEN; deletions in VIOLET

AUTHORITY: §§1-19, NRS 704B.200.

A REGULATION relating to providers of new electric resources; revising the manner in which the analysis of a proposed transaction between an eligible customer and a provider of new electric resources is conducted; revising provisions governing the information required to be submitted to conduct such an analysis; providing for the review and analysis of proposed transactions between eligible customers and alternative sellers that have nonconforming terms or conditions; providing for the issuance of protective orders relating to the confidentiality of the information concerning proposed transactions; revising certain deadlines; requiring the eligible customer to submit a plan for the avoidance of involuntary curtailments of energy or capacity to remaining retail customers of the electric utility; providing for deviations of regulatory requirements; and providing other matters properly relating thereto.

Section 1. NAC 704.8925 is hereby amended to read as follows:

704.8925 If a renewable energy system has entered into a contract with a provider of electric service before December 8, 2003, the renewable energy credits generated by the renewable energy system pursuant to the contract must be awarded to the provider, or as otherwise determined in a proceeding conducted pursuant to NAC 704B.300 to ~~[704B.420, inclusive.]~~ *704B.410, inclusive, and sections 7, 8 and 9 of this regulation.*

Sec. 2. Chapter 704B of NAC is hereby amended by adding thereto the provisions set forth as sections 3 to 9, inclusive, of this regulation.

Sec. 3. *“Capacity” means the rated continuous load-carrying ability, expressed in megawatts, of generation equipment.*

Sec. 4. *“Impact fee” means an amount assessed by the Commission against an eligible customer to satisfy pursuant to the requirements of subsection 7 of NRS 704B.310, exclusive of the payments required by subsection 7(b)(2) of NRS 704B.310.*

Sec. 5. *“Ten-percent contract” or “10-percent contract” means the contract required to be offered to an electric utility pursuant to subsection 2 of NRS 704B.320.*

Sec. 6. *“Underlying contract” means a contract or proposed contract between an eligible customer and a provider of new electric resources that is the subject of an application filed pursuant to NRS 704B.310.*

Sec. 7. 1. *If a proposed transaction between an eligible customer and a provider relies on new electric resources that will be constructed after the Commission has issued its order granting the application:*

(a) The Commission will establish reasonable time intervals by which:

(1) The eligible customer must file, and the electric utility must process, documents required to determine if the eligible customer is in compliance with all the terms, conditions and compliance items imposed pursuant to NAC 704B.370; and

(2) The Regulatory Operations Staff must review and verify whether the eligible customer has complied with the order issued by the Commission.

(b) Not later than 20 calendar days after the date on which the Commission determines that the eligible customer has complied with all the terms, conditions and compliance items imposed pursuant to NAC 704B.370, the eligible customer shall notify the electric utility and

the Commission in writing as to whether the eligible customer intends to proceed with the proposed transaction and, if so, the estimated date of commencement.

2. If the eligible customer ~~intends to proceed with the proposed transaction:~~ notifies the electric utility and the Commission pursuant to subsection 3, or reconfirms to the electric utility and the Commission pursuant to subsection 6, that it intends to proceed with the proposed transaction, the electric utility:

~~(a) The electric utility:~~

~~(1) (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~~

~~(2) (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.~~

3. If the eligible customer notifies the electric utility and the Commission in writing of its intent to proceed with the transaction no later than 50 days after the Commission issues a compliance order approving the eligible customer's application, the impact fee approved by the Commission, pursuant to NRS 704B.310(7)(b), will not be updated or adjusted unless the actual date of commencement occurs before the estimated date of commencement.

4. ~~(b)~~ Not later than 15 calendar days after the date on which the eligible customer notifies the electric utility and the Commission of its estimated date of commencement pursuant to paragraph (b) of subsection 1, unless the eligible customer gave notification pursuant to subsection 3, the Regulatory Operations Staff shall update its calculation of the impact fee

that will be assessed by the Commission against the eligible customer. The updated calculation must:

~~(1)~~ (a) Be based on the estimated date of commencement; and

~~(2)~~ (b) Have sufficient detail so that if the actual date of commencement occurs before the estimated date of commencement, the impact fee can be adjusted accordingly.

5. ~~3.~~ Upon completion of the calculation referenced in 4, the ~~The~~ Regulatory Operations Staff shall provide the eligible customer with an analysis of the updated calculation of the impact fee made in accordance with paragraph ~~(b)~~ of subsection 4 ~~2~~ and, on that date, shall provide a copy of the analysis to the provider, the electric utility, the Bureau of Consumer Protection, the Commission and all other parties of record. The analysis must include a listing of the major assumptions used and a listing of any inputs that were changed from the original analysis that served as the basis for the determination by the Commission that the assessment of the impact fee was necessary so that the proposed transaction would not be contrary to the public interest. A party of record may file with the Commission an objection to the analysis of the updated calculation of the impact fee not later than 15 calendar days after the Regulatory Operations Staff provides that analysis to the party of record pursuant to this subsection. The objection must identify the basis for concluding that the analysis was deficient, including, without limitation, the identification of each contested assumption and input.

6. ~~4.~~ Not later than 30 calendar days after receiving a copy of the analysis of the updated calculation of the impact fee pursuant to subsection 5, the eligible customer shall:

(a) If no objections to the updated calculation of the impact fee are filed pursuant to subsection 5 ~~3~~:

(1) Reconfirm to the Commission, electric utility and parties of record in writing that the eligible customer intends to proceed with the proposed transaction; or

(2) Inform the Commission, electric utility and parties of record in writing that the eligible customer will not proceed with the proposed transaction.

(b) If objections to the updated calculation of the impact fee are filed pursuant to subsection 5 3:

(1) Reconfirm to the Commission, electric utility and parties of record in writing that the eligible customer intends to proceed with the proposed transaction;

(2) Inform the Commission, electric utility and parties of record in writing that the eligible customer will not proceed with the proposed transaction; or

(3) Inform the Commission, electric utility and parties of record in writing that the eligible customer will delay the commencement of the proposed transaction until the Commission issues its decision on the objections. Not later than 30 calendar days after the date on which the Commission issues its decision on the objections, the eligible customer shall:

(I) Reconfirm to the Commission, electric utility and parties of record in writing that the eligible customer intends to proceed with the proposed transaction; or

(II) Inform the Commission, electric utility and parties of record in writing that the eligible customer will not proceed with the proposed transaction.

~~5. If the electric utility receives reconfirmation pursuant to subsection 4, 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.~~

7. 6. An eligible customer must comply with all terms, conditions and compliance items imposed pursuant to NAC 704B.370 not later than 70 days before the estimated date of commencement. Upon the request of the eligible customer, the Commission may approve a revised estimated date of commencement.

8. 7. If, as of the estimated date of commencement:

(a) The eligible customer is not capable of receiving energy, capacity or ancillary services from the provider of new electric resources pursuant to the proposed transaction; and

(b) The eligible customer is otherwise eligible to take electric service under the electric utility's incremental pricing tariff for the electric utility,

↳ the electric utility may require the eligible customer, or the eligible customer may elect, to take electric service under the incremental pricing tariff of the electric utility until the actual date of commencement.

Sec. 8. 1. If an eligible customer that is purchasing energy, capacity or ancillary services from a provider intends to purchase the energy, capacity or ancillary services from an alternative provider pursuant to a proposed transaction in which the terms or conditions, other than price, do not conform with the terms and conditions originally approved by the Commission with respect to the eligible customer, the eligible customer shall submit its

proposed transaction with the alternative provider to the Commission for approval pursuant to the provisions of this section.

2. To obtain approval of a proposed transaction between an eligible customer and alternative provider described in subsection 1, the eligible customer must give to the Commission and each party of record to the docketed matter in which the eligible customer's underlying contract was approved, notice of the eligible customer's intention to purchase energy, capacity or ancillary services from the alternative provider. The notice must:

(a) Be in writing;

(b) Contain the information relating to the supply of energy, capacity or ancillary services required for an application pursuant to NAC 704B.340; and

(c) Clearly identify each term and condition that the eligible customer believes does not conform to the terms and conditions of the underlying contract originally approved by the Commission.

3. In addition to the notice required by subsection 2, the eligible customer shall provide to the Regulatory Operations Staff a copy of the underlying contract previously approved by the Commission pursuant to which the eligible customer was purchasing energy, capacity or ancillary services from a provider of new electric resources and a copy of the contract for the proposed transaction between the eligible customer and the alternative provider. Contracts that are submitted to the Regulatory Operations Staff pursuant to this subsection are deemed to be submitted for verification purposes only, and will not be considered to be part of any public record. The Regulatory Operations Staff shall protect the confidentiality of such contracts and shall not disclose the contents of those contracts to any person or entity, unless authorized by the Commission.

4. An eligible customer may request from the Commission a protective order to protect the confidentiality of any information relating to the proposed transaction between the eligible customer and the alternative provider that the eligible customer believes to be commercially sensitive. The Commission will determine whether the requested information is commercially sensitive and requires confidential treatment under Nevada law.

5. Within 12 working days after receiving notice pursuant to subsection 2:

(a) A party of record may file any objection to the proposed transaction with the Commission and forward a copy of the objection to the eligible customer, alternative provider and all other parties of record. Such an objection must clearly describe the basis for the objection.

(b) The Regulatory Operations Staff shall:

(1) If the Regulatory Operations Staff objects to the proposed transaction, notify the Commission, eligible customer, alternative provider and the parties of record of its objection and identify the terms and conditions of the proposed transaction that the Regulatory Operations Staff believe do not conform with the terms and conditions of the underlying contract; or

(2) If the Regulatory Operations Staff does not object to the proposed transaction, the Regulatory Operations Staff shall notify the Commission, eligible customer, alternative provider and all other parties of record of that fact.

6. The Commission will process the notice on an expedited basis. If no objections are timely filed pursuant to subsection 5, the proposed transaction shall be deemed to be approved by the Commission. If any party or the Regulatory Operations Staff files an objection to the proposed transaction, the Commission will set the matter for a hearing to be held within 15

working days after the last date on which objections may be filed. The eligible customer shall file any response to the objection within 4 working days after receiving the objection. The Commission will approve the proposed transaction unless the Commission determines that the proposed transaction is inconsistent with the requirements of this chapter and chapter 704B of NRS regarding the terms and conditions of transactions between eligible customers and providers of new electric resources, in which case the Commission will identify the inconsistent terms and provide the eligible customer with an opportunity to revise the terms of the proposed transaction to remedy the inconsistency. If the inconsistency is not remedied, the Commission may prohibit the proposed transaction.

7. If applicable, the analysis of the 10-percent contract must be performed pursuant to NAC 704B.360, except that the Commission will process the analysis on an expedited basis commencing upon the approval by the Commission of the proposed transaction between the eligible customer and the alternative provider. A 10-percent contract must be submitted for Commission review upon replacement or amendment of every underlying contract.

8. Notwithstanding any provision of this chapter to the contrary, the Regulatory Operations Staff may use the underlying contract between an eligible customer and provider to evaluate an application for a proposed transaction between the eligible customer and alternative provider filed by the eligible customer pursuant to this section.

Sec. 9. The Commission ~~or the presiding officer~~ may allow deviation from the provisions of this chapter if:

(a) Good cause for the deviation appears; and

(b) The Commission ~~or the presiding officer~~ finds the deviation to be in the public interest and not contrary to statute.

~~2.—As used in this section, “presiding officer” has the meaning ascribed to it in NAC 703.090.~~

Sec. 10. NAC 704B.010 is hereby amended to read as follows:

704B.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 704B.020 to 704B.140, inclusive, *and sections 3 to 6, inclusive, of this regulation* have the meanings ascribed to them in those sections.

Sec. 11. NAC 704B.310 is hereby amended to read as follows:

704B.310 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,~~ *application*, 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. 12. 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 ~~the~~ *one or more identifiable* new electric *resources, including the location of the new electric resource or identification of the market resource.* *If the provider intends to build a new electric resource, the letter of intent must also include a description of the proposed new facility and of how the total electricity requirements new facility can meet the electricity requirements of the eligible customer will be met.*

(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~~ *underlying contract* between the provider and the eligible customer or, if no executed ~~agreement~~ *underlying contract* 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~~ *underlying contract* 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~~ *the OATT of the electric utility* 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 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]~~
An electric utility shall ~~[file with the Commission]~~ *adhere to the* written standards, policies and procedures *filed by the electric utility with the Commission* to ensure compliance with this subsection.

Sec. 13. 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]~~ *10-percent contract* in accordance with subsection 2 of NRS 704B.320; ~~[and]~~

(2) A binding offer *, in the form of a separate contract,* to assign ~~[such contractual rights]~~ *the 10-percent contract* to the electric utility ~~[]~~; *and*

(3) *All the information reasonably foreseen to be necessary to enable the Regulatory Operations Staff or any party of record to perform an analysis of the 10-percent contract.*

2. The eligible customer may request from the Commission a protective order to protect the confidentiality of any information the eligible customer believes to be commercially sensitive.

The Commission will determine whether the requested information is commercially sensitive under Nevada law and requires confidential treatment. *Upon determination that the information is commercially sensitive, the* ~~The~~ Commission:

(a) ~~May~~ *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.

(b) *Will grant a protective order with respect to all information concerning the price of the energy, capacity and ancillary services associated with the 10-percent contract offered by the eligible customer pursuant to subsection 2 of NRS 704B.320.*

(c) 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, the electric utility and any intervener authorized by the Commission to participate in the matter pursuant to NAC 703.578 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.

Sec. 14. NAC 704B.350 is hereby amended to read as follows:

704B.350 1. Not later than ~~15~~ *45* 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~~ *underlying contract* to estimate the potential impacts of the proposed ~~transaction~~ *underlying contract* 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}~~ 55 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}~~ 65 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.}~~ *underlying contract*. 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.}~~ *underlying contract*.

(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}~~ 80 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.}~~ 6. 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.}~~ 7. 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}~~ *underlying contract* 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.

~~19.1~~ 8. 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~~ *underlying contract* 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. 15. NAC 704B.360 is hereby amended to read as follows:

704B.360 1. In addition to the requirements of NAC 704B.350, 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,]~~ *a completed and fully executed underlying contract between the eligible customer and provider*, the Regulatory Operations Staff shall:

(a) Perform its initial analysis of the ~~[contractual rights]~~ *10-percent contract* identified in the application pursuant to paragraph (f) of subsection 1 of NAC 704B.340. In its initial analysis, the Regulatory Operations Staff shall indicate whether the ~~[contractual rights]~~ *10-percent contract* will be beneficial or detrimental to the remaining customers of the electric utility and shall include a recommendation regarding whether the ~~[contractual rights]~~ *10-percent contract* 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]~~ *20* calendar days after the date on which the eligible customer files ~~[an application,]~~ *the completed and fully executed underlying contract*, 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 *on the 10-percent contract* 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]~~ 30 calendar days after the date on which the eligible customer files ~~[an application,]~~ *the completed and fully executed underlying contract*, the Regulatory Operations Staff shall:

(a) Finalize its analysis of the ~~[contractual rights]~~ *10-percent contract* 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]~~ *10-percent contract* 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]~~ 40 calendar days after the date on which the eligible customer files ~~[an application, any party of record]~~ *the completed and fully executed underlying contract, the electric utility, Bureau of Consumer Protection, eligible customer or provider* 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,]~~ *pursuant to subsection 4*, 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]~~ *10-percent contract* to the electric utility.

~~[7.]~~ **6.** 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]~~ *10-percent contract* to the electric utility:

(a) The eligible customer shall assign the ~~[contractual rights]~~ *10-percent contract* to the electric utility.

(b) The electric utility shall accept the assignment and, upon the effective date of the *10-percent contract*, include the *10-percent contract* in its portfolio to supply its remaining customers. The *10-percent 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 *10-percent contract* as an option for supply; and

(3) Is not an amendment to the action plan of the electric utility for the purposes of NAC 704.9503, and the electric utility shall not apply for permission to amend its action plan pursuant to that section with regard to the *10-percent* contract.

(c) In its subsequent filing for recovery of the cost of the *10-percent* contract, the electric utility shall , *to the extent possible*, assign the cost of the *10-percent* contract to those classes of customers who are not eligible for choice pursuant to this chapter ~~[-8.]~~, *with the preference to be given to residential customers.*

7. 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]~~ *10-percent contract* to the electric utility, the eligible customer is entitled to the ~~[contractual rights.]~~ *10-percent contract.*

Sec. 16. NAC 704B.370 is hereby amended to read as follows:

704B.370 1. Except as otherwise provided in ~~[subsection 2,]~~ *this section*, 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]~~:

(I) 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)]~~ (I) The physical location of the point of delivery; and

~~[(2)]~~ (II) 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 ~~[-]~~; *and*

(2) A detailed plan for the avoidance of involuntary curtailments of energy or capacity to the remaining retail customers of the electric utility in the event that:

(I) ~~The provider for~~ The eligible customer is unable to secure supply for 100 percent of the ~~its load for the eligible customer~~;

(II) The eligible customer is no longer being served by operating reserves; and

(III) The electric utility in good faith determines that it is unable to provide replacement resources to the eligible customer without negatively impacting system reliability.

↪ The detailed plan may include provisions for standby service, load shedding, recourse to reliably available market resources and any other measures or combination of measures reasonably designed to avoid involuntary load curtailments by the electric utility.

(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 ~~[]~~ *of an eligible customer which is not subject to subsection 2 of NRS 704B.320 and the eligible customer has not submitted a copy of a completed and fully executed underlying contract between the eligible customer and the provider for the purchase of energy, capacity or ancillary services from the provider*, the Commission will condition its order approving the application on submission to the Regulatory Operations Staff of one copy of ~~[the]~~ *such a* completed and fully executed ~~[agreement]~~

underlying contract between the eligible customer and the provider . ~~[for the purchase of energy, capacity or ancillary services from the provider. The]~~ *Upon receipt of the underlying contract, the* Regulatory Operations Staff shall:

(a) Review the ~~[agreement]~~ *underlying contract* to verify that the terms of the ~~[agreement]~~ *underlying contract* are the same as the terms ~~[which]~~ *that* the eligible customer provided to the Regulatory Operations Staff ~~[for use in its finalized]~~ *when the Regulatory Operations Staff performed its final* 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 *shall issue an order identifying which terms differ, and allow the eligible customer an opportunity to cure the identified problems. If the eligible customer is unable to do so within seven (7) days, approving* the application shall be deemed to be rescinded.

~~[5.—An agreement]~~

↪ *An underlying contract* that is submitted to the Regulatory Operations Staff pursuant to *this* 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]~~ *underlying contract* 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]~~ *underlying contract* and shall not disclose the contents of the ~~[agreement]~~ *underlying contract* to any person or entity, unless authorized by the Commission.

5. If the Commission approves the application of an eligible customer which is subject to subsection 2 of NRS 704B.320 and the eligible customer has not submitted a copy of a

completed and fully executed underlying contract between the eligible customer and the provider for the purchase of energy, capacity or ancillary services from the provider, the Commission will condition its order approving the application on submission of a copy of the completed and fully executed underlying contract to the Commission, the Regulatory Operations Staff, the Bureau of Consumer Protection and the electric utility. Upon receipt of the underlying contract, the Regulatory Operations Staff shall:

(a) Review the underlying contract to verify that the terms of the underlying contract are the same as the terms that the eligible customer provided to the Regulatory Operations Staff when the Regulatory Operations Staff performed its final 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 shall issue an order identifying which terms differ, and allow the eligible customer an opportunity to cure the identified problems. If the eligible customer is unable to do so within seven (7) days, approving~~ the application shall be deemed to be rescinded.

↳ Except for the review process performed by the Regulatory Operations Staff pursuant to this subsection to verify the terms of the underlying contract, the underlying contract may be used only to evaluate the 10-percent contract required pursuant to NRS 704B.320 and is subject to any protective order issued pursuant to paragraph (b) of subsection 2 of NAC 704B.340.

6. In addition to the terms, conditions and compliance items required by subsections 2, 4 and ~~[4.]~~ 5, 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~~ 120 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,~~ ~~subsections 4 and 5~~ and *NRS 704B.360, section 16 of this regulation, or as may be needed to address any objections raised pursuant to section 8 of this regulation*, 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. 17. NAC 704B.380 is hereby amended to read as follows:

704B.380 1. *If a proposed transaction between an eligible customer and a provider relies exclusively on new electric resources currently in operation:*

(a) 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 NAC 704B.370, the eligible customer shall notify the electric utility ~~and the~~ *Commission in writing as to* whether the eligible customer intends to proceed with the proposed transaction and, if so, the date of commencement.

~~2.~~ (b) The date of commencement must not be sooner than:

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

~~(b)~~; and

(2) One hundred eighty calendar days after the date on which the eligible customer files the application, ~~1;~~

~~3.~~

↪ *unless the Commission authorizes an earlier date of commencement.*

2. If the eligible customer notifies the electric utility and the Commission in writing of its intent to proceed with the transaction no later than 30 days after the Commission issues a compliance order approving the eligible customer's application, the impact fee approved by the Commission, pursuant to NRS 704B.310(7)(b), will not be updated or adjusted unless the actual date of commencement occurs before the estimated date of commencement.

3. 2. After receiving notification pursuant to subsection 1[, the] that If the eligible customer notifies the electric utility and the Commission in writing pursuant to subsection 2, or reconfirms to the electric utility and the Commission in writing pursuant to subsection 5, that it intends to proceed with the proposed transaction:

(a) *The* electric utility:

~~[(a)]~~ (1) 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)]~~ (2) Shall install or implement, or cause to be installed or implemented, all systems, operations, equipment and other modifications necessary to accommodate the proposed transaction.

(b) Not later than 15 calendar days after the date on which the eligible customer files its estimated date of commencement pursuant to subsection 1, unless the eligible customer gave notification pursuant to subsection 2, the Regulatory Operations Staff shall update its calculation of the impact fee that will be assessed by the Commission against the eligible customer. The updated calculation must:

(1) Be based on the estimated date of commencement; and

(2) Have sufficient detail so that if the actual date of commencement occurs before the estimated date of commencement, the impact fee can be adjusted accordingly.

~~4. 3.~~ *The Regulatory Operations Staff shall provide the eligible customer with an analysis of the updated calculation of the impact fee made in accordance with paragraph (b) of subsection 2 and, on that date, shall provide a copy of the analysis to the provider, the electric utility, the Bureau of Consumer Protection, the Commission and all other parties of record. The analysis must include a listing of the major assumptions used and a listing of any inputs that were changed from the original analysis that served as the basis for the determination by the Commission that the assessment of the impact fee was necessary so that the proposed transaction would not be contrary to the public interest. A party of record may file an objection with the Commission to the analysis of the updated calculation of the impact fee not*

later than 15 calendar days after the Regulatory Operations Staff provides that analysis to the party of record pursuant to this subsection. The objection must identify the basis for concluding that the analysis was deficient, including, without limitation, an identification of each contested assumption and input.

5. 4. Not later than 30 calendar days after receiving a copy of the analysis of the updated calculation of the impact fee pursuant to subsection 4 3, the eligible customer shall:

(a) If no objections to the updated calculation of the impact fee are filed pursuant to subsection 4 3:

(1) Reconfirm to the Commission, electric utility and parties of record in writing that the eligible customer intends to proceed with the proposed transaction; or

(2) Inform the Commission, electric utility and parties of record in writing that the eligible customer will not proceed with the proposed transaction.

(b) If objections to the updated calculation of the impact fee are filed pursuant to subsection 4 3:

(1) Reconfirm to the Commission, electric utility and parties of record in writing that the eligible customer intends to proceed with the proposed transaction;

(2) Inform the Commission, electric utility and parties of record in writing that the eligible customer will not proceed with the proposed transaction; or

(3) Inform the Commission, electric utility and parties of record in writing that the eligible customer will delay the commencement of the proposed transaction until the Commission issues its decision on the objections. Not later than 30 calendar days after the date on which the Commission issues its decision on the objections, the eligible customer shall:

(I) Reconfirm to the Commission, electric utility and parties of record in writing that the eligible customer intends to proceed with the proposed transaction; or

(II) Inform the Commission, eligible customer and parties of record in writing that the eligible customer will not proceed with the proposed transaction.

6. 5. If the actual date of commencement occurs after the date of commencement provided to the electric utility in the final notice of intent to proceed pursuant to this section paragraph (a) of subsection 1, the electric utility may require the eligible customer, or the eligible customer may elect, to begin taking electric service under the provisions of the incremental pricing tariff of the electric utility.

7. 6. Notwithstanding the provisions of subsection 1, and subsection 8 of NAC 704B.370, if the Commission determines that all terms, conditions and compliance items imposed pursuant to NAC 704B.370 have been satisfied more than 120 calendar days after the date on which the Commission issues its order approving the application, the Commission may adjust the period in which the eligible customer must notify the utility of its intent to proceed with the proposed transaction and the date of commencement.

Sec. 18. NAC 704B.400 is hereby amended to read as follows:

704B.400 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]~~ 7 calendar days ~~[before the date of commencement,]~~ *after receiving notification pursuant to subsection 1 of NAC 704B.380 or subsection 1 of section 7 of this*

regulation that the eligible customer intends to proceed with the proposed transaction, 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~~ *underlying contract* 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. 19. NAC 704B.390 and 704B.420 are hereby repealed.

TEXT OF REPEALED SECTIONS

704B.390 Payment by eligible customer of share of annual assessment and other taxes, fees and assessments. (NRS 704B.200) 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.

704B.420 Additional conditions and limitations on certain proposed transactions. (NRS 704B.200)

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.