

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

LCB File No. R195-22

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

AUTHORITY: §§ 1, 2 and 4-7, NRS 703.025, 704.210 and 704.741; § 3, NRS 703.025, 704.210, 704.741, 704B.200 and 704B.310; § 8, NRS 703.025, 704.210, 704.741, 704.746 and 704B.310; §§ 9, 11, 15-18 and 20, NRS 704B.200; §§ 10, 12-14 and 19, NRS 704B.200 and 704B.310.

A REGULATION relating to energy; authorizing the annual limit on energy and capacity sales to be increased if the limit is not reached in certain preceding years of an action plan; establishing the procedure for the allocation of sales of energy and capacity if the cumulative load of the points of delivery identified by eligible customers exceeds the applicable annual limit; establishing requirements for proposals for the annual limit on sales of energy and capacity to eligible customers by providers of new electric resources; revising requirements for certain forecasts in the resource plan of an electric utility; requiring the Public Utilities Commission of Nevada to release a list of certain public policy programs; requiring eligible customers to demonstrate exemption from the annual limit, if applicable; establishing provisions governing fees paid by eligible customers; revising provisions governing an application for approval of the purchase of energy, capacity or ancillary services by an eligible customer from a provider of new electric resources; revising the timeline for the filing of certain agreements with the Commission; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires each electric utility to submit to the Public Utilities Commission of Nevada every 3 years an integrated resource plan to increase the utility's supply of electricity or decrease the demands made on its system by its customers. Existing law also requires the plan to include a proposal for annual limits on the energy and capacity that certain eligible customers are authorized to purchase from providers of new electric resources through transactions approved by the Commission pursuant to an application submitted on or after May 16, 2019. (NRS 704.741) **Section 7** of this regulation prohibits the proposal for annual limits from cumulatively exceeding 50 percent of projected large commercial and industrial load growth for the action plan period projected in the load forecast. **Section 2** of this regulation provides that if the amount of energy and capacity applied for by eligible customers from providers of new electric resources during the first or second year of an action plan is less than the annual limit on such transactions, the amount of unpurchased energy and capacity may be carried forward and added to the limit for the following year. **Section 3** of this regulation establishes the procedure for allocating sales of energy and capacity if the cumulative load for the points of delivery identified by eligible

customers exceeds the annual limit on the total amount of energy and capacity that eligible customers may be authorized to purchase from providers of new electric resources.

Section 4 of this regulation requires an electric utility to: (1) include certain calculations in its proposal for annual limits on the purchase of energy and capacity by eligible customers from providers of new electric resources; and (2) use those calculations to determine a rate to be charged to the eligible customer for a certain period beginning when the eligible customer begins to take services from the provider of new electric resources.

Existing regulations require a utility to include in its resource plan a series of forecasts of the peak demand and annual energy consumption that represent the range of future load which its system may be required to serve. (NAC 704.9225) **Section 6** of this regulation requires a utility to provide for each such forecast a version of the forecast that includes and a version of the forecast that excludes the amount of energy and capacity proposed as an annual limit on the purchase of energy and capacity by eligible customers from providers of new electric resources.

Section 7 requires the proposal for annual limits on the purchase of energy and capacity by eligible customers from providers of new electric resources to be included in the action plan of a utility and authorizes a utility to conduct a sensitivity analysis that includes additional factors for consideration beyond what is included in the sensitivity analysis required by statute.

Existing law provides that, in considering whether to accept or modify a proposal for annual limits on the purchase of energy and capacity by eligible customers from providers of new electric resources, the Commission is required to consider whether the proposed annual limits further the public interest. (NRS 704.746) **Section 8** of this regulation provides that, in determining whether such proposed annual limits further the public interest, the Commission will consider whether the proposed annual limits increase costs or remove benefits from customers of the utility who are not eligible customers.

Existing law provides that certain eligible customers are required to pay only those costs, fees, charges or rates which apply to current and ongoing legislatively mandated public policy programs, as determined by the Commission. (NRS 704B.310) **Section 8** provides that, at the time the Commission approves the action plan of a utility, the Commission will issue a list of any current or ongoing legislatively mandated public policy programs for which eligible customers are required to pay costs, fees, charges or rates.

Existing law excludes purchases of energy and capacity by certain eligible customers from the proposed annual limits on purchases of energy and capacity by eligible customers from providers of new electric resources. (NRS 704.741) **Section 10** of this regulation requires an eligible customer to demonstrate in its application for approval of a proposed transaction that the eligible customer qualifies for the exemption. **Section 10** requires an eligible customer whose purchases have been deemed exempt from the annual limits to demonstrate that it has achieved a peak load of 10 megawatts or more within 2 years after taking service from a provider of new electric resources. **Section 10** also establishes a procedure for the Commission to follow if it appears that such an eligible customer has failed to achieve a peak load of 10 megawatts or more within 2 years after taking service from a provider of new electric resources.

Section 11 of this regulation authorizes certain entities to file with the Commission a motion to dismiss an application for approval of the purchase of energy, capacity or ancillary services by an eligible customer from a provider of new electric resources and establishes a deadline for the Commission to grant or deny such a motion.

Section 12 of this regulation requires the Commission to order an eligible customer to pay certain costs, fees, charges and rates if the Commission approves an application for the

eligible customer to purchase energy, capacity or ancillary services from a provider of new electric resources. **Section 12** also prohibits an eligible customer from receiving certain energy efficiency and renewable energy portfolio credits. **Sections 16 and 17** of this regulation make conforming changes.

Section 13 of this regulation requires an electric utility to file certain information with the Commission related to the costs, fees, charges and rates that must be paid by an eligible customer who purchases energy, capacity or ancillary services from a provider of new electric resources and authorizes any party of record to submit an alternative filing disputing the accuracy of the electric utility's filing.

Section 14 of this regulation modifies the information which must be included in an application for approval of the purchase of energy, capacity or ancillary services by an eligible customer from a provider of new electric resources.

Existing regulations require an eligible customer to file with the Commission a completed distribution service agreement and transmission service agreement not later than 40 calendar days after the date on which the eligible customer files an application for approval of the purchase of energy, capacity or ancillary services from a provider of new electric resources. (NAC 704B.370) **Section 15** of this regulation instead requires these agreements and the underlying contract between the eligible customer and the provider of new electric resources to be filed not later than 30 days before the eligible customer begins purchasing energy, capacity or ancillary services from the provider and requires the Regulatory Operations Staff of the Commission to review the agreements and contract to verify that the agreements and contract are consistent with the eligible customer's application.

Existing law sets forth the factors to be considered by the Commission in evaluating an application for approval of the purchase of energy, capacity or ancillary services by an eligible customer from a provider of new electric resources. (NRS 704B.310) **Section 19** of this regulation removes provisions authorizing the Commission to consider certain additional factors in evaluating an application.

Section 20 of this regulation repeals certain existing regulations governing applications for approval of the purchase of energy, capacity or ancillary services by an eligible customer from a provider of new electric resources.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. 1. *If, during the first or second year of the applicable action plan period, the total amount of energy and capacity applied for by eligible customers from providers of new electric resources through transactions approved by the Commission is less than the annual limit on such transactions set forth in a plan filed with the Commission pursuant to NRS 704.741 and accepted by the Commission pursuant to NRS 704.751, the amount of energy and*

capacity which remains available by the end of the year may be carried forward and added to the annual limit for the following year.

2. No amount of energy and capacity allocated to annual limits within an action plan period may be carried forward or added to the annual limits established for a year within any subsequent action plan period.

Sec. 3. *1. If, for any year of the applicable action plan period, the cumulative load for the points of delivery identified by eligible customers in applications filed pursuant to NRS 704B.310 exceeds the applicable annual limit on the total amount of energy and capacity that eligible customers may be authorized to purchase from providers of new electric resources, the Regulatory Operations Staff of the Commission shall identify the applications which are authorized to proceed through a randomized, fair, impartial and open selection process.*

2. Before conducting a randomized, fair, impartial and open selection process, the Regulatory Operations Staff shall notify the Commission of the methodology chosen to conduct the selection process.

3. The Regulatory Operations Staff shall conduct the selection process on or before April 1 of the applicable action plan year.

Sec. 4. *1. As part of the proposal required by subsection 6 of NRS 704.741, the electric utility shall include the calculations set forth in this section, which shall be used to determine the charges to be paid by an eligible customer over the course of the transition period as provided by section 12 of this regulation. If the transition period is extended, as provided by subsection 4 of section 12 of this regulation, the time period for the calculations required by this section must be extended accordingly.*

2. The electric utility shall use its production cost modeling software to perform two sets of production cost simulations for a 3-year period, which coincides with the 3-year period of the action plan, as follows:

(a) The first production cost simulation will be known as the base case expansion plan and must be conducted by:

(1) Using the electric utility's load, fuel and purchase power forecasts from the electric utility's preferred plan, including the proposed amount of energy and capacity that eligible customers may be authorized to purchase from providers of new electric resources pursuant to subsection 6 of NRS 704.741; and

(2) Excluding all energy and capacity needs associated with the placeholder resources, which are generating facilities that have not yet been identified, proposed or approved as a part of the electric utility's resource plan, and assuming all energy and capacity needs are fulfilled with market purchases at the prices contained in the fuel and purchase power forecasts.

(b) The second production cost simulation will be known as the change case plan and must be conducted by:

(1) Using the electric utility's load, fuel and purchase power forecasts from the electric utility's preferred plan, but not including the proposed amount of energy and capacity that eligible customers may be authorized to purchase from providers of new electric resources pursuant to subsection 6 of NRS 704.741;

(2) Using January 1 of the second year of the applicable 3-year action plan period as the departure date for the analyses; and

(3) Performing the production cost simulations with external non-firm power sales omitted.

3. The electric utility shall calculate the net differential energy rate, which must be held fixed for the duration of any transition period initiated pursuant to an application filed pursuant to NRS 704B.310 during the applicable action plan period. To calculate the net differential energy rate, the electric utility shall:

(a) Use the system cost difference between the base case expansion plan and the change case plan to determine the impact to the base tariff energy rate.

(b) After the base tariff energy rate system impact is calculated, calculate the portion of the base tariff energy rate system impact associated with the current and ongoing legislatively mandated public policy programs that affect the base tariff energy rate, which include, without limitation:

(1) The out-of-money portion of the costs of long-term renewable energy contracts. To calculate such costs, the electric utility shall identify in its resource plan filed pursuant to NRS 704.741, for the Commission to determine, the long-term renewable energy contracts that contain out-of-money costs. The out-of-money costs are calculated by substituting the electric utility's projected average monthly system costs for the contractual prices of each of the out-of-money long-term renewable energy contracts, multiplying these projected average monthly system costs by the projected generation of the underlying renewable resources, and subtracting that cost from the projected costs of the renewable energy contracts.

(2) The non-bypassable costs attributable to any other public policies that are applicable to eligible customers.

(c) Subtract the portion of the Proposed Action Plan R-BTER costs and other non-bypassable costs attributable to other public policies attributable to the annual limits from the base tariff energy rate system impact cost to determine the net differential energy rate cost.

(d) Divide the net differential energy rate cost by the energy consumption in kilowatt-hours attributed to the annual limits in the production costs modeling to derive the net differential energy rate.

4. To calculate the impact to the base tariff general rate, determine the net impact to the variable operations and maintenance costs attributable to eligible customers by using the difference in variable operations and maintenance costs between the base case expansion plan and change case plan.

5. As used in this section:

(a) "Proposed Action Plan R-BTER" means the out-of-money portion of the costs of long-term renewable energy contracts calculated for the production cost simulation period.

(b) "Transition period" means a 3-year period commencing on the date on which the eligible customer begins to take service from a provider of new electric resources.

Sec. 5. NAC 704.9005 is hereby amended to read as follows:

704.9005 As used in NAC 704.9005 to 704.9525, inclusive, *and sections 2, 3 and 4 of this regulation*, and when used in a utility's resource plan, unless the context otherwise requires, the words and terms defined in NAC 704.9006 to 704.9173, inclusive, have the meanings ascribed to them in those sections.

Sec. 6. NAC 704.9225 is hereby amended to read as follows:

704.9225 1. A utility's resource plan must contain a series of forecasts of the peak demand and annual energy consumption that represent the range of future load which its system may be

required to serve. The range of future peak demand and energy consumption must be based upon and consistent with the upper and lower limits of expected economic and demographic change in the utility's service territory in the next 20 years, commencing with the year following the year in which the resource plan is filed, as follows:

- (a) A forecast of high growth;
- (b) A forecast of base growth; and
- (c) A forecast of low growth.

2. *For each forecast described in subsection 1, the utility must provide a version of the forecast that includes and a version of the forecast that excludes the amount of energy and capacity proposed pursuant to subsection 6 of NRS 704.741 as annual limits on the total amount of energy and capacity that eligible customers may be authorized to purchase from providers of new electric resources through transactions approved by the Commission pursuant to an application submitted pursuant to NRS 704B.310.*

3. In each of the forecasts described in subsection 1, the utility shall account for customer response to changes in the prices of electric energy and substitute energy sources and to the impacts of existing and proposed programs undertaken by the utility or required by governmental regulation to alter current energy use patterns.

~~13.1~~ 4. To the extent data is available, peak demand must be forecasted before accounting for the effects of cogeneration.

~~14.1~~ 5. The utility shall maintain internal consistency among its forecasts. The forecast of peak demand must be consistent with the forecast of energy consumption and must be based on data which is normalized for weather pursuant to NAC 704.9245.

Sec. 7. NAC 704.9489 is hereby amended to read as follows:

704.9489 1. Each resource plan of a utility must include a detailed action plan based on an integrated analysis of the demand side plan and supply plan of the utility. In its action plan, the utility shall specify all its actions that are to take place during the 3 years commencing with the year following the year in which the resource plan is filed. The action plan must contain:

(a) An introductory section that explains how the action plan fits into the longer-term strategic plan of the utility.

(b) A list of actions for which the utility is seeking the approval of the Commission.

(c) A schedule for the acquisition of data, including planned activities to update and refine the quality of the data used in forecasting.

(d) A specific timetable for acquisition of options for the supply of electric energy and for programs for energy efficiency and conservation.

(e) If changes in the methodology are being proposed, a description fully justifying the proposed changes, including an analysis of the costs and benefits. Any changes in methodology that are approved by the Commission must be maintained for the period described in the action plan.

(f) A section describing any plans of the utility to acquire additional modeling instruments.

(g) A section for the utility's program for energy efficiency and conservation, including:

(1) A description of continued planning efforts;

(2) A plan to carry out and continue selected measures for energy efficiency and conservation that have been identified as desirable; and

(3) Any impacts of imputed debt calculations associated with energy efficiency contracts in the preferred plan.

(h) A section for the utility's program for acquisition of resources for the supply of electric energy for the period covered by the action plan, including:

(1) The immediate plans of the utility for construction or acquisition of facilities or long-term purchases of power;

(2) The expected time for construction or acquisition of facilities and acquisition of long-term purchases of power identified in subparagraph (1);

(3) The major milestones of construction; and

(4) Any impacts of imputed debt calculations associated with renewable energy contracts or energy efficiency contracts in the preferred plan.

2. The action plan must contain an energy supply plan and a distributed resources plan, including, without limitation, a plan to accelerate transportation electrification, as required by NRS 704.7867.

3. The action plan must contain a budget for planned expenditures suitable for comparing planned and achieved expenditures. Expenses must be listed in a format that is consistent with the categories and periods to be presented in subsequent filings. The budget must be organized in the following categories:

(a) Forecasting of loads;

(b) Energy efficiency and conservation;

(c) Distributed resources;

(d) Transportation electrification;

(e) Plan for supply; and

(f) Financial plan.

4. The action plan must contain schedules suitable for comparing planned and actual activities and accomplishments. Milestones and points of decision committing major expenditures must be shown.

5. The action plan must include the surplus asset retirement plan required by NRS 704.734, for each asset that has been classified as surplus by the utility pursuant to NRS 704.7338 or reclassified as surplus by the Commission pursuant to NRS 704.7339.

6. The action plan must include a proposal which complies with the requirements of subsection 6 of NRS 704.741. The proposed annual limits shall not cumulatively exceed 50 percent of projected large commercial and industrial load growth for the applicable 3-year action plan period projected in the load forecast. The proposal may include, in addition to the sensitivity analysis required by subsection 6 of NRS 704.741, the results of a sensitivity analysis conducted by the utility which includes additional factors for consideration by the Commission, provided that any such sensitivity analysis is clearly explained and supported.

Sec. 8. NAC 704.9494 is hereby amended to read as follows:

704.9494 1. The Commission will issue an order:

(a) Approving the action plan of the utility as filed;

(b) Modifying the action plan of the utility; or

(c) If the plan is not approved as filed or modified, specifying those parts of the action plan the Commission considers inadequate.

2. An action plan shall be deemed to be approved by the Commission only as to that portion of the plan accepted as filed or modified with the consent of the utility pursuant to subsection 1 of NRS 704.751.

3. Approval by the Commission of an action plan constitutes a finding that the programs and projects contained in that action plan, other than the energy supply plan and distributed resources plan, are prudent, including, without limitation, construction of facilities, purchased power obligations, programs for energy efficiency and conservation and impacts of imputed debt calculations associated with renewable energy contracts or energy efficiency contracts. If the Commission subsequently determines that any information relied upon when issuing its order approving or modifying the action plan was based upon information that was known or should have been known by the utility to be untrue or false at the time the information was presented, the Commission may revoke, rescind or otherwise modify its approval of the action plan.

4. If, at the time that the Commission approves the action plan of the utility, the Commission determines that the elements of the energy supply plan are prudent, the Commission will specifically include in the approval of the action plan its determination that the elements contained in the energy supply plan are prudent. For the Commission to make a determination that the elements of the energy supply plan are prudent:

(a) The energy supply plan must not contain any feature or mechanism that the Commission finds would impair the restoration of the creditworthiness of the utility or would lead to a deterioration of the creditworthiness of the utility.

(b) The energy supply plan must optimize the value of the overall supply portfolio for the utility for the benefit of its bundled retail customers.

(c) The utility must demonstrate that the energy supply plan balances the objectives of minimizing the cost of supply, minimizing retail price volatility and maximizing the reliability of supply over the term of the plan.

↪ Failure by a utility to demonstrate that its energy supply plan is prudent in accordance with this subsection does not otherwise affect approval of the action plan, including the energy supply plan, and the utility may subsequently seek a determination that the energy supply plan is prudent in the appropriate deferred energy proceeding.

5. If, at the time that the Commission approves the action plan of the utility, the Commission determines that the elements of the distributed resources plan are prudent, the Commission will specifically include in the approval of the action plan its determination that the elements contained in the distributed resources plan are prudent. For the Commission to make a determination that the elements of the distributed resources plan are prudent:

(a) The net distribution system load and distributed resource forecasts, hosting capacity analysis, grid needs assessment and non-wires alternative and locational net benefit analyses must have been prudently performed; and

(b) The selections of new distributed resources set forth in the distributed resources plan must be reasonable.

6. *For the purposes of subsection 9 of NRS 704.746, in determining whether the proposed annual limits on the sale of energy and capacity further the public interest, the Commission will consider whether the proposed annual limits increase costs or remove benefits, including, without limitation, the benefit of a reduction of costs for electric service, from customers of the utility who are not eligible customers.*

7. *At the time that the Commission approves the action plan of the utility, the Commission will issue a list of any current or ongoing legislatively mandated public policy programs for which eligible customers are required to pay costs, fees, charges or rates pursuant to*

subsection 8 of NRS 704B.310. Costs, fees, charges or rates which apply to public policy programs not determined as part of the list will be considered on a case-by-case basis.

8. A utility may recover all costs that it prudently and reasonably incurs in carrying out an approved action plan in the appropriate separate rate proceeding. A utility may recover all costs it prudently and reasonably incurs in carrying out an approved distributed resources plan in an appropriate separate rate proceeding. A utility may recover all costs that are prudently and reasonably incurred in carrying out the approved energy supply plan, including deviations pursuant to subsection 1 of NAC 704.9504 approved by the Commission in the appropriate deferred energy application filed pursuant to NAC 704.023 to 704.195, inclusive.

Sec. 9. Chapter 704B of NAC is hereby amended by adding thereto the provisions set forth as sections 10 to 13, inclusive, of this regulation.

Sec. 10. 1. *In order for the energy and capacity sales to an eligible customer to be deemed exempt from the annual limits on the total amount of energy and capacity that eligible customers may be authorized to purchase from providers of new electric resources pursuant to subsection 7 of NRS 704.741, the eligible customer must demonstrate in an application filed pursuant to NRS 704B.310 that it qualifies for the exemption including, without limitation, by submitting electrical load calculations and electrical single-line diagrams which demonstrate that the eligible customer would have a peak load of 10 megawatts or more in the service territory of an electric utility within 2 years after initially taking electric service.*

2. *Whether an eligible customer was an end-use customer of the electric utility at any time before June 12, 2019, pursuant to subsection 7 of NRS 704.741, is based on whether the electric utility has provided fully bundled electric service to the premises of the eligible customer to power a facility at any time in the past, except for temporary construction service.*

3. Not later than 24 months after initially taking electric service from a provider of new electric resources, an eligible customer whose purchases of energy and capacity have been deemed exempt from the annual limits on energy and capacity sales pursuant to subsection 7 of NRS 704.741 shall demonstrate that it has achieved a peak load of 10 megawatts or more within that period by filing with the Commission and serving on the relevant electric utility, Regulatory Operations Staff and the Bureau of Consumer Protection in the Office of the Attorney General its peak load data achieved to date.

4. If the peak load data filed pursuant to subsection 3 demonstrates usage below 10 megawatts, within 15 days after the filing, the eligible customer, the relevant electric utility and Regulatory Operations Staff shall meet to discuss the information included in the filing. The Bureau of Consumer Protection in the Office of the Attorney General must be notified before any such meeting and be allowed to participate fully in the meeting and in any exchange of information. Not later than 5 business days after the meeting, Regulatory Operations Staff shall file a written summary of the meeting with the Commission. Within 60 days after the meeting summary is filed, the Commission will schedule a hearing to determine whether the eligible customer has failed to prove that it has achieved a peak load of 10 megawatts or more within 24 months after initially taking electric service from the provider of new electric resources. If the Commission determines that the eligible customer has failed to demonstrate that it has achieved a peak load of 10 megawatts or more within 24 months after initially taking electric service from the provider of new electric resources, the Commission will determine the appropriate remedy, which may include, without limitation:

(a) Requiring the eligible customer to pay the transition period charges using the net differential energy rate applicable at the time of the application, as determined pursuant to

section 4 of this regulation, plus carrying charges at the electric utility's authorized rate-of-return from the date of initially taking electric service from the provider of new electric resource;

(b) Requiring the eligible customer to transition to taking service from the electric utility pursuant to an incremental pricing tariff or other arrangement;

(c) Requiring the eligible customer to file a new application under NRS 704B.310, subject to the annual limits established pursuant to NRS 704.741, if the eligible customer wishes to take service from a provider of new electric resources; or

(d) Mandating any other appropriate remedy that is not contrary to the public interest.

Sec. 11. 1. *On or before February 15 of the year in which an end-use customer files an application pursuant to NRS 704B.310, the Regulatory Operations Staff, the Bureau of Consumer Protection in the Office of the Attorney General or the electric utility may file with the Commission a motion to dismiss the application if the application is insufficient or fails to establish the end-use customer's eligibility pursuant to NRS 704B.080.*

2. The Commission will grant or deny a motion to dismiss within 45 days after the date of its filing.

3. Nothing in this section precludes the Regulatory Operations Staff, the Bureau of Consumer Protection in the Office of the Attorney General, the electric utility or any other party from challenging the sufficiency of the application or the customer's eligibility on the same or different grounds as those alleged in the motion to dismiss subsequently in the proceeding.

Sec. 12. 1. *If the Commission approves an application of an eligible customer submitted pursuant to NRS 704B.310, the Commission will order the eligible customer to pay, in addition to all charges payable by distribution-only service customers:*

(a) For the duration of the transition period, the eligible customer's otherwise applicable base tariff general rates, with a credit or charge for the eligible customer's open access transmission tariff costs and variable operations and maintenance as determined pursuant to subsection 4 of section 4 of this regulation, multiplied by the amount of energy delivered to the customer. The base tariff general rate will be updated to reflect the rates in effect during the transition period or extended transition period.

(b) For the duration of the transition period, the net differential energy rate multiplied by the amount of energy delivered to the customer.

(c) A non-bypassable charge, paid monthly, for the duration of the underlying charge, of an amount at least equal to the customer's share of the ongoing out-of-the-money portion of the costs of long-term renewable energy contracts, other public policy programs for which eligible applicants are required to pay and the decommissioning and remediation costs of any generation resource used to provide service to the eligible customer. The non-bypassable charge shall be updated as necessary, including, without limitation, as new public policy programs become available. The ongoing out-of-the-money portion of the costs of long-term renewable energy contracts payments pursuant to this paragraph will be known as the Actual R-BTER and shall:

(1) Include the out-of-the-money costs of the long-term renewable energy contracts identified pursuant to subparagraph (1) of paragraph (b) of subsection 3 of section 4 of this

regulation or entered into by the electric utility to provide service to, or to meet the renewable portfolio standard on behalf of, the eligible customer;

(2) Be updated quarterly by the electric utility; and

(3) Be assessed over the life of the underlying renewable energy contracts.

(d) An amount not less than the eligible customer's load share of any regulatory asset, unless the eligible customer elects instead to receive a credit equal to the customer's load share of any regulatory liability that was established before the eligible customer applied to take service from a provider of new electric resources. For the regulatory assets or liabilities with amortization schedules beyond the eligible customer's 3-year transition period, the eligible customer shall continue to pay, or receive a credit for, its load share of the regulatory assets or liabilities for the full duration of the amortization schedules.

(e) If applicable, a one-time recapture payment of all incentive payments or credits the eligible customer received from the electric utility in the 5 years immediately preceding the date on which the eligible customer applies to take service from a provider of new electric resources including, without limitation:

(1) Energy efficiency measures installed or implemented by the electric utility's demand-side management program; and

(2) Behind-the-meter generation and storage facilities funded pursuant to chapter 701B of NRS.

(f) Other costs, fees, charges or rates which the Commission may determine are appropriate.

2. An eligible customer shall not receive any energy efficiency and renewable energy portfolio credits that are:

(a) Classified as surplus at the time that the eligible customer begins to take service from a provider of new electric resources; or

(b) Earned from the long-term renewable energy contracts identified pursuant to subparagraph (1) of paragraph (b) of subsection 3 of section 4 of this regulation for the entire duration of the long-term renewable energy contracts or from public policy program charges for the period during which public policy charges are assessed.

3. Regardless of the departure date used for the analysis pursuant to paragraph (b) of subsection 2 of section 4 of this regulation, the transition period begins on the date on which the eligible customer begins to take service from a provider of new electric resources with no credits or changes to the impact calculation.

4. If the Commission approves annual limits on the amount of energy and capacity that eligible customers may be authorized to purchase from providers of new electric resources that cumulatively exceed 50 percent of the projected large commercial and industrial load growth for the 3-year action period, the transition period shall be extended to ensure that remaining customers receive the benefit of at least 50 percent of the growth of the large commercial and industrial load during the extended transition period.

5. All payments made pursuant to this section, unless otherwise provided, will be billed monthly by the electric utility and sent directly to the eligible customer.

6. As used in this section, “transition period” means a 3-year period commencing on the date on which the eligible customer begins to take service from a provider of new electric resources.

Sec. 13. 1. *On or before April 15 of the year in which an eligible customer subject to the annual limit on the purchase of energy and capacity from a provider of new electric*

resources files an application pursuant to NRS 704B.310, the electric utility shall file with the Commission and release to the parties of record:

(a) A list of all known rates for recurring charges and credits applicable to the eligible customer during the 3-year transition period, including rates established in the resource plan filed pursuant to NRS 704.741 that authorized the annual limits;

(b) A list of long-term renewable energy contracts identified pursuant to subparagraph (1) of paragraph (b) of subsection 3 of section 4 of this regulation or entered into by the electric utility to provide service to, or to meet the renewable portfolio standard on behalf of, the eligible customer;

(c) A list of the costs, fees, charges or rates which apply to current and ongoing legislatively mandated public policy programs which an eligible customer is required to pay, as determined by the Commission;

(d) A list of electric utility-owned generation resources used to provide service to the eligible customer;

(e) A list of regulatory assets and liabilities established before the eligible customer submitted the application; and

(f) A calculation of the one-time recapture payment of all incentive payments or credits paid pursuant to paragraph (e) of subsection 1 of section 12 of this regulation.

2. On or before March 30 of the year in which an eligible customer not subject to the annual limit on the purchase of energy and capacity from a provider of new electric resources files an application pursuant to NRS 704B.310, the electric utility shall file with the Commission and release to the parties of record a list of the costs, fees, charges or rates which

apply to current and ongoing legislatively mandated public policy programs which an eligible customer is required to pay, as determined by the Commission.

3. Not later than 15 calendar days after the date on which the electric utility makes the filing pursuant to subsection 1 or 2, as applicable, the parties of record shall meet at least once to discuss the accuracy of the information filed by the electric utility and, if necessary, exchange information, including, without limitation, any suggested additions, modifications or deletions to the materials filed by the electric utility. The Bureau of Consumer Protection in the Office of the Attorney General must be notified of each such meeting and may fully participate in each such meeting.

4. Not later than 10 calendar days after the date on which the parties of record meet pursuant to subsection 3, the electric utility shall file with the Commission and release to the parties of record any updates to the information filed pursuant to subsection 1 or 2, as applicable.

5. Not later than 20 calendar days after the date on which the parties of record meet pursuant to subsection 3, any party of record may file with the Commission an alternative filing which disputes the accuracy of any materials identified in the filing pursuant to subsection 1 or 2, as applicable. Each alternative filing must:

(a) Identify the bases for concluding that the information submitted by the electric utility is erroneous or deficient; and

(b) Include objective information supporting the alternative filing and, if applicable, demonstrating that the methodology used by the party is valid.

6. The provisions of this section do not preclude the parties of record from meeting or conferring as often as they deem necessary.

Sec. 14. 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 *the following items* with the application : ~~{all the information that the eligible customer included with the letter of intent and all the following items:}~~

(a) ~~{Information}~~ *The name of the eligible customer, 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, license number of the provider, address and other contact information for the provider and information demonstrating that the provider will provide energy, capacity or ancillary services from one or more identifiable new electric resources, including the location of the new electric resource or identification of the market for the new electric resource. If the provider intends to build a new electric resource, the application must also include a description of the proposed new facility and of the manner in which the total 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 underlying contract between the provider and the eligible customer or, if no executed underlying contract exists when the application is submitted, a binding term sheet listing specific terms and conditions of the proposed transaction, which 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, including the amount of energy, capacity and ancillary services expected to serve reasonably foreseeable load growth over the applicable action plan period for each point of delivery;*
 - (3) The identity of any scheduling coordinator as required by 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) Specific information regarding the nature of the product being purchased, including, without limitation, information regarding whether the energy or capacity is firm;*
 - (7) Specific information regarding termination provisions and notice provisions; and*
 - (8) Specific information regarding load ramps, both increases and decreases, over the term of the proposed transaction.*
- (e) Specific information specifying which ancillary services will be taken from which entities.*
- (f) Specific information indicating whether the new electric resources will be delivered from within or outside of the control area of the electric utility.*

(g) Specific information identifying transmission requirements associated with the proposed transaction and the extent to which the proposed transaction requires transmission import capacity.

(h) Specific 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]~~

(i) Specific 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.

~~[(e)]~~ *(j)* Any applicable system impact studies or facilities studies completed for the transmission service request.

~~[(d) Any information required to update or complete the information the eligible customer included with the letter of intent.]~~

~~—(e)~~ *(k) If applicable, evidence that the eligible customer qualifies as exempt from the authorized annual limits of energy and capacity sales pursuant to section 10 of this regulation.*

(l) Any other information deemed necessary by the Regulatory Operations Staff and requested in writing.

~~—(f)~~ *(m) 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 10-percent contract in accordance with subsection 2 of NRS 704B.320;~~

~~—(2) A binding offer, in the form of a separate contract, to assign 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.]~~

governmental entity, in addition to the other information required by this subsection, information sufficient to establish to the satisfaction of the Commission that:

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

(2) 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.

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. If the Commission determines that the information is commercially sensitive, the Commission:

(a) 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.}~~

~~—(e)}~~ Will not grant a protective order with respect to the information described in paragraphs (a) and (b) of subsection ~~{2 of NAC 704B.320.}~~ *1.*

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

704B.370 1. ~~{Except as otherwise provided in this section, not later than 40 calendar days after the date on which the eligible customer files an application,}~~ *Not later than 30 days before the eligible customer begins purchasing energy, capacity or ancillary services from the provider,* 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:

(1) 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:

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

(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 eligible customer is unable to secure supply for 100 percent of its load;

(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.

(c) 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.

~~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.~~

~~—3.1~~ Each agreement filed with the Commission pursuant to subsection 1 ~~for 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 such a completed and fully executed underlying contract between the eligible customer and the provider.}~~

3. Upon receipt of the ~~{underlying contract,}~~ *agreements filed with the Commission pursuant to subsection 1*, 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}~~ *submitted with its application;*

(b) *Review the distribution agreement, transmission service agreement and operating agreement to verify that the agreements are consistent with the eligible customer's application; and*

(c) Inform the Commission and each party of record whether the terms are the same or whether the terms differ. If the terms differ, the Commission will issue an order identifying the terms that differ and providing the eligible customer with an opportunity to resolve the differences. If the eligible customer fails to resolve the differences within 7 days, the application shall be deemed to be rescinded.

~~{↪ An underlying contract that is submitted to the Regulatory Operations Staff pursuant to this subsection 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 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 underlying contract and shall not disclose the contents of the 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 Commission will issue an order identifying the terms that differ and providing the eligible customer with an opportunity to resolve the differences. If the eligible customer fails to resolve the differences within 7 days, 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.]~~ 4. In addition to the terms, conditions and compliance items required by subsections ~~2,~~ 4] 1 and ~~5.]~~ 3, 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.]~~ 5. 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 , *if any*, not later than 120 calendar days after the date on which the Commission issues the order.

~~8.]~~ 6. 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.]~~ 7. 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 this section , ~~and NRS 704B.360,]~~ or as may be needed to address any objections raised pursuant to NAC 704B.405, 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. 16. 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 ~~†~~ *or by way of market purchases:*

(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.

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

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

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

↪ unless the Commission authorizes an earlier date of commencement.

2. ~~If the eligible customer notifies the electric utility and the Commission in writing that the eligible customer intends to proceed with the proposed transaction not later than 30 days after the Commission issues a compliance order approving the application of the eligible customer, the impact fee approved by the Commission will not be updated or adjusted unless the actual date of commencement occurs before the estimated date of commencement.~~

~~3.~~ 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,* *I* that the eligible customer intends to proceed with the proposed transaction ~~†~~:

~~(a) The~~ *, 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.

~~{(b)} Except as otherwise provided in subsection 2, not later than 15 calendar days after the date on which the eligible customer files its estimated date of commencement pursuant to subsection 1, 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. Upon completion of the updated calculation of the impact fee required by paragraph (b) of subsection 3, the Regulatory Operations Staff shall provide the eligible customer with an analysis of the updated calculation 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. 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, the eligible customer shall:~~

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

~~——(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:~~

~~——(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 defer the decision of whether to proceed with 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~~

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

~~—6.]~~ 3. 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, 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.

~~17.]~~ 4. Notwithstanding the provisions of subsection 1 of this section and subsection ~~18.]~~ 6 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 *electric* utility of its intent to proceed with the proposed transaction and the date of commencement.

Sec. 17. NAC 704B.385 is hereby amended to read as follows:

704B.385 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 notifies the electric utility and the Commission pursuant to subsection ~~3, or reconfirms to the electric utility and the Commission pursuant to subsection 6,~~ *1* that the eligible customer intends to proceed with the proposed transaction, 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.

3. ~~If the eligible customer notifies the electric utility and the Commission in writing that the eligible customer intends to proceed with the proposed transaction not later than 50 days after the Commission issues a compliance order approving the application of the eligible customer, the impact fee approved by the Commission will not be updated or adjusted unless the actual date of commencement occurs before the estimated date of commencement.~~

~~4. Except as otherwise provided in subsection 3, 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, 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:~~

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

~~—(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.— Upon completion of the updated calculation of the impact fee required by subsection 4, the Regulatory Operations Staff shall provide the eligible customer with an analysis of the updated calculation 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.— 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:~~

~~—— (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:~~

~~—— (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 defer the decision of whether to proceed with 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.~~

~~—7.†~~ 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.†~~ 4. 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. 18. NAC 704B.405 is hereby amended to read as follows:

704B.405 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 believes 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. If the Commission makes such a determination, the Commission will identify the inconsistent terms and provide the eligible customer with an opportunity to revise the terms of the proposed transaction to resolve the inconsistencies. If the eligible customer fails to resolve the inconsistencies, 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 to the Commission for review upon the 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. 19. NAC 704B.410 is hereby amended to read as follows:

704B.410 In determining whether a proposed transaction for an existing eligible customer ~~[will be contrary to]~~ *is in* the public interest ~~;~~

~~—1.—The]~~, *the* Commission will base its determination on the criteria set forth in subsections 5 and 6 of 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 *or cause the remaining customers of the electric utility to forego a reduction in 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 NAC 704B.350.~~

~~—(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 NAC 704B.350.~~

~~—(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 NAC 704B.350.~~

~~—(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. 20. NAC 704B.060, 704B.100, 704B.104, 704B.138, 704B.320, 704B.330, 704B.350 and 704B.360 are hereby repealed.

TEXT OF REPEALED SECTIONS

704B.060 “Electric utility that primarily serves densely populated counties” defined.

(NRS 704B.200) “Electric utility that primarily serves densely populated counties” has the meaning ascribed to it in NRS 704B.060.

704B.100 “Impact fee” defined. (NRS 704B.200) “Impact fee” means an amount

assessed by the Commission against an eligible customer pursuant to subsection 7 of NRS 704B.310, but does not include any payment required by subparagraph (2) of paragraph (b) of subsection 7 of NRS 704B.310.

704B.104 “Letter of intent” defined. (NRS 704B.200) “Letter of intent” means a letter

of intent that an eligible customer submits pursuant to NAC 704B.320.

704B.138 “Ten-percent contract” and “10-percent contract” defined. (NRS 704B.200)

“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.

704B.320 Letter of intent to file application: General requirements; contents; limitations on use of certain information by electric utility. (NRS 704B.200)

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 one or more identifiable new electric resources, including the location of the new electric resource or identification of the market for the new electric 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 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 underlying contract between the provider and the eligible customer or, if no executed 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 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 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. An electric utility shall adhere to the written standards, policies and procedures filed by the electric utility with the Commission to ensure compliance with this subsection.

704B.330 Letter of intent to file application: Meetings and discussions; duty to provide and update certain data and information. (NRS 704B.200)

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.

704B.350 Analysis of proposed underlying contract; meetings and discussions; duty to provide and update certain data and information; methodology used by Regulatory Operations Staff. (NRS 704B.200)

1. Not later than 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 underlying contract to estimate the potential impacts of the proposed 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 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 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 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 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 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 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.

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.

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 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.

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 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.

704B.360 Additional analysis of 10-percent contract; meetings and discussions; determination of best interest by Commission; consequences of determination. (NRS 704B.200, 704B.320)

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 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 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 10-percent contract will be beneficial or detrimental

to the remaining customers of the electric utility and shall include a recommendation regarding whether the 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 20 calendar days after the date on which the eligible customer files 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 30 calendar days after the date on which the eligible customer files the completed and fully executed underlying contract, the Regulatory Operations Staff shall:

(a) Finalize its analysis of the 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 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 40 calendar days after the date on which the eligible customer files 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. After evaluating the analysis performed by the Regulatory Operations Staff and any alternative analysis filed 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 10-percent contract to the electric utility.

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 10-percent contract to the electric utility:

(a) The eligible customer shall assign the 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, 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 10-percent contract to the electric utility, the eligible customer is entitled to the 10-percent contract.