

**PROPOSED REGULATION OF THE
PUBLIC UTILITIES COMMISSION**

LCB FILE NO. R030-23I

**The following document is the initial draft regulation proposed
by the agency submitted on 08/01/2023**

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

Docket No. 18-11006

December 13, 2022

Explanation – Matter in *italics* is new; matter in brackets ~~[emitted material]~~ is material to be omitted

Section 1. NAC 704.5661 is hereby amended to read as follows:

The resource plan of a utility must be accompanied by a summary that is suitable for distribution to the public. Any tables, graphs or maps used in the summary must be easily interpretable by the public. The summary must include, without limitation:

1. A brief introduction that describes the utility, its facilities and the purpose and duration of the resource plan;

2. A statement that identifies the issues relating to the supply of water and services for the disposal of sewage and the utility's strategy for addressing those issues;

3. *A list of projects in the action plan for which the utility requests approval; and*

4. A list of projects included in the action plan for which the utility requests system improvement rate eligibility

5. A description of the criteria used by the utility to develop the resource plan, including, without limitation, a summary of each forecast prepared by the utility pursuant to NAC 704.5667;

~~4~~6. A statement that identifies the utility's current and projected requirements during the term of the resource plan for each of the following:

- (a) Water supply;
- (b) Water rights;
- (c) Storage;
- (d) Transmission and distribution system;
- (e) Fire flows and fire hydrants;
- (f) Wastewater treatment; and
- (g) Water conservation; and

~~5~~7. The methods that the utility proposes to use to fund the costs related to the resource plan.

Sec. 2. NAC 704.5665 is hereby amended to read as follows:

1. The resource plan of a utility must include and provide an integrated analysis of the utility's:

- (a) Conservation plan;
- (b) Water supply and wastewater treatment plan;
- (c) Funding plan; and
- (d) Action plan.

2. The analysis must establish priorities among the utility's options for water conservation, water supply, wastewater treatment and funding to enable the Commission to determine the extent to which the utility's action plan balances the objectives of minimizing cost, mitigating risk and maximizing reliability of service over the term of the action plan.

3. The analysis required by section 2 must prioritize the projects included in the action plan using the following criteria:

(a) High priority. Projects necessary to ensure safe and reliable service to customers, including full compliance with statutory and regulatory requirements;

(b) Medium priority. Projects that enhance service to customers; and

(c) Low priority. Any projects that are not of high or medium priority.

Sec. 3. NAC 704.568 is hereby amended to read as follows:

The action plan of a utility must include, without limitation:

1. An introductory section that explains how the action plan relates to the long-term plans of the utility as set forth in its resource plan;

2. A section that identifies each action for which the utility requests the approval of the Commission;

3. A section that identifies each part of the utility's conservation plan that the utility proposes to carry out during the term of the action plan; and

4. A section that identifies each part of the utility's water supply and wastewater treatment plan that the utility proposes to carry out during the term of the action plan and includes, without limitation:

(a) For each ~~project facility~~ for which construction will be performed during that term:

(1) The utility's plans for construction; and

(2) The utility's proposed schedule for construction, including, without limitation, the proposed dates for:

(I) The preparation of any environmental impact statements, if required;

(II) The application for and receipt of each significant permit;

(III) Entering into a commitment for each substantial expenditure; and

(IV) Placing the ~~project facility~~ in commercial operation.

(b) For each ~~project facility~~ that will be acquired during that term, the proposed date for placing the ~~project facility~~ in commercial operation.

(c) For each project for which system improvement rate eligibility is requested, a description of the project and the proposed date for placing the project in commercial operation.

Sec. 4. NAC 704.5682 is hereby amended to read as follows:

1. The Commission will issue an order:

(a) ~~Issue an order a~~ Approving the action plan of a utility as filed;

(b) ~~Issue an order m~~ Modifying the action plan of a utility; or

(c) Specifying those parts of the action plan that the Commission ~~considers~~ finds to be inadequate.

2. ~~An action plan shall be deemed to be approved by the Commission only as to that portion of the action plan accepted as filed or modified with the consent of the utility pursuant to subsection 5 of NRS 704.661.~~

~~—3.—~~ If the Commission approves or modifies the action plan of the utility, ~~the Commission will include in the approval of the~~ each project included in the approved or modified action plan ~~its determination that the elements contained in the action plan are prudent. The Commission will make a determination that the elements of the action plan are prudent if:~~

~~—(a) The action plan maximizes the utility’s water supply and wastewater treatment capacities for the benefit of the utility’s customers; and~~

~~—(b) The utility demonstrates that the action plan balances the objectives of minimizing cost, mitigating risk and maximizing reliability of service for the term of the action plan~~ shall be deemed to be a prudent investment.

4.3. 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 false when the information was presented, the Commission may revoke, rescind or otherwise modify its approval of the action plan.

Sec. 5 NAC 704.5684 is hereby amended to read as follows:

1. A utility shall continually monitor its action plan and amend the action plan before it submits its next resource plan to the Commission if:

(a) The utility intends to submit an application for a permit to construct a utility project facility pursuant to NRS 704.820 to 704.890, inclusive, which was not approved as part of the action plan;

(b) The utility makes a commitment for the acquisition or construction of a project facility that was not approved as part of the action plan;

(c) The utility makes a commitment for a long-term purchased water obligation which was not approved as part of the action plan;

(d) The utility is unable to place a resource in service or obtain a resource in accordance with the schedule for the resource that is included in the action plan which results in a significant deviation from the action plan;

(e) The utility makes a commitment for a resource that was not available when the action plan was approved; or

(f) The basic data used in the development of the resource plan requires substantial modification that affects the choice of a resource which was approved as part of the action plan.

2. The conditions under which an amendment to an action plan is requested must be specifically set forth in the application for the amendment.

3. As used in this section, “resource” includes, without limitation, a ~~[facility.]~~ source of water supply or water right.

4. The utility may amend its action plan to request approval of a project to be eligible for a system improvement rate if unforeseen circumstances result in an urgent need for assistance or relief.

Sec. 6. NAC 704.5687 is hereby amended to read as follows:

1. The Commission will issue an order:

(a) ~~Issue an order a~~ 4pproving the amendment to the action plan of a utility as filed;

(b) ~~Issue an order m~~ Modifying the amendment to the action plan of a utility; or

(c) Specifying ing those parts of the amendment to the action plan that the Commission ~~considers~~ finds to be inadequate.

~~2. An action plan shall be deemed to be approved by the Commission only as to that portion of the action plan accepted as filed or modified with the consent of the utility pursuant to subsection 5 of NRS 704.661.~~

~~3. If the Commission approves or modifies an amendment, ~~the Commission will include in the approval of the~~ each project included in the approved or modified amendment ~~its determination that the elements contained in the action plan are prudent. The Commission will make a determination that the elements of the action plan are prudent if:~~~~

~~—(a) The action plan maximizes the utility’s water supply and wastewater treatment capacities for the benefit of the utility’s customers; and~~

~~—(b) The utility demonstrates that the action plan balances the objectives of minimizing cost, mitigating risk and maximizing reliability of service for the term of the action plan shall be deemed to be a prudent investment.~~

~~4.3.~~ 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 false when the information was presented, the Commission may revoke, rescind or otherwise modify its approval of the action plan.

Sec. 7. NAC 704.63335 is hereby amended to read as follows:

“Eligible project” means ~~[an improvement]~~ a replacement, a repair, or an upgrade to a distribution system, production system, transmission system or wastewater system, which is not undertaken by the utility during the normal course of operation and maintenance, whose total cost is an amount equal to or greater than the lesser of \$500,000 or five percent of the utility’s approved rate base in its immediately prior rate case, and that the Commission designates as being eligible for the recovery of costs through a system improvement rate pursuant to subsection 5 of NAC 704.6339.

Sec. 8. NAC 704.6339 is hereby amended to read as follows:

1. A large utility may include in the action plan component of the utility’s resource plan submitted pursuant to NRS 704.661 a request to designate ~~[a project for an improvement to]~~ a distribution system, production system, transmission system or wastewater system project as an eligible project for which a system improvement rate may be established. The project proposed for designation as an eligible project must be ~~[a new improvement project that is]~~ included in the action plan for which the large utility seeks approval pursuant to NAC 704.5682. If the large utility furnishes both water and services for the disposal of sewage, the annual gross operating revenue of the large utility for each service must be considered separately for the purpose of determining whether the large utility is eligible to submit a request pursuant to this subsection for either service.

2. A utility that is not required to submit a resource plan pursuant to NRS 704.661 may file an application with the Commission to designate ~~[a project for an improvement to]~~ a distribution system, production system, transmission system or wastewater system project as an eligible project for which a system improvement rate may be established.

3. A large utility submitting a request pursuant to subsection 1 or a utility submitting an application pursuant to subsection 2 shall include with the request or application:

- (a) A description of the project.
- (b) A statement explaining the necessity of the project.
- (c) The resulting benefits of the project to the utility and the customers of the utility upon the completion of the project, including, but not limited to, whether the project extends the useful life of existing infrastructure.

(d) A statement supported by written testimony that the project is not designed to increase revenues by connecting an improvement to a distribution system or wastewater system to new customers.

(e) A statement that the project was not included in the rate base of the utility in its most recent general rate case.

(f) A statement that the project costs for which recovery will be sought represent an investment to be made by the utility and which will not be paid by another funding source, including, without limitation, a grant, developer contribution or other form of reimbursement.

(g) If submittal to the Commission is not otherwise required by law or regulation, the utility's plan for construction and the proposed schedule for construction. A plan for construction and a proposed schedule for construction submitted pursuant to this paragraph must comply with the provisions of paragraph (a) of subsection 4 of NAC 704.568.

(h) If submittal to the Commission is not otherwise required by law or regulation, a budget of planned expenditures which complies with the provisions of NAC 704.5681.

4. A large utility submitting a request pursuant to subsection 1 shall submit the information required pursuant to subsection 3 in addition to any information otherwise required to be submitted in support of an element of an action plan pursuant to NAC 704.565 to 704.5688, inclusive.

5. The Commission will:

(a) For a request submitted by a large utility pursuant to subsection 1, approve or disapprove the request at the time the Commission makes a determination with respect to the resource plan submitted by the large utility.

(b) For an application submitted by a utility pursuant to subsection 2, approve or disapprove the application not later than 135 days after the Commission receives the application.

6. The Commission's determination to approve or disapprove a request will consider whether:

- (a) The project replaces aging infrastructure;
- (b) The project materially improves service or reliability;
- (c) The project is critical to continued service or reliability; or
- (d) The project is required for statutory or regulatory compliance.

7. As used in this section, "action plan" has the meaning ascribed to it in NAC 704.5651.

Sec. 10. NAC 704.63425 is hereby amended as follows:

1. An application to establish a system improvement rate must be filed not later than 90 days after the completion of an eligible project. If the utility fails to file the application within the 90-day time limit, the project will no longer be eligible for a system improvement rate.

2. An application filed pursuant to subsection 1 must include:

(a) The actual cost of the eligible project and invoices supporting the calculation of the actual cost.

(b) The approved budget for the eligible project provided by the Commission pursuant to NAC 704.634.

(c) A calculation of the system improvement rate revenue requirement for each eligible project included in the system improvement rate. The system improvement rate revenue requirement for an eligible project must be calculated on an annual basis. The monthly system improvement rate revenue requirement is one-twelfth of the annual system improvement rate revenue requirement. The annual system improvement rate revenue requirement initially must be calculated using the information available on the last day of the month during which the eligible project is placed in service.

(d) The proposed system improvement rate to be collected from the customers of the utility. If the eligible project is an improvement to a distribution system, production system or transmission system, the proposed system improvement rate must be based upon water consumption by each customer class during the 12-month period ending on the last day of the month during which the eligible project was placed in service. If the eligible project is an improvement to a wastewater system, the proposed system improvement rate must be based upon the customer class contribution to total revenues for the 12-month period ending on the last day of the month during which the eligible project was placed in service.

↪ The utility has the burden of proving the reasonableness and prudence of the costs incurred to develop the eligible project.

3. The system improvement rate revenue requirement calculated as part of an application must be recalculated in any subsequent application to establish a system improvement rate submitted pursuant to subsection 1. The system improvement rate revenue requirement must be modified annually in the manner prescribed by NAC 704.63435. *Any system improvement rate must also be examined during a general rate case filed by a utility that is charging a system improvement rate.*