

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

LCB File No. R030-23

September 21, 2023

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

AUTHORITY: §§ 1-10, NRS 703.025, 704.210 and 704.661; § 11, NRS 703.025 and 704.210; §§ 12 and 13, NRS 703.025, 704.210, 704.661 and 704.663.

A REGULATION relating to public utilities; revising provisions governing the resource plan required to be submitted by certain utilities which furnish water or services for the disposal of sewage; revising provisions governing the determination that a project included in the action plan of a water or sewage utility is a prudent investment; authorizing a water or sewage utility to amend its action plan to request the eligibility of a project for a system improvement rate to recover the cost of the project; revising provisions governing the eligibility of projects for a system improvement rate; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires certain public utilities that furnish water or services for the disposal of sewage and which have an annual gross operating revenue of \$1,000,000 or more for at least 1 year during the immediately preceding 3 years to submit to the Public Utilities Commission of Nevada a triennial resource plan to provide sufficient water or services for the disposal of sewage to satisfy the demand made on the system of the utility by its customers. (NRS 704.661) Existing regulations require the resource plan of such a utility to include an action plan that specifies in detail the actions that the utility intends to take to meet its water demand, supply and wastewater treatment requirements during the 3 years immediately following the year in which its resource plan is filed with the Commission. (NAC 704.5651, 704.5665)

Existing law requires the Commission to adopt regulations governing its review of a request made by a utility in such a resource plan, or in any other form authorized by the Commission, to impose a surcharge to fund investment in infrastructure for the period between the filing of rate cases by the utility. (NRS 704.663) Existing regulations: (1) authorize a utility that is required to submit a resource plan to include in its resource plan a request to designate a project as an “eligible project” for which a “system improvement rate” may be established; (2) authorize a utility that is not required to submit a resource plan to submit an application to the Commission to designate a project as an eligible project for which such a system improvement rate may be established; and (3) establish a procedure by which the Commission approves or disapproves such a request or application and, if approved, establishes a system improvement

rate by which the utility recovers the cost of a project during the period between the filing of rate cases by the utility. (NAC 704.63335, 704.6339-704.63435)

Sections 1-4 of this regulation make the definitions of “eligible project” and “system improvement rate” in existing regulations applicable to existing regulations governing the resource plan of a utility.

Section 5 of this regulation requires the summary that a utility is required to submit with its resource plan and that must be suitable for distribution to the public to include a list of projects of the utility for which the utility is seeking approval and a list of projects which the utility requests to designate as an eligible project for which a system improvement rate may be established. (NAC 704.5661)

Section 6 of this regulation requires the analysis of the action plan of a utility to establish the priority of projects included in the action plan and establishes the criteria for a project to be deemed a high, medium or low priority project. (NAC 704.5665)

Section 7 of this regulation requires the action plan of a utility to include, for each project for which the utility requests eligibility for the recovery of costs through a system improvement rate, a description of the project and the proposed date for placing the project in commercial operation. (NAC 704.568)

Sections 8 and 10 of this regulation: (1) remove the criteria used by the Commission to determine whether the elements of an action plan are prudent for the purpose of determining whether the costs of those elements may be included in the determination of rates charged to customers; and (2) provide that each project included in an action plan or amendment to an action plan which is approved or modified by the Commission are deemed to be a prudent investment. (NAC 704.5682, 704.5687)

Section 9 of this regulation authorizes a utility to amend its action plan to request that a project be designated as an eligible project for which a system improvement rate may be established if unforeseen circumstances result in an urgent need for assistance or relief.

Section 11 of this regulation revises the definition of “eligible project” for the purposes of determining which projects are eligible for a system improvement rate. Specifically, **section 11**: (1) removes the requirement that an eligible project be an improvement to a distribution system, production system, transmission system or wastewater system and, instead, requires that an eligible project be a replacement, repair or upgrade to such a system; (2) prohibits projects undertaken during the normal course of operations and maintenance from being an eligible project for which a system improvement rate may be established; and (3) adds a requirement that for a project to be an eligible project for which a system improvement rate may be established, the project must have a total cost that is equal to or greater than a certain amount. **Section 14** of this regulation makes a conforming change to reflect the revisions to the definition of “eligible project.”

Section 12 of this regulation requires the Commission, in determining whether to approve or disapprove a request to designate a project as an eligible project for which a system improvement rate may be established, to consider whether the project meets certain criteria.

Section 13 of this regulation provides that a project is not eligible for a system improvement rate if the utility does not file an application within the time period established by existing regulations, which require such an application to be filed not later than 90 days after the completion of the eligible project. (NAC 704.63425) **Section 13** additionally requires a system improvement rate to be reexamined during a general rate case filed by the utility.

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

Sec. 2. *“Eligible project” has the meaning ascribed to it in NAC 704.63335.*

Sec. 3. *“System improvement rate” has the meaning ascribed to it in NAC 704.6336.*

Sec. 4. NAC 704.565 is hereby amended to read as follows:

704.565 As used in NAC 704.565 to 704.5688, inclusive, *and sections 2 and 3 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 704.5651 to 704.5658, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 5. NAC 704.5661 is hereby amended to read as follows:

704.5661 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 included in the action plan for which the utility requests approval;*
4. *A list of projects included in the action plan which the utility requests to designate as an eligible project for which a system improvement rate may be established;*
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;

~~14.1~~ 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

~~15.1~~ 7. The methods that the utility proposes to use to fund the costs related to the resource plan.

Sec. 6. NAC 704.5665 is hereby amended to read as follows:

704.5665 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 must establish the priority of projects included in the utility's action plan according to the following criteria:

(a) A high priority project is a project necessary to ensure safe and reliable service to customers.

(b) A medium priority project is a project that enhances service to customers.

(c) A low priority project is a project that is not a high or medium priority project.

Sec. 7. NAC 704.568 is hereby amended to read as follows:

704.568 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 ~~facility~~ *project* 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 ~~{facility}~~ *project* in commercial operation.

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

(c) For each project which the utility requests to designate as an eligible project for which a system improvement rate may be established, a description of the project and the proposed date for placing the project in commercial operation.

Sec. 8. NAC 704.5682 is hereby amended to read as follows:

704.5682 1. The Commission will ~~{}~~ *issue an order:*

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

(b) ~~{Issue an order modifying}~~ *Modifying* the action plan of a utility; or

(c) ~~{Specify}~~ *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}~~ *each project included* in the ~~{approval of 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.~~

~~—4.] shall be deemed to be a prudent investment.~~

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. 9. NAC 704.5684 is hereby amended to read as follows:

704.5684 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 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 ~~{facility}~~ *project* 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 utility may amend its action plan to request that a project be designated as an eligible project for which a system improvement rate may be established if unforeseen circumstances result in an urgent need for assistance or relief.*

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

~~3.~~ 4. As used in this section, “resource” includes, without limitation, a ~~facility,~~ source of water supply or water right.

Sec. 10. NAC 704.5687 is hereby amended to read as follows:

704.5687 1. The Commission will ~~it~~ *issue an order:*

(a) ~~Issue an order approving~~ *Approving* the amendment to the action plan as filed;

(b) ~~Issue an order modifying~~ *Modifying* the amendment to the action plan; or

(c) ~~Specify~~ *Specifying* those parts of the amendment that the Commission ~~considers~~ *finds to be* inadequate.

2. ~~An amendment to the action plan shall be deemed to be approved by the Commission only as to that portion of the amendment to the 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 amendment, ~~the Commission will include~~ *each project included* in the ~~approval of the~~ *approved or modified* amendment ~~its determination that the amendment is prudent. The Commission will make a determination that the amendment is prudent if:~~

~~—(a) The amendment 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 amendment balances the objectives of minimizing cost, mitigating risk and maximizing the reliability of water supply and wastewater treatment for the term of the action plan.~~

~~—4.} shall be deemed to be a prudent investment.~~

3. If the Commission subsequently determines that any information relied upon when issuing its order approving or modifying the amendment 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 amendment.

Sec. 11. NAC 704.63335 is hereby amended to read as follows:

704.63335 “Eligible project” means ~~{an improvement}~~ *a replacement, repair or upgrade* to a distribution system, production system, transmission system or wastewater system *which is not undertaken by the utility during the normal course of operations and maintenance, whose total cost is an amount equal to or greater than the lesser of \$500,000 or 5 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. 12. NAC 704.6339 is hereby amended to read as follows:

704.6339 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 ~~fa 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 ~~fa 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, without limitation, 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 ~~H~~, *and sections 2 and 3 of this regulation.*

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. *In determining whether to approve or disapprove a request submitted pursuant to subsection 1 or an application submitted pursuant to subsection 2, the Commission will consider whether the project:*

(a) Replaces aging infrastructure;

(b) Materially improves service or reliability;

(c) Is critical to continued service or reliability; or

(d) 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. 13. NAC 704.63425 is hereby amended to read as follows:

704.63425 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 a utility fails to file the application within this time limit, the project will not 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.

4. A system improvement rate must be reexamined during any general rate case filed by a utility that is charging a system improvement rate.

Sec. 14. NAC 704.63435 is hereby amended to read as follows:

704.63435 1. A utility that is charging a system improvement rate shall, on or before April 1 of each year after the establishment of the system improvement rate, file an application recommending continuation of the system improvement rate or an adjustment to the system improvement rate.

2. An application filed pursuant to subsection 1:

(a) Must:

(1) Provide the most current balance in the regulatory asset account for the system improvement rate.

(2) Recommend an adjustment to account for the difference between the actual revenues from the system improvement rate and the uncollected balance of the system improvement rate revenue requirement.

(b) May recommend an adjustment to account for the amortized amount of the reported balance of the regulatory asset account for the system improvement rate. If the utility does not provide a recommendation pursuant to this paragraph, the utility shall provide an explanation for the omission of the recommendation.

3. For any adjustment recommended pursuant to subsection 2:

(a) If the eligible project for which the recommendation is proposed is ~~{an improvement to}~~ a distribution system, production system or transmission system ~~{}~~ *project*, the recommended adjustment to the system improvement rate must be based upon water consumption by each customer class during the 12-month period for which the application is filed.

(b) If the eligible project for which the recommendation is proposed is ~~{an improvement to}~~ a wastewater system ~~{}~~ *project*, the recommended adjustment must be based upon the customer class contribution to total revenues for the 12-month period for which the application is filed.

4. If the Commission does not approve the application within 120 days after the filing date of the application, the application shall be deemed denied unless the Commission or presiding officer issues an order extending the time by which the application must be approved.