Senate Bill No. 438–Committee on Commerce and Labor

CHAPTER........

AN ACT relating to utilities; providing for the appointment of hearing officers to conduct proceedings before the public utilities commission of Nevada; revising the provisions governing recoverable costs; providing for the provision of basic electric services during the period of transition to a competitive market; providing for an auction of the right to provide such electric services; making various changes related to the provision of electricity in a competitive market; revising the provisions governing the statutory deadline by which customers may begin obtaining potentially competitive services; repealing provisions relating to deferred accounting; authorizing the use of the name or logo of a provider of a noncompetitive service by an affiliate of a provider of electric services or a provider of natural gas; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 703.130 is hereby amended to read as follows:

703.130 1. The commission shall appoint a deputy commissioner who shall serve in the unclassified service of the state.

2. The commission shall appoint a secretary who shall perform such administrative and other duties as are prescribed by the commission. The commission shall also appoint an assistant secretary.

3. The commission may employ such other clerks, experts or engineers as may be necessary.

4. The commission may appoint one or more hearing officers for a period specified by the commission to conduct proceedings or hearings that may be conducted by the commission pursuant to chapters 704, 704A, 705, 708 and 711 of NRS. The commission shall prescribe by regulation the procedure for appealing a decision of a hearing officer to the commission.

Sec. 2. Chapter 704 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 6, inclusive, of this act.

Sec. 3. ***1. A vertically integrated electric utility that is in existence on January 1, 1999, or its successor electric distribution utility or any assignee of the utility shall comply with the terms of any existing obligations for the purchase of power.***

2. To recover any costs associated with an obligation for the purchase of power, a vertically integrated electric utility in existence on January 1, 1999, or its successor electric distribution utility or any assignee of the utility must demonstrate to the commission that it has made reasonable efforts to reduce the cost or increase the value of the obligation, including, without limitation, by:

(a) Evaluating the costs and benefits of the obligation and analyzing whether there are any reasonable options under the existing provisions of the obligation that may reduce the costs or increase the benefits of the obligation;

(b) Reporting on the good faith attempts by the utility or its assignee to seek an increase in value or reduction in cost from the provider of the purchased power under the existing provisions of the obligation;

(c) Showing that the utility or its assignee has exercised to the extent practicable the terms of the existing obligation to mitigate the cost of the obligation or has assessed the value of retaining the obligation;

(d) Providing a citation to an order of the commission approving the obligation, or if such an order does not exist or is not available, providing all information, including, without limitation, any actions or statements by the commission or any state or federal agency, that demonstrates the commitment of the utility or its assignee to the obligation; and

(e) Providing all information indicating the extent to which the rates previously established by the commission have compensated shareholders for the risk of not recovering the costs of the obligation.

3. The provisions of this section must not be construed to allow the commission, by direct or indirect action, to modify or terminate any obligation for the purchase of power in effect on June 1, 1999.

Sec. 4. *The commission shall, for each class of customers of electric service in this state, establish a total rate for the components of electric service that are necessary to provide electric service to customers in this state pursuant to subsection 1 of NRS 704.982. The total rate for each class must be established at and must not exceed the total rate for each class of customers of electric service in this state which is in effect on July 1, 1999, except that the commission shall modify the rates to account for the effects of any decisions by the commission relating to any cases filed with the commission before October 1, 1999, which involve the use of deferred accounting. Upon approval by the commission, the provider designated pursuant to subsection 1 of NRS 704.982 may reduce the total rate for any class of customers. The total rates established pursuant to this subsection do not apply to any customer who obtains generation, aggregation or any other potentially competitive service from an alternative seller.*

Sec. 5. *1. The provider of electric service designated pursuant to subsection 1 of NRS 704.982 is entitled to recover only from the gain, if any, from the sale by the provider of its generation assets any shortfall during the period commencing on March 1, 2000, or such other date that is determined to be in the public interest by the governor pursuant to NRS 704.976, and ending on March 1, 2003, that results from the netting of any difference between:*

(a) The revenues generated by the total rates charged to all classes of customers pursuant to section 4 of this act; and

(b) The total cost incurred by the provider to provide that service to all classes of customers.

2. Upon approval of the amount of the net shortfall, if any, the commission shall authorize the designated provider to recover that

amount from the gain if any, on the sale of its generation assets, after the deduction of any taxes.

3. As used in this section, "total cost incurred by the provider" means the total revenues generated by all classes by the rates in effect on July 1, 1999, as adjusted to account for the effects of any decision of the commission relating to any cases filed with the commission before October 1, 1999, which involve the use of deferred accounting.

Sec. 6. ***1. At any time after July 1, 2001, a licensed alternative seller may submit to the commission an offer to provide electric service that is being provided by the provider designated pursuant to subsection 1 of NRS 704.982. The offer must:***

(a) Request to serve at least 10 percent of the load of the provider designated pursuant to subsection 1 of NRS 704.982;

(b) Provide that the service will be provided by the alternative seller to more than one class of customers; and

(c) Provide that there will be a discount of 5 percent off the rate prescribed in subsection 2 of NRS 704.982.

2. Upon the receipt of such an offer, the commission may conduct an auction if the commission determines that it is in the public interest to conduct such an auction. If the commission determines that such an auction is in the public interest, the commission shall conduct the auction as soon as practicable. The commission shall determine the terms and conditions for continued service by the successful bidder at the auction. Any licensed alternative seller or affiliate of an electric distribution utility may submit a bid. Bidding must be done by sealed bid. Each bid must be not less than 10 percent of the load, as measured in megawatts or megawatt hours, of the load of the provider designated pursuant to subsection 1 of NRS 704.982.

3. The commission shall review the bids. If the successful bidder is an alternative seller or an affiliate of an electric distribution utility other than the electric distribution utility that provided the service before the auction, the successful bidder becomes the provider of the service for the percentage of the load as indicated in its bid. For the remainder of the load that is not awarded to a successful bidder, the electric distribution utility which provided service to the customers before the auction remains the provider of the service, and that service must continue to be provided under the same terms and conditions as existed for the provision of that service by the electric distribution utility immediately before the auction.

Sec. 7. NRS 704.110 is hereby amended to read as follows:

704.110 Except as otherwise provided in NRS 704.075 or as otherwise provided by the commission pursuant to NRS 704.095 or 704.097:

1. Whenever there is filed with the commission any schedule stating a new or revised individual or joint rate or charge, or any new or revised individual or joint regulation or practice affecting any rate or charge, or any schedule resulting in a discontinuance, modification or restriction of

service, the commission may, upon complaint or upon its own motion without complaint, at once, without answer or formal pleading by the interested utility, investigate or, upon reasonable notice, conduct a hearing concerning the propriety of the rate, charge, classification, regulation, discontinuance, modification, restriction or practice.

2. Pending the investigation or hearing and the decision thereon, the commission, upon delivering to the utility affected thereby a statement in writing of its reasons for the suspension, may suspend the operation of the schedule and defer the use of the rate, charge, classification, regulation, discontinuance, modification, restriction or practice, but not for more than 150 days beyond the time when the rate, charge, classification, regulation, discontinuance, modification, restriction or practice would otherwise go into effect.

3. Whenever there is filed with the commission any schedule stating an increased individual or joint rate or charge for service or equipment, the public utility shall submit with its application a statement showing the recorded results of revenues, expenses, investments and costs of capital for its most recent 12 months for which data were available when the application was prepared. During any hearing concerning the increased rates or charges determined by the commission to be necessary, the commission shall consider evidence in support of the increased rates or charges based upon actual recorded results of operations for the same 12 months, adjusted for increased revenues, any increased investment in facilities, increased expenses for depreciation, certain other operating expenses as approved by the commission and changes in the costs of securities which are known and are measurable with reasonable accuracy at the time of filing and which will become effective within 6 months after the last month of those 12 months, but no new rates or charges may be placed into effect until the changes have been experienced and certified by the utility to the commission. The commission shall also consider evidence supporting expenses for depreciation, calculated on an annual basis, applicable to major components of the public utility’s plant placed into service during the recorded test period or the period for certification as set forth in the application. Adjustments to revenues, operating expenses and costs of securities must be calculated on an annual basis. Within 90 days after the filing with the commission of the certification required in this subsection, or before the expiration of any period of suspension ordered pursuant to subsection 2, whichever time is longer, the commission shall make such order in reference to those rates or charges as is required by this chapter.

4. After full investigation or hearing, whether completed before or after the date upon which the rate, charge, classification, regulation, discontinuance, modification, restriction or practice is to go into effect, the commission may make such order in reference to the rate, charge, classification, regulation, discontinuance, modification, restriction or practice as would be proper in a proceeding initiated after the rate, charge,

classification, regulation, discontinuance, modification, restriction or practice has become effective.

5. ~~[Whenever an application is filed by a public utility for an increase in any rate or charge based upon increased costs in the purchase of fuel or power, and the public utility has elected to use deferred accounting for costs of the purchase of fuel or power in accordance with the commission's regulations, the commission, by appropriate order after a public hearing, shall allow the public utility to clear the deferred account not more often than every 6 months by refunding any credit balance or recovering any debit balance over a period not to exceed 1 year as determined by the commission. The commission shall not allow a recovery of a debit balance or any portion thereof in an amount which would result in a rate of return in excess of the rate of return most recently granted the public utility.~~

~~6.]~~ Except as otherwise provided in subsection ~~[7,]~~ ***6,*** whenever a general rate application for an increased rate or charge for, or classification, regulation, discontinuance, modification, restriction or practice involving service or equipment has been filed with the commission, a public utility shall not submit another general rate application until all pending general rate applications for increases in rates submitted by that public utility have been decided unless, after application and hearing, the commission determines that a substantial financial emergency would exist if the other application is not permitted to be submitted sooner.

~~[7.]~~ ***6.*** A public utility may not file an application to recover the increased cost of purchased fuel, purchased power, or natural gas purchased for resale more often than once every 30 days.

~~[8.]~~ ***7.*** A utility facility identified in a 3-year plan submitted pursuant to NRS 704.741 and accepted by the commission for acquisition or construction pursuant to NRS 704.751 and the regulations adopted pursuant thereto shall be deemed to be a prudent investment. The utility may recover all just and reasonable costs of planning and constructing such a facility.

Sec. 8. NRS 704.185 is hereby amended to read as follows:

704.185 1. A public utility which purchases ~~[fuel, including]~~ natural gas for resale ~~[, or power]~~ may record upon its books and records all cost increases or decreases in ~~[fuels or purchased power]~~ ***the natural gas purchased for resale*** in deferred accounts. Any public utility which utilizes deferred accounting to reflect changes in costs of ~~[fuels and purchased power]~~ ***natural gas purchased for resale*** shall include in its annual report to the commission a statement showing the allocated rate of return for each of its operating departments in Nevada which uses deferred accounting.

2. If the rate of return for any department using deferred accounting is greater than the rate of return allowed by the commission in the last rate proceeding, the commission shall order the utility which recovered any ~~[deferred fuel and purchased power]~~ costs ***of natural gas purchased for resale*** through rates during the reported period to transfer to the next energy adjustment period that portion of such recovered amounts which exceeds the authorized rate of return.

Sec. 9. NRS 704.965 is hereby amended to read as follows:

704.965 As used in NRS 704.965 to 704.990, inclusive, ***and sections 3 to 6, inclusive, of this act,*** unless the context otherwise requires, the words and terms defined in NRS 704.966 to 704.975, inclusive, have the meanings ascribed to them in those sections.

Sec. 10. NRS 704.970 is hereby amended to read as follows:

704.970 "Electric distribution utility" means a utility that is in the business of supplying noncompetitive electric distribution or transmission service, or both, or a noncompetitive service pursuant to NRS 704.982, on or after ~~[July 1, 1999, or the date on which alternative sellers are authorized to provide potentially competitive services to customers in this state, as appropriate.]~~ ***March 1, 2000, or such other date that is determined to be in the public interest by the governor pursuant to NRS 704.976.***

Sec. 11. NRS 704.975 is hereby amended to read as follows:

704.975 1. "Vertically integrated electric utility" means any public utility in the business of supplying electricity or its successor in interest that, as of December 31, 1996:

(a) Held a certificate of public convenience and necessity issued pursuant to NRS 704.005 to 704.731, inclusive; and

(b) Had an annual operating revenue of $250,000,000 or more ~~[.]~~ ***in Nevada.***

2. The term does not include a cooperative association or nonprofit corporation or association or other provider of electric service, which is declared to be a public utility pursuant to NRS 704.673 and provides service only to its members.

Sec. 12. NRS 704.976 is hereby amended to read as follows:

704.976 1. The date upon which customers may begin obtaining generation, aggregation ***, metering, billing*** and any other potentially competitive services from an alternative seller must be no later than ~~[December 31, 1999,]~~ ***March 1, 2000,*** unless the ***governor, after consultation with the*** commission ***,*** determines that a different date is necessary to protect the public interest. ~~[If the commission determines that a different date is necessary, the commission shall provide a report to the director of the legislative counsel bureau for transmittal to the legislature by February 1, 1999, which:~~

~~(a) Explains the reason that the commission has not granted such an authorization; and~~

~~(b) States whether the commission will grant such an authorization by December 31, 1999.]~~

2. The commission may:

(a) Establish different dates for the provision of different services by alternative sellers in different geographic areas; and

(b) Authorize, in gradual phases, the right ***of customers*** to buy from alternative sellers.

3. The commission shall determine that an electric service is a potentially competitive service if provision of the service by alternative sellers:

(a) Will not harm any class of customers;

(b) Will decrease the cost of providing the service to customers in this state or increase the quality or innovation of the service to customers in this state;

(c) Is a service for which effective competition in the market is likely to develop;

(d) Will advance the competitive position of this state relative to surrounding states; and

(e) Will not otherwise jeopardize the safety and reliability of the electric service in this state.

4. If the commission determines that a market for a potentially competitive service does not have effective competition, the commission shall, by regulation, establish the method for determining prices for the service and the terms and conditions for providing the service. The regulations must ensure that the pricing method, terms and conditions are just and reasonable and not unduly discriminatory. The regulations may include pricing alternatives which authorize the seller to reduce prices below maximum pricing levels specified by the commission or any other form of alternative pricing which the commission determines to be consistent with the provisions of this subsection. In determining whether a market for an electric service has effective competition, the commission shall:

(a) Identify the relevant market;

(b) Identify, where feasible, the alternative sellers that participate and are reasonably expected to participate in the relevant market; and

(c) Calculate, where feasible, the market share of each participant in the market and evaluate the significance of each share.

5. On ~~[or before October 1, 2000, the commission shall submit to the director of the legislative counsel bureau for transmittal to the appropriate legislative committee a report which:~~

~~(a) Evaluates the effectiveness of competition in the market for each service which customers have the right to purchase from alternative sellers; and~~

~~(b) Recommends actions which the legislature should take to increase the effectiveness of competition in the markets for all potentially competitive services.~~

~~6. On]~~ or before October 1, 2001, an electric service that has been found ***on or before that date*** to be potentially competitive shall be deemed to be competitive.

~~[7.]~~ ***6.*** The commission may reconsider any determination made pursuant to this section upon its own motion or upon a showing of good cause by a party requesting a reconsideration. Upon a finding by the commission that the market for a service previously found not to have effective competition has become effectively competitive, the commission shall repeal the regulations which established the pricing methods and the terms and conditions for providing that service. The commission shall conduct any proceedings for the reconsideration of any such determination as expeditiously as practicable considering the current work load of the commission and the need to protect the public interest.

~~[8.]~~ ***7.*** A vertically integrated electric utility shall not provide a potentially competitive service except through an affiliate ~~[:~~

~~(a) On or after December 31, 1999; or~~

~~(b) The date on which the commission determines that the service is potentially competitive,~~

~~whichever is later.]~~ ***on or after March 1, 2000, or such other date that is determined to be in the public interest by the governor pursuant to subsection 1.***

Sec. 13. NRS 704.977 is hereby amended to read as follows:

704.977 1. It is unlawful for an alternative seller to sell any electric service to a customer for consumption within this state without having first obtained a license from the commission to do so.

2. ~~[Not later than January 1, 1999, or any different date as determined by the commission pursuant to NRS 704.976, as appropriate, the]~~ ***The*** commission shall by regulation set forth the procedures and conditions that alternative sellers must satisfy to obtain a license to sell any electric services to a customer in this state, including, but not limited to, procedures and conditions relating to:

(a) Safety and reliability of service;

(b) Financial and operational fitness; and

(c) Billing practices and customer service, including the initiation and termination of service.

3. If, after reviewing the application of an alternative seller for a license, the commission finds that the applicant is qualified to be an alternative seller, the commission shall issue a license to the applicant.

4. The commission may deny the application of an applicant for a license to operate as an alternative seller and may limit, suspend or revoke a license issued to an alternative seller if the action is necessary to protect the interests of the public or to enforce the provisions of NRS 704.965 to 704.990, inclusive, ***and sections 3 to 6, inclusive, of this act,*** or a regulation of the commission.

5. In determining whether an applicant is qualified for a license, whether to deny an application for a license to operate as an alternative seller or whether to limit, suspend or revoke a license issued to an alternative seller, the commission may consider whether the applicant for or holder of the license, or any affiliate thereof, has engaged in any activities which are inconsistent with effective competition.

6. A city, county or other local governmental entity or a public utility, or any affiliate thereof, which is authorized to provide electric service within the State of Nevada and which has an annual operating revenue of

less than $250,000,000, ~~[is]~~ ***becomes*** subject to the provisions of NRS 704.965 to 704.990, inclusive, ***and sections 3 to 6, inclusive, of this act,*** and any regulations adopted ~~[by the commission that are in effect]~~ ***pursuant thereto,*** on the date on which the city, county or other local governmental entity or a public utility, or an affiliate thereof:

(a) Applies to obtain a license as an alternative seller; or

(b) Directly or indirectly attempts to provide, or act on behalf of an alternative seller in the provision of, electric service in the territory served by another city, county or other local governmental entity or public utility, or an affiliate thereof, unless the city, county or other local governmental entity or public utility, or an affiliate thereof, is otherwise required or permitted by specific statute to provide such service.

7. Notwithstanding the provisions of subsection 6, a city, county or other local governmental entity or a public utility, or any affiliate thereof, does not become subject to the provisions of NRS 704.965 to 704.990, inclusive, ***and sections 3 to 6, inclusive, of this act,*** or any regulations adopted pursuant thereto, solely because the city, county or other local governmental entity or a public utility, or any affiliate thereof, provides transmission or distribution services to an alternative seller pursuant to a contract, tariff or requirement of any state or federal law, except that the city, county or other local governmental entity or public utility, or an affiliate thereof, shall provide such transmission and distribution services on an open and nondiscriminatory basis to alternative sellers in accordance with such standards as the commission may establish by regulation for the provision of transmission and distribution services in accordance with this subsection.

8. Regulations adopted pursuant to subsection 2:

(a) Must not be unduly burdensome;

(b) Must not unnecessarily delay or inhibit the initiation and development of competition for any service in any market; and

(c) May establish different requirements for licensing alternative sellers of:

(1) Different services; or

(2) Similar services to different classes of customers,

whenever such different requirements are appropriate to carry out the provisions of NRS 704.965 to 704.990, inclusive ~~[.]~~ ***, and sections 3 to 6, inclusive, of this act.***

9. An alternative seller may combine two or more customers or any group of customers to provide aggregation service. The commission may not limit the ability of:

(a) An alternative seller to combine customers to provide aggregation service; or

(b) Customers to form groups to obtain aggregation service from alternative sellers.

Sec. 14. NRS 704.978 is hereby amended to read as follows:

704.978 1. The commission shall prohibit a provider of a noncompetitive service from providing a potentially competitive service, except through an affiliate of the provider.

2. The commission shall require each provider of a noncompetitive service that is necessary to the provision of a potentially competitive service to make its facilities or services available to all alternative sellers on equal and nondiscriminatory terms and conditions.

3. In providing a potentially competitive service, an affiliate of a provider of a noncompetitive service may use the name or logo, or both, of the provider of noncompetitive service.

Sec. 15. NRS 704.981 is hereby amended to read as follows:

704.981 1. An electric distribution utility shall provide all noncompetitive services within its territory unless the commission authorizes another entity to provide the noncompetitive service.

2. A noncompetitive service is subject to NRS 704.001 to 704.655, inclusive, 704.701 to 704.751, inclusive, and 704.800 to 704.900, inclusive.

3. ***The component rates for noncompetitive services established by the commission pursuant to NRS 704.986 must be used by customers who elect to receive competitive or potentially competitive services from alternative sellers or from the Colorado River Commission pursuant to NRS 704.987.***

4. The commission shall adopt regulations for noncompetitive services that allow innovative pricing methods for noncompetitive services upon a finding that the innovative pricing, when compared to pricing of services provided pursuant to subsections 1 and 2, improves the performance of the service or lowers the cost of the service to the customer, or both. The regulations for innovative pricing must specify:

(a) The provisions that must be included in a plan of innovative pricing;

(b) The procedures for submitting an innovative plan for pricing to the commission for approval and implementation; and

(c) Which provisions of this chapter do not apply to pricing changes that are made during the period in which the innovative pricing plan is in effect.

~~[4.]~~ ***5.*** The commission shall adopt regulations which ensure that a person who owns a transmission or distribution facility, or both, or a facility that provides access to a competitive service shall make the facilities available on equal and nondiscriminatory terms and conditions to all alternative sellers or to the customers of the alternative sellers, or both, as the commission may determine.

Sec. 16. NRS 704.982 is hereby amended to read as follows:

704.982 1. The commission shall designate a vertically integrated electric utility ***or its successor electric distribution utility*** to provide electric service to customers who are unable to obtain electric service from an alternative seller or who fail to select an alternative seller. The provider so designated by the commission is obligated to provide electric service to the customers. Electric service provided by the utility pursuant to this section shall be deemed to be a noncompetitive service for which the utility may recover its costs pursuant to NRS 704.001 to 704.655, inclusive, 704.701 to 704.751, inclusive, and 704.800 to 704.900, inclusive.

2. ***The rate that the designated provider of electric service must charge a customer for the provision of electric service pursuant to subsection 1 is the total rate established for that class of customer by the commission pursuant to section 4 of this act.***

3. Upon a finding by the commission that the public interest will be promoted, the commission may prescribe alternate methods for providing electric service to those customers described in subsection 1. The alternate methods may include, but are not limited to, the direct assignment of customers to alternative sellers or electric distribution utilities or a process of competitive bidding for the right to provide electric service to the designated customers ~~[.~~

~~3.]~~ ***, including, without limitation, an auction conducted pursuant to section 6 of this act. Any alternate methods prescribed by the commission pursuant to this subsection may not go into effect before July 1, 2001.***

4. A customer who has obtained generation, aggregation or any other potentially competitive service for at least 30 continuous days from an alternative seller after March 1, 2000, or such other date that is determined to be in the public interest by the governor pursuant to NRS 704.976, may reacquire service from the designated provider of electric service pursuant to tariffs approved by the commission. The commission shall establish minimum terms and conditions under which electric service must be provided pursuant to this section, including a minimum period during which a customer must be obligated to pay for the electric service from the assigned provider. The price charged for electric service for a particular group of customers must reflect the incremental cost of serving the group.

~~[4.]~~ ***5.*** If the designated provider of the electric service ***pursuant to subsection 1*** is a vertically integrated electric utility, the utility shall provide the electric service ***on or after July 1, 2001, only*** through an affiliate whose sole business activity is the provision of electric service.

~~[5. Except as otherwise provided in this subsection and subsection 6, the rate charged for residential service provided pursuant to subsection 1 must not exceed the rate charged for that service on July 1, 1997. The limitation set forth in this subsection is effective until 2 years after the date upon which, in accordance with NRS 704.976, the commission repeals the regulations which established the pricing method for that service and the terms and conditions for providing that service.~~

~~6. The commission may, in accordance with NRS 704.110, 704.120 and 704.130, approve an increase in the rate charged for residential service provided pursuant to subsection 1 in an amount that does not exceed the increase necessitated, if any, to ensure the recovery by the vertically integrated electric utility of its just and reasonable costs. The provisions of~~

~~this section do not limit or prohibit in any manner the operation of any order issued by the commission before July 1, 1997.~~**]**

6. Except upon the application of the designated provider to reduce the total rate for any class of customers pursuant to section 4 of this act, the commission shall not initiate or conduct any proceedings to adjust the rates, earnings, rate base or rate of return of the designated provider of electric service during the period in which the provider is providing that service to customers pursuant to this section.

Sec. 17. NRS 704.982 is hereby amended to read as follows:

704.982 1. The commission shall designate **[**~~a vertically integrated electric utility or its successor~~**]** ***an*** electric distribution utility to provide electric service to customers who are unable to obtain electric service from an alternative seller or who fail to select an alternative seller. The provider so designated by the commission is obligated to provide electric service to the customers. Electric service provided by the utility pursuant to this section shall be deemed to be a noncompetitive service for which the utility may recover its costs pursuant to NRS 704.001 to 704.655, inclusive, 704.701 to 704.751, inclusive, and 704.800 to 704.900, inclusive.

2. **[**~~The rate that the designated provider of electric service must charge a customer for the provision of electric service pursuant to subsection 1 is the total rate established for that class of customer by the commission pursuant to section 4 of this act.~~

~~3.~~**]** Upon a finding by the commission that the public interest will be promoted, the commission may prescribe alternate methods for providing electric service to those customers described in subsection 1. The alternate methods may include, but are not limited to, the direct assignment of customers to alternative sellers or ***other*** electric distribution utilities or a process of competitive bidding for the right to provide electric service to the designated customers, including, without limitation, an auction conducted pursuant to section 6 of this act. **[**~~Any alternate methods prescribed by the commission pursuant to this subsection may not go into effect before July 1, 2001.~~

~~4.~~**]** ***3.*** A customer who has obtained generation, aggregation or any other potentially competitive service for at least 30 continuous days from an alternative seller **[**~~after March 1, 2000, or such other date that is determined to be in the public interest by the governor pursuant to NRS 704.976,~~**]** may reacquire service from the designated provider of electric service pursuant to tariffs approved by the commission. The commission shall establish minimum terms and conditions under which electric service must be provided pursuant to this section, including a minimum period during which a customer must be obligated to pay for the electric service from the assigned provider. The price charged for electric service for a particular group of customers must reflect the incremental cost of serving the group.

~~[5.]~~ ***4.*** If the designated provider of the electric service pursuant to subsection 1 is ~~[a vertically integrated]~~ ***an*** electric ***distribution*** utility, the utility shall provide the electric service ~~[on or after July 1, 2001,]~~ only through an affiliate whose sole business activity is the provision of electric service.

~~[6. Except upon the application of the designated provider to reduce the total rate for any class of customers pursuant to section 4 of this act, the commission shall not initiate or conduct any proceedings to adjust the rates, earnings, rate base or rate of return of the designated provider of electric service during the period in which the provider is providing that service to customers pursuant to this section.]~~

Sec. 18. NRS 704.983 is hereby amended to read as follows:

704.983 1. The commission shall determine the recoverable costs associated with assets and obligations that are documented in the accounting records of a vertically integrated electric utility ***and its successor electric distribution utility*** and that are properly allocable to a particular potentially competitive service as of the date on which alternative sellers of similar potentially competitive services begin providing such service to customers in this state. Shareholders of the vertically integrated electric utility must be compensated fully for all such costs determined by the commission. ~~[In]~~ ***Except as otherwise provided in section 3 of this act, in*** determining the recoverable costs, the commission shall take into account:

(a) The extent to which the utility was legally required to incur the costs of the assets and obligations ***.*** ~~[;]~~

(b) The extent to which the market value of the assets and obligations of the utility, relating to the provision of potentially competitive services, exceeds the costs of the assets and obligations ***.*** ~~[;]~~

(c) ~~[The]~~ ***Except as otherwise provided in this paragraph, the*** effectiveness of the efforts of the utility to increase the market value and realize the market value of any assets, and to decrease the costs of any obligations, associated with the provision of potentially competitive services ***.*** ~~[;]~~ ***If a utility purchases generation services pursuant to the approval of the appropriate governmental agencies to meet its obligations to provide electric service pursuant to NRS 704.982 from a generation unit that the utility has divested, the commission shall not impute a value to the generation unit other than the sales price of the unit.***

(d) The extent to which the rates previously established by the commission have compensated shareholders for the risk of not recovering the costs of the assets and obligations ***.*** ~~[;]~~

(e) The effects of the difference between the market value and the cost, including, without limitation, tax considerations, for the assets and obligations ***.*** ~~[; and]~~

(f) If the utility had the discretion to determine whether to incur or mitigate the costs, the conduct of the utility with respect to the costs of the assets and obligations when compared to other utilities with similar obligations to serve the public.

2. ~~[For the purposes of this section,]~~ ***If*** the commission ~~[may impose a procedure]~~ ***determines that costs are recoverable pursuant to subsection 1, the commission shall, for the purposes of this section and section 3 of this act, adopt by regulation procedures to provide*** for the direct and unavoidable recovery from ratepayers of the portion of the past costs which are determined by the commission to be owed by the ratepayers. The ~~[procedure]~~ ***procedures*** must include a determination of the period over which the recovery may occur and include the authority for the commission to assess charges on those customers on whose behalf the vertically integrated electric utility incurred costs who are no longer receiving transmission or distribution service, or both, from the vertically integrated electric utility. Such determinations and procedures must not discriminate against a participant in the market.

3. Failure by a utility to minimize, in a reasonable and prudent manner, federal taxes resulting from the offsetting of gains and losses of assets and obligations properly allocable to a potentially competitive service must be considered by the commission in determining the recoverable costs for the utility.

Sec. 19. NRS 704.984 is hereby amended to read as follows:

704.984 A vertically integrated electric utility shall take such reasonable steps as are necessary to minimize layoffs and any other adverse effects on the employees of the vertically integrated electric utility that result from the beginning of provision of potentially competitive services by alternative sellers. ***In determining the recoverable costs of the vertically integrated electric utility pursuant to NRS 704.983, the commission shall consider any reasonable costs incurred by the vertically integrated electric utility pursuant to this section, including, without limitation, the costs for severance pay, retraining, job placement and early retirement for employees of the vertically integrated electric utility.***

Sec. 20. NRS 704.997 is hereby amended to read as follows:

704.997 1. Upon the receipt of a specific request for an exemption by a public utility that supplies natural gas, the commission may, to the extent it deems necessary, exempt any service offered by the public utility from the strict application of one or more provisions of this chapter. Such an exemption may be made only upon a determination by the commission, after notice and an opportunity for a hearing, that the service is competitive, discretionary or potentially competitive.

2. The commission shall adopt regulations necessary to establish an alternative plan of regulation of a public utility that supplies natural gas and that is otherwise subject to regulation pursuant to the provisions of this chapter. The alternative plan may include, but is not limited to, provisions that:

(a) Allow adjustment of the rates charged by the public utility during the period in which the utility elects the alternative plan of regulation.
(b) Specify the provisions of this chapter that do not apply to a public utility which elects to be regulated under the alternative plan.
(c) Provide for flexibility of pricing for services that are discretionary, competitive or potentially competitive.
3. A public utility that elects to be regulated under the alternative plan established pursuant to this section is not subject to the remaining provisions of this chapter to the extent specified pursuant to this section.
4. ***In providing a potentially competitive service, an affiliate of a provider of a noncompetitive service may use the name or logo, or both, of the provider of noncompetitive service.***
5. It is unlawful for an alternative seller to sell any service relating to the supply of natural gas to a customer for his consumption within this state without first having obtained a license from the commission to do so.

Sec. 21. On or before March 1, 2000, or such other date that is determined to be in the public interest by the governor pursuant to NRS 704.976, the commission shall, for the purposes of NRS 704.986, establish for each class of customers of electric service in this state the rate for each component and a total rate for electric services for customers based on the cost to provide electric service to each class of customers in this state. The total rate established for each class of customers pursuant to this section must be the same as the total rate for each class of customers that is in effect on June 1, 1999.

Sec. 22. On or before March 1, 2000, or such other date that is determined to be in the public interest by the governor pursuant to NRS 704.976, an alternative seller and a vertically integrated electric utility may negotiate and enter into a contract with a customer for the provision of electric service, but no such contract is effective before March 1, 2000, or such other date that is determined to be in the public interest by the governor pursuant to NRS 704.976.

Sec. 23. This act must not be construed to impair any existing rights under contracts with customers in effect on June 1, 1999.

Sec. 24. This act must not be construed to impair any existing rights under any labor agreement to which a vertically integrated electric utility or its successor electric distribution utility or an affiliate thereof is a party on July 1, 1999.

Sec. 25. 1. This section and sections 1 to 6, inclusive, 9 to 16, inclusive, 18 to 22, inclusive, and 26 of this act become effective on July 1, 1999.
2. Sections 23 and 24 become effective upon passage and approval.
3. Sections 7 and 8 of this act become effective on October 1, 1999.
4. Sections 4 and 16 expire by limitation on March 1, 2003.
5. Section 5 expires by limitation on September 1, 2003.
6. Section 17 becomes effective on March 1, 2003

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Sec. 26. If the pending merger between Sierra Pacific Resources and Nevada Power Company, referred to in the records of the Public Utilities Commission of Nevada as Docket No. 98-7023, is terminated for any reason before the completion of the merger, this act expires by limitation on the date on which the pending merger is terminated.

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