

ASSEMBLY BILL NO. 7—COMMITTEE ON COMMERCE AND LABOR

PREFILED DECEMBER 12, 2006

Referred to Committee on Commerce and Labor

SUMMARY—Provides that certain public utilities have the burden of proving that costs sought to be recovered in deferred accounting proceedings were the result of reasonable and prudent practices and transactions. (BDR 58-280)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

AN ACT relating to public utilities; providing that certain electric and natural gas utilities applying to the Public Utilities Commission of Nevada to clear deferred accounts or to recover costs for purchased fuel and power have the burden of proving reasonableness and prudence in such applications; prohibiting the Commission from allowing natural gas utilities to recover costs for purchases made imprudently; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law authorizes certain electric utilities to use deferred accounting to
2 account for increases in the costs of power or fuel purchased by the electric utility.
3 (NRS 704.110, 704.187) An electric utility is only allowed to recover increases in
4 the costs of power or fuel purchased by the electric utility if the costs were not the
5 result of practices or transactions that were imprudently undertaken by the electric
6 utility. (NRS 704.110) The Nevada Supreme Court has ruled, in the absence of a
7 statute to the contrary, that in a deferred accounting proceeding there is a
8 presumption that the practices and transactions of an electric utility were reasonable
9 and prudent. (*Nevada Power Company v. Public Utilities Commission of Nevada*,
10 122 Nev. Adv. Op. 72 (2006)) **Section 1** of this bill provides by specific statute that
11 there is no presumption that the practices and transactions of an electric utility were
12 undertaken prudently and that the burden is on the electric utility to prove that its
13 practices and transactions were prudent.



Existing law authorizes certain natural gas utilities to use deferred accounting to account for increases in the costs of natural gas purchased by the utility. (NRS 704.185) **Section 2** of this bill provides that a natural gas utility is only allowed to recover increases in the costs of natural gas purchased by the natural gas utility if the costs were not the result of practices or transactions that were imprudently undertaken by the natural gas utility. **Section 2** also provides that there is no presumption that the practices and transactions of a natural gas utility were undertaken prudently and that the burden is on the natural gas utility to prove that its practices and transactions were prudent.

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

Section 1. NRS 704.110 is hereby amended to read as follows:

704.110 Except as otherwise provided in NRS 704.075 and 704.68904 to 704.68984, inclusive, or as may otherwise be provided by the Commission pursuant to NRS 704.095 or 704.097 or pursuant to the regulations adopted by the Commission in accordance with subsection 4 of NRS 704.040:

1. If a public utility files with the Commission an application to make changes in any schedule, including, without limitation, changes that will result in a discontinuance, modification or restriction of service, the Commission shall investigate the propriety of the proposed changes to determine whether to approve or disapprove the proposed changes. If an electric utility files such an application and the application is a general rate application or an application to clear its deferred accounts, the Consumer's Advocate shall be deemed a party of record.

2. Except as otherwise provided in subsections 3 and 13, if a public utility files with the Commission an application to make changes in any schedule, the Commission shall issue a written order approving or disapproving, in whole or in part, the proposed changes:

(a) For a public utility that is a PAR carrier, not later than 180 days after the date on which the application is filed; and

(b) For all other public utilities, not later than 210 days after the date on which the application is filed.

3. If a public utility files with the Commission a general rate application, 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. Except as otherwise provided in subsection 4, in determining whether to approve or disapprove any increased rates, the Commission shall consider evidence in support of the increased rates based upon actual recorded results of operations for the same



1 12 months, adjusted for increased revenues, any increased
2 investment in facilities, increased expenses for depreciation, certain
3 other operating expenses as approved by the Commission and
4 changes in the costs of securities which are known and are
5 measurable with reasonable accuracy at the time of filing and which
6 will become effective within 6 months after the last month of those
7 12 months, but the public utility shall not place into effect any
8 increased rates until the changes have been experienced and
9 certified by the public utility to the Commission and the
10 Commission has approved the increased rates. The Commission
11 shall also consider evidence supporting expenses for depreciation,
12 calculated on an annual basis, applicable to major components of the
13 public utility's plant placed into service during the recorded test
14 period or the period for certification as set forth in the application.
15 Adjustments to revenues, operating expenses and costs of securities
16 must be calculated on an annual basis. Within 90 days after the date
17 on which the certification required by this subsection is filed with
18 the Commission, or within the period set forth in subsection 2,
19 whichever time is longer, the Commission shall make such order in
20 reference to the increased rates as is required by this chapter. An
21 electric utility shall file a general rate application pursuant to this
22 subsection at least once every 24 months based on the following
23 schedule:

24 (a) An electric utility that primarily serves less densely
25 populated counties shall file a general rate application on or before
26 October 3, 2005, and at least once every 24 months thereafter.

27 (b) An electric utility that primarily serves densely populated
28 counties shall file a general rate application on or before
29 November 15, 2006, and at least once every 24 months thereafter.

30 4. In addition to submitting the statement required pursuant to
31 subsection 3, a public utility which purchases natural gas for resale
32 may submit with its general rate application a statement showing the
33 effects, on an annualized basis, of all expected changes in
34 circumstances. If such a statement is filed, it must include all
35 increases and decreases in revenue and expenses which may occur
36 within 210 days after the date on which its general rate application
37 is filed with the Commission if such expected changes in
38 circumstances are reasonably known and are measurable with
39 reasonable accuracy. If a public utility submits such a statement, the
40 public utility has the burden of proving that the expected changes in
41 circumstances set forth in the statement are reasonably known and
42 are measurable with reasonable accuracy. If the Commission
43 determines that the public utility has met its burden of proof:



(a) The Commission shall consider the statement submitted pursuant to this subsection and evidence relevant to the statement in addition to the statement required pursuant to subsection 3 as evidence in establishing just and reasonable rates for the public utility; and

(b) The public utility is not required to file with the Commission the certification that would otherwise be required pursuant to subsection 3.

5. If a public utility files with the Commission an application to make changes in any schedule and the Commission does not issue a final written order regarding the proposed changes within the time required by this section, the proposed changes shall be deemed to be approved by the Commission.

6. If a public utility files with the Commission a general rate application, the public utility shall not file with the Commission another general rate application until all pending general rate applications filed by that public utility have been decided by the Commission unless, after application and hearing, the Commission determines that a substantial financial emergency would exist if the public utility is not permitted to file another general rate application sooner. The provisions of this subsection do not prohibit the public utility from filing with the Commission, while a general rate application is pending, an application to recover the increased cost of purchased fuel, purchased power, or natural gas purchased for resale pursuant to subsection 7 or an application to clear its deferred accounts pursuant to subsection 9, if the public utility is otherwise authorized by those provisions to file such an application.

7. A public utility may file an application to recover the increased cost of purchased fuel, purchased power, or natural gas purchased for resale once every 30 days. The provisions of this subsection do not apply to:

(a) An electric utility using deferred accounting pursuant to NRS 704.187; or

(b) A public utility which purchases natural gas for resale and which adjusts its rates on a quarterly basis between annual rate adjustment applications pursuant to subsection 8.

8. A public utility which purchases natural gas for resale must request approval from the Commission to adjust its rates on a quarterly basis between annual rate adjustment applications based on changes in the public utility's recorded costs of natural gas purchased for resale. If the Commission approves such a request:

(a) The public utility shall file written notice with the Commission before the public utility makes a quarterly rate adjustment between annual rate adjustment applications. A quarterly rate adjustment is not subject to the requirements for notice and a



1 hearing pursuant to NRS 703.320 or the requirements for a
2 consumer session pursuant to subsection 1 of NRS 704.069.

3 (b) The public utility shall provide written notice of each
4 quarterly rate adjustment to its customers by including the written
5 notice with a customer's regular monthly bill. The public utility
6 shall begin providing such written notice to its customers not later
7 than 30 days after the date on which the public utility files its
8 written notice with the Commission pursuant to paragraph (a). The
9 written notice that is included with a customer's regular monthly
10 bill:

11 (1) Must be printed separately on fluorescent-colored paper
12 and must not be attached to the pages of the bill; and

13 (2) Must include the following:

14 (I) The total amount of the increase or decrease in the
15 public utility's revenues from the rate adjustment, stated in dollars
16 and as a percentage;

17 (II) The amount of the monthly increase or decrease in
18 charges for each class of customer or class of service, stated in
19 dollars and as a percentage;

20 (III) A statement that customers may send written
21 comments or protests regarding the rate adjustment to the
22 Commission; and

23 (IV) Any other information required by the Commission.

24 (c) The public utility shall file an annual rate adjustment
25 application with the Commission. The annual rate adjustment
26 application is subject to the requirements for notice and a hearing
27 pursuant to NRS 703.320 and the requirements for a consumer
28 session pursuant to subsection 1 of NRS 704.069.

29 (d) The proceeding regarding the annual rate adjustment
30 application must include a review of each quarterly rate adjustment
31 and a review of the transactions and recorded costs of natural gas
32 included in each quarterly rate adjustment and the annual rate
33 adjustment application. There is no presumption of reasonableness
34 or prudence for any quarterly rate adjustment or for any transactions
35 or recorded costs of natural gas included in any quarterly rate
36 adjustment or the annual rate adjustment application, and the public
37 utility has the burden of proving reasonableness and prudence in the
38 proceeding.

39 (e) The Commission shall not allow the public utility to recover
40 any recorded costs of natural gas which were the result of any
41 practice or transaction that was unreasonable or was undertaken,
42 managed or performed imprudently by the public utility, and the
43 Commission shall order the public utility to adjust its rates if the
44 Commission determines that any recorded costs of natural gas



1 included in any quarterly rate adjustment or the annual rate
2 adjustment application were not reasonable or prudent.

3 9. Except as otherwise provided in subsection 10 and
4 subsection 5 of NRS 704.100, if an electric utility using deferred
5 accounting pursuant to NRS 704.187 files an application to clear its
6 deferred accounts and to change one or more of its rates based upon
7 changes in the costs for purchased fuel or purchased power, the
8 Commission, after a public hearing and by an appropriate order:

9 (a) Shall allow the electric utility to clear its deferred accounts
10 by refunding any credit balance or recovering any debit balance
11 over a period not to exceed 3 years, as determined by the
12 Commission.

13 (b) Shall not allow the electric utility to recover any debit
14 balance, or portion thereof, in an amount that would result in a rate
15 of return during the period of recovery that exceeds the rate of
16 return authorized by the Commission in the most recently completed
17 rate proceeding for the electric utility.

18 10. Before allowing an electric utility to clear its deferred
19 accounts pursuant to subsection 9, the Commission shall determine
20 whether the costs for purchased fuel and purchased power that the
21 electric utility recorded in its deferred accounts are recoverable and
22 whether the revenues that the electric utility collected from
23 customers in this State for purchased fuel and purchased power are
24 properly recorded and credited in its deferred accounts. The
25 Commission shall not allow the electric utility to recover any costs
26 for purchased fuel and purchased power that were the result of any
27 practice or transaction that was undertaken, managed or performed
28 imprudently by the electric utility. *There is no presumption that*
29 *any practice or transaction was undertaken, managed or*
30 *performed prudently by an electric utility applying to the*
31 *Commission to clear its deferred accounts or to recover costs for*
32 *purchased fuel and purchased power, and the electric utility has*
33 *the burden of proving that the practices and transactions of the*
34 *electric utility were reasonable and prudent.*

35 11. If an electric utility files an application to clear its deferred
36 accounts pursuant to subsection 9 while a general rate application is
37 pending, the electric utility shall:

38 (a) Submit with its application to clear its deferred accounts
39 information relating to the cost of service and rate design; and

40 (b) Supplement its general rate application with the same
41 information, if such information was not submitted with the general
42 rate application.

43 12. A utility facility identified in a 3-year plan submitted
44 pursuant to NRS 704.741 and accepted by the Commission for
45 acquisition or construction pursuant to NRS 704.751 and the



1 regulations adopted pursuant thereto shall be deemed to be a prudent
2 investment. The utility may recover all just and reasonable costs of
3 planning and constructing such a facility.

4 13. A PAR carrier may, in accordance with this section and
5 NRS 704.100, file with the Commission a request to approve or
6 change any schedule to provide volume or duration discounts to
7 rates for telecommunication service for an offering made to all or
8 any class of business customers. The Commission may conduct a
9 hearing relating to the request, which must occur within 45 days
10 after the date the request is filed with the Commission. The request
11 and schedule shall be deemed approved if the request and schedule
12 are not disapproved by the Commission within 60 days after the date
13 the Commission receives the request.

14 14. As used in this section:

15 (a) "Electric utility" has the meaning ascribed to it in
16 NRS 704.187.

17 (b) "Electric utility that primarily serves densely populated
18 counties" has the meaning ascribed to it in NRS 704.187.

19 (c) "Electric utility that primarily serves less densely populated
20 counties" has the meaning ascribed to it in NRS 704.187.

21 (d) "PAR carrier" has the meaning ascribed to it in
22 NRS 704.68942.

23 **Sec. 2.** NRS 704.185 is hereby amended to read as follows:

24 704.185 1. Except as otherwise provided in subsection 8 of
25 NRS 704.110, a public utility which purchases natural gas for resale
26 may record upon its books and records in deferred accounts all cost
27 increases or decreases in the natural gas purchased for resale. Any
28 public utility which uses deferred accounting to reflect changes in
29 costs of natural gas purchased for resale shall include in its annual
30 report to the Commission a statement showing the allocated rate of
31 return for each of its operating departments in Nevada which uses
32 deferred accounting.

33 2. If the rate of return for any department using deferred
34 accounting pursuant to subsection 1 is greater than the rate of return
35 allowed by the Commission in the last rate proceeding, the
36 Commission shall order the utility which recovered any costs of
37 natural gas purchased for resale through rates during the reported
38 period to transfer to the next energy adjustment period that portion
39 of such recovered amounts which exceeds the authorized rate of
40 return.

41 3. A public utility which purchases natural gas for resale may
42 request approval from the Commission to record upon its books and
43 records in deferred accounts any other cost or revenue which the
44 Commission deems appropriate for deferred accounting and which
45 is not otherwise subject to the provisions of subsections 1 and 2. If



1 the Commission approves such a request, the Commission shall
2 determine the appropriate requirements for reporting and recovery
3 that the public utility must follow with regard to each such deferred
4 account.

5 *4. The Commission shall not allow a public utility which*
6 *purchases natural gas for resale to clear its deferred accounts or*
7 *to recover any costs for purchased natural gas that were the result*
8 *of any practice or transaction that was undertaken, managed or*
9 *performed imprudently by the public utility. There is no*
10 *presumption that any practice or transaction was undertaken,*
11 *managed or performed prudently by a public utility applying to the*
12 *Commission to recover costs for purchased natural gas, and the*
13 *public utility has the burden of proving that the practices and*
14 *transactions of the public utility were reasonable and prudent.*

15 **Sec. 3.** This act becomes effective upon passage and approval.

