

CHAPTER.....

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:

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

Section 4 of this bill provides that the changes made by this bill apply to all applications of a public utility seeking to clear its deferred accounts pursuant to NRS 704.185 or 704.187 that are: (1) pending before the Public Utilities Commission of Nevada on or after the effective date of this act; (2) pending on appeal in a district court or the Supreme Court pursuant to NRS 703.373 to 703.376, inclusive, on or after the effective date of this act; or (3) filed with the Public Utilities Commission of Nevada on or after the effective date of this act.

Section 1 of this bill provides that the Legislature in enacting this bill determined that: (1) a public utility should have the burden of proving that its practices and transactions were reasonable and prudent; and (2) the holding in *Nevada Power Company v. Public Utilities Commission of Nevada* should be superseded. Additionally, the Legislature indicates in **section 1** that this bill is not intended to abrogate or change any rule of evidence or procedure other than the presumption of reasonableness that the Nevada Supreme Court established.



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

Section 1. The Legislature hereby finds and declares that:

1. In proceedings involving deferred energy accounting where a public utility seeks to recover from its ratepayers costs recorded in its deferred accounts pursuant to NRS 704.185 or 704.187, it is just and reasonable to require a public utility to prove that the costs recorded in its deferred accounts were incurred prudently. Therefore, to ensure that ratepayers do not pay for costs incurred as a result of any practices or transactions that were undertaken, managed or performed imprudently, the public utility should have the burden of proving that its practices and transactions were reasonable and prudent.

2. In *Nevada Power Company v. Public Utilities Commission of Nevada*, 122 Nev. Adv. Op. 72 (2006), the Nevada Supreme Court held that, in the absence of a statute to the contrary, the controlling procedure in proceedings involving deferred energy accounting is the rebuttable presumption of prudence adopted by the Public Utilities Commission of Nevada in the 1986 rate case of *Re Nevada Power Company*, 74 Pub. Util. Rep. 4th 703 (Nev. Pub. Serv. Comm'n May 30, 1986).

3. The provisions of this act are intended to supersede the holding of the Nevada Supreme Court in *Nevada Power Company v. Public Utilities Commission of Nevada*, 122 Nev. Adv. Op. 72 (2006), to the extent that the Court determined that the rebuttable presumption of prudence is the controlling procedure in proceedings involving deferred energy accounting.

4. Because the rebuttable presumption of prudence is a rule of procedure, this act applies to all applications of a public utility seeking to clear its deferred accounts that are:

(a) Pending before the Public Utilities Commission of Nevada on or after the effective date of this act;

(b) Pending on appeal in a district court or the Supreme Court pursuant to NRS 703.373 to 703.376, inclusive, on or after the effective date of this act; or

(c) Filed with the Public Utilities Commission of Nevada on or after the effective date of this act.

5. The provisions of this act are not intended to abrogate or change any other rule of procedure or evidence followed by the Public Utilities Commission of Nevada in proceedings involving deferred energy accounting. Therefore, the provisions of this act do not abrogate or change the Commission's regulations which provide that:



(a) A public utility must comply with certain minimum filing requirements when it files an application seeking to clear its deferred accounts; and

(b) If the public utility meets those requirements, the public utility has established a prima facie case in support of its application.

6. Under the provisions of this act, in proceedings involving deferred energy accounting, if any party challenges the prudence of particular costs incurred by a public utility based on evidence entered into the record, the public utility is required to answer such challenge, and no presumption of prudence applies. However, if no party challenges the prudence of particular costs and the public utility has established a prima facie case regarding those costs, the Commission has the authority to approve those costs for recovery by the public utility in its rates.

Sec. 2. 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 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 the public utility shall not place into effect any increased rates until the changes have been experienced and certified by the public utility to the Commission and the Commission has approved the increased rates. 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 date on which the certification required by this subsection is filed with the Commission, or within the period set forth in subsection 2, whichever time is longer, the Commission shall make such order in reference to the increased rates as is required by this chapter. An electric utility shall file a general rate application pursuant to this subsection at least once every 24 months based on the following schedule:

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

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

4. In addition to submitting the statement required pursuant to subsection 3, a public utility which purchases natural gas for resale may submit with its general rate application a statement showing the effects, on an annualized basis, of all expected changes in circumstances. If such a statement is filed, it must include all increases and decreases in revenue and expenses which may occur within 210 days after the date on which its general rate application is filed with the Commission if such expected changes in circumstances are reasonably known and are measurable with



reasonable accuracy. If a public utility submits such a statement, the public utility has the burden of proving that the expected changes in circumstances set forth in the statement are reasonably known and are measurable with reasonable accuracy. If the Commission 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 hearing pursuant to NRS 703.320 or the requirements for a consumer session pursuant to subsection 1 of NRS 704.069.

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

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

(2) Must include the following:

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

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

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

(IV) Any other information required by the Commission.

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

(d) The proceeding regarding the annual rate adjustment application must include a review of each quarterly rate adjustment and a review of the transactions and recorded costs of natural gas included in each quarterly rate adjustment and the annual rate adjustment application. There is no presumption of reasonableness or prudence for any quarterly rate adjustment or for any transactions or recorded costs of natural gas included in any quarterly rate adjustment or the annual rate adjustment application, and the public



utility has the burden of proving reasonableness and prudence in the proceeding.

(e) The Commission shall not allow the public utility to recover any recorded costs of natural gas which were the result of any practice or transaction that was unreasonable or was undertaken, managed or performed imprudently by the public utility, and the Commission shall order the public utility to adjust its rates if the Commission determines that any recorded costs of natural gas included in any quarterly rate adjustment or the annual rate adjustment application were not reasonable or prudent.

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

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

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

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



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

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

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

12. 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.

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

14. As used in this section:

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

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

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

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

Sec. 3. NRS 704.185 is hereby amended to read as follows:

704.185 1. Except as otherwise provided in subsection 8 of NRS 704.110, a public utility which purchases natural gas for resale may record upon its books and records in deferred accounts all cost increases or decreases in the natural gas purchased for resale. Any public utility which uses deferred accounting to reflect changes in costs of 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 pursuant to subsection 1 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 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.

3. A public utility which purchases natural gas for resale may request approval from the Commission to record upon its books and records in deferred accounts any other cost or revenue which the Commission deems appropriate for deferred accounting and which is not otherwise subject to the provisions of subsections 1 and 2. If the Commission approves such a request, the Commission shall determine the appropriate requirements for reporting and recovery that the public utility must follow with regard to each such deferred account.

4. When a public utility which purchases natural gas for resale files an application to clear its deferred accounts, the proceeding regarding the application must include a review of the transactions and recorded costs of natural gas included in the application. There is no presumption of reasonableness or prudence for any transactions or recorded costs of natural gas included in the application, and the public utility has the burden of proving reasonableness and prudence in the proceeding.

Sec. 4. This act applies to all applications of a public utility seeking to clear its deferred accounts pursuant to NRS 704.185 or 704.187 that are:

1. Pending before the Public Utilities Commission of Nevada on or after the effective date of this act;

2. Pending on appeal in a district court or the Supreme Court pursuant to NRS 703.373 to 703.376, inclusive, on or after the effective date of this act; or

3. Filed with the Public Utilities Commission of Nevada on or after the effective date of this act.

Sec. 5. This act becomes effective upon passage and approval.

