

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.

~

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:

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



* A B 7 R 1 *

17 recover increases in the costs of natural gas purchased by the natural gas utility if
18 the costs were not the result of practices or transactions that were imprudently
19 undertaken by the natural gas utility. **Section 3** also provides that there is no
20 presumption that the practices and transactions of a natural gas utility were
21 undertaken prudently and that the burden is on the natural gas utility to prove that
22 its practices and transactions were prudent.

23 **Section 4** of this bill provides that the changes made by this bill apply to all
24 applications of a public utility seeking to clear its deferred accounts pursuant to
25 NRS 704.185 or 704.187 that are: (1) pending before the Public Utilities
26 Commission of Nevada on or after the effective date of this act; (2) pending on
27 appeal in a district court or the Supreme Court pursuant to NRS 703.373 to
28 703.376, inclusive, on or after the effective date of this act; or (3) filed with the
29 Public Utilities Commission of Nevada on or after the effective date of this act.

30 **Section 1** of this bill provides that the Legislature in enacting this bill
31 determined that: (1) a public utility should have the burden of proving that its
32 practices and transactions were reasonable and prudent; and (2) the holding in
33 *Nevada Power Company v. Public Utilities Commission of Nevada* should be
34 superseded. Additionally, the Legislature indicates in **section 1** that this bill is not
35 intended to abrogate or change any rule of evidence or procedure other than the
36 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:

1 **Section 1.** The Legislature hereby finds and declares that:

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

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

20 3. The provisions of this act are intended to supersede the
21 holding of the Nevada Supreme Court in *Nevada Power Company v.*
22 *Public Utilities Commission of Nevada*, 122 Nev. Adv. Op. 72
23 (2006), to the extent that the Court determined that the rebuttable



1 presumption of prudence is the controlling procedure in proceedings
2 involving deferred energy accounting.

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

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

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

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

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

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

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

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

34 **Sec. 2.** NRS 704.110 is hereby amended to read as follows:

35 704.110 Except as otherwise provided in NRS 704.075 and
36 704.68904 to 704.68984, inclusive, or as may otherwise be provided
37 by the Commission pursuant to NRS 704.095 or 704.097 or
38 pursuant to the regulations adopted by the Commission in
39 accordance with subsection 4 of NRS 704.040:

40 1. If a public utility files with the Commission an application to
41 make changes in any schedule, including, without limitation,
42 changes that will result in a discontinuance, modification or
43 restriction of service, the Commission shall investigate the propriety
44 of the proposed changes to determine whether to approve or
45 disapprove the proposed changes. If an electric utility files such an



* A B 7 R 1 *

1 application and the application is a general rate application or an
2 application to clear its deferred accounts, the Consumer's Advocate
3 shall be deemed a party of record.

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

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

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

13 3. If a public utility files with the Commission a general rate
14 application, the public utility shall submit with its application a
15 statement showing the recorded results of revenues, expenses,
16 investments and costs of capital for its most recent 12 months for
17 which data were available when the application was prepared.
18 Except as otherwise provided in subsection 4, in determining
19 whether to approve or disapprove any increased rates, the
20 Commission shall consider evidence in support of the increased
21 rates based upon actual recorded results of operations for the same
22 12 months, adjusted for increased revenues, any increased
23 investment in facilities, increased expenses for depreciation, certain
24 other operating expenses as approved by the Commission and
25 changes in the costs of securities which are known and are
26 measurable with reasonable accuracy at the time of filing and which
27 will become effective within 6 months after the last month of those
28 12 months, but the public utility shall not place into effect any
29 increased rates until the changes have been experienced and
30 certified by the public utility to the Commission and the
31 Commission has approved the increased rates. The Commission
32 shall also consider evidence supporting expenses for depreciation,
33 calculated on an annual basis, applicable to major components of the
34 public utility's plant placed into service during the recorded test
35 period or the period for certification as set forth in the application.
36 Adjustments to revenues, operating expenses and costs of securities
37 must be calculated on an annual basis. Within 90 days after the date
38 on which the certification required by this subsection is filed with
39 the Commission, or within the period set forth in subsection 2,
40 whichever time is longer, the Commission shall make such order in
41 reference to the increased rates as is required by this chapter. An
42 electric utility shall file a general rate application pursuant to this
43 subsection at least once every 24 months based on the following
44 schedule:



* A B 7 R 1 *

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

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

7 4. In addition to submitting the statement required pursuant to
8 subsection 3, a public utility which purchases natural gas for resale
9 may submit with its general rate application a statement showing the
10 effects, on an annualized basis, of all expected changes in
11 circumstances. If such a statement is filed, it must include all
12 increases and decreases in revenue and expenses which may occur
13 within 210 days after the date on which its general rate application
14 is filed with the Commission if such expected changes in
15 circumstances are reasonably known and are measurable with
16 reasonable accuracy. If a public utility submits such a statement, the
17 public utility has the burden of proving that the expected changes in
18 circumstances set forth in the statement are reasonably known and
19 are measurable with reasonable accuracy. If the Commission
20 determines that the public utility has met its burden of proof:

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

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

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

34 6. If a public utility files with the Commission a general rate
35 application, the public utility shall not file with the Commission
36 another general rate application until all pending general rate
37 applications filed by that public utility have been decided by the
38 Commission unless, after application and hearing, the Commission
39 determines that a substantial financial emergency would exist if the
40 public utility is not permitted to file another general rate application
41 sooner. The provisions of this subsection do not prohibit the public
42 utility from filing with the Commission, while a general rate
43 application is pending, an application to recover the increased cost
44 of purchased fuel, purchased power, or natural gas purchased for
45 resale pursuant to subsection 7 or an application to clear its deferred



* A B 7 R 1 *

1 accounts pursuant to subsection 9, if the public utility is otherwise
2 authorized by those provisions to file such an application.

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

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

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

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

17 (a) The public utility shall file written notice with the
18 Commission before the public utility makes a quarterly rate
19 adjustment between annual rate adjustment applications. A quarterly
20 rate adjustment is not subject to the requirements for notice and a
21 hearing pursuant to NRS 703.320 or the requirements for a
22 consumer session pursuant to subsection 1 of NRS 704.069.

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

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

33 (2) Must include the following:

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

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

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

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

44 (c) The public utility shall file an annual rate adjustment
45 application with the Commission. The annual rate adjustment



* A B 7 R 1 *

1 application is subject to the requirements for notice and a hearing
2 pursuant to NRS 703.320 and the requirements for a consumer
3 session pursuant to subsection 1 of NRS 704.069.

4 (d) The proceeding regarding the annual rate adjustment
5 application must include a review of each quarterly rate adjustment
6 and a review of the transactions and recorded costs of natural gas
7 included in each quarterly rate adjustment and the annual rate
8 adjustment application. There is no presumption of reasonableness
9 or prudence for any quarterly rate adjustment or for any transactions
10 or recorded costs of natural gas included in any quarterly rate
11 adjustment or the annual rate adjustment application, and the public
12 utility has the burden of proving reasonableness and prudence in the
13 proceeding.

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

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

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

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

37 10. Before allowing an electric utility to clear its deferred
38 accounts pursuant to subsection 9, the Commission shall determine
39 whether the costs for purchased fuel and purchased power that the
40 electric utility recorded in its deferred accounts are recoverable and
41 whether the revenues that the electric utility collected from
42 customers in this State for purchased fuel and purchased power are
43 properly recorded and credited in its deferred accounts. The
44 Commission shall not allow the electric utility to recover any costs
45 for purchased fuel and purchased power that were the result of any



1 practice or transaction that was undertaken, managed or performed
2 imprudently by the electric utility. *There is no presumption that*
3 *any practice or transaction was undertaken, managed or*
4 *performed prudently by an electric utility applying to the*
5 *Commission to clear its deferred accounts or to recover costs for*
6 *purchased fuel and purchased power, and the electric utility has*
7 *the burden of proving that the practices and transactions of the*
8 *electric utility were reasonable and prudent.*

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

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

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

17 12. A utility facility identified in a 3-year plan submitted
18 pursuant to NRS 704.741 and accepted by the Commission for
19 acquisition or construction pursuant to NRS 704.751 and the
20 regulations adopted pursuant thereto shall be deemed to be a prudent
21 investment. The utility may recover all just and reasonable costs of
22 planning and constructing such a facility.

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

33 14. As used in this section:

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

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

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

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

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

43 704.185 1. Except as otherwise provided in subsection 8 of
44 NRS 704.110, a public utility which purchases natural gas for resale
45 may record upon its books and records in deferred accounts all cost



1 increases or decreases in the natural gas purchased for resale. Any
2 public utility which uses deferred accounting to reflect changes in
3 costs of natural gas purchased for resale shall include in its annual
4 report to the Commission a statement showing the allocated rate of
5 return for each of its operating departments in Nevada which uses
6 deferred accounting.

7 2. If the rate of return for any department using deferred
8 accounting pursuant to subsection 1 is greater than the rate of return
9 allowed by the Commission in the last rate proceeding, the
10 Commission shall order the utility which recovered any costs of
11 natural gas purchased for resale through rates during the reported
12 period to transfer to the next energy adjustment period that portion
13 of such recovered amounts which exceeds the authorized rate of
14 return.

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

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

32 **Sec. 4.** This act applies to all applications of a public utility
33 seeking to clear its deferred accounts pursuant to NRS 704.185 or
34 704.187 that are:

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

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

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

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

