

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Investigation and rulemaking to implement Assembly Bill 223 (2017).)	Docket No. 17-07011
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Investigation and rulemaking to implement Senate Bill 150 (2017).)	Docket No. 17-08023
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At a general session of the Public Utilities Commission of Nevada, held at its offices on November 28, 2018.

PRESENT: Chairman Ann Wilkinson
Commissioner Ann Pongracz
Commissioner C.J. Manthe
Assistant Commission Secretary Trisha Osborne

ORDER

The Public Utilities Commission of Nevada (“Commission”) makes the following findings of fact and conclusions of law:

I. INTRODUCTION

On July 13, 2017, the Public Utilities Commission of Nevada (“Commission”) opened a rulemaking docket to implement Assembly Bill 223 (2017) (“AB 223”). This matter was designated by the Commission as Docket No. 17-07011.

On August 25, 2017, the Commission opened a rulemaking docket to implement Senate Bill 150 (2017) (“SB 150”). This matter was designated by the Commission as Docket No. 17-08023.

II. SUMMARY

The proposed regulation, appended hereto as Attachment 1, is adopted as a permanent regulation.

III. PROCEDURAL HISTORY

- On July 13, 2017, the Commission opened the rulemaking in Docket No. 17-07011.
- On August 25, 2017, the Commission opened the rulemaking in Docket No. 17-08023.

- These matters are being conducted pursuant to the Nevada Revised Statutes (“NRS”) and the Nevada Administrative Code (“NAC”), Chapters 233B, 703, and 704, AB 223, and SB 150.
- On September 27, 2017, the Commission issued Notices of Rulemaking, Notices of Request for Comments, and Notices of Workshop in Docket Nos. 17-07011 and 17-08023.
- On October 10, 2017, the Commission issued Amended Notices of Rulemaking, Notices of Request for Comments, and Amended Notices of Workshop in Docket Nos. 17-07011 and 17-08023.
- On October 23, 2017, the Regulatory Operations Staff of the Commission (“Staff”) filed Comments in Docket Nos. 17-07011 and 17-08023.
- On October 24, 2017, Home Performance Coalition filed Comments in Docket No. 17-08023.
- On October 25, 2017, Southwest Energy Efficiency Project, the Natural Resources Defense Council, and Western Resource Advocates (together, “Joint Commenters”), and Nevada Power Company d/b/a NV Energy (“NPC”) and Sierra Pacific Power Company d/b/a NV Energy (“SPPC,” and together with NPC, “NV Energy”) filed Comments in Docket Nos. 17-07011 and 17-08023.
- Also on October 25, 2017, the Attorney General’s Bureau of Consumer Protection (“BCP”) filed letters in Docket Nos. 17-07011 and 17-08023.
- On November 8, 2017, Joint Commenters, NV Energy, BCP, and Staff filed Reply Comments in Docket Nos. 17-07011 and 17-08023.
- On November 8, 2017, Home Performance Coalition filed Reply Comments in Docket No. 17-08023.
- On November 21, 2017, the Presiding Officer held workshops in Docket Nos. 17-07011 and 17-08023. Joint Commenters, NV Energy, Staff and BCP made appearances. The Presiding Officer consolidated the Dockets on the record and continued the workshop to December 14, 2017.
- On December 8, 2017, the Presiding Officer issued a Procedural Order, memorializing the consolidation of Docket Nos. 17-07011 and 17-08023 for hearing purposes and canceling the continued workshop scheduled for December 14, 2017.
- On December 18, 2017, the Presiding Officer issued Procedural Order No. 2.
- On January 5, 2018, BCP, Joint Commenters, NV Energy, and Staff filed Comments.
- On January 12, 2018, the Presiding Officer held a workshop. Joint Commenters, NV Energy, Staff and BCP made appearances.

- On January 26, 2018, BCP, NV Energy, and Joint Commenters filed Comments.
- On March 23, 2018, the Presiding Officer sent proposed regulations to the Legislative Counsel Bureau (“LCB”) for review.
- On July 11, 2018, the Commission received revised regulations from LCB.
- On July 12, 2018, the Presiding Officer issued Procedural Order No. 3, directing Staff to conduct an investigation pursuant to NRS 233B.0608(1).
- On July 26, 2018, Staff filed a briefing memorandum recommending the Commission find that the proposed regulations are not likely to impose a direct or significant economic burden on a small business, or to restrict the formation, operation, or expansion of a small business.
- On August 1, 2018, at a regularly scheduled Agenda, the Commission discussed Staff’s briefing memorandum and set it for consideration at the next Agenda.
- On August 10, 2018, Staff filed a briefing memorandum recommending the Commission find that the proposed regulations are not likely to impose a direct or significant economic burden on a small business, or to restrict the formation, operation, or expansion of a small business.
- On August 20, 2018, the Commission issued an Order finding that the proposed regulation is not likely to impose a direct and substantial economic burden upon small businesses, nor is it likely to directly restrict the formation, operation, or expansion of a small business.
- On September 4, 2018, the Commission issued a Notice of Intent to Act upon a Regulation, Notice of Workshop, and Notice of Hearing for the Adoption, Amendment, and Repeal of Regulations of the Public Utilities Commission of Nevada.
- On September 26, 2018, BCP filed Comments (“BCP Comments”), Joint Commenters filed Comments (“Joint Commenter Comments”), NV Energy filed Comments (“NV Energy Comments”), and Staff filed Comments (Staff Comments”).
- On October 15, 2018, the Commission held a workshop pursuant to NRS 233B.061(2).
- On October 16, 2018, the Commission held a hearing pursuant to NRS 233B.061(3).

IV. REGULATION

1. The regulation, appended hereto as Attachment 1, implements AB 223 and SB 150. Specifically, Section 1 of this regulation establishes the goal for energy savings for each electric utility for the period beginning January 1, 2022, and ending on December 31, 2024, and provides that the goal for energy savings for each electric utility after that period is an amount

established by the Commission in an order denying, approving or modifying the most recent demand side plan included in the integrated resource plan submitted by the electric utility.

Section 1 also authorizes the Commission to modify a goal for energy savings.

2. Existing law requires an electric utility to submit an integrated resource plan every three years and to include in that integrated resource plan a demand side plan. (NRS 704.741; NAC 704.934.) Section 2 of this regulation requires the demand side plan to optimize energy savings and to be cost effective as a whole. Section 2 also establishes that the demand-side plan must include: (1) an energy efficiency plan which complies with the requirements of existing law and which includes any additional goals for energy savings established by the Commission; and (2) a proposal for the expenditure of not less than five percent of the total expenditures related to energy efficiency and conservation programs on programs directed to low-income customers of the electric utility.

3. Existing regulations further require a demand side plan to include a complete life cycle analysis of the costs and benefits of certain energy efficiency and conservation programs, which reduce the consumption of electricity or any fossil fuel using the Total Resource Cost Test. (NAC 704.934.) Section 2 eliminates the requirement to use the Total Resource Cost Test for this purpose and instead requires an electric utility to use at least one standard test of cost effectiveness that accounts for the nonenergy benefits of a program.

4. Existing law enables an electric utility, subject to the authorization of the Commission, to recover the cost of financial incentives to support the promotion of the participation of the customers of the electric utility in programs for energy efficiency and conservation. (NRS 704.95225.) Section 3 of this regulation removes section 2 of NAC 704.95225 because it is inconsistent with Section 12 of SB 150 (2017), which adds a new public

interest standard to be applied when the Commission determines whether to remove financial disincentives to the implementation of energy efficiency and conservation programs and adds new rate adjustment provisions that are not included in the existing regulations.

5. Existing law authorizes the Commission to remove financial disincentives which discourage an electric utility from implementing or promoting participation in energy efficiency and conservation programs by including a rate adjustment mechanism to ensure that the revenue per customer authorized in a general rate application is recovered without regard to the difference in the quantity of electricity actually sold by the electric utility. (NRS 704.785.) Section 4 of this regulation provides that, if a rate adjustment mechanism is authorized by the Commission, certain provisions of regulation relating to the amount recoverable by an electric utility for the costs of implementing programs for energy efficiency and conservation do not apply.

Staff Comments

6. Pursuant to the Notice of Intent to Act Upon a Regulation, Notice of Workshop, and Notice of Hearing for the Adoption, Amendment and Repeal of Regulations of the Public Utilities Commission of Nevada, dated September 4, 2018, Staff proposed the following amendments to the proposed regulation: (1) Amending the language in Section 1, subsection 1 to establish two energy efficiency goals in regulation. The first goal would apply to each electric utility, SPPC and NPC, and is set at a minimum of 0.8 percent of the forecasted weather normalized sales of each utility. The second goal would apply jointly to both utilities and is set at a minimum of 1.1 percent of the combined forecasted weather normalized sales of the utilities; (2) Eliminating the effective dates in Section 1, subsection 1 (a) and deleting the date and changing language in Section 1, subsection 1 (b) to ensure that the individual and joint goals

are seen as an energy savings floor set in regulation; (3) Adding language to Section 1, subsection 2 in order to establish a process by which the Commission can modify energy savings goals. Goals would be modified at least one year before the triennial integrated resource plan is filed allowing the utilities to comply with the modified goals in their three-year demand side plan; (4) Eliminate the proposed phrase “optimizes energy savings” in NAC 704.934(1); (5) Amending LCB's revised language to NAC 704.934(2)(d) to state that the demand side plan must include an energy efficiency plan which complies with the requirements of NRS 704.7836 and any additional energy savings goals established by the Commission; (6) Adding language that would require the utility to file a modified Total Resource Cost (“TRC”) to account for non-energy benefits; (7) Streamlining LCB’s proposed language in NAC 704.934(8); (9) Moving the definition of “energy efficiency and conservation program” to the end of NAC 704.934; (10) Deleting NAC 704.934(9) as proposed by the LCB language would eliminate the Commission's ability to modify or reject a utility's proposed demand side plan. Staff states that the LCB was attempting to condense Section 4 of the draft regulations sent to the LCB on March 23, 2018, which establishes the Commission’s responsibilities in approving a demand side plan. Since NAC 704.934 establishes the requirements for the utility, Staff therefore states that inclusion of the Commission's responsibilities in NAC 704.934 would be inappropriate; (11) Moving the definition of "energy efficiency and conservation program" to NRS 704.934(10); and (12) Reinstating the definition of “Total Resource Cost Test” since Staff is now proposing that the utility file a modified TRC test. (Staff Comments at 1-4.)

BCP Comments

7. BCP stated that it had no written comments but participated in the workshop and hearing. (BCP Comments at 1.)

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Joint Commenter Comments

8. Joint Commenters state that the spirit of SB 150 and AB 223 was to set energy efficiency goals as soon as possible. Therefore, Joint Commenters recommend adopting the goal of “no less than 1.1 percent savings” starting in 2020 rather than waiting until 2022. Furthermore, Joint Commenters recommend maintaining this initial goal through the 2022-2024 demand side plan period as indicated in Subsection 1 (a). (Joint Commenter Comments at 1.)

9. For the period starting January 1, 2025, Joint Commenters recommend allowing the Commission to modify the previous goals by either increasing the goals or adopting additional goals, as reflected in the language included in the March 23, 2018, version of the proposed regulation. (*Id.*)

10. In addition, the Joint Commenters propose a new subsection 2 that allows utilities with the same parent company to meet the energy savings goals for the utilities in combination. This means that NV Energy could meet the goals for Nevada Power Company and Sierra Pacific Power Company in combination, but not necessarily for each utility individually. (*Id.*)

11. Joint Commenters also propose adding in subsection 1 language that draws directly from the legislation regarding the overall objective of energy efficiency plans and programs in Nevada. Section 9, subsection 6 of SB 150 states:

It is in the interest of this state and residents of this state that the energy efficiency plans and programs of electric utilities should maximize the implementation of cost-effective, achievable energy efficiency opportunities.

Joint Commenters state that this is a critical policy objective that should be reflected in the regulations. (*Id.*)

12. Regarding Section 2, subsection 6, Joint Commenters state that the legislation directs NV Energy and the Commission to account for non-energy benefits in demand side cost effectiveness analysis in the primary cost effectiveness test and recommends a change in subsection 6 of the proposed regulation to clarify this. (*Id.* at 2.)

13. Regarding Section 2, subsection 9, Joint Commenters recommend inserting the following language that replicates an important new policy included in the legislation:

“The Commission may approve an energy efficiency plan submitted pursuant to NRS 704.741 that consists of energy efficiency and conservation programs that are not cost effective if the Commission determines that the energy efficiency plan as a whole is cost effective.”

(Id.)

NV Energy Comments

14. NV Energy states that it has two concerns with the proposed regulations. The first is with the provisions of Section 1, subsection (1) (a), which requires the use of an energy savings goal of 1.1 percent for each utility. NV Energy states that it is concerned that having to file a demand side plan that is designed to achieve the same energy goal at Nevada Power and Sierra will result in a plan for Sierra that is considerably more expensive, less cost effective and, extremely difficult to achieve than if NV Energy were to draw up a plan designed to achieve the 1.1 percent energy savings goal on a state-wide basis. (NV Energy Comments at 1.)

15. NV Energy further states that although NRS 704.7836(2) (Section 10(1) of Senate Bill 150) requires the setting of goals for each utility, it does not require that the goals for each utility be the same. As such, the statute does not forbid the Commission from setting a state-wide goal and then using that goal to set separate and different energy savings goals for each utility. NV Energy states that its concerns stem from the fact that energy savings have been proven to come more efficiently from Nevada Power’s service territory than Sierra’s and that a demand side plan for Sierra that is designed to meet the same energy savings goal as Nevada Power would result in a higher budget per kWh for Sierra’s customers than the accompanying plan for Nevada Power. (*Id.* at 1-2.)

16. NV Energy states that setting separate energy savings goals of each utility that is based upon a state-wide energy savings goal will allow it to file a plan designed to meet the goals in a manner that is cost effective for each utility. (*Id.* at 2.)

17. NV Energy states that its second concern lies with Section 1, subsection 2. This language is new and has not been considered by the Commission before. NV Energy believes that by limiting modifications to “increasing” goals, the draft regulation is not in line with the provisions of Section 10 of Senate Bill 223, now NRS 704.7836(2). NV Energy states that the statute does not limit modifications to an energy savings goal previously set by the Commission to only increases and allows the temporary lowering of a goal under certain circumstances; and, therefore, the regulation should recognize that the statute does not limit modifications of an energy savings goal to only increases. (*Id.*)

Commission Discussion and Findings

18. Based on the foregoing, the Commission finds that it is in the public interest to adopt as permanent the proposed regulation appended hereto as Attachment 1.


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THEREFORE, it is ORDERED:


1. The proposed regulation, appended hereto as Attachment 1, is ADOPTED AS PERMANENT.

By the Commission,

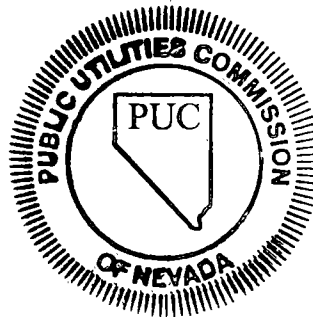

ANN WILKINSON, Chairman


ANN PONGRACZ, Commissioner and Presiding Officer


C.J. MANTHE, Commissioner

Attest: 
TRISHA OSBORNE,
Assistant Commission Secretary

Dated: Carson City, Nevada
12/4/18
(SEAL)



ATTACHMENT 1

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

LCB File No. R055-18

November 28, 2018

EXPLANATION — Matter in *italics* is new; matter in brackets [omitted material] is material to be omitted; matter in *italics and underlined* is new material added by the Commission; matter in brackets and underlined [omitted material] is material omitted by the Commission.

AUTHORITY: §§1 and 2, NRS 703.025, 704.210, 704.741 and 704.7836; §§3 and 4, NRS 703.025, 704.210 and 704.785.

A REGULATION relating to electric utilities; establishing for electric utilities annual goals for energy savings resulting from energy efficiency programs; requiring the inclusion of certain information relating to energy efficiency and conservation in the demand side plan submitted by an electric utility to the Public Utilities Commission of Nevada; revising provisions relating to the recovery of costs based on the implementation by an electric utility of energy efficiency and conservation programs; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Public Utilities Commission of Nevada to establish, by regulation, goals for energy savings from energy efficiency programs implemented by an electric utility which are applicable to each electric utility in this State. (Section 10 of Senate Bill No. 150, chapter 591, Statutes of Nevada 2017, at page 4292 (NRS 704.7836)) **Section 1** of this regulation establishes the goal for energy savings for each electric utility for the period beginning January 1, 2022, and ending on December 31, 2024, and provides that the goal for energy savings for each electric utility after that period is an amount established by the Commission in an order denying, approving or modifying the most recent demand side plan included in the integrated resource plan submitted by the electric utility. **Section 1** also authorizes the Commission to modify a goal for energy savings [~~by increasing the goal for energy savings or by setting additional goals for energy savings~~].

Existing law requires an electric utility to submit an integrated resource plan every 3 years and to include in that integrated resource plan a demand side plan. (NRS 704.741; NAC 704.934) **Section 2** of this regulation requires the demand side plan [~~to optimize energy savings and~~] to be cost effective as a whole. **Section 2** also establishes that the demand side plan must include: (1) an energy efficiency plan which complies with the requirements of existing law and

which includes ~~[one or more]~~ *any additional* goals for energy savings for each year ~~[included in the resource plan]~~ *established by the Commission*; and (2) a proposal for the expenditure of not less than 5 percent of the total expenditures related to energy efficiency and conservation programs on programs directed to low-income customers of the electric utility.

Existing regulations require a demand side plan to include a complete life cycle analysis of the costs and benefits of certain energy efficiency and conservation programs which reduce the consumption of electricity or any fossil fuel using the Total Resource Cost Test. (NAC 704.934) **Section 2** eliminates the requirement to use the Total Resource Cost Test for this purpose and instead requires an electric utility to use at least one standard test of cost effectiveness that accounts for the nonenergy benefits of a program.

Existing law enables an electric utility, subject to the authorization of the Commission, to recover the cost of financial incentives to support the promotion of the participation of the customers of the electric utility in programs for energy efficiency and conservation. (NAC 704.95225) **Section 3** of this regulation removes the authorization for the Commission to permit electric utilities to recover the cost of these financial incentives.

Existing law authorizes the Commission to remove financial disincentives which discourage an electric utility from implementing or promoting participation in energy efficiency and conservation programs by including a rate adjustment mechanism to ensure that the revenue per customer authorized in a general rate application is recovered without regard to the difference in the quantity of electricity actually sold by the electric utility. (NRS 704.785) **Section 4** of this regulation provides that, if such a rate adjustment is authorized by the Commission, certain provisions of regulation relating to the amount recoverable by an electric utility for the costs of implementing programs for energy efficiency and conservation do not apply.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto a new section to read as follows:

1. Pursuant to NRS 704.7836, the goal for energy savings established by the Commission for each electric utility is:

(a) For the period beginning on January 1, 2022, and ending on December 31, 2024, an amount of energy savings resulting from the implementation of energy efficiency programs by the electric utility that results in an average reduction

~~[for]~~ **during the period of 1.1 percent of the forecasted weather normalized sales of the electric utility for the period.**

(b) **For any period beginning on or after January 1, 2025, an amount of energy savings resulting from the implementation of energy efficiency programs established by the Commission in an order denying, approving or modifying the most recent demand side plan submitted by the electric utility pursuant to NAC 704.934.**

2. **The Commission may modify a goal for energy savings established pursuant to subsection 1 ~~[by increasing the goal for energy savings or by setting additional goals for energy].~~ in an order granting, denying, or modifying a petition submitted pursuant to NAC 703.540.**

3. **As used in this section:**

(a) **"Energy efficiency program" has the meaning ascribed to it in NRS 704.7833.**

(b) **"Energy savings" has the meaning ascribed to it in NRS 704.7834.**

Sec. 2. NAC 704.934 is hereby amended to read as follows:

704.934 1. As part of its resource plan, a utility shall submit a demand side plan ~~[r]~~ **that ~~[optimizes energy savings and]~~ is cost effective as a whole.**

2. The demand side plan must include:

(a) An identification of end-uses for programs for energy efficiency and conservation.

(b) An assessment of savings attributable to technically feasible programs for energy efficiency and conservation, as determined by the utility. The programs must be ranked in a list according to the level of savings in energy or reduction in demand, or both.

(c) An assessment of technically feasible programs to determine which will produce benefits in peak demand or energy consumption. The utility shall estimate the cost of each such program. The methods used for the assessment must be stated in detail, specifically listing the data and assumptions considered in the assessment.

(d) An energy efficiency plan which complies with the requirements of NRS 704.7836, and which includes ~~one or more~~ any additional goals for energy savings ~~[for each year included in the resource plan]~~ established by the Commission.

3. In creating its demand side plan, a utility shall consider the impact of applicable new technologies on current and future energy efficiency and conservation options. The consideration of new technologies must include, without limitation, consideration of the potential impact of advances in digital technology and computer information systems.

4. A utility shall include in its demand side plan an energy efficiency program for residential customers which reduces the consumption of electricity or any fossil fuel. The energy efficiency program must include, without limitation, the use of new solar thermal energy sources.

5. The demand side plan must provide a list of the programs for which the utility is requesting the approval of the Commission. The list must include, without limitation:

(a) An estimate of the reduction in the peak demand and energy consumption that would result from each proposed program, in kilowatt-hours and kilowatts saved. The programs must be listed according to their expected savings and their contribution to a reduction in peak demand and energy consumption based upon realistic estimates of the penetration of the market and the average life of the programs.

(b) An assessment of the costs of each proposed program and the savings produced by the program. If the program can be relied upon to reduce peak demand on a firm basis, the assessment must include the savings in the costs of transmission and distribution.

(c) An assessment of the impact on the utility's load shapes of each proposed and existing program for energy efficiency and conservation.

(d) If a program is an educational program, the projected expenses of the utility for the educational program.

6. For any energy efficiency or conservation program which reduces the consumption of electricity or any fossil fuel, a utility shall include in its demand side plan a complete life-cycle analysis of the costs and benefits of the program using [~~the Total Resource Cost Test.~~] *at least one standard test of cost effectiveness for the nonenergy benefits of the program.*

7. The utility shall include with its demand side plan a report on the status of all programs for energy efficiency and conservation that have been approved by the Commission. The report must include tables for each such program showing, for each year, the planned and achieved reduction in kilowatt-hours, the reduction in kilowatts and the cost of the program.

8. ~~*The demand side plan must include a proposal for the expenditure of not less than 5 percent of the total expenditures related to energy efficiency and conservation programs on energy efficiency and conservation programs directed to low-income customers of the electric utility. For the purposes of this subsection, "energy efficiency and conservation program" has the meaning ascribed to it in NRS 704.7366.*~~ *Not less than 5 percent of the total expenditures related to energy efficiency and conservation programs in the demand side plan must be directed to energy efficiency and conservation programs for low-income customers of the electric utility.*

~~*9. The Commission will approve a demand side plan that complies with the requirements of this section.*~~

~~[10]~~9. On or before July 1 of each year following the filing of its resource plan, the utility shall file with the Commission a copy of the complete analysis that the utility used in determining for the upcoming year which energy efficiency and conservation programs are to be continued and which programs are to be cancelled. Within 180 days after the analysis is filed, the Commission will accept the analysis as filed, accept the analysis with modification or reject the analysis.

~~[9.]~~ ~~[11]~~10. As used in this section:

(a) "Energy savings" has the meaning ascribed to it in NRS 704.7834.

(b) “Energy efficiency and conservation program” has the meaning ascribed to it in NRS 704.7366.

~~/(b)/(c)~~ “New solar thermal energy sources” means energy sources which are installed after the effective date of the utility's energy efficiency program and which reduce the consumption of electricity or any fossil fuel by using solar radiation to heat water or to provide space heating or cooling.

~~[(b) “Total Resource Cost Test” means a method of determining the overall economic efficiency of a demand management program from the perspective of society by measuring the net costs of the program based on its total costs, including without limitation, the costs to both the participants and the utility.]~~

Sec. 3. NAC 704.95225 is hereby amended to read as follows:

704.95225 1. An electric utility may recover an amount based on the measurable and verifiable effects of the implementation by the electric utility of programs for energy efficiency and conservation described in the demand side plan of the electric utility and approved by the Commission pursuant to NAC 704.9494 as part of the action plan of the electric utility. The amount recovered must include:

(a) The costs reasonably incurred by the electric utility in implementing and administering the programs for energy efficiency and conservation, which are recovered pursuant to paragraph (a) of subsection 2 of NAC 704.9523; and

(b) An amount equal to the costs reasonably incurred by the electric utility in implementing and administering the programs for energy efficiency and conservation multiplied by the electric utility's authorized overall rate of return grossed up for taxes applicable to the utility's equity portion of the authorized rate of return, which is recovered pursuant to paragraph (b) of subsection 2 of NAC 704.9523.

2. ~~[Upon the request of an electric utility or intervening party or upon a motion of the Mission, the Commission may authorize an electric utility to include in the amount~~

~~recovered pursuant to subsection 1 for programs for energy efficiency or conservation financial incentives to support the promotion of the participation of the customers of the electric utility in programs for energy efficiency or conservation. Financial incentives must be requested on a program by program basis.~~

3.] The Commission will consider the effect of any recovery pursuant to this section on the rates of the customers of the electric utility.

Sec. 4. NAC 704.9523 is hereby amended to read as follows:

704.9523 1. All costs of implementing programs for energy efficiency and conservation calculated pursuant to paragraph (a) of subsection 2 and the amounts calculated pursuant to paragraph (b) of subsection 2 must be accounted for in the books and records of an electric utility separately from costs and amounts attributable to any other activity. All accounts must be maintained in a manner that will allow costs and amounts attributable to specific programs to be readily identified.

2. An electric utility may, pursuant to subsection 3, recover:

(a) All reasonably incurred costs of implementing programs for energy efficiency and conservation that have been described in the demand side plan of the electric utility and approved by the Commission pursuant to NAC 704.9494 as part of the action plan of the electric utility, including, without limitation, the costs for labor, overhead, materials, incentives paid to customers, advertising, marketing, monitoring and evaluation.

(b) An amount equal to the costs calculated pursuant to paragraph (a) multiplied by the electric utility's authorized overall rate of return grossed up for taxes applicable to the utility's equity portion of the authorized rate of return.

3. To recover the reasonably incurred costs of implementing programs for energy efficiency and conservation calculated pursuant to paragraph (a) of subsection 2 and the amounts calculated pursuant to paragraph (b) of subsection 2, an electric utility must:

(a) Establish and maintain separate subsidiary records of the subaccounts of FERC Account No. 182.3 (Other Regulatory Assets) for each program described in the demand side plan of the electric utility and approved by the Commission pursuant to NAC 704.9494 as part of the action plan of the electric utility. These records must clearly delineate all costs calculated pursuant to paragraph (a) of subsection 2 and amounts calculated pursuant to paragraph (b) of subsection 2 and be maintained by program by month by rate effective period.

(b) At the time the electric utility files an annual deferred energy accounting adjustment application pursuant to subsection 3 of NRS 704.187, apply to the Commission to establish the following period-specific rates:

(1) A prospective base program cost rate which is determined by allocating in the manner approved by the Commission in the most recent general rate case of the electric utility the total cost of programs for energy efficiency and conservation that are described in the demand side plan approved by the Commission. The prospective base program cost rate for a customer class is an amount equal to the cost allocated to that customer class pursuant to this subparagraph divided by the projected kilowatt hour sales for that class for the relevant period.

(2) A deferred program cost rate to clear the period-specific balance over 12 months. The deferred program cost rate is an amount equal to the period-specific balance in the subaccount of FERC Account No. 182.3 for the cost of programs for energy efficiency and conservation divided by the applicable test period kilowatt hour sales.

(c) At the time the electric utility files an annual deferred energy accounting adjustment application pursuant to subsection 3 of NRS 704.187, file a statement that reports the Nevada jurisdictional earned rate of return for each month of the test period for the electric utility. The Nevada jurisdictional earned rate of return must be calculated for each month of the test period on a 12-month average rate base. The statement must be accompanied by all subsidiary schedules, and any adjustments made thereto, necessary to support the calculations.

4. ~~[(H)]~~ ***Except as otherwise provided in subsection 8, if*** the Nevada jurisdictional earned rate of return for the last month of the test period reported for an electric utility pursuant to paragraph (c) of subsection 3 exceeds the rate of return last authorized by the Commission to set rates for the electric utility, the electric utility must, at the time the electric utility files the annual deferred energy accounting adjustment application pursuant to subsection 3 of NRS 704.187:

(a) File a statement that reports calculations of:

(1) The amount of revenue which caused the electric utility to exceed the rate of return last authorized by the Commission;

(2) An adjustment to the amount calculated pursuant to paragraph (b) of subsection 2; and

(3) The carrying charges at a monthly rate of 1/12 of the authorized overall rate of return on the adjustment amount calculated pursuant to subparagraph (2).

(b) Establish a rate of credits for adjustments calculated pursuant to subparagraph (2) of paragraph (a) attributable to each class of service and which are identifiable from the information maintained in accordance with paragraph (a) of subsection 3.

5. ~~{An}~~ ***Except as otherwise provided in subsection 8, an*** electric utility must:

(a) Record any adjustment calculated pursuant to subparagraph (2) of paragraph (a) of subsection 4 in a subaccount of FERC Account No. 254.

(b) Transfer any balance which remains in the subaccount of FERC Account No. 254 at the end of the amortization period to the appropriate subaccount of PERC Account No. 182.3 for the current period.

(c) Maintain sufficiently detailed information to identify the amount of the adjustment attributable to each class of service.

6. ~~{The}~~ ***Except as otherwise provided in subsection 8, the*** sum of the adjustment calculated pursuant to subparagraph (2) of paragraph (a) of subsection 4 and any adjustments for carrying charges made to subaccounts of FERC Account No. 182.3 must not exceed the amount of revenue calculated pursuant to subparagraph (1) of paragraph (a) of subsection 4.

7. An electric utility shall account for period-specific costs incurred to implement a program for energy efficiency and conservation calculated pursuant to paragraph (a) of subsection 2, amounts calculated pursuant to paragraph (b) of subsection 2 and revenues

received from the period-specific prospective base program cost rate in the following manner:

(a) On a monthly basis, the electric utility shall record in a subaccount of FERC Account No. 182.3 the program costs incurred, amounts calculated pursuant to paragraph (b) of subsection 2 and the revenues received from the prospective base program cost rate for the program for energy efficiency and conservation.

(b) The electric utility shall apply a carrying charge at the rate of 1/12 of the authorized overall rate of return to the unamortized balance in the subaccounts of FERC Account No. 182.3. If, in any month, the balance in a subaccount of FERC Account No. 182.3 is a debit, an adjustment amount must be calculated in an amount equal to the amount which exceeds the electric utility's last authorized rate of return that was used to set rates for the electric utility or any remainder after the rate of return has been applied to the carrying charge calculation for deferred energy pursuant to NAC 704.150.

8. If the Commission authorizes a rate adjustment mechanism for an electric utility pursuant to paragraph (b) of subsection 1 of NRS 704.785, the provisions of subsections 4, 5 and 6 do not apply to the electric utility.