

1

Nevada Revised Statutes, Title 58, Energy; Public Utilities
and Similar Entities:
Regulation of Public Utilities Generally

10/13/80

UTILITY ENVIRONMENTAL PROTECTION ACT

704.820 Short title. NRS 704.820 to 704.900, inclusive, shall be known and may be cited as the Utility Environmental Protection Act. (Added to NRS by 1971, 554)

704.825 Declaration of legislative findings and purpose.

1. The legislature hereby finds and declares that:

(a) There is at present and will continue to be a growing need for electric, gas, telephone, telegraph, water and CATV utility services which will require the construction of new facilities. It is recognized that such facilities cannot be built without in some way affecting the physical environment where such facilities are located.

(b) It is essential in the public interest to minimize any adverse effect upon the environment and upon the quality of life of the people of the state which such new facilities might cause.

(c) Present laws and practices relating to the location of such utility facilities should be strengthened to protect environmental values and to take into account the total cost to society of such facilities.

(d) Existing provisions of law may not provide adequate opportunity for individuals, groups interested in conservation and the protection of the environment, state and regional agencies, local governments and other public bodies to participate in any and all proceedings before the public service commission of Nevada regarding the location and construction of major facilities.

2. The legislature, therefore, hereby declares that it is the purpose of NRS 704.820 to 704.900, inclusive, to provide a forum for the expeditious resolution of all matters concerning the location and construction of electric, gas, telephone, telegraph, water and CATV transmission lines and associated facilities.

(Added to NRS by 1971, 554)

704.830 Definitions. As used in NRS 704.820 to 704.900, inclusive, the words and terms defined in NRS 704.840 to 704.860, inclusive, have the meanings ascribed to them in NRS 704.840 to 704.860, inclusive, unless the context otherwise requires.

(Added to NRS by 1971, 554; A 1973, 1263)

10/13/80

704.840 "Commence to construct" defined. "Commence to construct" means any clearing of land, excavation or other action which would adversely affect the natural environment of the site or route of a utility facility, but does not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions.
(Added to NRS by 1971, 555)

704.845 "Local government" defined. "Local government" means any county, municipality, district, agency or other unit of local government.
(Added to NRS by 1971, 555)

704.850 "Person" defined. "Person" includes any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government or other organization.
(Added to NRS by 1971, 555)

704.855 "Public utility," "utility" defined.
1. "Public utility" or "utility" includes those public utilities as defined in NRS 704.020, any oil pipeline carrier as described and regulated under chapter 708 of NRS, and any CATV company as defined in NRS 711.030.
2. "Public utility" also includes any plant or equipment within this state used directly or indirectly for the generation and transmission of electrical energy, except plants or equipment used to generate electrical energy that is wholly consumed on the premises of and by the producer thereof.
(Added to NRS by 1971, 555; A 1973, 1035)

704.860 "Utility facility" defined. "Utility facility" means:
1. Electric generating plants and their associated facilities;
2. Electric transmission lines and transmission substations designed to operate at 200 kilovolts or more, and not required by local ordinance to be placed underground when constructed outside any incorporated city;
3. Gas transmission lines, storage plants, compressor stations and their associated facilities when constructed outside any incorporated city;
4. Telephone, telegraph and CATV equipment buildings, their associated facilities and the sites thereof, when constructed outside any incorporated city;
5. Water storage and transmission facilities; and
6. Sewer transmission and treatment facilities.
(Added to NRS by 1971, 555; A 1979, 671)

10/13/80

704.865 Construction permit: Requirement; transfer; exceptions to requirement.

1. No public utility shall after July 1, 1971, commence to construct a utility facility in the state without first having obtained a permit therefor from the commission. The replacement of an existing facility with a like facility, as determined by the commission, shall not constitute construction of a utility facility. Any facility, with respect to which a permit is required, shall thereafter be constructed, operated and maintained in conformity with such permit and any terms, conditions and modifications contained therein. A permit may only be issued pursuant to NRS 704.820 to 704.900, inclusive; but any authorization relating to a utility facility granted under other laws administered by the commission shall constitute a permit under such sections if the requirements of such sections have been complied with in the proceedings leading to the granting of such authorization.

2. A permit may be transferred, subject to the approval of the commission, to a public utility who agrees to comply with the terms, conditions and modifications contained therein.

3. NRS 704.820 to 704.900, inclusive, do not apply to any utility facility:

(a) For which, prior to July 1, 1971, an application for the approval of such facility has been made to any federal, state, regional or local governmental agency which possesses the jurisdiction to consider the matters prescribed for finding and determination in subsection 1 of NRS 704.890;

(b) For which, prior to July 1, 1971, a governmental agency has approved the construction of such facility and such utility has incurred indebtedness to finance all or part of the cost of such construction; or

(c) Over which an agency of the Federal Government has exclusive jurisdiction.

4. Any public utility intending to construct a utility facility excluded from NRS 704.820 to 704.900, inclusive, pursuant to paragraph (a) or (b) of subsection 3 may elect to waive such exclusion by delivering notice of such waiver to the commission. NRS 704.820 to 704.900, inclusive, shall thereafter apply to each such utility facility identified in such notice from the date of its receipt by the commission.

(Added to NRS by 1971, 555)

704.870 Construction permit application: Form, contents; filing; service; public notice.

1. An applicant for a permit shall file with the commission an application, in such form as the commission may prescribe, containing the following information:

(a) A description of the location and of the utility facility to be built thereon;

(b) A summary of any studies which have been made of the environmental impact of the facility;

(c) A statement explaining the need for the facility;

(d) A description of any reasonable alternate location or locations for the proposed facility, a description of the comparative merits or detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility; and

(e) Such other information as the applicant may consider relevant or as the commission may by regulation or order require. A copy or copies of the studies referred to in paragraph (b) shall be filed with the commission and be available for public inspection.

2. A copy of the application shall be filed with the chairman of the state environmental commission created pursuant to NRS 445.451.

3. Each application shall be accompanied by proof of service of a copy of such application on the clerk of each local government in the area in which any portion of such facility is to be located, both as primarily and as alternatively proposed.

4. Each application shall also be accompanied by proof that public notice thereof was given to persons residing in the municipalities entitled to receive notice under subsection 3 by the publication of a summary of the application in newspapers published and distributed in the area in which such utility facility is proposed to be located.

(Added to NRS by 1971, 556; A 1973, 1263)

10/13/80

4

704.875 Review of application by state environmental commission. The state environmental commission shall review each application filed and may participate in any proceeding held pursuant to NRS 704.880. (Added to NRS by 1971, 556; A 1973, 1264)

704.880 Hearing on application for permit. The commission, in its discretion, may dispense with the hearing on the application if, upon the expiration of the time fixed in the notice thereof, no protest against the granting of the permit has been filed by or in behalf of any interested party. The conduct of the hearing shall be the same as set forth in the applicable Rules of Practice and Procedure before the commission.

(Added to NRS by 1971, 556)

704.885 Parties to permit proceeding; appearances; intervention.

1. The parties to a permit proceeding include:

(a) The applicant.

(b) The state environmental commission created pursuant to NRS 445.451.

(c) Each local government entitled to receive service of a copy of the application under subsection 3 of NRS 704.870, if it has filed with the commission a notice of intervention as a party, within 45 days after the date it was served with a copy of the application.

(d) Any person residing in a local government entitled to receive service of a copy of the application under subsection 3 of NRS 704.870, if such a person has petitioned the commission for leave to intervene as a party within 45 days after the date of the published notice and if such petition has been granted by the commission for good cause shown.

(e) Any domestic nonprofit corporation or association, formed in whole or in part to promote conservation of natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located, if it has filed with the commission a notice of intent to be a party within 45 days after the date of the published notice.

2. Any person may make a limited appearance in the proceeding by filing a statement of position within 45 days after the date of the published notice. A statement filed by a person making a limited appearance becomes part of the record. No person making a limited appearance has the right to present oral testimony or cross-examine witnesses.

3. The commission may, for good cause shown, grant a petition for leave to intervene as a party to participate in subsequent phases of the proceeding, filed by a municipality, government agency, person or organization who is identified in paragraph (b), (c), (d) or (e) of subsection 1, but who failed to file a timely notice of intervention or petition for leave to intervene, as the case may be.

(Added to NRS by 1971, 556; A 1973, 910, 1265, 1837; 1977, 215)

704.890 Grant or denial of application; required findings; service of copies of order.

1. The commission shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions or modifications of the construction, operation or maintenance of the utility facility as the commission may deem appropriate. The commission may not grant a permit for the construction, operation and maintenance of a utility facility, either as proposed or as modified by the commission, unless it finds and determines:

(a) The basis for the need of the facility;

(b) The nature of the probable environmental impact;

(c) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;

(d) That the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder; and

(e) That the facility will serve the public interest.

2. If the commission determines that the location of all or a part of the proposed facility should be modified, it may condition its permit upon such modification.

3. A copy of the order and any opinion issued therewith shall be served upon each party.

(Added to NRS by 1971 557)

10/13/80

704.892 Grant, denial, conditioning of permit for plant for generation of electrical energy for export.

1. When application is made for the construction of a plant for the generation of electrical energy using any natural resource of this state, including but not limited to coal, geothermal steam and water resources, for export outside this state, the commission:

(a) May grant or deny the construction permit.

(b) Except as otherwise provided in subsection 2, shall condition the granting of the construction permit on the applicant's making available to public utilities which primarily serve retail customers in this state an amount of capacity equal to or less than the amount provided for export in one of the following ways:

(1) Fifty percent of that amount of capacity must be made available to those utilities; or

(2) If less than 50 percent of that amount of capacity initially is taken by those utilities, provision must be made for recapture by those utilities of up to 50 percent of the capacity available from the project, and in either case for a reciprocal commitment by out-of-state participants to allow the Nevada utilities to participate in any future capacity of such participants to generate or transmit electricity to the same extent that the out-of-state participants have participated in such capacity from the project to be constructed.

2. In the case of a project for the generation and transmission of electricity financed in whole or in part under NRS 244A.669 to 244A.763, inclusive:

(a) The construction permit must be conditioned only upon the compliance with the provisions of those sections with respect to participation of Nevada utilities in the project, the recapture of capacity thereof from out-of-state utilities and the reciprocal participation rights of Nevada utilities.

(b) Before granting the construction permit, the commission must approve the contracts for the purchase of capacity and the agreement or agreements for the construction and operation of the project required by subsection 2 of NRS 244A.741. The commission shall either approve or disapprove such an agreement or contract within 90 days after filing. The county shall, every 6 months during construction of such a project, file with the commission a report as to the then-current estimates of the total cost of the project, but such reports are not filed for approval or disapproval by the commission.

(Added to NRS by 1973, 1035; A 1979, 693)

10/13/80

704.895 Rehearing; judicial review.

1. Any party aggrieved by any order issued on an application for a permit may apply for a rehearing within 15 days after issuance of the order. Any party aggrieved by the final order of the commission on rehearing may obtain judicial review thereof by filing of a complaint in a district court within 30 days after the issuance of such final order. Upon receipt of such complaint, the commission shall forthwith deliver to the court a copy of the written transcript of the record of the proceeding before it and a copy of its decision and opinion entered therein, which shall constitute the record on judicial review.

2. The grounds for and the scope for review of the court shall be limited to whether the opinion and order of the commission is:

- (a) In conformity with the constitution and the laws of the State of Nevada and of the United States;
- (b) Supported by substantial evidence in the record;
- (c) Made in accordance with the procedures set forth in NRS 704.820 to 704.900, inclusive, or established order, rule or regulation of the commission; and
- (d) Arbitrary, capricious or an abuse of discretion.

(Added to NRS by 1971, 558)

704.900 Cooperation with United States, other states. The commission, in the discharge of its duties under NRS 704.820 to 704.900, inclusive, or any other law, is authorized to make joint investigations, hold joint hearings within or without the state, and issue joint or concurrent orders in conjunction or concurrence with any official or agency of any state or of the United States, whether in the holding of such investigations or hearings, or in the making of such orders, the commission functions under agreements or compacts between states or under the concurrent power of states to regulate interstate commerce, or as an agency of the United States, or otherwise. The commission, in the discharge of its duties under NRS 704.820 to 704.900, inclusive, is further authorized to negotiate and enter into agreements or compacts with agencies of other states, pursuant to any consent of the Congress, for cooperative efforts in permitting the construction, operation and maintenance of utility facilities in accord with the purpose of NRS 704.820 to 704.900, inclusive, and for the enforcement of the respective state laws regarding them.

(Added to NRS by 1971, 558)