

LCB File No. R144-01

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

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

In re investigation and rulemaking to promulgate)
and adopt regulations to implement the provisions) Docket No. 01-7029
of SB 372.)

**NOTICE OF INTENT TO ACT UPON A REGULATION
NOTICE OF WORKSHOP AND NOTICE OF HEARING
FOR THE ADOPTION OF REGULATIONS**

NOTICE IS HEREBY GIVEN that the Public Utilities Commission of Nevada (“Commission”) will hold a WORKSHOP on **Monday, November 19, 2001**, 10:00 a.m., at the offices of the Commission, Hearing Room A, 1150 E. William Street, Carson City, Nevada 89701, at which time interested persons may appear and be heard. This workshop may be continued day to day as necessary. The purpose of this workshop is to receive comments from all interested persons regarding the attached proposed regulations concerning renewable energy requirements.

NOTICE IS ALSO GIVEN that the Commission will hold a HEARING on **Monday, November 26, 2001**, 10:00 a.m., at the offices of the Commission, Hearing Room A, 1150 E. William Street, Carson City, Nevada 89701, at which time interested persons may appear and be heard. This hearing may be continued day to day as necessary. The purpose of this hearing is to receive comments from all interested persons regarding the attached proposed regulations concerning renewable energy requirements.

The following information is provided pursuant to the requirements of NRS 233B.0603:
On June 8, 2001, Nevada Governor Kenny C. Guinn signed Senate Bill No. 372 (“SB 372”) into

law. SB 372, Sec. 17 requires that the Commission adopt regulations governing the portfolio standard for renewable energy.

The proposed regulations potentially affect all entities that offer or will offer electric services. At this time, the Commission cannot quantify either the adverse or beneficial economic effects on the entities affected by the regulation or the public, either immediate or long-term, which may result from the regulation.

The Commission envisions an increase in costs associated with enforcement of these proposed regulations. The regulations do not overlap or duplicate any other state or local federal government regulation, nor do they establish any new fee or increase an existing fee.

Persons wishing to comment upon the proposed action of the Commission may appear at the scheduled public hearing or address their comments, data, views, or arguments, in written form, to the Secretary of the Commission, 1150 E. William Street, Carson City, Nevada 89701 or 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109.

A copy of this notice and the proposed regulations will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulations will be available at the offices of the Commission, at 1150 East William Street, Carson City, Nevada 89701 and 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109; and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the

proposed regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adopting any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice has been posted at the county courthouses located in Reno, Carson City, and Las Vegas.

By the Commission,

DONNA WICKHAM, Assistant Commission Secretary

Dated: Carson City, Nevada

(SEAL)

LCB File No. R144-01

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

RENEWABLE ENERGY PORTFOLIO STANDARD

DRAFT OF THE REGULATORY OPERATIONS STAFF

October 12, 2001

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

AUTHORITY: Senate Bill No. 372 of the 71st session of the Nevada Legislature.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 32, inclusive, of this regulation.

Sec. 2. *As used in sections 3 to 18, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in this section of this regulation have the meanings ascribed to them in this section.*

Sec. 3. *"Biomass" has the meaning ascribed to it in Section 4 of Senate Bill No. 372 of the 71st session of the Nevada Legislature, Chapter XXX, Statutes of Nevada 2001.*

"Municipal Waste", as used in that section, includes biogas, which is methane produced as a result of the decomposition of organic materials including, but not limited to, landfill, waste water treatment and industrial digester gases.

Sec. 4. *"Bureau of Consumer Protection" means the Bureau of Consumer Protection in the Office of the Attorney General.*

Sec. 5. *"Commission" means the Public Utilities Commission of Nevada.*

Sec. 6. *"Compliance Period" means a calendar year beginning January 1 and ending December 31.*

Sec. 7. *"Distribution Service" means the service provided over the physical distribution plant of delivering electricity from the transmission system to Retail Customers.*

Sec. 8. *"Forward Banking" is the ability to apply unused renewable energy credits that were produced in one compliance period for compliance with an electric service provider's portfolio standard in a later compliance period.*

Sec. 9. *"Just and Reasonable" has the meaning ascribed to it in section 20 of this regulation.*

Sec. 10. *"Portfolio Standard" has the meaning ascribed to it in section 10 of Senate Bill No. 372 of the 71st session of the Nevada Legislature, Chapter XXX, Statutes of Nevada 2001.*

Sec. 11. *"Provider of Electric Service" or "Provider" has the meaning ascribed to it in section 6 of Senate Bill No. 372 of the 71st session of the Nevada Legislature, Chapter XXX, Statutes of Nevada 2001.*

Sec. 12. *"Renewable Energy" has the meaning ascribed to it in section 7 of Senate Bill No. 372 of the 71st session of the Nevada Legislature, Chapter XXX, Statutes of Nevada 2001.*

Sec. 13. *"Renewable Energy System" has the meaning ascribed to it in section 8 of Senate Bill No. 372 of the 71st session of the Nevada Legislature, Chapter XXX, Statutes of Nevada 2001.*

Sec. 14. *"Retail Customer" has the meaning ascribed to it in section 9 of Senate Bill No. 372 of the 71st session of the Nevada Legislature, Chapter XXX, Statutes of Nevada 2001.*

Sec. 15. *"Solar Renewable Energy System" is a renewable energy system whose direct fuel source is solar radiation, including photovoltaics, solar thermal electric systems, and solar thermal energy systems that reduce the consumption of electricity, which meets the eligibility guidelines in section 25 and 26, below.*

Sec. 16. *"Solar Rating and Certification Corporation (SRCC) " is a corporation whose primary purpose is the development and implementation of certification and labeling programs, and national rating standards for solar thermal equipment.*

Sec. 17. *"Solar Thermal System" is a renewable energy system utilizing solar energy to heat domestic water, or provide domestic space heating and/or cooling where electrical energy is displaced; or a renewable energy system where solar energy is used in combined-cycle operation to increase electric output of an electric generation plant. The number of kWh produced from a solar thermal system is based upon SRCC standards.*

Sec. 18. *Beginning January 1, 2003, all providers of electric service shall meet the minimum renewable energy purchase obligations as set forth in section 10 of Senate Bill No. 372 of the 71st session of the Nevada Legislature, Chapter XXX, Statutes of Nevada 2001, through generation or acquisition from renewable energy systems.*

Sec. 19. 1. *As used in section 7 of Senate Bill No. 372 of the 71st session of the Nevada Legislature, Chapter XXX, Statutes of Nevada 2001, just and reasonable terms and conditions of renewable energy contracts must:*

(a) Accommodate the construction of renewable energy systems to meet the renewable energy portfolio standard;

(b) Not result in a cost to ratepayers that exceeds the standard set forth in subsection 2;

(c) Allow for terms and conditions in renewable energy contracts approved by the

Commission that include, without limitation, provisions for

(1) Non-compliance with renewable energy portfolio standards;

(2) Construction and performance milestones;

(3) Liquidated damages;

(4) Transportation arrangements for the delivery of the renewable energy;

2. The cumulative rate effect of new renewable energy purchased for retail customers who have not elected to receive renewable energy preferentially at a greater price and are served by a utility provider shall be no greater than a target rate effect established by the Commission. For the compliance periods ending December 31, 2003 and 2004, the target rate effect is 0.0005 dollars per kilowatt-hour.

3. For the period from the effective date of this regulation through compliance year 2004, the cumulative cost for renewable energy other than solar shall meet the requirement of subsection 2 above, and when taken together with all other contracts for renewable energy other than solar, shall not exceed a cost that is 40% above the lesser of the levelized price for a standard electric product involving similar amounts of energy for a term of ten years at all hours of the day for a fixed price and the levelized cost to construct and operate a renewable energy facility supplying similar amounts of renewable energy for a period of at least ten years.

(a) The standard electric product shall be the least expensive option for energy and capacity, regardless of fuel type, that is available for purchase by the utility provider of electric service executing the renewable energy contract or contracts.

(b) The cost to construct a renewable energy facility shall be the least expensive option based on a bona fide offer to build and operate a renewable energy facility for ten years or an estimate by the utility provider to build and operate a renewable energy facility.

4. For the period from the effective date of this regulation through compliance year 2004, the cumulative cost for solar renewable energy shall meet the requirement of subsection 2 above, and when taken together with all other contracts for solar renewable energy, shall not

exceed a cost that is 100% above the lesser of the levelized price for a standard electric product involving similar amounts of energy for a term of ten years at all hours of the day for a fixed price and the levelized cost to construct and operate a solar renewable energy facility supplying similar amounts of renewable energy for a period of at least ten years.

(a) The standard electric product shall be the least expensive option for energy and capacity, regardless of fuel type, that is available for purchase by the utility provider of electric service executing the renewable energy contract or contracts.

(b) The cost to construct a solar renewable energy facility shall be the least expensive option based on a bona fide offer to build and operate a solar renewable energy facility for ten years or an estimate by the utility provider to build and operate a solar renewable energy facility.

5. The calculations for such a comparison shall be performed by the provider of electric service entering into the renewable energy contract as follows:

(a) A levelized market price for the renewable energy contract shall be calculated utilizing the energy and capacity rates contained in the contract, incorporating:

(1) any escalators or inflation indices which may be specified in the contract,
(2) any energy and/or capacity delivery projections contained in the contract, and
(3) any other factors contained in the contract which would affect the price paid for electricity deliveries under the contract.

(b) Any escalators, inflation indices, or other items incorporated into the calculation under (a) above shall be determined as the most current projections available at the time the contract is executed. A levelized price for the standard electric product shall be determined based upon prices provided through the broker market.

6. A non-utility provider is not required to make the comparisons and calculations prescribed in subsections 1 through 5 above unless it intends to seek relief from the imposition of an administrative fine based on an assertion that the cost of renewable energy was not just and reasonable. If a non-utility provider seeks relief from the imposition of an administrative fine based on such an assertion:

(a) The assertion shall be made in the annual report described in section 28.

(b) The calculation shall compare the standard electric product or cost to construct and operate in the subsections above with bids received by the provider and used to determine that the cost of renewable energy was not just and reasonable.

Sec. 20. 1. *In determining the amount of renewable energy the provider must acquire in a compliance period, the following must occur:*

(a) The provider of electric service must by April 1, of the compliance period, provide to the regulatory operations staff and the bureau of consumer protection, the total amount of electricity sold by the provider to its Nevada retail customers during the preceding calendar year.

(b) The provider of electric service will use the total amount of electricity that was forecasted to be sold to Nevada retail customers in the compliance period to calculate the amount of kilowatt hours of renewable energy that the provider must generate or acquire for the present compliance period using the percentages set forth in section 10 of Senate Bill No. 372 of the 71st session of the Nevada Legislature, Chapter XXX, Statutes of Nevada 2001. The provider of electric service must by April 1, of the compliance period, provide to the regulatory operations staff and the bureau of consumer protection this calculation.

(c) If the provider acquires renewable energy for the compliance period that is at least equal to the amount calculated in subsection b, the provider will not be assessed an administrative fine.

(d) The provider can include pre-existing contracts for renewable energy in the calculation in subsection b as approved by the Commission.

Sec. 21. 1. *Not later than 30 days after the effective date of this regulation, the provider shall issue an initial request for proposal or competitive solicitation for the renewable portfolio standard.*

2. Not later than 90 days following the end of the request for proposal due date or competitive solicitation process set forth in subsection 1, the provider shall submit the results and any other unsolicited proposals to the regulatory operations staff and the bureau of consumer protection with a recommendation as to which options or contracts should be selected.

3. In evaluating the proposed options or contracts, the provider may consider, without limitation, the following factors with respect to the proposed renewable energy system:

(a) Price;

(b) Contract term;

(c) Location;

(d) Use of natural resources;

(e) Firmness of energy and energy delivery schedule;

(f) Delivery point;

(g) Characteristics of similar renewable energy systems;

(h) Ancillary service requirements;

- (i) Unit contingent provisions;*
- (j) The providers system peak capacity requirements;*
- (k) Scheduling requirements;*
- (l) Transmission system conditions and limitations;*
- (m) Project insurance;*
- (n) Indemnification;*
- (o) Replacement power costs for non-delivery.*

4. Not later than 60 days following submittal by the provider of the subsection 2 documentation, the regulatory operations staff and the bureau of consumer protection may convene a meeting with the provider to evaluate the provider's recommendation.

Sec. 22. Following execution of the renewable energy contracts, the provider shall submit the contracts to the Commission for a determination as to whether the terms and conditions are just and reasonable using the criteria in section 19 and section 21.3. Such contracts shall not be submitted to the commission as an amendment to a plan of action pursuant to NAC 704.9503(3).

Sec. 23. 1. Prior to the submittal of contracts referenced in section 22, the renewable energy system that is larger than 10 kilowatts that is party to the contract shall submit to the commission an application for eligibility that contains the following information:

- (a) The location of the facility or planned facility;*
- (b) The names, addresses and telephone numbers of the owner(s) and designated representative(s);*
- (c) The generation or conversion technology;*
- (d) The renewable energy type;*

(e) Use and amount of any non-renewable fuel types;

(f) The rated capacity, the estimated output of the facility, and the date the renewable energy system was placed or will be placed in service. If the renewable energy system is a planned facility and has not yet been placed in service, the owner or designated representative must also provide:

(I) The construction schedule for the facility;

(II) A list of all permits needed and the agency from which permission will be sought;

(III) All significant construction and permitting milestones; and

(IV) The projected date for the commencement of operation.

(g) Evidence of compliance with Federal, state, and local statutes, regulations, and permits as required.

(h) Information verifying that the renewable energy system transmits or distributes the electricity that it generates from renewable energy in accordance with section 8 of Senate Bill No. 372 of the 71st session of the Nevada Legislature, Chapter XXX, Statutes of Nevada, 2001.

(i) Any other information the Commission determines to be necessary.

2. Prior to the submittal of contracts referenced in section 22 or prior to the commercial operation of the renewable energy system, the renewable energy system that is smaller than 10 kilowatts that is party to the contract shall submit to the Commission an application for eligibility that contains the following information:

(a) The location of the facility or planned facility;

(b) The names, addresses and telephone numbers of the owner(s) and designated representative(s);

(c) The generation or conversion technology;

(d) The renewable energy type;

(e) The rated capacity, the estimated output of the facility, and the date the renewable energy system was placed or will be placed in service;

(f) The name of the utility providing the renewable energy system with electric service; and

(g) Any other information the Commission determines to be necessary.

3. If following the submission of the application for eligibility by the renewable energy system but before commercial operation, any of the information submitted pursuant to subsection 1 materially changes or changes such that the output of the renewable energy system will increase or decrease by more than 5% from the level originally provided to the commission, the renewable energy system shall submit an amended application to the commission.

4. The application for eligibility in subsection 1 will be noticed for hearing by the Commission and processed pursuant to the procedures authorized in NAC chapter 703. The application for eligibility in subsection 2 will be noticed by the Commission and processed pursuant to the procedures authorized in NAC chapter 703, but no hearing will be held unless the case is contested or the commission deems it otherwise necessary. The Commission will issue its order on the renewable energy system's application for eligibility no later than 120 days after it is filed or it is deemed denied. The Commission may at any time request and obtain information from the Renewable Energy System operators and Electric Service Providers that the Commission determines is necessary to monitor or enforce compliance with this regulation.

Sec. 24. *For a renewable energy system that uses less than 2% fossil fuel input on a British Thermal Unit basis, the total output of the facility shall qualify for producing*

renewable energy. For a renewable energy system that uses more than 2% fossil fuel on a BTU basis, only the fraction of the output that can be attributed to renewable energy generation (based on BTU fuel input or separate metering, if practicable) may qualify for producing renewable energy.

Sec. 25. Solar water heating systems are eligible to produce renewable energy if the applicant demonstrates that the systems will be or have been installed in conjunction with an electric water heater where natural gas is otherwise unavailable and if certified by the SRCC. If not metered with a thermal energy meter, the commission shall use the SRCC annual performance estimates to determine the equivalent amount of renewable energy created by such systems.

Sec. 26. Solar thermal systems other than those in section 25, that displace the consumption of fossil fuel generated electricity and whose kWh-equivalent output can be adequately measured or estimated are eligible to produce renewable energy.

Sec. 27. The output of any Renewable Energy System that generates electricity and is greater than 10 kW in size must be metered and capable of being verified.

Sec. 28. 1. Each provider of electric service shall be responsible for acquiring or generating sufficient electricity from renewable energy systems or, if applicable, acquiring sufficient renewable energy credits on an annual basis to comply with the portfolio standard.

2. Each provider of electric service has the burden to demonstrate compliance with the portfolio standard in each compliance period.

3. Beginning on April 1, 2004 and each April 1 thereafter, each provider of electric service shall submit to the Commission an annual report that sets forth:

(a) The electric service provider's total retail electric sales in Nevada for the compliance period;

(b) The information for in section 20.1(a) and (b);

(c) The amount of electricity which the provider generated or acquired from renewable energy systems during the compliance period;

(d) The amount of renewable energy credits that the provider intends to carry forward to the next compliance period;

(e) Using the information generated in subsections a and b, an affirmative showing as to whether the provider is in compliance with the portfolio standard in section 10 of Senate Bill No. 372 of the 71st session of the Nevada Legislature, Chapter XXX, Statutes of Nevada 2001. If the provider is not in compliance with the portfolio standard, a detailed explanation for the non-compliance must be provided, including information with respect to infeasibility as set forth in section 29.3(d).

(f) The capacity of each renewable energy system owned, operated or controlled by the provider, the total amount of electricity generated by each such system during the compliance period and the percentage of that total amount which was generated directly from renewable energy; and

(g) Whether, during the compliance period, the provider began construction on, acquired or placed into operation any renewable energy system and, if so, the date of any such event.

(h) When renewable energy credits are acquired from a renewable energy system not owned or operated by the provider, such credits must be accompanied by an attestation from the renewable energy system owner or operator that the renewable energy credit so acquired has not been and will not be sold or otherwise exchanged for compensation in any other state

or jurisdiction, and that the energy represented by the renewable energy credit has not been and will not be included within a blended energy product certified to include a fixed percentage of renewable energy in any other state or jurisdiction.

Sec. 29. 1. *Within 30 days after the submission to the Commission of an annual report by an electric service provider, the Commission will issue an order indicating whether or not the electric service provider fully complied with the portfolio standard for the compliance period.*

(a) If the Commission determines that the electric service provider did not fully comply with the portfolio standard, the Commission will indicate the number of kilowatt-hours of electricity by which the electric service provider failed to satisfy the portfolio standard and issue a notice of non-compliance and set the matter for hearing. The provider will be required to substantiate compliance with the portfolio standard to the commission pursuant to the specifications set forth in the Commission's notice.

(b) If the Commission indicates the electric service provider did comply with the portfolio standard, the Commission must also indicate the excess number of kilowatt-hours of electricity, if any, by which the electric service provider satisfied the portfolio standard in the compliance period just ended.

2. If after the hearing, the Commission determines an electric service provider did not fully comply with the portfolio standard for the compliance period, the Commission may impose an administrative fine assessed on each kilowatt-hour of electricity by which the electric service provider failed to satisfy the portfolio standard.

3. The administrative fine imposed by the Commission on an electric service provider that fails to fully comply with the portfolio standard shall not be less than, on a per kilowatt-hour

basis, the difference between the just and reasonable price for renewable energy contracts and the provider's average cost per kilowatt-hour.

(a) In no event will an administrative fine or penalty be assessed by the Commission if the provider elected not to construct their own renewable energy system.

(b) An electric service provider may submit to the Commission within thirty (30) days of the issuance of the Commission's order imposing an administrative fine, a petition for an exemption from the administrative fine.

(c) The Commission shall schedule the petition for hearing no later than sixty (60) days after the petition is filed.

(d) The Commission may, after hearing, grant in whole or in part an electric service provider's petition for exemption from the imposition of an administrative fine. The Commission may only grant the petition for exemption if the Commission determines it was not feasible for the electric service provider to acquire or generate sufficient electricity from renewable energy. The Commission may only find such acquisition or generation was infeasible if it finds the following:

(I) Following the issuance by the electric service provider of a request for proposals to supply renewable energy, there was an insufficient amount of available renewable energy offered;

(II) The proposals received by the provider from renewable energy systems did not meet the just and reasonable terms and conditions as set forth in section 19;

(III) Failure or the inability of a renewable energy system to meet the commitments made to the provider of electric service in the renewable energy contracts which results in an insufficient amount of electricity made available to the provider;

(IV) Federal, state or local requirements or standards that prevented the renewable energy system from fulfilling the terms and conditions of the renewable energy contract; and

(V) Other factors the Commission may deem relevant.

4. If any finding of infeasibility by the Commission is attributable to non-performance on behalf of the renewable energy system, which may include, without limitation, failure to meet the terms and conditions of the renewable energy systems contract, the Commission will not impose an administrative fine or any other penalty on the provider of electric service.

Sec. 30. *An electric service provider may count any or all of the excess number of kilowatt-hours of electricity by which the electric service provider satisfied the portfolio standard in the compliance period just ended, and as determined in section 29.1(b) of this regulation, as electricity which the provider generated or acquired from renewable energy systems in the five compliance periods subsequent to the compliance period just ended.*