

**REVISED ADOPTED REGULATION OF THE
PUBLIC UTILITIES COMMISSION OF NEVADA**

LCB File No. R144-01

Effective May 31, 2002

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

AUTHORITY: §§1-33, NRS 703.025, 704.210 and NRS 704.7801 to 704.7828, inclusive; §§34 and 35, NRS 703.025, 704.210 and 704.736 to 704.751, inclusive.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 33, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 33, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 20, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. 1. *“Biogas” means methane and other gases produced from the decomposition of organic matter.*

2. The term includes, without limitation:

(a) Landfill gases.

(b) Wastewater treatment gases.

(c) Industrial digester gases.

Sec. 4. 1. *“Biomass” has the meaning ascribed to it in NRS 704.007.*

2. The term includes, without limitation:

(a) Biogas.

(b) Any product made from agricultural crops or residues, including, without limitation, cooking oils.

Sec. 5. *“Bureau of consumer protection” means the bureau of consumer protection in the office of the attorney general.*

Sec. 6. 1. *“Compliance year” means a calendar year that begins on January 1 and ends on December 31.*

2. *The term does not include any calendar year that begins before January 1, 2003.*

Sec. 7. *“New renewable energy contract” means a renewable energy contract that is executed on or after the effective date of this regulation.*

Sec. 8. *“Nonutility provider” means a provider of electric service that is not a public utility.*

Sec. 9. *“Portfolio standard” has the meaning ascribed to it in NRS 704.7805.*

Sec. 10. *“Preexisting renewable energy contract” means a renewable energy contract:*

1. *Which was executed before the effective date of this regulation; and*

2. *Which is pending approval by the commission or which the commission has approved as a preexisting renewable energy contract.*

Sec. 11. *“Provider of electric service” and “provider” have the meaning ascribed to them in NRS 704.7808.*

Sec. 12. *“Regulatory operations staff” means the regulatory operations staff of the commission.*

Sec. 13. *“Renewable energy” has the meaning ascribed to it in NRS 704.7811.*

Sec. 14. *“Renewable energy contract” has the meaning ascribed to it in NRS 704.7821.*

Sec. 15. *“Renewable energy system” has the meaning ascribed to it in NRS 704.7815.*

Sec. 16. *“Retail customer” has the meaning ascribed to it in NRS 704.7818.*

Sec. 17. 1. *“Solar renewable energy system” means a renewable energy system that uses solar radiation as its direct source of energy.*

2. *The term, includes, without limitation:*

(a) A photovoltaic system.

(b) A solar thermal electric system.

(c) A solar thermal system.

Sec. 18. 1. *“Solar thermal system” means an energy system that:*

(a) Displaces the use of electricity generated from nonrenewable energy by using solar radiation to heat water or provide space heating or cooling and meets the requirements of section 33 of this regulation; or

(b) Uses solar radiation in a combined-cycle operation to increase the electric output of an electric generating plant or unit.

2. *The term includes, without limitation:*

(a) A solar thermal electric system.

(b) A solar thermal energy system that reduces the consumption of electricity.

Sec. 19. *“SRCC” means the Solar Rating and Certification Corporation or any successor in interest to that organization.*

Sec. 20. *“Utility provider” means a provider of electric service that is a public utility.*

Sec. 21. 1. *For the purposes of sections 2 to 33, inclusive, of this regulation, the commission hereby adopts by reference the ratings, certification standards and annual performance estimates of the SRCC.*

2. *Copies of the ratings, certification standards and annual performance estimates of the SRCC are available at no charge from the SRCC, c/o FSEC, 1679 Clearlake Road, Cocoa, Florida 32922-5703, or at the Internet website of the SRCC, <<http://www.solar-rating.org>>.*

Sec. 22. *1. Except as otherwise provided in sections 2 to 33, inclusive, of this regulation, each provider shall comply with its portfolio standard during each compliance year by generating or acquiring electricity from renewable energy systems in the amounts required by NRS 704.7821 for that compliance year.*

2. Each provider has the burden to prove that it complied with its portfolio standard during each compliance year.

Sec. 23. *The commission may, at any time, require a provider or an owner or operator of a renewable energy system providing electricity to a provider pursuant to a renewable energy contract to provide the commission with any information that the commission determines is necessary to monitor or enforce compliance with the provisions of sections 2 to 33, inclusive, of this regulation.*

Sec. 24. *In calculating the total number of kilowatt-hours that a provider generates or acquires from renewable energy systems during a compliance year, the provider may use the following kilowatt-hours if the provider has complied with all requirements for inclusion of the kilowatt-hours in its calculation:*

1. Any kilowatt-hours generated by the provider from its own renewable energy systems during the compliance year;

2. Any kilowatt-hours acquired by the provider during the compliance year pursuant to preexisting renewable energy contracts;

3. *Any kilowatt-hours acquired by the provider during the compliance year pursuant to new renewable energy contracts;*

4. *Any equivalent kilowatt-hours attributable to the provider during the compliance year from solar thermal systems;*

5. *Any excess kilowatt-hours fed back to the provider during the compliance year from net metering systems used by customer-generators pursuant to NRS 704.766 to 704.775, inclusive; and*

6. *Any kilowatt-hours that the provider is authorized to carry forward from previous compliance years.*

Sec. 25. 1. *Not later than April 1 of each compliance year, each provider shall submit to the regulatory operations staff and the bureau of consumer protection:*

(a) *The total number of kilowatt-hours sold by the provider to its retail customers in this state during the most recently completed compliance year. For compliance year 2003, calendar year 2002 shall be deemed to be the most recently completed compliance year for the purposes of this paragraph.*

(b) *The estimated number of kilowatt-hours that the provider expects to sell to its retail customers in this state during the current compliance year.*

(c) *The estimated number of kilowatt-hours that the provider must generate or acquire from renewable energy systems to comply with its portfolio standard for the current compliance year, as calculated by the provider pursuant to subsection 2.*

2. *To calculate the estimated number of kilowatt-hours that the provider must generate or acquire from renewable energy systems to comply with its portfolio standard for the current compliance year, the provider must multiply the estimated number of kilowatt-hours that the*

provider expects to sell to its retail customers in this state during the current compliance year by the required percentage that is set forth in NRS 704.7821 for the current compliance year.

3. If the total number of kilowatt-hours that the provider generates or acquires from renewable energy systems for the current compliance year is equal to or exceeds the estimated number of kilowatt-hours as calculated by the provider pursuant to subsection 2, the commission will not impose an administrative fine or take other administrative action against the provider for that compliance year.

Sec. 26. 1. Beginning with compliance year 2004, not later than April 1 of each compliance year, each provider shall submit to the commission an annual report that sets forth all the information required by this section.

2. The annual report must set forth:

(a) The capacity of each renewable energy system owned, operated or controlled by the provider, the total number of kilowatt-hours generated by each such system during the most recently completed compliance year and the percentage of that total amount which was generated directly from renewable energy.

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

(c) The total number of kilowatt-hours sold by the provider to its retail customers in this state during the most recently completed compliance year.

(d) The total number of kilowatt-hours that the provider generated or acquired from renewable energy systems during the most recently completed compliance year and, from that total number of kilowatt-hours, subtotals for the number of kilowatt-hours:

- (1) Generated by the provider from its own renewable energy systems;*
 - (2) Acquired by the provider pursuant to preexisting renewable energy contracts;*
 - (3) Acquired by the provider pursuant to new renewable energy contracts;*
 - (4) Attributable to the provider from solar thermal systems;*
 - (5) Fed back to the provider from net metering systems used by customer-generators pursuant to NRS 704.766 to 704.775, inclusive; and*
 - (6) Carried forward by the provider from previous compliance years.*
- (e) The total number of kilowatt-hours that the provider intends to carry forward from the most recently completed compliance year.*
- (f) The estimated number of kilowatt-hours that the provider expects to sell to its retail customers in this state during the current compliance year.*
- (g) The estimated number of kilowatt-hours that the provider must generate or acquire from renewable energy systems to comply with its portfolio standard for the current compliance year, as calculated by the provider pursuant to section 25 of this regulation.*
- (h) If the provider is a utility provider, the estimated costs for the utility provider to comply with its portfolio standard for the current compliance year. If appropriate, the utility provider must report such estimated costs for each major type of cost, such as general and administrative costs and costs for purchased power.*
- 3. In the annual report, the provider must make an affirmative showing that the provider complied with its portfolio standard during the most recently completed compliance year. If the provider did not comply with its portfolio standard during the most recently completed compliance year, in the annual report the provider must:*
- (a) Make a detailed explanation for its noncompliance; and*

(b) Provide any information that would support an exemption for the provider from any administrative fine or other administrative action.

4. If, to comply with its portfolio standard during the most recently completed compliance year, the provider acquired any kilowatt-hours from a renewable energy system that is not owned, operated or controlled by the provider, the annual report must include an attestation from the owner or operator of the renewable energy system that the energy represented by those kilowatt-hours:

(a) Has not been and will not be sold or otherwise exchanged for compensation or used for renewable energy credits in any other state or jurisdiction; and

(b) 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. 27. 1. *Not later than 30 days after the date on which a provider submits its annual report, the commission will issue an order stating whether the provider complied with its portfolio standard during the most recently completed compliance year.*

2. If the commission determines that the provider complied with its portfolio standard during the most recently completed compliance year, the commission will determine whether the provider is authorized to carry forward any excess kilowatt-hours from that compliance year. If the commission determines that the total number of kilowatt-hours which the provider generated or acquired from renewable energy systems during the most recently completed compliance year exceeded the total number of kilowatt-hours which the provider needed to comply with its portfolio standard for that compliance year:

(a) The commission will state in its order the number of excess kilowatt-hours which the provider is authorized to carry forward from that compliance year; and

(b) The provider may use those excess kilowatt-hours to comply with its portfolio standard for the 4 compliance years immediately following that compliance year.

3. If the commission determines that the provider did not comply with its portfolio standard during the most recently completed compliance year, the commission will:

(a) State in its order the number of kilowatt-hours by which the provider failed to comply with its portfolio standard; and

(b) Issue a notice of noncompliance and schedule a hearing on the matter.

4. At the hearing, the provider has the burden to prove that it complied with its portfolio standard during the most recently completed compliance year.

5. Except as otherwise provided in sections 2 to 33, inclusive, of this regulation, if, after the hearing, the commission determines that the provider did not comply with its portfolio standard during the most recently completed compliance year, the commission may impose an administrative fine that is assessed against the provider on each kilowatt-hour by which the provider failed to comply with its portfolio standard or take other administrative action against the provider, or do both.

6. In determining whether to impose an administrative fine or take other administrative action against the provider, the commission will consider whether the provider should have built its own renewable energy systems to comply with its portfolio standard.

7. If the commission imposes an administrative fine that is assessed against a provider on each kilowatt-hour by which the provider failed to comply with its portfolio standard, the commission will calculate the administrative fine, on a per kilowatt-hour basis:

(a) For a utility provider, in an amount that is not less than the difference between the just and reasonable average cost per kilowatt-hour to acquire electricity pursuant to renewable

energy contracts and the overall average cost per kilowatt-hour to generate and acquire electricity that is incurred by the utility provider.

(b) For a nonutility provider, in an amount that is not less than the difference between the just and reasonable average cost per kilowatt-hour to acquire electricity pursuant to renewable energy contracts and the overall average cost per kilowatt-hour to generate and acquire electricity that is incurred by a utility provider designated by the commission.

Sec. 28. *1. If the commission imposes an administrative fine or takes other administrative action against a provider pursuant to section 27 of this regulation, not later than 30 days after the date on which the commission issues its order, the provider may file with the commission a petition for an exemption from the administrative fine or other administrative action. If the provider files such a petition, the commission will schedule a hearing on the petition to be held not later than 75 days after the date on which the petition is filed.*

2. For the provider to be entitled to an exemption, the commission must determine that there was not a sufficient supply of electricity from renewable energy systems made available to the provider during the most recently completed compliance year. The commission will make such a determination only if it finds that:

(a) After the provider made its request for proposals for renewable energy contracts, the proposals received by the provider did not offer sufficient quantities of electricity for the provider to comply with its portfolio standard or did not offer sufficient quantities of electricity pursuant to renewable energy contracts with just and reasonable terms and conditions;

(b) After the provider contracted for sufficient quantities of electricity pursuant to renewable energy contracts with just and reasonable terms and conditions, one or more of the

renewable energy systems under contract were unable or failed to meet their contractual commitments to the provider or were prevented from meeting their contractual commitments to the provider based on federal, state or local requirements or standards;

(c) The provider could not have economically or technically placed into commercial operation its own renewable energy systems; or

(d) Other facts and circumstances which the commission deems relevant support a conclusion that there was not a sufficient supply of electricity from renewable energy systems made available to the provider. Such other facts and circumstances may include, without limitation, any regulatory delay attributable to the State of Nevada or any other governmental entity.

3. If, after the hearing, the commission determines that there was not a sufficient supply of electricity from renewable energy systems made available to the provider during the most recently completed compliance year, the commission:

(a) Will grant, in whole or in part, the petition for an exemption from the administrative fine or other administrative action; and

(b) Will not impose an administrative fine or take other administrative action against the provider with regard to any insufficiency in the portfolio standard that occurs because one or more of the renewable energy systems under contract were unable or failed to meet their contractual commitments to the provider or were prevented from meeting their contractual commitments to the provider based on federal, state or local requirements or standards.

Sec. 29. 1. If a utility provider executes a new renewable energy contract, the utility provider shall submit the new renewable energy contract to the commission for approval. The new renewable energy contract shall be deemed to be a long-term purchase obligation for the

purposes of NAC 704.9005 to 704.9525, inclusive, regardless of the term of the contract or the amount of electricity to be acquired pursuant to the contract, and the utility provider shall submit the contract to the commission for approval in accordance with the provisions of those sections.

2. To approve a new renewable energy contract executed by a utility provider, the commission must determine that the terms and conditions of the new renewable energy contract are just and reasonable. In making its determination, the commission will consider, without limitation:

(a) The reasonableness of the price for the electricity based on the factors set forth in section 30 of this regulation;

(b) The term of the contract;

(c) The location of each renewable energy system that is subject to the contract;

(d) The use of natural resources by each renewable energy system that is subject to the contract;

(e) The firmness of the electricity to be delivered and the delivery schedule;

(f) The delivery point for the electricity;

(g) The characteristics of similar renewable energy systems;

(h) The requirements for ancillary services;

(i) The unit contingent provisions;

(j) The system peak capacity requirements of the utility provider;

(k) The requirements for scheduling;

(l) Conditions and limitations on the transmission system;

(m) Project insurance;

(n) The costs for procuring replacement power in the event of nondelivery;

(o) Information verifying that each renewable energy system which is subject to the contract transmits or distributes or will transmit or distribute the electricity that it generates from renewable energy in accordance with the requirements of NRS 704.7815;

(p) For each owner and for each operator of a renewable energy system that is subject to the contract, the total number of renewable energy systems that each such owner and each such operator is or has been associated with as an owner or operator, including, without limitation, all renewable energy systems that are actively being constructed by or have been constructed by the owner or operator;

(q) For each renewable energy system that is subject to the contract, the points of interconnection with the electric system of the utility;

(r) The interconnection priority which has been established for the available transmission capacity of the utility provider for all proposed renewable energy systems that will interconnect and begin commercial operation within the 3-year period immediately following the date on which the new renewable energy contract is submitted for approval;

(s) Any requests for transmission service that have been filed with the utility provider;

(t) For each renewable energy system that is subject to the contract, any evidence that an environmental assessment, an environmental impact statement or an environmental impact report is being completed or has been completed with regard to the renewable energy system, or any evidence that a contract has been executed with an environmental contractor who will prepare such an assessment, statement or report within the 3-year period immediately preceding the date on which the renewable energy system is projected to begin commercial operation;

(u) Whether any required permits have been acquired from or any applications for such permits have been filed with the appropriate governing agencies within the 3-year period immediately preceding the date on which the renewable energy system is projected to begin commercial operation;

(v) Whether any applications for developmental rights have been filed with the appropriate federal agencies, including, without limitation, the United States Bureau of Land Management, where the granting of such developmental rights is not contingent upon a competitive bidding process;

(w) For each renewable energy system that is subject to the contract, any evidence that establishes rights of ownership, possession or use concerning land or natural resources, including, without limitation, deeds, land patents, leases, contracts, licenses or permits concerning land, geothermal drilling rights or other rights to natural resources; and

(x) Whether the utility provider has any economical dispatch rights.

Sec. 30. 1. *For the purposes of this section, each utility provider shall calculate the price for electricity acquired pursuant to a new renewable energy contract by calculating the levelized market price for the electricity based on:*

(a) The rates for electricity and capacity set forth in the contract;

(b) Any escalators or inflation indices set forth in the contract;

(c) Any delivery projections for electricity and capacity set forth in the contract; and

(d) Any other terms and conditions set forth in the contract that would affect the price paid for electricity acquired pursuant to the contract.

FLUSH *All data that the utility provider uses to make its calculation must be based on the most current projections available when the new renewable energy contract is executed.*

2. After the utility provider calculates the price pursuant to subsection 1, the commission will determine whether the price is reasonable. In making its determination, the commission will consider, without limitation:

(a) Whether the new renewable energy contract comports with the utility provider's most recently approved plan to increase its supply of or decrease the demand for electricity that is submitted to the commission pursuant to NAC 704.9005 to 704.9525, inclusive;

(b) The reasonableness of any price indexing provision set forth in the new renewable energy contract;

(c) As compared to competing facilities or energy systems that use one or more fossil fuels as their primary source of energy to generate electricity, whether the renewable energy systems that are subject to the contract will reduce environmental costs in this state, including, without limitation:

(1) Air emissions;

(2) Water consumption;

(3) Waste disposal and other land uses; and

(4) Impacts on wildlife;

(d) The net economic impact and all environmental benefits and environmental costs to this state in accordance with NAC 704.9005 to 704.9525, inclusive;

(e) Any economic development benefits that might inure to any sector of the economy of this state, including, without limitation, any economic development benefits that might inure to the agricultural customers identified in paragraph (d) of subsection 1 of NAC 704.926;

(f) The diversity of energy sources being used to generate the electricity that is consumed in this state;

(g) The diversity of energy suppliers generating or selling electricity in this state;

(h) The value of any price hedging or energy price stability associated with the new renewable energy contract;

(i) The date on which each renewable energy system that is subject to the contract is projected to begin commercial operation;

(j) Whether the utility provider has any flexibility concerning the quantity of electricity that the utility provider must acquire pursuant to the new renewable energy contract;

(k) Whether the new renewable energy contract will result in any benefits to the transmission system of the utility provider; and

(l) Whether the electricity acquired pursuant to the new renewable energy contract is priced at or below the utility provider's long-term avoided cost rate.

3. If a utility provider will be using a new renewable energy contract to comply with the solar energy requirements of its portfolio standard, the price for electricity acquired pursuant to that contract will be evaluated separately from the price for electricity acquired pursuant to other new renewable energy contracts that will not be used to comply with the solar energy requirements of the portfolio standard.

Sec. 31. *The electric output of any renewable energy system that generates electricity must be metered and capable of being verified if the maximum electric output of the renewable energy system is more than 10 kilowatts.*

Sec. 32. 1. *If a renewable energy system uses any fossil fuel as an energy source to generate electricity and that fossil fuel constitutes 2 percent or less of the total input, as measured in British thermal units, used by the renewable energy system to generate electricity,*

the total electric output of the renewable energy system qualifies as electricity generated from renewable energy.

2. If a renewable energy system uses any fossil fuel as an energy source to generate electricity and that fossil fuel constitutes more than 2 percent of the total input, as measured in British thermal units, used by the renewable energy system to generate electricity, only the proportion of the total electric output of the renewable energy system that can be attributed to the use of renewable energy qualifies as electricity generated from renewable energy. The proportion of the total electric output that qualifies as electricity generated from renewable energy must be calculated based on:

(a) The proportion that renewable energy constitutes of the total input, as measured in British thermal units, used by the renewable energy system to generate electricity; or

(b) If practicable, separate metering.

Sec. 33. *1. A solar thermal system which displaces the use of electricity generated from nonrenewable energy and which is used as a solar water heating system qualifies as a renewable energy system only if the solar water heating system is certified by the SRCC and is installed in conjunction with an electric water heater in a location where natural gas is unavailable. To calculate the number of equivalent kilowatt-hours attributable to the solar water heating system, the provider must use:*

(a) A thermal energy meter; or

(b) If the solar water heating system is not metered with a thermal energy meter, the annual performance estimates of the SRCC for the solar water heating system.

2. A solar thermal system which displaces the use of electricity generated from nonrenewable energy and which is used for a purpose other than as a solar water heating

system qualifies as a renewable energy system only if the commission determines that the provider can adequately measure or estimate the number of equivalent kilowatt-hours attributable to the solar thermal system.

Sec. 34. NAC 704.9113 is hereby amended to read as follows:

704.9113 “Long-term purchase obligation” means ~~the~~:

1. A new renewable energy contract that must be submitted to the commission for approval pursuant to section 29 of this regulation, regardless of the term of the contract or the amount of electricity to be acquired pursuant to the contract; and

2. Any other contract for the purchase of more than 5 megawatts and having a term of more than 3 years.

Sec. 35. NAC 704.9503 is hereby amended to read as follows:

704.9503 A utility shall continually monitor its plan of action and shall apply for permission to amend its plan before it submits its next plan if any of the following circumstances exist:

1. The utility anticipates submitting an application for a permit to construct a utility facility pursuant to NRS 704.820 to 704.900, inclusive, which was not previously approved as part of the plan of action.

2. The utility makes a commitment for the acquisition or construction of a facility which was not previously approved as part of the plan of action.

3. The utility makes a commitment for a long-term purchase obligation which was not previously approved as part of the plan of action. A long-term purchase obligation with a qualifying facility is not subject to the provisions of this subsection if ~~the~~:

(a) The long-term purchase obligation is not a new renewable energy contract that must be submitted to the commission for approval pursuant to section 29 of this regulation; and

(b) *The* cumulative contractual amount of power purchased does not exceed the capacity limitation specified for the utility's avoided cost rate established pursuant to NAC 704.690 to 704.745, inclusive.

4. The utility makes a commitment for an option which was not available at the time the plan was approved.

5. The basic data used in the formation of the plan requires significant modification which affects the choice of a resource which was approved as part of the plan of action.

FLUSH The conditions under which an amendment is sought must be specifically set forth in the application for amendment.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R144-01**

DOCKET NO. 01-7029

The Public Utilities Commission of Nevada adopted regulations assigned LCB File No. R144-01 which pertain to portfolio standards for renewable energy (chapter 704 of the Nevada Administrative Code) on May 8, 2002.

Notice date: 3/18/2002

Date of adoption by agency: 5/8/2002

Hearing date: 5/6/2002

Workshop date: 3/14/2002

Filing date: 5/31/2002

INFORMATIONAL STATEMENT

The following statement is submitted for adopted amendments to Nevada Administrative Code ("NAC") 704 and 705.

1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

The regulations concerning renewable resources of electricity in Nevada in Public Utilities Commission of Nevada ("Commission") Docket No. 01-7029 were noticed on three occasions: two (2) Notices of Workshops were issued on July 31, 2001, and September 14, 2001, and a combined Notice of Intent to Amend/Adopt/Repeal Regulations, Notice of Workshop and Notice of Hearing was issued on October 12, 2001, in the Elko Daily Free Press, Ely Daily Times, Humboldt Sun, Las Vegas Review Journal, Mineral County Independent, Nevada Appeal, Reno Gazette Journal, and Tonopah Times-Bonanza. Additionally, the notices were mailed to county clerks, county libraries and all persons who requested inclusion on the Commission's service list. The Commission also sought public comment in two (2) procedural orders: Procedural Order #1 which was issued September 11, 2001, and Procedural Order #2 which was issued October 17, 2001. The procedural orders were sent to all persons who requested inclusion on the Commission's service list.

In addition to the public response from affected businesses discussed in #3 below, the following represents a summary of the public responses that were made to the Commission at the duly-noticed Workshop held on August 31, 2001: Richard Burdette, Manager, Resource and Marketing, Regulatory Operations Staff ("Staff"), suggested that there were six (6) issues that needed to be addressed in this renewable resource docket, which included feasibility, the definition of just and reasonable, renewable RFP's and the resource planning process, the renewable energy credit system, renewable requirement forgiveness, and administrative fines; Dr. James Polito, Economist with the Bureau of Consumer Protection ("BCP"), agreed with Mr. Burdette's description of the issues that needed to be resolved, however, Dr. Polito proposed that prices for renewable resources should be considered just and reasonable relative to construction options not fossil fuels and the utilities not in compliance with the renewable portfolio standards should be made to demonstrate why they were unable or unwilling to meet the requirements;

Joseph Johnson, an individual, stated that he agreed with the schedule and had some concern regarding the just and reasonable standard; and Art Johnston, an individual, supported hydroelectric and nuclear power as reliable renewable energy sources.

In addition to the public response from affected businesses discussed in #3 below, the following represents a summary of the public responses that were made to the Commission at the continued Workshop held on October 9, 2001: Richard Burdette, Manager of Resource and Market, Staff, discussed the issues of renewable energy credits and their limited use, the separate solar component, and administrative fines; Dr. James Polito, Economist with the BCP, commented that the BCP supported a diverse and reliable portfolio at just and reasonable prices; and Dave McNeil, Administrator with the Nevada State Energy Office, requested the addition of 'cooling' to Section 18 if Staff's proposed regulations and suggested that biodiesel was a Nevada product made from recycling current waste stream.

In addition to the public response from affected businesses discussed in #3 below, the following represents a summary of the public responses that were made to the Commission at the duly-noticed Workshop held on November 19, 2001: Richard Burdette, Manager of Resource and Market, Staff, discussed the caps in the proposed regulations, specifically in Section 19.2 where the rate impact of compliance with the renewables standard cannot be higher than a half mill, and the second cap in Section 19.3 and 19.4 which sets a cap of forty (40) percent above a broker product and 100 percent above that standard product for the cost of renewables; Dr. James Polito, Economist with the BCP, suggested that a 'just and reasonable' price could be determined by looking at the cost of service of the product as estimated by what the cost would be to construct a renewable energy facility and by examining the rate impact, Dr. Polito further suggested that the term 'average cost' be defined in the proposed regulations to avoid confusion and quoted his research on energy efficiency and renewable energy network from the Department of Energy; Kevin C. Powers, Principal Deputy of the Legislative Counsel Bureau ("LCB"), stated that the definition of 'biomass' as defined in Section 38 of AB 661 is broad enough to allow the Commission to give shape to it; Joseph Johnson, an individual, supported the exclusion of Section 19.3 and 19.4 from the just and reasonable standard; Brook Marlowe, an individual, informed the Commission that citizens are concerned about the cost of energy and hesitant because of the cost of renewables and proposed that the Commission provide incentives to developers so that the money for renewable projects doesn't have to be put up all at once; Betsy Gledhill, an individual, expressed support for renewable energy as a clean and dependable resource; Ed Powell, an individual, advocated distributed generation from many sources as a more dependable power source.

In addition to the public response from affected businesses discussed in #3 below, the following represents a summary of the public responses that were made to the Commission at the duly-noticed Hearing held on November 26, 2001: Richard Burdette, Manager of Resource and Marketing, Staff, stated that, in Staff's revisions to the LCB copy of the proposed regulations, the word 'credit' would be stricken as it is undefined, Mr. Burdette also informed the Commission that Staff had added language to Section 22.3 so that renewable energy could be considered as part of the resource planning process, and noted an additional change to Section 31.2 that required the utility to include whatever contracts are entered into pursuant to SB 372 during this first compliance period in the next resource plan; Mark Harris, Resource Planning Engineer, Staff, presented information regarding wind and biomass projects contained in a memorandum from Ryan Wiser of the Lawrence Berkeley Laboratory; Dr. James Polito, Economist with the BCP, stated that, while both Staff and the Sierra Pacific Power Company ("Sierra Pacific") calculate the half mill cap in a similar way, they use different values of comparison to determine

if the rate comparison test is satisfied, Dr. Polito suggested language this difference and clear up any confusion that may have resulted; Joseph Johnson, an individual, discussed the issue of how geothermal contracts already in existence where Sierra Pacific has a significant over-compliance with the existing standard and the trading of this compliance; and Ed Powell, an individual, expressed support for renewable energy resources and his commitment to pay a significant amount for these resources.

A copy of the summary may be obtained by calling the Commission at (775) 687-6001 or (702) 486-2600, or by writing to the Commission at 1150 East William Street, Carson City, Nevada 89701 or 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109.

2. The number of persons who:

(a) Attended the workshop:

August 31, 2001: 38
October 9, 2001: 26
November 19, 2001: 35

(b) Testified at the workshop:

August 31, 2001: 21
October 9, 2001: 21
November 19, 2001: 27

(c) Attended the hearing:

November 26, 2001: 29

(d) Submitted to the agency written comments:

Written comments were submitted to the Commission by Staff; BCP; Nevada Power Company ("Nevada Power") and Sierra Pacific; Center for Energy and Economic Development ("CEED"); Caithness Dixie Valley, LLC, Empire Energy, LLC, Ormat Nevada, and EnergySource, LLC; Barrick Goldstrike Mines Inc. ("Barrick"); Reliant Energy Renewables Inc. ("Reliant"); Vulcan Power Company ("Vulcan"), FarWest Energy ("FarWest"), Sierra Watch, and the Land and Water Fund of the Rockies ("Land and Water Fund"); Global Renewable Energy Partners ("GREP") and the Nevada Test Site Development Corporation ("NTSDC"); American Wind Energy Association ("American Wind"); Earth Power Resources, Inc.; CSC Pacific Corp.; Duke Solar Energy LLC ("Duke"); Joseph L. Johnson; Nevada Wind Power, LLC ("Nevada Wind"); BP; Stirling Energy Systems, Inc. ("SES"); and Ed Powell.

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by notices placed in the newspapers mentioned in the response to question #1 above, by direct mailings to interested persons on the Commission's mailing list and by posting of notices at county libraries, courthouses and the Commission's website.

Appearances were made at the foregoing workshops and hearings by interested persons, including Staff; BCP; Sierra Pacific and Nevada Power; Barrick; NTSDC and MNS Wind Power; Caithness Operating Company, Caithness Dixie Valley, LLC & Empire Energy ("Caithness"); Ormat-Nevada, Inc. ("Ormat"); Joseph Johnson; Vulcan, FarWest and the Land and Water Fund; Reliant; Nevada Independent Energy Coalition ("NIEC"); CEED; Walker River Paiute Tribe; Eric Dominquez; Verde Resources; Nevada Wind; Southwest Gas Corporation; Milant; Art Johnston; LCB; BP; Earth Power Resources, Inc. ("Earth Power"); CSC Pacific Corporation; PowerLight Corporation; Brook Marlowe; and Betsy Gledhill.

Written responses were received as set forth in the response to question 2(d) above.

The first series of comments were received by the Commission on September 26, 2001. Staff filed comments with the Commission that asserted the differences in positions of the various participants during the informal gatherings that were held. These differences encompassed such topics as the just and reasonable standard, the feasibility of compliance with the standard, forgiveness of noncompliance and administrative fines. CEED stated in its comments that it supported the pricing proposal as outlined in its attached draft rule. In the pricing proposal, CEED suggested that the payment of higher utility rates should be optional with the ratepayer. This, CEED states, would avoid an economic impact on business and business development in Nevada. The BCP comments and proposed regulations adopted an 'opportunity cost' standard in determining a just and reasonable price for renewable energy. In addition, the BCP's proposed regulations provided for a renewable energy credit system where 'excess' renewable energy could either be carried forward to a future compliance period or transferred to another utility that failed to meet its own portfolio standard.

Nevada Power and Sierra Pacific also submitted comments and draft regulations to the Commission on September 26, 2001. The attached draft regulations addressed the just and reasonable standard; development of the portfolio requirement and request for proposals; petitions for eligibility; use of fossil fuel, small solar units, metering and net metering; the renewable energy credit program; the filing of an annual report and determination of compliance; Staffs administration of the renewable energy credits; and recovery of costs associated with complying with the regulation. Caithness and Ormat also filed comments and proposed language for the regulation. In its comments, Caithness and Ormat stated that it objected to Section 3(5)(d) in the BCP's version of the regulation which qualified a renewable energy system as one that uses less than 2% fossil fuel input on a British Thermal Unit basis.

Reliant's September 26th comments discussed the definition of 'biogas' and modification of the renewable energy credit program. Likewise, Vulcan, FarWest, Sierra Watch and the Land and Water Fund filed comments with the Commission on September 26, 2001, and suggested that the Commission could include in its renewable regulations a mechanism to determine that there are not significant overruns for a specific renewable contract purchase that are unreasonably beyond the price of that technology in a fair and open market.

The second series of comments were filed with the Commission immediately following September 26, 2001. On September 27th, the Commission received comments from Barrick. Barrick suggested that renewable contracts should subject renewable producers to at least the same, if not more stringent, conditions as those endured by non-renewable resource producers since renewables are more costly and less available than traditional thermal resources. Barrick

further suggested that the renewable energy credit system be available only to the utilities required to purchase renewable resources, not to generators or producers.

Staff filed additional comments proposed regulations with the Commission on October 5, 2001. These comments included a definition of just and reasonable that would be adjusted each time the utility sought renewable energy contracts or proposed the building of a renewable facility. Staff also suggested that the renewable energy credits could be carried forward for the next two compliance periods, as opposed to indefinitely.

On October 8, Barrick submitted its supplemental comments. Barrick strongly objected to the BCP's just and reasonable standard which Barrick asserted as using an opportunity cost basis. The BCP also filed supplemental comments on October 8, 2001. In these comments, the BCP asserted that Barrick had misquoted the BCP approach to the just and reasonable standard. Instead, the BCP described its approach to the standard as having a basis in 'cost of service'.

On October 9th, Reliant filed additional comments and attachments with the Commission. Reliant, in its comments, discussed again its concern regarding the definition of 'biogas' and the development of a simplified and easily administered Renewable Energy Credit program.

Senator Randolph Townsend filed an Affidavit with the Commission in the renewable energy docket. In his Affidavit, Senator Townsend stated he understood the requirement that the contract terms be just and reasonable was not intended to restrict the renewable contract price to be less than or equal to the current average cost of electric power. Further, Senator Townsend asserted that there is no language in SB 372 or AB 661 which suggests that the cost of purchasing renewable energy should be a separate line item on a consumer's electric bill.

On November 6, 2001, the Commission received comments from the BCP. Said comments suggested that the Commission's proposed regulations of October 12th examined the just and reasonable standard in terms of its cumulative effect, not the effect the price for renewable energy will have on individual contracts.

The third series of comments were filed with the Commission from November 14th through November 19th when the Commission held its statutorily mandated Workshop. GREP and NTSDC submitted comments to the Commission on November 14, 2001. In these comments, GREP and NTSDS questioned what the Commission had meant in Section 19(1)(c) when it had included provisions for non-compliance with renewable energy portfolio standards and liquidated damages. The Commission also received comments from FarWest on November 14th. FarWest discussed the half mill rate cap. Staff filed comments with the Commission on November 14, 2001, and discussed removing the word 'credit' from the proposed regulations. Staff further discussed the soft and hard caps, administrative fines and the renewable portfolio standard.

On November 15, 2001, Barrick filed comments with the Commission. Barrick agreed with the Commission's half mill cap. The BCP also filed supplemental comments on November 15th. In these comments, the BCP stated that its approach would limit renewable prices to some multiple of average cost and that Staff's approach would limit renewable prices to some absolute value above average costs. Nevada Power and Sierra Pacific weighed in on the issues on November 15th as well. These comments proposed that the definition of 'biogas' included biodiesel, that the Commission's half mill cap would work for the compliance period ending 2004 but that a different cap may be needed for the period after 2004.

In its comments of November 16th, Caithness suggested that the Commission utilize the BCP cost of service method in determining a just and reasonable standard. Ormat likewise filed

comments with the Commission on November 16th which stated that the BCP's proposed regulations addressed the issue of the cost to construct specific types of renewable energy projects and their technologies. Ormat further stated that the cumulative calculations that the Commission proposed regulations contemplate should be replaced with an individualized approach. American Wind supported a long-term contract for a minimum of fifteen (15) years instead of a minimum of ten (10) years.

Earth Power filed comments with the Commission on November 19, 2001. In said comments, Earth Power advocated eliminating the administrative fines for non-compliance with the portfolio standard and geothermal energy receiving at least a \$10/MWh premium over conventional power sources for environmental considerations. CSC Pacific Corp. also submitted comments on November 19th in which it proposed the use of water gas or AgroHydroGas as a renewable energy. Duke stated in its November 19th comments that it supports the BCP's approach to the just and reasonable standard with a few modifications. On November 19th, Mr. Joseph Johnson filed comments with the Commission wherein he suggested that criteria would be needed to establish the just and reasonable standard from liquidated damages and transportation arrangements for the delivery of the renewable energy. American Wind submitted additional comments to the Commission on November 19th recommending that the term 'provider of electric service' be used to identify the utility company in the proposed regulations. On November 19th, the Commission received comments from Nevada Wind. Nevada Wind stated that Nevada's policy should be to put a plan in place so that there is an adequate supply of electricity at a predictable price, and Nevada should continue to develop its native renewable energy resources.

The fourth series of comments was received on November 21, 2001. BP p.l.c. filed comments with the Commission that suggested that the initial compliance period be lengthened from ending 2004 to ending 2006 and concurred with Staff's changes in Section 19.3 and 19.4. Nevada Power and Sierra Pacific submitted comments to the Commission with attachments regarding the half mill rate cap. The Commission also received comments from GREP and NTSDC which proposed a more flexible approach to the hard and soft caps.

The fifth series of comments was received by the Commission on November 26, 2001. The BCP filed supplemental comments wherein it disagreed with the Commission's cumulative approach. The Land and Water Fund filed the testimony of James 'Rick' Gilliam with the Commission. Mr. Gilliam discussed the potential problems with attempting to establish a just and reasonable rate cap based on anticipated costs. The Commission also received supplemental comments from Ormat. In these comments, Ormat questioned the flexibility of a half mill rate cap. Duke, in its supplemental comments, suggested a full mill rate cap instead of the half mill cap.

SES submitted comments to the Commission that stated the price considerations were being given undue importance and that each renewable proposal should be evaluated on an individual basis and not be part of a cumulative test. Ronald Burch of FarWest filed an Affidavit with the Commission wherein he recommended that the Commission adopt the just and reasonable test as proposed by the BCP. At the Hearing held on November 26, 2001, Staff presented a document which contained its revisions to the LCB version of the Commission's proposed regulations.

Further, on November 26th, Mr. Ed Powell submitted his comments to the Commission and cited the Sacramento Municipal Utility District as a model for the use of renewable energy

resources. Finally, Barrick filed comments on the Hearing with the Commission wherein Barrick supported the half mill cap and suggested that the amount of renewable energy resources paid for by a consumer appear on that consumer's bill as a separate line item.

Transcripts of the workshops and hearings, copies of the comments and this summary are on file and available for public viewing at the offices of the Commission. A copy of the summary may be obtained by calling the Commission at (775) 687-6001 or (702) 486-2600, or by writing to the Commission at: 1150 East William Street, Carson City, Nevada 89701 and 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

Changes were made to the proposed regulation before it was adopted by the Commission on November 29, 2001, at a duly-noticed general session. The Commission received LCB revisions to its regulation on December 7, 2001. On December 11, 2001, the Commission voted to adopt the LCB revisions at a duly-noticed general session.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects; and**
- (b) Both intermediate and long-term effects.**

The Commission has found that the regulation does not impose a direct and significant burden upon businesses and the public in Nevada based on the following facts: (1) the regulation reflects Senate Bill 372 and thus does not impose additional burdens; and (2) the effect of the requirement does not impose a significant burden nor does it restrict the formation, operation, or expense of businesses.

6. The estimated cost to the agency for enforcement of the adopted regulation.

At this time, the Commission cannot quantify what, if any, estimated cost it will incur to enforce the adopted regulation.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The Commission is not aware of any overlap or duplication by this regulation of any regulation of any other local, state or federal government agencies.

8. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The Commission is not aware of any provision in this regulation that is more stringent than a federal regulation which regulates the same activity.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

At this time the Commission cannot quantify what, if any, new fees or increase in any existing fees will result with the adoption of this regulation.

BEFORE THE PUBLIC UTIUTIES COMMISSION OF NEVADA

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

At a general session of the Public Utilities
Commission of Nevada, held at its offices
on December 11, 2001.

PRESENT: Chairman Donald L. Soderberg
Commissioner Richard M. McIntire
Commissioner Adriana Escobar Chanos
Commission Secretary Crystal Jackson

ORDER ADOPTING REGULATIONS

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

1. On June 8, 2001, Nevada Governor Kenny C. Guinn signed Senate Bill No. 372 ("SB372") into law. SB 372, Sec. 17 requires the Commission to adopt regulations to carry out and enforce the provisions of Sec. 10 of SB 372.
2. On July 18, 2001, the Public Utilities Commission ("Commission") voted to open Docket No. 01-7029, an investigation and rulemaking to promulgate and adopt regulations to implement the provisions of SB 372.
3. This matter is being conducted by the Commission pursuant to the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code Chapters 703 and 704.
4. On October 12, 2001, the Commission issued a Notice of Intent to Amend/Adopt/Repeal Regulations and Notice of Workshop and Notice of Hearing, in order to receive comments from all interested persons regarding the Commission's proposed universal energy charge regulations.

5. Pursuant to NRS 233B.0608, before conducting the workshop, the Commission ordered the Regulatory Operations Staff ("Staff") of the Commission to investigate the impact of the proposed regulation on small business.

6. On November 15, 2001, the Commission voted to accept Staff's recommendation and find that the proposed regulation does not: (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business.

7. A duly noticed workshop was held on November 19, 2001, and a duly noticed hearing was held on November 26, 2001.

8. Appearances were made at the foregoing workshop and hearing by interested persons, including Staff, the Bureau of Consumer Protection, the State of Nevada Legislative Counsel Bureau, Sierra Pacific Power Company, Nevada Power Company, Nevada Test Site Development Corporation & Global Renewable Energy Partners, Barrick Goldstrike Mines, Caithness Dixie Valley, LLC & Empire Energy, Caithness Operating Company, Ormat-Nevada, Inc., The Land and Water Fund of the Rockies, Far West Energy & Sierra Watch, Reliant Energy Renewables, Incorporated, Center for Energy & Economic Development, Duke Solar, Incorporated, BP, Earth Power Resources, Inc., CSC Pacific Corporation, Joe Johnson, PowerLight Corporation, Nevada Wind Power, LLC, Brook Marlowe, Betsy Gledhill, and Ed Powell.

9. On November 29, 2001, the Commission voted to adopt the regulations at a duly noticed agenda meeting.

10. The Commission delivered the adopted regulations along with the Order Adopting Regulations, the Informational Statement and the Cover Sheet to the Legislative Counsel Bureau ("LCB") on December 7, 2001.

11. The LCB submitted its revisions to the regulations with the Commission on December 7, 2001

12. The Commission finds that no substantive changes have been made and that it would be in the public interest to adopt the LCB revisions to the regulations, attached hereto as Attachment 1 and incorporated herein by reference.

13. The Commission also finds that it would be in the public interest to open a docket at a later time to integrate and administer portions of the renewable portfolio docket so as to coordinate it with the resource planning regulations.

14. The Commission further finds that it should examine the issue of energy credits trading.

THEREFORE, based on the foregoing findings of fact and conclusions of law, it is hereby ORDERED that:

1. The revised regulations, which are attached hereto as Attachment 1 and incorporated herein by reference, are ADOPTED

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2. The Commission retains jurisdiction for the purpose of correcting any errors that may have occurred in the drafting of this Order.

By the Commission,

DONALD L. SODERBERG, Chairman and
Presiding Officer

RICHARD M. MCINTIRE, Commissioner

ADRIANA ESCOBAR CHANOS, Commissioner

Attest: _____
CRYSTAL JACKSON, Commission Secretary

Dated: Carson City, Nevada

12/12/01
(SEAL)