

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

**LCB File No. R153-04**

Effective November 10, 2004

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

AUTHORITY: §§1-12, NRS 703.025, 704.210 and 704.7828.

A REGULATION relating to renewable energy; providing for the creation of a temporary renewable energy development program; providing for the creation of a trust within the temporary renewable energy development program; providing for the collection of a temporary renewable energy development charge by a utility provider to be disbursed to eligible new renewable energy projects participating in the temporary renewable energy development program of the utility provider; providing for the closure of the temporary renewable energy development program; and providing other matters properly relating thereto.

**Section 1.** Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

**Sec. 2.** *“New renewable energy project” means a renewable energy project, the construction of which commenced on or after July 1, 2001.*

**Sec. 3.** *“Temporary renewable energy development charge” or “TRED charge” means an amount determined pursuant to section 9 of this regulation to be collected by a utility provider from retail electric customers on behalf of a TRED trust.*

**Sec. 4.** *“Temporary renewable energy development program” or “TRED program” means a program established by order of the Commission to assist with the completion of new renewable energy projects associated with Commission-approved renewable energy or renewable energy credits contracts.*

**Sec. 5.** *“Temporary renewable energy development trust” or “TRED trust” means a trust established by a utility provider pursuant to an order of the Commission issued pursuant to section 9 of this regulation for the benefit of eligible new renewable energy projects.*

**Sec. 6.** *The Commission may order a utility provider to establish and participate in a temporary renewable energy development program to assist with the completion of new renewable energy projects associated with Commission-approved renewable energy or renewable energy credits contracts. In determining whether to require a utility provider to establish and participate in a TRED program, the Commission will consider:*

- 1. The creditworthiness of the utility provider as measured by its bond rating and other key financial indicators;*
- 2. Whether the creditworthiness of the utility provider has impeded or is impeding the schedule for completing a new renewable energy project in accordance with a Commission-approved renewable energy contract;*
- 3. Whether the use of a TRED trust will alleviate those impediments to completing a new renewable energy project in accordance with Commission-approved renewable energy or renewable energy credits contracts; and*
- 4. Whether the use of a TRED trust is necessary and reasonable to ensure that the utility provider complies with its renewable energy portfolio standard.*

**Sec. 7.** *If, after considering the factors set forth in section 6 of this regulation, the Commission determines that it is in the public interest to require a utility provider to establish and participate in a temporary renewable energy development program, the Commission will:*

- 1. Order the establishment of a temporary renewable energy development trust in accordance with the provisions of section 9 of this regulation; and*

*2. Order the establishment of a temporary renewable energy development charge in accordance with the provisions of section 10 of this regulation.*

*Sec. 8. The Commission will, upon request by a new renewable energy project either during proceedings establishing a TRED program or at the time that a new renewable energy or renewable energy credits contract is submitted for the approval of the Commission, designate which new renewable energy projects associated with Commission-approved renewable energy or renewable energy credits contracts are eligible to participate in the TRED program to established, or to be established, by the utility provider. The Commission will consider the factors set forth in section 6 of this regulation to determine eligibility of such projects.*

*Sec. 9. 1. Within 30 days after the issuance of an order by the Commission to establish a TRED program, the utility provider shall appoint a third-party professional trustee acceptable to the Commission and shall take all actions necessary to initiate a temporary renewable energy development trust. The TRED trust shall receive money collected by the utility provider from retail customers pursuant to a temporary renewable energy development charge and disburse that money to eligible new renewable energy projects. The TRED trust has the sole right to receive revenue generated by the TRED charge, and the right to receive such revenue constitutes a current property right granted to and vested in the TRED trust.*

*2. The utility provider shall file an executed copy of the trust agreement between the utility provider and the trustee of the TRED trust with the Commission for its approval.*

*3. The trust agreement must contain a provision establishing a minimum level of reserve for the TRED trust that is equal to three times the highest projected monthly payment to each*

*eligible new renewable energy project for the period during which the TRED charge will be in effect.*

*4. The costs incurred by a utility provider to initiate and maintain a TRED trust, including, without limitation, the cost of reserves advanced by the utility provider to the TRED trust, the taxes assessed on the utility provider for amounts related to the TRED trust and the fees charged by the trustee, must be considered expenses associated with the acquisition of purchased power, must be booked by the utility provider in FERC account 557 as an “other expense” associated with purchasing power and may be recovered by the utility provider pursuant to the deferred energy accounting process set forth in NAC 704.023 to 704.195, inclusive.*

*5. Once the TRED charge is established by an order of the Commission issued pursuant to section 10 of this regulation, the utility provider shall begin collecting the TRED charge from its retail customers. Beginning with the first full calendar week thereafter and continuing once each week following, the utility provider shall estimate and remit to the TRED trust the total amount collected pursuant to the TRED charge through the last calendar day of the previous collection period.*

*6. On the 20th calendar day of each month, the utility provider shall provide the trustee of the TRED trust with a statement showing the calculation of the amounts to be disbursed to each eligible new renewable energy project in accordance with its respective renewable energy or renewable energy credits contracts based on the production of each eligible new renewable energy project during the previous calendar month. The TRED trust shall, within 7 calendar days after receiving the statement from the utility provider, remit payment to each eligible new renewable energy project in accordance with the statement.*

**Sec. 10. 1.** *Once a TRED program is established by order of the Commission and the utility provider has established a TRED trust, the utility provider shall, concurrent with the filing of its next annual deferred energy application, seek Commission authorization to establish or continue, as revised, a temporary renewable energy development charge.*

**2.** *The TRED charge must be determined in accordance with the following formula:*

$$\text{TRED CHARGE} = \frac{\text{PC} + \text{RA}}{\text{TE}}$$

**Where:**

*PC = the 12-month projected cost of renewable energy or renewable energy credits to be delivered to the utility provider from new renewable energy projects eligible for the TRED program, determined as the sum from all eligible new renewable energy projects of the product of the 12-month projected production from each eligible new renewable energy project at the rates set forth in each of the Commission-approved renewable energy or renewable energy credits contracts for each eligible new renewable energy project, plus the projected tax liability for the 12 months for the TRED trust.*

*RA = the adjustment to increase or decrease the reserve, which must equal the sum of the reserves for each of the renewable energy or renewable energy credits contracts approved for payment in accordance with section 9 of this regulation.*

*TE = the historical Nevada jurisdictional kilowatt-hour sales reflected in the electric utility's concurrent deferred energy application.*

3. *The utility provider shall seek review of each element of the TRED charge at least once each year, concurrent with the filing by the utility provider of its annual deferred energy application.*

4. *The utility provider may seek interim review of one or more elements of the TRED charge where experienced production from eligible new renewable energy projects or experienced revenues collected pursuant to the TRED charge differ materially from projected production from new renewable energy projects associated with Commission-approved renewable energy contracts or with projected revenues collected pursuant to the TRED charge, causing either inadequate or excess reserves.*

5. *Once the TRED charge is established pursuant to this section, that amount must be collected by the utility provider on behalf of the TRED trust until that amount is revised pursuant to subsection 3 or 4 or is revised after the participation of a new renewable energy project is terminated pursuant to section 11 of this regulation.*

**Sec. 11.** 1. *A utility provider may apply to the Commission for authority to close a TRED program to new renewable energy projects once the utility provider has achieved an investment grade credit rating as determined by either Moody's Investors Service, Inc., or Standard and Poor's Rating Services and has maintained that credit rating for 24 consecutive months.*

2. *The Commission will grant an application to close a TRED program only after finding that the creditworthiness of the utility provider is sufficiently restored so that closure of the TRED program to new renewable energy projects is in the public interest.*

3. *An order issued by the Commission closing a TRED program to new renewable energy projects will not be effective as to any new renewable energy project that has previously been*

*accepted into the TRED program and that receives remittance from the TRED trust with proceeds from the TRED charge until the earlier of:*

*(a) The expiration or termination of the original Commission-approved renewable energy contract between the utility provider and the new renewable energy project, in which case the participation of the new renewable energy project in the TRED program will, without further process, be terminated; or*

*(b) The original financing, including debt, equity, or both debt and equity, as applicable, entered into by the new renewable energy project upon completion of construction of the project has been fully satisfied pursuant to its original terms, in which case the new renewable energy project has an affirmative obligation to inform the Commission within 30 days after satisfaction of financing. The new renewable energy project must apply to the Commission for an order allowing the new renewable energy project to remain in the TRED program. If the new renewable energy project does not apply to remain in the TRED program, the participation of the new renewable energy project in the TRED program will be terminated without further process.*

*4. When the participation of all new renewable energy projects in the TRED program have been terminated, the TRED charge will be terminated and the TRED trust will be instructed to first remit any balance in the TRED trust to offset any reserves advanced by the utility provider to the TRED trust. The utility provider shall then apply any excess or shortfall from the TRED trust to the utility provider's then current deferred energy balance. In the utility provider's next deferred energy filing, the utility provider shall establish a new base tariff energy rate that reflects the utility provider's estimated annual cost of purchasing power from new renewable energy projects formerly included in the TRED program.*

**Sec. 12.** NAC 704.8831 is hereby amended to read as follows:

704.8831 As used in NAC 704.8831 to 704.8893, inclusive, *and sections 2 to 11, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 704.8833 to 704.8867, inclusive, *and sections 2 to 5, inclusive, of this regulation* have the meanings ascribed to them in those sections.



**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R153-04**

The Public Utilities Commission of Nevada adopted regulations assigned LCB File No. R153-04 which pertain to chapter 704 of the Nevada Administrative Code on October 5, 2004.

**Notice date:** 8/4/2004  
**Hearing date:** 9/21/2004

**Date of adoption by agency:** 10/5/2004  
**Filing date:** 11/10/2004

**INFORMATIONAL STATEMENT**

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

The Regulations concerning the Temporary Renewable Energy Development (“TRED”) Program in Public Utilities Commission of Nevada (“Commission”) Docket No. 04-7017 were noticed by a Notice of Intent to Amend/Adopt/Repeal Regulations, Request for Comments, Notice of Workshop and Notice of Hearing issued on August 4, 2004. The Notice was published in the Elko Daily Free Press, Las Vegas Review Journal, Nevada Appeal, Reno Gazette Journal, and Tonopah Times-Bonanza. Additionally, the notice was mailed to county clerks, county libraries and 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 summary represents public responses that were made to the Commission at the duly-noticed Workshop held on September 20, 2004: Patrick Fagan, representing Caithness Operating Company, LLC (“Caithness”), stated that Caithness supported the Proposed TRED Program Regulations, but wanted to make sure that all renewable energy projects, as defined in the governing statutes, would qualify for inclusion in a TRED Program; William Kockenmeister, representing Solargenix Energy, LLC (“Solargenix”), Solargenix also supported the Proposed TRED Program Regulations and stated that Solargenix anticipates that future renewable energy contracts could be included in a TRED Program after Commission approval of a specific renewable energy project contract with a participating utility; Tim Carlson, representing Ely Wind, LLC (“Ely Wind”), concurred with Mr. Kockenmeister, stating that future renewable energy contracts should be allowed into a TRED Program; Jon Wellinghoff, representing Powerlight, suggested the inclusion of contracts providing renewable energy credits, or RECs, along with contracts for renewable energy as eligible contracts for a TRED Program; Elizabeth Elliot, Associate General Counsel for Nevada Power Company and Sierra Pacific Power Company (“NPC/SPPC”), responded to the concerns expressed by Caithness and Powerlight, and discussed the development of the Proposed Regulation; Fred Schmidt, representing Ormat Nevada, Inc. (“Ormat”), supported the efforts of the Commission to create the TRED Program Regulations, but suggested that a renewable energy project’s participation in any TRED Program should be voluntary; and Bob Cooper, Senior Regulatory Analyst for the Attorney General’s Bureau of Consumer Protection (“BCP”), stated that as a joint-petitioner in the Petition requesting that the Commission initiate this rulemaking, BCP supports the Proposed Regulations.

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:**

May 11, 2004: 14

**(b) Testified at the workshop:**

May 11, 2004: 8

**(c) Attended the hearing:**

May 11, 2004: 11

**(d) Submitted to the agency written comments:**

Joint written comments were submitted by the following: the Regulatory Operations Staff of the Commission (“Staff”); the BCP; NPC/SPPC; Solargenix; and Ely Wind. Separate written comments were submitted by Staff and Ormat.

**3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation 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; NPC/SPPC; Solargenix; Ely Wind; Ormat; Caithness; and Powerlight.

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. Copies of the transcripts 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 Regulations were adopted without changing any part of the Proposed Regulations, a summary of the reasons for adopting the Regulations without change.**

Changes were made to the Proposed Regulations before they were adopted by the Commission. The Commission received the Legislative Counsel Bureau’s (“LCB”) revisions to the Proposed Regulations on August 23, 2004. On September 21, 2004, after the duly-noticed Workshop, the Presiding Officer changed the language of the Proposed Regulations to include clarifications suggested by the participants at the Workshop. The modifications were not substantive in nature, but merely for clarification. The Presiding Officer made further clarifications after the September 21, 2004 Hearing before the Commission adopted the Proposed Regulations on September 29, 2004, at a duly-noticed general session.

**5. The estimated economic effect of the adopted Regulations on the businesses that 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 completed a small business impact statement pursuant to Nevada Revised Statute (“NRS”) 233B.0608. On August 11, 2004, the Presiding Officer issued a Procedural Order instructing Staff to conduct an investigation into whether the Proposed Regulation is likely to: (i) impose a direct and significant economic burden upon a small business; or (ii) directly restrict the formation, operation or expansion of a small business. Staff was required to present a report on the investigation to the Commission. At the September 17, 2004 general session of the Commission, Staff presented its report. The Commission voted at that general session to accept Staff’s recommendation that the Proposed Regulations do not impose a direct and significant burden on small businesses in Nevada or restrict the formation, operation or expansion of small businesses in Nevada.

The Regulations have no additional direct economic effect on businesses subject to the Regulations, other than to allow those businesses to establish a TRED Program to assist renewable energy projects in finding financing. Therefore, the revised Nevada Regulations will not have an economic impact in the intermediate or long term.

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

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

**7. A description of any Regulations of other state or government agencies that the Proposed Regulations overlap or duplicates and a statement explaining why the duplication or overlapping is necessary. If the Regulations overlaps or duplicates a federal Regulations, the name of the regulating federal agency.**

The Regulation does not overlap the Regulations of any other state or federal agencies.

**8. If the Regulations include provisions that are more stringent than federal Regulations that regulate the same activity, a summary of such provisions.**

There are no similar federal Regulations governing the subject matter of the Regulations.

**9. If the Regulations 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.**

The Commission does not anticipate any new fees or an increase in any existing fees as a result of the adoption of these Regulations.

**BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

In re investigation and rulemaking concerning the )  
Temporary Renewable Energy Development Program. ) Docket No. 04-7017  
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At a general session of the Public Utilities  
Commission of Nevada, held at its offices  
on September 29, 2004.

PRESENT: Chairman Donald L. Soderberg  
Commissioner Adriana Escobar Chanos  
Commissioner Carl B. Linvill  
Commission Secretary Crystal Jackson

**ORDER**

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

1. On August 4, 2004, the Commission voted to open an investigation and rulemaking proceeding concerning the Temporary Renewable Energy Development Program, after granting, in part, a Petition for Rulemaking in Docket No. 04-7007. The Commission designated this investigation and rulemaking as Docket No. 04-7017.
2. This matter is being conducted by the Commission pursuant to the Nevada Revised Statutes and the Nevada Administrative Code, Chapters 233B, 703, and 704.
3. The Commission issued a public notice of this matter in accordance with state law and the Commission’s Rules of Practice and Procedure.
4. On July 30, 2004, the proposed regulations were sent to the Legislative Counsel Bureau for review. On August 19, 2004, the Commission received the Legislative Counsel Bureau’s comments on the proposed regulations.
5. On August 4, 2004, the Commission issued a request for comments in this matter and a Notice of Intent to Amend/Adopt/Repeal Regulations.
6. On September 8, 2004, the Commission received Joint Comments filed by Nevada Power Company, Sierra Pacific Power Company, the Regulatory Operations Staff of the Commission (“Staff”), the Attorney General’s Bureau of Consumer Protection, Solargenix Energy, LLC and Ely Wind, LLC. The Commission also received comments from Ormat Nevada, Inc. and separate comments from Staff.
7. On September 17, 2004, the Commission voted to adopt Staff’s Small Business Impact Statement Report on the proposed regulations, finding no direct or significant impact upon small businesses.
8. On September 20, 2004, the Commission held a workshop in this matter.
9. On September 21, 2004, the Commission held a hearing in this matter.

10. During the hearing, the Presiding Officer presented proposed regulations incorporating clarification comments made during the workshop. An additional edit, to clarify the intent of the proposed regulation was incorporated during the hearing.

11. The Commission finds that it is in the public interest to adopt the proposed permanent regulations, attached hereto as Attachment A and incorporated herein by reference.

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

1. The proposed permanent regulations in Docket No. 04-7017, which are attached hereto as Attachment A 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 or issuance of this Order.

By the Commission,

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DONALD L. SODERBERG, Chairman

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ADRIANA ESCOBAR CHANOS, Commissioner

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CARL B. LINVILL, Commissioner and Presiding Officer

Attest: \_\_\_\_\_  
CRYSTAL JACKSON, Commission Secretary

Date: Carson City, Nevada

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(SEAL)