

**ADOPTED REGULATION OF THE COLORADO
RIVER COMMISSION OF NEVADA**

LCB File No. R112-02

Effective September 20, 2002

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

AUTHORITY: §§ 1-6, NRS 538.181 and 538.201.

Section 1. Chapter 538 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *1. During October in each operating year, and at any other time it deems necessary, the commission will conduct a review to determine the creditworthiness of each of its contractors, except:*

(a) A federal or state agency or political subdivision; and

(b) The Nevada Power Company and any other entity regularly engaged in the business of buying and selling electric power.

2. After a review conducted pursuant to subsection 1, the commission will establish the amount and prescribe the manner in which the contractor is required to furnish collateral pursuant to its contracts with the commission. In no case will the amount of collateral established by the commission be less than one-fourth of the contractor's gross annual purchases.

3. If a contractor does not provide and maintain the full amount of the collateral required, the commission may, in addition to its other remedies and in the course of its normal

invoicing, bill the contractor for an amount necessary to furnish a cash collateral within a period established by the commission, but not to exceed 6 months.

4. Notwithstanding any other provision of NAC 538.340 to 538.740, inclusive, this section and section 3 of this regulation, the commission may at any time require a contractor to furnish collateral in an amount that is greater than the minimum amount set forth in subsection 2, as may be necessary to protect the State of Nevada from any loss that it might suffer as a result of the contractor's breach of any covenant or condition of any contract with the commission. That amount of the collateral which is greater than the minimum amount set forth in subsection 2 will be calculated on any rational and appropriate basis as determined by the commission.

5. As used in this section:

(a) "Date of review" means the date in any operating year on which the commission establishes the amount of collateral a contractor must furnish pursuant to its contracts with the commission.

(b) "Gross annual purchases" means the total amount of a contractor's actual purchases of power, transmission and other related services, if any, under all its contracts with the commission, invoiced by the commission during the test period.

(c) "Test period" means the 12 consecutive months immediately preceding the month containing the date of review.

Sec. 3. 1. *If a contractor fails or refuses to perform any of its obligations under any of its contracts with the commission, including, without limitation, any agreement confirming the purchase of supplemental power from any source, and the executive director determines that*

the failure or refusal may expose the commission to significant liability, the executive director shall provide written notice of the nonperformance to the contractor.

2. If the contractor fails or refuses to cure the nonperformance within 15 days after the date of the written notice, the commission may, after notifying the contractor, suspend the contractor's allocation of hydroelectric power under NAC 538.340 to 538.740, inclusive, this section and section 2 of this regulation, and discontinue furnishing electric service specified in its contracts with the contractor pending any further action taken by the commission pursuant to this section.

3. Within 30 days after the suspension of the contractor's allocation of hydroelectric power, the contractor may petition the commission for the reinstatement of the allocation. The commission will hold a hearing on the petition within 10 days after providing notice of the hearing as required by NAC 538.075 to 538.330, inclusive.

4. If the contractor fails to file a petition for reinstatement in a timely manner or if, after a hearing on such a petition, the commission denies the petition, the commission may permanently terminate the contractor's allocation of hydroelectric power and permanently discontinue electric service to the contractor.

5. Upon the permanent termination of a contractor's allocation of hydroelectric power, the commission will reallocate the hydroelectric power as authorized by law.

6. This section does not preclude the commission from pursuing at any time any other remedy for breach of contract that is available to the commission.

Sec. 4. NAC 538.340 is hereby amended to read as follows:

538.340 As used in NAC 538.340 to 538.740, inclusive, *and sections 2 and 3 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 538.350 to 538.390, inclusive, have the meanings ascribed to them in those sections.

Sec. 5. NAC 538.350 is hereby amended to read as follows:

538.350 “Contractor” means any entity that contracts with the commission to purchase power . ~~[from the Boulder Canyon Project, Parker-Davis Project or Salt Lake City Area Integrated Projects.]~~

Sec. 6. NAC 538.395 is hereby amended to read as follows:

538.395 **1.** The provisions of NAC 538.340 to 538.740, inclusive, apply to power allocated by the commission from the Boulder Canyon Project, Parker-Davis Project or Salt Lake City Area Integrated Projects.

2. *The provisions of sections 2 and 3 of this regulation apply to power allocated by the commission from any source.*

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R112-02**

The Colorado River Commission of Nevada adopted regulations assigned LCB File No. R112-02 which pertain to chapter 538 of the Nevada Administrative Code on August 13, 2002.

Notice date: 7/9/2002
Hearing date: 8/13/2002

Date of adoption by agency: 8/13/2002
Filing date: 7/20/2002

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.

Copies of the Notice of Workshop and Hearing for the Amendment of Certain Regulations of the Colorado River Commission of Nevada (R112-02RP), which contained the text of the proposed regulation, were posted at the State Library in Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation were available at the offices of the Colorado River Commission (CRC) in Las Vegas, Nevada, and were sent to the main public libraries in all counties, for inspection and copying by members of the public during business hours. Copies were also sent to those persons on the commission's mailing list for notice of meetings, including CRC's six retail industrial customers who are directly affected by the adopted regulation, and the notice was posted in the same places as notices of any other meeting of the commission. The notice and the text of the proposed regulation were also available in the State of Nevada Register of Administrative Regulations and at the workshop itself.

Prior to the public workshop and hearing held on August 13, 2002, CRC received written comments from three interested parties, Clark County Sanitation District, Valley Electric Association and Titanium Metals Corporation (TIMET). The comments of the Sanitation District and Valley Electric principally addressed the question of whether a collateral requirement applies to governmental or quasi-governmental entities. TIMET's comments addressed procedural concerns--principally relating to notice and hearing--and various substantive issues. These issues related to the form of collateral required, the propriety of setting a minimum level of collateral, the exception of Nevada Power Company and others from the proposed regulation, the billing of customers for collateral and the power of the CRC to raise the amount of the required collateral.

During the public workshop and hearing held on August 13, 2002, oral comments were received from representatives of Pioneer Americas, Inc., Titanium Metals Corporation, the United Steelworkers Union and the Machinists Union. Their comments addressed the legality of the various provisions of the proposed regulation, issues of notice and hearing, and the economic impact of requiring collateral of CRC's retail industrial customers.

A copy of this summary of public response may be obtained by telephoning the CRC at 702-486-2670 or writing to Mr. George Caan, Executive Director, Colorado River Commission, 555 East Washington Avenue, Suite 3100, Las Vegas, Nevada 89101-1048.

2. The number of persons who:

(a) Attended each hearing:

(b) Testified at each hearing:

(c) Submitted to the agency written comments:

The Colorado River Commission held one hearing on August 13, 2002. Fifteen persons attended the hearing. Six persons testified at the hearing. Three persons submitted written statements concerning the proposed regulation. These written statements are summarized in paragraph number 1.

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 as described in paragraph number 1. A summary of their response and an explanation of how other interested persons may obtain a copy of the summary are also contained in paragraph number 1.

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.

The Colorado River Commission adopted the text of the proposed regulation as revised by the Legislative Counsel Bureau (LCB File No. R112-02RP).

5. The estimated economic effect of the adopted regulation on the businesses 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 immediate and long-term effects.

The adopted regulation affects CRC's six retail industrial customers, which purchase substantial quantities of electric power and other electrical services from the State to operate their businesses at the Basic Industrial Complex near Henderson, Nevada. The estimated immediate adverse economic effect of the adopted regulations is the cost of providing the minimum collateral required to protect the State of Nevada against defaults on these customers' power-related contracts with CRC. As calculated under the adopted regulation, the minimum required collateral represents one-fourth of a contractor's gross annual purchases during the testing period, and in the aggregate for all these customers presently amounts to \$3,892,753.41 to cover over \$15.5 million of annual purchases from the State. Oral comments offered at the workshop and hearing asserted that the cost of providing the required collateral would also have long-term adverse economic effects of an indeterminate amount on at least two of the businesses to whom these regulations would apply and, by extension, to the public with whom they do business.

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

There is no additional cost to the agency for enforcement of this regulation.

7. A description of any regulation 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.

There are no other state or government agency regulations that the proposed regulation overlaps or duplicates.

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

There are no federal regulations which regulate the activity covered by the adopted regulation.

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.

This regulation does not provide or involve a new fee or increase an existing fee.