

LCB File No. E002-02

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

(Effective for 120 days after August 27, 2002)
(Proposed as LCB File No. R112-02)

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

ESTABLISHES MINIMUM COLLATERAL REQUIREMENTS FOR ELECTRIC
POWER CONTRACTS AND PROVIDES FOR REALLOCATION OF ELECTRIC
POWER UNDER CERTAIN CIRCUMSTANCES.

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. *As used in this section:*

(a) *“Date of review” means the date in any operating year when the commission sets the amount of collateral a contractor must furnish pursuant to its contracts with the commission.*

(b) *“Gross annual purchases” means the total of a contractor’s actual purchases invoiced by the commission during the test period under all of its contracts with the commission.*

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

2. *During October in each operating year, and at any other time it deems necessary, the commission shall conduct a review to determine the creditworthiness of each of its contractors, except a federal or state agency or political subdivision and except Nevada Power Company and any other entity regularly engaged in the business of buying and selling electric*

power. Following the review, the commission shall set 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 may the amount of collateral set 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, assess a fee sufficient to collect cash collateral from the contractor within a period set by the commission but not to exceed 6 months.

4. Notwithstanding any other provision of NAC 538.340 to 538.740, inclusive, and sections 2 and 3 of this regulation, the commission may at any time set the required amount of collateral above the minimum provided in subsection 2 as may be necessary to protect the State of Nevada from any loss that it might suffer as a result of a contractor's breach of any covenant or condition of any contract with the commission. The entire amount of the required collateral above the minimum provided in subsection 2 may be calculated on any rational and appropriate basis as determined by the commission.

Sec. 3. *1. If a contractor fails or refuses to perform any of its obligations under any contract with the commission, including, without limitation, agreements 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 of the date of the written notice, the commission may, after notice, suspend the contractor's allocation of hydropower under NAC 538.340 to 538.740, inclusive, and sections 2 and 3 of this regulation,

and discontinue furnishing electric service specified in its contracts with the contractor pending further action by the commission under this section.

3. Within 30 days following the suspension of the commission's allocation of hydropower to the contractor, the contractor may petition the commission in writing for reinstatement of the allocation. The commission shall hold a hearing on the petition within 10 days after providing notice of the hearing as required by the commission's rules of practice.

4. If the contractor fails to file a timely petition or if, after a hearing on a timely filed petition, the commission rejects the petition, the commission may permanently terminate the contractor's allocation of hydropower and permanently discontinue electric service to the contractor.

5. Upon the permanent termination of any contractor's allocation of hydropower, the commission shall reallocate the hydropower pursuant to law.

6. Nothing in this section precludes the commission from pursuing at any time all other remedies for breach of contract available to it by law or contract.

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 *electric* 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 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. *The provisions of sections 2 and 3 of this regulation apply to power from any source.*

STATEMENT OF EMERGENCY

The Colorado River Commission of Nevada (“Commission”) at a special meeting called and held on July 1, 2002, made the following determinations:

1. Pursuant to state law and regulation, the Commission purchases substantial quantities of electric power from the federal Boulder Canyon Project, Parker-Davis Project and Salt Lake City Area Integrated Projects and from other sources, and re-sells that power for the benefit of citizens of this state.

2. NRS 538.181(3) prohibits the Commission from selling the power “for less than the actual cost to the State of Nevada.”

3. Under NRS 538.181(2), the Commission may determine the amount of collateral that a customer, other than a state or federal agency or political subdivision, must furnish to protect the State of Nevada against any loss it might suffer from a customer’s breach of any of its contracts with the commission.

4. In recent years, the electric power market in the western region has experienced unusual levels of volatility in pricing and other conditions relating to the procurement of electric power. Currently, significant price uncertainty exists in these markets because of on-going state and federal investigations into the practice of numerous participants in that market. The allegations of widespread fraud and manipulation of markets have yet to be resolved, but these investigations raise significant concerns and uncertainty about future market prices and conditions of service.

5. Some of the Commission’s customers rely substantially on electric power as a large cost component of their production or business and, consequently, are particularly vulnerable to these uncertainties. Extreme price variance has forced and may continue to force significant and costly business adjustments, plant closures or reorganizations through bankruptcy or otherwise. These circumstances challenge the ability of the Commission’s customers to fully and faithfully perform their contracts with the Commission, pose substantial financial risk for the State of Nevada, interfere with the Commission’s ability to comply with the requirements of NRS 538.181(3), and ultimately endanger the welfare of the citizens of this state.

6. In order to adequately protect the State of Nevada, it has become necessary as soon as possible to establish minimum amounts for collateral and provide additional procedures for the reallocation of power in circumstances involving a material breach of contract. Accordingly, the Colorado River Commission of Nevada finds that an emergency exists, and that the adoption of the foregoing Emergency Regulation is appropriate.

July 1, 2002

Richard W. Bunker, Chairman
Colorado River Commission of Nevada

I, Governor Kenny C. Guinn, endorse the foregoing Statement of Emergency of the Colorado River Commission of Nevada.

July 1, 2002

KENNY C. GUINN
Governor

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.

A notice of a special meeting of the Colorado River Commission of Nevada (CRCN) to, among other things, adopt an emergency regulation was posted on June 25, 2002. The meeting was scheduled for July 1, 2002. The notice of the meeting indicated that CRCN would consider and possibly act on the submittal of a statement of emergency to the governor in support of an emergency regulation providing for periodic review of the creditworthiness of certain electric power contractors, minimum amounts of collateral required of them under their contracts with the CRCN, and discontinuance of electric services and reallocation of power under certain circumstances. The notice also indicated that CRCN would consider and possibly act to adopt the emergency regulation contingent on the governor's endorsement. Copies of this notice were sent to those persons on the CRCN's mailing list for notice of meetings, including CRCN's six retail industrial customers who are the only parties directly affected by the proposed regulation. The notice was posted in the same places as notices of any other meeting of the CRCN. The text of the proposed regulation was available in the State of Nevada Register of Administrative Regulations and at the public meeting itself.

Prior to the July 1, 2002, meeting, CRCN's executive director placed telephone calls to CRCN's six retail industrial customers, as well as other of its power customers to explain the emergency regulation and solicit comments. No written or oral comments were submitted before the meeting.

During the meeting held on July 1, 2002, written and oral comments were submitted by Titanium Metals Corporation (Timet). Representatives of Pioneer Americas, LCC and Kerr-McGee Chemical, LLC also delivered oral comments at the meeting. These comments principally challenged the existence of an emergency to justify adopting the regulation pursuant to NRS 233B.0613, and the need for the proposed regulation given the exemplary payment history of CRCN's retail industrial customers. Kerr-McGee urged that other money held by CRCN from the customers be used for collateral purposes.

A copy of this summary of public response may be obtained by telephoning the CRCN 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 July 1, 2002. Apart from the commissioners and staff, 18 persons attended the hearing, six persons testified at the hearing and one person 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 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 emergency regulation was adopted without revision. The Legislative Counsel Bureau offered no revisions because it does not review emergency regulations before their adoption by the agency. However, the Colorado River Commission adopted the text of the proposed regulation as it appeared under the Legislative Counsel Bureau's File No. E002-02.

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. No action has been taken under the emergency regulation as of August 27, 2002, because an adjustment of the level of required collateral was made at the July 1, 2002, meeting solely under the provisions of the NRS 538.181(2) and CRCN's contracts with its retail industrial customers, and no contractual defaults have occurred to trigger the remedial provisions of the emergency regulation.

The first mandated review of the customer's creditworthiness under the emergency regulation occurs in October 2002. As a result of that review, the estimated immediate adverse economic effect of the adopted regulation is the cost of providing the collateral required to protect the State of Nevada against defaults on these customers' power-related contracts with CRC. As calculated under the adopted regulations, the minimum required collateral represents one-fourth of a contractor's gross annual purchases from the State. The cost of providing the required collateral may 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 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.

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.