

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

LCB File No. R153-04

August 19, 2004

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

AUTHORITY: §§1-11, NRS 703.025, 704.210 and 704.7828.

A REGULATION relating to renewable energy; providing for the creation of a temporary renewable energy program; providing for the creation of a trust within the temporary renewable energy program; providing for the collection of a temporary renewable energy charge by a utility provider to be disbursed to eligible new renewable energy projects participating in the temporary renewable energy program of the utility provider; providing for the closure of the temporary renewable energy 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 10, 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 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 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 contracts.*

Sec. 5. *“Temporary renewable energy trust” or “TRED trust” means a trust established by a utility provider pursuant to an order of the Commission issued pursuant to section 8 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 program to assist with the completion of new renewable energy projects associated with Commission-approved renewable energy 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 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 program, the Commission will:*

- 1. Order the establishment of a temporary renewable energy trust in accordance with the provisions of section 8 of this regulation;*

2. *Order the establishment of a temporary renewable energy charge in accordance with the provisions of section 9 of this regulation; and*

3. *Designate which new renewable energy projects associated with Commission-approved renewable energy contracts are eligible to participate in the TRED program to be established by the utility provider.*

Sec. 8. 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 trust. The TRED trust shall receive money collected by the utility provider from retail customers pursuant to a temporary renewable energy 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 9 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 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. 9. 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 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 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 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 contracts approved for payment in accordance with section 8 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 10 of this regulation.

Sec. 10. 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 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. 11. 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 10, 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.