

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

LCB File No. R064-10

Docket No. 09-12005

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

AUTHORITY: NRS 703.025, 704.210, and 704.7828.

A REGULATION relating to the review process for short-term contracts for renewable energy and portfolio energy credits.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

Sec. 2. *“Energy efficiency contract” has the meaning ascribed to it in NRS 704.7821.*

Sec. 3. *“Long-term portfolio energy credits contract” means a contract for the purchase of more than 43,800,000 portfolio energy credits annually and having a term of more than 3 years.*

Sec. 4. *“Long-term renewable energy contract” means a contract for the purchase of more than 5 megawatts of renewable energy and having a term of more than 3 years.*

Sec. 5. *“Short-term portfolio energy credits contract” means a contract for portfolio energy credits for the purchase of less than or equal to 43,800,000 portfolio energy credits annually or having a term of less than or equal to 3 years.*

Sec. 6. *“Short-term renewable energy contract” means a contract for renewable energy for the purchase of less than or equal to 5 megawatts or having a term of less than or equal to 3 years.*

Sec. 7. *A short-term renewable energy contract or short-term portfolio energy credits contract shall be evaluated during an annual deferred energy application proceeding filed*

pursuant to NAC 704.116.

Sec. 8. NAC 704.8831 is hereby amended to read as follows:

As used in NAC 704.8831 to 704.8899 *and sections 2 to 7 of this regulation*, inclusive, unless the context otherwise requires, the words and terms defined in NAC 704.8833 to 704.8867 *and sections 2 to 6 of this regulation*, inclusive, have the meanings ascribed to them in those sections.

Sec. 9. NAC 704.88663 is hereby amended to read as follows:

“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~~ *portfolio* energy credits contracts.

Sec. 10. NAC 704.8869 is hereby amended to read as follows:

1. For the purposes of NAC 704.8831 to 704.8899 *and sections 2 to 7 of this regulation*, inclusive, 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. 11. NAC 704.8871 is hereby amended to read as follows:

1. Except as otherwise provided in NAC 704.8831 to 704.8899 *and sections 2 to 7 of this regulation*, inclusive, each provider shall comply with its portfolio standard during each compliance year by generating, acquiring or saving electricity from a portfolio energy system or efficiency measure 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. 12. NAC 704.8872 is hereby amended to read as follows:

1. As an alternative to transferring ~~renewable~~ *portfolio* energy credits directly to providers of electric service, portfolio energy credits generated by renewable energy systems may be transferred to an aggregator of portfolio energy credits.

2. As used in this section, “aggregator of portfolio energy credits” means a person who obtains portfolio energy credits and then transfers those credits in aggregate to providers of electric service.

Sec. 13. NAC 704.8873 is hereby amended to read as follows:

The Commission may, at any time, require a provider or an owner or operator of a portfolio energy system or efficiency measure providing electricity or portfolio energy credits to a provider pursuant to a contract to provide the Commission with any information that the Commission determines is necessary to monitor or enforce compliance with the provisions of NAC 704.8831 to 704.8899 *and sections 2 to 7 of this regulation*, inclusive.

Sec. 14. NAC 704.8875 is hereby amended to read as follows:

In calculating the total number of kilowatt-hours that a provider generates, acquires or saves from portfolio energy systems or efficiency measures 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 or saved by the provider during the compliance year pursuant to preexisting renewable energy contracts or energy efficiency contracts;
3. Any kilowatt-hours acquired or saved by the provider during the compliance year pursuant to ~~new~~ *long-term* renewable energy contracts, *long-term portfolio energy credits contracts*, *short-term renewable energy contracts*, *short-term portfolio energy credits contract*, or energy efficiency 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;
6. Any kilowatt-hours saved during the compliance year as a result of an energy efficiency measure, subject to the limitations set forth in NRS 704.7821; and
7. Any kilowatt-hours that the provider is authorized to carry forward from previous compliance years.

Sec. 15. NAC 704.8879 is hereby amended to read as follows:

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, acquired or saved from portfolio energy systems or efficiency measures during the most recently completed compliance year and, from that total number of kilowatt-hours, subtotals for the number of kilowatt-hours:

(1) Generated or saved by the provider from its own portfolio energy systems or efficiency measures;

(2) Acquired by the provider pursuant to preexisting renewable energy contracts;

(3) Acquired by the provider pursuant to ~~new~~ *long-term* renewable energy contracts;

(4) *Acquired by the provider pursuant to long-term portfolio energy credits contracts;*

(5) *Acquired by the provider pursuant to short-term renewable energy contracts;*

(6) *Acquired by the provider pursuant to short-term portfolio energy credits contracts;*

~~(4)~~ (7) Acquired or saved by the provider pursuant to ~~new~~ energy efficiency contracts;

~~(5)~~ (8) Attributable to the provider from solar thermal systems;

~~(6)~~ (9) Fed back to the provider from net metering systems used by customer-generators pursuant to NRS 704.766 to 704.775, inclusive;

~~(7)~~ (10) Carried forward by the provider from previous compliance years; and

~~(8)~~ (11) Saved by the provider as a result of energy efficiency measures installed at service locations of residential customers of the provider for the purposes of paragraph (b) of subsection 2 of NRS 704.7821.

- (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, acquire or save from portfolio energy systems or efficiency measures to comply with its portfolio standard for the current compliance year, as calculated by the provider pursuant to NAC 704.8877.
- (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 credit 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. 16. NAC 704.8885 is hereby amended to read as follows:

1. If a utility provider executes a ~~[new]~~ *long-term* renewable energy contract, *long-term portfolio energy credits contract*, or energy efficiency contract, the utility provider shall submit the ~~[new renewable energy contract or energy efficiency]~~ contract to the Commission for approval. The ~~[new renewable energy contract or energy efficiency]~~ 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 or saved 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]~~ *long-term* renewable energy contract, *long-term portfolio energy credits contract*, or energy efficiency contract executed by a utility provider, the Commission must determine that the terms and conditions of the ~~[new renewable energy contract or energy efficiency]~~ contract are just and reasonable. In making its determination, the Commission will consider, as applicable and without limitation:

(a) The reasonableness of the price for the electricity based on the factors set forth in NAC 704.8887;

(b) The term of the contract;

(c) The location of each portfolio energy system or efficiency measure 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 or energy efficiency]~~ 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. 17. NAC 704.8887 is hereby amended to read as follows:

1. For the purposes of this section, each utility provider shall calculate the price for electricity acquired or saved pursuant to a ~~[new]~~ *long-term* renewable energy contract, *long-term portfolio energy credits contract*, or energy efficiency 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 or saved pursuant to the contract.

↪ 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 or energy efficiency]~~ 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 or energy efficiency]~~ 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 or energy efficiency]~~ 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;

(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 or energy efficiency~~ 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 or save pursuant to the ~~new renewable energy contract, or energy efficiency~~ contract;

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

(l) Whether the electricity acquired or saved pursuant to the ~~[new renewable energy contract or energy efficiency]~~ 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]~~ *long-term* renewable energy contract, *long-term portfolio energy credits contract*, or energy efficiency 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 or saved pursuant to other ~~[new]~~ *long-term* renewable energy contracts, *long-term portfolio energy credits contracts*, or energy efficiency contracts that will not be used to comply with the solar energy requirements of the portfolio standard.

Sec. 18. NAC 704.88875 is hereby amended to read as follows:

1. For a *long-term* renewable energy contract, *long-term portfolio energy credits contract*, or energy efficiency contract for a term of more than 3 years, a utility provider may request that the Commission approve mitigation for the impact of imputed debt on the capital structure of the utility provider.

2. If a utility provider wishes to submit a request to the Commission pursuant to subsection 1, the utility provider must include the request in its resource plan which includes the renewable energy contract or energy efficiency contract and which is submitted to the Commission for approval pursuant to the provisions of NAC 704.9005 to 704.9525, inclusive.

3. In the request submitted pursuant to subsection 1, the utility provider:

(a) Shall include its estimate of the amount of the impact of imputed debt on the capital structure of the utility provider measured as a percentage of the net present value of the capacity payments over the life of the contract;

(b) Shall, if the capacity of the portfolio energy system or efficiency measure is not specified in the contract, propose the percentage of the value of the contract payment to be assumed as a capacity payment; and

(c) May propose an amount to be added to the cost of the contract which is equal to a compensating component in the capital structure of the utility provider. A utility requesting an amount to be added to the cost of a renewable energy contract or energy efficiency contract shall provide information which illustrates the financial impact from any imputed debt cost and any assumptions used to develop related imputed debt calculations.

4. In evaluating a request submitted pursuant to subsection 1, the Commission will consider:

(a) The effect that the proposals in the request will have on the rates paid by the retail customers of the utility provider; and

(b) The recovery of costs equal to a compensating component in the capital structure during the utility provider's next deferred energy rate proceeding.

5. If the Commission approves a request submitted pursuant to subsection 1:

(a) The Commission will set forth in its order approving the request the impact of imputed debt on the capital structure of the utility provider measured as a percentage of the net present value of the capacity payments over the life of the contract;

(b) The costs, if any, determined by the Commission as necessary to mitigate imputed debt costs will be collected with other contract costs as a component of the base tariff energy rate; and

(c) The utility provider shall segregate imputed debt revenues from deferred energy revenues and record such revenues as general rate revenues in general rate cases.

6. As used in this section:

(a) “Capacity payment” means the payment for the acquisition of a specified quantity of generating capacity over a specified period of time.

(b) “Compensating component” means the imputed equity necessary to offset the effects of the imputed debt associated with a renewable energy contract or energy efficiency contract.

Sec. 19. NAC 704.8894 is hereby amended to read as follows:

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~~ *portfolio* 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~~ *portfolio* 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. 20. NAC 704.8896 is hereby amended to read as follows:

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]~~ *long-term* renewable energy or ~~[renewable]~~ *long-term portfolio* energy credits contract is submitted for the approval of the Commission, designate which new renewable energy projects associated with Commission-approved *long-term* renewable energy or ~~[renewable]~~ *long-term portfolio* energy credits contracts are eligible to participate in the TRED program established, or to be established, by the utility provider. The Commission will consider the factors set forth in NAC 704.8894 to determine eligibility of such projects.

Sec. 21. NAC 704.8897 is hereby amended to read as follows:

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 NAC 704.8898, 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~~ *portfolio* 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. 22. NAC 704.8898 is hereby amended to read as follows:

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] portfolio** 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] portfolio** 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] portfolio** energy credits contracts approved for payment in accordance with NAC 704.8897.

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 NAC 704.8899.

Sec. 23. NAC 704.9113 is hereby amended to read as follows:

“Long-term purchased power obligation” means:

1. A ~~new~~ *long-term* renewable energy contract, *long-term portfolio energy credits contract*, or energy efficiency contract that must be submitted to the Commission for approval pursuant to NAC 704.8885 ~~[, regardless of the term of the contract, or the amount of capacity or electric energy, or both, to be acquired pursuant to the contract];~~ and
2. Any other contract, including a multiple seasonal contract, for the purchase of more than 5 megawatts and having a term of *more than* 3 years ~~[or more]~~.

Sec. 24. NAC 704.8841 is hereby repealed.

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TEXT OF REPEALED SECTIONS

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NAC 704.8841 “New renewable energy contract” defined. (NRS 703.025, 704.210, 704.7828) “New renewable energy contract” means a renewable energy contract that is executed on or after May 31, 2002.