

**REVISED PROPOSED REGULATION OF THE
DIRECTOR OF THE OFFICE OF ENERGY**

LCB File No. R063-11

December 8, 2011

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

AUTHORITY: §§1-3 and 7-15, NRS 701.595; §§4-6, NRS 701.590 and 701.595.

A REGULATION relating to energy; revising provisions relating to the administration of the Account for Renewable Energy, Energy Efficiency and Energy Conservation Loans; revising the scope of projects for which loans from the Account may be made; revising certain provisions relating to applications for loans from the Account; and providing other matters properly relating thereto.

Section 1. Chapter 701 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. *“Energy conservation project” has the meaning ascribed to it in NRS 701.557.*

Sec. 3. *“Energy efficiency project” has the meaning ascribed to it in NRS 701.558.*

Sec. 4. *“Larger energy conservation project” means an energy conservation project*

which:

1. Is for a facility which is 50,000 square feet or more;

2. Has a total project cost of \$120,000 or more; and

3. Significantly improves the energy conservation within the facility.

Sec. 5. *“Larger energy efficiency project” means an energy efficiency project which:*

1. Is for a facility which is 50,000 square feet or more;

2. Has a total project cost of \$120,000 or more; and

3. Significantly improves the energy efficiency of the facility.

Sec. 6. *“Larger renewable energy system” means a renewable energy system that has a generating capacity greater than 1 megawatt.*

Sec. 7. NAC 701.640 is hereby amended to read as follows:

701.640 “Project” means ~~the planning, design and~~ :

1. *The construction or expansion of a renewable energy system.*
2. *The construction of an energy conservation project.*
3. *The construction of an energy efficiency project.*
4. *The manufacturing of components of a renewable energy system.*

Sec. 8. NAC 701.660 is hereby amended to read as follows:

701.660 ~~In accordance with the provisions of the American Recovery and Reinvestment Act, the~~ *The* purpose of the Account is to provide below-market-rate financing, at an interest rate not to exceed 3 percent, *to qualified applicants* for projects ~~that develop or expand renewable energy systems in this State.]~~ *which comply with the requirements of the American Recovery and Reinvestment Act and which meet the qualifications set forth in NRS 701.545 to 701.595, inclusive, and NAC 701.600 to 701.700, inclusive, and sections 2 to 6, inclusive, of this regulation.*

Sec. 9. NAC 701.670 is hereby amended to read as follows:

701.670 1. Except as otherwise provided in this section, the ~~following persons~~ *owner or operator of a project* may apply for ~~loans~~ *a loan* from the Account . ~~:~~

~~—(a) An owner of an existing renewable energy system in this State; or~~

~~—(b) A person seeking to construct a new renewable energy system in this State.]~~

2. To be eligible for financing from the Account, *the owner or operator of* a project must ~~:~~

~~—(a) Use reliable, proven technology; and~~

~~—(b) Include the expansion of an existing renewable energy system to increase its electrical generating capacity or the construction of a new renewable energy system.]~~ *submit a complete application to the Director and the Director must determine that the applicant is qualified to receive financing from the Account.*

3. The following ~~[projects and]~~ activities are not eligible for financing from the Account:

- (a) Research or general planning;
- (b) Refinancing of existing debt;
- (c) Purchase of land or water rights; or
- (d) Operation and maintenance.

Sec. 10. NAC 701.675 is hereby amended to read as follows:

701.675 1. The Director will solicit applications for the financing of ~~[renewable energy]~~ projects. The solicitations will be made available to interested parties and posted on the Internet website of the Office of Energy at <http://energy.state.nv.us>. The solicitations ~~[will]~~ *may* specify the amount of financing available ~~[and may specify an]~~, *the* allocation of financing to categories of applicants, such as natural persons, schools, public entities and small businesses ~~[. The solicitations will specify]~~, *and* the minimum and maximum amounts of individual loans within each category.

2. Each application for financing through the Account must be submitted on a form prescribed by the Director and must include:

(a) The name, address and telephone number of the applicant or the legal representative of the applicant.

(b) A narrative description of the proposed project. ~~[, including, without limitation, a complete description of the renewable energy system and the capacity of the system.]~~

(c) An estimate of the time required to recover the project cost . ~~[from energy cost savings, if the project is replacing the use of fossil fuels.]~~

(d) An estimate of the amount of reduction in emission of greenhouse gases ~~[, if the project is replacing the use of fossil fuels.]~~ *as a result of the project.*

(e) An estimate of the number of jobs that will be created or retained as a result of the project.

(f) Maps of appropriate scale to show clearly the location of the proposed project with respect to other identifiable topographical or geographical features in the area of the project.

(g) A complete and legible legal description of the location of the project ~~[,]~~ , *including the assessor's parcel number.*

(h) Proof of ownership, rights-of-way, easements or agreements showing that the applicant holds or is able to acquire all land, other than public land, or acquire interests therein and any water rights necessary for the construction of the proposed project.

(i) A description of how the project complies with all applicable planning and zoning requirements.

(j) An itemized estimate of the total cost of the project and the amount of financing requested. If an estimate of the total cost of the project has been prepared by a professional , ~~[engineer,]~~ the application must include a copy of that estimate.

(k) A statement of any other anticipated sources of funding for the project from this State, another state, a federal agency , *the qualified applicant's capital* or any other ~~[entity,]~~ *source.*

(l) If the applicant is a public entity, the median household income for the community or area that will be served by the project or for the city or county in which the project is located, including, without limitation, the source of that information.

(m) A preliminary project schedule that ~~[, as applicable,]~~ provides a timetable for : ~~[the:]~~

- (1) ~~[Advertising]~~ *The advertising* and opening of bids for the project;
- (2) ~~[Start of the]~~ *Each* construction phase of the project ~~[;]~~, *from planning and permitting to completion and commencement of operation of the project; and*
- (3) ~~[Estimated]~~ *The estimated* schedule of progress payments to the contractor and other costs related to the ~~[drawdown]~~ *disbursement* of money . ~~[;]~~
- ~~— (4) Completion of the construction phase of the project; and~~
- ~~— (5) Initiation of the operation of the project.]~~

(n) Information sufficient to demonstrate the means by which any loan made by the Director from the Account will be repaid. If the applicant is a public entity, this information must include, as applicable, orders or resolutions specifying the method of loan repayment from the appropriate governing board, regulatory agency or local governing body and copies of current capital improvement plans and debt management policies as provided to the Department of Taxation pursuant to chapter 350 of NRS and any applicable regulations. If the applicant is not a public entity, the applicant shall provide:

- (1) Annual financial statements for the 3 years immediately preceding the application ~~[;]~~ *for each applicant and co-applicant or guarantor, if any;*
- (2) ~~[At]~~ *A reference from a bank, at* least three *direct* credit references ~~[;]~~ and *authorization for the Director to access and use personal and commercial credit reports in the loan decision process;*
- (3) *Any necessary legal documents; and*
- (4) Any other information required by the Director to demonstrate the means by which the applicant intends to repay the loan.

(o) Institutional, ~~and~~ management *and contractual* arrangements required for successful implementation of the project.

(p) A report on the status of the process of environmental review for the project, if applicable.

(q) A list of any required permits and a schedule of when those permits will be obtained.

(r) Security, *collateral or information concerning any co-applicant or guarantor* for the loan, as required by the Director.

(s) *A copy of the articles of incorporation or organizational documents of the applicant, a certificate of good standing provided by the Secretary of State, a copy of the contractor's license of any contractor who will perform any work on the project and proof of general liability, workers' compensation and course of construction insurance maintained by the applicant.*

(t) Any other information the Director determines is necessary.

Sec. 11. NAC 701.680 is hereby amended to read as follows:

701.680 1. The Director will review each application submitted pursuant to NAC 701.675 for completeness. An application that is incomplete will be returned to the applicant and may be resubmitted. ~~within 30 days. The Director will deny the application if the applicant fails to submit a complete application within 30 days after the incomplete application is returned to the applicant.~~ The Director will deny an application if the Director determines that:

(a) The project or applicant does not meet the eligibility requirements set forth in NAC 701.670;

(b) The project is not feasible;

(c) The applicant is unable to provide necessary collateral to secure the loan; ~~or~~

(d) The applicant lacks the technical, managerial or financial capability to carry out the project and repay the loan ~~[;]~~; *or*

(e) The applicant is unable or unwilling to comply with the requirements, terms or conditions of the loan or the loan approval process.

2. If the Director denies an application, the Director will provide written notice to the applicant of the denial of the application and the reason for the denial.

Sec. 12. NAC 701.685 is hereby amended to read as follows:

701.685 1. The Director will evaluate and ~~[rank each eligible applicant within each category established by the Director,]~~ *prioritize the applications submitted by qualified applicants* based on the following criteria:

(a) Job creation as a result of the *qualified applicant's* project ~~[, if the project is to be financed with money awarded pursuant to the American Reinvestment and Recovery Act,]~~ *relative to the cost of the project;*

(b) Renewable energy generation, *energy saved, efficiency increased or renewable energy system components manufactured* relative to the cost of the *qualified applicant's* project;

(c) Reduction of the use of fossil fuels and the emission of greenhouse gases ~~[;]~~ *relative to the cost of the qualified applicant's project;*

(d) Leveraging of additional financial resources ~~[; and]~~, *the availability of full financing, the proposed repayment schedule and the reliability of sources of repayment of the loan;*

(e) Readiness of the *qualified applicant's* project to proceed ~~[and be constructed within prescribed time frames,]~~, *the quality of the management of the project and the expected duration of the project; and*

(f) Loan amount and availability of money from the Account to meet the needs of the qualified applicant.

2. The Director will ~~[present the ranking of eligible projects to]~~ *give preference to larger energy conservation projects, larger energy efficiency projects and larger renewable energy systems.*

3. *The Director will request approval from* the Interim Finance Committee ~~[for approval.]~~ *to make loans of money from the Account.* Upon approval by the Interim Finance Committee, the Director ~~[will make the ranking of eligible projects available to the public and]~~ will post *a list of the [ranking] qualified applicants* on the Internet website of the Office of Energy at <http://energy.state.nv.us>.

Sec. 13. NAC 701.690 is hereby amended to read as follows:

701.690 1. The Director ~~[will]~~ *may* offer ~~[loan agreements]~~ *loans according* to the ~~[applicants with the highest ranked projects within each category]~~ *priority established by the Director* until money available from the Account is fully committed. ~~[If the rankings of projects within a category are tied, money will be allocated in the order that the applications were received.]~~ *Each loan offer will have an expiration date determined by the Director. If a qualified applicant who receives a loan offer does not execute the loan documents to the satisfaction of the Director before the expiration date of the loan offer, the qualified applicant may lose his or her opportunity to receive a loan from the Account.*

2. ~~[Each]~~ *Loans will be documented according to the unique characteristics of each loan.*
The loan documents for each loan agreement must be:

- (a) ~~[On a form provided]~~ *Prepared* by the Director; ~~[and]~~
- (b) *Approved by the Attorney General; and*

(c) Executed by all parties *in a form and manner acceptable to the Director* before the ~~commencement of construction of the project.~~ *Director will make a loan from the Account.*

3. The term of a loan ~~agreement~~ will be determined by the Director but will not exceed 15 years.

4. The interest rate for all ~~loan projects~~ *loans* will be set by the Director, but will not exceed 3 percent. The Director may offer a lower interest rate to a *qualified applicant who is a public entity* if the project is located in a disadvantaged community.

Sec. 14. NAC 701.695 is hereby amended to read as follows:

701.695 Each ~~recipient of~~ *qualified applicant who receives* a loan from the Account shall:

1. Establish ~~an official~~ *a dedicated* file for the project. The file must contain an adequate record of all significant actions relating to the project.

2. Establish accounts that accurately and adequately show all amounts of money:

(a) Received as financial assistance from the Account;

(b) Received and spent on the project; and

(c) Received as income from the project.

3. Establish a system of accounting which ensures that the final total costs of the project, including all direct and indirect costs, are recorded accurately.

4. Establish and maintain such other accounts and records as are required by the Director ~~to~~ *comply* and *required for compliance* with *the* requirements for reporting established by the Federal Government.

5. Retain all records relating to the project for at least 3 years after final repayment of financial assistance has been made or for any longer period required by the Director.

6. Make any records relating to the project available at any reasonable time for inspection or copying by any authorized representative of the Director.

Sec. 15. NAC 701.700 is hereby amended to read as follows:

701.700 1. If an audit is required by federal law or by an agency of the Federal Government, or if the Director determines that an audit is necessary to ensure the integrity of the Account, the Director may require that an audit be performed of ~~financial~~ *the* records relating to a project.

2. Any audit required pursuant to this section must be performed at the expense of the ~~recipient~~ *qualified applicant* by ~~a certified public accountant~~ *an appropriate professional or expert* who is independent of the ~~recipient.~~ *qualified applicant.*

3. A report of the audit must be prepared by the auditor in the form prescribed by the Director.