

**STATE OF NEVADA**  
**Colorado River Commission of Nevada**

**Minutes of Workshop to Solicit Comments  
on Proposed Regulations  
LCB File No. R148-13**

The workshop was held at 1:00 p.m. on Monday, April 21, 2014 at the Clark County Commission Chambers, Clark County Government Center, 500 South Grand Central Parkway, Las Vegas, Nevada.

**STAFF MEMBERS PRESENT**

Ms. Jayne Harkins, Executive Director  
Mr. Jim Salo, Deputy Executive Director  
Ms. Ann Pongracz, Special Counsel, Attorney General  
Mr. Craig Pyper, Hydropower Program Manager  
Ms. Lisa Ray, Assistant Hydropower Program Manager  
Ms. Dana Corkill, Hydropower Program Specialist  
Ms. Carla Miguel, Administrative Assistant II  
Ms. Sandra Fairchild, Consultant to Colorado River Commission of Nevada

**OTHERS PRESENT**

Mr. Mike Simonton, Western Area Power Administration (Western)  
Mr. John Holmstrom, Tronox  
Mr. Darrell Lacy, Nye County  
Ms. Pauline England, Nevada Department of Transportation  
Mr. Eric Witkoski, Attorney General, Bureau of Consumer Protection  
Mr. David A. Jones, Nevada State College  
Ms. Mary Simmons, NV Energy  
Mr. Douglas Brooks, Nevada Power  
Mr. Jeff Morrow, State of Nevada, Department of Child and Family Services  
Ms. Chelsie Campbell, NV Energy  
Mr. Curt Ledford, Valley Electric Association  
Mr. Randy Ewell, Mt. Wheeler Power  
Mr. Nicholas Vaskov, Nevada State Higher Education  
Mr. Scott Krantz, Southern Nevada Water Authority  
Ms. Tammy Cordova, Public Utilities Commission of Nevada (PUC-N)  
Mr. Randy DeVaul, City of North Las Vegas  
Mr. Vinny Spotleson, Senator Reid's Office  
Mr. Paul Stuhff, Attorney General, Bureau of Consumer Protection  
Mr. Lloyd Webb, Olin Corporation (by teleconference)  
Mr. Tamay Hodu, member of the public

The workshop was conducted in accordance with Nevada's Open Meeting Law.

The following materials were made available at the workshop: the Notice of Workshop and Agenda, the proposed regulations, the Small Business Impact Statement, the slide presentation, a summary of the proposed regulations, Nevada Revised Statutes (NRS) 704.787, a copy of Nevada Administrative Code

(NAC) 538 and the Hoover Power Allocation Act of 2011. These materials are attached to and made a part of the minutes.

Ms. Jayne Harkins welcomed everyone to the public workshop pertaining to the proposed regulations amending Chapter 538 of the Nevada Administrative Code (NAC). Ms. Harkins stated that the purpose of the workshop is to solicit comments from interested persons regarding the Colorado River Commission of Nevada (Commission) proposed regulations. Further, the topics in the proposed regulations would be divided into five general areas – 1) rules of Practice and Procedures before the Commission; 2) allocation of Schedule D Power from the Boulder Canyon Project to new allottees; 3) marketing of electric power by the Commission; 4) other matters addressed in NAC 538, including metering and risk management; and 5) general rules that are being repealed.

Ms. Ann Pongracz described the timeline for the rulemaking process and interaction to date between the Commission staff and the Legislative Council Bureau (LCB). Ms. Pongracz outlined the remaining process which includes receipt of final comments by 5:00 p.m., Friday, April 25 and the proposed hearing at the Commission's regularly planned meeting in June.

Ms. Pongracz then provided a summary of the changes to the Commission's Rules of Practice and Procedures which included Sections 1, 2, 4-6, 10, and 17-18, XX, and 19-25. Section 1 is simply an introductory section that is non-substantive. It says that Chapter 538 of NAC is hereby amended by adding "thereto the provisions set forth as Sections 2 to 16, inclusive, of this regulation." Section 2 states, "As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 538.010 and Section 3 of this regulation have the meanings ascribed to them in those sections."

The next revision to Section 4 talks about how documents can be received officially by the Commission. The last time the Commission revised its regulations, the internet did not exist. Section 5 requires the Commission to maintain a service list for each case for which a hearing will be held. Section 6 allows for the appointment of one or more presiding officers to preside over and conduct hearings and other proceedings, or any portion thereof.

In Section 10, there's a definition of Schedule C, which specifies the priority of entitlement of the States of Arizona, California, and Nevada to excess energy generated at the Hoover Power plant. Section 17 addresses the amendment of NAC 538.010 to read as follows: "Commission" means the Colorado River Commission of Nevada. Section 18 contains introductory language clarifying which of the regulations that will be discussed later applies to Schedule D allocations and which sections of the NAC govern practice and procedures for the Commission. And Section XX states that complaints may be made by any interested person and explains how a complaint should be made to the Commission.

Sections 19 through 25 set forth minor revisions to current procedural regulations. Section 19 states that the Commission Chair, Executive Director or the presiding officer may hold a prehearing conference. Section 20 addresses who may be the presiding officer. Section 21 changes the date for rendering a Commission decision from 90 to 180 days after completion of the hearing.

Section 22 addresses the Commission's issuance of a decision or order and inserts the language "following a hearing." Section 23 states that the Commission may be petitioned by members of the public regarding any matter within the Commission's jurisdiction. Section 24 addresses petitions and Section 25 clarifies which sections of the regulations are covered under the Rules of Practice and Procedure.

Following Ms. Pongracz' presentation, Jim Salo provided a summary of proposed regulations that relate to the topic of allocating Schedule D power including Sections 3, 7-8, and 11-13. Section 3 is a definition of the phrase "Schedule D Power." Section 7 sets up the steps that will be followed to develop the criteria to be used by the Commission in determining how to allocate Schedule D power.

The basic steps include the following: Staff will hold a public meeting to solicit input, comments, and suggestions. After considering that input, Staff will prepare a draft order setting forth proposed criteria for the Commission's consideration and decision. A copy of the draft order will be served on all interested persons, and on anyone else who asks to be served with a copy of that draft order. The Commission will conduct a formal hearing at a future date to consider the proposed criteria the Staff has developed, at which the Commission will act on those criteria by adopting them, modifying them, or rejecting them. The Commission has a range of options. Assuming the Commission approves the criteria then Staff will utilize the criteria in developing a proposed allocation of Schedule D power for consideration by the Commission. Section 8 focuses on the actual steps leading up to allocations once the Commission has the criteria in place. Staff will hold another public meeting and discuss the application process. Any application forms that are developed will be discussed. The deadlines will be set forth; and, again, input, comments and questions will be solicited. Interested persons will be able to submit an application. All the applications will be reviewed by Staff.

Again, a draft order will be prepared by the Staff for the Commission's consideration recommending which entities the Staff believes would most appropriately be identified as potentially successful applicants. After this notice there will be another Commission hearing on the actual allocations and the proposed draft order the Staff has prepared. Once again, the Commission at the hearing will have a full range of options but ultimately will be asked to make a decision on which applications will be successful. That decision will be advertised with a notice calling for any objections pursuant to statute. If objections are received within ten days, the Commission will hold a hearing within 30 days.

Mr. Salo next addressed Section 8 which sets forth the concept that if the applicant is offered a contract and for whatever reason is unable or fails to execute the contract within 90 days, the Commission has the ability to call that portion of the allocation back and reallocate it to some other entity.

Section 11 directs the Commission to allocate Schedule D power according to the law and incorporates a phrase to achieve the greatest possible benefit to the State, which is directly taken from one of the Commission's organic statutes, NRS 538.161.

Section 12 sets forth the minimum requirements for an applicant that is a public utility, and Section 13 sets forth the minimum requirements for an applicant -- that is not a public utility.

These two sections parallel each other closely. Subparagraphs 3 and 4 relate to who has the responsibility to maintain an appropriate power factor. Obviously, if a customer is a utility applicant, that's part of what you do in your business, and the burden of the utility. If you're a non-utility applicant, you would have to have a contract with a utility or other entity that can maintain the appropriate power factor. Similarly, the Integrated Resource Plan (IRP) requirements that apply in this context directly apply to you if you are a utility. If you're a non-utility, you will be expected to contract with someone that does comply with the requirements.

Craig Pyper provided a summary of proposed regulations related to electric power marketing rules, including Sections 9-10, 14-16, 26-33, 35, 37-39. Section 9 and 10 simply define Schedule A and Schedule

C. Section 14 describes the steps that the Commission will take to reallocate power if a contractor either surrenders or loses its allocation. Sections 28 and 29 also describe the steps the Commission will take to reallocate power if a contractor loses, surrenders, or fails to contract with the Commission within 90 days of being offered an allocation.

Section 15 describes the Commission's offer of new Hoover power contracts to existing Schedule A and B contractors for Post-2017 Hoover power. Section 16 describes the Post-2017 contract provisions for Schedule A, B, and D contractors. These are items that are mandated by the State or the federal government in accepting the Hoover contract. Some of these provisions include the Lower Colorado Multi-Species Conservation Program and an IRP that is mandated by the federal government and therefore to customers.

Also, the new Schedule D customers will be required to participate through the Commission in the implementation agreement, which also mandates repayable advances that will basically be repaying those existing customers who made the investment in Hoover Dam who have given up part of their allocations to create the Schedule D resource pool.

Section 26 describes the eligibility requirements for applicants who seek an allocation of Hoover power prior to 2017, as well as for applicants seeking an allocation from Parker-Davis or Salt Lake City Area Integrated Projects.

Section 30 describes the minimum capacity reserve requirement for each contractor. Section 31 identifies the contract term for Boulder Canyon, Parker-Davis and Salt Lake City Integrated Projects. For the new Hoover contracts, the power terms could be up to 50 years. In the current contract, the term was 30 years.

Section 32 describes the provisions that require several things. Currently, some hydropower customers have existing relationships with other customers for resource sharing. And this section just clarifies some of the rules that need to be in place prior to their lease agreements or selling their share of power. It also mandates that the current utilities that have Hoover power use it to the full advantage for the benefit of their current customers, which provides the greatest benefit to this State. Also, currently Nevada Power by contract has to pass through the benefits of Hoover Schedule B power to its residential rate payers. Under this provision, Staff has proposed changes to pass through the benefits of both Schedules A and B to Nevada Power's residential rate payers.

Section 33 allows the Commission to reduce the allocation of any contractor that does not use its full allocation for three consecutive years. Section 35 includes Schedule D in the calculation when apportioning shortages when there is a reduction in Hoover capacity. For those customers who know Hoover, it is basically a pro-rata share of what's available. So this just explains how Schedule D is incorporated into what is already occurring with Schedule A and B, so they all share the available resource.

Section 38 adds a provision that allows the Commission to designate other points of delivery and voltages within Western's marketing area for all hydropower projects. Section 39 specifies Post-2017 Schedule A and B Hoover Contractors' allocations of capacity and energy and creates a virtual place-holder for Schedule D Contractors allocations of capacity and energy. As of this point in time, the Commission doesn't know who they will be.

Lisa Ray, Assistant Hydropower Program Manager provided a summary of proposed regulations related to metering and risk management, which includes Sections 34, 36, 40 and 41.

Ms. Ray stated that the Commission is a customer-funded agency which does not receive revenue from the State's General Fund. The Commission passes through costs to its customers directly, and pays suppliers within four to five days of receiving payment from its customers. There is no wiggle room if a payment is received late. The goal of the proposed changes to the NAC is to provide financial protection for the State of Nevada, the Commission and its contractors that could result in a loss resulting from a late payment or nonpayment.

Ms. Ray went on to say that the Commission is not a power generator. And, therefore, the Commission wants to avoid becoming a credit risk to its power suppliers, including Western, Bureau of Reclamation and other market power suppliers. One of the reasons the Commission is looking at this is because Western is proposing to implement additional risk management policies that may require a federal electric service contractor such as the Commission, to provide collateral in the event of an adverse material change. One of the things that the Commission has been looking at is establishing appropriate meter and meter data requirements according to the type of customer in order to provide accurate data for billing purposes, providing protection for both the Commission and its customers.

Staff also wants to provide the Commission flexibility to adjust its administration charge rate for a number of circumstances that will protect Commission's revenue stream in order to provide continued operation in the event of planned and unplanned reductions in billable kWh. Currently, the Commission does an annual credit worthiness review of a few contractors, but what Staff desires is to conduct an annual credit worthiness review of all contractors to provide the Commission the whole picture of its customers' financial situations. Current statutes limit which customers must provide collateral. There is no change to which customers must provide collateral.

The proposed revisions also provide the Commission the flexibility necessary to implement prepayment of power purchases and/or establish a cash working capital fund, if and when it is needed. Examples were provided that explained the impact of late and inaccurate payment discrepancies. There are also proposed changes to the regulations that allow for short-term reallocation of hydropower to other contractors following the suspension of a contractor's hydropower allocation in order for the Commission to maintain its revenue stream until there's a reconciliation with that contractor or the contract is fully terminated and the power is permanently reallocated. So, again, this gives the Commission a few checks and balances.

Following the presentation, Ms. Harkins opened public comment. She explained that she would walk through each page and section, and if there was a section that someone was interested in, to come up to the microphone and provide comment. She also reminded the participants that a court reporter was present and would be transcribing the workshop.

The first commenter was Tamay Hodu. Mr. Hodu's comments addressed certain personal concerns of his that are not related to the Commission's Rulemaking process. Ms. Harkins explained that the Commission was only using the meeting room at the Clark County Government Center and that the Commission was taking comments on the proposed regulations.

No oral comments were provided for Sections 1 through 15.

The second commenter was Mr. Douglas Brooks, Assistant General Counsel of NV Energy. Mr. Brooks expressed concerns with subsection 2F of Section 16, which he indicated appears to be a misinterpretation of the relevant section of NRS 704.787, specifically subsection 3. Mr. Brooks said that this was part of AB 199 that passed last year in Nevada's legislative session, and believes that all new customers who are allotted Schedule D power are subject to the provisions of AB 199 subsection 3, and that all the charges enumerated therein would apply to those customers. Mr. Brooks also stated that it appears that subsection 2F of Section 16 of regulations does not accomplish that and omits what NV Energy calls subsection 3 charges from applying to those customers.

No oral comments were provided for Sections 17, 18, XX and 19 through 31.

The third comment was provided by Mr. Douglas Brooks, Assistant General Counsel of NV Energy. Mr. Brooks expressed concerns with Section 32, subsection 4. Mr. Brooks stated that current regulation requires Nevada Power to pass the benefits of Schedule B power through to residential customers, as does the contract between the Commission and Nevada Power for the sale of Schedule B power. Mr. Brooks also stated that the PUC-N has implemented this principle in general rate case proceedings with Nevada Power consistent with stipulations presented to the Commission that involve Nevada Power and the Commission. Mr. Brooks further stated that as a general principle, Nevada Power does not believe it's appropriate for anyone other than the PUC-N to attempt to determine how Nevada Power's rates should be set. Mr. Brooks said that it's Nevada Power's position that the Commission should not attempt to further engage in rate setting through its regulations, and that the rate setting process involves the balancing of many interests and the allocation of an additional hundred megawatts of river power benefit to one rate class would disadvantage other rate classes and make Nevada Power's non-residential rates less competitive. Mr. Brooks added that the only appropriate place under Nevada law for determining how to balance all of these competing interests is before the PUC-N and not in the Commission's regulations. Mr. Brooks also stated that the Commission has participated in many PUC-N proceedings regarding Nevada Power's rates and has been an effective advocate for its interests and should continue to use those interventions in their dockets to attempt to implement its preferred policies on rate making. Additionally, Mr. Brooks stated that Section 32, subsection 1 is not clear.

Ms. Harkins asked if NV Energy's concern was with the use of the term "full" in place of "economic" in subsection 4, or was the concern related to the fact that the Commission allocated Schedule A to residential customers. Mr. Brooks responded that it was the addition of Schedule A. Mr. Brooks added that Schedule B in the regulation is a historic artifact, and NV Energy does not advocate changing that. The addition of Schedule A is the issue that NV Energy has and that the allocation of the economic benefits of Schedule A power is vested by the Nevada Legislature and the PUC-N.

Mr. Brooks provided additional comments on Section 32, subsection 1 stating that it appears subsection 1 is written so that the Commission can determine issues regarding a joint dispatch agreement between Nevada Power and its sister company, Sierra Pacific Power, through its regulations, which Nevada Power believes would be improper. Mr. Brooks added that he understands the Commission's concerns with carrying out its statutory duties and obligations, but suggested that the PUC-N hearing room was the only appropriate place under Nevada law to do that. And that would include any concerns that the Commission has with how the joint dispatch of generation involving Nevada Power and its sister company up north affecting any obligations Nevada Power may have to ensure that the benefits of Schedule B power be flowed through to residential customers. He said he didn't think it was appropriate to do through the Commission's regulations. Mr. Brooks further expressed that Nevada Power is not

taking issue with what concerns the Commission or the policies it wants to implement and respects those, but suggests that the PUC-N under Nevada Law is the only appropriate place to make those final decisions. Mr. Brooks said that Nevada Power is somewhat confused and unclear about the meaning of the term "full benefits" in subsection 4, and that a definition of this phrase would be very helpful for its proper understanding and application should this section be included in the opted regulations. Mr. Brooks reemphasized that if the use of "full benefits" is intended to mandate how the PUC-N is to allocate costs between Nevada Power and its affiliate Sierra Pacific under their interim joint dispatch agreement, NV Energy's objections against the Commission's regulations attempting to dictate the PUC-N rate making decisions apply here as well. Mr. Brooks thanked Commission staff for the opportunity to present comments.

Mr. Eric Witkoski, the State of Nevada's Consumer Advocate with the Attorney General's Bureau of Consumer Protection, stated that his office would be filing additional comments on Section 32, subsection 4 by Friday, April 25. Mr. Witkoski further stated that he was not totally in agreement with the characterization of Nevada Power's interpretation on what the PUC-N can do and what the Commission can do. Mr. Witkoski added that Hoover Schedule B was allocated to residential rate payers in a contract in the early '80s and is followed by the PUC-N today, and that it may be up to the Commission on how it is going to be allocated. Mr. Witkoski restated that Bureau of Consumer Protection will file comments by Friday and cautioned that he does not fully agree with Nevada Power's interpretation on what the PUC-N can do and what the Commission can do.

No oral comments were provided for Sections 33 through 38.

The final comment, on Section 39, was provided by Mr. Douglas Brooks, Assistant General Counsel of NV Energy. Mr. Brooks said that NV Energy is incorrectly shown in the listing or restatement of the entities that will take Schedule A and Schedule B power. Mr. Brooks added that the current contract and any future contract for Schedules A or B power would be with Nevada Power Company, and clarified that NV Energy, Inc. is the holding company that owns Nevada Power Company. Mr. Brooks added that there is a lot of confusion because Nevada Power Company does business as NV Energy, Inc. with the Secretary of State, but that's not the entity the Commission contracts with. Mr. Salo asked if "Nevada Power Company" should be listed in the NAC chart; Mr. Brooks affirmed.

No oral comments were provided for Sections 39 through 43.

Ms. Harkins asked if there were any comments from those on the phone. No other comments were provided. Ms. Harkins reminded the participants that written comments were due to the Commission by 5:00 o'clock p.m. on Friday, April 25. Ms. Harkins provided the fax number and email address and added that comments could be hand delivered or mailed to the Commission. Ms. Harkins then outlined the next steps in the Rulemaking process that include the posting of the Notice of Intent to Adopt Regulations in May 2014 and the public hearing at the Commission's regularly planned June meeting date and that the Staff anticipates submitting the final regulations to the LCB for final adoption after Commission approval.

The Workshop was concluded at 1:54 p.m.

*Staff received written comments by the April 25, 2014 deadline from the following entities: Basic Power Company, State of Nevada's Attorney General's Bureau of Consumer Protection, City of Henderson, City of*

*Mesquite, Nevada Power Company, Olin Corporation, Southern Nevada Water Authority and Valley Electric Association. Written comments are attached and made part of the minutes.*

APPROVED:

  
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Jayne Harkins, B.E., Executive Director