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**Form For Filing
Administrative Regulations**

**Agency: Colorado River Commission
of Nevada**

**FOR EMERGENCY
REGULATIONS ONLY**

Effective date _____

Expiration date _____

Governor's signature

Classification: ADOPTED BY AGENCY

Brief description of action: The proposed changes to the Commission's regulations are needed to implement the provisions of the Hoover Power Allocation Act of 2011 (43 USC Sec. 619a), and Assembly Bill 199 adopted in the 2013 session of the Nevada Legislature (NRS 704.787), and to update other provisions of Nevada Administrative Code (NAC) 538.

The additional proposed regulatory changes in part:

- Revise provisions governing practice and procedure before the Commission that pertain to how hearings, public processes and in particular the hydropower marketing and allocation process, will be conducted and how to participate;
- Revise provisions regarding the marketing and allocation of power to current contractors;
- Adopt provisions governing the marketing and allocation of certain power from Hoover Dam to new allottees;
- Revise various provisions governing electric power contracting by the Commission and other matters addressed in NAC 538; and,
- Revise current risk management procedures and adopt additional risk management procedures.

Authority citation other than 233B: NRS Chapter 538, NRS 704.787

Notice date: May 8, 2014

Date of Adoption by Agency: June 10, 2014

Hearing date: June 10, 2014

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

LCB File No. R148-13

§§1 to 39, inclusive, and 41 to 44, inclusive, become effective on June 23, 2014

§40 becomes effective on October 1, 2017

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

AUTHORITY: §§1, 2, 4-6, 17 and 19-25, NRS 538.201; §§3, 7-16, 18 and 26-44, NRS 538.181 and 538.201.

A REGULATION relating to the Colorado River Commission of Nevada; revising provisions governing practice and procedure before the Commission; adopting provisions governing the allocation of certain power from the Boulder Canyon Project to new allottees; revising various provisions governing the marketing of electric power by the Commission; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing federal law requires the United States Secretary of Energy to create from existing allocations of power from the Hoover Dam a pool of power for allocation by the Colorado River Commission of Nevada to new allottees for delivery commencing October 1, 2017. (43 U.S.C. § 619a(a)(2)) Under existing state law, the Commission holds and administers all rights and benefits pertaining to the distribution of power from the Hoover Dam and may enter into contracts relating to that power, including, without limitation, contracts relating to the transmission and distribution of that power. (NRS 538.181)

Sections 7 and 8 of this regulation set forth the procedures the Commission will follow in developing criteria for the allocation of power to new allottees and evaluating applications for an allocation of power to new allottees. Section 7 provides that after conducting a public meeting and considering comments by meeting participants, the Commission's staff must prepare a draft order setting forth proposed criteria for the allocation of the power by the Commission. The Commission will conduct a hearing on this draft order and issue a decision establishing the criteria for the allocation of power to new allottees. Section 8 sets forth the procedure the Commission will use to accept and consider and applications for an allocation of power to new

allottees. **Sections 12 and 13** of this regulation require a new allottee seeking to contract with the Commission for the purchase of power to meet certain requirements.

Under existing federal law and state regulations, certain entities have entered into contracts for the purchase from the Commission of power from the Hoover Dam. (43 U.S.C. § 619a(1); NAC 538.690) These contracts expire on the last day of the billing period for September 2017. (NAC 538.500) **Section 16** of this regulation provides that upon the expiration of such a contract, the Commission will offer the contractor a new contract for the delivery of power for the period commencing on October 1, 2017.

Existing regulations set forth certain terms and conditions for contracts for the purchase of power from the Boulder Canyon Project. (NAC 538.490-538.670) **Section 16** requires a contract for the purchase of power from the Boulder Canyon Project for a period commencing on or after October 1, 2017, to require the contractor to pay a proportionate share of this State's contribution to the cost of the Lower Colorado River Multi-Species Conservation Program established under federal law and to pay certain fees, tariff rates and charges required by existing law.

Sections 26-40 of this regulation amend various provisions relating to the marketing of power by the Commission.

Section 41 of this regulation amends provisions relating to the creditworthiness and collateral requirements of contractors who purchase power from the Commission. **Section 41** also authorizes the Commission to require a contractor to make payments to a cash working capital fund established by the Commission or to require a contractor to prepay for power from the Commission.

Section 42 of this regulation authorizes the Executive Director of the Commission to reallocate on a short-term basis the hydroelectric power allocated to a contractor if the contractor's allocation is suspended by the Commission because of the contractor's nonperformance.

Sections 4-6 and 18-25 of this regulation amend various provisions relating to practice and procedure in proceedings before the Commission.

Section 1. Chapter 538 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 16, inclusive, of this regulation.

Sec. 2. *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.*

Sec. 3. *“Schedule D” means the schedule appearing at 43 U.S.C. § 619a(a)(2)(A) which specifies the amount of:*

- 1. Contingent capacity of the Hoover power plant; and*
- 2. Associated firm energy,*

↪ allocated in that schedule for allocation to new allottees.

Sec. 4. *A document is considered officially received by the Commission only if it is:*

- 1. Delivered to the Commission’s office in Las Vegas in person or by United States mail;*
- 2. Presented to the Commission during a hearing;*
- 3. Filed electronically through the Commission’s website, if an electric filing system is available, and by United States mail; or*
- 4. Filed with Commission in any other manner directed by the Executive Director.*

Sec. 5. 1. *The Commission will maintain a service list for each case for which a hearing will be held.*

2. A person may submit to the Executive Director a written request to be placed on the service list maintained by the Commission pursuant to subsection 1. If a person makes such a request, the Commission will send the person either copies or electronic mail notification of all notices and orders issued by the Commission or a presiding officer in the case to which the service list applies.

3. *A person placed on the service list maintained by the Commission pursuant to subsection 1 is responsible for notifying the Executive Director in writing of any changes in the electronic or physical address contact information for that person.*

Sec. 6. 1. *The Commission may appoint one or more presiding officers to preside over and conduct hearings or other proceedings, or any portion thereof, in any matter pending before the Commission. The Commission, in its discretion, may appoint an employee of the Commission or any other person to serve as a presiding officer.*

2. *If the Commission appoints a presiding officer to preside over and conduct any hearing or proceeding, within 30 days after the close of all evidentiary hearings in the matter, the presiding officer shall file with the Commission a draft order that sets forth the findings and conclusions of the presiding officer and the reasons and bases for those findings and conclusions. The draft order must be served promptly on each party of record.*

3. *Any party of record may file comments to the draft order of a presiding officer. Any such comments must be filed with the Commission within 30 days after the issuance of the draft order.*

4. *Upon review of a draft order filed with the Commission by a presiding officer and any comments to the draft order filed by a party of record, the Commission may affirm or modify the draft order, in whole or in part, remand the draft order to the presiding officer for further proceedings or take any other just and reasonable action with regard to the draft order, including, without limitation, replacing the draft order with an order of the Commission.*

Sec. 7. 1. *The Commission will develop criteria for the allocation of power designated in Schedule D in accordance with this section.*

2. The Commission's staff must prepare a draft order setting forth proposed criteria for the allocation by the Commission of power designated in Schedule D. To prepare the draft order, the Commission's staff must:

(a) Conduct a public meeting that complies with the provisions of chapters 241 and 538 of NRS and NAC 538.075 to 538.330, inclusive, and sections 4 to 8, inclusive, of this regulation. In addition to satisfying the requirements of chapters 241 and 538 of NRS and NAC 538.075 to 538.330, inclusive, and sections 4 to 8, inclusive, of this regulation, the notice must:

(1) Describe the power designated in Schedule D for which allocation criteria is being developed;

(2) Set forth the proposed criteria to be used by the Commission for the allocation of power designated in Schedule D;

(3) Include a proposed form for applying for an allocation of power designated in Schedule D;

(4) State that, at the public meeting, the Commission's staff will accept questions and oral comments from persons attending the meeting; and

(5) State a deadline for the submission of written comments to the Commission's staff.

(b) Consider written comments submitted to the Commission's staff on or before the deadline for the submission of written comments and the questions and oral comments presented at the public meeting.

3. After preparing the draft order described in subsection 2, the Commission's staff must:

(a) Serve a copy of the draft order on each person who submits:

(1) Written comments to the Commission's staff on or before the deadline for the submission of written comments or submitted questions or oral comments at the public meeting conducted pursuant to subsection 2.

(2) A request to the Executive Director to be included on a service list for proceedings related to the development of criteria for the allocation of power designated in Schedule D.

(b) Post a copy of the draft order on the Commission's Internet website.

4. The Commission will conduct a hearing and issue a decision on the draft order prepared by the Commission's staff pursuant to subsection 1. The hearing will be conducted, and the Commission's decision issued, in accordance with the provisions of chapters 241 and 538 of NRS and NAC 538.075 to 538.330, inclusive, and sections 4 to 8, inclusive, of this regulation. In addition to satisfying the requirements of chapters 241 and 538 of NRS and NAC 538.075 to 538.330, inclusive, and sections 4 to 8, inclusive, of this regulation, the notice must include, without limitation, a copy of the draft order prepared by the Commission's staff pursuant to subsection 2.

5. The proceeding described in this section is not a contested case as defined in NRS 233B.032.

Sec. 8. 1. The Commission's staff must conduct a public meeting that complies with the provisions of chapters 241 and 538 of NRS and NAC 538.075 to 538.330, inclusive, and sections 4 to 8, inclusive, of this regulation to discuss the process of allocating power designated in Schedule D and accept questions and comments concerning that process. In addition to satisfying the requirements of chapters 241 and 538 of NRS and NAC 538.075 to 538.330, inclusive, and sections 4 to 8, inclusive, of this regulation, the notice must state:

(a) That applications for an allocation of power designated in Schedule D may be submitted after the public meeting;

(b) A deadline for the submission of applications for an allocation of power designated in Schedule D; and

(c) That, at the public meeting, the Commission's staff will accept questions and oral comments from persons attending the meeting.

2. After the public meeting conducted pursuant to subsection 1, a person who wishes to apply for an allocation of power designated in Schedule D may submit an application to the Commission's staff. The application must:

(a) Be on a form provided by the Commission.

(b) Set forth the applicant's full name and mailing address and any facts and exhibits required by law.

(c) Be signed by the applicant.

3. The Commission's staff must review any application submitted pursuant to subsection 2 and prepare a draft order containing a recommendation for the Commission's disposition of each application. The Commission's staff must provide a copy of the draft order to each applicant. An applicant must file any comments on the draft order with the Commission within 30 days after the Commission's staff issues the draft order.

4. The Commission will conduct a hearing and issue a decision on the draft order prepared by the Commission's staff pursuant to subsection 3. The hearing will be conducted, and the Commission's decision issued, in accordance with the provisions of chapters 241 and 538 of NRS and NAC 538.075 to 538.330, inclusive, and sections 4 to 8, inclusive, of this

regulation. In addition to satisfying the requirements of chapters 241 and 538 of NRS and NAC 538.075 to 538.330, inclusive, and sections 4 to 8, inclusive, of this regulation, the notice must include, without limitation, a copy of the draft order prepared by the Commission's staff pursuant to subsection 3.

5. After the issuance of the Commission's decision on the draft order prepared by the Commission's staff pursuant to subsection 3, the Commission's staff must advertise the notice required by subsection 4 of NRS 538.181. If the Commission receives an objection to its decision on the application within 10 days after the date of the last publication of the notice required by subsection 4 of NRS 538.181, the Commission will conduct a hearing on the objection not later than 30 days after the date of the last publication of the notice.

6. If an applicant that has been offered an allocation of power designated in Schedule D from the Commission fails to enter into a contract with the Commission within 90 days after being offered the allocation of power, the Commission will reallocate the amount of power offered to that applicant to other applicants at the Commission's discretion.

7. Except for a hearing conducted pursuant to subsection 5, the proceeding described in this section is not a contested case as defined in NRS 233B.032.

Sec. 9. "Schedule A" means the schedule appearing at 43 U.S.C. § 619a(a)(1)(A) which specifies the amount of:

- 1. Contingent capacity of the Hoover power plant; and*
- 2. Associated firm energy,*

↪ allocated in that schedule.

Sec. 10. *“Schedule C” means the schedule appearing at 43 U.S.C. § 619a(a)(1)(C) which specifies the priority of entitlement of the states of Arizona, California and Nevada to excess energy generated at the Hoover power plant.*

Sec. 11. *The Commission will allocate power designated in Schedule D in accordance with this chapter and to achieve the greatest possible benefit to this State.*

Sec. 12. *An applicant that is an electric utility and is seeking to contract with the Commission for the delivery of power from the Boulder Canyon Project designated in Schedule D commencing on or after October 1, 2017, must supply information as requested by the Commission and must demonstrate that, on or before the date determined by the Executive Director, the applicant:*

- 1. Is an entity to which the Commission is authorized by law to sell electricity or provide transmission service or distribution service, or both;*
- 2. Is able to receive energy from one or more of the points of delivery authorized by the Commission;*
- 3. Is able to maintain a ratio between “real power” in kilowatts and “apparent power” in kilovoltamperes (“power factor”) within at least 95 percent, if called upon to do so, or is able to receive power over the facilities of a utility that is able to maintain that ratio;*
- 4. Meets the requirements for any program for integrated resource planning or a similar program, however designated, set forth as a condition to the purchase of power by federal or state law;*
- 5. Has an annual peak load of at least 1 megawatt;*

6. *Has load located within Western's defined marketing area in this State for the Boulder Canyon Project; and*

7. *Complies with any other requirements imposed by the Commission.*

Sec. 13. *An applicant that is not an electric utility and is seeking to contract with the Commission for the delivery of power from the Boulder Canyon Project designated in Schedule D commencing on or after October 1, 2017, must supply information as requested by the Commission and must demonstrate that, on or before the date determined by the Executive Director, the applicant:*

1. *Is an entity to which the Commission is authorized by law to sell electricity or provide transmission service or distribution service, or both;*

2. *Is able to receive energy from one or more of the points of delivery authorized by the Commission;*

3. *Will receive power from the Commission over the facilities of an electric utility that is able to maintain a ratio between "real power" in kilowatts and "apparent power" in kilovoltamperes ("power factor") within at least 95 percent, if called upon to do so, or is able to receive power over the facilities of a utility that is able to maintain that ratio;*

4. *Will receive power from the Commission over the facilities of an electric utility that meets the requirements for any program for integrated resource planning or a similar program, however designated, set forth as a condition to the purchase of power by federal or state law;*

5. *Has an annual peak load of at least 1 megawatt;*

6. *Has load located within Western's defined marketing area in this State for the Boulder Canyon Project; and*

7. *Complies with any other requirements imposed by the Commission.*

Sec. 14. 1. *The Commission will reallocate power that becomes available for reallocation pursuant to NAC 538.440 and 538.450 in accordance with the provisions of this section and to achieve the greatest possible benefit to this State.*

2. *As soon as practicable after power becomes available for reallocation by the Commission pursuant to NAC 538.440 and 538.450, the Commission's staff must notify the public of the availability of the power. The notice must:*

(a) *Describe the power to be allocated;*

(b) *Set forth the proposed criteria to be used by the Commission for the allocation of the power;*

(c) *Include a proposed form for applying for an allocation of the power; and*

(d) *Set forth the dates during which applications may be submitted.*

3. *A person who wishes to apply for an allocation of power from the Commission pursuant to this section must submit an application to the Commission's staff. The application must:*

(a) *Be on a form provided by the Commission.*

(b) *Set forth the applicant's full name and mailing address and any facts and exhibits required by law.*

(c) *Be signed by the applicant.*

4. *The Commission's staff must review any application submitted pursuant to subsection 3 and prepare a draft order containing a recommendation for the Commission's disposition of each application. The Commission's staff must provide a copy of the draft order to each applicant. An applicant must file any comments on the draft order with the Commission within 30 days after the Commission's staff issues the draft order.*

5. *The Commission will conduct a hearing and issue a decision on the draft order prepared by the Commission's staff pursuant to subsection 4. The notice of the hearing must include, without limitation, a copy of the draft order prepared by the Commission's staff pursuant to subsection 4.*

6. *After the issuance of the Commission's decision on a draft order prepared by the Commission's staff pursuant to subsection 4, the Commission's staff must advertise the notice required by subsection 4 of NRS 538.181. If the Commission receives an objection to its decision on the application within 10 days after the date of the last publication of the notice required by subsection 4 of NRS 538.181, the Commission will conduct a hearing on the objection not later than 30 days after the date of the last publication of the notice.*

7. *If an applicant that has been offered an allocation of power from the Commission pursuant to this section fails to enter into a contract with the Commission within 90 days after being offered the allocation of power, the Commission will reallocate the amount of power offered to that applicant to other applicants at the Commission's discretion.*

8. *Except for a hearing conducted pursuant to subsection 6, the proceedings described in this section is not a contested case as defined in NRS 233B.032.*

Sec. 15. Before the expiration of a contract for the delivery of long-term power from the Boulder Canyon Project designated in Schedule A or Schedule B pursuant to subsection 1 of NAC 538.500, the Commission will offer the contractor a new contract for the delivery of such power for the period commencing on October 1, 2017, and ending on September 30, 2067.

Sec. 16. 1. A contract for the delivery of power from the Boulder Canyon Project designated in Schedule A or Schedule B commencing on or after October 1, 2017, must include a provision requiring the contractor to pay:

(a) A proportionate share of this State's contribution to the cost of the Lower Colorado River Multi-Species Conservation Program, as defined in section 9401 of the Omnibus Public Land Management Act of 2009, Public Law 111-11; and

(b) Applicable tariff rates and charges pursuant to paragraph (a) of subsection 4 of NRS 704.787 if the contractor obtains electric distribution services from an electric utility that primarily serves densely populated counties, and is a customer of the Commission pursuant to paragraph (a) or (b) of subsection 1 of NRS 704.787.

2. A contract for the delivery of power from the Boulder Canyon Project designated in Schedule D commencing on or after October 1, 2017, must include provisions requiring the new allottee to:

(a) Pay a proportionate share of this State's contribution to the cost of the Lower Colorado River Multi-Species Conservation Program, as defined in section 9401 of the Omnibus Public Land Management Act of 2009, Public Law 111-11;

(b) Participate through the Commission in the Boulder Canyon Project Implementation Agreement;

(c) Pay a pro rata share of Hoover Dam repayable advances required to be paid by contractors who entered into contracts for the delivery of power from the Boulder Canyon Project before October 1, 2017;

(d) Meet the requirements for any program for integrated resource planning or a similar program, however designated, set forth as a condition to the purchase of power by federal or state law, or receive power from the Commission over the facilities of an electric utility that meets the requirements for such a program;

(e) Pay applicable fees, tariff rates and charges pursuant to subsections 2 and 3 of NRS 704.787 and paragraph (b) of subsection 4 of NRS 704.787, if the contractor:

(1) Is located in the service area of an electric utility that primarily serves densely populated counties;

(2) Is a customer of the Commission pursuant to paragraph (c) of subsection 1 of NRS 704.787; and

(3) Will receive power from Schedule D at delivery points that are not served pursuant to an existing Distribution Only Service Agreement; and

(f) Pay applicable tariff rates and charges for its allocation of power from Schedule D pursuant to paragraph (a) of subsection 4 of NRS 704.787 if the contractor:

(1) Is located in the service area of an electric utility that primarily serves densely populated counties;

(2) Is a customer of the Commission pursuant to paragraph (b) of subsection 1 of NRS 704.787;

(3) Will receive power from Schedule D at delivery points that are served pursuant to an existing Distribution Only Service Agreement; and

(4) Has not previously paid such rates and such charges.

3. As used in this section, "electric utility that primarily serves densely populated counties" has the meaning ascribed to it in NRS 704.787.

Sec. 17. NAC 538.010 is hereby amended to read as follows:

538.010 ~~As used in this chapter, unless the context otherwise requires, "Commission"~~ means the Colorado River Commission of Nevada.

Sec. 18. NAC 538.075 is hereby amended to read as follows:

538.075 1. The provisions of NAC 538.075 to 538.330, inclusive, *and sections 4 to 8, inclusive, of this regulation* govern all practice and procedure before the Commission.

2. *The provisions of NAC 538.075 to 538.330, inclusive, and sections 4 to 8, inclusive, of this regulation apply to the allocation by the Commission of power designated in Schedule D for delivery commencing on or after October 1, 2017.*

3. *To the extent that any action before the Commission is not covered by the provisions of NAC 538.075 to 538.330, inclusive, and sections 4 to 8, inclusive, of this regulation the Executive Director may determine the proceedings to apply to the action, including, without limitation, the use of workshops for rulemaking.*

Sec. 19. NAC 538.180 is hereby amended to read as follows:

538.180 1. Upon the initiative of any interested person, ~~for of the Executive Director,} a complaint may be made alleging one or more causes of action based on ~~chapter 538 of NRS,}~~~~

subsection 4 of NRS 538.181 and NRS 538.221. Facts constituting acts or omissions must be stated with such particularity as to enable the respondent to prepare a defense to the complaint.

2. All applicable statutes, regulations and orders of the Commission must be cited, together with the dates on which the acts or omissions occurred.

3. If more than one cause of action is alleged, each cause of action must be stated and numbered separately.

4. Two or more complainants may join in one complaint if their respective causes of action are against the same person and deal with substantially the same violation of a statute, regulation or order of the Commission.

5. Every complaint must be in writing, signed and verified by the person making it, and filed with the Commission.

6. A complaint will be set for hearing at the earliest convenience of the Commission unless the Commission receives notice of satisfaction of the complaint.

Sec. 20. NAC 538.200 is hereby amended to read as follows:

538.200 The *Chair of the Commission, the Executive Director or the presiding officer* may, upon written notice to all parties of record, hold a prehearing conference to:

1. Formulate or simplify the issues;
2. Obtain admissions of fact and documents in order to avoid unnecessary proof;
3. Arrange for the exchange of proposed exhibits or prepared expert testimony;
4. ~~Limit~~ *Identify and limit* the number of witnesses , *specify the subject matter of witnesses' testimony* and consolidate the examination of witnesses;
5. Establish a procedure for the hearing; and

6. Consider any other matters which may promote orderly conduct and expedite the disposition of the proceedings or achieve a settlement.

Sec. 21. NAC 538.210 is hereby amended to read as follows:

538.210 1. Hearings will be held before the Commission or its designated presiding officer. ~~{A presiding officer may be a member of the Commission or a representative designated by the Commission to conduct a hearing.}~~

2. Notice of a hearing will be served at least 20 days before the time set for the hearing.

3. A hearing which has previously been continued may be reset on notice of not less than 10 days.

4. Hearings will be held at the time and place designated by the notice.

Sec. 22. NAC 538.290 is hereby amended to read as follows:

538.290 1. The Commission's order or decision will be rendered within ~~{90}~~ 180 days after the completion of its hearing.

2. A proceeding stands submitted for decision by the Commission after the taking of evidence, the filing of briefs and the presentation of any oral argument permitted by the Commission.

Sec. 23. NAC 538.300 is hereby amended to read as follows:

538.300 1. Within 20 days after the Commission renders a decision or order ~~{}~~ *following a hearing*, the aggrieved party may apply for a rehearing, setting forth the grounds for the petition.

2. The Commission will act upon such a petition within 30 days after the effective date of the order or decision upon which the rehearing is requested, but if the Commission does not take action on the petition within that time, the petition shall be deemed denied.

3. The Commission or presiding officer on his or her own motion may order a rehearing within 30 days after the rendering of the decision if a mistake, fraud or a misconception of facts led to the original decision.

4. The filing of a petition for a rehearing upon an order or decision does not excuse compliance with it or suspend its effectiveness unless otherwise ordered by the Commission.

Sec. 24. NAC 538.320 is hereby amended to read as follows:

538.320 1. Any member of the public may petition the Commission for a declaratory order or an advisory opinion on the applicability of any statutory provision or ~~any~~ regulation ~~or decision of the Executive Director of~~ *within the jurisdiction of the Commission.*

2. A petition for a declaratory order or an advisory opinion must be in writing.

3. The Commission will issue a declaratory order or render an advisory opinion in writing within 90 days after its receipt of the petition in proper form.

Sec. 25. NAC 538.330 is hereby amended to read as follows:

538.330 1. A petition for the adoption, filing, amendment or repeal of a regulation of the Commission must be in writing and be delivered to the offices of the Commission.

2. *A petition filed pursuant to subsection 1 will not be classified as a petition for the purposes of applying the procedures set forth in NAC 538.075 to 538.330, inclusive, and sections 4 to 8, inclusive, of this regulation.*

3. The Commission will send any statement denying such a petition or correspondence concerning the petition to the petitioner by certified mail.

Sec. 26. NAC 538.340 is hereby amended to read as follows:

538.340 As used in NAC 538.340 to 538.746, inclusive, *and sections 9 to 16, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 538.350 to 538.390, inclusive, *and sections 9 and 10 of this regulation* have the meanings ascribed to them in those sections.

Sec. 27. NAC 538.410 is hereby amended to read as follows:

538.410 An applicant ~~for an allocation of power from~~ *seeking to contract with the Commission for the delivery of power from the Boulder Canyon Project designated in Schedule A, Schedule B or Schedule C commencing before October 1, 2017, or power from the Parker-Davis Project or the Salt Lake City Area Integrated Projects* must supply information as requested by the Commission and must:

1. Be an entity to which the Commission is authorized by law to sell electricity or provide transmission service or distribution service, or both;

2. Be able to receive energy from one or more of the ~~Commission's~~ points of delivery ~~including, without limitation, Amargosa substation, Basic substation, Boulder City switchyard, Boulder City tap, Clark tie, Eastside substation, Mead substation or Newport substation;~~
authorized by the Commission;

3. Be able to maintain a ratio between "real power" in kilowatts and "apparent power" in kilovoltamperes ("power factor") within at least 95 percent, if called upon to do so;

4. Meet the requirements for a program for integrated resource planning or a similar program, however designated, set forth as a condition to the purchase of power by:

- (a) Regulations adopted by Western pursuant to 42 U.S.C. § 7276;
- (b) Federal statute; or
- (c) The Commission; and

5. If the applicant is an electric utility:

(a) Have a ~~principal~~ load that:

(1) Has a peak demand of at least 8 megawatts; and

(2) Is located within Western's *defined* marketing area in this State for ~~power from~~ the Boulder Canyon Project, Parker-Davis Project or Southern Division of the Salt Lake City Area Integrated Projects; and

(b) Be qualified to receive preference power under the applicable provisions of federal law relating to preference power when applying for electric power from the Parker-Davis Project or Salt Lake City Area Integrated Projects.

Sec. 28. NAC 538.420 is hereby amended to read as follows:

538.420 ~~+-~~ Power from the Boulder Canyon Project ~~and~~, *the* Parker-Davis Project *and the Salt Lake City Area Integrated Projects* will be marketed by the Commission during ~~two~~ *the* seasons as ~~follows~~:

~~(a) The summer season for any calendar year is the 7-month period beginning the first day of the Commission's billing period for March and continuing through the last day of its billing period for September.~~

~~—(b) The winter season for any calendar year is the 5-month period beginning the first day of the Commission's billing period for October and continuing through the last day of its billing period for February in the next succeeding calendar year.~~

~~2. Power from the Salt Lake City Area Integrated Projects will be marketed by the Commission during the following seasons:~~

~~—(a) The summer season for any calendar year is the 6-month period beginning the first day of the Commission's billing period for April and continuing through the last day of its billing period for September.~~

~~—(b) The winter season for any calendar year is the 6-month period beginning the first day of the Commission's billing period for October and continuing through the last day of its billing period for March of the next succeeding calendar year.} **defined by Western.**~~

Sec. 29. NAC 538.440 is hereby amended to read as follows:

538.440 If a contractor loses *or surrenders* its entitlement to power allocated to it by the Commission pursuant to NAC 538.340 to 538.670, inclusive, *and sections 9 to 16, inclusive, of this regulation*, the Commission will reallocate that power in the manner provided in ~~these provisions.} **section 14 of this regulation.**~~

Sec. 30. NAC 538.450 is hereby amended to read as follows:

538.450 ~~{}~~ **Except as otherwise provided in subsection 6 of section 8 of this regulation and subsection 7 of section 14 of this regulation**, if an entity that has been offered an allocation of power from the Commission fails, within ~~a reasonable time as determined by the Commission.} **90 days after being offered the allocation of power**, to enter into a contract with the Commission in accordance with the terms and conditions set by the Commission, the~~

Commission will reallocate the amount of power offered to that entity in the manner provided in ~~NAC 538.340 to 538.670, inclusive,~~ **section 14 of this regulation.**

Sec. 31. NAC 538.460 is hereby amended to read as follows:

538.460 ~~1.~~ Each contractor must meet the minimum recommendation for reserves set by the Western ~~Systems~~ **Electricity** Coordinating Council ~~:-~~

~~2. If there is a reduction in capacity from the Hoover power plant, each contractor may supply its own needs for capacity.~~ **unless the contractor receives power from the Commission over the facilities of a utility that meets the minimum recommendation for reserves set by the Western Electricity Coordinating Council.**

Sec. 32. NAC 538.500 is hereby amended to read as follows:

538.500 1. ~~Contract~~ **Except as otherwise provided in this subsection, contracts** for the delivery of long-term power from the Boulder Canyon Project allocated under NAC 538.340 to 538.740, inclusive, **and sections 9 to 16, inclusive, of this regulation, for the period ending on September 30, 2017,** become effective on the day they are executed and expire on the last day of the billing period for September 2017, unless terminated before that date by the contractor or the Commission in accordance with the terms of the contract. **The provisions of sections 11, 12 and 13 of this regulation do not apply to this subsection.**

2. **Contracts for the delivery of long-term power from the Boulder Canyon Project allocated under NAC 538.340 to 538.740, inclusive, and sections 9 to 16, inclusive, of this regulation for the period commencing on October 1, 2017, become effective on the day they are executed and expire on the day specified in the contract, unless terminated before that date by the contractor or the Commission in accordance with the terms of the contract. The**

Commission will determine the term of each contract for the delivery of power from the Boulder Canyon Project for a term of less than 50 years commencing on or after October 1, 2017.

3. Contracts for the delivery of long-term power from the Parker-Davis Project allocated under NAC 538.340 to 538.740, inclusive, *and sections 9 to 16, inclusive, of this regulation* become effective on the day they are executed and expire on the last day of the billing period for September 2028, unless terminated before that date by the contractor or the Commission in accordance with the terms of the contract.

~~{3.}~~ 4. Contracts for the delivery of long-term power from the Salt Lake City Area Integrated Projects allocated under NAC 538.340 to 538.740, inclusive, *and sections 9 to 16, inclusive, of this regulation* become effective on the first day of the billing period for October 1989 and expire on the last day of the billing period for September 2024, unless terminated before that date by the contractor or the Commission in accordance with the terms of the contract.

~~{4. The}~~

5. *Except as otherwise provided in subsection 2, the* term of contracts for short-term power will be determined by the Executive Director of the Commission for each contract.

~~{5. The Commission will, upon the expiration of a contract described in subsection 1, offer to the contractor the right to renew the contract. This right is subject to the conditions set forth in subsection 7 of NRS 538.181 and the terms for such renewal provided in the contract.}~~

Sec. 33. NAC 538.540 is hereby amended to read as follows:

538.540 1. ~~[No retail]~~ A contractor that ~~[contracts with the Commission for]~~ *is not an electric utility and that purchases power provided by the Commission from the Boulder Canyon Project, Parker-Davis Project or Salt Lake City Area Integrated Projects may not share, resell* ~~[any]~~, *pool, lease or change the point of use of that power* ~~[-~~

~~2. No]~~ *without the prior approval of the Commission. The Commission may approve the sharing, reselling, pooling, leasing or changing the point of use of power pursuant to this subsection for a term of not more than 3 years.*

2. An electric utility that contracts with the Commission for power from the Boulder Canyon Project, Parker-Davis Project or Salt Lake City Area Integrated Projects ~~[may]~~ :

(a) *Must receive that power at a location in this State within Western's defined marketing area for the project from which the power is obtained.*

(b) *May not resell [any of] that power [outside of its service area without] outside this State or outside Western's defined marketing area for the project from which the power is obtained without the prior approval of the Commission.*

(c) *May resell that power to serve customers within its service area in this State and within Western's defined marketing area for the project from which the power is obtained, without the prior approval of the Commission.*

3. ~~[The Nevada Power Company]~~ *An electric utility that contracts with the Commission for power from the Boulder Canyon Project must:*

(a) *Use the full power resource available to them, including energy, capacity and the dynamic signal and other ancillary services and, except as otherwise provided in subsection 4, pass through to its customers located within Western's defined marketing area for the Boulder*

Canyon Project the economic benefits of the energy, capacity, and dynamic signal and other ancillary services used by the customers; and

(b) Upon the request of the Commission, provide to the Commission's staff information demonstrating compliance with the requirements of this subsection.

4. Nevada Power Company shall pass through to its residential class of ratepayers the economic benefits of power from Schedule B.

Sec. 34. NAC 538.560 is hereby amended to read as follows:

538.560 Except as otherwise provided in this section, if, for 3 consecutive operating years, a ~~[retail customer]~~ *contractor* does not use the full allocation of power made available to it by the Commission, the Commission, after notifying the contractor, may reduce its allocation to that contractor to the extent of the contractor's failure to use that full allocation. A reduction will not be made if the contractor's failure to use that full allocation is caused by the implementation of a program for integrated resource planning or a similar program, however designated, described in NAC 538.530 and approved for the contractor by Western or the Commission.

Sec. 35. NAC 538.570 is hereby amended to read as follows:

538.570 1. A contractor *that is not a utility and that purchases power provided by the Commission for its own use* shall provide *the Commission with meter data and other information necessary for the provision and billing of electric service by:*

(a) Using suitable equipment for metering power ~~{allocated}~~ delivered to it ~~{pursuant to NAC 538.340 to 538.740, inclusive, to provide data as required}~~ by the ~~{Executive Director of the}~~ Commission ~~{:~~

~~2. The equipment for metering must be installed at the contractor's designated points for measuring and must be maintained, tested and repaired as required by the Executive Director of the Commission.]~~ *that meets all applicable standards of the electric utility industry or such other standards as may be approved by the Executive Director; or*

(b) Obtaining interconnection to the transmission system through an electric distribution provider that has metering which meets all applicable standards of the electric utility industry or such other standards as may be approved by the Executive Director.

2. Upon the request of the Commission's staff and at any time specified by the Commission's staff, a contractor must provide the Commission's staff with such revenue quality meter data as may be required by the Executive Director.

3. Upon the request of the Commission's staff and at any time specified by the Commission's staff, a contractor that is not a utility and that purchases power provided by the Commission must provide the Commission's staff with physical access to the metering equipment used by the contractor to measure the contractor's load for the purpose of inspection and verification of the accuracy of the metering equipment.

4. The Executive Director of the Commission shall provide for the ~~full adjustment~~ just resolution of claims between the Commission and a contractor arising from the inaccuracy of a meter.

5. On or before September 30, 2017, each contractor, or an agent of a contractor, that obtains all of its electric power from the Commission, must provide the Commission with the ability to physically disconnect the contractor's power for failure to pay a power invoice from

the Commission in a timely manner, without adversely impacting the delivery of power to other contractors.

Sec. 36. NAC 538.590 is hereby amended to read as follows:

538.590 1. The capacity and energy available to the contractors for each month by the Commission will be shown by an annual report or by exhibits to the contracts for power from the Boulder Canyon Project, Parker-Davis Project or Salt Lake City Area Integrated Projects.

2. Scheduling and accounting procedures will be established by the Commission to adjust for any variations between the contractual energy available for delivery and the actual deliveries.

3. If requested by the contractor, the Commission, in preparing the exhibits, will endeavor to approximate that contractor's seasonal and monthly pattern of usage of energy. The extent to which the Commission is able to accommodate these patterns is contingent upon the monthly availability of energy.

4. The Commission will, in the contracts for power from the Boulder Canyon Project, allow for a reduction in capacity due to loss of head or flow or to outages of generating units or other factors. Such a reduction will be apportioned by the Commission among the contractors for capacity from the Boulder Canyon Project. The Commission will not discriminate between the capacity designated in Schedule A, ~~at 43 U.S.C. § 619a(a)(1)(A) and~~ Schedule B *and Schedule D* in apportioning the shortages. The pro rata share of any contractor is the proportion its capacity bears to the total capacity available under ~~Schedules~~ *Schedule A* ~~and~~ *Schedule B* ~~and~~ *Schedule D*.

Sec. 37. NAC 538.610 is hereby amended to read as follows:

538.610 1. The rates or charges payable by a contractor to the Commission for capacity or energy from the Boulder Canyon Project, Parker-Davis Project or Salt Lake City Area Integrated Projects and for wheeling energy from the Parker-Davis Project or Salt Lake City Area Integrated Projects must be Western's effective rates or charges for those resources. These rates or charges, the Commission's administrative charge and any other costs associated with the contracted resource will be shown by a periodic report or by exhibits to the contracts for power from these projects. These rates, charges and costs may vary due to changing conditions. Some rates or charges may be estimated for a portion of an operating year with an adjustment, for the months the estimate is used, in the month the actual rate or charge is established.

2. At the time the Commission is notified by Western of any change in the rates or charges, the Commission will notify its contractors of the change.

3. The administrative charge is based on a projection for 2 years of all costs for the Commission's operations relating to the contractors. Those estimated costs are divided by the total estimated number of kilowatt-hours of all energy, including both hydroelectric and nonhydroelectric, to be delivered to contractors to arrive at a rate per kilowatt-hour. ~~The~~ *Except as otherwise provided in subsection 4, the administrative charge may be increased or decreased after the Commission notifies the contractors of the grounds for the increase or decrease ~~+~~ and the effective date of the increase or decrease, which must be not less than 90 days after the Commission sends the notice of the increase or decrease.*

4. *The Commission may use the expedited procedure set forth in this subsection to increase or otherwise revise the administrative charge if actual revenue from the administrative charge is equal to or less than 70 percent of the revenue projected in*

accordance with subsection 3. The Commission's staff may develop a proposed increase or other revision to the administrative charge and, not later than 30 days before the Commission meeting at which the Commission will make a determination on the proposed increase or other revision, notify the contractors in writing of the proposed increase or other revision. The notice must contain a statement of the amount of, and the grounds for, the proposed increase or other revision and the date of the Commission meeting at which the Commission will make a determination on the proposed increase or other revision. The Commission will accept written comments from contractors regarding the proposed increase or other revision which are submitted not later than 15 days before the Commission meeting at which the Commission will make a determination on the proposed increase or other revision. In determining whether to increase or otherwise revise the administrative charge, the Commission will review the proposed increase or other revision to the administrative charge proposed by the Commission's staff, comments submitted by contractors in accordance with this subsection and any other relevant information.

5. As soon as practicable, a contractor planning, projecting or experiencing a decrease in its load of 30 percent or more for 90 consecutive days or more, in any 12 month period, shall notify the Commission of the decrease in its load.

Sec. 38. NAC 538.620 is hereby amended to read as follows:

538.620 1. The Commission, in cooperation with the contractor, will establish scheduling, ~~{and}~~ accounting *and delivery* procedures ~~{based upon standard practices of utilities.}~~ *for the receipt of power from the Commission that meet the needs of the contractor.* These procedures must be set forth in an agreement approved by the Executive Director of the Commission.

2. Deliveries of power from the Boulder Canyon Project, Parker-Davis Project or Salt Lake City Area Integrated Projects will be scheduled by the Commission in advance in accordance with the procedures set forth in separate scheduling instructions which will provide for schedules to meet the needs of day-to-day or hour-by-hour operations. The instructions must include procedures for determining amounts of power from the Boulder Canyon Project, Parker-Davis Project and Salt Lake City Area Integrated Projects delivered to the contractor at each point of delivery and procedures for delivery of losses. The procedures must also specify the conditions under which actual deliveries, which are greater or less than scheduled deliveries during the month of a particular season, will be adjusted in later deliveries in subsequent months of that season.

Sec. 39. NAC 538.650 is hereby amended to read as follows:

538.650 1. The points of delivery and voltages for ~~the~~ *Western's defined* marketing area for the Boulder Canyon Project, Parker-Davis Project and Salt Lake City Area Integrated Projects are:

Location	Kilovolts
Boulder Canyon Project	
Mead substation	69.0
Mead substation	230.0

Location	Kilovolts
Parker-Davis Project	
Amargosa substation	138.0
Clark tie	230.0
Henderson substation	230.0
Mead substation	230.0

Location	Kilovolts
Salt Lake City Area Integrated Projects	
Amargosa substation	138.0
Boulder City tap	230.0
Clark tie	230.0
Henderson substation	230.0
Mead substation	230.0
Pinnacle Peak/Rogers substation	230.0

2. Delivery will be made at designated points on Western's "Parker-Davis Project Southern Nevada Facilities" at rates of delivery not to exceed the available capability of the facilities. The designated points of delivery and Western's "Parker-Davis Project Southern Nevada Facilities" may be modified as required.

3. The designation of a point of delivery does not imply any obligation on the Commission's part to furnish additional facilities or to increase the capabilities of transmission or of the transformer at the designated points. Each contractor must obtain the permission of the Commission for any modification to existing facilities and alternate or additional points of delivery. Requests for taps on Western's "Parker-Davis Project Southern Nevada Facilities" will be considered by the Commission individually.

4. Any cost associated with obtaining points of delivery or voltage at other than those set forth in subsection 1 is the obligation of the contractor.

5. Power from the Boulder Canyon Project will be delivered at the Mead substation. If a contractor cannot accept delivery of power from the Boulder Canyon Project at the Mead substation, arrangements for transmission service to other points of delivery are the obligation of the contractor.

6. Notwithstanding the provisions of this section, the Commission may designate any other points of delivery and voltages for points of delivery for the marketing area for the Boulder Canyon Project, Parker-Davis Project and Salt Lake City Area Integrated Projects.

Sec. 40. NAC 538.690 is hereby amended to read as follows:

538.690 1. Pool 1 consists of a total of ~~1,377,000~~ **392,239** kilowatts of capacity and ~~14,057,989,000~~ **1,032,202,000** kilowatt-hours of energy from the following sources of the Boulder Canyon Project:

Schedule A

Schedule B

Schedule D

Schedule A		Schedule B		Schedule D	
Capacity	Energy	Capacity	Energy	Capacity	Energy
(KW)	(KWH)	(KW)	(KWH)	(KW)	(KWH)
189,000	615,989,000	188,000	412,000,000	11,510	25,113,000
190,869	613,689,000	189,860	391,400,000		

2. ~~This resource~~ *The resource specified for Schedule A and Schedule B* is reserved for allocation to the named entities as follows:

Hoover Capacity and Energy

Contractors	Schedule A		Schedule B	
	Capacity	Energy	Capacity	Energy
	(KW)	(KWH)	(KW)	(KWH)
American Pacific Corp.	10,625	19,952,389	0	0
Basie Water Co.	4,827	9,738,148	0	0
Boulder City	0	0	8,500	17,870,400
Chemical Lime Co.	382	2,164,033	0	0
Lincoln County Power District				
No. 1	4,828	20,726,814	21,339	77,521,529

Hoover Capacity and Energy

Contractors	Schedule A		Schedule B	
	Capacity (KW)	Energy (KWH)	Capacity (KW)	Energy (KWH)
Nevada Power Company	100,232	240,098,311	135,000	283,824,000
Overton Power District No. 5	6,507	27,936,142	13,007	20,946,270
Southern Nevada Water Authority	15,207	75,200,137	0	0
Titanium Metals Corp.	21,397	113,070,710	0	0
Tronox LLC	17,649	75,561,510	0	0
Valley Electric Association	7,346	31,540,806	10,154	11,837,801
Totals	189,000	645,989,000	188,000	112,000,000
<i>American Pacific Corp.</i>	<i>10,730</i>	<i>47,454,729</i>	<i>0</i>	<i>0</i>
<i>Basic Water Co.</i>	<i>4,874</i>	<i>9,251,239</i>	<i>0</i>	<i>0</i>
<i>Boulder City</i>	<i>0</i>	<i>0</i>	<i>8,584</i>	<i>16,976,897</i>
<i>Chemical Lime Co.</i>	<i>386</i>	<i>2,055,858</i>	<i>0</i>	<i>0</i>
<i>Lincoln County Power District</i>				
<i>No. 1</i>	<i>4,876</i>	<i>19,690,457</i>	<i>21,550</i>	<i>73,645,433</i>
<i>Nevada Power Company</i>	<i>101,223</i>	<i>228,093,166</i>	<i>136,336</i>	<i>269,632,798</i>
<i>Overton Power District No. 5</i>	<i>6,571</i>	<i>26,539,288</i>	<i>13,136</i>	<i>19,898,972</i>

Hoover Capacity and Energy

Contractors	Schedule A		Schedule B	
	Capacity	Energy	Capacity	Energy
	(KW)	(KWH)	(KW)	(KWH)
<i>Southern Nevada Water Authority</i>	<i>15,357</i>	<i>71,440,089</i>	<i>0</i>	<i>0</i>
<i>Titanium Metals Corp.</i>	<i>21,609</i>	<i>107,417,054</i>	<i>0</i>	<i>0</i>
<i>Tronox LLC</i>	<i>17,824</i>	<i>71,783,386</i>	<i>0</i>	<i>0</i>
<i>Valley Electric Association</i>	<i>7,419</i>	<i>29,963,734</i>	<i>10,254</i>	<i>11,245,900</i>
<i>Totals</i>	<i>190,869</i>	<i>613,689,000</i>	<i>189,860</i>	<i>391,400,000</i>

3. *The resource specified for Schedule D is reserved for allocation to new allottees as follows:*

Contractors	Schedule D	
	Capacity	Energy
	(KW)	(KWH)
<i>New Allottees</i>	<i>11,510</i>	<i>25,113,000</i>

Sec. 41. NAC 538.744 is hereby amended to read as follows:

538.744 1. *The Commission may require a contractor to pay collateral, make payments to a cash working capital fund or prepay for power pursuant to this section.*

2. During October in each operating year, and at any other time it deems necessary, the Commission will conduct a review to determine the creditworthiness of each of its contractors. ~~except:~~

~~(a) A federal or state agency or political subdivision; and~~

~~(b) The Nevada Power Company and any other entity regularly engaged in the business of buying and selling electric power.~~

~~2.~~

3. After ~~a~~ *the creditworthiness* review conducted pursuant to subsection ~~1~~ 2, the Commission will establish the amount *of collateral which a contractor is required to furnish* and prescribe the manner in which the contractor is required to furnish *that* collateral pursuant to its contracts with the Commission. In no case will the amount of collateral established by the Commission be less than one-fourth of the contractor's gross annual purchases.

~~3.~~ *The Commission will not require any of the following to furnish collateral:*

(a) A federal or state agency or political subdivision.

(b) The Nevada Power Company or any other entity regularly engaged in the business of buying and selling electric power.

4. *In addition to requiring a contractor to furnish collateral pursuant to subsection 3, the Commission may require a contractor to make payments to a cash working capital fund established by the Commission or prepay for power purchased from the Commission in*

accordance with requirements established by the Commission, or both, as deemed necessary by the Commission to:

- (a) Reflect the results of the creditworthiness review conducted pursuant to subsection 2;*
- (b) Implement sound risk management policies; and*
- (c) Protect the financial health of the Commission and the State of Nevada.*

5. If a contractor does not provide and maintain the full amount of the collateral required ~~by~~ *by subsection 3 or make payments to a cash working capital fund as required by the Commission pursuant to subsection 4*, the Commission may, in addition to its other remedies and in the course of its normal invoicing, bill the contractor for an amount necessary to furnish ~~the~~ *the required collateral or fund working capital* within a period established by the Commission, but not to exceed 6 months.

~~6.~~ 6. Notwithstanding any other provision of NAC 538.340 to 538.746, inclusive, *and sections 9 to 16, inclusive, of this regulation, if a contractor fails to provide and maintain the full amount of required collateral within the period authorized by the Commission, fails to make payments to a cash working capital fund as required by the Commission or fails to comply in a timely manner with any prepayment requirements established by the Commission*, the Commission may at any time require a contractor to furnish collateral *within 30 days after written demand* in an amount that is greater than the minimum amount set forth in subsection ~~3,~~ *3*, as may be necessary to protect the State of Nevada from any loss that it might suffer as a result of the contractor's breach of any covenant or condition of any contract with the Commission. That amount of the collateral which is greater than the minimum amount set forth

in subsection ~~{2}~~ 3 will be calculated on any rational and appropriate basis as determined by the Commission.

~~{5}~~ 7. As used in this section:

(a) "Date of review" means the date in any operating year on which the Commission establishes the amount of collateral a contractor must furnish pursuant to its contracts with the Commission.

(b) "Gross annual purchases" means the total amount of a contractor's actual purchases of power, transmission and other related services, if any, under all its contracts with the Commission, invoiced by the Commission during the test period.

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

Sec. 42. NAC 538.746 is hereby amended to read as follows:

538.746 1. If a contractor fails or refuses to perform any of its obligations under any of its contracts with the Commission, including, without limitation, any agreement 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 ~~{,}~~ *or expose this State to financial risk*, 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 after the date of the written notice, the ~~{Commission}~~ *Executive Director* may, after ~~{notifying}~~ *giving 3 days' notice in writing to* the contractor, suspend the contractor's allocation of hydroelectric power under NAC 538.340 to 538.746, inclusive, *and sections 9 to 16, inclusive, of this regulation* and

discontinue furnishing electric service specified in its contracts with the contractor pending any further action taken by the Commission pursuant to this section.

3. *After the suspension of the contractor's allocation of hydroelectric power pursuant to subsection 2, the Executive Director may reallocate the power to any other contractor or contractors on a short-term basis. A contractor receiving an allocation of power pursuant to this subsection shall comply with all terms and conditions applicable to that power under the contract between the Commission and the contractor whose allocation was suspended.*

4. Within 30 days after the suspension of the contractor's allocation of hydroelectric power, the contractor may petition the Commission for the reinstatement of the allocation. The Commission will hold a hearing on the petition within 10 days after providing notice of the hearing as required by NAC 538.075 to 538.330, inclusive ~~+~~ ~~+~~, and sections 4 to 8, inclusive, of this regulation.

5. If the contractor fails to file a petition for reinstatement in a timely manner or if, after a hearing on such a petition, the Commission denies the petition, the Commission may permanently terminate the contractor's allocation of hydroelectric power and permanently discontinue electric service to the contractor.

~~+~~ 6. Upon the permanent termination of a contractor's allocation of hydroelectric power, the Commission will reallocate the hydroelectric power ~~as authorized by law.~~

~~+~~ *pursuant to NAC 538.450 and section 14 of this regulation.*

7. This section does not preclude the Commission from pursuing at any time any other remedy for breach of contract that is available to the Commission.

Sec. 43. NAC 538.490 and 538.580 are hereby repealed.

Sec. 44. 1. This section and sections 1 to 39, inclusive, 41, 42 and 43 of this regulation become effective upon filing with the Secretary of State.

2. Section 40 of this regulation becomes effective on October 1, 2017.

TEXT OF REPEALED SECTIONS

538.490 General rule. (NRS 538.181, 538.201) The terms and conditions set forth in NAC 538.500 to 538.570, inclusive, for contracts for power are not subject to change during the contractual period.

538.580 General rule. (NRS 538.181, 538.201) The contractual provisions set forth in NAC 538.590 to 538.670, inclusive, are subject to change as necessary throughout the contractual period.

STATE OF NEVADA

BRIAN SANDOVAL, *Governor*
GEORGE F. OGILVIE III, *Chairman*
BERLYN D. MILLER, *Vice Chairman*
JAYNE HARKINS, P.E., *Executive Director*



BOB COFFIN, *Commissioner*
J. BRIN GIBSON, *Commissioner*
DUNCAN R. MCCOY, *Commissioner*
PUOY K. PREMSRIRUT, *Commissioner*
STEVE SISOLAK, *Commissioner*

COLORADO RIVER COMMISSION
OF NEVADA

June 10, 2014

INFORMATIONAL STATEMENT

PROPOSED REGULATION OF THE COLORADO RIVER COMMISSION OF
NEVADA

LCB File No. R148-13

The following information is provided pursuant to the requirements of Nevada Revised Statutes (NRS) 233B.066:

a) **A clear and concise explanation of the need for the adopted regulations**

The proposed changes to the Commission's regulations are needed to implement the provisions of the Hoover Power Allocation Act of 2011 (43 USC Sec. 619a), and Assembly Bill 199 (AB 199) adopted in the 2013 session of the Nevada legislature, which amended NRS 704.787, and to update other provisions of Nevada Administrative Code (NAC) 538. Implementation of the Hoover Power Allocation Act and AB 199 will result in new, up to 50-year contracts with Nevada entities for power resources from Hoover Dam that will replace current contracts which will expire in September, 2017.

The additional proposed regulatory changes in part:

- Revise provisions governing practice and procedure before the Commission that pertain to how hearings, public processes and in particular the hydropower marketing and allocation process, will be conducted and how to participate;
- Revise provisions regarding the marketing and allocation of power to current contractors;
- Adopt provisions governing the marketing and allocation of certain power from Hoover Dam to new allottees;
- Revise various provisions governing electric power contracting by the Commission and other matters addressed in NAC 538; and,
- Revise current risk management procedures and adopt additional risk management procedures.

b) **A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.**

In early 2012, as part of the Commission's extensive outreach efforts, Commission staff developed a website dedicated to the Commission's Hoover marketing and allocation process and researched and developed a list of potential interested parties in Nevada. The list of potential interested parties included leaders of cities, counties, state government entities and utilities that currently do not have an allocation of Hoover power that may have electrical load located within Western Area Power Administration's (Western's) marketing area, and the Commission's existing customers.

Commission staff also published, emailed and posted on its website a series of informational newsletters informing interested persons in Nevada, and existing customers of the Commission, about each step in Western's Hoover marketing and allocation process and timeline, the Commission's Hoover marketing and allocation process and timeline including the introduction and status of AB 199 that amended NRS 704.787, when various informal public meetings and workshops would be held, and who to contact with questions.

Prior to introduction of the Commission's proposed regulations, in 2012 and in 2014, Commission Staff held informal public informational meetings and workshops informing interested persons in Nevada and existing customers of the Commission about the Hoover Power Allocation Act of 2011, Western's allocation process and timeline, and the Commission's allocation process and timeline which included the status of Assembly Bill 199 and the time frame in which the Commission would be amending its Regulations.

As a result of the Commission's extensive outreach efforts, staff developed a mailing distribution list of interested persons.

Copies of the proposed regulations, notice of workshop, notice of intent to act upon the regulation and notice of hearing were sent by email to persons who were known to have an interest in the Commission's regulations and the implementation of the Hoover Power Allocation Act of 2011 as well as to those who had requested such notice.

Copies of the proposed regulations, notice of workshop, notices of intent to act upon the regulation and notice of hearing were shipped by Federal Express to all county libraries in the State of Nevada and posted at the following locations:

- City of Las Vegas City Hall, 495 South Main Street, Las Vegas, NV
- City of North Las Vegas City Hall, 2250 Las Vegas Boulevard North, North Las Vegas, NV
- Clark County Government Center, 500 South Grand Central Parkway, Las Vegas, NV
- State of Nevada Grant Sawyer Building, 555 East Washington Avenue, Las Vegas, NV
- The Capitol Building, 101 North Carson Street, Carson City, Nevada 89701
- The State Library, 100 North Stewart Street, Carson City, Nevada 89701
- Nevada State Legislature Building, 401 South Carson Street, Carson City, Nevada 89701
- Nevada Legislature website <http://www.leg.state.nv.us>
- City of Boulder City Hall, 401 California Avenue, Boulder City, NV
- City of Henderson City Hall, 240 Water Street, Henderson, NV
- Laughlin Chamber of Commerce, 1725 Casino Drive, Laughlin, NV
- Laughlin Town Manager's Office, 101 Civic Way, Laughlin, NV
- Esmeralda County, Courthouse, 233 Crook Avenue, Goldfield, NV
- Eureka County, 10 South Main Street, Eureka, NV
- Lincoln County, 181 North Main Street, Pioche, NV

- Mineral County, 105 South "A" Street, Hawthorne, NV
- Nye County, 1520 East Basin Avenue, Pahrump, NV
- White Pine County, Courthouse, 801 Clark Street, Ely, NV

Commission staff held a workshop on April 21, 2014 to provide a summary of, and solicit comments on, the proposed regulations. Oral comments by interested persons were provided at the workshop and additional written comments were also submitted. In addition to the workshop transcripts, and minutes that contain a summary of the discussion held regarding the proposed regulations, Commission staff prepared a Workshop Comments and Commission staff Response Matrix and provided this document to all interested persons by email. The minutes of the workshop and Comment and Response Matrix are attached hereto (Attachment 1 and 2).

On May 8, 2014 Commission staff issued a notice of intent to act upon a regulation. The text of the proposed regulation which accompanied the notice incorporated some of the suggestions made by parties attending the April 21, 2014 workshop and in written comments submitted by April 25, 2014. A notice of hearing was also included in the May 8, 2014 notice of intent. This notice of hearing also was posted again on June 4, 2014 in accordance with Open Meeting Law, with the notice of the Commission's regularly scheduled June 10, 2014 meeting.

The Commission conducted a hearing on the proposed regulation on June 10, 2014 to receive and consider comments from interested persons regarding the adoption, amendment and repeal of the proposed regulations. The minutes of the hearing that contain a summary of the discussion held regarding the proposed regulations are attached hereto (Attachment 3).

In addition to direct email to interested persons and public postings, documentation including the notices, proposed regulations, other materials provided, and written comments received by the Commission for both the April 21, 2014 public workshop and June 10, 2014 public hearing have been provided to the public on the Commission's Hoover allocation website at www.crchoverallocation.com. Audio recordings of the public workshop and hearing are also available at the Colorado River Commission of Nevada office located at 555 East Washington Avenue, Suite 3100, Las Vegas, Nevada 89101, Phone (702) 486-2670.

- c) **A statement indicating the number of persons who attended the workshop, testified at the hearing, and submitted written statements regarding the proposed regulations.**

Nineteen (19) attendees participated in the public workshop on April 21, 2014. Of those attendees three (3) had questions or comments at the workshop and eight (8) persons provided written comments by the April 25, 2014 due date.

Thirteen (13) persons attended the hearing on June 10, 2014. No one testified at the hearing.

- d) **A list of names and contact information, including telephone number, business address, business telephone number, electronic email address, and name of entity or organization represented for each person identified in item C above, as provided to the agency, is attached hereto (Attachment 4).**

- e) **A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.**

Following a presentation summarizing the proposed regulations, Commission staff provided existing customers of the Commission and interested persons (affected businesses) an opportunity to ask questions and provide comment at the April 21, 2014 workshop. Also, written comments were accepted through April 25, 2014. The written summary of workshop comments, additional

written comments submitted by April 25, 2014 and Commission staff responses (Comment and Response Matrix) are attached hereto (Attachment 2).

Additionally, Commission staff provided existing customers of the Commission and interested persons (affected businesses) the opportunity to provide further written comments between May 8, 2014 and May 27, 2014 and at the public hearing held on June 10, 2014. No written comments were received between May 8, 2014 and May 27, 2014. There were no comments from affected businesses provided at the June 10, 2014 public hearing.

Documentation including the notices, proposed regulations, other materials provided and comments received by the Commission for both the April 21, 2014 public workshop and June 10, 2014 public hearing, a statement identifying the methods used by the agency in determining the impact on a small business and small business impact statement, have been provided to the public on the Commission's Hoover allocation website at www.crchoovertime.com. The statement identifying the methods used by the agency in determining an impact on a small business and the small business impact statement are attached hereto (Attachment 5).

- f) **If, after consideration of public comment, the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

Two additional revisions to the May 8, 2014 version of the proposed regulations were included in the regulations approved by the Commission on June 10, 2014. These changes removed from Section 32 (4) the provision requiring Nevada Power Company to pass through to its residential class of ratepayers the benefits of Schedule A power; and added to Section 34 (5) a provision allowing Contractor's agents, as well as Contractors, to provide the Commission with the ability to physically disconnect a Contractor's power.

The members of the Colorado River Commission of Nevada fully considered the comments addressed in the Comment and Response Matrix and the recommended revisions to the May 8, 2014 version of the proposed regulations.

No public comments were made at the June 10, 2014 public hearing.

Commissioner Coffin moved for approval of the recommended revisions to the May 8, 2014 version of the proposed regulations of the Commission contained in NAC Chapter 538, LCB File No. R148-13 as follows:

Section 32 (4) of the proposed regulation are modified as follows (changes shown in ~~strikeout~~ and in underlined text) resulting in the original language remaining unchanged:

4. ~~{NV Energy, Inc.,}~~ Nevada Power Company shall pass through to its residential class of ratepayers ~~located within Western's {Boulder Canyon Project} defined marketing area for the Boulder Canyon Project~~ the ~~{full}~~ economic benefits of power from ~~Schedule A~~ and Schedule B.

Section 34 (5) of the proposed regulation are modified as follows (changes shown in ~~strikeout~~ and in underlined text):

5. *On or before September 30, 2017, each Contractor or their agent(s) that obtains all of its electric power from the Commission must provide the Commission with the ability to physically disconnect the Contractor's power for failure to pay a power invoice from the Commission in a timely manner, without adversely impacting the delivery of power to other Contractors.*

The motion was seconded by Vice Chairman Miller and approved by a unanimous vote at the June 10, 2014 hearing.

Commissioner Coffin moved for approval of the May 8, 2014 version of the proposed regulations of the Commission contained in NAC Chapter 538, LCB File No. R148-13 as amended. The motion was seconded by Commissioner Gibson and approved by a unanimous vote at the June 10, 2014 hearing.

The adoption, amendment and repeal of permanent regulations of the Colorado River Commission of Nevada were adopted by the Commission on June 10, 2014.

The minutes of the hearing contain the full discussion of the Commission and approval of the proposed regulations which are attached hereto as Attachment 3.

g) The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include:

a. Both adverse and beneficial effects:

The proposed regulation is not expected to have any adverse economic effect on the general public. The proposed regulation may have a beneficial effect to the extent that these regulatory changes facilitate expeditious allocation of post-2017 Hoover power and provide the Commission staff with new tools for administration of electrical power contracts.

b. Both immediate and long-term effects:

The proposed regulation does not have an immediate or long-term effect on the general public, because these regulations address aspects of the Colorado River Commission's statutory mandate which focus upon the Commission's trust responsibility under NRS 538.181 to hold and administer the State of Nevada's rights and benefits to electrical power, including Hoover power, and to ensure that the State's power contracts are administered for "the greatest possible benefit to this state" under NRS 538.161. These regulations do not contain provisions related to the general public, other than those members of this group who participate in the receipt and delivery of Hoover power. The only entities eligible to receive federal hydropower and other electric services from the Commission are set forth in NRS 704.787.

h) The estimated cost to the agency for enforcement of the proposed regulation.

Enforcement of these proposed regulations poses no measurable cost to the Commission beyond funds already authorized in the budget approved by the Nevada legislature.

i) A description of and citation to any regulation of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

The proposed regulation does not overlap that of any other state, local, or federal agency.

j) If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

Certain provisions of these proposed regulations are required to implement the federal Hoover Power Allocation Act of 2011 (43 USC Sec. 619a), which authorized the Commission to receive, allocate and administer Nevada's allocations of Schedule A, B, C and D Hoover power, and to

receive and administer allocations of Schedule D Hoover power approved by the Western Area Power Administration.

Sections 12 and 13 of the proposed regulations in part implement provisions of NRS 704.787 (1)(c) that require an applicant that receives an allocation of capacity and energy from the Commission to have an annual peak load of at least 1 megawatt which is more stringent than the Western Area Power Administration's minimum allocation of 100 kilowatts pursuant to its December 30, 2013 Federal Register Notice Volume 78, Number 250.

- k) If the regulation establishes a new fee or increases an existing fee, a statement indicating the total annual amount the agency expects to collect and the manner in which the money will be used.**

The proposed regulations do not establish any new fees or increase an existing fee.