

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Rulemaking to amend, adopt, and/or repeal)
regulations in accordance with Assembly Bill 465) Docket No. 19-06028
(2019).)
_____)

At a general session of the Public Utilities
Commission of Nevada, held at its offices
on December 7, 2021.

PRESENT: Chair Hayley Williamson
Commissioner C.J. Manthe
Commissioner Tammy Cordova
Assistant Commission Secretary Trisha Osborne

ORDER

The Public Utilities Commission of Nevada (“Commission”) makes the following
findings of fact and conclusions of law:

I. INTRODUCTION

On June 18, 2019, the Commission opened a rulemaking docket to implement Assembly Bill 465 (“AB 465”) (2019). This matter was designated as Docket No. 19-06028.

II. SUMMARY

The proposed regulations, appended hereto as Attachment 1, are adopted as permanent regulations.

III. PROCEDURAL HISTORY

- On June 18, 2019, the Commission opened a rulemaking docket to implement AB 465.
- This matter is being conducted pursuant to the Nevada Revised Statutes (“NRS”) and the Nevada Administrative Code (“NAC”), Chapters 233B, 703, and 704, including, but not limited to, NRS 703.025 and 704.210 and AB 465.
- On August 9, 2019, the Commission issued a Notice of Rulemaking, Notice of Request for Comments, and Notice of Workshop.
- On September 9, 2019, the Sierra Club and Western Resource Advocates (“WRA”), Nevada Power Company d/b/a NV Energy (“NPC”) and Sierra Pacific Power Company d/b/a NV Energy (“SPPC” and together with NPC, “NV Energy”) the Regulatory Operations Staff of the Commission (“Staff”), and Bombard Renewable Energy (“Bombard”) filed comments.

- On September 9, 2019, the Nevada Bureau of Consumer Protection (“BCP”) filed a Letter stating that it will not submit initial comments but may file reply comments.
- On September 10, 2019, Chispa Nevada et al. filed comments.
- On September 12, 2019, Nevada Assemblywoman Daniele Monroe-Moreno filed comments.
- On September 23, 2019, Staff, BCP, and NV Energy filed reply comments.
- On October 1, 2019, the Commission held a workshop. Staff, NV Energy, BCP, Sierra Club, WRA, Faith Organizing Alliance, and Nevada Department of Employment, Training and Rehabilitation (“DETR”) made appearances. Participants discussed comments, reply comments, and a procedural schedule.
- On October 2, 2019, the Presiding Officer issued Procedural Order No. 1.
- On October 14, 2019, participants held a conference call to discuss priorities and topics for the upcoming informal workshops and conference calls.
- On October 28, 2019, participants in the October 14, 2019, conference call filed with the Commission a status update regarding the October 14, 2019, conference call.
- On October 29, 2019, participants held an informal workshop.
- On November 1, 2019, participants in the informal workshop filed with the Commission a status update regarding the progress made during the informal workshop.
- On November 12, 2019, participants held a conference call.
- On November 15, 2019, participants in the November 12, 2019, conference call filed with the Commission a status update from the November 12, 2019, conference call, as well as a consensus decision as to whether participants are prepared to proceed with an informal or formal workshop on Wednesday, December 4, 2019.
- On November 20, 2019, the Commission issued a Notice of Workshop and an Amended Notice of Informal Workshop.
- On December 4, 2019, participants held an informal workshop.
- On December 5, 2019, the City of Las Vegas filed comments.
- On December 6, 2019, the Commission issued a Notice of Workshop.
- On January 16, 2020, the Commission held a workshop. Staff, BCP, NV Energy, WRA, Sierra Club, Faith Organizing Alliance, City of Las Vegas, Renew Nevada, Nevada Governor’s Office of Energy, International Brotherhood of Workers Local Union 396 and International Brotherhood of Workers Local 1245 (“IBEW”), Grid Alternatives, and Bombard

made appearances. At the workshop, Grid Alternatives presented an informational slideshow presentation.

- On January 21, 2020, the Presiding Officer issued Procedural Order No. 2.
- On January 29, 2020, participants held an informal workshop.
- On March 3, 2020, participants held an informal workshop.
- On March 10, 2020, NV Energy filed a status update with the Commission.
- On March 12, 2020, BCP and DETR filed comments.
- On March 13, 2020, the Commission held a continued workshop. Staff, BCP, NV Energy, Sierra Club, WRA, Faith Organizing Alliance, Renew Nevada, Grid Alternatives, the Nevada Conservation League (“NCL”), and DETR made appearances. Participants described draft regulations, a procedural schedule, and non-consensus items.
- On March 31, 2020, NV Energy filed a Workforce Development Plan on behalf of Senator Brooks and Assemblywoman Monroe-Moreno as discussed at the March 13, 2020, workshop.
- On April 21, 2020, the Presiding Officer issued Procedural Order No. 3 requesting comments on draft regulations appended thereto.
- On May 29, 2020, NV Energy, Sierra Club and WRA, BCP, and Staff filed comments.
- On June 12, 2020, NV Energy, Sierra Club and WRA, BCP, and Staff filed reply comments.
- On July 8, 2020, the Presiding Officer sent proposed regulations to the Legislative Counsel Bureau (“LCB”).
- On July 9, 2020, the Presiding Officer issued Procedural Order No. 4.
- On November 4, 2020, LCB returned revised proposed regulations.
- On November 9, 2020, the Presiding Officer issued Procedural Order No. 5 requesting a Small Business Impact Report and scheduling a workshop and hearing.
- On November 16, 2020, the Commission issued a Notice of Workshop and Notice of Hearing.
- On December 3, 2020, Staff filed its Small Business Impact Report (“Report”).
- On December 9, 2020, at a regularly scheduled agenda, the Commission pulled Staff’s Report from consideration.
- On December 9, 2020, the Presiding Officer issued Procedural Order No. 6 cancelling a scheduled workshop and hearing and requesting that Staff conduct and file a rate impact analysis (“RIA”).

- On January 5, 2021, Staff filed the requested RIA.
- On January 20, 2021, the Commission issued a Notice of Intent to Act Upon a Regulation, Notice of Workshop, and Notice of Hearing.
- On January 21, 2021, the Commission issued an Order finding that the proposed regulation is not likely to impose a direct and significant economic burden upon small businesses.
- On January 25, 2021, the Commission issued an Amended Notice of Intent to Act Upon a Regulation, Notice of Workshop, and Notice of Hearing.
- On February 12, 2021, NCL, NV Energy, and Staff filed comments.
- On February 16, 2021, Chispa Nevada and BCP filed comments.
- On February 16, 2021, the Commission held a workshop. Staff, BCP, NV Energy, Chispa Nevada, Renew Nevada, Sierra Club, WRA, and MGM Resorts International and Caesars Enterprise Services, LLC (together, “MGM and Caesars”) made appearances.
- On February 17, 2021, the Commission held a hearing. Staff, BCP, NV Energy, WRA, Sierra Club, Renew Nevada, and MGM and Caesars made appearances.
- On February 18, 2021, the Presiding Officer issued Procedural Order No. 7 soliciting comments from interested participants regarding the draft regulation.
- On February 23, 2021, the Commission issued a Notice of Intent to Act Upon a Regulation and Notice of Hearing.
- On February 26, 2021, Staff, NV Energy, Sierra Club and WRA, MGM and Caesars, BCP, and City of Las Vegas filed comments.
- On March 25, 2021, the Commission held a hearing. Staff, BCP, NV Energy, WRA and Sierra Club, and MGM and Caesars made appearances.
- On April 14, 2021, the Commission issued an Order adopting the proposed regulations as temporary.
- On May 20, 2021, the Presiding Officer submitted the adopted temporary regulations to the Secretary of State.
- On May 26, 2021, the Presiding Officer submitted the adopted temporary regulations to LCB and the State Library and archives.
- On September 3, 2021, the Presiding Officer submitted proposed revisions to the proposed regulations to LCB for review.

- On November 23, 2021, the Commission received the proposed regulation from LCB in revised form.

IV. REGULATIONS

1. The proposed regulations, appended hereto as Attachment 1, implement AB 465, pertaining to the Expanded Solar Access Program (“ESAP”) of electric utilities.

2. Sections three through nine of the proposed regulations define “disadvantaged business,” “eligible premises customer,” “expanded solar access program plan,” “expanded solar access program rate,” “low-income eligible customer,” “non-contiguous geographic locations,” and “nonprofit organization.”

3. Section ten establishes limits on the amount of energy which may be allocated to certain categories of customers under the ESAP.

4. Section eleven requires an electric utility to submit an ESAP plan to the Commission every 3 years, and to file with the Commission an informational report regarding the ESAP on or before March 1 of each calendar year following the calendar year in which the Commission approves the initial ESAP plan. Section eleven also requires the utility scale solar resources included in the ESAP plan to be approved by the Commission as part of the electric utility’s triennial resource plan.

5. Section twelve establishes the information that an electric utility must include in its ESAP plan.

6. Section thirteen establishes requirements for eligible customers to apply to participate in an ESAP and requires applicants to be selected through a lottery system.

7. Section fourteen establishes requirements for the selection of the geographic locations for community-based solar resources.

8. Section fifteen establishes the method for calculating the rate charged to participants in the ESAP, replacing the base tariff energy rate (“BTER”) and deferred energy accounting adjustment (“DEAA”).

9. Section fifteen also requires the Commission to adjust certain rates charged to low-income customers to ensure that such customers receive a lower energy rate.

10. Section sixteen establishes the process for an electric utility to recover the costs of implementing an ESAP.

11. Section sixteen also requires an electric utility to use the portfolio energy credits (“PECs”) acquired by implementing the ESAP to meet its portfolio standard and allocates PECs generated from community-based solar resources between the electric utility implementing the expanded solar access program and its distribution-only service customers on a load ratio basis.

Summary of Public Comments in 233B Workshop and Hearings

Staff’s Comments

12. Before the 233B workshop and hearings, Staff filed written comments and then also participated in the 233B workshop and hearings. Staff provided numerous edits to the proposed regulations, which the Commission took into consideration and incorporated into the proposed regulations attached as Attachment 1.¹

13. Staff states it wants to provide clarification on statements made during the 233B hearing on February 17, 2021. (Staff’s February 26, 2021, Comments at 1.) Staff states that when referring to what is meant by “the opportunity for a lower rate” in the ESAP statute (NRS 704.7865(2)(f)(4)), NV Energy confirmed that its interpretation of that phrase means that

¹ At hearing, Staff raised the issue of requiring the filing of direct testimony supporting the ESAP. (March 25, 2021, Tr. at 44-49.) The Commission notes that a presiding officer may direct a party to submit prepared testimony and accompanying exhibits pursuant to NAC 703.710(1).

customers will have the opportunity to be subject to a rate that is lower than the rate they would otherwise pay if the customers were to install rooftop solar on their own. (*Id.*, quoting February 27, 2021, Tr. at 23.) Staff states that it does not agree with this characterization of the statutory language. (*Id.*) Staff states that it believes the phrase “opportunity for a lower rate” in NRS 704.7865(2)(f)(4) refers to a rate that is lower than the otherwise applicable BTER and DEAA that the customer would be required to pay but for his/her participation in the ESAP. (*Id.*)

NV Energy’s Comments

14. Before the 233B workshop and hearings, NV Energy filed written comments and then also participated in the 233B workshop and hearings. NV Energy provided numerous edits to the proposed regulations, all of which the Commission took into consideration and some of which are incorporated into the proposed regulations attached as Attachment 1. The comments below highlight areas where NV Energy’s comments either provide additional clarification to or diverge from the attached proposed regulations.

15. NV Energy states that it was directly involved in drafting the ESAP legislation and because distributed solar energy resources are at a premium compared to utility-solar energy resources, NV Energy’s intent was to blend the costs of the utility-scale solar energy resources with the costs of the smaller distributed solar energy resources to drive costs down in an effort to facilitate participation. (February 16, 2021, Tr. at 231-233.) NV Energy states that the ESAP does not guarantee a discount, which was never discussed when NV Energy developed the legislation, except the low-income discount. (*Id.*) NV Energy states that the ESAP does not guarantee everybody a lower rate than what they would otherwise pay. (*Id.* at 234.) NV Energy states that that is not the intent of the ESAP, and that NV Energy knew ESAP was going to cost

more. (*Id.*) NV Energy states that rooftop solar costs more compared to the BTER. (*Id.* at 234-235.)

16. NV Energy states that, with respect to distribution only service (“DOS”) customers, the ESAP is a public program cost, and NV Energy specifically wrote that language into the legislation that DOS customers are going to pay because this is a public program cost, not just the low-income discount, but all project costs. (February 16, 2021, Tr. at 235.)

17. NV Energy states that the ESAP systems are distributed resources. (February 16, 2021, Tr. at 235.) NV Energy states that these distributed resources benefit the distribution grid. (*Id.*) NV Energy states that the intent, and the “pure language” of the law, says the ESAP will be paid for as a distribution expense, which means all customers pay for this, including DOS customers. (*Id.*)

18. NV Energy states that under AB 465, a community-based solar resource is defined as “a component of the distribution system of the electric utility.” (NV Energy’s February 12, 2021, Comments at 3.) NV Energy states that as such, the ESAP costs are a component of the distribution system of the electric utility. (*Id.*) NV Energy states that DOS customers do not pay the BTER and DEAA rates, which are updated quarterly. (*Id.*) NV Energy states that because the proposed regulations direct the utility to track and recover the low-income discount quarterly through the BTER/DEAA rates, which DOS customers do not pay, DOS customers are not contributing to their fair ratio of the low-income discount and project costs. (*Id.*) NV Energy requests the regulations to continue to track the discount quarterly but recover those costs through the ESAP public policy rate, which will be spread to all customers, including DOS customers. (*Id.*) NV Energy states that this more fairly addresses this cost and equally

spreads those costs to all customers. (*Id.*) NV Energy proposes changing the recovery to an annual, rather than quarterly, basis. (*Id.*)

19. NV Energy states that, contrary to BCP's assertions, the regulations do not deviate from cost-of-service, because everything calculated is related to the actual costs to either build or get an authorized rate of return that is approved by the Commission. (February 17, 2021, Tr. at 28.) NV Energy states it believes AB 465 allows for those costs of service costs to be collected from the distribution system. (*Id.*)

BCP's Comments

20. Before the 233B workshop and hearings, BCP filed written comments and then also participated in the 233B workshop and hearings. BCP provided numerous edits to the proposed regulations, all of which the Commission took into consideration and some of which are incorporated into the proposed regulations attached as Attachment 1. The comments below highlight areas where BCP's comments diverge from or provide clarification to the attached proposed regulations.

21. BCP states that it does not support any rate discounts for ESAP customers other than the low-income residential discount required by NRS 704.7865(2)(f)(5). (BCP's February 26, 2021, Comments at 2-3.) BCP states that the ESAP rate will be whatever it calculates to be—whether it be higher or lower than the BTER/DEAA energy rate paid by all other bundled customers—and will be the energy rate paid by ESAP participants in place of the BTER/DEAA. (*Id.*) BCP states that it agrees with NV Energy that it is more practical to recover any amounts recoded in the ESAP low-income regulatory asset account on an annual basis rather than a quarterly basis. (*Id.* at 3-4.) BCP states that, furthermore, the annual recovery of the ESAP low-

income regulatory asset account would be consistent with the annual recovery of the ESAP regulatory asset account for incurred costs in Section 16(3). (*Id.* at 4.)

22. Regarding section 16.3 of the proposed regulations, BCP does not have any proposed changes but does highlight a potential for double-recovery of a return-on and return-of NV Energy's investment in community-based solar resources. (BCP's February 26, 2021, Comments at 4.) BCP states that the ESAP rate paid for by customers participating in the ESAP already includes a return-on and return-of NV Energy's investment in community-based solar resources. (*Id.*) BCP states that it is not appropriate for NV Energy to calculate an additional return-on and return-of its investment in ESAP community-based solar resources. (*Id.*) BCP states that the burden will be on NV Energy in future applications to recover any amounts recorded in the ESAP regulatory assets to clearly demonstrate that it is not seeking double recovery of a return-on and return-of its investment in ESAP community-based solar resources. (*Id.*)

23. BCP states that there is no statutory authority for the Commission to charge non-participating ESAP customers the administrative costs associated with the ESAP. (BCP's February 26, 2021, Comments at 5.) BCP states that the Nevada Legislature has specifically provided for the recovery of administrative costs by statute of the Renewable Generations programs in NRS Chapter 701B and the Energy Efficiency and Conservation programs in NRS 704.785. (*Id.* at 5-6.) BCP states that the ESAP does not contain similar language regarding passing on the administrative costs of the ESAP to non-participating customers. (*Id.* at 6.) BCP states that the only subsidy allowed under AB 465 to be charged to non-participating customers is that of the low-income discount and that the ESAP was intended to be a stand-alone program with its costs covered by participating customers. (*Id.*)

24. BCP states that the ESAP involves costs and investments that are related to the production function in the cost-of-service, not the distribution function. (BCP's February 26, 2021, Comments at 7.) BCP states that DOS customers do not pay for costs and investments that are functionalized as production in their general rates, but only for costs and investments that are functionalized as distribution. (*Id.*) BCP states that whether one is setting general rates or surcharge rates, cost-of-service principles must be followed for rate-regulated accounting. (*Id.*) BCP states that, in its view, there can be no greater violation of cost-of-service principles than intentionally functionalizing costs and investments that are indisputably functionalized as production to distribution just so DOS customers are subject to those costs and investments. (*Id.*)

25. BCP states that NV Energy's argument for requiring DOS customers to pay for ESAP costs and investments that are properly functionalized as production in the Federal Energy Regulatory Commission's Uniform System of Accounts and a cost-of-service study is the definition of community-based solar resource in NRS 704.7865(6)(b): "'Community-based solar resource' means a solar resource which has a nameplate capacity of not more than 1 megawatt and is owned and operated by the electric utility and connected to and used as a component of the distribution system of the electric utility." (BCP's February 26, 2021, Comments at 7.) BCP states that NV Energy's argument is without merit and ignores definitions of "utility scale solar resource" in NRS 704.7865(6)(o) and "solar resource" in NRS 704.7865(6)(m). (*Id.*) BCP states that in addition, NV Energy's argument ignores the definition of "distribution system" and "transmission system" in its Engineering Requirements for Design Standard for Parallel Generation of 10 Megawatts or Less (RE-1). (*Id.* at 7-9.)

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MGM and Caesars' Comments

26. Before the 233B workshop and hearings, MGM and Caesars filed written comments and then also participated in the 233B workshop and hearings. MGM and Caesars provided edits to the proposed regulations, all of which the Commission took into consideration and some of which are incorporated into the proposed regulations attached as Attachment 1. The comments below highlight areas where MGM and Caesars' comments either provide clarification to or diverge from the attached proposed regulations.

27. MGM and Caesars state that public policy costs or the ESAP recoverable from all utility customers are limited to the costs associated with any low-income eligible customer discount. (MGM and Caesars' February 26, 2021, Comments at 3.) MGM and Caesars state that section 16(4) of the proposed regulations is inconsistent with AB 465, codified at 704.7865, which only provides for a subsidy by non-participating customers for costs related to providing low-income eligible customers a lower rate. (*Id.*) MGM and Caesars state it is also inconsistent with general and long-established cost of services principles used by the Commission under Nevada law to establish just and reasonable rates. (*Id.*) MGM and Caesars state that DOS customers pay for wire costs on the utility's distribution system, not generation which DOS customers buy from an alternative provider. (*Id.*) MGM and Caesars state that while there is agreement that DOS customers do pay the public policy costs for the low-income eligible customer discount, this does not include all costs as laid out in section 16(4) of the proposed regulation. (*Id.*)

28. MGM and Caesars state that AB 465 did not guarantee a lower rate to ESAP participants, other than low-income eligible customers and did not provide for a fully subsidized ESAP. (MGM and Caesars' February 26, 2021, Comments at 3-4.)

Sierra Club and WRA Comments

29. Before the 233B workshop and hearings, WRA and Sierra Club filed written comments and then also participated in the 233B workshop and hearings. Sierra Club and WRA provided edits to the proposed regulations, all of which the Commission took into consideration and some of which are incorporated into the proposed regulations attached as Attachment 1. The comments below highlight areas where Sierra Club and WRA's comments either provide clarification to or diverge from the attached proposed regulations.

30. Sierra Club and WRA state that they support the specific components of the proposed regulations that spread the cost of the ESAP across all ratepayers of a utility. (Sierra Club and WRA's February 26, 2021, Comments at 1.) Sierra Club and WRA state without such a mechanism, the ESAP simply cannot support itself, especially in light of the mandate that low-income customers must receive a lower rate. (*Id.*) Sierra Club and WRA state that the proposed regulations also ensure that non-participating ratepayers and DOS customers help cover the costs of the ESAP, and that these businesses and individuals do receive numerous benefits from the ESAP, such as greater access to clean energy, which results in cleaner air. (*Id.* at 1-2.) Sierra Club and WRA state that another benefit of adding distributed resources to the built environment is to conserve the vast open spaces and wild parts of Nevada, which benefits Nevada's tourism, hospitality, and recreational industries. (*Id.*) Sierra Club and WRA state that programs like the ESAP make Nevada a more attractive place to live and attract top talent to Nevada that our state continues to need in the workforce. (*Id.*)

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City of Las Vegas Comments

31. The City of Las Vegas states that it is in support of the proposed regulations as drafted, and states that the regulations for the ESAP will be a benefit to residents in Las Vegas. (City of Las Vegas February 26, 2021, Comments at 1.)

Chispa Nevada Comments

32. Before the 233B workshop and hearings, Chispa Nevada filed written comments and then also participated in the 233B workshop. Chispa Nevada provided edits to the proposed regulations regarding input from non-profit organizations serving communities of color and low-income Nevadans as well as input regarding marketing for the ESAP being culturally and linguistically appropriate that the Commission incorporated into the proposed regulations attached as Attachment 1.

33. Chispa Nevada states that, if implemented appropriately, AB 465 could achieve important progress in expanding access to solar energy and jobs. (February 16, 2021, Tr. at 281.) However, Chispa Nevada states that it is concerned that certain proposals in the rulemaking do not equitably address the importance of ensuring that the benefits of solar energy reach all communities in Nevada. (*Id.*) Chispa Nevada states it is concerned that low-income communities of color will not be a part of the planning process for workforce education, training, and job placement, and therefore less likely to benefit from these programs. (*Id.*) Chispa Nevada states we need to ensure that these opportunities effectively reach these communities and there are no outreach gaps. (*Id.* at 281-282.) Chispa Nevada states that, similarly, for locating these solar programs, the community must be actively consulted and engaged in choosing the locations. (*Id.* at 282.) Chispa Nevada states it would also like to improve the criteria for how low-income customers and low-income communities are identified so that we target low-income

communities of color that are disproportionately suffering from the pollution and cause associated with dirty fossil fuel energy. (*Id.*)

Renew Nevada Comments

34. Before the 233B workshop and hearings, Renew Nevada filed written comments and then also participated in the 233B workshop. Renew Nevada states that it supports the regulations to implement AB 465. (February 16, 2021, Tr. at 283.) Renew Nevada states that expanded solar access is the first step to address the lack of equality in access to solar energy and green jobs for renters and communities of color. (*Id.* at 283-284.) Renew Nevada states that it is critical to enact these regulations quickly so that we can develop a meaningful ESAP plan. (*Id.*)

Commission Discussion and Findings

35. Based on the foregoing, the Commission finds that it is in the public interest to adopt as permanent the proposed regulations attached hereto as Attachment 1.

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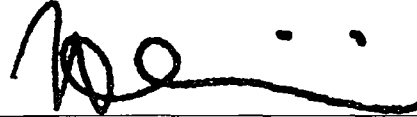
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THEREFORE, it is ORDERED:

1. The proposed regulations, attached hereto as Attachment 1, are adopted as permanent.

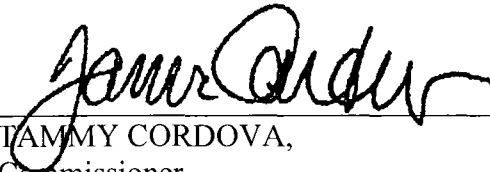
By the Commission,



HAYLEY WILLIAMSON,
Chair and Presiding Officer



C.J. MANTHE,
Commissioner



TAMMY CORDOVA,
Commissioner

Attest:

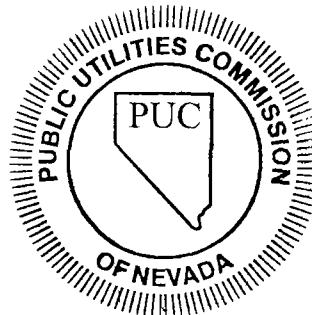


TRISHA OSBORNE,
Assistant Commission Secretary

Dated: Carson City, Nevada

12/8/21

(SEAL)



ATTACHMENT 1

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

LCB File No. R136-20

December 7, 2021

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

AUTHORITY: §§1-16, NRS 703.025, 704.210 and 704.7865.

A REGULATION relating to electric utilities; limiting the amount of energy that may be allocated to certain categories of customers under an expanded solar access program; requiring an electric utility to submit to the Public Utilities Commission of Nevada an expanded solar access program plan; establishing the application and selection process for an expanded solar access program; establishing requirements for the selection of locations for community-based solar resources; establishing requirements for rates charged under an expanded solar access program; authorizing an electric utility to recover certain costs of implementing an expanded solar access program; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires: (1) an electric utility to offer an expanded solar access program to eligible customers within its service territory; and (2) the Public Utilities Commission to adopt regulations establishing standards for the expanded solar access program. (NRS 704.7865)

Section 10 of this regulation establishes limits on the amount of energy which may be allocated to certain categories of customers under the expanded solar access program.

Section 11 of this regulation requires an electric utility to: (1) submit an expanded solar access program plan to the Commission every 3 years; and (2) file with the Commission an informational report regarding the expanded solar access program on or before March 1 of each calendar year following the calendar year in which the Commission approves the initial expanded solar access program plan of the electric utility. **Section 11** requires the utility scale solar resources included in the expanded solar access program plan to be approved by the Commission as part of the electric utility's triennial resource plan.

Section 12 of this regulation establishes the information which an electric utility is required to include in its expanded solar access program plan.

Section 13 of this regulation establishes requirements for eligible customers to apply to participate in an expanded solar access program and requires applicants to be selected through a lottery system.

Section 14 of this regulation establishes requirements for the selection of the geographic locations for community-based solar resources.

Section 15 of this regulation establishes the method for calculating the rate charged to participants in the expanded solar access program which replaces the base tariff energy rate and deferred energy accounting adjustment. **Section 15** also requires the Commission to adjust certain rates charged to low-income customers to ensure that such customers receive a lower energy rate.

Section 16 of this regulation establishes the process for an electric utility to recover the costs of implementing an expanded solar access program. **Section 16** also authorizes an electric utility to use the portfolio energy credits acquired by implementing the expanded solar access program to meet its portfolio standard.

Section 1. Chapter 704 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 sections 2 to 16, inclusive, of this regulation unless the context otherwise requires, the words and terms defined in sections 3 to 9, inclusive, have the meanings ascribed to them in those sections.*

Sec. 3. *“Disadvantaged business” has the meaning ascribed to it in NRS 704.7865.*

Sec. 4. *“Eligible premises customer” means a customer who is a fully bundled residential customer of an electric utility who cannot install solar resources on the customer’s premises due to physical or ownership constraints on the premises.*

Sec. 5. *“Expanded solar access program plan” means the expanded solar access program plan submitted to the Commission by an electric utility pursuant to section 11 of this regulation.*

Sec. 6. *“Expanded solar access program rate” means a fixed-rate charge approved by the Commission to be charged to customers participating in an expanded solar access program, which replaces the base tariff energy rate and the deferred energy accounting adjustment and which is adjusted in accordance with the quarterly calculations of the Commission.*

Sec. 7. *“Low-income eligible customer” has the meaning ascribed to it in NRS 704.7865.*

Sec. 8. *“Non-contiguous geographic locations” means two geographic locations that are not adjoining along a boundary or consisting of parts that adjoin.*

Sec. 9. *“Nonprofit organization” means an organization which qualifies as tax exempt pursuant to section 501(c) of the Internal Revenue Code, 26 U.S.C. § 501(c).*

Sec. 10. 1. *An electric utility that primarily serves densely populated counties shall ensure that the amount of energy provided annually through its expanded solar access program does not exceed:*

(a) 60,000 megawatt-hours to low-income eligible customers;

(b) 60,000 megawatt-hours to disadvantaged businesses and nonprofit organizations; and

(c) 120,000 megawatt-hours to eligible premises customers.

2. *An electric utility that primarily serves less densely populated counties shall ensure that the amount of energy provided annually through its expanded solar access program does not exceed:*

(a) 40,000 megawatt-hours to low-income eligible customers;

(b) 40,000 megawatt-hours to disadvantaged businesses and nonprofit organizations; and

(c) 80,000 megawatt-hours to eligible premises customers.

3. *An electric utility shall set forth in its expanded solar access program plan a reserve amount for the categories of customers listed in subsections 1 and 2, as applicable, to ensure*

that the size of the expanded solar access program does not exceed the limits set forth in subsection 1 of NRS 704.7865.

4. As used in this section:

(a) "Electric utility that primarily serves densely populated counties" has the meaning ascribed to it in NRS 704.110.

(b) "Electric utility that primarily serves less densely populated counties" has the meaning ascribed to it in NRS 704.110.

Sec. 11. *1. On or before December 1, 2020, and every 3 years thereafter, an electric utility shall submit an expanded solar access program plan to the Commission for approval.*

2. An electric utility may file an amendment to an expanded solar access program plan that has been approved by the Commission provided that another expanded solar access program plan submitted by the utility is not pending before the Commission.

3. Two or more utilities that are affiliated through common ownership may jointly file an expanded solar access program plan or amendment pursuant to this section.

4. Utility scale solar resources which are included in an expanded solar access program plan must be approved by the Commission in an order issued pursuant to NRS 704.751.

5. On or before March 1 of each calendar year following the calendar year in which the Commission approved the initial expanded solar access program plan of an electric utility, the electric utility shall file an informational report with the Commission which details:

(a) For the immediately preceding calendar year:

(1) The number of applications for the program received by the electric utility;

(2) The number of individuals who voluntarily left the program; and

(3) The number of participants remaining in the program at the end of the calendar year.

(b) The status of any community-based solar resources including, without limitation, the construction, maintenance and operation of such solar resources.

(c) The production of energy by community-based solar resources and utility scale solar resources which are included in the program.

(d) The amount of energy subscribed and whether the reserve capacity is adequate.

(e) Information regarding the expanded solar access program rate, including, without limitation, revenues received and costs incurred by the utility.

(f) Any workforce statistics related to the program that are available to the electric utility.

(g) The number and types of calls to the customer service department of the utility relating to the program.

(h) The number of individuals who did not return recertification documentation.

Sec. 12. *The expanded solar access program plan of an electric utility must include the following information:*

1. A list of actions for which the electric utility is seeking approval by the Commission, including, without limitation, the electric utility's selection of community-based solar resources and utility scale solar resources to be included in the expanded solar access program. The Commission will not approve the list of actions unless the proposed actions ensure that the expanded solar access program utilizes a reasonable mixture of community-based solar resources and utility scale solar resources.

2. A list of the utility scale solar resources to be used in determining the expanded solar access program rate.

3. *The criteria, which must be developed using stakeholder input, to be used by the electric utility to create an initial list of non-contiguous geographic locations for community-based solar resources and the process, which must include receiving input from stakeholders, for selecting final site locations for community-based solar resources. An electric utility may, in subsequent expanded solar access program plans or amendments, after consultation with stakeholders, propose modifications to the criteria and process for selecting the community-based solar resource locations and, when necessary, indicate any proposed new community-based solar resource locations.*

4. *A schedule for the selection, construction and operation of the community-based solar resources dedicated to the expanded solar access program that complies with the requirements of paragraph (h) of subsection 2 of NRS 704.7865 and considers the amount of energy that is subscribed, the amount of energy that is expected to be subscribed and the reserve energy.*

5. *A description of the electric utility's process for community participation in the naming of community-based solar resources.*

6. *Information on how the electric utility plans to compensate community-based solar site hosts including, without limitation, the terms of any form lease agreements, purchase agreements or easements.*

7. *Information regarding a solar workforce innovations and opportunities program, developed by the Department of Employment, Training and Rehabilitation in conjunction with potential employers, interested nonprofit organizations and the International Brotherhood of Electrical Workers, or its successor organization, to provide workforce education, training and job placement. The solar workforce innovations and opportunities program must accomplish the following:*

(a) Leverage existing plans and programs within the Department of Employment, Training and Rehabilitation to reduce administrative costs.

(b) Ensure that at least one job fair open to the public is conducted in each community or neighboring low-income community, as needed for recruitment, where a community-based solar resource is planned to be built. The job fair must be coordinated with the Department of Employment, Training and Rehabilitation, private solar or electrical installation companies, local schools and colleges, the International Brotherhood of Electrical Workers, or its successor organization, including, without limitation, representatives from the Joint Apprenticeship Training Center, and other interested stakeholders, as practicable, to provide educational resources and training and to solicit potential qualified applicants.

(c) Establish a selection process to refer qualified applicants to the International Brotherhood of Electrical Workers, or its successor organization, for adequate training. Qualified applicants may be selected to participate in appropriate contracted positions to aid in the construction, maintenance and operation of community-based solar projects.

(d) Determine job titles, detail quality compensation and establish benefits for the contracted positions.

8. A description of the application and selection process for eligible customers, including, without limitation, annual rules for recertification, disenrollment and relocation of customers enrolled in the expanded solar access program.

9. A plan for marketing the expanded solar access program that includes marketing that is linguistically appropriate.

10. The proposed annual budget for each of the expanded solar access program plan components, including, without limitation, marketing, community outreach and program administration.

11. Criteria for identifying traditionally underrepresented groups for the purposes of determining qualifying owners of a disadvantaged business. Qualifications for a disadvantaged business may be developed in coordination with a governmental agency or nonprofit organization with relevant expertise.

12. Criteria for identifying and establishing the boundaries of a community with higher levels of low-income eligible customers. An electric utility shall utilize available tools and work with appropriate government agencies, including, without limitation, the Division of Welfare and Supportive Services of the Department of Health and Human Services, to the extent practicable, to develop the criteria necessary to determine the boundaries of a community with higher levels of low-income eligible customers.

13. A description of expanded solar access program rate components and methodology for developing participant charges.

Sec. 13. *1. A low-income eligible customer, disadvantaged business, nonprofit organization or eligible premises customer located within the service territory of an electric utility may apply to participate in the expanded solar access program of the electric utility.*

2. An electric utility may cooperate with the Housing Division of the Department of Business and Industry, the Division of Welfare and Supportive Services of the Department of Health and Human Services or any other state, county or local governmental entity, or any nonprofit organization, to develop eligibility criteria and verification processes for a low-income eligible customer.

3. A disadvantaged business must include in its application to participate in an expanded solar access program:

(a) A copy of its State or local business license;

(b) Documentation demonstrating that more than 50 percent of the owners of the business are women, veterans, members of a racial or ethnic minority group or otherwise part of a traditionally underrepresented group according to the criteria included in the expanded solar access program plan approved by the Commission; and

(c) A signed affidavit of eligibility with supporting evidence that confirms that each owner of the business does not have a net worth of more than \$250,000, not including equity held in the business or in a primary residence.

4. A nonprofit organization must include in its application to participate in an expanded solar access program an affirmation or determination letter from the Internal Revenue Service indicating that the organization is exempt from taxation pursuant to section 501(c) of the Internal Revenue Code, 26 U.S.C. § 501(c).

5. An eligible premises customer must include in his or her application to participate in an expanded solar access program a written statement certifying that the customer cannot install solar resources on his or her premises due to physical or ownership constraints on the premises. For the purpose of determining whether an eligible premises customer is eligible to participate in an expanded solar access program, a financial constraint preventing the customer from installing solar resources on his or her premises does not constitute a physical constraint on such an installation. An eligible premises customer may include in his or her application building or property schematics or pictures demonstrating that the eligible premises customer cannot install solar resources on his or her premises due to physical or ownership constraints on the installation of solar resources on his or her premises.

6. The expanded solar access program plan year runs from January 1 to December 31 of each calendar year.

7. *Applicants for participation in an expanded solar access program must be selected on the basis of a lottery system which each electric utility shall set forth in its expanded solar access program plan. Each electric utility shall also include in its expanded solar access program plan a description of any interim enrollment process that the electric utility intends to use.*

8. *Participants in an expanded solar access program will be enrolled in the program for 1 year but may withdraw from participation at any time. At the end of the expanded solar access program term, a participant may renew participation in the program without participating in the selection lottery if the participant notifies the electric utility of the participant's intention to remain in the program and resubmits any documents that meet the requirements contained in subsection 3, 4 or 5, as applicable.*

9. *A customer's participation in the program may be terminated by the electric utility as provided in an expanded solar access program plan that has been approved by the Commission.*

Sec. 14. 1. *In selecting the host sites for community-based solar resources connected to the distribution system, an electric utility must consider and provide greater weight to the following locations:*

(a) *A location in a disadvantaged or low-income community.*

(b) *A location in an area determined by an electric utility or the Commission to have high locational value which includes, without limitation, an area that has optimum solar output, an area for which it is possible to obtain the necessary permits, an area that provides community services or benefits or an area that provides a grid benefit.*

2. *An electric utility shall provide a reasonable justification for its selection of a host site as the site for a community-based solar resource. If it is impracticable for an electric utility to site a community-based solar resource in a community with higher levels of low-income eligible*

customers, the electric utility shall provide adequate rationale for why the selected site is appropriate.

Sec. 15. *1. The expanded solar access program rate for all customers participating in the program must be calculated as 30 percent of the weighted average of the rates for new utility-scale solar resources accepted by the Commission in an order pursuant to NRS 704.751 and selected for use in determining the expanded solar access program rate pursuant to subparagraph (1) of paragraph (f) of subsection 2 of NRS 704.7865, as approved by the Commission, and community-based solar resources approved as part of the expanded solar access program plan, plus 70 percent of the base tariff energy rate and deferred energy accounting adjustment, adjusted to remove the expanded solar access program resources. The expanded solar access program rate will replace a participating customer's base tariff energy rate and deferred energy accounting adjustment.*

2. The Commission will adjust the expanded solar access program rate charged to low-income customers as necessary to guarantee that such customers receive a lower energy rate as required by NRS 704.7865.

3. Customers participating in the expanded solar access program shall pay any other applicable charges, including, without limitation, the universal energy charge, franchise fees, the renewable energy program rate and the base tariff general rates, except that the Commission may reduce one or more of these charges for low-income customers to ensure that such customers receive a lower rate as required by NRS 704.7865.

4. Any expanded solar access program rate discount, including, without limitation, any low-income customer discount, must be tracked by the electric utility separately in a regulatory asset and recovered from all utility customers, including distribution-only service customers, on a

quarterly basis in conjunction with an electric utility's quarterly filing made pursuant to NRS 704.110.

5. Expanded solar access rate revenues paid by participating customers must be applied to the deferred energy accounting balance in the same manner as the base tariff energy rate and the deferred energy accounting adjustment rates.

Sec. 16. *1. All of the costs of implementing an expanded solar access program, with the exception of any rate discount tracked pursuant to subsection 4 of section 15 of this regulation, must be accounted for in the books and records of an electric utility in regulatory asset accounts which are separate from costs and amounts attributable to any other activity. All such accounts must be maintained in a manner that will allow costs and amounts attributable to specific programs to be readily identified. The calculation for the regulatory asset account for the capital costs of a community-based solar resource begins on the last day of the month following the date on which the resource is made available as a community-based solar resource.*

2. An electric utility shall recover all prudent and reasonable expenditures of implementing the expanded solar access program, provided that such expenditures arise out of actions that have been approved by the Commission as part of the electric utility's expanded solar access program plan.

3. An electric utility must submit the regulatory asset accounts associated with the expanded solar access program to the Commission with the electric utility's annual deferred energy accounting adjustment application submitted pursuant to NRS 704.187, with proposals to recover the accumulated balance of the expanded solar access program costs and for the recovery of and return on the costs for the construction or acquisition of any community-based solar resource dedicated to the expanded solar access program by the electric utility.

4. All expenditures related to the expanded solar access program are public policy costs that must be charged to all customer classes of an electric utility, including, without limitation, distribution-only customers.

5. The portfolio energy credits generated:

(a) From the expanded solar access program must be used for renewable portfolio standard compliance by the electric utility implementing the expanded solar access program; and

(b) From community-based solar resources must be allocated between the electric utility implementing the expanded solar access program and its distribution-only service customers on a load ratio basis.