BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Application of Switch Ltd. to purchase energy, capacity, and/or ancillary services from a provider of new electric resources. Docket No. 14-11007

At a general session of the Public Utilities Commission of Nevada, held at its offices on June 10, 2015.

PRESENT: Chairman Alaina Burtenshaw
Commissioner Rebecca D. Wagner
Commissioner David Noble
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

Switch Ltd. ("Switch") filed with the Commission an Application, designated as Docket No. 14-11007, for authority to exit the system of Nevada Power Company d/b/a NV Energy ("Nevada Power" or "NPC") and to purchase energy, capacity, and/or ancillary services from a provider of new electric resources.

II. SUMMARY

The Commission denies the Amended Application without prejudice.

III. PROCEDURAL HISTORY

• On November 7, 2014, Switch filed the Application.

• The Application was filed pursuant to the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC"), Chapters 703, 704, and 704B, including but not limited to NAC 704B.340 and 704B.380. Pursuant to NAC 703.5274, Switch requested confidential treatment of information submitted under seal with the Application.

• On November 14, 2014, Switch filed an amendment to its Application ("Amendment").

• On November 24, 2014, the Commission issued a Notice of Application to Exit System and Notice of Prehearing Conference.
• On November 26, 2014, the Attorney General’s Bureau of Consumer Protection ("BCP") filed a Notice of Intent to Intervene pursuant to NRS Chapter 228.

• The Regulatory Operations Staff ("Staff") of the Commission participates as a matter of right pursuant to NRS 703.301.

• On December 9, 2014, Nevada Power filed "Notice of Nevada Power Company of Intent to Intervene, or in the Alternative, Petition for Leave to Intervene."

• On December 11, 2014, Nevada Power filed a Motion Seeking Supplement of Amended Application and Tolling of Statutory Effective Date ("Nevada Power's Motion").

• On December 18, 2014, Staff and Switch filed responses to Nevada Power’s Motion.

• On December 26, 2014, Nevada Power filed a reply to Switch’s response to Nevada Power’s Motion. Pursuant to NAC 703.5274, Nevada Power requested confidential treatment of information submitted under seal with this filing.¹

• On December 26, 2014, Switch filed a reply to the December 18, 2014, Staff response to Nevada Power’s Motion.

• On January 5, 2015, Nevada Power filed a replacement filing, replacing its December 26, 2014, reply to Switch’s response. In the replacement filing, Nevada Power asks the Commission to accept the replacement filing because it redacts a footnote that was inadvertently left unredacted in the December 26, 2014, filing. Pursuant to NAC 703.5274, Nevada Power requested confidential treatment of information submitted under seal with this filing.

• On January 6, 2015, the Commission held a prehearing conference. BCP, Nevada Power, Staff, and Switch made appearances. The Application, Nevada Power’s Motion, and a procedural schedule were discussed.

• On January 13, 2015, Switch filed a supplement to its Application (the "Supplement" and together with the November 14, 2014, Amendment, are referred to herein as the "Amended Application" or "Exit Application").

• On January 15, 2015, the Commission issued a Notice of Hearing.

• On January 15, 2015, the Presiding Officer issued Procedural Order No. 1, adopting a procedural schedule.

• On January 20, 2015, and in accordance with NAC 704B.350(3), Staff filed its finalized analysis ("Final Impact Analysis").

• On January 23, 2015, the Presiding Officer issued Corrected Procedural Order No. 1,

¹The Commission removed this filing from its records system after being notified by Nevada Power that confidential information included in the filing was inadvertently left unredacted.
correcting the procedural schedule.

- On February 3, 2015, BCP, Nevada Power, Staff, and Switch filed a Stipulation regarding the procedural schedule.

- On February 3, 2015, and in accordance with NAC 704B.350(4), Nevada Power filed its alternative analysis to the analysis performed by Staff.

- On February 4, 2015, and in accordance with NAC 704B.350(4), Switch filed its alternative analysis to the analysis performed by Staff.

- On February 11, 2015, Nevada Power filed a letter withdrawing Nevada Power’s Motion.

- On February 13, 2015, the Presiding Officer issued an Order on Stipulation, accepting the Stipulation; finding that Switch’s January 13, 2015, supplement to its Application actually amended the Application; resetting the deemed approved date for the Application to June 12, 2015, to reflect the amendment; and generally revising the procedural schedule accordingly.

- On February 17, 2015, the Commission issued a Notice of Hearing, thereby superseding the Notice of Hearing that was issued on January 15, 2015, in this Docket.

- On February 18, 2015, Noble Americas Energy Solutions, LLC ("Noble Solutions") filed a Late-filed Petition for Leave to Intervene and Notice of Association ("PLTI").

- On February 25, 2015, Staff and BCP filed Responses to Noble Solutions’ Late-filed PLTI.

- On February 26, 2015, Switch filed a Joinder to BCP’s Response to Noble Solutions’ Late-filed PLTI.

- On March 2, 2015, Nevada Power filed its Response and a Joinder to the Responses filed by Staff and BCP to Noble Solutions’ Late-filed PLTI.

- On March 4, 2015, Noble Solutions filed a Reply to the Response filed by BCP and Staff.

- On March 13, 2015, Staff filed a Motion to Strike Portions of Nicholas L. Phillips and Adam Kramer’s Pre-Filed Direct Testimony ("Staff’s Motion to Strike").

- On March 18, 2015, Switch filed a Motion for a Protective Order.

- On March 20, 2015, Switch filed its Response to Staff’s Motion to Strike.

- On March 20, 2015, Staff filed a supplement to its January 20, 2015, Final Impact Analysis.

- On March 24, 2015, Staff filed its Reply to Switch’s Response to Staff’s Motion to Strike.

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• On March 24, 2015, BCP, Staff, and Nevada Power filed Responses to Switch’s Motion for a Protective Order.

• On March 24, 2015, the Presiding Officer issued the Order on PLTI of Noble Solutions.

• On March 24, 2015, the Presiding Officer issued Procedural Order No. 2, requesting legal briefs.

• On March 25, 2015, the Presiding Officer issued Procedural Order No. 3, revising the procedural schedule.

• On March 27, 2015, Switch filed its Reply to the Responses filed by BCP, Staff, and Nevada Power, respectively, to Switch’s Motion for a Protective Order.

• On March 27, 2015, the Presiding Officer issued the Order on Motion to Strike.

• On April 1, 2015, the Presiding Officer issued the Order on Motion for Protective Order, granting in part and denying in part Switch’s Motion, directing Switch to file a supplement to its Motion for a Protective Order to identify and address the legal issues associated with Switch’s alternative request set forth under Switch’s Reply, and setting an interim procedural schedule solely applicable to Switch’s supplemented Motion for a Protective Order.

• On April 1, 2015, the Presiding Officer issued Corrected Order on Motion to Strike, correcting references to a procedural order and a date.

• On April 2, 2015, the Hearing Officer\(^2\) held a teleconference regarding a discovery dispute.

• On April 3, 2015, Switch filed a supplement to its Motion for a Protective Order.

• On April 3, 2015, Noble Solutions filed its Notice of Intent to Participate as a Commenter.

• On April 6, 2015, the Presiding Officer issued the Order on Discovery Dispute.

• On April 7, 2015, the Presiding Officer issued Procedural Order No. 4, revising the procedural schedule.

• On April 8, 2015, Switch filed Motion to Strike Portions of Shawn Elicegui’s Pre-filed Testimony and Motion for Order Shortening Time (“Switch’s April 8, 2015, Motion”).

• On April 8, 2015, the Presiding Officer issued Corrected Order on Discovery Dispute, correcting a reference to a date.

• On April 8, 2015, Switch filed Motion to Strike Portions of Dan Jacobsen’s Pre-filed Testimony and Motion for Order Shortening Time.

\(^2\) Pursuant to NAC 703.486, the Presiding Officer appointed the Hearing Officer to preside over and conduct this discovery dispute conference.
• On April 9, 2015, Switch filed Revised Motion to Strike Portions of Dan Jacobsen's Pre-filed Testimony and Motion for Order Shortening Time ("Switch's April 9, 2015, Motion").

• On April 10, 2015, the Presiding Officer issued Procedural Order No. 5, setting a procedural schedule and, effectively, granting Switch's requests for expedited orders for Switch's Revised Motion to Strike Portions of Dan Jacobsen's Pre-filed Testimony and Motion for Order Shortening Time, and Switch's Motion to Strike Portions of Shawn Elicegui's Pre-filed Testimony and Motion for Order Shortening Time.

• On April 13, 2015, BCP filed its Response to the Revised Motion to Strike Portions of Dan Jacobsen's Pre-filed Testimony and Motion for Order Shortening Time.

• On April 13, 2015, Staff and Nevada Power filed Responses to the Motion to Strike Portions of Shawn Elicegui's Pre-filed Testimony and Motion for Order Shortening Time.

• On April 14, 2015, the Presiding Officer issued the Order on Revised Motion to Strike Portions of Dan Jacobsen's Pre-filed Testimony and Motion for Order Shortening Time, and the Order on Motion to Strike Portions of Shawn Elicegui's Pre-filed Testimony and Motion for Order Shortening Time, thereby granting each motion.

• On April 16, 2015, the Presiding Officer issued Procedural Order No. 6, directing the parties to ensure that hearing exhibits are prepared in a manner consistent with orders in this Docket striking testimony and ruling on requests for confidentiality, as well as in a manner consistent with NAC 703.715.

• On April 20, 2015, the Presiding Officer issued Corrected Procedural Order No. 6, correcting a reference to the number of copies of the hearing exhibits that would be required by the Commission.

• On April 22-24, 2015, the Commission held a hearing. BCP, Nevada Power, Staff, and Switch made appearances. At the conclusion of the hearing, the Presiding Officer granted an oral motion to accept Exhibit Nos. 1-42 and Confidential Exhibit Nos. C1-C22 into the record pursuant to NAC 703.730. 3

• On April 27, 2015, the Presiding Officer issued Procedural Order No. 7, requesting replies (by May 21, 2015) to the legal briefs due on or before Monday, May 11, 2015, by 5:00 p.m.

• On May 11, 2015, BCP, Nevada Power, Staff, and Switch filed legal briefs.

• On May 21, 2015, BCP, Nevada Power, Staff, and Switch filed reply legal briefs.

3 Administrative Notice was taken of the following: Nevada Power's Open Access Transmission Tariff ("OATT"); Nevada Power's Rule Nos. 1 and 9; and Commission Docket Nos. 14-05003, 08-03025, 06-07026, 04-02006. Per the verbally stipulated agreement between BCP, NPC, Staff, and Switch, Administrative Notice was taken of each of the following: (1) State statutes and regulations; (2) Federal statutes and regulations; (3) FERC rules, regulations, and decisions; (4) Any judicial or administrative proceedings and/or decisions, including, but not limited to, any of the Commission's dockets; and (5) Any documented and publicly available information.
IV. BACKGROUND

This is the first time, in over a decade, that the Commission considers an exit application filed pursuant to NRS 704B and NAC 704B that affects Nevada Power and its customers.\(^4\) This is the first time, since the passage of NRS 704B, that the Commission considers an exit application that does not also provide for a simultaneous review of a stipulation that would resolve at least some or all of the critical issues associated with an NRS 704B exit application. Therefore, the background information that follows includes a discussion regarding each of the following: the procedural requirements that must be met prior to filing an exit application; the analyses that must be conducted following the filing of an exit application; a summary of the components of Staff's Final Impact Analysis and a summary of Staff's proposed exit fee that Switch seeks to adjust, and payment upon which BCP and NPC seek to condition Switch's exit. Finally, given the complexity of the legal issues in this Docket, which were purposefully not addressed in pre-filed testimony of the parties given the general prohibition of expert testimony on issues of law,\(^5\) the Commission discusses its request for post-hearing legal briefs.

**Procedural Requirements Prior to Filing an Exit Application**

Prior to filing an exit application, the applicant must undergo a process. First, the applicant, must ensure that it complies with all applicable provisions of NRS 704B and NAC 704B prior to filing its exit application,\(^6\) and must submit a letter of intent to file the exit application to Staff, BCP, and the applicable electric utility, no later than 30 calendar days before it files the exit application.\(^7\) Pursuant to NAC 704B.320(2), this letter of intent must include information regarding the eligible customer and the "provider of new electric resource"\(^8\) (the "Provider"), as well as information describing the proposed transaction between the provider and the eligible customer. Following the submittal of the letter of intent to file the exit application, NAC 704B.330 requires Staff to "identify any additional data and information that it will need from the electric utility and the eligible customer to carry out the provisions of this section and the format that the electric utility and the eligible customer must use to provide and update the data and information."

**Impact Analysis of Exit Application**

If an eligible customer ultimately files an exit application with the Commission, NAC 704B.340(1) requires the eligible customer to include the information contained in its letter of intent submitted pursuant to NAC 704B.320, as well as other information regarding the proposed

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\(^4\) The last Exit Application filed pursuant to NRS 704B and NAC 704B that affected Nevada Power was considered in Docket No. 03-3002. There were several dockets consolidated in 2002. Stipulations were approved allowing for exit, but the eligible customers in each of those dockets decided not to exit.

\(^5\) "Expert testimony is not proper for issues of law." *Crow Tribe of Indians v. Racicot*, 87 F.3d 1039, 1045 (9th Cir. 1996). "Resolving doubtful questions of law is the distinct and exclusive province of the trial judge." *United States v. Weitzenhoff*, 35 F.3d 1275, 1287 (9th Cir. 1993) (quoting *United States v. Brodie*, 858 F.2d 492, 497 (9th Cir. 1988))

\(^6\) NAC 704B.310(1).

\(^7\) NAC 704B.320(1).

\(^8\) NRS 704B.130 defines "Provider of new electric resources" and "provider" as a person who makes energy, capacity or ancillary services from a new electric resource available to an eligible customer.
transaction, as part of its first filing.

With the information contained in the exit application, Staff is required to initially analyze the potential impact that the proposed transaction may have on the electric utility and remaining ratepayers. NAC 704B.350(1) requires Staff to, not later than 45 calendar days after the filing, “[p]erform its initial analysis of the proposed underlying contract to estimate the potential impacts of the proposed underlying contract on the electric utility and its remaining customers; and [r]elease the results of its initial analysis to the eligible customer, the provider, the electric utility and the [BCP].” Then, NAC 704B.350(2) requires Staff, the eligible customer, and the electric utility to meet and discuss Staff’s initial analysis, and after this meeting occurs, NAC 704B.350(3) requires that Staff finalize its analysis of the exit application and submit its finalized analysis to the Commission.

Following Staff’s finalized analysis, NAC 704B.320(4) allows any party of record to file with the Commission an alternative analysis to the analysis performed by Staff. Each of these alternative analyses must: “(a) Identify the bases for concluding that the analysis performed by [Staff] is deficient; and (b) Include objective information demonstrating that the methodology used by the party is valid under the range of circumstances included in the alternative analysis performed by the party.”

Given that NAC Chapter 704B imposes upon Staff the duty of initially assessing the potential impact a departing eligible customer may have on the electric utility and its remaining customers, a summary discussion regarding Staff’s Final Impact Analysis is appropriate and helpful for explaining and framing the party positions, as well as the Commission’s discussions and findings, provided below. As noted above, Staff’s Final Impact Analysis was Switch’s starting point to explain Switch’s proposed adjustments to Staff’s proposed exit fee, and Staff’s Final Impact Analysis was used as a starting point for Nevada Power and BCP to analyze the potential impact of Switch’s exit. The discussion that immediately follows addresses the components of Staff’s Final Impact Analysis.

Staff’s Final Impact Analysis

Pursuant to NAC 704B.350, Staff directed NPC “to perform a set of production cost simulations and rate calculations in order to determine the impact that a departure of Switch’s load[11] would have on remaining customers, as well as on NPC.”[12] (Ex. 5 at 1.) Staff states that, in response to this directive, “NPC provided Staff with a copy of the requested calculations and output reports from the production cost simulation.” (Id.) Staff states that it “vetted” the copy of

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9 NAC 704B.310(3)(a) provides that “[e]ach eligible customer named as an applicant, each provider named in the application, the electric utility and the [BCP] shall be deemed to have a direct and substantial interest in the proceedings on the application…”

10 NAC 704B.350(4)(a)-(b).

11 Initially, Staff found that Switch’s existing total load represents approximately 1.35 percent of NPC’s annual energy sales. (Ex. 5 at 1.) However, following Switch’s supplemental filing that removed “one meter that was inadvertently included” (the “Withdrawn Account”) under its Exit Application (Ex. 3 at 2), Staff determined that “the exiting load decreases to 1.33 percent of NPC’s annual energy sales.” (Ex. 5 at 1.)

12 Staff states that Attachment 1 to Exhibit 5 “lays out the key inputs and analysis criteria NPC was to use in performing the calculations and production costs simulations.” (Ex. 5 at 1; Ex. 5 at Attachment 1.)
the requested calculations and output reports from the production cost simulation ("Requested Calculation") and determined that they were consistent with the initial directions given to NPC.\textsuperscript{13} (Id.)

Staff states that the Requested Calculation utilizes a 3-year analysis period (May 2015 – April 2018) to determine the 3-year impact of Switch’s exiting load (the "3-year Impact Analysis") and monetarily represents this 3-year impact through an exit fee calculation.\textsuperscript{14} (Ex.5 at 2, Attachment 4 at 1.) Staff states that the exit fee calculation was developed by analyzing seven categories of rates and costs that would be affected by Switch’s exiting load: (1) the base tariff general rate ("BTGR"); (2) the base tariff energy rate ("BTER"); (3) the Merrill Lynch regulatory asset ("Merrill Lynch Obligation"); (4) the renewable energy program rate ("REPR"); (5) the costs associated with operating demand side management programs ("Energy Efficiency"); (6) the costs associated with regulatory assets that are either currently in rates or that have been created and are not yet included in rates ("Regulatory Assets"); and (7) the cost associated with the 5 percent fee that Clark County mandates that NPC collect on revenue generated within Clark County ("Local Government Fees").\textsuperscript{15} (Ex. 5 at 2-4.) Staff’s explanations of these seven categories, along with its proposed modifications, are as follows.

1) **BTGR**

Staff explains that the BTGR category of the 3-year Impact Analysis (the "BTGR Impact") represents the "revenue impact that NPC will experience, and remaining customers will be burdened with, once Switch’s load leaves bundled retail service." (Ex. 5 at 2.) Staff states that, if the Exit Application is approved, Switch will only be responsible for paying transmission rates pursuant to NV Energy’s Open Access Transmission Tariff ("OATT") and distribution charges pursuant to NPC’s Distribution Only Service ("DOS") Tariff. (Id. at 2-3.) Staff states that the BTGR Impact of Switch’s departing load is a "$9.92 million impact on NPC and/or remaining customers" for the 3-year analysis period. (Id. at 3.) Staff explains that "[t]his impact is caused by NPC receiving less revenue from Switch over the 3-year timeframe for the analysis." (Id.) Staff states that this "reduction in revenue is primarily the result of Switch no longer paying for generation assets that were built in part to serve its load, such as the $750 million Harry Allen combined cycle unit placed into service in 2011." (Id.)

Staff proposes a downward adjustment to the costs associated with the BTGR Impact category due to potentially lower operations and maintenance ("O&M") costs resulting from Switch’s exiting load. (Id. at 7.) Specifically, Staff explains that "once Switch’s load depart[s] bundled retail service, NPC’s generating units will operate less, and will therefore incur lower variable O&M costs, such as chemicals and other consumables." (Id.) Staff further explains that, "[b]ecause variable O&M costs are included in the BTGR rate and not in the BTER rate, Switch is paying for a fixed amount of variable O&M costs in the exit fee calculation, and

\textsuperscript{13} A summary of Staff’s vetting process of the Requested Calculation is provided on pages 5 and 6 of Exhibit 5.

\textsuperscript{14} Staff states that it also directed NPC to provide a 5-year impact analysis as well, which Staff states provides "some level of flexibility" in recalculating the exit fee should Switch’s load depart after May 1, 2015. (Id. at 2, fn. 6.)

\textsuperscript{15} Staff states that Attachment 3 to Exhibit 5 contains the “summary sheets” of the seven categories analyzed under the Requested Calculation and that Attachment 4 to Exhibit 5 contains the “individual calculation sheets that support the summary sheets...” (Ex. 5 at 2.)
therefore Staff believes Switch should be given credit for the reduction in variable O&M costs that will result when Switch’s loads are removed.” *(Id.)* Staff estimates that this reduction in variable O&M costs results in a credit of approximately $1.01 million to the BTGR Impact category.¹⁶ *(Id.)*

Staff further proposes a downward adjustment to the costs associated with the BTGR Impact category due to a correction to the summer transmission demand for a Switch Large General Service-1 (“LGS-1”) account. *(Id. at 9.)* Staff explains that the summer demand for this account “was not being captured when determining the amount of transmission revenue Switch will pay (under NPC’s OATT) once its [load] leaves bundled retail service and [Switch becomes a] wholesale transmission [customer].” Thus, Staff states that the “[i]nclusion of the summer demand for this load during the 3-year analysis period decreases the BTGR component of the exit fee by approximately $20,000 [because] inclusion of the billing demand increases the revenue NPC will receive from Switch as a wholesale transmission customer.” *(Id.)*

Finally, Staff proposes one more downward adjustment to the costs associated with the BTGR Impact category due to the Withdrawn Account from the Exit Application. *(Id. at 9.)* Staff states that, given “the Withdrawn Account is so small, Staff believes the overall Requested Calculation can be scaled by reducing the impact fee by 1.4 percent, which is the ratio of the bundled BTGR revenue from [the Withdrawn Account] to the total bundled BTGR revenue from all departing accounts.” *(Id.)* Therefore, Staff proposes to reduce the exit fee by this same 1.4 percent, which Staff states results in a downward adjustment, of approximately $433,871, to the exit fee. *(Id.)*

2) **BTER**

Staff explains that the BTER category of the 3-year Impact Analysis (the “BTER Impact”) represents “the estimated impact to fuel and purchased power costs as a result of Switch’s load being removed from the total load that NPC is required to serve.” *(Id. at 3.)* Staff states that the BTER Impact of Switch’s departing load is a “$10.1 million impact on NPC and [its] other customers as a result of Switch’s departure.” *(Id.)* Staff explains that “[t]his impact is associated with the average monthly system cost increasing when Switch’s load is removed.” *(Id.)* Staff mainly attributes these increased costs to the “must-take” resource contracts that NPC entered into from 2005 to 2012 (the “Must-Take Resource Contracts”) and generation dispatch changes. *(Id.)*

Regarding these Must-Take Resource Contracts, Staff explains that, “as the renewable energy market in Nevada developed, NPC entered into renewable energy contracts with prices in the range of $100 to $190 per [megawatt-hour (‘MWh’)].” *(Id.)* Staff states that while renewable energy prices have seen a considerable decrease in the past two years, “the embedded cost of renewable resources in NPC’s portfolio is higher, and most of those resources are ‘must-take’ resources under contract for the next 20 years, so that these higher costs cannot be avoided.” *(Id.)* Staff states that, due to the uneconomical nature of the costs associated with these Must-Take Resource Contracts, and given that these costs are embedded in NPC’s portfolio, “a greater percentage of the cost of these higher cost resources are used to serve [NPC’s] remaining

¹⁶ The work papers associated with this proposed adjustment is provided under Attachment 8 to Exhibit 5.
customer loads” as a result of Switch’s potential exiting load. (Id.) Therefore, Staff explains that “more of these higher costs” are spread onto remaining customers. (Id.)

Regarding the generation dispatch changes, Staff states that, given Switch’s substantial load factor, which Staff explains is in the 90 percent range, “Switch’s load allows NPC to economically operate its low-cost combined cycle units in the evening and shoulder/winter periods.” (Id. at 3-4.) Staff explains that using these units “helps offset the higher cost of renewable resources and brings the average system cost down.” (Id. at 4.) Thus, Staff states that if Switch’s load departs, “the capacity factor” of these units drop, which results in an increase to NPC’s average system cost. (Id.)

However, Staff proposes a non-monetary adjustment to the BTER Impact category due to the positive effect Switch’s departing load will have on NPC’s supply of portfolio credits (“PCs”). (Id. at 6-7.) Specifically, Staff explains that Switch’s departing load will result in a “small surplus of [PCs] due to the decrease in total sales.” (Id. at 7.) Staff states that this surplus of PCs was not valued in the Requested Calculation, but that, “in theory, these PCs have some value either on the secondary market or towards future [Renewable Portfolio Standard (“RPS”)] compliance.” (Id.) Staff estimates that Switch’s departing load will lead to a surplus of 146,988 PCs.17 (Id.) Staff states that Switch should be permitted to take these surplus PCs upon its potential exit, “or should be credited a reasonable value for these PCs if left behind.” (Id.) Staff explains that because there is difficulty in valuing these PCs, Staff proposes that Switch take these PCs upon its potential exit. (Id. at 7, 9.)

3) Merrill Lynch Obligation

Staff explains that the Merrill Lynch Obligation category of the 3-year Impact Analysis represents “Switch’s estimated cost of the Merrill Lynch regulatory asset, which stemmed from the 2000/2001 western energy crisis.” (Id. at 4.) Staff further explains that “Switch currently pays for the Merrill Lynch [regulatory] asset in its rates, and [that] not including it in the impact analysis would result in other customers paying a larger share of this regulatory asset.” (Id.)

4) REPR

According to Staff, the REPR category of the 3-year Impact Analysis (the “REPR Impact”) is currently “a credit to Switch under the Requested Calculation.” (Id. at 4.) Staff explains that the REPR “is the rate component associated with program administration costs and providing rebates under the solar and wind renewable generation programs mandated by NRS chapter 701B.” (Id.)

Staff states that, while the REPR Impact provides a credit to Switch under the Requested Calculation, “Staff believes this credit rate will not continue next year because rebates are currently being paid out under the [NRS 701B Renewable Energy Programs], which will likely erode the credit.” (Id. at 8.) Staff proposes this credit to the REPR Impact category be removed from the exit fee calculation, which Staff calculates would increase the exit fee by approximately

17 Staff states that the work papers associated with this proposed adjustment are provided under Attachment 7 to Exhibit 5.
$693,000.  

5) Energy Efficiency

Staff states that the Energy Efficiency category of the 3-year Impact Analysis (the “Energy Efficiency Impact”) represents costs from demand side management programs (“DSM”) approved by the Commission in NPC’s past Integrated Resource Plans (“IRPs”), including lost revenues due to these DSM programs. (Id. at 4.) Staff states that, due to the Stipulation approved by the Commission in Docket No. 13-07021,19 “current Energy Efficiency rates seek limited recovery of lost revenues.” (Id.) Staff explains that the Requested Calculation “assumes continuation of this limited recovery of lost revenues.” (Id.)

With this in mind, Staff states that the current Energy Efficiency rates “represent only 50 percent of requested 2014 lost revenue as well as [a refund to] the lost revenue collected during 2013.” (Id. at 8.) However, Staff explains that, because “NPC may recommence requesting prospective 2015 lost revenues in its 2015 [deferred energy accounting adjustment (“DEAA”)] filing,... Staff believes the Energy Efficiency category is understated in the Requested Calculation.” (Id.) Thus, Staff recommends that the Energy Efficiency Impact category be modified to reflect the lost revenue(s) and Energy Efficiency rate charges that start in January 2016, which Staff calculates would increase the exit fee by approximately $311,087.20 (Id.)

6) Regulatory Assets

Staff explains that the Regulatory Assets category of the 3-year Impact Analysis represents “Switch’s load ratio share...of those regulatory assets that either...[a]re in current rates but will not be fully paid off by the end of the 3-year impact analysis period; or [h]ave been created and not yet included in rates, or will be created as a result of NRS 704.7316 et seq. and NPC’s recently filed Emissions Reduction and Capacity Replacement (“ERCR”) plan.” (Id. at 4.)

Staff states that these ERCR costs include costs associated with each of the following: (1) Reid Gardner stranded plant costs; (2) the costs associated with the dismantling and clean-up of Reid Gardner; and (3) the costs associated with the ERCR resources, which include LV Cogen units 1&2, Nellis PV array, and the Sun Peak units (collectively, the “ERCR Resources”). (Id. at 4.) Staff states that, while these costs are not represented in current rates, they were included in the Requested Calculation. (Id. at 4.)

Staff proposes a downward adjustment to the Regulatory Assets category. (Id. at 8.) Specifically, Staff states that “[t]here are eight regulatory assets included in the Requested Calculation that Staff believes should not be charged to Switch.” (Id. at 7.) Staff explains that

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18 Staff states that the work papers associated with this proposed adjustment is provided under Attachment 10 to Exhibit 5.
20 Staff states that the work papers associated with this proposed adjustment are provided under Attachment 11 to Exhibit 5.
“[t]he timing of the new resources associated with these regulatory assets have not yet been determined, and will be based upon NPC’s resource needs, which should be adjusted to account for Switch’s departure.” Staff states that the costs associated with these eight regulatory assets, totaling $21.55 million, should not be included in the Regulatory Assets category because “these resources were either not included in the production cost simulations that were performed, or were included beyond the 3-year impact period analyzed.” (Id. at 8.) Thus, Staff proposes a downward adjustment to the Regulatory Assets category to reflect the removal of these eight regulatory assets.

However, Staff also proposes an upward adjustment to the Regulatory Assets category to reflect the costs associated with the site remediation work for the Reid Gardner generating site, which will begin accruing once the site is retired and dismantled pursuant to the ERCR plan. (Id. at 8.) Staff states that “there is currently no doubt that site remediation costs will be incurred,” but that NPC did not include these costs in the Requested Calculation. (Id.) Staff states that, “[b]ased on information from NPC’s ERCR filing (Docket No. 14-05003) and other proceedings, Staff estimates the site remediation costs for Reid Gardner to be in excess of $100 million.” (Id.) Thus, Staff states that an estimate of these costs should have been included under NPC’s list of regulatory assets. (Id.) Staff states that there will be additional costs associated with the remediation work for the Navajo generating station that were not reflected in the Requested Calculation but that “because it is unknown as to when those units will be retired/sold and when and what site remediation work will be required, Staff is not proposing to account for any Navajo site remediation costs in the impact analysis.” (Id.)

Accordingly, Staff states that the blended effect of its proposed upward and downward adjustments to the Regulatory Assets category “is an increase in the total regulatory assets of $78.45 million, which equates to a net increase of $1.06 million to the [R]egulatory [A]ssets category in the Requested Calculation for Switch.”21 (Id.)

7) Local Government Fees

Staff explains that this category represents the costs associated with the 5 percent fee that Clark County requires Nevada Power to collect on revenue generated in Clark County. (Ex. 5 at 4.)

Staff’s Proposed Exit Fee

Staff states that, given the results of the Requested Calculation and Staff’s proposed modifications, the “impact of Switch’s proposed departure of the 17 accounts/points of delivery…and corresponding approximately 34 megawatts (‘MW’) of average load, is approximately $27.671 million.” (Ex. 5 at 1.) Staff states that its Final Impact Analysis does not include “any account or loads associated with the premise referred to as SUPERNAP 9. (Ex. 5 at 1, fn 2.)

On March 20, 2015, Staff filed a supplement to its Final Impact Analysis that reflects two

21 Staff states that the work papers associated with this proposed adjustment is provided under Attachment 9 to Exhibit 5.
modifications to the exit fee that were proposed by NPC in its alternative analysis that was filed on February 3, 2015. Regarding the first modification, Staff states that it “inadvertently withdrew the wrong premise/account” when it modified the results of the Requested Calculation to reflect the Withdrawn Account. (Ex. 6 at 1.) Staff states that, rather than withdrawing the account referred to as the “temporary construction account,” it withdrew the account that Switch refers to as “Meter 1.” (Id.) Staff states that NPC’s alternative analysis replaces Meter 1 with the temporary construction account. (Id.) Staff states that it agrees with NPC’s correction but that it does not agree with NPC’s corresponding modification to the overall exit fee. (Id. at 1-2.) Staff states that, given the correction to the list of departing accounts, its corresponding modification results in a $4,597 reduction to its proposed exit fee.

Moreover, regarding the second modification, Staff states that NPC removed two regulatory assets associated with the “NV Energize regulatory assets.” (Id. at 2.) Staff explains that “[t]he costs of these regulatory assets will be recovered in part through distribution rates, and [because] Switch will take service under NPC’s [DOS] tariff if allowed to depart… Staff concurs that it is not appropriate to assign a percentage of these regulatory asset costs directly to Switch’s departing loads.” (Id.) Staff states that the removal of the costs associated with these two regulatory assets from the exit fee results in a downward adjustment of $733,000. (Id.)

Accordingly, Staff’s final estimate of the 3-year impact associated with the departure of Switch’s exiting load is approximately $27.018 million. (Ex. 6 at 1.) More specifically, Staff’s Final Impact Analysis, as supplemented, which is based on a 3-year analysis period, shows that Switch should be required to pay an estimated exit fee of $27.018 million because the total exiting load Switch proposes to remove from Nevada Power’s bundled retail service “materially impacts NPC’s future revenue and costs to remaining NPC customers.” (Ex. 5 at 1; Ex. 6 at 1.)

Post-Hearing Legal Briefs

Given that this is the first time that the Commission considers an exit application pursuant to NRS Chapter 704B and NAC Chapter 704B in a contested hearing, and given that expert testimony regarding legal opinions is generally discouraged, the Presiding Officer sought to provide the parties with an opportunity to address legal arguments through the filing of post-hearing legal briefs. First, the Presiding Officer issued Procedural Order No. 2, on March 24, 2015, directing the parties to file legal briefs to ensure that each party was provided with an opportunity to identify and address the legal issues in this Docket.22 Then, during the hearing, the Presiding Officer stated that, in the interest of fairness, parties would be provided with an opportunity to file reply briefs as well. (Tr. at 526.) In response to Switch’s request for additional time to prepare its reply legal briefs, the Presiding Officer indicated that a procedural order would be issued that would allow each party 10 days to prepare replies. (Tr. a 526-527.) Procedural Order No. 7 was issued, allowing all parties to file reply legal briefs ten days after the filing of simultaneous legal briefs.

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22 As Switch notes in its April 8 and 9, 2015, motions, “[t]he Commission’s hearing room is not the place for a battle of experts as to the meaning of laws. Indeed, the Commission’s Procedural Order No. 2 reflects this fact insofar as the Commission has already established a protocol for arguing points of law in this matter. That order ensures that each party will have the opportunity to make such arguments in final legal briefs- not through live testimony.” (See Switch’s April 8, 2015, Motion at 8; Switch’s April 9, 2015, Motion at 7.)
Moreover, during the hearing, the Presiding Officer addressed her expectations regarding the legal briefs, giving the parties “full latitude” to address any legal issues that they deemed appropriate but requested that the parties specifically discuss the following two legal issues: (1) whether market resources satisfy the definition of a “new electric resource” as that term is defined under NRS 704B.110 (Tr. at 527); and (2) whether the Commission can assess a non-bypassable charge, as a condition to an order granting the Exit Application, if the Commission deems that such a charge is necessary to ensure that Switch’s exit is not contrary to the public interest. (Tr. at 528.) Over the course of the hearing, there were many fact-based discussions regarding these two issues as the Commission vetted the legality of Switch’s proposal to exclusively utilize market resources to satisfy NRS 704B.110 and tried to identify whether it was possible, or even necessary, to implement non-bypassable charges to reflect the costs that appeared to not be captured under any of the 3-year impact analyses performed and offered by the parties. Thus, the Presiding Officer gave the parties each and every opportunity to thoroughly address whether market resources satisfy the definition of a new electric resource under NRS 704B.110, whether the Commission can implement non-bypassable charges as a condition to Switch’s potential exit, and whether such non-bypassable charges are even necessary.

Accordingly, with this background in mind, the Commission presents the following party positions and findings regarding Switch’s Exit Application.

V. AMENDED APPLICATION

Switch’s Position

1. Switch seeks “to purchase energy, capacity and ancillary services from one or more identifiable new electric resources, pursuant to NRS Chapter 704B.” (Ex. 2 at 2.) Switch states that it is considered an eligible customer pursuant to NRS 704B.080 because it is a “nongovernmental commercial operator of, among other things, its SUPERNAP data centers” and that its “load without losses is approximately 35 megawatts with a load factor that exceeds 80 [percent].” (Id.) Switch seeks to exit Nevada Power’s system with 17 departing accounts, or “points of delivery” (the “Points of Delivery”). (Ex. 3 at 2.) Switch states that this proposed...

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23 Specifically, the costs associated with the ERCR Resources, which have been identified but have not yet been placed into rates, the Reid Gardner and Navajo site remediation costs, which have, to date, only been estimated, and the costs associated with the out-of-market, Must-Take Resource contracts, which extend over the next 20 years.

24 NAC 704B.300(3) requires that, in determining whether an applicant is an eligible customer pursuant to NRS 704B.080, the Commission must “treat each service location of a nongovernmental commercial or industrial entity as a separate end-use customer.” NAC 704B.300(4) defines “service location” as “[a] single point of delivery..., [m]ultiple points of delivery on contiguous property..., or [m]ultiple points of delivery that, as of the date on which the application is filed, have been treated as a single service location by the electric utility.
transaction “will allow Switch to meet its goal of acquiring [100 percent] of its energy needs from green resources.” (Ex. 8 at 4.) Switch states that this is a “vital” goal in the data center business. (Id.)

2. Switch states that, at the time of exit, it will acquire electricity from Exelon Generation Company, LLC d/b/a Constellation (“Constellation”). (Ex. 2 at 2.) Switch states that Constellation is active in the Western Electricity Coordinating Council (“WECC”) wholesale power market, including electricity and natural gas trading and marketing activities throughout the region, generation asset ownership (both renewable and traditional thermal assets), physical load-supply service to utilities and end-use customers and a structured products portfolio including generation entitlement, transmission capacity, and other power products.

3. Switch states that Constellation responded to Switch’s request for proposals (“RFP”) for energy delivery and scheduling coordinator services and that Constellation “has since engaged in negotiations to be the ‘provider of new electric resources’ to Switch pursuant to NRS 704B should the Commission grant The Exit Application.” (Ex. 10 at 3.) Switch states that these “negotiations are ongoing, and final terms and conditions of such service have not yet been approved by either company’s management.” (Id.) Switch states that “[c]onsideration of the statutory requirements for NRS 704B service, including the new electric resources requirements, the 10 percent contract requirements, and [Staff’s] review of the final executed contract, is integral to the negotiations.” (Id. at 3-4.)

4. Switch states that Constellation, as the potential Provider, “will enter into an agreement with Switch to provide energy, capacity and ancillary services from one or more to-be-identified new electric resources.” (Ex. 2 at 3.) Switch states that Constellation, “to meet the new electric resource supply criteria, will provide load following, firm energy supply service
with energy imbalance...to service Switch’s hourly data center load up to 35 MW.” (Ex. 2 at 4-5.) Specifically, Switch “contemplate[s] the use of a contract framework that includes the market standard [Western Systems Power Pool Schedule C (‘WSPP Schedule C’)] firm power contract, with the addition of specific provisions for the supply of load following, firm energy supply service, and energy imbalance service to manage the real-time deviations between scheduled energy and actual load.” (Ex. 10 at 9.)

5. Switch states that “Constellation and Switch contemplate that Constellation will, on a day-to-day basis using its 24-hour trading operations, optimize the procurement of energy from available generating resources, including procurement of conventional energy, renewable energy, and portfolio energy credits, all of which will qualify as ‘new electric resources’.” (Id. at 10.)

6. Switch states that Constellation will deliver the energy to the 230 kilovolt (“kV”) Mead Substation (the “Point of Receipt”). (Ex. 2 at 4.) Switch states that the “energy delivered to Switch will be metered through one or more time-of-use meters for each Point of Delivery.” 25 (Ex. 2 at 4.) Switch states that it will be a customer of Nevada Power’s network integrated transmission services and will utilize Constellation to manage these services to deliver power from the Point of Receipt to the Points of Delivery. (Id. at 5.)

7. Switch states that it has submitted a Service Agreement for Network Integration Transmission Service (“NITS Application”) to Nevada Power’s transmission division “to facilitate the purchase [of] 35 MWs of energy, capacity and ancillary services, as well as transmission services pursuant to the terms and conditions of the [NPC] OATT.” (Id.) Switch further states that, “[p]ursuant to NAC 704B.340(1)(a), Switch is an eligible customer under Section 1.14(ii) of [NPC’s OATT]….and has the ability to enter into all transmission service

25 The Points of Delivery are listed under “Revised Confidential Exhibit 1” to Confidential Exhibit 3.
agreements necessary for the delivery of energy from the Point of Receipt to the [Points of Delivery]..." (Id. at 6.)

8. Switch states that it will also enter into a Network Operating Agreement ("NOA") with NPC pursuant to NPC’s OATT, Attachment G, and will file this executed NOA with the Commission. (Id.)

9. Switch states that it will negotiate and eventually execute a DOS agreement (the "DOS Agreement") with Nevada Power to "utilize [NPC’s] distribution system for receiving some or all of the energy received from [Constellation]..." (Id.) Switch states that this executed DOS Agreement will be filed with the Commission. (Id.)

10. If the Exit Application is approved, Switch states that, pursuant to NRS 704B.320, it will enter into a 10 percent contract (the "10 Percent Contract"), as such a contract is defined under NRS 704B.320(2). (Id. at 7.) Switch states that, in accordance with NAC 704B.340(1)(f)(2), the "binding offer to assign the 10-Percent Contract to [NPC]" is attached to the Exit Application. (Id.)

11. Switch states that, pursuant to NRS 704.78213, Constellation is "fully qualified" to comply with the renewable portfolio standard under NRS 704.782, if the Exit Application is approved. (Id.)

12. Switch states that its "exit will result in releasing existing energy, capacity and possibly ancillary services to supply [NPC’s] electric customers in this state...[,] will improve electric service reliability to [NPC’s] electric customers in this state... [and] will not result in burdening [NPC] or any remaining customer with increased costs." (Id. at 8.) Thus, Switch states that approval of its Exit Application is not contrary to the public interest. (Id.)

13. Switch states that if the Commission grants the Exit Application, it will pay the
taxes and fees, or assessments required under NRS 704B.360, the load-share portion of any unrecovered balance that the Commission determines remains in the deferred accounts of the electric utility, and "will receive or pay an appropriate impact fee, if any, also in an amount determined by the Commission." (Id.)

14. Pursuant to NAC 704B.175, Switch requests that the Commission waive the provisions of NAC 704B.300 to also allow the exit of one additional meter, the meter that will be servicing its SUPERNAP 9 facility once that facility is operational (the "SUPERNAP 9 Meter"), and to permit the departure of one meter ("Meter 1") that is listed under its Exit Application "which does not have an average load of 1 [MW] and which may be construed as not directly contiguous with another eligible service location..." (Id. at 8-9.)

15. Regarding Meter 1, Switch states that good cause exists for, and the public interest favors, the deviation from NAC 704B.300(4) to allow Meter 1 to exit "because the inclusion of Meter 1 in the universe of meters to be served by Constellation offers Switch the most efficient way to manage its electric service." (Ex. 8 at 13.) Switch states that Meter 1 is a "supporting facility" for another Switch facility that is included as an eligible Point of Delivery under its Exit Application. (Id. at 13-14.) Specifically, Switch states that Meter 1 "provides all of the carrier telecommunication services for other eligible points of delivery" and that not granting its request for deviation would result in an "unnecessary stratification" of its electric supply, which Switch states "would undermine Switch’s efforts to place all of its significant data center power needs in the hands of a single provider of new electric resources." (Id. at 14.) Thus, Switch states that denying its request for deviation to allow Meter 1 to exit "would pose an unnecessary and disparate administrative burden on Switch." (Id. at 13.)

16. Regarding SUPERNAP 9, Switch states that this facility will not be completed
until May or June of 2015. (Ex. 8 at 14.) Switch states that “[i]t is impossible to know the rate at which the facility will be occupied, especially given changes in data center legislation regarding tax abatements by neighboring states such as Arizona and Oregon.” (Id.) Switch states that “[t]hese abatements compete with Switch’s ability to attract new clients which is why the future of Switch’s load growth is largely dependent on the passage and proper implementation of more attractive legislation.” Switch states that, without such “attractive legislation,” it is possible Switch’s load could actually decrease as a result of clients moving to a more favorable tax environment. (Id. at 15.) Switch further states that, due to the “ever-improving efficiency for server and information technology equipment, it is not possible to predict with pinpoint accuracy how much energy each customer will utilize and therefore what the load will be at any given time.” (Id.) Moreover, Switch states that “the Commission should treat the SUPERNAP 9 load as ordinary load growth for an eligible customer who has left the service of the utility.” (Id.) Switch states that the load forecast of a departing eligible customer under NRS 704B is no longer considered by Nevada Power’s retail division. (Id.) Thus, Switch requests that the Commission “treat the SUPERNAP 9 meters as ordinary load growth of a departed eligible customer and not include this load in the 704B fee calculation.” (Id. at 16.)

17. Alternatively, Switch believes that good cause exists for, and the public interest favors, the deviation from NAC 704B.300(4) to allow the SUPERNAP 9 Meter to exit because of its “unpredictable rate of growth” and because it is currently only drawing “construction power” from Nevada Power. (Id.) Moreover, Switch states that waiving NAC 704B.300(4) would “permit Switch to obtain the administrative efficiencies inherit in consolidation of each of its data center meters into the hands of a single provider of new electric resources.” (Id.) Switch states that not granting its request for deviation would require Switch to file another, separate
exit application for the SUPERNAP 9 Meter, which Switch views as “promoting unnecessary and egregious regulatory and operational inefficiencies” and ignoring past Commission decisions regarding exit applications. (Id. at 16-17.)

18. Regarding whether the Exit Application meets the standards of NRS 704B.310(5) and (6), Switch states that granting the Exit Application is in the public interest because it will enable Switch to continue to expand its business in northern and southern Nevada, resulting in many jobs in Nevada and the “continued relocation of companies and their personnel to Nevada…” (Id. at 17-18.) Switch further states that its Exit Application “will result in the payment of significant additional tax revenue to state and local governments…” and the continued growth of its “unparalleled philanthropic activities in Nevada.” (Id. at 18.)

19. Moreover, Switch states that its “graduation” to an NRS 704B customer avails Nevada Power’s existing customers to 34 MWs of generating capacity that Switch’s exit would leave behind upon exit. (Id.) Switch states that its exit further benefits Nevada Power’s remaining customers because its exit would allow Nevada Power to make off-system sales and “because it assists with deferral of construction of the next unit of generation needed to serve [NPC’s] load.” (Id.)

20. Regarding whether Switch’s exit will add energy, capacity, or ancillary services to the supply in Nevada, Switch states that “Constellation will be bringing 34 [MWs] of additional energy to [NPC’s] balancing area.” (Id. at 20.)

21. Regarding whether Nevada Power will have the “opportunity or ability” to “mitigate costs that would otherwise be assigned to its remaining customers,” Switch states that the “freeing of generation required to support Switch’s forecasted load makes available a pool of generation” that Nevada Power could sell to “adjacent markets” or into the Energy

26 NAC 704B.410(2)(d)
Imbalance Market ("EIM"). (Id. at 21.)

22. Regarding whether Switch’s exit "increases or decreases existing subsidies to the remaining customers of the electric utility in the same rate class or in other rate classes," Switch states that its "departure does not result in an increase to the subsidy in violation of [NAC] 704B.410(2)(e)." (Id. at 22.) Switch states that "if the Commission accepts Switch’s argument that the impact fee should not include the subsidy, Switch’s departure will require the Commission to consider how to reallocate the portion of the subsidy that is no longer paid by Switch." (Id.)

23. Regarding whether Switch’s exit would affect the considerations listed under NAC 704B.410(2)(g), Switch reiterates that its "operations in Nevada have contributed significantly to employment, economic development and quality of life in Nevada" and that these contributions will continue in southern Nevada as well as northern Nevada as it "pursues development of 3 million square feet of data center space in northern Nevada." (Id. at 23.)

24. Regarding the analysis period that should be utilized to determine the impact fee associated with Switch’s potential exit, Switch states that a "three-year window" should be used to evaluate the impact its departure may have on remaining Nevada Power customers. (Ex. 12 at 15.) Switch states that a 3-year impact analysis is consistent with Nevada’s resource planning statutes. (Id.) Switch states, "[t]herefore, the logical impact analysis is, at most, for three years." (Id.) Switch further states that "[t]his is required by the statutes presumably because of widespread acceptance in the utility industry that it is not possible to predict load growth reliably over a three year period let alone over a ten or twenty year period." (Id.)

25. Regarding Switch’s assessment of its load forecast, Switch’s pre-filed direct
testimony offers its own load forecast, but later, at hearing, Switch adopted the load forecast that is contained in Staff’s Final Impact Analysis. (Tr. at 40.) Switch acknowledges that Staff’s Final Impact Analysis does not consider the SUPERNAP 9. (Tr. at 44.)

26. Regarding its assessment of Staff’s Final Impact Analysis, Switch states that it disagrees with Staff’s estimated impact fee and states that several modifications to Staff’s estimated impact fee are required. (Ex. 13 at 5; Ex. 14 at 13.) Switch seeks to adjust Staff’s Final Impact Analysis by modifying “…the allocation of the cost of [NPC’s] regulatory assets to Switch, the residential cross-class subsidy that is paid by [NPC’s] large customers,” and by “eliminat[ing] the rate of return included in Staff’s [Final Impact Analysis].” (Ex. 13 at 3.) Additionally, Switch states that while it agrees with Staff that Switch should be given its allotted share of PCs upon its departure, the number of PCs it is entitled to should be adjusted. (Ex. 14 at 14.) Switch further states that Staff’s Final Impact Analysis should be modified to reflect a credit of 100 percent of the off-system sales that are directly related to Switch’s departure. (Tr. at 50; Tr. at 53.)

27. Regarding the legal standard that the Commission must apply in this Docket, Switch states that “[t]he plain language of [NRS 704B.310(5)] clearly evidences a legislative preference for granting [NRS] 704B applications,” which Switch states is “reinforced by the language in NRS 704B.310(8)…” (Switch’s Legal Brief at 9-10.) Thus, Switch states that, because of this “clear and unambiguous” preference for NRS 704B exit applications, “reliance on legislative history is unwarranted and misplaced as a matter of statutory construction and

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28 See generally Ex. 12.
29 Switch states that it modifies Staff’s allocation of the costs of NPC’s regulatory assets by removing “distribution related regulatory asset costs,” correcting what Switch views is “an error related to the discounting of future regulatory asset costs,” and, according to these foregoing modifications, updating Staff’s estimated Reid Gardner remediation costs. (Ex. 13 at 14.)
30 Switch states that it “does not agree with the inclusion of the RS rate class subsidy in the impact fee” and that its position is “that having to pay the subsidy after it departs would violat[e] NAC 704.662…” (Ex. 13 at 18-19.)
Nevada Supreme Court case law.” (Id. at 10.)

**Nevada Power's Position**

28. Nevada Power recommends that, “if the Commission finds it in the public interest to grant [the Exit Application], the Commission [should] impose conditions on the transaction necessary to ensure that Nevada Power and its customers are protected against increases in costs as a result of the transaction proposed in [the Exit Application].” (Ex. 15 at 5.) Nevada Power states that the Nevada Legislature specifically mandated that the Commission order, pursuant to NRS 704B.310(7(b), “such terms, conditions and payments as the Commission deems necessary and appropriate to ensure that the proposed transaction will not be contrary to the public interest.” (Id. at 26 quoting NRS 704B.310(7)(b).) Thus, Nevada Power states that “[i]f the Commission determines that granting [the Exit Application] is in the public interest, Nevada Power believes the Commission should impose conditions necessary to protect the public interest, including the impact fee recommended by the Commission’s Staff.”31 (Id. at 32.)

29. Regarding its assessment of Staff’s recommended impact fee under its Final Impact Analysis, Nevada Power states that Staff’s Final Impact Analysis “assumes that $27,018 million is a level that will provide protection to Nevada Power’s customers from increased rates, and that...at least some portion of load growth...may mitigate any additional consequences of an eligible customer purchasing from a provider of a new electric resource.” (Tr. at 64.)

30. Nevada Power further states that the Commission should “take into consideration the facts and circumstances that exist at the time of hearing, and that are set forth in the record, to weigh those facts and circumstances, and to ensure that it imposes conditions which can include

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31 Nevada Power provides a list of the conditions it recommends the Commission impose, at a minimum, if the Commission grants the Exit Application. (See Exhibit 15 at 30-32.)
an impact fee, as well as additional conditions that are designed to ensure Nevada Power’s customers [do not] see an increase in electric prices because of the decision of a customer to pursue an alternative.” *(Id. at 68.)*

31. Nevada Power further states that the Commission should impose conditions on Constellation should the Commission grant the Exit Application. *(Id.)* Specifically, Nevada Power recommends that one of these conditions should require Constellation to “identify the generating resources controlled by Constellation…that will be used to serve Switch’s customer load, and indicate whether those resources have either directly or indirectly been under the control of Nevada Power.” *(Id. at 69.)*

32. Regarding whether Nevada Power’s optional “High Load Factor Tariff” allows a Nevada Power customer that “qualifies under the terms and conditions of that tariff to go 100 percent green…,” Nevada Power states that “the utility has a green rider tariff that is also optional that allows a customer to become 100 percent green”32 and that the optional “High Load Factor Tariff” only addresses base-level services. *(Id. at 75.)*

33. In response to questions posed by the Commission regarding the Temporary Renewable Energy Development Trust (“TRED”), Nevada Power explains that the TRED is a legislatively-created “trust designed at a time when [Nevada Power’s] financial metrics were not [sufficiently] sound to provide credit support for a long-term purchase power agreement between [Nevada Power] and Nevada Solar One.” *(Id. at 80.)* In response to whether customers would be held harmless if Staff’s Final Impact Analysis only accounts for the costs associated with the TRED for a 3-year period, Nevada Power states that “[c]ustomers would likely see an increase in

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32 Pursuant to Nevada Power’s Schedule No. NGR, “[a]n LGS-1 or higher customer may enter into a special contract which provides for dedication of a new or existing renewable resource with power owned or procured by [NPC] dedicated to a specific customer. Such customer will be responsible for all of the costs associated with such contract up to a specified energy amount not to exceed the Customer’s total energy consumption, which shall be calculated on a kilowatt-hour basis and added to the Customer’s otherwise applicable rate.”
the price of electricity in the form of a TRED charge increase if an inappropriate or
an...insufficient amount is taken into account in this proceeding.” (Id. at 80-81.)

34. In response to questions posed by the Commission regarding the REPR, Nevada
Power explains that the REPR is “a charge that reflects three separate renewable energy
programs, namely the SolarGenerations Incentive Program, the Wind Incentive Generation
Program, and the Waterpower Generation Incentive Program.” (Tr. at 82.) Nevada Power states
that, while the REPR is taken into account under Staff’s Final Impact Analysis, Nevada Power’s
remaining ratepayers will not be held harmless after three years. (Tr. at 83.) However, Nevada
Power states that the Commission could condition Switch’s exit to pay the costs of the REPR
that are not captured under Staff’s Final Impact Analysis. (Id.)

35. Regarding the costs associated with the Regulatory Assets category of Staff’s
Final Impact Analysis, Nevada Power states that it represents only an estimate of all of the costs
rather than a “firm number.” (Id. at 83-84.) Nevada Power states that the Commission could
condition Switch’s exit on the payment of any increased costs not captured under such estimate.
(Id. at 84.)

36. Regarding the costs associated with the Must-Take Resource Contracts, Nevada
Power concurs with Staff’s assessment of these contracts. (Id. at 85.) Nevada Power agrees
that, while renewable energy prices have seen a considerable decrease in the past two years, “the
embedded cost of renewable resources in NPC’s portfolio is higher, and most of those resources
are ‘must-take’ resources under contract for the next 20 years, so that these higher costs cannot
be avoided.”33 However, Nevada Power notes that “a customer who is pursuing incremental
pricing available on the market, without an adequate impact fee, may avoid some of those costs,”
which Nevada Power states would result in “captive or remaining ratepayers” seeing “increased

33 Ex. 5 at 3.
rates due to higher renewable costs.” (Id.)

37. Moreover, regarding these Must-Take Resource Contracts, Nevada Power states that it entered into these contracts “to meet the renewable portfolio standard, and advance the policies of the State” that are codified under Nevada law. (Id. at 90.) Nevada Power states that, given these Must-Take Resource Contracts run over the next 20 years, the Commission could require that Switch purchase PCs over the next 20 years as a way of providing “additional assurance that customers would be held harmless.” (Tr. at 93.)

38. Regarding the costs associated with the Energy Efficiency category under Staff’s Final Impact Analysis, Nevada Power confirms that these costs stem from Nevada Power’s efforts to implement programs to meet the RPS and states that the Commission could condition Switch’s exit upon the payment of its share of these costs on an on-going basis. (Tr. at 93-94.) Nevada Power confirms that some of these energy efficiency (“EE”) programs extend beyond five years. (Id. at 184.)

39. Nevada Power acknowledges that Exhibit 17, which includes a load and resources (“L&R”) table filed by Nevada Power as part of its ERCR filing in Docket No. 14-05003, represents that there will be 176 MWs of load growth in its system between 2015 and 2018. (Tr. at 112.) Thus, Nevada Power acknowledges that during the three years following Switch’s proposed exit of approximately 34 MWs of load, the total load of Nevada Power’s service territory is expected to grow in excess of 100 MWs. (Id. at 113.)

40. However, while Nevada Power expects general load growth in its system, Nevada Power states that there has been a reduction to the sales associated with the large customer rate class. (Ex. 16 at 19.) Specifically, in explaining why Nevada Power did not separately forecast Switch’s load in the ERCR forecast, Nevada Power explains that, since 2010, large commercial
and industrial ("Large C&I") "sales have been relatively flat," which is why Nevada Power has only forecasted the individual customer loads associated with DOS customer reductions. (Ex. 16 at 19.) More specifically, Nevada Power states that the Large C&I sales growth has declined, on an average annual growth rate of negative 0.6 percent from 2010 to 2014. (Ex. 16 at 19; Ex. 16 at Attachment-Exhibit 14.) Nevada Power states that this decline is associated with a slow recovery of Nevada’s tourism industry, "the lack of new construction of large buildings, and aggressive energy efficiency by customers in that [Large C&I] class." (Ex. 16 at 19-20.) Nevada Power notes the challenges of developing a load forecast due to "energy efficiency sales reductions, economic uncertainty, other large customer load uncertainty, and net metering." (Ex. 16 at 5.)

41. Nevada Power recommends that the Commission condition Switch’s exit upon Constellation identifying the new electric resources that will be utilized to satisfy the energy requirements of Switch’s exiting load, and Nevada Power further recommends that regular reports identifying these resources be required to ensure that "the source or the supply for new electric resources is in fact from resources other than those that are owned by [Nevada Power]." (Tr. at 133.) Specifically, Nevada Power states that, "in the absence of being able to review an executed agreement for the provision of new electric resources, [Nevada Power] cannot be certain that it will not ever be the generating source for the services Constellation offers to this or other NRS Chapter 704B applicants." (Ex. 18 at 13-14.)

42. Regarding whether Switch’s potential exit will have a negative impact on Nevada Power’s system reliability, Nevada Power acknowledges that it does not foresee such a negative impact. (Tr. at 145.)

43. Regarding whether a different impact period would further insulate Nevada
Power’s customers from potential increased costs associated with Switch’s departure, Nevada Power states that a five-year impact period would further insulate its remaining customers from potential increased costs if the Exit Application is approved. (Ex. 25 at 10.) Nevada Power states that “Staff considered a five year exit study period for the calculation of an impact fee in light of the lack of growth in the Nevada Power service territory and the number and magnitude of regulatory assets that could increase the burden on remaining customers due to the exit of this large customer.” (Id. at 10-11.)

44. Finally, regarding Switch’s proposed adjustments to Staff’s Final Impact Analysis, Nevada Power states that it cannot support any of Switch’s proposed adjustments to the impact fee calculation under Staff’s Final Impact Analysis.⁴ (Ex. 25 at 6.)

45. In its legal brief, Nevada Power further addresses the concept of a non-bypassable charge. Nevada Power states that “non-bypassable charges that reflect the actual costs of implementing Nevada’s energy policies provide a fair and equitable means of implementing NRS 704B.310(6)&(7).” (NPC’s Legal Brief at 2.) Nevada Power explains that it “has made investment and incurred costs to further Nevada’s energy policy.” (Id.) Nevada Power states that these costs include each of the following: “energy efficiency program and implementation costs...[;]renewable energy program costs[;]...costs associated with the [TRED][;]...costs associated with must-take, above-market renewable energy contracts[;]...and costs associated with reducing emissions from coal-fired generating units including the costs of decommissioning units, remediating the sites upon which those units are located, and replacing the retired capacity,” which are associated with Senate Bill (“SB”) 123 of the 2013 Nevada Legislative Session (the “SB 123” costs). (Id. at 2-3.) Nevada Power states that the concept of “[n]on-bypassable charge” is embodied in the above-described costs.

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⁴ Nevada Power notes that its own alternative analysis “simply made some corrections to Staff’s Final Impact Analysis. (Tr. at 172.) Staff’s supplement to its Final Impact Analysis reflects some of these corrections. (Ex. 3 at 1.)
bypassable but adjustable charges that are set through the general ratemaking process and that reflect the actual and unavoidable costs of implementing Nevada’s energy policies are consistent with and appropriate under NRS Chapter 704B.” (Id. at 3.) Nevada Power states that “[t]hese types of charges are fair because the eligible customer is only responsible for [its] share of the actual costs, instead of trying to rely on estimates and projections to calculate a one-time exit payment that in the end may prove to either over collect (harming the eligible customer) or under collect (harming remaining customers) the relevant costs.” (Id. at 5.)

46. In its reply legal brief, Nevada Power reiterates its position that energy resources made available from Nevada Power’s generation assets are not considered a “new electric resource” under NRS 704B.110. (NPC’s Reply Legal Brief at 11.) Nevada Power explains that “[t]he process of designating and undesignating utility-owned generation as a network resource (“DNR”) described under section 30.1 of the NV Energy OATT does not change or alter ownership of the generating unit.” (Id. at 12.) Nevada Power states that Schedule C of the WSPP Agreement supports this position as well. (Id.)

BCP’s Position

47. BCP states that Switch’s proposed adjustments to Staff’s Final Impact Analysis would result in increased costs to Nevada Power and its remaining ratepayers. (Ex. 26 at 1.) Specifically, BCP states that Switch “has proposed several changes to the exit fee calculations that are inappropriate, because they would cause remaining customers’ bills to increase or would increase the burden on the utility.” (Id.)

48. BCP agrees that renewable energy prices have substantially decreased over the past two years. (Tr. at 188.) BCP agrees that the embedded costs of renewable energy resources in Nevada Power’s portfolio is higher than current prices and that most of these embedded costs
are associated with Must-Take Resource Contracts that extend over the next 20 years, which results in the unavoidable payment of these higher costs. (Id.) Indeed, BCP states that one of its concerns in this Docket is that more of the costs associated with these Must-Take Resource Contracts will be spread over the remaining Nevada Power customers as a result of Switch’s potential departure. (Id.) BCP states that while implementing non-bypassable charges is one way of addressing the issue associated with these higher costs, BCP notes that Nevada “does not have a framework for retail competition” and that “it would be much better if [Nevada] had a framework that really laid out how competition is going to be good for all customers, [and] not just a few customers that are going to take advantage of excess capacity that happens to exist in the market today.” With that said, BCP states that developing such a framework prior to the deemed approved date in this Docket is unlikely. (Id.)

49. Regarding Staff’s proposed exit fee, BCP states that “if the Commission decides to approve what Staff has proposed as the exit fee, it is pretty generous to Switch... in light of the fact that there is no framework...” (Id. at 190.) And given that there is insufficient time to develop the framework it suggests above, BCP agrees that a non-bypassable charge for the costs associated with legislative policy initiatives, some of which are represented through the TRED, REPR, and ERCR costs, may ensure that exiting customers are not “allowed to dodge” these costs, and, accordingly, may address the adverse impact a departing customer like Switch may have on remaining customers. (Id. at 191.)

50. In its legal brief, regarding the concept of implementing non-bypassable charges, BCP states that “[o]ngoing non-bypassable charges are preferable to one-time payments that only recover a relatively small amount of mandated costs, leaving increased burdens to remaining and new customers.” (BCP’s Legal Brief at 14.) Moreover, BCP states that “[n]on-bypassable
charges to all exiting customers would establish more consistency in the overall cost of exiting.... [and]....would also solve the dilemma related to the uncertainty associated with mandated costs that have not yet been fully incurred. (Id.)

51. In its reply legal brief, regarding what is considered a new electric resource under NRS 704B.110, BCP states that it “agrees with [NPC] that Constellation relying on energy purchased from the wholesale market that includes energy generated by NV Energy generating assets would be inconsistent with the plain language of NRS 704B.110.” (BCP’s Reply Legal Brief at 7.)

52. BCP states that Meter 1 and the SUPERNAP 9 meter should not be included in any approval of the Exit Application. (Id. at 8.)

Staff's Position

53. Staff recommends that the Commission “[f]ind that it is in the public interest to allow the sixteen accounts identified by Switch in its [Exit Application], only if Switch pays an appropriate impact fee such that departure of these loads [do] not negatively impact and increase costs to NPC or its remaining customers, and Switch otherwise complies with all compliance items and directives.” (Ex. 32 at 4.)

54. Staff states that the appropriate exit fee that Switch should be required to pay is $27.018 million, which is the same amount reflected in Staff’s supplemented Final Impact Analysis. (Id. at 3.)

55. Staff states that Meter 1 and the SUPERNAP 9 Meter are not included under the sixteen Switch accounts that Staff recommends the Commission allow to exit. (Id.) Regarding Meter 1, Staff recommends that the Commission “[f]ind that it is not in the public interest to waive NAC 704B.080 to allow Meter 1 to depart bundled retail service as part of Switch’s [Exit]
Application."35 (Id.) Regarding the SUPERNAP 9 Meter, Staff recommends that the Commission “[f]ind that it is not in the public interest to grant the waivers requested to allow SUPERNAP 9 to depart bundled retail service as part of this [Exit] Application and that this facility does not constitute normal load growth in relation to the other premises/accounts for which Switch is requesting be allowed to depart bundled retail service.”36 (Id.)

56. Staff recommends that the Commission “[f]ind that the proposed departure of the sixteen accounts (not including Meter 1 or SUPERNAP 9) will not negatively impact the reliability of NPC’s transmission system or negatively impact the reliability of service to remaining customers.” (Id.)

57. Staff recommends that Switch comply with all of Staff’s recommended directives and compliance requirements as a condition to its proposed exit.37 (Id. at 4.)

58. Staff considers the history of NRS 704B, specifically the history of the Assembly Bill that created NRS 704B, to be important in evaluating the Exit Application because “it has been over seven years since the last NRS 704B application was filed with the Commission, and it has been over thirteen years since the last NRS 704B application was filed with the Commission that involved NPC.” (Id. at 5.) Staff explains that, during the 2001 Nevada Legislative Session, the Legislature “halted” and “reversed” the “deregulation” of the electric industry, with the only exception provided for customers pursuant to Assembly Bill 661 (“AB 661”) (2001). (Id.) Staff explains that “AB 661 was intended to help alleviate [Sierra Pacific Power Company’s (‘SPPC’)] and NPC’s purchased power market exposure as part of their obligations to procure large amounts of power on behalf of [their] customers.” (Id.) Staff explains that “SPPC and NPC had

35 Staff provides a detailed discussion regarding this recommendation on pages 16 through 18 of Exhibit 32.
36 Staff provides a detailed discussion regarding this recommendation on pages 19 through 21 of Exhibit 32.
37 Staff outlines its recommended compliances and directives in Attachment PRM-11 to Exhibit 32. (Ex. 32 at 4; Ex. 32 at Attachment PRM-11.)
been required to go into the market to procure large amounts of very high cost power in order to serve [their] growing customer base, and these purchased power costs led to very large deferred energy balances.” (Id.)

59. Staff explains that “almost everything” has changed since AB 661 was passed by the 2001 Legislature. (Id. at 6.) Staff states that, in order to follow Nevada’s “vision to lessen its exposure to volatile purchases power markets, NPC constructed and/or acquired almost 4,000 MW of new generation assets, as well as executed long-term contracts with an additional 700 MW to 1,000 MW of renewable energy resources.” (Id.) Thus, Staff states that “NPC no longer has a large exposure to external purchased power markets... [and that]... NPC has essentially not had an open capacity position during the past three years.” (Id.) Staff states, “Therefore, although the law remains, the arguable goal of NRS 704B (i.e. to alleviate NPC’s and SPPC’s reliance on purchased power markets) is no longer necessary.” (Id.)

60. Regarding Switch’s proposed modifications to Staff’s Final Impact Analysis, Staff states that Switch’s proposed modifications would result in the payment of an impact fee that “would once again expose NPC and ratepayers to the purchased power market.” (Id.) Specifically, Staff states that Switch’s proposed modifications seek to expose NPC and ratepayers to the volatility of the same energy markets that were part of the Western Energy Crisis and would result in NPC and ratepayers “bear[ing] all the risk of selling capacity and energy that was built and procured, at least in part, on Switch’s behalf into these same volatile energy markets with the hopes of recouping the costs that Switch is attempting to bypass.”

61. Regarding the differences between the Exit Application and those NRS 704B exit

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38 Regarding the specifics of today’s energy markets, Staff explains that the western United States currently has “a fair degree of surplus capacity” and that “gas prices are really low and...relatively stable...” (Tr. at 264-265) Staff agrees that current energy markets offer favorable pricing compared to 2001. (Id. at 265.)
applications filed in the past, Staff states that there are several factors which make the Exit Application “distinct from any other NRS 704B applications previously filed with the Commission.” (Ex. 32 at 7.) Specifically, Staff provides the following factors: “a) NPC now owns the vast majority of its generation needs; b) NPC is forecasted to be compliant with the Nevada renewable portfolio standard until 2030; c) NPC is in the process of retiring its coal generation resources (all of which have significant unamortized net book values remaining and are going to cost hundreds of millions of dollars to clean up); and d) NPC has close to thirty regulatory assets either in rates or expected to be placed into rates in upcoming general rate case (“GRC”) proceedings.” (Id.)

62. Regarding its proposed exit fee, Staff states that it attempts “to strike a reasonable balance among the three interests pursuant to NRS 704B.310(6).” (Id. at 8.) Staff states that, “in many instances [Staff] did not assign Switch specific costs, such as the contingency on the estimated Reid Gardner site remediation costs, or derived additional credits, such as Staff’s variable operations and maintenance credit, in its analyses.” (Id.)

63. Regarding whether remaining ratepayers might be forced to pay increased costs associated with the Must-Take Resource Contracts as a result of Switch’s potential exit, Staff states that “[r]emaining customers will have to pick up [Switch’s] share of the RPS that [is] associated with these contracts…” (Tr. at 302-303.) Staff states that the remaining balance of Switch’s obligation under these contracts, which were acquired, in part, to serve Switch’s load, and to comply with policy goals associated with Switch’s load, “would have to be borne” by Nevada Power’s remaining customers should Switch be permitted to exit. (Id. at 303.) With regard to whether these remaining costs are fully captured in its proposed impact fee, Staff states that its impact fee captures three years worth of costs associated with these contracts, but that its
impact fee does not capture the remaining 17 years worth of these costs. \textit{(Id.)} Staff states that the remaining 17 years worth of costs would “get picked up by the customers who remained, plus any new customers that show up in that time period,” which Staff states results in remaining customers bearing the risk of a potential Switch exit. \textit{(Id. at 306.)}

64. However, Staff notes that “businesses come and go,” and an impact fee must strike a balance between addressing how long a potentially exiting customer might be in business in Nevada and how long a corresponding impact fee should be assessed on that customer. \textit{(Tr. at 306.)} Staff states that “there is a fundamental premise of how long you can force a customer to be a customer.” \textit{(Id. at 347.)}

65. Regarding its decision to utilize a three-year period in its Final Impact Analysis, Staff states that Nevada Power’s load growth, specifically the time in which Nevada Power would grow into Switch’s departing load, factored into Staff’s decision. \textit{(Id.)} However, Staff acknowledges that if the Commission implemented non-bypassable charges as a condition to Switch’s exit, the period of analysis becomes less important because shifts in revenue or costs could be avoided. \textit{(Id. at 349.)}

66. Regarding the difference between an eligible customer who exits pursuant to NRS 704.787 and an eligible customer who exits pursuant to NRS 704B, Staff explains that NRS 704.787 does not require the Commission to ensure that the exiting customer’s departing load not burden the utility or remaining ratepayers. \textit{(Id. at 356-357.)} As to why NRS 704.787 customers pay an exit fee, Staff explains that such customers unilaterally consent to paying an exit fee to ensure that their departing loads do not adversely affect remaining ratepayers. \textit{(Id. at 357.)} Staff further explains that because these customers are not statutorily required to pay an exit fee, but want to ensure they do not leave stranded costs, Staff treats them similarly to NRS
704B exiting customers. *(Id.)*

67. Regarding whether ratepayer costs will be static following Switch’s proposed exit due to Nevada Power expecting enough load growth over the next three years to replace Switch’s exiting load, Staff states that the benefits of load growth are not meant to only lower Switch’s costs, but to also lower the costs of all of Nevada Power’s customers. *(Id. at 361.)* Moreover, Staff states that while Switch should be allocated a share of the benefits associated with load growth, Switch is not entitled to all of the benefits because “[l]oad growth does not just accrue to the applicant who is leaving.” *(Id.)*

68. Regarding the stranded costs associated with the retired Reid Gardner 1-3 generating facilities and the stranded costs that will result from the statutorily-scheduled retirement of the Reid Gardner 4 generating facility, Staff agrees that it would be more equitable than not to require Switch to pay, on an ongoing basis, its portion of these stranded costs given that it received the benefit of load service from these facilities. *(Tr. at 368.)* Staff states that “but-for leaving, Switch would pay for those costs,” and rhetorically questions why Switch should “be able to escape those costs by leaving.” *(Id.)*

69. Regarding the costs associated with the ERCR Plan, which originates from SB 123, Staff states that it does not know the exact costs associated with the ERCR Plan, specifically, the costs associated with net salvage and remediation of Reid Gardner 4. *(Id. at 369.)* Staff states that it does not have a time frame regarding when it will have a better understanding of these costs and cites to the fact that Nevada Power only recently placed into rates the costs associated with the retired Mojave plant, which was shut down in 2005. *(Id. at 370.)* Staff agrees that a non-bypassable charge regarding these unknown costs would be more equitable than not but states that it would be difficult for a departing customer to make a business
decision to leave bundled retail service without certainty regarding the total costs associated with its exit. (I'd. at 371.) Indeed, Staff states that it "has not supported impact fee true-up provisions in the past, as it is very difficult for an entity to make a large business decision, like the decision to leave bundled retail service under the provisions of [NRS 704B], without certainty in what impact fee may be assessed. (Ex. 32 at 12-13.) However, given that the previous exiting customers like Newmont Mining Corporation ("Newmont") and Barrick Gold U.S. Inc. ("Barrick") actually built their own generating units, Staff states that, "although [it] never factored that monetarily into the impact fee, clearly if you had two identical departing customers and one said, 'I am leaving and I am building a $100 million plant in your state,' and the other one said, 'I am just leaving and buying from the market,' those two customers should not pay the same exit fee, even if their loads were identical." (I'd. at 372-373.)

70. In its legal brief, Staff expresses concerns regarding "whether any attempted exit under NRS Chapter 704B could be in the public interest under current circumstances...and...whether Switch's use of NRS Chapter 704B for an unintended purpose (yielding no benefit to NPC and its remaining ratepayers) is an innovative use of law or a destructive one." (Staff's Legal Brief at 6.) Staff states that it "views the use of NRS Chapter 704B in such an unintended way as potentially destructive by opening the door to electric service competition without any of the legal framework and consumer protections in place..." (I'd. at 6-7)

71. Regarding whether Constellation will be providing Switch with exclusively "new electric resources" as defined under NRS 704B.110, Staff states that "as proposed, Constellation could make energy, capacity and/or ancillary services available to Switch...from non-new electric resources by, for example, procuring excess generation capacity of NPC via the market." (I'd. at 8.)
72. Furthermore, Staff questions whether Switch will be adding supply to this State, finding that under NRS 704B.310(6)(c), Switch’s “failure to add energy, capacity or ancillary services to the State’s supply “is not consistent with, and may be considered contrary to, the public interest.” (Id. at 9.)

73. Regarding the concept of a non-bypassable charge, Staff cites to a number of questions and problems. Staff states that: “[t]he first step in establishing non-bypassable rates and tariffs in this Docket would require the Commission to determine the applicability of the non-bypassable tariffs, which presents many alternatives for consideration…; (Id. at 20.) [s]econd, the Commission will need to determine the frequency with which any of the non-bypassable rates or tariffs will have to be refreshed…; (Id. at 21.) [t]hird, the revenue requirement for each component would have to be established…; (Id. at 22.) [f]ourth, the Commission will have to establish the allocation methodology for each rate component…; (Id.) [f]ifth, the Commission would need to establish how any revenue collected under the non-bypassable rate or tariff would flow to the benefit of remaining ratepayers; (Id.) [s]ixth, the Commission must determine the duration of any non-bypassable rate or tariff, and the specific components of each rate or tariff…” and “[f]inally, the Commission must determine the mechanism and timing for the Commission to approve any non-bypassable rates calculated by NPC…” (Id.) Thus, Staff states “while the Commission has statutory authority to impose non-bypassable rates or tariffs, if the Commission decides to do so, the Commission should proceed cautiously through each step in establishing such rates or tariffs and avoid practical and possible legal changes where possible.” (Id.) Staff states that “[b]esides practical concerns (like availability and reliability of cost data) in establishing non-bypassable rates and tariffs outside of the usual annual or 3-year cycles for the respective components, establishing rates in isolation
without consideration of other aggregate costs may trigger single-issue ratemaking concerns, which should be avoided. (Id. at 21.)

74. In its reply legal brief, regarding the “deemed approved” language applicable to exit applications if a final order is not issued by the Commission within 150 days, Staff states that NRS 704B.310(8) does not show a legislative preference for NRS 704B transactions, but rather “a legislative preference for docket[s] not to languish, and have a definitive date for conclusion.”39 (Staff’s Reply Legal Brief at 3.)

Switch’s Rebuttal

75. Switch states that it “is adopting the load forecast used in Staff’s impact fee analysis and requests that the Commission make several adjustments to Staff’s impact fee analysis consistent with the testimony in [Exhibit 39].” (Ex. 42 at 8) Switch states that its proposed adjustments to Staff’s Final Impact Analysis include adjustments to Staff’s impact fee calculations that affect the following: the return on equity,40 Reid Gardner remediation costs,41 regulatory assets;42 and off-system sales.43 (See generally Ex. 39.) Thus, Switch recommends that the Commission “order that Switch pay an impact fee of no more than $18.736 million.”44 (Ex. 39 at 2.)

76. Specifically rebutting Nevada Power’s recommendation that Switch be required to identify which generating resources it will be obtaining energy from to ensure that it does not purchase energy from generators owned by Nevada Power, Switch explains that when “NV

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39 Staff cites to similar deemed approved date language in NRS 704.329, NRS 704.110, NRS 704.751, and NRS 704.8905. (Staff’s Reply Legal Brief at 3.)
40 Ex. 39 at 28-30.
41 Ex. 39 at 25-27.
42 Ex. 39 at 5-22.
43 Ex. 39 at 35-36.
44 Switch states that its estimated impact fee is compared to Staff’s recommended impact fee in Exhibit NLP-Reb-1 to Exhibit 39, and that a more detailed breakdown of Switch’s recommended adjustments is in Exhibit NLP-Reb-2 to Exhibit 39. (Ex. 39 at 2.)
Energy enters into an off-system sale and undesignates its [Designated Network Resources], that generation is no longer subject to contractual commitments to an electric utility and sale of the output must comply with the terms and conditions of NV Energy’s OATT.” (Ex. 37 at 13-14.)

77. Switch reconfirms that, upon its departure, consistent with Constellation’s response to Switch’s RFP, “Switch will be served by the resources that are referenced in the Constellation proposal which will be the subject of the agreement executed between Switch and Constellation” and that “[i]t will not be necessary for any resources to be constructed to serve Switch upon departure.” (Ex. 38. at 2-4; Tr. at 448-450.) Switch states that while it intends to “bring on” renewable energy resources over time, the projects associated with these resources are not contained in its Exit Application. (Tr. at 449-450.)

78. Switch reiterates its request to be credited with 100 percent of the modeled off-system sales but acknowledges that “remaining Nevada Power customers bear the risk of lower than projected off-system sales.” (Id. at 459-460.)

79. Regarding the issues associated with the Must-Take Resource Contracts, Switch concurs with Staff’s assessment that, while renewable energy prices have seen a considerable decrease in the past two years, “the embedded cost of renewable resources in NPC’s portfolio is higher, and most of those resources are ‘must-take’ resources under contract for the next 20 years, so that these higher costs cannot be avoided.”

80. Moreover, Switch states that while it agrees with Staff’s assessment that, “[b]ecause the renewable resources in NPC’s portfolio are must-take resources and cannot be dispatched economically, when Switch’s load is removed, a greater percentage of the cost of these higher cost resources are used to serve remaining customer loads, thereby spreading more

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45 Ex. 5 at 3.
of these higher costs onto remaining customers," Switch states that "the purpose of an impact fee calculation [is] to ensure that remaining ratepayers are held neutral or harmless in that situation." (Tr. at 495.) Regarding whether the three-year impact fee is appropriate given that these costs extend over the next 20 years, Switch states that the three-year analysis represents "the appropriate length of time to use," but that "[w]hether or not customers are held harmless depends on a number of factors..." including the growth of the utility, and total energy and off-system sales. (Id. at 498.)

81. Regarding whether Switch supports or opposes the concept of a non-bypassable charge on DOS customers who exit, as of a certain date, to mitigate costs on remaining ratepayers that would be responsible for the remaining costs associated with the Must-Take Resource Contracts, Switch explains that it has not vetted this proposal but that it "would be supportable if those costs are appropriately assigned; if they were to be included, as an example, in the DOS fee." (Id. at 502-503.) Switch states that if these non-bypassable charges were implemented, a corresponding reduction in the impact fee would be required. (Id.)

82. In its legal brief, Switch further addresses the possible implementation of a non-bypassable charge. Switch summarizes its testimony that while it "had not had time to entirely vet the issue of a non-bypassable charge... Switch would be supportive if the costs were appropriately assigned, could be included in the distribution only service agreement fee spread over time to all DOS customers in an equitable fashion and resulted in a reduction of the impact fee commensurate with the allocation of the non-bypassable charge." (Switch's Legal Brief at 28.) However, Switch states that "implementation of a non-bypassable charge must be consistent with the provisions of NRS Chapter 704." (Id. at 29.) More specifically, Switch states that, under NRS 704.100, "a general rate case must be utilized...because a tariff that would

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46 Ex. 5 at 3.
include a non-bypassable charge that would impose the long term costs of regulatory assets and purchase power agreements would undoubtedly result in a rate change or an increase in annual gross operating revenue in an amount that exceeds $2,500.” (Id.) Moreover, Switch states that “[w]ithout a general rate case proceeding, where the Commission would first need to determine that the imposition of such long term costs was lawful, the tariff cannot be implemented.” (Id. at 29-30.) Switch states that “[i]f the Commission were to approve a non-bypassable charge in this Docket, it would be engaging in ratemaking outside the confines of NRS Chapter 704’s ratemaking procedures, in violation of the clear statutory prescription that ratemaking only occur pursuant to the terms of NRS Chapter 704.” (Switch’s Reply Legal Brief at 39.) Switch adds that requiring an exit applicant “to wait until the Commission adjudicates Nevada Power’s next general rate case would be inequitable and unreasonable since it would force a customer to make a decision to transition from bundled retail service under the provisions of NRS 704B without the certainty regarding the impact fee that will be assessed.” (Id. at 30.) Switch states that this “would equate to implementing a payment that is discriminatory in violation of NRS 704B.310(7).” (Id.)

83. Additionally, Switch states that NRS 704B.310(7)(b) does not indicate that the Commission’s authority under NRS 704.310(7) extends to “payments made pursuant to a utility tariff once a customer is no longer a customer taking bundled retail service.” (Id.) Switch states that, notwithstanding its foregoing assessment of the Commission’s limits under NRS 704B.310(7)(b), it questions how the Commission would maintain its jurisdiction over a departing NRS 704B customer under a utility tariff. (Id.) Switch states that “it presumes such a charge would directly offset the impact fee, as the inputs included in the impact fee calculation would be removed from the impact fee, and instead, be collected over a time period rather than
remitted [as] a lump sum payment.” (Id. at 30-31.) Switch further states that the following questions would also need to be vetted in an appropriate Commission proceeding: “What inputs or components of the impact fee would be removed? How long after the non-bypassable charge was implemented would the customer be required to pay it? Would there be a different period of time for payment of different components since, for example, one purchase power agreement may expire sooner than others? Would the eligible customer’s obligation change over time if…the utility customer’s obligation for the Reid Gardner remediation costs was modified by the Commission?” (Id. at 31.) Switch states that “[i]n the absence of a legal evaluation that leads to a finding that imposing non-bypassable charge would be lawful and capable of being applied to all departing [NRS] 704B customers in an equitable way, Switch submits that the use of an impact fee that has been calculated over a three-year period should be maintained.” (Id.)

84. Regarding the issue associated with whether Constellation will provide Switch with energy from a “new electric resource,” Switch states that “[a] plain reading of the statutory definition of ‘new electric resources’ as well as Commission precedent supports the use of market sources as new electric resources.” (Id. at 52.) Thus, in its reply legal brief, Switch disagrees with Nevada Power, BCP, and Staff’s interpretation of NRS 704B.110. (Switch’s Reply Legal Brief at 7.)

85. Additionally, Switch states that prior to this Docket, the Commission has interpreted market resources as “permissible new electric resources.” (Id. at 21.) In rebutting Nevada Power’s position that the Commission should require Switch to specify which market resources Constellation will utilize, Switch states that, from a public interest perspective, “[n]o Parties have demonstrated a legitimate public interest concern with a provider of new electric resources purchasing energy in the market that was produced by a Nevada Power generating
asset [that] has been undesignated and is no longer associated with a particular asset, is available and is not committed to native load, and is able to be delivered. (*Ibid.* at 21-22.)

86. Finally, in both of its legal briefs, Switch reiterates and explains its position that granting the Exit Application is not contrary to the public interest. (*See* Switch’s Legal Brief at 5-9; *See also* Switch’s Reply Legal Brief at 5.)

**Commission Discussion and Findings**

87. The Commission finds that the Exit Application includes, pursuant to NRS 704B.310(2)(a), information demonstrating that Switch is an eligible customer as that term is defined under NRS 704B.080. It is uncontested that 16 departing accounts meet the 1 MW criteria of NRS 704B.080(2)(a). Given the Commission’s decision herein the Commission declines at this time to make a finding regarding Meter 1 or the SUPERNAP 9 Meter.

88. The Commission finds that the Exit Application includes, pursuant to NRS 704B.310(2)(b), information demonstrating that Constellation will provide energy, capacity or ancillary services from a new electric resource as that term is defined under NRS 704B.110, but only to the extent that the Commission is able to condition Switch’s potential exit to prohibit Switch’s purchase of market resources found to be directly sourced from Nevada Power generating assets. While the Commission acknowledges that the Federal Energy Regulatory Commission ("FERC") has jurisdiction over wholesale transactions related to energy sales, the Commission notes that, prior to FERC’s jurisdiction of these Switch-proposed wholesale transactions, the Commission must first approve the Exit Application, and the Commission may only approve the Exit Application pursuant to NRS 704B if the Commission is able to determine that Switch will be utilizing a NRS 704B.110 new electric resource. Thus, the identification of a new electric resource is a condition precedent to Commission approval of an exit application
under NRS 704B.

89. While the Commission finds that the information in the Exit Application is not explicitly demonstrative of the required information under NRS 704B.310(2)(b), the Commission finds that NRS 704B.310(7)(b) provides the necessary safeguards to ensure that the information that Switch does provide regarding Constellation’s use of new electric resources to service Switch’s load is sufficient given the Commission’s specifically authorized discretion to “order such terms, conditions and payments as the Commission deems necessary and appropriate to ensure that the proposed transaction will not be contrary to the public interest.”

90. The Commission finds that the Exit Application includes, pursuant to NRS 704B.310(2)(c), information concerning the terms and conditions of the proposed transaction, including information concerning the duration of the proposed transaction and the amount of energy proposed to be purchased by Switch from Constellation.

91. NRS 704B.310(5) through (7) provides the Commission with guidance for assessing whether an eligible customers’ proposed transactions will be contrary to the public interest. NRS 704B.310(5) through (7), provides:

... 5. The Commission shall approve the application of the eligible customer unless the Commission finds that the proposed transaction:
   (a) Will be contrary to the public interest; or
   (b) Does not comply with the provisions of NRS 704B.320, if those provisions apply to the proposed transaction.

6. In determining whether the proposed transaction will be contrary to the public interest, the Commission shall consider, without limitation:
   (a) Whether the electric utility that has been providing electric service to the eligible customer will be burdened by increased costs as a result of the proposed transaction or whether any remaining customer of the electric utility will pay increased costs for electric service as a result of the proposed transaction;
   (b) Whether the proposed transaction will impair system reliability or the ability of the electric utility to provide electric service to its remaining customers; and
   (c) Whether the proposed transaction will add energy, capacity or ancillary services to the supply in this State.

7. If the Commission approves the application of the eligible customer:
(a) The eligible customer shall not begin purchasing energy, capacity or ancillary services from the provider pursuant to the proposed transaction sooner than 180 days after the date on which the application was filed, unless the Commission allows the eligible customer to begin purchasing energy, capacity or ancillary services from the provider at an earlier date; and

(b) The Commission shall order such terms, conditions and payments as the Commission deems necessary and appropriate to ensure that the proposed transaction will not be contrary to the public interest. Such terms, conditions and payments:
   (1) Must be fair and nondiscriminatory as between the eligible customer and the remaining customers of the electric utility; and
   (2) Must include, without limitation:
      (I) Payment by the eligible customer to the electric utility of the eligible customer’s load-share portion of any unrecovered balance in the deferred accounts of the electric utility; and
      (II) Payment by the eligible customer of the annual assessment and any other tax, fee or assessment required by NRS 704B.360.

92. In applying the governing statute, the Commission must give the statute its plain meaning unless an ambiguity exists, the plain meaning interpretation violates the spirit or purpose of the enacting legislation, or the plain meaning interpretation would otherwise lead to a result which is inconsistent with the intent of the legislature. McKay v. Bd. of Sup’rs of Carson City, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986) (see also V & S Ry. LLC v. White Pine County, 125 Nev. 233, 239, 211 P.3d 879, 882 (2009)). In Nevada, “[i]t is well established that the court must interpret statutes consistent with the intent of the Legislature.” State, Dept. of Taxation v. Chrysler Group LLC, 129 Nev. Adv. Op. 29, 300 P.3d 713, 715 (2013) (quoting Steward v. Steward, 111 Nev. 295, 302, 890 P.2d 777, 781 (1995)). Thus, Nevada courts have instructed that, “[i]n construing a statute, our primary goal is to ascertain the legislature’s intent in enacting it, and we presume that the statute’s language reflects the legislature’s intent.” Moore v. State, 117 Nev. 659, 661, 27 P.3d 447, 449 (2001). “Where a statute is clear on its face, a court may not go beyond the language of the statute in determining the legislature’s intent.” McKay, 102 Nev. at 648, 730 P.2d at 441. “However, if following the statute’s apparent plain meaning results in a meaning that runs counter to the spirit of the statute, [Nevada courts] may

93. With these statutes, regulations, and common law principles in mind, the Commission assesses the Exit Application pursuant to the considerations identified in NRS 704B.310(6) and any additional consideration necessary to determine, as required by NRS 704B.310(5), whether the Exit Application is contrary to the public interest.

A. **NRS 704B.310(6)**

1. *Will Nevada Power be burdened by increased costs as a result of the proposed transaction?*

94. **NRS 704B.310(6)(a)** requires that the Commission consider whether Nevada Power will be burdened by increased costs as a result of Switch’s proposed exit. The Commission finds that any potential that Nevada Power will be burdened by increased costs is mitigated, if not extinguished, by statutes authorizing Nevada Power to recover its prudently incurred costs from facilities and agreements approved in an integrated resource plan. As Staff’s Final Impact Analysis indicates, the 3-year impact analysis of Switch’s departure yields an impact fee distinct from any other NRS 704B impact fee calculated in the past because of the substantial costs associated with Nevada Power’s efforts to not only decrease its exposure to the volatile energy markets that marked the turn of the century by building or contracting for its own
generation, but also its early and recent efforts to comply with Nevada’s RPS goals by integrating renewable energy resources and energy efficiency into its portfolio. Indeed, since 2001, Nevada Power has been actively seeking to control the generating capacity required to meet its load obligations through the resource planning process provided under to NRS 704.741 and has sought to end its reliance on coal-fired generation pursuant to NRS 704.7316.

95. Notably, Nevada Power’s 2003 IRP filing shows that while Nevada Power required 5,460 MW of capacity to meet its service obligations, it only owned 2,405 MW of generating capacity.\footnote{Docket No. 03-7004, Volume IV, Section I, Supply Side Plan at 30, Figure SS-11 ("Figure SS-11").} In 2003, Nevada Power owned just 44 percent of the generating capacity that it required to adequately meet the capacity needs of its customers. In contrast, Nevada Power’s 2014 ERCR filing shows that Nevada Power has made significant progress in diminishing its reliance on the wholesale energy market. Specifically, despite requiring 6,444 MW of capacity to meet its service obligations, Nevada Power’s 2014 ERCR filing shows that, at the time of filing, Nevada Power owned 4,692 MW of generating capacity, representing 72 percent of the generating capacity that is required to adequately meet the capacity needs of its customers.\footnote{Docket No. 14-05003, Volume 4 of 15, page 285, at Figure EA-31.}

96. Additionally, since 2003, Nevada Power has entered into a number of power purchase agreements to comply with Nevada’s RPS. By 2003, Nevada Power had secured long-term power purchase agreements for renewable resources totaling just 260 MW, none of which provided Nevada Power with firm capacity.\footnote{Docket No. 03-7004, Volume IV, Section I, Supply Side Plan at 12.} In contrast, by 2014, Nevada Power executed, and the Commission approved, a total of 18 long-term renewable energy power purchase agreements, representing a total nameplate capacity of approximately 792 MW.\footnote{Docket No. 14-05003, Volume 4 of 15, at page 165.} These resources provide
approximately 311 MW of peaking capacity further reducing Nevada Power’s reliance on purchased power.\footnote{Docket No. 14-05003, Volume 4 of 15, at page 285, at Figure EA-31}

97. The Commission’s partial approval of Nevada Power’s ECR Plan authorized Nevada Power to end its reliance on coal-fired generation through the retirement and elimination of 812 MW of coal-fired generating capacity. However, while this legislatively sponsored initiative to reduce the State’s reliance on coal provides a social and environmental benefit, it also comes at an economic cost. The Commission notes that Staff’s Final Impact Analysis provides a microcosm of these ECR costs, which include the Reid Gardner stranded plant costs, the costs associated with the dismantling and clean-up of Reid Gardner, and the costs associated with the ECR resources.\footnote{Ex. 5 at 4.} The Commission further notes that the site remediation costs of Reid Gardner alone are estimated in Staff’s Final Impact Analysis to be at least $100 million.\footnote{Ex. 5 at 8; Ex. 13 at 12.} Staff’s Final Impact Analysis did not even attempt to quantify the site remediation costs of the Navajo generating station.\footnote{Ex. 5 at 8.}

98. The Commission finds that while Nevada Power has incurred substantial costs associated with the development and diversification of its energy portfolio, these projects and programs have already been approved by the Commission pursuant to Nevada’s resource planning statutes. These projects and programs undertaken to develop and diversify the energy portfolio have already been deemed to be prudent pursuant to NRS 704.110(13)\footnote{NRS 704.110(13) provides that “[a] utility facility identified in a 3-year plan submitted pursuant to NRS 704.741 and accepted by the Commission for acquisition or construction pursuant to NRS 704.751 and the regulations adopted pursuant thereto, or the retirement or elimination of a utility facility identified in an emissions reduction and capacity replacement plan submitted pursuant to NRS 704.7316 and accepted by the Commission for retirement or elimination pursuant to NRS 704.751 and the regulations adopted pursuant thereto, shall be deemed to be a prudent investment. The utility may recover all just and reasonable costs of planning and constructing, or retiring or eliminating, as applicable, such a facility.} and NRS...
704.751(3). Therefore, the substantial costs associated with these activities, other than the
ERCR costs, were found to be prudent and reasonable through the approval of applications filed
pursuant to NRS 704.110(3) and (11)(e) and NRS 704.187.57

99. Accordingly, the Commission finds that Nevada Power will not be burdened by
any increased costs associated with Switch’s potential departure.

2. Will any of Nevada Power’s remaining customer’s pay increased costs as a
result of Switch’s proposed exit?

100. NRS 704B.310(6)(a) requires the Commission to consider whether any of Nevada
Power’s remaining customer’s will pay increased costs as a result of Switch’s proposed exit.

101. The Commission finds that a 3-year analysis of the costs associated with Switch’s
departure is insufficient to protect ratepayers from the quantifiable costs that extend beyond a 3-
year period. Specifically, the Commission finds that the use of a 3-year Impact Analysis that
relies so heavily on forecasted load growth to mitigate the potential damage to ratepayers
following Switch’s proposed exit neglects to consider the evidence in this Docket that clearly
shows the existence of costs that will not be covered under any of the proposed impact analyses
offered in this Docket.

102. The Commission is particularly concerned that remaining Nevada Power
customers will be responsible for Switch’s share of the costs associated with the long-term, out-
of-market contracts that are currently embedded in Nevada Power’s rates, as well as Switch’s

56 NRS 704.751(3) provides that “all prudent and reasonable expenditures made to develop the utility’s plan
[pursuant to NRS 704.741], including environmental, engineering and other studies, must be recovered from the
rates charged to the utility’s customers.”
57 Pursuant to NRS 704.110(11)(e), Nevada Power is obligated to prudently manage its costs. Specifically, NRS
704.110(11)(e) provides that “[t]he Commission shall not allow the electric utility to recover any recorded costs of
purchased fuel and purchased power which were the result of any practice or transaction that was unreasonable or
was undertaken, managed or performed imprudently by the electric utility, and the Commission shall order the
electric utility to adjust its rates if the Commission determines that any recorded costs of purchased fuel and
purchased power included in any quarterly rate adjustment or the annual deferred energy accounting adjustment
application were not reasonable or prudent.”
share of the costs of Nevada Power’s other obligations to further Nevada’s energy policies. These obligations were exceptions to least-cost resource planning, and they result in significant stranded costs that require consideration in this Docket. These long-term obligations include: 1) all renewable energy contracts and energy efficiency programs necessary to comply with the RPS standard; and 2) all of the SB 123 costs, including the remaining book value of the retired coal generation, decommissioning costs, and site remediation costs. The Commission notes that these obligations have either not begun to be collected (e.g. SB 123 costs) or will be collected for a period much longer than the three years reflected in Staff’s Final Impact Analysis.

103. The Commission finds that while Nevada Power’s load forecast estimates general load growth in its system, Nevada Power’s concerns regarding the reduction to the sales associated with its large customer class must be considered in assessing whether load growth will actually keep the costs of Nevada Power’s remaining customers static following Switch’s potential exit. More specifically, the Commission finds that Nevada Power’s concerns regarding the lack of growth to its Large C&I customer classes could adversely affect Nevada Power’s remaining customers should Switch be allowed to exit without paying an impact fee commensurate with the costs Switch would be required to pay should it remain a bundled retail customer of Nevada Power.

104. The Commission finds that this foregoing concern is validated when comparing the Large C&I forecasted sales in Nevada Power’s ECR filing with the forecasted sales contained in Staff’s Final Impact Analysis that reflect the billing determinants for Switch’s proposed departing accounts. When the Commission removes the billing determinants that are associated with Switch’s smaller departing accounts that may not classify as Large C&I

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58 Ex. 16 at Exhibit Baxter 14, page 1 of 1, showing an average annual growth rate in Large C&I sales of -0.6% from 2010-2014.
customers, leaving the 12 accounts that have a load demand equal to or greater than 1 MW, the Commission finds that the billing determinants for these 12 large accounts show sales of approximately 862,576 MWh during a three-year period from May 2015 to April 2018. In contrast, Nevada Power’s 2014 ERCR filing shows that the forecasted Large C&I energy sales are significantly less compared with the sales from Switch’s departing load. The Commission finds that from 2015 to 2018, the average MWh sales of Nevada Power’s Large C&I classes is forecasted to grow by approximately 201,875 MWh, and by approximately 287,493 MWh from 2015 to 2019. In other words, the Commission finds that only 23 percent of the total MWh sales in Switch’s rate class is forecasted to be replaced through Large C&I class load growth in the next 3 years. Therefore, the Commission finds that the MWh sales associated with Switch’s 12 largest departing loads is significantly greater than the forecasted MWh sales Nevada Power expects to collect from its Large C&I customer classes following a Switch exit. If Nevada Power loses the sales associated with Switch’s load, Nevada Power will be required to reallocate costs to ensure recovery of its revenue requirement, which the Commission finds would ultimately result in increased costs to Nevada Power’s remaining customers.

105. Accordingly, the Commission finds that given the way rates are designed in Nevada to collect the electric utility’s annual revenue requirement via class-specific rates and revenue requirements, Nevada Power’s current Large C&I customers are more likely than not to see increased costs as a result of Switch’s exit because Nevada Power’s Large C&I customer load forecast does not show enough growth to account for the loss in sales resulting from Switch’s departing load. At a minimum, Switch’s departure must be followed by the arrival of a

59 Staff’s Final Impact Analysis shows that Switch seeks to exit with four LGS-3S accounts, and eight LGS-3P accounts. Ex. 5 at Schedule A-5a.
60 Ex. 5 at Schedule A-5a.
61 Docket No. 14-05003, Volume 4 of 15, page 43, at Figure LF-38.
Switch-like customer to Nevada Power’s Large C&I classes over the next three years if Nevada Power’s remaining Large C&I customers are to be protected from increased costs. Otherwise, the portion of the revenue requirement currently paid by Switch will be allocated among the remaining members of the Large C&I customer classes. And any portion of the revenue requirement not retained by the Large C&I customer classes would be reallocated to other customer classes, including the small commercial and residential classes, resulting in increased costs to those remaining customers.

106. Furthermore, while the Commission acknowledges that a 3-year impact period has been used in previous impact analyses of exiting customers, the Commission finds that the use of an analytical framework developed over a decade ago, and most recently used in southern Nevada in 2003, is insufficient at this time for the purposes of assessing the potential impact of Switch’s exit on remaining ratepayers. The Commission finds that a 3-year analysis fails to fully capture Switch’s share of costs that are embedded in Nevada Power’s rates. The Commission finds that the costs associated with the REPR, TRED, Must-Take Resource Contracts, and SB 123 costs, not to mention the costs associated with Nevada Power’s construction of various generating facilities required to meet its load and insulate Nevada Power and its customers from the volatility of energy markets, are all costs that were borne by Nevada Power’s system during Switch’s development as a Nevada Power customer. These costs would be borne by remaining Nevada Power customers following any Switch exit for a period of time that this record clearly shows will be in excess of three years.

107. The Commission finds that the costs associated with the TRED, REPR, Must-Take Resource Contracts, and SB 123 costs are inadequately accounted for in a 3-year analysis. The Commission particularly agrees with Nevada Power’s assessment regarding the
inadequacies of a 3-year analysis to fully capture these long-term costs. Specifically, the Commission finds that “[c]ustomers would likely see an increase in the price of electricity in the form of a TRED charge increase if an inappropriate or an…insufficient amount is taken into account in this proceeding,” (Id. at 80-81) and that while the REPR is taken into account under Staff’s Final Impact Analysis, Nevada Power’s remaining ratepayers will not be held harmless after the three-year analysis period. (Tr. at 83.) Moreover, the Commission finds that “a customer who is pursuing incremental pricing available on the market, without an adequate impact fee,” may be able to avoid some of the costs associated with the Must-Take Resource Contracts that extend over the next 20 years, with the remainder of such costs borne by “captive or remaining ratepayers” who would experience “increased rates due to higher renewable costs.” (Id. at 88.)

108. The Commission also finds Staff’s assessment of the Must-Take Resource Contracts particularly persuasive given that it is Staff’s Final Impact Analysis that attempts to quantify ratepayer risk in an appropriate exit fee. The Commission finds that the remaining balance of Switch’s obligation under the Must-Take Resource Contracts embedded in Nevada Power’s rates, which were acquired, in part, to serve Switch’s load and to comply with policy goals associated with Switch’s load, “would have to be borne” by Nevada Power’s remaining customers should Switch be permitted to exit without paying its share of these costs. (Id. at 303.) The Commission finds that the Staff-estimated impact fee only captures three years’ worth of costs associated with these contracts and, therefore, does not capture the remaining contract years’ worth of these costs. (Id. at 303) Thus, the Commission finds that remaining Nevada Power customers would bear the risk of incurring these remaining costs associated with a Switch
exit.\textsuperscript{62} (\textit{Id.} at 306.)

109. Regarding the stranded costs associated with the retired Reid Gardner 1-3 generating facilities and the stranded costs that will result from the statutorily-scheduled retirement of the Reid Gardner 4 generating facility, the Commission finds that it would be more equitable to require Switch to pay, on an ongoing basis, its portion of these stranded costs given that it received the benefit of load service from these facilities (Tr. at 368), rather than an impact fee that only captures 3-years worth of estimated costs. The Commission notes that Staff did not include the additional costs associated with the remediation work for the Navajo generating station in its Final Impact Analysis “because it is unknown as to when those units will be retired/sold and when and what site remediation work will be required...” (Ex. 5 at 8.) The Commission finds that an estimate of these stranded costs, and any failure to include the remediation costs of a plant that was in use during Switch’s presence in Nevada, results in unnecessary risks that remaining ratepayers will pay increased costs and leads to the conclusion that there are costs that a 3-year analysis fails to entirely capture. Thus, the Commission, agreeing with Staff, finds that, “but-for leaving,” Switch would be responsible for these costs and finds that if Switch is allowed to “be able to escape [these] costs by leaving,” the responsibility for paying the balance of these costs will fall on remaining Nevada Power ratepayers. (\textit{Id.})

110. The Commission rejects any argument that the Commission is bound to apply a 3-year exit analysis in this Docket because it has accepted stipulations based on 3-year analyses in previous Dockets. In its legal brief, Switch states that it “agrees that the calculation of the

\textsuperscript{62} In 2014, Nevada Power’s must take renewable contract purchased power costs were in excess of $176 million for 17 contracts (Docket No. 15-02039, Volume 2, at Exhibit E-2; See also Nevada Power’s April 16, 2015, FERC Form 1 filing with FERC, Submittal No. 20150419-8027, FERC Form 1 at 326 and 327.) This amount does not include one contract associated with the Tonopah Solar Energy purchase power agreement, which will add in excess of $65 million (this project is expected to produce 485,000 MWhs of energy annually, at a rate of $134.95 per MWh) in costs annually, over a period of 25-years, once the project begins to deliver energy to Nevada Power’s system. (See Docket No. 10-02009: Commission’s July 30, 2010, Order at 90 and 91; and NV Energy’s July 9, 2010, compliance filing at Exhibit 2A.)
impact fee can occur over a three-year period” and that “[t]his is the same process that was undertaken to calculate the impact fee agreed to by all parties in the [NRS] 704B and NRS 704.787 applications that preceded the filing of [the Exit Application]” (Switch’s Legal Brief at 16-17.) Switch further states that “[i]n each of these cases the parties stipulated and/or the Commission found that the payment of an impact fee would ensure that neither the utility nor the remaining customer would be burdened by increased costs as a result of the customer’s exit.” (Id. at 17.) Switch states that, under NRS 704B.310(7), “[i]t would be unfair and discriminatory to treat Switch differently than all customers who have made the same or similar applications, which were approved by the Commission. (Id. at 19.)


112. Additionally, the Commission finds that to arbitrarily apply a 3-year analysis to each and every exit application filed pursuant to NRS 704B, as Switch proposes, would result in ad hoc rulemaking in violation of NRS Chapter 233B given that a 3-year analysis is not required by any statute or regulation by creating a rule of general applicability (NRS 233B.038(1)(d)) in violation of NRS 233B.040 and 233B.060 et seq. The Commission notes that the facts and circumstances of each case dictate the result. The facts and circumstances of Switch’s Exit Application are very different from the Exit Applications that have come before this Docket. The level of investment in the last 10 years in long term obligations, coupled with the limited load growth in the Large C&I classes discussed above, are all significant, factual differences that
require a different impact analysis in this proceeding to ensure that "...any remaining customer" will not pay increased costs for electric service as a result of Switch's exit.

113. Moreover, in each situation where an eligible customer actually exited the system of one of Nevada's electric utilities pursuant to NRS 704B, it did so under the terms of a stipulation. The Commission notes that there is standard language in every Stipulation that Staff signs that provides that the provisions of the stipulation hold no precedential value "...with respect to any issue, principle, or interpretation or application of law and regulations for any purpose or in connection with any proceeding..." (Tr. at 532.)

114. Accordingly, given that the load forecast does not show the necessary growth to Nevada Power's Large C&I customer classes to replace Switch's load sales, and given that there are quantifiable costs that extend well beyond three years, the Commission finds that, based on the evidence in this Docket, remaining ratepayers will experience an increase in costs as a result of Switch's exit, even if Switch pays the exit fee as calculated by Staff.

3. Will Switch's proposed exit impair system reliability or Nevada Power's ability to service its remaining customers?

115. NRS 704B.310(6)(b) requires that the Commission consider "[w]hether the proposed transaction will impair system reliability or the ability of the electric utility to provide electric service to its remaining customers."

116. The Commission finds that Constellation has broad experience serving customers that have left utility service and that Switch has demonstrated that Constellation will be capable of performing the duties of Provider and scheduling coordinator. (See generally Ex. 10; Tr. at 377-378.)

117. The Commission finds that while Nevada Power raises reliability issues associated with Switch taking service from Constellation (Ex. 23 at 5-6), Switch has effectively
rebutted Nevada Power's concerns. *(See Generally Ex. 35.)*

118. The Commission notes that Staff recommends that the Commission find that the
proposed exit will not negatively affect the service Nevada Power provides to its remaining
customers (Ex. 32 at 22). This was confirmed by Nevada Power during hearing. *(Tr. at 145.)*

119. Based on the foregoing, the Commission finds that Switch's proposed exit will
not impair system reliability or Nevada Power's ability to service its remaining customers.

4. *Will Switch's proposed exit add energy, capacity or ancillary services to the supply in
this State?*

120. NRS 704B.310(6)(c) requires the Commission to consider "[w]hether the
proposed transaction will add energy, capacity or ancillary services to the supply in this State."

121. The Commission finds that Switch's proposal to exclusively use market
resources to satisfy its energy needs upon its exit does not necessarily increase the State's supply
of energy. The Commission notes that Switch's exclusive use of market resources may not add
energy to the State's supply if Switch were to import energy, capacity, or ancillary services from
the market's supply of Nevada-sourced resources.

122. However, the Commission agrees with Switch that it may condition Switch's exit
upon Switch filing with the Commission "a signed solar power purchase agreement for at least
50 MW (nameplate) of renewable solar energy located in Nevada, deliverable to Switch within 3
years of Switch's departure" *(Switch's Reply Legal Brief at 5-6.)* The Commission finds that
NRS 704B.310(7)(b) provides the Commission with the authority to condition Switch's exit in
the manner Switch proposes to ensure that its exit would add energy, capacity or ancillary
services to the supply in this State.

5. *Will approval of the Exit Application be contrary to the public interest?*

123. NRS 704B.310(5)(a) provides that the Commission "shall approve the application
of the eligible customer unless the Commission finds that the proposed transaction…will be contrary to the public interest…” Therefore, while Switch may rely on a modification to Staff’s 3-year Impact Analysis to assert that approval of the Exit Application is not contrary to the public interest, the Commission cannot limit its consideration of the potential ramifications of Switch’s potential exit to a 3-year period.

124. The Commission finds that the Exit Application is contrary to the public interest because it will result in increased costs to Nevada Power’s remaining customers. The Commission finds that it is inherently contrary to the public interest to expose remaining Nevada Power customers to the risk that Switch’s share of the long-term embedded costs in Nevada Power’s system will be reallocated to remaining ratepayers. The Commission finds that neither of the estimated impact fees discussed in this Order would satisfy Switch’s remaining obligations. The Commission finds that the impact associated with a Switch exit from bundled retail service reaches beyond the 3-year period used in the analyses discussed in this Docket, and that Switch’s exit makes Nevada Power’s remaining customers responsible for all of the stranded costs discussed in this Order.

125. Additionally, the Commission finds it inequitable, and thus contrary to the public interest, to fully allocate the benefits of load growth to one exiting customer. The Commission finds that forecasted load growth alone is not evidence that Switch’s proposed exit will not be contrary to the public interest. Switch states that “[p]ayment of an impact fee [based on a 3-year analysis] will ensure that remaining customers and Nevada Power will not experience increased costs” because “[t]he [forecasted] addition of 176 MWs of load growth [over that 3-year period] provides additional assurance that Switch’s departure will not result in increased costs for the utility and remaining ratepayers.” (Switch’s Reply Legal Brief at 44.) However, Switch
assumes that the benefits of load growth are only meant to lower the costs of an exiting customer's impact fee, rather than to lower the costs paid by Nevada Power's remaining customers. Thus, the Commission finds that Switch's impact fee may be discounted to reflect Switch's calculated share of the monetary benefits which may be attributable to load growth. However, the Commission finds that it is contrary to the public interest to allocate all of the benefits of load growth toward lowering Switch's impact fee. Moreover, the Commission finds that it is contrary to the public interest to allow Switch to use forecasted load growth to marginalize the impact of its departure. Therefore, the Commission finds that Switch's reliance on forecasted load growth to mitigate the risk of increased costs for Nevada Power and its remaining customers is contrary to the public interest because the forecasted load growth fails to show sufficient growth to Nevada Power's Large C&I classes and because Switch is only entitled to its share of the benefits associated with load growth in determining a sufficient impact fee.

126. The Commission finds that it is contrary to the public interest to allow Switch to exit bundled retail service to circumvent paying its share of the costs that have been incurred by Nevada Power to comply with Nevada's legislative energy policies. The Commission finds that these costs include each of the following: REPR costs; TRED costs; energy efficiency program and implementation costs; long term must-take resource contracts required by the RPS standard; and SB 123 costs, including but not limited to decommissioning and site remediation costs. The Commission finds that each of these costs were incurred, in part, to serve Switch's load and that it would be contrary to the public interest to allow Switch to exit Nevada Power's system without fully paying for its portion of these costs. The Commission finds that each of these costs extends past the next 3 years, which means that Switch's responsibility for these costs also extends past a
3-year period. Given that these remaining, long-term costs are currently embedded in Nevada Power’s rates, all current ratepayers, not just those smaller customers unable to exit Nevada Power’s system, are responsible for the payment of these costs. Thus, the Commission finds it contrary to the public interest to accept an impact fee that does not capture the entirety of Switch’s share of these costs that are currently embedded in Nevada Power’s rates. Therefore, the Commission finds that it would be contrary to the public interest to limit Switch’s impact fee to either the Switch- or Staff-estimated impact fee.

127. However, recognizing that the governing public interest standard is open to interpretation by reasonably informed minds, and recognizing Switch's insistence that a 3-year impact fee will ensure that approval of its Exit Application will not be contrary to the public interest, the Commission reviews the applicable legislative history to ensure its findings are consistent with the legislative intent.

128. The legislative history of NRS Chapter 704B, more specifically, of AB 661, reveals that the Legislature specifically contemplated whether utility customers would be able to avoid the costs embedded in the utility’s system that resulted from the “public interest charges both past and future.”63 The Commission refers to this particular exchange between Assemblywoman Leslie and the then-CEO and Chairman of Sierra Pacific Resources, which was the parent company of SPPC and Nevada Power, Walter Higgins:

[Assemblywoman] Leslie asked about the public benefits charges both past and future. Mr. Higgins stated…the public benefits were not unique to who the electric marketer was and should be paid by everyone. He believed public benefit should stay with the customer regardless of the marketer serving the customers.64

(Emphasis added).

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63 Minutes of the May 3, 2001, Meeting of the Assembly Select Committee on Energy, Seventy-First Session of the Nevada Legislature, at page 9.
64 Id.
129. Section 9 of the preamble to AB 661 is consistent with the foregoing testimony:

... To protect the electric utilities in this state and their remaining customers, all transactions proposed by eligible customers pursuant to sections 3 to 26, inclusive, of this act must be carefully reviewed by the public utilities commission of Nevada to ensure that the electric utilities in this state and their remaining customers are not subject to increased costs as a result of the proposed transactions and that the proposed transaction are not otherwise contrary to the public interest.

130. The Legislature also examined the effect that large energy user’s exiting the utility’s system would have on Nevada Power’s remaining customers and intended for the Commission to ensure that remaining customers are not left paying exited customers’ shares of embedded costs. The following testimony by Andrew L. Barbano, lobbyist for Nevada Utility Reform Alliance, and the subsequent exchange between Mr. Barbano and the then-Chairman of the Senate Committee on Commerce and Labor, Chairman Townsend, is quite prophetic:

Mr. Barbano: When the big users start dropping out of the system, the huge, embedded costs, the stranded costs of the system, as you well know, somebody has to pay for those, and those costs fall on the other ratepayers...

Chairman Townsend: I don’t disagree necessarily with what you think is potentially here. I want to ask this important point. We’ll take southern Nevada, for a moment; if there’s 350 megawatts of “strip” that includes four publicly traded companies, and there’s 2,400 megawatts of base load in southern Nevada, and they go up to 4,700 megawatts at peak, if they were to take that 350 megawatts and literally pick some corner down there and build a 350 megawatt plant for only that usage, and growth exceeded that 350 megawatts... therefore, you are not really using is a transmission line, all you are using is a distribution system that perhaps they build for themselves. You free-up transmission so we could bring in new capacity, whether it’s from out-of-state, or whether it’s renewable, or whether it’s another gas-fired power plant that would be built somewhere in southern Nevada. *Is that potentially advantageous to the remaining customer base, mostly small commercial and residential, given the demand on that system*?66

Mr. Barbano: I will give you a true politician’s answer, yes, no, and I don’t know, for these reasons: Yes, if you are talking today.... The answer very well could be no, further down the road.... *When there is no short-term supply and demand problem, but this legislation is still sitting here, conceivably big users could see the opportunity to drop out of the system and negatively impact the system by driving up rates, due to embedded*

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65 Minutes of the May 25, 2001, Meeting of the Senate Committee on Commerce and Labor, Seventy-First Session of the Nevada Legislature, at page 26.
66 Id. at 27.
and stranded costs, to other users. The answer to your question is also no.\textsuperscript{67}

Chairman Townsend: Your objections also remain, even given the language given to the commission on page 7?\textsuperscript{68} I don’t disagree with you...If you will look on page 7, where they give the commission authority to review it in the context of what’s in the best interests of the remaining ratepayers and make them pay the cost, is that language adequate? That’s what I’m asking you.\textsuperscript{69}

(Emphasis added)

131. Accordingly, the Commission finds that approval of the Exit Application is contrary to the public interest because the evidence on this record shows that remaining customers will be burdened with increased costs associated with the long-term obligations that will remain on Nevada Power’s system following Switch’s departure, and because the record does not support either of the promulgated impact fees as being adequate to capture the portion of these costs that are attributable to Switch and that were incurred in part to service Switch’s load.

6. Can the Commission order such terms, conditions and payments as the Commission deems necessary and appropriate to ensure that the proposed transaction will not be contrary to the public interest?

132. Pursuant to NRS 704B.310(7)(b), if the Commission approves an exit application, it “shall order such terms, conditions and payments as the Commission deems necessary and appropriate to ensure that the proposed transaction will not be contrary to the public interest.”

133. At the hearing, the Presiding Officer discussed the concept of implementing non-bypassable charges to ensure that Switch would pay its share of these long term costs which are currently embedded in Nevada Power’s rates. Each party was agreeable to these charges, up to a point. Switch argued that any assessment of a non-bypassable charge should be followed by a corresponding reduction to the impact fee (Tr. at 502-503). The Commission agrees.

\textsuperscript{67} Id. at 28.
\textsuperscript{68} The Commission notes that Chairman Townsend is referring to what is now codified as NRS 704B.310.
\textsuperscript{69} Id. at 29.
134. Pursuant to the Presiding Officer’s request, the parties fully briefed this issue post-hearing. Staff posited that while a non-bypassable charge would be more equitable (Tr. at 368), and that “while the Commission has statutory authority to impose non-bypassable rates or tariffs,” Staff stated that, “if the Commission decides to do so, the Commission should proceed cautiously…” suggesting a number of “steps” that the Commission should follow to ensure that the non-bypassable charges are properly implemented. (Staff’s Legal Brief at 20-22.) See also paragraph 73 above. The Commission agrees to the extent that there are a number of issues associated with implementing a non-bypassable charge that have not been adequately addressed in this Docket.

135. Similarly, Switch raised issues regarding the feasibility of implementing a non-bypassable charge in this Docket. Switch posited that “[i]f the Commission were to approve a non-bypassable charge in this Docket, it would be engaging in ratemaking outside the confines of NRS Chapter 704’s ratemaking procedures, in violation of the clear statutory prescription that ratemaking only occur pursuant to the terms of NRS Chapter 704. (Switch’s Reply Legal Brief at 39.) While ultimately recognizing the Commission’s authority “to order terms, conditions and payments as the Commission deems necessary an appropriate…” Switch stated that NRS 704B.310(7(b) “does not allow for the ability to engage in ratemaking which is reserved for NRS Chapter 704.” (Id.)

136. In contrast, BCP and Nevada Power found that the Commission is entirely within its statutory authority under NRS 704B.310(7) to implement and assess non-bypassable charges, and that these charges would be much more equitable to both the applicant and the remaining customer. The BCP stated that “[o]ngoing non-bypassable charges are preferable to one-time payments that only recover a relatively small amount of mandated costs, leaving increased
burdens to remaining and new customers.” (BCP’s Legal Brief at 14.) Similarly, Nevada Power stated that the concept of “[n]on-bypassable but adjustable charges that are set through the general ratemaking process and that reflect the actual and unavoidable costs of implementing Nevada’s energy policies are consistent with and appropriate under NRS Chapter 704B.” (NPC’s Legal Brief at 3.) Nevada Power explained that “[t]hese types of charges are fair because the eligible customer is only responsible for their share of the actual costs, instead of trying to rely on estimates and projections to calculate a one-time exit payment that in the end may prove to either over collect (harming the eligible customer) or under collect (harming remaining customers) the relevant costs.” (Id. at 5.)

137. The Commission agrees that implementing ongoing charges would ensure a level of equity that is clearly lacking in the proposed, one-time exit payments. These ongoing charges would capture the long-term costs associated with the REPR, TRED, EE/DSM programs, the RPS, and SB 123 compliance. These costs are all examples of legislative exceptions to the least cost resource planning process resulting in uneconomic long-term obligations which all of the parties have acknowledged were not captured after the third year of a 3-year impact analysis.70 Thus, given the length of these obligations, the Commission has serious concerns that the sole use of a time-based impact fee, by itself, properly identifies the costs and stranded investments necessary to ensure that remaining customers do not pay increased costs as a result of a customer exiting NPC's system. Therefore, a mechanism that captures recorded costs eliminates the uncertainties created by estimates, projections and forecasts.

138. The Commission agrees with BCP, Staff and Nevada Power that it has broad powers under NRS Chapter 704B to: "... order such terms, conditions and payments as the

70 See Tr. at 80-85 (NPC's discussion); Tr. at 188 (BCP's discussion); Tr. at 303 (Staff's discussion); Tr. at 498 (Switch’s discussion).
Commission deems necessary and appropriate to ensure that the proposed transaction will not be contrary to the public interest." However, the Commission is mindful of the due process concerns identified in Staff’s and Switch's legal briefs regarding the ability of the Commission to implement a non-bypassable charge in this docket, in compliance with NRS 704.110 while avoiding single issue ratemaking. Specifically, the processes discussed in BCP's, NPC's and Staff's legal briefs warrant further scrutiny if Switch re-files its application. For instance, non-bypassable charges in tariffs or other mechanisms that are designed to capture recorded costs of long-term obligations that are not captured by a three-year analysis (e.g. REPR, TRED, BTER charges associated with RPS compliance, the EE/DSM programs, and SB 123 compliance costs) could be implemented to reflect and collect only that amount which is currently paid by Switch.⁷¹ These charges, if based on the last approved DEAA application, or in the case of SB 123 costs, in the GRC where those costs are first sought for recovery, should be discussed and analyzed in the context of Switch's concern over single issue ratemaking, and NRS 704.100 and 704.110.

139. Such mechanisms could resolve the concerns identified in this Order and assure Switch that it is not paying more than it should, while also assuring that remaining customers would not be burdened with Switch's share of these long-term obligations. Regarding the potential benefits of load growth, the Commission finds that a non-bypassable charge or other mechanism would allow Switch to continue to share in the benefits of such growth along with remaining customers. The Commission contemplates that these benefits could be determined in successive GRC and DEAA filings, until the long-term obligations expire or are fully amortized. Placement of such non-bypassable charges in a DOS tariff or pursuant to an agreement subject to

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⁷¹ The Commission contemplates that these charges would be subject to change in future rate cases. The Commission contemplates that a continuing rate (perhaps in a DOS tariff) to capture long-term obligations would be pulled out of the exit fee calculation and collected elsewhere and in a different manner. This concept was provisionally supported by Switch-witness Randy Harris. (Tr. 503.)
Commission approval could also be considered and analyzed with a view to addressing Switch's concerns regarding the extent of the Commission's continuing jurisdiction to subject an exiting customer to a utility's tariffs.

140. The Commission finds that the significant investment on Nevada Power's system since 2001 has complicated, not simplified, the necessary analysis and evidence required for the Commission to determine whether or not an exit application will be contrary to the public interest. Therefore, if Switch re-files an exit application, the Commission will expect the parties to fully address how the long term obligations discussed in this Order may be more properly captured in an ongoing charge should a one-time, time-based, impact fee again fail to address the Commission's concerns that remaining Nevada Power customer's will be burdened with the unrecovered costs associated with a Switch exit.

141. The Commission shares in Staff's and Switch's concerns and finds that the concept of a non-bypassable charge has not been adequately vetted in this Docket. And, given the Commission's findings that approving the Exit Application without addressing long-term costs to remaining ratepayers is contrary to the public interest, the Commission finds that it does not have enough evidence on this record to develop the terms, conditions, and payments necessary to ensure that an approval of the Exit Application would not be contrary to the public interest.

142. Accordingly, consistent with each of the findings made in this Order, the Commission finds that the approval of the Exit Application will be contrary to the public interest, and denies the Exit Application without prejudice.

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THEREFORE, it is ORDERED that:

1. The Amended Application filed by Switch Ltd., designated as Docket No. 14-11007, is DENIED WITHOUT PREJUDICE.

Directive:

2. The Assistant Commission Secretary SHALL OPEN an investigatory docket regarding the issues associated with analyzing applications filed pursuant to Chapter 704B of the Nevada Revised Statutes to ensure that approval of these applications will not be contrary to the public interest.

3. The Commission may correct any errors that have occurred in the drafting or issuance of this Order without further proceedings.

By the Commission,

ALAINA BURTENSHAW, Chairman and Presiding Officer

REBECCA D. WAGNER, Commissioner
(Concurring in part and dissenting in paragraphs 87 – 89, 101, 103 – 109, 112 – 114, 121, 124 – 131, 140 – 142, and ordering paragraph 1.)

DAVID NOBLE, Commissioner

Attest: TRISHA OSBORNE,
Assistant Commission Secretary

Dated: Carson City, Nevada

6/11/15
(SEAL)