

Agenda 03-16 ; Item No. 2C Draft Order for discussion at agenda

THIS ORDER IS NOT A FINAL ORDER AND MAY BE SUBSTANTIALLY REVISED PRIOR TO ENTRY OF A FINAL ORDER BY THE PUBLIC UTILITIES COMMISSION OF NEVADA

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Application of Nevada Power Company d/b/a NV Energy)
for approval of a cost-of-service study and net metering) Docket No. 15-07041
tariffs.)
_____)

Application of Sierra Pacific Power Company d/b/a NV)
Energy for approval of a cost-of-service study and net) Docket No. 15-07042
metering tariffs.)
_____)

At a general session of the Public Utilities Commission of Nevada, held at its offices on February 12, 2016.

PRESENT: Chairman Paul A. Thomsen
Commissioner Alaina Burtenshaw
Commissioner David Noble
Assistant Commission Secretary Trisha Osborne

[PROPOSED] ORDER ON RECONSIDERATION AND REHEARING

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

I. INTRODUCTION

Nevada Power Company d/b/a NV Energy ("NPC") filed an Application for approval of a cost-of-service study and net energy metering ("NEM") tariffs. Sierra Pacific Power Company d/b/a NV Energy ("SPPC," and together with NPC, "NV Energy") filed an Application for approval of a cost-of-service study and NEM tariffs.

II. SUMMARY

The Commission grants in part and denies in part the Petitions for Reconsideration and modifies the final Order issued on December 23, 2015, based on the discussion and findings herein pursuant to reconsideration and rehearing.

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DOCUMENT REVIEW AND APPROVAL ROUTING

DRAFTED BY: DAVID NOBLE

FINAL DRAFT ON 02/10/16 AT 4:45 P M

REVIEWED & APPROVED BY: _____ DATE _____

ADMIN / ASST. (_____) _____ / /

COMM / COUNSEL HW _____ 2/10/16

SECRETARY / ASST. SEC. _____ / /

OTHER (_____) _____ / /

III. PROCEDURAL HISTORY

- On July 31, 2015, NPC filed an Application for approval of a cost-of-service study and NEM tariffs.
- On July 31, 2015, SPPC filed an Application for approval of a cost-of-service study and NEM tariffs.
- The Applications were filed pursuant to the Nevada Revised Statutes (“NRS”) and Nevada Administrative Code (“NAC”) Chapter 703 and 704, including but not limited to Section 4.5 of Senate Bill (“SB”) 374 of the 78th Session of the Nevada Legislature (2015) and NAC 703.535.
- On August 3, 2015, the Commission issued Notices of Application in Docket Nos. 15-07041 and 15-07042.
- The Regulatory Operations Staff (“Staff”) of the Commission participates as a matter of right pursuant to NRS 703.301.
- On August 4, 2015, the Attorney General’s Bureau of Consumer Protection (“BCP”) filed a Notice of Intent to Intervene pursuant to NRS 228.360 in Docket Nos. 15-07041 and 15-07042.
- On August 14, 2015, the Sierra Club filed a Petition for Leave to Intervene (“PLTI”) in Docket Nos. 15-07041 and 15-07042.
- On August 17, 2015, the Alliance for Solar Choice (“TASC”) filed a PLTI in Docket Nos. 15-07041 and 15-07042.
- On August 17, 2015, Bombard Renewable Energy (“Bombard”) filed a PLTI in Docket No. 15-07041.
- On August 17, 2015, Travis G. Miller filed a PLTI in Docket No. 15-07042.
- On August 17, 2015, Nevadans for Clean Affordable Reliable Energy (“NCARE”) filed a PLTI in Docket Nos. 15-07041 and 15-07042.
- On August 17, 2015, the Southern Nevada Homebuilders Association (“SNHBA”) filed a PLTI in Docket Nos. 15-07041 and 15-07042.
- On August 17, 2015, the United States Green Building Council, Nevada Chapter (“USGBC”) filed a PLTI in Docket No. 15-07041.
- On August 17, 2015, Vote Solar filed a PLTI in Docket Nos. 15-07041 and 15-07042.
- On August 18, 2015, Shawn O’Meara (on behalf of SUNworks, Black Rock Solar, Inc., The Power Company, and Alternative Energy Solutions) filed a late-filed PLTI in Docket No. 15-07042.

- On August 18, 2015, the Solar Energy Industries Association (“SEIA”) filed a late-filed PLTI in Docket No. 15-07042.
- On August 18, 2015, the Washoe County School District (“WCSD”) filed a PLTI in Docket No. 15-07042.
- On August 19, 2015, the Commission held a prehearing conference. BCP, Bombard, Mr. Miller, NCARE, NV Energy, SEIA, SNHBA, Staff, TASC, USGBC, Vote Solar, and WCSD made appearances. The Presiding Officer excused the Sierra Club and Mr. O’Meara from appearing. The Presiding Officer consolidated Docket Nos. 15-07041 and 15-07042 for hearing purposes. The Presiding Officer granted the PLTIs filed by Bombard, NCARE, TASC, Vote Solar, and WCSD. The Presiding Officer conditionally granted the PLTIs filed by Mr. O’Meara, SEIA, Sierra Club, SNHBA, and USGBC, subject to those parties filing supplemental information. The Presiding Officer denied the PLTI filed by Mr. Miller.
- On August 19, 2015, the Sierra Club filed a Reply to Staff Response to Petition to Intervene in Docket Nos. 15-07041 and 15-07042.
- On August 20, 2015, the Great Basin Solar Coalition (“GBSC”), formerly Mr. O’Meara, filed supplemental information in Docket No. 15-07042.
- On August 20, 2015, SEIA filed a Supplement to Late-Filed Petition for Leave to Intervene in Docket Nos. 15-07041 and 15-07042.
- On August 20, 2015, SNHBA filed a Supplement to the Petition for Leave to Intervene in Docket Nos. 15-07041 and 15-07042.
- On August 20, 2015, USGBC filed a letter rescinding its PLTI in Docket No. 15-07041.
- On August 20, 2015, Vote Solar filed a Supplemental and Errata Filing in Support of Vote Solar’s Petition for Leave to Intervene in Docket Nos. 15-07041 and 15-07042.
- On August 21, 2015, the Commission held a hearing in Docket Nos. 15-07041 and 15-07042. BCP, Bombard, GBSC, NCARE, NV Energy, SEIA, Sierra Club, SNHBA, Staff, TASC, and Vote Solar made appearances. Exhibits 1-28 were admitted into the record pursuant to NAC 703.730.
- On September 1, 2015, the Commission issued an Interim Order.
- On September 4, 2015, the Presiding Officer issued a Procedural Order establishing a procedural schedule in Docket Nos. 15-07041 and 15-07042.
- On October 26, 2015, the Presiding Officer held a discovery conference with NV Energy and TASC.

- On October 28, 2015, the Presiding Officer issued Procedural Order No. 2.
- On November 2, 2015, NV Energy and Vote Solar notified the Presiding Officer, via electronic mail to the Administrative Attorney, of an agreement to revise the procedural schedule as it pertains to work papers.
- On November 6, 2015, Sierra Club submitted a letter requesting to withdraw as a party and participate as a commenter.
- On November 12, 2015, the Presiding Officer issued Procedural Order No. 3.
- On November 18-20, 2015 the Commission held a continued hearing in Docket Nos. 15-07041 and 15-07042. BCP, Bombard, GBSC, NCARE, NV Energy, SEIA, SNHBA, Staff, TASC, Vote Solar, and WCSD made appearances. Exhibits 1A-102A were admitted to the record pursuant to NAC 703.730.
- On December 1, 2015, the Presiding Officer issued Procedural Order No. 4.
- On December 2, 2015, BCP, NCARE, NV Energy, SEIA, Staff, TASC, and Vote Solar filed legal briefs. On December 9, 2015, BCP, NCARE, NV Energy, Staff, TASC, and Vote Solar filed reply briefs.¹
- On December 21, 2015, the Presiding Officer issued a Draft Order.
- At the December 22, 2015 Agenda, the Commission voted to approve the Draft Order. The Commission issued the Final Order on December 23, 2015 (“December 23rd Order”).
- On December 24, 2015, BCP filed a Motion for Stay and Request for Order Shortening Time for Responses. On December 29, 2015, BCP filed an Amendment to Motion for Stay and Request for Order Shortening Time for Responses and Request for Modification of Procedural Order No. 5. On December 29, 2015, BCP filed a Corrected Amendment.
- On December 24, 2015, TASC filed a Motion for Stay of Final Order and Tariffs and Request for Order Shortening Time. On December 30, 2015, TASC filed an Amendment to Motion for Stay of Final Order and Tariffs and Request for Order Shortening Time and Request for Modification of Procedural Order No. 5.
- On December 28, 2015, the Presiding Officer issued Procedural Order No. 5, establishing an expedited timeframe for filing responses and replies to the Motions for Stay and a hearing date.

¹ Several parties also included analyses of SB 374 and the relevant statutes and regulations in witness testimony. (See Ex. 29A (NV Energy) at 15-17; Ex. 30A (NV Energy) at 15-17; Ex. 40A (WCSD) at 3; Ex. 41A (SNHBA) at 3-4; Ex. 44A (Vote Solar) at 7-9, 11, 13, 46-47, 50-51, 60, 62; Ex. 49A (TASC) at 6-7, 9-10; Ex. 62A (BCP) at 2; Ex. 64A (Staff) at 3, 11-12, 23-24; Ex. 76A (TASC) at 34, 48; Ex. 99A (NV Energy) at 5, 7-15, 79; Ex. 101A (NV Energy) at 6-7, 21-23, 26-31, 35-37, 39, 41-42; Tr. at 89-90 (NV Energy), 99-100 (NV Energy), 357-359 (TASC), 406 (Bombard), 442-443 (BCP), 474-477 (Staff), 503-505 (Staff), 552-554 (Staff), 580-583 (Staff), 595-596 (Staff), 1103-1104 (NV Energy), 1132-1133 (NV Energy), 1140-1144 (NV Energy).)

- On December 29, 2015, SNHBA filed a Response to BCP's Motion to Stay. On December 30, 2015, Vote Solar and SEIA filed Responses to the Motions for Stay. On January 4, 2016, NCARE, NV Energy, and Staff filed Responses to the Motions for Stay. On January 6, 2016, BCP and TASC filed Replies.
- On December 31, 2015, the Presiding Officer issued Procedural Order No. 6, suspending GBSC's representative, Shawn O'Meara, from further participation in these proceedings.
- On January 7, 2016, the Commission held a hearing on the Motions for Stay. BCP, Bombard, GBSC, NV Energy, SEIA, SNHBA, Staff, TASC, and Vote Solar made appearances. NCARE and WCSD were excused.
- On January 8, 2016, the Presiding Officer issued Procedural Order No. 7, requiring NV Energy to file notification that it has updated its website with customer education explaining the December 23rd Order.
- On January 8, 2016, BCP filed a Petition for Reconsideration and/or Rehearing.
- On January 8, 2016, SNHBA filed a Petition for Rehearing and Reconsideration.
- On January 8, 2016, SEIA filed a Petition for Reconsideration.
- On January 8, 2016, TASC filed a Petition for Reconsideration.
- On January 8, 2016, Vote Solar filed a Petition for Reconsideration.
- On January 13, 2016, GBSC late-filed a Petition for Reconsideration.²
- On January 19, 2016, the Commission issued an Order, denying the Motions to Stay.
- On January 20, 2016, the Presiding Officer issued a draft Order on BCP's Petition for Reconsideration and/or Rehearing, granting rehearing on grandfathering, and SNHB's Petition for Rehearing and Reconsideration, denying rehearing.
- On January 21, 2016, BCP filed a letter withdrawing the rehearing portion of its Petition for Reconsideration. On January 22, 2016, BCP filed a supplement to its letter.³

² Pursuant to NAC 703.530(3), the Commission will liberally construe the pleadings and disregard any defects that do not affect the substantial rights of any party. GBSC's late-filed Petition for Reconsideration affects the substantial rights of all other parties because it responds to the Petitions for Reconsideration filed on or before the deadline prescribed in NAC 703.801(3). The Commission construes GBSC's late-filed Petition for Reconsideration as an Answer to the Petitions for Reconsideration.

³ Pursuant to NAC 703.530(3), the Commission will liberally construe the pleadings and disregard any defects that do not affect the substantial rights of any party. Portions of BCP's letter and supplement to the letter affect the substantial rights of all other parties because they respond to the draft Order issued by the Presiding Officer on January 20, 2016. There is no regulation allowing a party to comment on a draft order filed by a commissioner. The portions of the letter and supplement that respond to the draft Order (beyond withdrawing the request for rehearing) are impermissible and, therefore, are stricken from the record.

- On January 22, 2016, SNHBA filed an Errata to its Petition for Rehearing and Reconsideration, removing all references to rehearing.
- On January 22, 2016, SNHBA filed a letter with the Commission regarding the draft Order.⁴
- On January 22, 2016, TASC filed a letter with the Commission regarding the draft Order.⁵
- On January 25, 2016, NV Energy filed an Answer to Petitions for Rehearing.
- On January 25, 2016, BCP, NV Energy, NCARE, Staff, and TASC filed Answers to the Petitions for Reconsideration.
- On January 25, 2016, GBSC filed an Answer to Petitions for Reconsideration. On January 26, 2016, GBSC filed an Amendment.⁶
- On January 25, 2016, the Commission issued an Order to conduct a rehearing in Docket Nos. 15-07041 and 15-07042 to allow the parties to present additional evidence on grandfathering.
- On January 25, 2016, the Commission issued a Notice of Hearing.
- On January 27, 2016, Staff filed a Motion to Strike New Evidence Presented in GBSC's Answer to Petitions for Reconsideration and Amendment Thereto.⁷
- On January 28, 2016, Vote Solar filed a letter responding to Staff's Answer to Petitions for Reconsideration, attempting to explain why the Commission should not suspend Vote Solar's representatives from further participation in these proceedings for the misrepresentations in its Petition for Reconsideration.

⁴ Pursuant to NAC 703.530(3), the Commission will liberally construe the pleadings and disregard any defects that do not affect the substantial rights of any party. SNHBA's letter affects the substantial rights of all other parties because it responds to the draft Order issued by the Presiding Officer on January 20, 2016. There is no regulation allowing a party to comment on a draft order filed by a commissioner. The letter is a fugitive document and, therefore, is stricken from the record.

⁵ Pursuant to NAC 703.530(3), the Commission will liberally construe the pleadings and disregard any defects that do not affect the substantial rights of any party. TASC's letter affects the substantial rights of all other parties because it responds to the draft Order issued by the Presiding Officer on January 20, 2016. There is no regulation allowing a party to comment on a draft order filed by a commissioner. The letter is a fugitive document and, therefore, is stricken from the record.

⁶ On February 1, 2016, GBSC filed the same information as supplemental direct testimony.

⁷ The Commission grants Staff's Motion to Strike New Evidence Presented in GBSC's Answer to Petitions for Reconsideration and Amendment Thereto. GBSC filed the same information as supplemental direct testimony on February 1, 2016, asserting that Staff's Motion was rendered moot by the filing. However, GBSC did not withdraw its Answer and Amendment filed on January 25 and 26, 2016. GBSC attempts to impermissibly introduce new evidence, ignoring the fact that the Commission takes evidence through a formal hearing process that guarantees due process to all parties involved.

- On January 28, 2016, TASC filed a Motion for Extended Procedural Schedule Regarding Rehearing. On January 29, 2016, TASC filed an Errata. On January 29, 2016, NV Energy filed a Response. On February 2, 2016, TASC filed a Reply. On February 8, 2016, the Presiding Officer denied the Motion.
- On February 1, 2016, NV Energy filed a Motion to Strike Portions of “Answers” to Petitions for Reconsideration. On February 8, 2016, BCP and TASC filed Responses.⁸
- On February 1, 2016, SNHBA filed a Response to PUC’s January 25, 2016, Order.⁹
- On February 2, 2016, TASC filed a Motion Requesting Adequate Public Notice of Proposed Rate Adjustment. On February 3, 2016, NV Energy and Staff filed Responses. On February 8, TASC provided an oral Reply. On February 8, 2016, the Presiding Officer denied the Motion.
- On February 2, 2016, Staff filed a Motion to Strike Portions of the Supplemental Direct Testimonies Filed On Behalf of Vote Solar, GBSC and BCP. On February 4, 2016, Vote Solar filed a Response. On February 5, 2016, NV Energy filed a Joinder in Staff’s Motion. On February 5, 2016, BCP filed a Response to Staff’s Motion. On February 5, 2016, BCP filed a Response to NV Energy’s Joinder. On February 8, 2016, TASC filed a Response. On February 8, 2016, GBSC provided an oral Response. On February 8, 2016, Staff and NV Energy provided oral Replies. On February 8, 2016, the Presiding Officer granted in part and denied in part the Motion and Joinder.
- On February 5, 2016, BCP filed a Legal Brief in Lieu of Rebuttal on Particular Issue Raised by Regulatory Operations Staff. On February 8, 2016, the Presiding Officer struck the document from the record.
- On February 8, 2016, the Commission held a rehearing. BCP, Bombard, GBSC, NCARE, NV Energy, SEIA, Staff, TASC, Vote Solar, and WCSD made appearances. SNHBA was excused. Exhibits 103A-137A were admitted into the record pursuant to NAC 703.730.

IV. PARTY POSITIONS ON RECONSIDERATION AND REHEARING

⁸ The Commission grants NV Energy’s Motion to Strike Portions of “Answers” to Petitions for Reconsideration. GBSC attempts to impermissibly introduce new evidence, ignoring the fact that the Commission takes evidence through a formal hearing process that guarantees due process to all parties involved. The Commission notes that GBSC’s Answer was also the subject of Staff’s Motion to Strike New Evidence Presented in GBSC’s Answer to Petitions for Reconsideration and Amendment Thereto; the Commission granted Staff’s Motion (*see* footnote 7). TASC’s arguments starting at page 1, line 18, through page 6, line 3, are an improper attempt to address the Commission’s January 19, 2016, Order that is not subject to the Petitions for Reconsideration. BCP’s counterarguments at page 4, lines 3-14, are in response to hypothetical arguments that no party made in the Petitions for Reconsideration. All are impermissible answers to the Petitions for Reconsideration.

⁹ Pursuant to NAC 703.530(3), the Commission will liberally construe the pleadings and disregard any defects which do not affect the substantial rights of any party. SNHBA’s filing affects the substantial rights of all other parties because it responds to the Order in a manner not prescribed by the Commission’s regulations. The filing is a fugitive document and, therefore, is stricken from the record.

