

**---THIS IS A DRAFT ORDER---
BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

Application of Sierra Pacific Power Company d/b/a NV)
Energy for authority to adjust its annual revenue)
requirement for general rates charged to all classes of) Docket No. 16-06006
electric customers and for relief properly related thereto.)
_____)

Application of Sierra Pacific Power Company d/b/a NV)
Energy for authority to adjust its annual revenue)
requirement for general rates charged to all classes of) Docket No. 16-06007
gas customers and for relief properly related thereto.)
_____)

Application of Sierra Pacific Power Company d/b/a NV)
Energy for approval of new and revised depreciation and) Docket No. 16-06008
amortization rates for its electric operations.)
_____)

Application of Sierra Pacific Power Company d/b/a NV)
Energy for approval of new and revised depreciation and) Docket No. 16-06009
amortization rates for its gas operations.)
_____)

At a general session of the Public Utilities
Commission of Nevada, held at its offices
on DECEMBER 22, 2016.

PRESENT: JOSEPH C. REYNOLDS, Chairman and Presiding Officer
PAUL A. THOMSEN, Commissioner
ANN C. PONGRACZ, Commissioner

TRISHA OSBORNE, Assistant Commission Secretary

(PROPOSED DRAFT)
ORDER GRANTING IN PART AND DENYING IN PART
GENERAL RATE APPLICATION BY SIERRA PACIFIC POWER

EXECUTIVE SUMMARY

Having thoroughly reviewed thousands of pages of documents and exhibits, considered conflicting expert testimony from well-educated and credible witnesses over seven (7) days of hearings, and applied the balance and reasonableness sought in Senate Bill 374 through Nevada's policy of supporting solar and renewable forms of energy, economic development, and new technologies, the PUCN hereby finds and concludes that re-opening on January 1, 2017, up to 6 megawatts (MW) of installed capacity of rooftop solar energy systems for existing and new customer-generators under the prior "Net Energy Metering" (NEM-1) terms and rates in the service territory for Sierra Pacific Power is just, reasonable, and consistent with the public interest.

An increased cap of 6 MW is approximately forty percent (40%) of the total NEM rooftop solar growth that Northern Nevada has experienced in the past twenty (20) years and will allow nearly double the growth of NEM participants that has occurred in Sierra Pacific Power's territory over the past three (3) years. Any cost shift borne by ratepayers for this NEM expansion is reasonable under the facts of this case. Indeed, through this Order the average residential customer in Northern Nevada may expect a *decrease* of approximately \$0.01 (one cent) per month on monthly utility bills and the average small commercial customer may expect a *decrease* of approximately \$0.43 (forty-three cents) per month on their average monthly utility bill. It is not much. But given that no "unreasonable" cost shift between customer classes is created by a 6-MW expansion of NEM-1, even accepting the evidence and methodology of Sierra Pacific Power as true and correct, the PUCN hereby finds and concludes that the proscriptions of NRS 704.7735(2)(e) are not triggered. NEM may grow, while average monthly bills should not.

Retaining separate rate classes makes sense and is consistent with the unique relationship between NEM customer-generators and a utility. The Stipulation entered into by the Parties in good-faith to resolve most of the issues in this case is hereby accepted. The PUCN finds that reaching the remaining issues raised by the Parties in this case regarding the valuation of NEM rooftop solar in Nevada is premature. Like gasoline or milk, the value of NEM rooftop solar energy in Nevada is not static—it is subject to change, like other commodities, and ebbs and flows with things like the economy and the weather. This decision is fact-specific and is not to serve as binding precedent upon future rate cases, including those in Southern Nevada. Any remaining issues will be in abeyance before the PUCN until the new cap is reached in Northern Nevada. Resolution of valuation of NEM issues in Nevada requires more study and collaboration. But the policy of the State of Nevada clearly supports the development and growth of diverse forms of solar and renewable energy as a priority, including NEM.

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DRAFT

INTRODUCTION

Before REYNOLDS, JOSEPH C., Chairman and Presiding Officer.

Nevada law provides that every three (3) years a public utility shall file with the Public Utilities Commission of Nevada (PUCN) a General Rate Application¹ regarding any proposed future changes to the costs and rates to its customers. *See* NRS 704.110(1). Once filed, the PUCN has a statutorily-imposed deadline of 210 days by which to either approve or disapprove, in whole or part, the proposed changes. NRS 704.110(2). Here, Sierra Pacific Power Company d/b/a NV Energy (Sierra Pacific Power) filed with the PUCN a general rate application on June 6, 2016, regarding the electric and gas utility costs and rates of services it provides to its customers throughout Northern Nevada. (Exhibit Nos. 1 and 159).

Numerous parties thereafter intervened in the proceedings: SolarCity; Vote Solar; Northern Nevada Industrial Electric Users (NNIEU);² Nevadans for Clean Affordable Reliable Energy (NCARE); Newmont USA, Limited, d/b/a Newmont Mining Corporation (Newmont); the Coalition;³ Northern Nevada Utility Customers (NNUC);⁴ the Office of the Nevada Attorney General, Bureau of Consumer Protection (Attorney General);⁵ and the Regulatory Operations Staff of the PUCN.⁶

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¹ The phrase "General Rate Application" refers collectively to the applications filed in Docket Nos. 16-06006, 16-06007, 16-06008, and 16-06009, which were consolidated by the PUCN pursuant to NAC 703.740 to promote efficiency. *See PUCN Procedural Order No. 1* at 4 (August 12, 2016).

² NNIEU consists of the following: EP Minerals, LLC; Heavenly Valley, Limited Partnership; Sheltie Opco, LLC d/b/a Nugget Casino Resort; Nevada Cement Company; Premier Magnesia, LLC; Prime Healthcare Services; The Ridge Tahoe Property Owners' Association; Saint Mary's Regional Medical Center, Inc.; and Renown Health.

³ The Coalition consists of the following: City of Reno; City of Sparks; Carson City; Carson City School District; Washoe County School District; and the Reno-Tahoe Airport Authority.

⁴ NNUC consists of the following: Eldorado Resorts, LLC; Circus and Eldorado Joint Venture, LLC d/b/a the Silver Legacy Resort Casino Reno; CC-Reno, LLC; Golden Road Motor Inn, Inc. d/b/a Atlantis Casino Resort Spa; Truckee Meadows Water Authority; and Caesars Enterprise Services, LLC as manager on behalf of Harveys Lake Tahoe Management Company d/b/a Harrah's Lake Tahoe and Harveys Resort & Casino and Caesars Entertainment Operating Company d/b/a Harrah's Reno.

⁵ The Attorney General intervened pursuant to NRS 228.360.

⁶ Staff of the PUCN is automatically party pursuant to NRS 703.301(1). It is noteworthy Staff of the PUCN acts independently of the Presiding Officer. *See* NRS 703.301(2).

Based upon an extensive and thorough review of oral and written witness testimony and evidentiary exhibits admitted during seven (7) days of administrative hearings, as well as a Stipulation signed by all the parties, and in accordance with Nevada statutory and regulatory law, the PUCN hereby orders the General Rate Application filed by Sierra Pacific Power GRANTED IN PART AND DENIED IN PART.

LEGAL STANDARDS OF REVIEW

The touchstone analysis in any General Rate Application pending before the PUCN is to ensure that any charges imposed on Nevada utility customers are “just and reasonable,” *see* NRS 704.001(4); NRS 704.120(1), which is a statutorily-imposed standard consistent with the PUCN’s responsibility to “[p]rotect, further and serve the public interest.” *See* NRS 703.151(1).

An order by the PUCN will be upheld by a higher court on judicial review when it is “within the legal framework of the law, and based on substantial evidence in the record.” *Nevada Power Co. v. Public Utilities Commission of Nevada (PUCN), et al.*, 122 Nev. 821, 834, 138 P.3d 486, 494 (2006) (other internal citations and quotations omitted). Substantial evidence is that which “a reasonable mind might accept as adequate to support a conclusion.” *Id.* (quoting *State, Emp. Security v. Hilton Hotels*, 102, 606, 608, 729 P.2d 497, 498 (1986)).

Great deference is afforded to the PUCN’s “interpretation of its governing statutes or regulations,” *see Dutchess Business Service, Inc. v. Nevada State Board of Pharmacy*, 124 Nev. 701, 709, 191 P.3d 1159, 1165 (2008), and a higher court will not “reweigh the evidence” or substitute its judgment on factual questions. *Nevada Power Co.*, 122 Nev. at 495, 138 P.3d at 494; NRS 703.373 (11). Evaluating the credibility of witness testimony and the weight to be given to it resides well-within the province of the PUCN’s presiding officer, *i.e.*, fact finder. *See In the Matter of TR v. State*, 119 Nev. 646, 649, 80 P.3d 1276, 1278 (2003). This standard holds true even when expert testimony is conflicting. *See Allen v. State*, 99 Nev. 485, 487-88, 665 P.2d 238 (1983). Indeed, the Nevada Supreme Court has recognized that “[e]xpert testimony is not binding on the trier of fact; [he or she] can either accept or reject the testimony as they see fit.” *Id.*

The PUCN may also take “[n]otice of judicially cognizable facts and generally recognized technical or scientific facts within the specialized knowledge of the agency,” NRS 233B.123(5), and its final decisions “shall be deemed reasonable and lawful” and have operative effect unless they are set aside by a higher court on review upon a showing of clear error or abuse of discretion. *See* NRS 703.373(9); *see also* NRS 703.374(2).

“Findings of fact and decisions must be based upon a preponderance of the evidence.” NRS 233B.125. The “preponderance of evidence” standard is the “minimum civil standard of proof” and represents “the degree of confidence our society thinks [the fact finder] should have in the correctives of factual conclusions for a particular type of adjudication.” *Nassiri v. Chiropractic Physicians Board*, 130 Nev. ___, ___, 327 P.3d 487, 491 (2014) (quoting *Addington v. Texas*, 441 U.S. 418, 423 (1979)). It does not depend upon and is not satisfied simply by finding in favor of the party that produces the greatest number of witnesses or the largest volume of evidence. See *Brown v. State*, 107 Nev. 164, 166, 807 P.2d 1379, 1380-1381 (1991). Rather, a preponderance of the evidence is met when the existence of a fact is more probable than not. *Id.*

THE STIPULATION

Inquiry into a General Rate Application by a public utility, such as Sierra Pacific Power, by the PUCN traditionally encompasses three phases: (1) Cost of Capital; (2) Depreciation and Revenue Requirement; and (3) Rate Design. Here, a procedural order was entered by the PUCN,⁷ which divided the hearings on the general rate application into each of these three phases.⁸

Key Terms of the Stipulation

On October 17, 2016, all of the parties reached and signed a written agreement, *i.e.*, the Stipulation (Exhibit No. 99), which was filed with the PUCN, and was intended by the Parties to resolve the Cost of Capital (Phase 1), the Depreciation and Revenue Requirement (Phase 2), and a distinct portion of the Rate Design (Phase 3) pertaining to all residential and commercial non-NEM customers in this case. The Stipulation contains the following pertinent core terms:

1. Sierra Pacific Power’s annual electric base tariff general revenue requirement shall be reduced by \$2.923 million (or 0.44%). Sierra Pacific Power’s annual gas base tariff general revenue requirement shall be reduced by \$2.402 million (or 2.16%). The return on equity for Sierra Pacific Power’s electric operations shall be set at 9.6% and the stated return on equity for Sierra Pacific Power’s gas operations shall be set at 9.5%.
2. The Stipulation resolves portions of the electric Rate Design Phase of the Consolidated Docket pertaining to all customers and customer classes other than the non-grandfathered net energy metered (NEM-2) customers. For non-NEM-2 customers and customer classes, the Stipulation (a) maintains the existing rate design and (b) spreads the revenue reductions to all classes based on sales through reductions in volumetric charges.

⁷See *PUCN Procedural Order No. 1* at 4 (August 12, 2016).

⁸These matters were re-assigned to a new Presiding Officer effective October 3, 2016.

3. The Stipulation also resolves all rate design issues for Sierra Pacific Power's gas operations by maintaining the existing rate design, spreading the reduction to customer classes based on sales, and effecting the reduction through lowering the per-therm rate.

Revenue Requirement and Cost of Capital

4. Sierra Pacific Power's annual revenue requirement for electric operations will be reduced by \$2.923 million and Sierra Pacific Power's annual revenue requirement for gas operations will be reduced by \$2.402 million. Sierra Pacific Power's electric operations Return On Equity shall be stated as 9.6% and its gas operations ROE shall be stated as 9.5%. Sierra Pacific Power's rate of return shall be based on the capital structure set forth in Statement F of its electric and gas certification filings in Exhibits Nos. 18 and 44 (or 6.65% for electric operations and 5.75% for gas operations).

Operation and Maintenance Expense Adjustments

5. NV Energy will remove from Sierra Pacific Power's and Nevada Power's electric revenue requirement (both capital and lease expense) \$1.7 million attributable to the payment of Newmont's Mining's legal fees. This does not preclude the signatories from arguing the propriety of capital investment in the blocking filters in the next Nevada Power General Rate Application.
6. Sierra Pacific Power will make the following adjustments for the purposes of calculating the electric revenue requirement for the purposes of this case:
 - i. Follow PUCN Staff's proposal with regards to the Tracy Incentive.
 - ii. Exclude from its rate base approximately \$7.8 million associated with the Tracy Wastewater Treatment Plant as proposed by PUCN Staff.
 - iii. Include in its rate base only 37% of the capital investment associated with North Valmy Wells 21, 23, and 27 as proposed by PUCN Staff.
 - iv. Include in rate base only 50% of the capital investment associated with the Valmy Electrical Mechanical Shop, which represents use of the facility for the operation of Valmy until 2025 plus an additional five years for use in connection with remediation and demolition as proposed by PUCN Staff.

7. Sierra Pacific Power reserves the right to include additional amounts in future cases if it makes showings with regard to the Tracy Wastewater Treatment Plant, the North Valmy Wells, and the Valmy Electrical Mechanical Shop.
8. Sierra Pacific Power will make the following adjustments when calculating electric revenue requirement for purposes of this case:
 - i. Follow PUCN Staff's recommendation with regard to the legacy meter regulatory asset adjustment.
 - ii. Extend the amortization of the ON Line lease regulatory assets.
 - iii. Not include the costs of the Tracy Paving project in rate base, as proposed by PUCN Staff and the Bureau of Consumer Protection.
 - iv. Exclude the costs of the Tracy Roof Modification project from rate base as proposed by PUCN Staff.
 - v. Exclude the costs of the Valmy Low NOx Burner project from rate base as proposed by PUCN Staff.
 - vi. Follow the Bureau of Consumer Protection's proposal for the capitalization of Modified Business Tax.
 - vii. Determine the cost of utilizing the General Office Building (GOB) as proposed by Staff and as adjusted by Sierra Pacific Power witness Elena Mello. This determination can be revisited in a future proceeding if Sierra Pacific Power's occupancy levels at the GOB materially change.
9. The following investments will be included in Sierra Pacific Power's rate base and will be considered prudent and the costs will be considered reasonable when calculating electric revenue requirement for purposes of this case:
 - i. 345 kV PLC Replacement.
 - ii. Spanish Springs Under Rate Circuit Breaker Upgrades.

