

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Petition of Google Inc. for a Declaratory Order)
regarding the impact analysis that will be performed)
if Google seeks to obtain service from a provider of) Docket No. 17-04019
new electric resources pursuant to NRS Chapter 704B.)
_____)

ADVISORY OPINION TO GOOGLE ON NRS CHAPTER 704B

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

Google, Inc. filed a request on April 25, 2017,¹ asking the Public Utilities Commission of Nevada (PUCN) to issue an advisory opinion and/or declaratory order explaining how a prospective new business to Nevada may obtain electric service without being subject to any impact fee in accordance with NRS Chapter 704B. *See* NAC 703.825(1); NRS 233B.120.² Specifically, Google seeks guidance from the PUCN on the following three questions: (1) whether there is a minimum period of time Google needs to become and remain as an end-use customer of NV Energy before departing under NRS Chapter 704B; (2) whether Google needs to demonstrate an *actual* average annual load of 1 megawatt or more of electricity use before becoming eligible under NRS Chapter 704B; and (3) whether NRS Chapter 704B mandates a specific time in the construction of a new business, *i.e.*, beginning, during, or end, whereby Google can commence the NRS Chapter 704B process before the PUCN. The ultimate question is whether Google may avoid an impact fee. The short answer is ‘yes.’

A hearing on this matter was held on June 20, 2017, where representatives from Google

¹ Switch, Ltd. filed a letter on May 24, 2017, supporting Google’s request for clarity regarding NRS Chapter 704B in order to provide “new customers certainty regarding their potential future in Nevada.” Regulatory Operations Staff of the PUCN and Google also filed separate comments that are considered in this analysis.

² Analysis and discussion in this advisory opinion is directed toward the unique facts and questions posited by Google and shall not be construed as a binding rule or regulation of general applicability pursuant to NRS Chapter 233B.

and the PUCN Regulatory Operations Staff appeared. *See* NAC 703.825(2). During this hearing, Google stated that it has purchased approximately 1200 acres of undeveloped land in Storey County for the potential development of a data center. 06/20/17 Hearing Transcript (HT) at 6. Google also stated at the hearing that it has a corporate goal of powering its business facilities with “100% renewable energy.” HT at 5. Google further represented that the response from the PUCN regarding the application of NRS Chapter 704B will be “material” to its ultimate decision whether or not to construct a new facility in Nevada. HT at 7. Each of Google’s three questions regarding NRS Chapter 704B will be addressed below.

THE THEORY OF NRS CHAPTER 704B

To place this analysis in its proper context, it is prudent to first discuss the underlying theory of requiring a customer of NV Energy to pay money as an impact fee pursuant to NRS Chapter 704B for the opportunity to purchase electricity in an open market. At the outset, the very idea appears antithetical to what we teach our children about the principles of capitalism. But, it is essential to recognize that electricity is inherently different from most any other commodity, and it is a fundamental necessity to every aspect of our economy and modern way of life. The lights in Nevada need to turn on and stay on whenever we want them to—*always*. Electricity is treated uniquely and Nevadans have partnered with NV Energy for decades under a regulatory compact whereby the PUCN provides governmental oversight to ensure Nevadans remain protected because traditional market forces are not at work.

The premise of the compact is that NV Energy is granted an exclusive monopoly over the electricity market and services in Nevada in exchange for being subject to strict regulatory oversight, which includes achieving policy mandates as set forth by the Nevada State Legislature and the periodic adjustment of customer rates as determined by the PUCN. *See* NRS 704B.310(1).

Under this compact, NV Energy must also be prepared and able to meet the maximum peak electricity needs of *all* Nevada residents and businesses regardless of geographic location (urban and rural) at any given time of any given day of the year.

To achieve this mandate, NV Energy is in a constant mode of planning, building, and forecasting for both the current and anticipated future electricity needs of Nevadans. This ongoing process involves financial investments and long-term commitments that can span decades, but has been done so under the principle that all Nevadans and all Nevada-based businesses are the beneficiaries and stakeholders in NV Energy's investments of both physical and fiscal resources. When a Nevada business files an application pursuant to NRS Chapter 704B, it is in effect seeking to leave or 'exit' the regulatory compact between Nevada and NV Energy to have the opportunity to purchase its electricity on the open, competitive market. It constitutes at least a partial separation or break in that relationship that may entail both benefits and risks.

NRS Chapter 704B is largely unique to Nevada, and the roadmap for businesses that are qualified to invoke this process under Nevada law has become more developed with each case before the PUCN, *see, e.g.*, Docket No. 15-05017 (MGM), Docket No. 16-09023 (Switch), Docket No. 16-11034 (Caesars). But there is still uncharted territory, as each applicant may present unique facts that may distinguish it from others. The touchstone duty of the PUCN is to ensure fairness. It is the PUCN's responsibility to ensure that any departure by a business from the regulatory compact under NRS Chapter 704B "[w]ill not be contrary to the public interest," *see* NRS 704B.310(5), and that any terms and conditions set by the PUCN are "fair and nondiscriminatory" to the remaining ratepayers of Nevada as well as the already-departed businesses. *See* NRS 704B.310(7)(b)(1). Against this backdrop, the legal questions by Google will be addressed below.

QUESTION ONE

Is there a minimum duration of time required for an end-use customer to receive bundled service from NV Energy under NRS Chapter 704B?

ANSWER

No. The provisions of NRS and NAC Chapters 704B are silent on this question, and it is one that appears before the PUCN *de novo*. The Nevada Supreme Court has held that “great deference” is given to an agency’s interpretation of a statute that the agency is charged with enforcing, *State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 293, 995 P.2d 481, 484 (2000), and it is entitled to “consideration and respect,” especially where the agency has a “special familiarity and expertise” with the subject area. *United States v. State Engineer*, 117 Nev. 585, 590, 117 Nev. 585, 589, 27 P.3d 51, 53 (2001). When the plain language of a statute is silent on a particular issue, “it should be construed in accordance with what ‘reason and public policy would indicate the legislature intended.’” *Mineral County v. State, Board of Equalization*, 121 Nev. 533, 540, 119 P.3d 706, 710 (2005) (quoting *Davenport, Comstock Hills—Reno*, 118 Nev. 389, 392 n. 4, 46 P.3d 62, 64 n. 2 (2002)).

The intent of NRS Chapter 704B is to provide a pathway, *i.e.* exit, for certain eligible customers to purchase energy from a source other than NV Energy; but only when that pathway is “not contrary to the public interest.” See NRS 704B.310(5)(a). The plain language of NRS 704B.310(6) provides guidance to the PUCN on how to analyze the “public interest.” In doing so, the PUCN is to examine such factors as whether the public utility “has been providing electric service” to the eligible customer; whether the proposed transaction “will impair system reliability” for remaining customers; and, whether the proposed transaction “will add energy, capacity or ancillary services to the supply in this State.” NRS 704B.310(6)(a)-(c).

Under the facts proffered by Google, it will only become a customer of NV Energy for the sole purpose of meeting statutory and regulatory requirements of NRS Chapter 704B. Therefore, no meaningful increase to generation and load capacity or future resource planning should occur by NV Energy. No impact should occur to system reliability. And Google's proposed transaction will only add energy capacity and ancillary services to this State. Ratepayers should feel nothing, as what is proposed by Google appears largely a symbolic and paper relationship with NV Energy. While NRS Chapter 704B provides no specific time, the one day proposed by Google appears reasonable and sufficient to qualify as an eligible end-use customer.

Additionally, the applicable tariff for electric service suggests that Google does not need to actually purchase or receive bundled electric service to be considered a "customer" eligible to submit an applications pursuant to NRS Chapter 704B. Rule 1 of NV Energy's Electric Tariff for Northern Nevada defines a "customer" as follows:

A person or persons who receives, or whose application for service has been accepted to receive, electric service from Utility; or in whose name such electric service is provided or is to be provided, as evidenced by written, electronic or verbal application for service as may be established by the person's or persons' completion of the application process as specified in the Utility's Tariff schedules.

Under the clear terms of the Rule, status as a "customer" is attained upon acceptance of an application for service or completion of the application process. Google can become a customer of NV Energy upon completion of the application process, which will occur upon execution of a bundled electric service contract between the two companies. As a note: If Google intends to rely upon the temporary construction service to attain customer status, Google needs to ensure that the service is being received under its name and not under the name of a contractor.

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QUESTION TWO

Can an application for bundled service by a prospective end-use customer, who does not actually take service in-fact from NV Energy, satisfy the annual average load requirement to qualify as an eligible customer under NRS Chapter 704B?

ANSWER

Yes, if it includes reliable documentation. NRS 704B.080 requires, among other things, that in order for Google to qualify as an eligible end-use customer³ it must have “an average annual load of one megawatt or more in the service territory” of NV Energy. NRS 704B.080(2)(b). However, NAC 704B.300 provides that a new end-use customer (of less than 12 months) can satisfy the average annual load requirement of NRS 704B.080(2)(b) by a presumption if the new end-use customer can demonstrate to the PUCN that it “will consume, during the 12 months immediately following the date of commencement, 8,760,000 kilowatt-hours or more of energy in the service territory of the utility.” NAC 704B.300(1). In other words, the average annual load requirement can be met if Google provides credible and relevant evidence to the PUCN that *it will* consume 8,760,000 kilowatt-hours of energy in the 12 months after it leaves bundled service.⁴

Reliable documentation from Google may include electric load information for similar facilities, detailed annual load projections, electrical single line drawings showing transmission and feeder sizes and all connected loads, transmission-related studies associated with the planned facility, and evidence regarding the projected loads at each of the identified points of delivery.

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³ The relevant inquiry for NRS Chapter 704B eligibility is whether or not Google qualifies as an “eligible customer” under NRS 704B.080.

⁴ To be clear, acceptance by NV Energy of an application made by Google under NRS Chapter 704B may be sufficient to constitute the receipt of service, as long as sufficient proof is submitted to the PUCN that the average annual load requirement *will be* met during the subsequent year.

Following the preliminary determination that Google is an eligible end-use customer, actual load information will need to be provided as a compliance item to demonstrate that Google will average at least one megawatt of load during the 12 months immediately following the date of Google's departure from bundled electric service

QUESTION THREE

Can a one-day application to depart under NRS Chapter 704B occur at any time during the development of a construction project?

ANSWER

Yes. The language of NRS 704B and NAC 704B is silent on this question, as they are in Question One. *See supra* at 3-4. No practical or discernable public interest would be impaired under the facts proffered by Google as to whether its NRS Chapter 704B application was made before, during, or after completing its construction project, provided that the other requirements of NRS 704B and NAC 704B are satisfied. It is fully within Google's discretion on when to apply and begin the process.

CONCLUSION AND SUMMARY

In summary, the PUCN hereby confirms that Google may comply with NRS Chapter 704B and *avoid an impact fee* by applying to NV Energy on a day of its own choosing to take bundled electric service on the following day and then discontinuing that service the day after, so long as Google subsequently provides sufficient evidence to the PUCN that it will meet the average 1 megawatt annual load requirement set forth in NRS 704B.080(2)(b) and NAC 704B.300(1), and comply with the other applicable statutory and regulatory provisions.

NRS Chapter 704B is not intended to hinder growth and economic development in Nevada or to give prospective businesses pause. It will not be applied by the PUCN in such a rigid manner,

as it often holds true that “[g]overnment never of itself furthered any enterprise, but by the alacrity with which it got out of the way.” Henry David Thoreau, *Civil Disobedience* (1849). NRS Chapter 704B is intended to protect Nevada ratepayers and those businesses who exist and operate under Nevada’s current regulatory compact with NV Energy and the investments *already made* under the existing paradigm. It should not be used to burden⁵ new businesses to Nevada where no meaningful relationship with NV Energy exists. Ratepayers should feel no financial impact.

The facts proffered by Google are unique, and contemplate development that largely falls outside the NRS Chapter 704B framework and intent. Yet, the law must still be followed. The PUCN welcomes Google’s interest in Nevada, and encourages Google to work closely and regularly with the PUCN Regulatory Operations Staff and NV Energy to complete its renewable energy goals. Regulatory uncertainty is bad for business, and the PUCN is committed to making the NRS Chapter 704B process as easy and certain as possible.

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⁵ Google does not request an exemption from mandatory non-bypassable charges applicable to *all* departing customers under NRS Chapter 704B.

IT is so ORDERED this 8 day of September, 2017.


By the PUCN:



JOSEPH C. REYNOLDS, Chairman
and Presiding Officer



ANN C. PONGRACZ, Commissioner

Attest: 
TRISHA OSBORNE,
Assistant Commission Secretary

Dated: Carson City, Nevada

9/8/17
(SEAL)

