

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Application of Las Vegas Resort Holdings,)
LLC d/b/a SLS Las Vegas to purchase energy,)
capacity, and/or ancillary services from a)
provider of new electric resources.)
_____)

Docket No. 18-12019

At a general session of the Public Utilities
Commission of Nevada, held at its offices
on May 23, 2019.

PRESENT: Chairwoman Ann Pongracz
Commissioner C.J. Manthe
Commissioner Hayley Williamson (Dissenting)
Assistant Commission Secretary Trisha Osborne

ORDER

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

I. INTRODUCTION

On December 20, 2018, Las Vegas Resort Holdings, LLC d/b/a SLS Las Vegas (“SLS”) filed with the Commission an Application and on December 27, 2018, SLS filed an Application Supplement (together “the Application”), designated as Docket No. 18-12019, to purchase energy, capacity, and/or ancillary services from a provider of new electric resources.

II. SUMMARY

The Commission grants the Application, subject to the payment of an impact fee and the satisfaction of the compliances and directives delineated in this Order.

III. PROCEDURAL HISTORY

- On December 20, 2018, SLS filed an Application.
- SLS filed the Application pursuant to the NRS and the NAC Chapters 703, 704, and 704B, including, but not limited to, NRS 704B.310, NAC 704B.310 and NAC 704B.340. Pursuant to NAC 703.5274, NRS 703.190 and NRCP Rule 26(c)(7), SLS requested confidential treatment of certain information contained in its Application.

- On December 20, 2018, SLS filed Direct Testimony.
- On December 27, 2018, filed an Application Supplement.
- The Regulatory Operations Staff (“Staff”) of the Commission participates as a matter of right pursuant to NRS 703.301.
- On December 28, 2018, Tenaska Power Services Co. (“Tenaska”) filed a Petition for Leave to Intervene (“PLTI”).
- On January 3, 2019, the Attorney General’s Bureau of Consumer Protection (“BCP”) filed a Notice of Intent to Intervene pursuant to NRS Chapter 228.
- On January 7, 2019, the Commission issued a Notice of Application.
- On January 17, 2019, Nevada Power Company d/b/a NV Energy (“NPC”) filed a Letter of Intent to Participate pursuant to NAC 704B.310 and NAC 703.595.
- On January 18, 2019, the Commission issued a Notice of Prehearing Conference.
- On January 29, 2019, the Commission held a prehearing conference. SLS, NPC, BCP, and Staff (collectively “the Parties”) made appearances.
- On February 6, 2019, the Presiding Officer issued a Procedural Order.
- On February 13, 2019, Tenaska, NPC ,BCP, and Staff filed information requested in the Procedural Order.
- On February 14, 2019, the Presiding Officer issued an Order granting Tenaska’s PLTI.
- On February 15, 2019, the Commission issued a Notice of Hearing.
- On February 20, 2019, SLS filed information requested in the Procedural Order.
- On March 1, 2019, Staff filed its Final Impact Analysis.
- On March 21, 2019, NPC filed Direct Testimony supporting NPC’s Alternative Analysis.
- On March 21, 2019, SLS filed Direct Testimony supporting SLS’s Alternative Analysis.
- On April 5, 2019, BCP filed Direct Testimony.
- On April 5, 2019, NPC filed Direct Testimony.
- On April 5, 2019, Staff filed Direct Testimony.

- On April 12, 2019, NPC filed Revised Direct Testimony.
- On April 15, SLS filed Rebuttal Testimony.
- On April 17, 2019, Staff filed Revised Direct Testimony.
- On April 18, 2019, Staff filed Corrected Revised Direct Testimony.
- On April 19, 2019, BCP filed Supplemental Direct Testimony.
- On April 22, 2019, the Presiding Officer held a hearing. The Parties made appearances. At the conclusion of the hearing, the Presiding Officer admitted Exhibits 1 through 27 and Confidential Exhibits C-1 through C-11 into the record. The Presiding Officer took administrative notice of Late-filed Exhibit 12 in Docket No. 18-09015 and Late-filed Exhibit 24 in Docket No. 18-08007.

IV. LEGAL STANDARD

1. Pursuant to NRS 704B.310(1), an eligible customer cannot purchase energy, capacity, or ancillary services from a provider of new electric resources until it files an application with the Commission and the Commission approves the application. An application filed pursuant to NRS 704B.310 must include:

- (a) Information demonstrating that the person filing the application is an eligible customer;
- (b) Information demonstrating that the proposed provider will provide energy, capacity or ancillary services from a new electric resource;
- (c) Information concerning the terms and conditions of the proposed transaction that is necessary for the Commission to evaluate the impact of the proposed transaction on customers and the public interest, including, without limitation, information concerning the duration of the proposed transaction and the amount of energy, capacity or ancillary services to be purchased from the provider; and
- (d) Any other information required pursuant to the regulations adopted by the Commission.

2. Pursuant to NRS 704B.320, if an eligible customer's load is located in NPC's service territory, the eligible customer must agree to contract with its provider of new electric

resources for an additional amount of energy equal to 10 percent of the total amount of energy that the eligible customer is purchasing for its own use under the proposed transaction. The eligible customer must offer to assign to NPC the rights to the additional 10 percent of energy, and the eligible customer must include with its application information concerning the ten percent contract to be offered to NPC. Such information must include, without limitation, the amount of the energy and capacity to be purchased under the contract, the price of the energy, capacity and ancillary services, and the duration of the contract.

3. To facilitate an eligible customer's submission of statutorily-required information, the Commission adopted NAC 704B.340 which lists components of 704B applications on a granular level. Aside from requiring detailed information regarding the eligible customer, the provider, the underlying contract, and the 10-percent contract, the regulation also mandates submission of information regarding points of delivery, ancillary services, transmission services, and the new electric resources to be supplied by the provider.

4. Once an application is submitted, the Commission must "provide public notice of the application of the eligible customer and an opportunity for a hearing on the application" NRS 704B.310(4). The Commission has 150 days to process the application. If the Commission does not enter a final order on the application within 150 days of filing, the application is deemed approved. NRS 704B.310(8).

5. The Commission must approve the application unless the Commission finds the proposed transaction to be contrary to the public interest or determines that the application does not comply with NRS 704B.320 – the 10-percent contract requirements. NRS 704B.310(5). To make the public interest determination, the Commission must 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.

NRS 704B.310(6).

6. In analyzing the public interest, the Commission may also consider (1) the opportunity of the electric utility to mitigate costs that would otherwise be assigned to its remaining customers; (2) the extent to which the proposed transaction increases or decreases existing subsidies to the remaining customers; (3) whether approval of the application will result in construction of additional generation, transmission, or distribution assets without cost to the remaining customers; (4) whether approval of the application will result in location of generation assets where they may improve or degrade system reliability; (5) whether approval of the application will result in availability of generation assets which may be dispatched by the electric utility or which may be capable of providing ancillary services; and (6) factors that affect the general welfare of the residents of this State, including, employment, economic development, and the quality of life. NAC 704B.410.

7. If the Commission approves the application, the Commission must order any terms and payments necessary to ensure that the proposed transaction will not harm the public interest. NRS 704B.310(7). Such terms must be fair and nondiscriminatory as between the eligible customer and the remaining customers and must include, without limitation, payment by the eligible customer of its load-share portion of any unrecovered deferred accounts balance and payment of the annual assessment and any other tax, fee, or assessment required by NRS

704B.360.

V. NRS 704B APPLICATION

8. On December 20, 2018, SLS filed an Application with the Commission and on December 27, 2018, SLS filed an Application Supplement. (Ex. 1 and 2.) The Application contains four exhibits: Exhibit A is SLS's letter of intent to NPC dated November 20, 2018, ("Letter of Intent"); Exhibit B is a confidential exhibit containing customer-specific information; Exhibit C is a November 20, 2018, letter from Tenaska indicating it intends to serve as SLS's scheduling coordinator; and Exhibit D is a Binding Offer to Assign Contractual Rights pursuant to NRS 704B.320(2)(b) ("the 10-Percent Contract"). (Ex. 1 and 2.)

9. Pursuant to NAC 704B.320, on September 14, 2018, SLS states that it caused to be served Staff, BCP, and NPC with its Letter of Intent notifying these parties of SLS's intent to purchase energy, capacity, and ancillary services from a provider of new electric resources. (*Id.* at 2.) In compliance with NAC 704B.330, SLS states that it met with Staff, BCP, and NPC on December 5, 2018, to discuss SLS's intentions and to identify any issues of concern with respect to the transaction. (Ex. 1 at 20.)

10. SLS requests the Commission grant its application for approval of a transaction with a provider of new electric resources pursuant to NRS Chapter 704B and NAC Chapter 704B. (*Id.*)

A. Eligible customer information and information demonstrating that SLS is an eligible customer (NRS 704B.310(2)(a) and NAC 704B.320(2)(a))

11. Pursuant to NRS 704B.310(2)(a), a 704B application must contain "[i]nformation demonstrating that the person filing the application is an eligible customer." NAC 704B.320(2)(a) further explains that such information must include the name, address, and other contract information for the eligible customer.

12. SLS states that it is an “eligible customer” under NRS 704B.080 and NAC 704B.300. (*Id.* at 2.) SLS states that it is a nongovernmental commercial end-use customer. SLS states that it is located at 2535 S. Las Vegas Boulevard in Las Vegas, Nevada, within NPC’s service territory. (*Id.* at 1) SLS states that the facility has an average annual load in excess of 1 megawatt (“MW”) and has consumed in excess of 8,760,000 kilowatt-hours of energy. (*Id.* at 2.) SLS states that the maximum number of megawatts (“MW”) estimated to be delivered under the proposed transaction is a coincident peak of 5 MW. (*Id.* at 5.)

13. The information provided by SLS confirms that it is an eligible customer as that term is defined in NRS 704B.080. The Commission finds that SLS satisfies the requirements of NRS 704B.310(2)(a) and NAC 704B.320(2)(a).

B. Provider information and information demonstrating that the proposed provider will provide energy, capacity, or ancillary services from a new electric resource (NRS 704B.310(2)(b) and NAC 704B.320(2)(b))

14. Pursuant to NRS 704B.310(2)(b), a 704B application must contain “[i]nformation demonstrating that the proposed provider will provide energy, capacity or ancillary services from a new electric resource.” NAC 704B.320(2)(b) further explains that such information must contain the name, address, and other contact information for the provider as well as identification of the location of the new electric resources or identification of the market for the new electric resources.

SLS’s Position

15. SLS states that it has a letter of intent with Tenaska and will enter into an agreement with Tenaska to acquire energy, capacity and ancillary services (“the Underlying Contract”). (Ex. 4 at 6.) SLS indicates that Tenaska offers marketing and trading services in the Western Electricity Coordinating Council wholesale power markets and has transacted in

Nevada at several trading points, including at the 230 kilovolt (“kV”) Mead Substation (“Mead”). (Ex. 1 at 4.) SLS states that it will acquire firm energy from Tenaska in the form of a Schedule C Conformation(s) to the Western Systems Power Pool Master Agreement that will meet the requirements of NRS 704B.110. (Ex. 4 at 8.) SLS states that it anticipates that service from Tenaska will commence as promptly as possible after Commission authorization is obtained, all necessary metering and communications equipment is installed and operational, and the necessary transmission service agreements are in place. (Ex. 1 at 6.) SLS projects that it can commence taking service from Tenaska as early as October 1, 2019. (*Id.*)

16. SLS asserts that, upon transitioning to unbundled service, SLS has no intention of taking service directly from generation assets that are owned by or are contractually committed to NPC or Sierra Pacific Power Company (“SPPC”). (Ex. 4 at 8.) SLS states that it will require Tenaska to develop and file a compliance policy ensuring the same subject to review and approval by the Commission. (*Id.*)

NPC’s Position

17. NPC states that SLS does not propose to construct a new generation facility in the state of Nevada, which is what the first 704B applicant proposed to do shortly after the Legislature passed AB 661. (Ex. 18 at 7.) NPC states that, instead, SLS proposes to purchase financially-firm energy for delivery at Mead. (*Id.*) NPC asserts that SLS proposed market-based purchases in the western bi-lateral market, a market in which NPC currently operates and is fully capable of making purchases at the market price, *i.e.*, without a premium. (*Id.*) NPC states that this is a fatal flaw and its primary recommendation is that the Commission deny the Application. (*Id.*) NPC’s secondary recommendation is that the Commission impose an impact fee that

provides additional protection for NV Energy's customers against price increases caused by SLS's decision to purchase energy from an alternative provider. (*Id.*)

Commission Discussion and Findings

18. The Commission finds SLS has satisfied the requirements of NRS 704B.310(2)(b) and NAC 704B.320(2)(b), subject to compliance of the filing requirements of NAC 703B.370.

C. Points of delivery information (NAC 704B.320(2)(c))

19. Pursuant to NAC 704B.320(2)(c), a letter of intent to file an application pursuant to NRS Chapter 704B must contain:

Each point of delivery at which the eligible customer intends to purchase energy from the provider and, for each such point of delivery:

- (1) The physical location of the point of delivery; and
- (2) The current account number for the point of delivery, the name on each such account and the current billing address and final billing address for each such account.

20. SLS states that the points of delivery at which it intends to receive energy are set forth in confidential Exhibit B attached to its Application. (Ex. 4 at 9.) SLS also states that Exhibit B contains the energy usage data, billing and meter information, including specific meter locations. (Ex. 1 at 2.)

21. The Commission finds that SLS has satisfied the requirements of NAC 704B.320(2)(c).

D. Information concerning the terms and conditions of the proposed transaction (NRS 704B.310(2)(c) and NAC 704B.320(2)(d))

22. Pursuant to NRS 704B.310(2)(c), an application filed pursuant to NRS Chapter 704B must include:

Information concerning the terms and conditions of the proposed transaction that is necessary for the Commission to evaluate the impact of the proposed transaction on customers and the public interest, including, without limitation,

information concerning the duration of the proposed transaction and the amount of energy, capacity or ancillary services to be purchased from the provider.

23. NAC 704B.320(2)(d) explains that such information must contain:

A description of the proposed transaction in the executed underlying contract between the provider and the eligible customer or, if no executed underlying contract exists when the letter of intent is submitted, a description of the terms that the eligible customer reasonably expects to be included in an executed underlying contract between the eligible customer and the provider for the purchase of energy, capacity or ancillary services from the provider.

24. NAC 704B.320(2)(d) requires the inclusion of certain information describing either the proposed or reasonably expected Underlying Contract between the eligible customer and provider. SLS provided the following list of the terms it anticipates will be included in the proposed transaction between SLS and Tenaska:

- a. The date by which delivery of energy, capacity, and ancillary services will commence is estimated to be October 1, 2019.
- b. The initial term of the Underlying Contract will be a minimum of three years.
- c. The amount of electricity to be purchased is anticipated to be the full amount required by SLS.
- d. Tenaska intends to be SLS's scheduling coordinator pursuant to NAC 704.320(2)(d).
- e. The Point of Receipt is anticipated to be Mead.
- f. The Points of Delivery are anticipated to be the various SLS facilities that qualify under NRS 704B.080 as more fully described in Exhibit B to Ex. 1.
- g. The maximum number of MW estimated to be delivered to the meters identified in Exhibit B to Ex. 1 represents a coincident peak of approximately 5 MW.
- h. Tenaska will meet all the obligations related to Nevada's renewable portfolio standard ("RPS") in accordance with NAC 704B.500.
- i. The energy expected to be purchased is expected to be firm.
- j. Ancillary services will be purchased from NPC pursuant to its Open Access Transmission Tariff ("OATT").
- k. Tenaska will file annual reports including SLS's compliance with Nevada's RPS laws.
- l. Tenaska will pay all applicable local taxes and fees and pay the annual Commission assessment.
- m. Termination and notice provisions.

(Ex. 1 at 4-5 and Ex. 4 at 7-8.)

25. The Commission finds that SLS has satisfied the requirements of NRS 704B.310(2)(c) and NAC 704B.320(2)(d) with respect to information regarding the Underlying Contract.

E. Information specifying the sources of ancillary services (NAC 704B.320(2)(e))

26. Pursuant to NAC 704B.320(2)(e), an application filed pursuant to NRS Chapter 704B must contain information specifying which ancillary services will be taken from which entities.

27. SLS represents that it anticipates purchasing all ancillary services from NPC pursuant to the terms of the OATT. (Ex. 1 at 5.)

28. The Commission finds that the SLS has satisfied the requirements of NAC 704B.320(2)(e).

F. Information indicating whether the new electric resources will be delivered from within or outside NPC's control area (NAC 704B.320(2)(f))

29. Pursuant to NAC 704B.320(2)(f), an application filed pursuant to NRS Chapter 704B must contain information indicating whether the new electric resources will be delivered from within or outside of the control area of the electric utility.

30. SLS states that it expects the new electric resources will be delivered from outside NPC's control area to Mead pursuant to the terms of NPC's OATT. (Ex. 1 at 5.)

31. The Commission finds that SLS has satisfied the requirements of NAC 704B.320(2)(f).

G. Information demonstrating that the eligible customer or the provider has the ability to enter into distribution service and transmission service agreements necessary and the proposed rates, terms, and conditions of each such agreement (NAC 704B.340(1)(a) and (b))

32. Pursuant to NAC 704B.340(1)(a), an application filed pursuant to NRS Chapter 704B must contain:

Information demonstrating that the eligible customer or the provider has the ability to enter into all transmission service agreements necessary for the provider to deliver energy to the distribution system of the electric utility, and the proposed rates, terms and conditions of each such agreement. The eligible customer shall be deemed to have met the requirements of this subsection if:

- (1) The eligible customer or the provider demonstrates that transmission service agreements with the electric utility will not be necessary for the provider to deliver energy to the distribution system of the electric utility; or
- (2) The eligible customer demonstrates that it is an eligible customer under the OATT of the electric utility and the eligible customer agrees, to the extent applicable, to pay all costs for system impact studies, costs for construction and other costs required under the OATT of the electric utility to obtain the necessary transmission service.

33. SLS states that it will enter into a Network Integration Transmission Service Agreement (“NITS Agreement”) pursuant to the terms of NPC’s OATT to facilitate the purchase of approximately 5 MW of energy, capacity and ancillary services. (Ex. 1 at 5 and Ex. 4 at 9-10.) SLS also states that it will enter into a Network Operating Agreement (“NOA”) in the standard form contained within Attachment G to the OATT. (Ex. 1 at 5-6 and Ex. 4 at 9-10.) SLS states that it will file the NITS Agreement and NOA with the Commission pursuant to NAC 704B.370(1)(b). (Ex. 1 at 6 and Ex. 4 at 10.) SLS also states that pursuant to NAC 704B.370(1)(a) it will file with the Commission and serve on all parties a completed and fully executed Distribution-Only Service Agreement (“DOS”) which will be negotiated pursuant to the terms of NPC’s DOS tariff. (Ex. 1 at 6 and Ex. 4 at 10.)

34. SLS states that it has begun the process of preparing its NITS application. (Ex. 4 at 9.) SLS further states that it will enter into a Transmission Reduction Plan as required by the OATT. (*Id.* at 10.)

35. The Commission finds that SLS has satisfied the requirements of NAC 704B.340(1)(a).

H. Time-of-use meters information (NAC 704B.340(1)(b))

36. Pursuant to NAC 704B.340(1)(b), an application filed pursuant to NRS Chapter 704B must contain information demonstrating that all energy delivered to the eligible customer will be metered through one or more time-of-use meters for each point of delivery.

37. SLS states that any Points of Delivery that do not currently have the necessary time-of-use meters and related communications system for unbundled service will be upgraded as required by NAC 704B.340(1)(b), combined with other meters or withdrawn from its Application. (Ex. 1 at 6.)

38. The Commission finds that SLS has satisfied the requirements of NAC 704B.340(1)(b).

I. The 10-percent contract information (NRS 704B.320 and NAC 704B.340(1)(f))

39. Pursuant to NRS 704B.320(3), an application filed pursuant to NRS Chapter 704B by an eligible customer in NPC's service territory must contain:

all information concerning the contract offered to the electric utility that is necessary for the Commission to determine whether it is in the best interest of the remaining customers of the electric utility for the electric utility to accept the rights to the contract. Such information must include, without limitation, the amount of the energy and capacity to be purchased under the contract, the price of the energy, capacity and ancillary services and the duration of the contract.

40. NAC 704B.340(1)(f) explains that the 10-percent contract information submitted with the application must include:

- (1) Information demonstrating that the eligible customer has obtained the 10-percent contract in accordance with subsection 2 of NRS 704B.320;
- (2) A binding offer, in the form of a separate contract, to assign the 10-percent contract to the electric utility; and

- (3) All the information reasonably foreseen to be necessary to enable the Regulatory Operations Staff or any party of record to perform an analysis of the 10-percent contract.

41. SLS states that it will obtain the required contractual rights for an additional amount of energy equal to 10 percent of the total amount of energy that SLS is purchasing for its own use under the proposed transaction and the capacity and ancillary services associated with the additional amount of energy (the “10-Percent Contract”). (Ex. 1 at 6.) SLS states further that it has executed a binding offer to assign the 10-Percent Contract rights to NPC in the event its Application is approved and the Commission finds such assignment to be in the best interests of NPC’s remaining customer. (*Id.* and Ex. 2.)

42. The Commission finds that SLS has satisfied the requirements of NRS 704B.320(3) and NAC 704B.340(1)(f).

VI. APPROVAL OF APPLICATION

43. Pursuant to NRS 704B.310(5), the Commission must approve an application unless the Commission finds that the proposed transaction (1) will be contrary to public interest or (2) does not comply with the provisions of NRS 704B.320 – the 10-Percent Contract provisions. As discussed in more detail below, the Commission conditionally approves SLS’s Application.

A. Public Interest

44. Pursuant to NRS 704B.310(6), in determining whether the proposed transaction will be contrary to the public interest, the Commission must 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.

1. NRS 704B.310(6)(a) – Whether the electric utility will be burdened by increased costs or whether remaining customers will pay increased costs for electric service

a. Upfront Fee

SLS’s Position

45. SLS states that, in the NPC service territory, the Commission’s approach to assessing an impact fee calls for using a six-year impact period and includes an upfront impact fee and non-bypassable surcharges. (Ex. 7 at 2.) SLS states that the upfront fee consists of four major components: (i) Base Tariff General Rate (“BTGR”); (ii) net-Base Tariff Energy Rate (“net-BTER”); (iii) Regulatory Assets not in rates but with known balances and amortization schedules; and (iv) Energy Efficiency (“EE”) and Demand-Side Management (“DSM”). (*Id.*) SLS states that, since 2015 in each of the 704B dockets processed and approved based on a full evidentiary record, the Commission has employed a substantially similar approach aside from whether the applicant was an existing or new customer. (*Id.* at 3.) SLS states that the approach employed, both north and south, has been consistent with the Commission’s stated characterization of the impact fee as “a reasonable-estimated forecasted revenue impact to the utility and its remaining customers over an impact period – a snapshot in time resulting in a forecasted revenue impact.”¹ (*Id.*)

46. SLS states that it agrees that it is important for the Commission to be consistent and non-discriminatory between similarly situated entities. (*Id.* at 5.) SLS states, however,

¹ Order (Docket No. 18-02010 (Tax Rider Dockets)) at 72.

where the facts and circumstances are not sufficiently similar, different treatment may be warranted. (*Id.* at 5.)

47. SLS states that, in practical terms, the determination of the financial impact of a departing customer is essentially a stranded cost analysis, net of avoided cost to serve benefits to the system. (*Id.* at 8.) SLS asserts that the impact fee should not exceed the fixed, sunk costs that NPC has incurred directly to serve the customer (net of avoided cost to serve benefits to the system) and which cannot be avoided if the customer takes service from another power supplier. (*Id.*)

48. SLS notes that it mostly agrees with Staff's Final Analysis. (*Id.* at 9.) SLS states that its Alternative Analysis makes one primary adjustment to Staff's Final Analysis in order to ensure that SLS's transition to DOS will not be contrary to the public interest with respect to the remaining system and to SLS. (*Id.*) SLS argues that consistent with the treatment of all 704B applications approved since 2015 based on a full evidentiary record, it recommends that SLS be credited with 100 percent of Off-System Sales ("OSS") revenues estimated by PROMOD. (*Id.* at 11.) SLS states that there are no new facts or circumstances that would justify treating SLS different from all other 704B Applicants. (*Id.*)

NPC's Position

49. NPC recommends:
- a. That the Commission conclude that the Application is contrary to the public interest and deny the Application;
 - b. That the Commission find the impact fees proposed by SLS and Staff are deficient and do not protect the public interest;

- c. That, should the Commission be inclined to grant the Application, it impose the impact fee proposed by NPC as follows:
- i. A BTGR analysis period of at least eighteen years;
 - ii. A discount rate consistent with current overnight funds rate;
 - iii. A marginal generation demand cost allocation;
 - iv. A BTER analysis period of three years;
 - v. Non-bypassable Renewable-BTER (“R-BTER”), Renewable Energy Program Rate (“REPR”), and Temporary Renewable Energy Development charge (“TRED”) charges extending for the life of the contracts and related programs; and
 - vi. Other charges, *e.g.*, governmental fees and DSM charges, as proposed by Staff.

(Ex. 18 at 3.)

50. NPC states that, as provided for in NRS Chapter 704B, the Commission’s role is to “protect the electric utilities in this state and their remaining customers”² (*Id.* at 4.) NPC further states, “[A]ll transactions proposed by eligible customers pursuant to [Chapter 704B] must be carefully reviewed by the [Commission] to ensure that . . . remaining customers are not subject to increased costs as a result of the transaction and that the proposed transactions are not otherwise contrary to the public interest.”³ (*Id.*)

51. NPC states that, in making its determination, the Commission must consider at least five factors: (a) whether NV Energy will be burdened by increased costs; (b) whether any remaining customers will pay increased rates; (c) whether the transaction will impair system

² 2001 Statutes of Nevada 3223, Chapter 604.

³ *Id.*

reliability; (d) whether the transaction will impair NV Energy's ability to provide electric service to remaining customers; and (e) whether the transaction will add energy, capacity or ancillary services to the supply of this State. (*Id.*)

52. NPC states that SLS is responsible for demonstrating that the transaction would not be contrary to the public interest. (*Id.* at 5.) NPC argues that SLS's case is essentially grounded on the notion of inertia – that Commission orders since 2015 generally need to be adhered to and that the only instances where the Applicant believes the Commission should deviate from those decisions is when the deviation benefits the Applicant. (*Id.*) NPC states that the Commission has noted that it is not bound by *stare decisis* and that, if the Commission were to blindly apply the same analysis in this case as it did in a past case, it would result in *ad hoc* rulemaking. (*Id.* at 6.)

53. NPC states that the transition of customers to DOS reduces full service marginal revenue by \$57.7 million. (Ex. 17 at 4.) NPC notes that while DOS revenue and transmission service revenue will increase, the impact fee amortization is insufficient to hold NPC's remaining customers harmless. (*Id.*) NPC states that, all other things being equal, NPC's remaining customers will pay BTGR rates that are \$17.0 million higher than they otherwise would be in the next general rate case ("GRC") and potentially \$30.3 million higher than they otherwise would be in the subsequent GRC. (*Id.*)

54. NPC states that load growth is one of the significant factual circumstances that the Commission must consider when it evaluates the impact of a transaction under 704B as well as the potential for future 704B activity. (*Id.* at 4-5.) NPC states, that when all eligible remaining customers are removed from the 2018 Integrated Resource Plan ("IRP"), NPC's retail sales do not return to the 2018 baseline by 2040. (*Id.* at 11-22.)

BCP's Position

55. BCP recommends the Commission approve SLS's application subject to paying the impact fee utilizing the six-year non-bypassable methodology as calculated by Staff. (Ex. 19 at 3.) BCP states that, when considering individual 704B applications, Staff's method provides an estimate of an impact fee that should reasonably ensure that the remaining ratepayers and NPC are not burdened with SLS's departure. (*Id.*) BCP states, however, that when taken collectively, it is becoming concerned that there may be impacts to the remaining customers that are not captured by the current method of analysis. (*Id.*) BPC notes that NPC demonstrated the cumulative impact on load growth of eligible customers departing bundled service on load growth and explained that it takes much longer for the load growth to replace the collective departed load than is expected when evaluating any single 704B application. (*Id.* at 3-4.)

56. BCP states that it recognizes that the Commission can modify the 704B process and methodology to address these specific concerns, but in addition to the direct impact fee issues, BCP also has concerns about the indirect consequences of 704B departures on remaining customers. (*Id.* at 4.) BCP states that identifying and developing solutions for these indirect consequences is a work in progress but may include: (a) Is it fair and just and reasonable to small customers that large customers can depart bundled service while they cannot? (b) What is the impact on residential and small commercial/industrial customers to be served by a utility system devoid of large commercial/industrial customers, noting that the long-term impact on remaining customers of losing high-load factor customers from bundled service has not been fully considered? (c) How will the class cost allocations, using cost of service studies to allocate revenue requirement responsibility among various customer classes, change with the departure of large commercial/industrial customers?

Staff's Position

57. Staff recommends that the Commission find it to be in the public interest to approve SLS's Application under the terms and conditions of its Final Impact Analysis. (Ex.25 at 3.) Staff states recommends that the Commission order SLS to pay an upfront impact fee of approximately \$1.298 million and to comply with the compliances and directives set forth in Attachment AED-2. (*Id.*) Staff states that, with the exception of its analysis regarding OSS, its Final Impact Analysis is similar to those 704B applicants who have recently departed NPC's bundled retail electric service. (*Id.* at 11.)

58. Staff states that its recommended terms and conditions reasonably assure that neither NPC nor its remaining customers will be burdened with increased costs because Staff's Final Impact Analysis incorporates reasonably known and measurable costs that would inure to remaining customers when SLS departs NPC's service and does not attempt to calculate highly speculative impacts that are not reasonably know or measurable at this time. (*Id.* at 14.)

SLS's Rebuttal

59. SLS states that there are two new pieces of information that suggest that Staff's impact fee recommendation is overstated. (Ex. 27 at 3) SLS states that the first of these pieces of information is that in the 2017 GRC the Commission authorized a new earning sharing mechanism that would refund a portion of earnings NPC earned in excess of its authorized return back to ratepayers. (*Id.*) SLS states that this would include SLS who paid fully bundled rates through all of 2018. (*Id.*) SLS concludes that it is entitled to a share of \$21.5 million equating to \$21,500.00. (*Id.*)

60. SLS states that the second piece of new information is a NPC recent announcement that it plans to reduce the BTGR revenue requirement by \$100 million in the 2020

GRC. (*Id.*) SLS notes that those rates will go into effect in 2021. (*Id.* at 3-4.) SLS asserts that this means that the assumption requested by Staff to hold BTGR rates constant over the impact period is incorrect. (*Id.* at 4.) SLS states that \$100 million is approximately 10 percent of NPC's total BTGR and a 10 percent reduction in the BTGR impact fee component for SLS beginning in 2021 is approximately \$120,000.00 on Net Present Value ("NPV") basis. (*Id.*) SLS states that these two adjustments based on filings and statements made by NPC should be reflected in any impact fee ordered by the Commission. (*Id.*) SLS states that if the Commission determines that these are not yet measurable enough, the Commission should reserve a placeholder adjustment as it has done for such items as Reid Gardner, Valmy, and EDIT. (*Id.*)

Commission Discussion and Findings

61. The Commission is willing to reconsider a prior position when compelling data and supporting documentation are presented. The presentation of substantially similar facts and expert opinions in multiple dockets results in substantially similar findings of fact and conclusions. In making findings, the Commission relies on substantial evidence. Substantial evidence is that which a "reasonable mind might accept as adequate to support a conclusion." *Tighe v. Las Vegas Metro. Police Dept.*, 110 Nev. 632, 634, 877 P.2d 1032, 1034 (1994), *citing*, *State Emp. Security v. Hilton Hotels*, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986). *See also*, *Public Service Comm'n v. Continental Tel. Co. of Calif.*, 94 Nev. 345, 348, 580 P.2d 467, 468 (1978), *citing*, *Garson v. Steamboat Canal Co.*, 43 Nev. 298, 185 P. 801 (1919). The substantial evidence test for upholding factual findings is "extremely deferential to the factfinder." *Rhine v. Stevedoring Services of America*, 596 F.3d 1161 (9th Cir. 2010), *citing*, *Metro. Stevedore Co. v. Rambo*, 521 U.S. 121, 149, 117 S.Ct. 1953 (1997).

62. The upfront impact fee has been calculated by Staff (at a net present value) to

determine the costs associated with the impact of SLS's departure from NPC's bundled retail electric service. Staff calculates the total upfront impact fee to be approximately \$1.279 million (NPV). As will be discussed in more detail elsewhere in this Order, the separate cost components that make up the \$1.279 million upfront impact fee are: (1) \$1.706 million representing the BTGR impact; (2) a \$303,000.00 credit representing the net-BTER impact; (3) a \$233,000.00 credit representing the variable operating and maintenance cost components; (4) \$3,000 representing SLS' obligation for non-ERCR regulatory assets; (5) \$39,000.00 representing SLS's obligation for ERCR regulatory assets; (6) \$67,280.00 representing SLS's DSM recapture payment; and (7) \$63,964.00 representing local government fees. These dollar amounts are subject to change and will not be known with certainty until compliance filings are made.

63. The Commission finds that, with the exception of Staff's analysis regarding OSS, Staff's Final Impact Analysis is similar to its analyses for the NRS 704B applicants who have recently departed NPC's bundled retail electric service and reasonably calculates the impact fee.

i. BTGR

SLS's Position

64. SLS agrees with the BTGR component of Staff's Final Impact Analysis. (Ex. 7 at 9.)

NPC's Position

65. NPC states that it is recommending an alternative analysis with a NPV for the BTGR of \$3,468,000. (Ex. 12 at 4, n 2) NPC states that the impact fee is calculated by fixing the BTGR and variable operations and maintenance credit ("VOM") to an eighteen-year assessment period. (*Id.* at 4.)

66. NPC states that there is no question that circumstances today are far different than they were when the Nevada Legislature adopted NRS Chapter 704B in 2001. (Ex. 13 at 1.) NPC notes that in light of the prevailing conditions, the legislature reasonably assumed that the 704B process advanced the public interest in 2001 when it allowed Nevada's largest energy consumers to use their own resources and credit to develop new generating resources for Nevada. (*Id.* at 2.) NPC asserts that today, in contrast, the 704B process does not advance the public interest and has impacted the scale of its operations. (*Id.*) NPC states that the transactions proposed by customers do not reduce the total cost of electric consumption. (*Id.*) NPC states that applying the "substantially disproportionate" allocation of load growth to 704B applicants adopted by the Commission in the Sands/Wynn/MGM 704B proceedings to NPC would increase electric prices for its customers, which runs counter to the purpose of Chapter 704B. (*Id.* at 2)

67. NPC states that, since 2014, none 704B applicants has affirmatively shown that the transactions they have proposed will decrease the total cost of electricity for customers in NPC's service territory. (*Id.*) NPC notes that when a customer accesses wholesale markets at market prices at the same price that NPC can access those markets, the price of electricity consumed in the state by NPC's customers is not reduced. (*Id.*) NPC argues that a comprehensive review and reform of the 704B process is needed and, until such a review is completed and reforms are made, the Commission should insist upon a compelling showing by the applicant that the proposed transaction is in the public interest or use a much longer period for analyzing the impact of 704B transactions on BTER to protect the interest of remaining customers. (*Id.* at 3.)

68. NPC states that the transition of customers to DOS reduces full service margin revenue by \$57.7 million. (Ex. 17 at 4.) NPC notes that, while DOS service revenue and

