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18-02010

Public Utilities Commission of Nevada
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Nevada Gaming Group

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Reply to: Reno

March 7, 2018

Breanne Potter
Assistant Commission Secretary
Public Utilities Commission of Nevada
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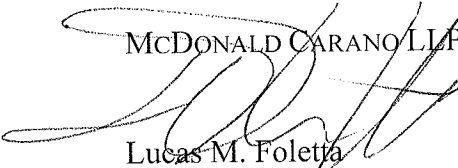
***Re: Docket Nos: 18-02010, 18-02011, and 18-02012;
Motion to Extend the Procedural Schedule***

Dear Ms. Potter:

Please accept for filing in the above-referenced docket the Motion to Extend the Procedural Schedule filed on behalf of Boyd Gaming Corporation (“Boyd”), Station Casinos, LLC (“Station”), Las Vegas Sands Corp. (“Sands”), TLC Casino Enterprises, Inc. (“TLC”), Eldorado Resorts LLC, Circus and Eldorado Joint Venture LLC, Silver Legacy Resort Casino Reno, CC-Reno LLC (together with Eldorado Resorts LLC, Circus and Eldorado Joint Venture LLC, Silver Legacy Resort Casino Reno “Eldorado”), The Plaza Hotel and Casino (“Plaza”), and Peppermill Casinos, Inc. (“Peppermill”) (collectively, “Petitioners” or “Nevada Gaming Group”), in this proceeding.

Please do not hesitate to contact me directly at (775) 788-2000 should you have any questions or concerns regarding this submission.

Sincerely,


MCDONALD CARANO LLP
Lucas M. Foletta

LMF/ajb
Enclosures (as stated herein)

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1 BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

2 Application of Nevada Power Company d/b/a
3 NV Energy filed under Advice Letter No. 485
4 to revise Tariff No. 1-B to establish the 2017
Tax Rate Reduction Rider

Docket No. 18-02010

5 Application of Sierra Pacific Power Company
6 d/b/a NV Energy filed under Advice Letter No.
7 605-E to revise Electric Tariff No. 1 to
establish the 2017 Tax Rate Reduction Rider.

Docket No. 18-02011

8 Application of Sierra Pacific Power Company
9 d/b/a NV Energy filed under Advice Letter No.
10 326-G to revise Gas Tariff No. 1 to establish
the 2017 Tax Rate Reduction Rider.

Docket No. 18-02012

11 MOTION TO EXTEND PROCEDURAL SCHEDULE AND REQUEST FOR ORDER
12 SHORTENING TIME

13 Boyd Gaming Corporation (“Boyd”), Station Casinos, LLC (“Station”), Las Vegas Sands
14 Corp. (“Sands”), TLC Casino Enterprises, Inc. (“TLC”), The Plaza Hotel and Casino (“Plaza”),
15 Eldorado Resorts LLC, Circus and Eldorado Joint Venture LLC, Silver Legacy Resort Casino
16 Reno, CC-Reno LLC (together with Eldorado Resorts LLC, Circus and Eldorado Joint Venture
17 LLC, Silver Legacy Resort Casino Reno “Eldorado”), and Peppermill Casinos, Inc.
18 (“Peppermill”) (altogether, “Petitioners” or “Nevada Gaming Group”) by and through their
19 attorneys Lucas Foletta and Curt Ledford of the law firm of McDonald Carano LLP, hereby
20 submits this Motion to Extend Procedural Schedule and Request for Order Shortening Time
21 (“Motion”) to the Public Utilities Commission of Nevada (“Commission”) pursuant to NAC
22 703.550.

23 **I. Introduction**

24 Nevada Power Company (“NPC”) and Sierra Pacific Power Company (“SPPC”) (together, “NV Energy” or the “Company”) filed the above-captioned Applications purportedly

1 to pass on to ratepayers savings associated with the Tax Cuts and Jobs Act (“TCJA”). The
2 Applications, however, are summary in nature and fail to propose passing on all of the savings
3 associated with the TCJA at this time. As such, significant discovery, development of expert
4 testimony and preparation for hearing is necessary to fully determine whether the proposals
5 reflected in the Applications are just and reasonable. As articulated more fully below, the
6 Nevada Gaming Group therefore requests the Commission extend the procedural schedule in this
7 matter and set a date for hearing no sooner than 45 days from the existing hearing date. In the
8 meantime, the Commission should conditionally approve NV Energy’s proposals subject to a
9 final order in these proceedings. The Commission should further issue an order shortening time
10 for any responses to this Motion so the issues raised here may be resolved at the prehearing
11 conference.

12 **II. Background**

13 NV Energy filed the Applications on February 14, 2018 proposing to pass through to
14 ratepayers “the benefits of the federal income tax rate reductions associated with the Tax Cuts
15 and Jobs Act of 2017 [“TCJA”].” (NPC Application at 1.) The Applications are summary in
16 nature and request that the Commission approve the requested riders on an extraordinarily short
17 timeframe. The Applications were filed pursuant to advice letter authority reflected in NRS
18 704.100(f), (*see e.g.*, NPC Application at 1), are not accompanied by any pre-filed testimony and
19 are supported merely by an eight-page whitepaper. (*E.g. id.* at 33). NV Energy requested that
20 the proposed 2017 Tax Rate Reduction Riders (“TRRRs”) go into effect April 1, 2018. (*E.g. id.*
21 at 1.)

22 Perhaps more importantly, the Applications make no reference to the savings associated
23 with the so-called excess accumulated deferred income tax (“ADIT”) balance. That balance was
24 collected from existing customers assuming the historical 35% corporate tax rate, whereas going

1 forward the tax rate applicable to NV Energy is 21%. As such, as it relates to the excess ADIT
2 balance, there are substantial tax savings associated with the change in rate that should be passed
3 on to customers but are not.

4 Nevada Gaming Group estimates preliminarily—and without the benefit of having
5 conducted discovery—that the savings associated with the change in tax rate to the excess ADIT
6 balance is approximately \$36m annually for customers in NPC’s service territory and
7 approximately \$10.5m in SPPC’s service territory.¹ The extent of the savings associated with the
8 TCJA’s is substantial. For NPC’s customers, those savings are in excess of the revenue
9 requirement reduction ordered by the Commission in NPC’s recent general rate case, in which
10 the Commission ordered a historically significant rate decrease.

11 Only after receiving inquiries regarding the issue of the excess ADIT balance did NV
12 Energy indicate publicly its proposed treatment thereof. With respect to the so-called
13 “protected” balance, NV Energy indicated that those savings are being handled according to law,
14 thus excusing the absence of any reference to that treatment in the Applications. (NV Energy
15 Response Comments at 3.) With respect to the so-called “unprotected balance,” the Company
16 indicated that it was not addressed in the Applications because the Company has not yet decided
17 “when and how to flow this benefit to customers.” (*Id.*)

18 On February 16, 2018, the Commission issued its Procedural Order setting the date to file
19 petitions for leave to intervene in this matter for March 7, 2018, the prehearing conference for
20 March 9, 2018, and the hearing for March 16, 2018. (Procedural Order at 1-2.)

21 **III. Law**

22 Under Nevada law, “[a]lthough proceedings before administrative agencies may be
23 subject to more relaxed procedural and evidentiary rules, due process guarantees of fundamental
24

¹ These figures assume an annual average amortization.

1 fairness still apply.” *Dutchess Business Services, Inc. v. Nevada State Bd. of Pharmacy*, 124
2 Nev. 702, 711 (2008) (citing e.g., *Bivens Constr. v. State Contractors’ Bd.*, 107 Nev. 281, 283
3 (1991)). Thus, “[a]dministrative bodies in Nevada must follow their established procedural
4 guidelines and give notice to the defending party of ‘the issues on which decision will turn and
5 ... the factual material on which the agency relies for decision so that he may rebut it.’” *Id.*
6 (citing *McClelland v. Andrus*, 606 F.2d 1278, 1285-86 (D.C. Cir. 1979)).

7 In matters before the Commission, the parties “may conduct discovery with regard to any
8 information that is not privileged through written data requests and oral depositions that are
9 reasonably calculated to obtain information that is relevant to the matter.” NAC 703.680(1).
10 The parties also have the right to cross examine witnesses and present their own evidence. *Id.* at
11 703.685(3) (providing for right to cross examination) and 703.695(1) (providing for right to
12 present evidence).

13 **IV. Discussion**

14 **a. The Commission must extend the procedural schedule in this matter to ensure 15 that the requirements of due process are satisfied.**

16 As is indicated by NV Energy’s proposal, customers are likely to see substantial savings
17 associated with the reduction of the corporate tax rate. NV Energy, however, has failed to make
18 a comprehensive proposal with respect to the savings associated with the TCJA. Indeed, the
19 company misleadingly stated that the Applications propose to flow through to customers “the
20 benefits” of the TCJA, leaving the impression that it was proposing to return all of the savings
21 associated with TCJA when in fact it has not. The Applications make no reference to the
22 substantial savings associated with the excess ADIT balance. Only after Comments made by
23 Walmart did NV Energy provide a public explanation of its treatment of the excess ADIT
24 balance.

That explanation is vague and inconclusive. With respect to the protected balance, the

1 Company's assertion that the amortization of that balance is occurring according to law does not
2 provide an explanation of how ratepayers will be impacted. The extent to which and the timing
3 of when the savings associated with the protected balance will amortize to ratepayers through
4 rates is unclear. What's more, the novelty and relative newness of the TCJA makes confirming
5 NV Energy's assertion that the protected balance is being handled consistent therewith
6 difficult—particularly, on a short time frame.

7 With respect to the unprotected balance, the picture is even fuzzier. As to that balance,
8 NV Energy has indicated that it has not yet decided when and how to flow those savings to
9 customers. Equally as important, it has not indicated what it is doing with those savings now.

10 With respect to the proposals the Applications do make, they raise significant questions.
11 The obvious question is whether the savings NV Energy proposes to flow through to ratepayers
12 accounts for all of the non-excess ADIT savings associated with the TCJA. There is no way to
13 make that determination based on the content of the Applications. It is also unclear how the tax
14 savings that essentially occurred between enactment of the TCJA and April 1, 2018 are being
15 handled. If NV Energy amortized even four months of tax savings to earnings, that total amount
16 amortized would be, using the figures NV Energy provided in the Applications, approximately
17 \$20m. There is no justification for the Company retaining any of the savings associated with the
18 TCJA.

19 In light of the foregoing, what should have been a straightforward exercise in flowing all
20 the savings resulting from the TCJA to ratepayers has been complicated by NV Energy's failure
21 to propose and articulate a comprehensive mechanism to return ratepayers' money. This failure
22 necessitates an extension of the procedural schedule so that the parties may investigate NV
23 Energy's proposals, both stated and unstated, in order to ensure that ratepayers' interests are
24 properly protected—i.e., that the savings associated with the TCJA are passed through to

1 ratepayers promptly and in full.

2 Conducting the proper examination is impossible prior to the scheduled hearing in this
3 matter. There is simply no way to propound meaningful discovery and prepare expert testimony
4 in that time frame. In fact, the summary nature of the Applications and the obvious omissions
5 likely necessitate more in-depth discovery than would have been necessary had NV Energy been
6 more forthcoming in the Applications. Requiring that this matter be heard on the extraordinarily
7 tight time frame currently set would violate the parties due process rights.

8 As described above, Nevada law requires that administrative agencies follow their own
9 procedures in a manner consistent with fundamental fairness. *Dutchess Business Services*, 124
10 Nev. at 711. Fundamental fairness requires more than one week to prepare to participate in a
11 hearing the subject of which is, including savings relating to the excess ADIT balance, in excess
12 of \$100m annually. The parties must issue discovery, engage experts, prepare testimony and
13 potentially raise legal arguments. That cannot happen in one week, particularly given the
14 sparseness of the Applications, the significant omissions and the novelty of the issues raised.

15 Extending the time for hearing in this matter is supported by administrative decisions
16 from other jurisdictions. In *In re Matter of Application of PacifiCorp for Approval of a General*
17 *Rate Increase*, 2005 WL 7146869 (Wyo. P.S.C. 2005), the Wyoming Public Service
18 Commission (“WPSC”) rejected PacifiCorp’s request for a shortened procedural schedule to
19 consider a \$40.2 million retail electric utility service rate increase. *Id.* at *6. In that case,
20 PacifiCorp requested a shortened procedural schedule to consider the rate increase in the event a
21 partial stipulation was reached. *Id.* at 1. The shortened schedule would have allowed non-
22 settling interveners only fifteen (15) days to conduct discovery and prepare and file their
23 opposition case in chief. *Id.* at 5.

24 In rejecting the shortened schedule, the WPSC concluded that the shortened procedural

1 schedule would “not provide sufficient time, and the manner is sufficiently summary that it does
2 not appear to be able to satisfy the [due process] standard.” *Id.* at 5. As such, the WPSC
3 concluded that unless all parties agreed to settle the case, “it could not be in the public interest
4 for the Commission to make a decision in this substantial and complex contested case on a
5 marginally or incompletely developed record on major issues of first impression in Wyoming.”
6 *Id.* Instead, the WPSC concluded that an approximately seven (7) month schedule was
7 appropriate. *Id.*

8 As to specific elements of the due process requirements, other administrative decisions
9 have spoken to the right to conduct effective cross-examination and discovery as essential. In *In*
10 *re Application of Mountainridge Telephone*, 2015 WL 328410 (Kan. S.C.C. 2015), the Kansas
11 State Corporation Commission (“KCC”) acknowledged that “[t]he basic elements of procedural
12 due process are notice and the opportunity to be heard at a meaningful time and manner.” *Id.* at
13 *3. In doing so, the KCC identified the right to cross-examination as “one of fundamental
14 importance and is generally recognized as an important requirement of due process.” *Id.* (citing
15 *Farmland Indus. v. Kansas Corp. Common*, 25 Kan. App. 2d 849, 859 (1999)). In concluding
16 that Mountainridge had been afforded adequate due process, the KCC further identified the fact
17 that the procedural schedule established in the case provided for adequate notice of the
18 evidentiary hearing, time to file two rounds of post hearing briefs, and present evidence of its
19 own at the hearing as supporting the existence of due process. *Id.*

20 In *New Mexico Indus. Energy Consumers v. New Mexico Pub. Serv. Comm’n*, 725 P.2d
21 244, 247 (N.M. 1986), the Supreme Court of New Mexico noted that, in the context of a New
22 Mexico Public Service Commission decision, the denial of the right to conduct discovery results
23 in the denial of procedural due process of law. *Id.* at 247.

24 Based on the foregoing the Commission should extend the procedural schedule in this

1 matter to allow sufficient time to conduct discovery and develop expert testimony. The
2 Commission should set the hearing in this matter no sooner than 45 days from the currently
3 schedule date to afford the parties sufficient time to perform necessary discovery and prepare for
4 hearing.

5 **b. The Commission should approve the TRRRs subject to a final order in these**
6 **Dockets.**

7 The Nevada Gaming Group recognizes the importance of passing through savings
8 associated with the TCJA as soon as possible. NV Energy has complicated that by filing
9 Applications that fail to propose passing through all of the savings associated with the TCJA in a
10 timely manner. In order to ensure that ratepayers receive the maximum benefit of the TCJA, and
11 to preclude as much as possible the amortization of savings associated with the TCJA to NV
12 Energy's earnings, the Commission should preliminarily and conditionally approve the TRRRs
13 effective April 1, 2018, subject to further examination in this docket to ensure that the TRRRs
14 are just and reasonable. This will allow ratepayers to immediately see some of the economic
15 benefits of the TCJA while concurrently allowing the parties and the Commission to properly
16 evaluate the adequacy of the Applications.

17 **c. The Commission should shorten time for responses to this Motion.**

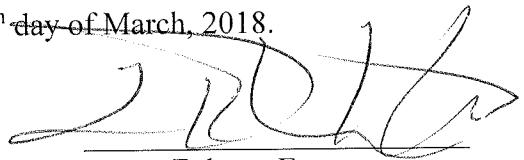
18 The Commission should shorten time for filing response to this Motion. It is important to
19 resolve the issues presented in this motion to ensure that parties to this matter can adequately
20 prepare for hearing, whether it goes forward on March 16, 2018 or not. Without clarity quickly,
21 the parties will not know how to approach the possibility of a hearing next week. Therefore, the
22 Nevada Gaming Group respectfully requests the Commission issue an order shortening time for
23 responding to this Motion, requiring responses no later than 12:00 p.m. on March 9, 2018, so the
24 parties can discuss this matter at the prehearing conference.

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V. Conclusion

In light of the foregoing, the Commission should extend the procedural schedule in this matter to accommodate discovery, the preparation of expert testimony and preparation to hearing. In the meantime, the Commission should approve the TRRRs subject to final order of this Commission as to whether they reflect just and reasonable rates.

Respectfully submitted this 7th day of March, 2018.



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CERTIFICATE OF SERVICE

I hereby certify that I have on this 7th day of March, 2018, caused to be served by either electronic mail or U.S. Mail, a true and correct copy of the foregoing document on each of the persons identified on the following list:

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