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18-02010

Public Utilities Commission of Nevada
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5 **BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

6 Application of Nevada Power Company Docket No. 18-02010
d/b/a NV Energy filed under Advice Letter
7 No. 485 to revise Tariff No. 1-B to establish the
2017 Tax Rate Reduction Rider.
8

9 Application of Sierra Pacific Power Company Docket No. 18-02011
d/b/a NV Energy filed under Advice Letter
10 No. 605-E to revise Electric Tariff No. 1 to establish
Rider.
11

12 Application of Sierra Pacific Power Company Docket No. 18-02012
d/b/a NV Energy filed under Advice Letter
13 No. 326-G to revise Gas Tariff No. 1 to establish the
Rider.
14 _____ /

15 **REGULATORY OPERATIONS STAFF'S**
16 **ANSWER TO PETITION FOR RECONSIDERATION**

17 The Regulatory Operations Staff ("Staff") of the Public Utilities Commission of Nevada
18 ("Commission"), pursuant to Nevada Administrative Code ("NAC") 703.801, hereby answers
19 Nevada Power Company d/b/a NV Energy's ("Nevada Power") and Sierra Pacific Power Company
20 d/b/a NV Energy's ("Sierra") (together "NV Energy") Petition for Reconsideration ("Petition") of the
21 Commission's Order issued on October 8, 2018 ("Order"). NV Energy asserts that Paragraphs 64
22 through 70 of the Order are unlawful, unreasonable, or based on erroneous conclusions of law or
23 mistaken facts. For the reasons outlined below, the Commission should deny the Petition.

24 **I. The Commission's Order is Lawful and Reasonable in Finding that NV Energy's**
25 **Decision to Commence Amortization of Protected Excess ADIT Balances as of**
26 **January 1, 2018 was Contrary to NAC 704.6526 and NAC 704.6534.**

27 NV Energy asserts that the Commission's regulation, NAC 704.6526, requires NV Energy to
28 adjust its deferred income tax balances to reflect a change in the statutory corporate income tax rate.

1 (Petition at 7.) NV Energy asserts that the regulation further requires that the adjusted balances “be
2 amortized to cost of service over the period of time determined by the Commission.” (*Id.*) NV
3 Energy argues that the question to be answered by the Commission is “whether the Commission has
4 determined the period over which amortization to cost of service of adjusted ADIT balances should
5 take place.” (*Id.*) NV Energy does not dispute that the Commission has not yet determined the
6 period of time over which unprotected EDIT balances should be amortized. (*Id.* at 8.) What NV
7 Energy does dispute, however, is the Commission’s finding in the Order that the Commission has not
8 yet determined the period of time over which protected ADIT balances should be amortized. (*Id.*)
9 NV Energy argues that the Commission has already determined the period of time over which
10 protected EDIT balances should be amortized when it promulgated NAC 704.6534, which requires
11 EDIT balances to be amortized using ARAM. (*Id.*)

12 NV Energy further argues that NAC 704.6526 requires that NV Energy’s “adjusted ADIT
13 balances are to be amortized *to cost of service. ...*” (emphasis in original), and therefore the
14 Commission was incorrect when it ordered NV Energy to book the amortized amounts to a deferred
15 account and regulatory asset, instead of to cost of service. (*Id.* at 9.) In essence, NV Energy argues
16 that the Commission’s Order is unlawful and unreasonable because it refuses to accept NV Energy’s
17 interpretation of the regulations (NAC 704.6526 and NAC 704.6534), which would require NV
18 Energy to *immediately* begin amortizing the protected deferred income tax balances *to cost of service*
19 pursuant to the ARAM methodology.

20 Contrary to NV Energy’s allegations, the Commission’s Order reflects a plain meaning
21 reading of the regulations and, therefore, is lawful and reasonable. Pursuant to NAC 704.6526(4),
22 “[d]eferred income tax balances must be adjusted to reflect changes in the statutory corporate income
23 tax rate and these adjustments must be amortized to cost of service over a period of time to be
24 determined by the Commission.” The plain meaning of this regulation is that the deferred income tax
25 balances are required to be adjusted to reflect changes in the statutory corporate income tax rate.
26 Then, those adjusted balances (or EDIT) are required to be amortized to cost of service over “a period
27 of time”—not “the” period of time as argued by NV Energy (Petition at 7)—to be determined by the
28 Commission. While the amortization of the EDIT must be to cost of service, the regulation does not

1 state that the amortization of the EDIT must begin *immediately* to cost of service, but merely that the
2 EDIT must be amortized to cost of service over a period of time that is determined by the
3 Commission. Thus, the Commission sets the period of time to which EDIT is amortized to cost of
4 service.

5 Consistent with this plain meaning reading of the regulation, the Commission reasonably
6 found that the language in the Commission’s regulations is clear when it ordered protected excess
7 ADIT “to be amortized over a period determined by the Commission, but no faster than ARAM” and
8 that unprotected excess ADIT “may be amortized over any period as determined by the
9 Commission.” (Order at ¶¶ 65-66; emphasis in original.)

10 NV Energy does not dispute that the amortization period for the unprotected EDIT has to be
11 determined by the Commission—only that the amortization period for the protected EDIT has already
12 been determined by the Commission. (Petition at 7-8.) NV Energy relies upon the language in NAC
13 704.6534 to argue the Commission has already determined the period over which to amortize
14 protected EDIT, which must be pursuant to the ARAM method described in the regulation.
15 However, this regulation does not prescribe the amortization period for protected EDIT, but rather
16 serves to impose limitations on the Commission when determining the amortization period to
17 prescribe.

18 Under NAC 704.6534, “[e]xcess income tax reserves must be calculated for each vintage of
19 assets appearing on a utility’s regulated books of account. The vintages must be analyzed and
20 computed pursuant to section 203(e) of the Tax Reform Act of 1986.” Section 203(e) of the Tax
21 Reform Act of 1986 requires that normalization accounting be used to reduce the excess income tax
22 reserve in calculating rates charged to ratepayers and in maintaining NV Energy’s books, if the utility
23 wishes to continue using accelerated depreciation for tax purposes. However, the immediate flow
24 through of the excess tax reserve to a utility’s customers is prohibited. Notwithstanding, the reserve
25 may be reduced or flowed through to cost of service provided the reduction to cost of service is not
26 more rapid than it otherwise would be reduced under the ARAM method. Thus, when NAC
27 704.6526 and NAC 704.6534 are read together, the regulations instruct that the period of time over
28 which the protected and unprotected EDIT must be amortized to cost of service should be determined

1 by the Commission (per NAC 704.6526), but should not be faster than the ARAM method so as to
2 remain in compliance with the Internal Revenue Service's normalization rules (per NAC 704.6534,
3 26 U.S.C. § 168(i)(9), and Section 203(e) of the Tax Reform Act of 1986).

4 Consistent with the plain meaning of NAC 704.6526, when read in conjunction with NAC
5 704.6534, the Commission reasonably determined that NV Energy's decision to commence
6 amortization of the protected EDIT to cost of service on January 1, 2018, at ARAM was contrary to
7 the Commission's regulations. (Order at ¶ 68.) Because the Commission had not yet determined the
8 period of time over which the protected excess ADIT balances was to be amortized to cost of service,
9 amortization of protected EDIT should not have begun. (*Id.*) In making the above finding, the
10 Commission also made clear that it did not find that "NV Energy exhibited any ill intent in
11 determining to commence amortization as it did. The Commission simply does not agree with NV
12 Energy's interpretation of the relevant law." (*Id.*)

13 Based on the foregoing, NV Energy has failed to support its allegations that the Commission's
14 Order is unlawful and/or unreasonable. The Commission's Order reflects a plain meaning, lawful,
15 and reasonable interpretation of the Commission's regulations. Thus, NV Energy's Petition should
16 be denied.

17 **II. NV Energy has Failed to Demonstrate or Support its Allegations that the**
18 **Commission has Disregarded the Language in the Commission's Regulations.**

19 NV Energy argues that the only reasonable interpretation of the Commission's regulations is
20 the one proffered by NV Energy. (Petition at 9-10.) Specifically, that NAC 704.6526 mandates the
21 adjusted ADIT balances for protected assets must be amortized to cost of service in the month in
22 which the statutory corporate income tax rate goes into effect. (*Id.* at 9-10.) NV Energy argues that
23 the regulation does not authorize NV Energy or the Commission with the discretion to delay
24 amortizing adjusted ADIT balances to cost of service. (*Id.* at 10.)

25 Contrary to NV Energy's assertion, the regulation does not mandate such actions by NV
26 Energy or the Commission. While the language of the regulation does state that the adjusted ADIT
27 balances on protected assets "must be amortized to cost of service," nowhere does it state that such
28 amortization to cost of service must begin *immediately*. NV Energy continues to insist that this

1 Commission read into the regulations words that are not present in the regulation. If anyone is
2 disregarding the plain language of the regulation, it is NV Energy—not the Commission. The plain
3 language in the regulation supports the Commission’s Order finding that the Commission must
4 determine when the amortization period should commence on protected EDIT balances. Thus,
5 contrary to NV Energy’s assertions, the Order is lawful and reasonable.

6 **III. NV Energy has Failed to Demonstrate or Support its Allegations that the Order**
7 **is Based on Mistaken Conclusions, Factual or Legal, in Finding that the**
8 **Amortization Period on Protected EDIT Must be no Faster than the ARAM**
Methodology.

9 NV Energy argues that the Order is premised on the mistaken conclusion, both factual and
10 legal, that the Commission has adopted by regulation a “no faster than ARAM methodology for
11 determining the rate at which ADIT on protected assets is to be amortized.” (Petition at 10.) NV
12 Energy further argues that the Commission incorrectly relied on NAC 704.6526 as the source for the
13 Commission’s authority to approve a period over which to amortize protected adjusted ADIT
14 balances. (*Id.*) NV Energy asserts that the correct source for that authority is NAC 704.6534,¹
15 wherein Section 203(e) of the Tax Reform Act of 1986 is adopted by reference, which NV Energy
16 argues specifies the utilization of ARAM. (*Id.* at 10-11.)

17 The Commission properly relied upon NAC 704.6526 as the source for its authority to
18 determine the period of time over which to amortize protected (and unprotected) EDIT balances. As
19 explained above, NAC 704.6534 merely provides that EDIT for each vintage of assets appearing on a
20 utility’s regulated books of account, must be analyzed pursuant to Section 203(e) of the Tax Reform
21 Act of 1986. Section 203(e) provides that normalization accounting must be used to reduce the EDIT
22 on the utility’s books. Further, if the EDIT is to be flowed back to cost of service, it must comply
23 with normalization rules in that the EDIT may not be flowed back to cost of service faster than it
24 would otherwise be flowed back pursuant to the ARAM methodology. Thus, NAC 704.6534
25 provides a limitation on any amortization period that may be selected by the Commission, in that the
26 EDIT must be amortized to cost of service no faster than it otherwise would be under the ARAM

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¹ NV Energy actually cited to NAC 704.5643, which appears to have been a typo since that regulation does not exist.
NAC 704.6534 is the regulation adopting by reference Section 203(e) of the Tax Reform Act of 1986.

1 method. In other words, the Commission shall determine the period of time over which to amortize
2 the protected EDIT, but it shall not allow the amortization to cost of service to occur at a rate that is
3 faster than would occur pursuant to the ARAM method.

4 Accordingly, the Commission's Order is lawful, reasonable, and correctly attributes the
5 Commission's mandate to approve a period over which to amortize protected (and unprotected) EDIT
6 to NAC 704.6526.

7 **IV. NV Energy has Failed to Demonstrate or Support its Allegations that the Order**
8 **Constitutes Impermissible Ad Hoc Rulemaking.**

9 NV Energy argues that the Commission's Order does not enforce NAC 704.6526 consistent
10 with NV Energy's interpretation, which would require the adjusted ADIT balances on protected
11 assets be amortized to cost of service immediately upon a statutory change in the corporate tax rate.
12 (Petition at 11.) NV Energy argues that failure to enforce the regulation consistent with NV Energy's
13 interpretation constitutes impermissible ad hoc rulemaking in violation of the rulemaking provisions
14 contained in NRS Chapter 233B. (*Id.*)

15 NV Energy's arguments are without merit and based upon the false assumption that the
16 Commission's interpretation of its own regulations are incorrect. As explained above, the
17 Commission's finding that NAC 704.6526 requires the Commission to determine the period of time
18 over which protected assets should be amortized to cost of service reflects a plain meaning reading of
19 the regulation. Simply because the Commission interprets its regulations in a manner that is
20 inconsistent with NV Energy's interpretation does not mean the Commission has engaged in ad hoc
21 rulemaking. In fact, contrary to NV Energy's assertions, the Commission's Order does indeed
22 enforce the prima facie reasonable and valid regulations at issue in this contested case. Thus, because
23 the Order does not involve the promulgation of any rules of general applicability—but, merely
24 enforcement of valid, existing regulations—the Commission has not engaged in any improper ad hoc
25 rulemaking. For these reasons, NV Energy's Petition should be denied.

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1 **V. NV Energy has Failed to Demonstrate or Support its Allegations that the Order**
2 **is a “Retroactive Directive that Requires Non-Enforcement of a Valid**
3 **Regulation.”**

4 NV Energy argues that Paragraph 69 of the Order is a directive that results in retroactive non-
5 enforcement of an existing regulation, which is barred by statute, because it a “reaches backward in
6 time, to January 1, 2018, recaptures ADIT on protected assets, adjusted to reflect the impact of the
7 TCJA, amortized to cost of service.” (Petition at 12.) NV Energy cites to NRS 704.130(2) as the
8 statute the Order violates. (*Id.*)

9 Again, NV Energy’s arguments are without merit and based upon the false assumption that
10 the Commission’s interpretation of its own regulations are incorrect. NRS 704.130(2) provides that
11 “[a]ll regulations, practices and service prescribed by the Commission must be enforced and are
12 prima facie reasonable unless suspended or found otherwise in an action brought [for judicial review]
13 . . . or until changed or modified by the Commission itself..” The Order simply instructs NV Energy
14 to comply with the plain language of the existing regulations, NAC 704.6526 and 704.6534.
15 Furthermore, there is no legal prohibition of the application of a statute to a past time period during
16 which the statute was already in effect. (*Pub. Employees’ Benefits Program v. Las Vegas Metro*
17 *Police Dep’t*, 124 Nev. 138, 154, 179 P.3d 542 (2008).) A statute only operates “retroactively” if it
18 “imposes new legal consequences on events completed before its enactment.” (*Id.* at 155.) Similarly,
19 the application of a regulation to a past time period during which the regulation was already in effect
20 does not constitute the “retroactive” operation of a regulation. As stated previously, the Order
21 constitutes the proper enforcement of valid, existing regulations. For these reasons, NV Energy’s
22 Petition should be denied.

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VI. Conclusion

As outlined above, NV Energy has failed to show that Paragraphs 64 through 70 of the Commission's Order are unlawful, unreasonable, or based on erroneous conclusions of law or mistaken facts as required by NAC 703.801. Therefore, NV Energy's Petition for Reconsideration must be denied in full.

RESPECTFULLY SUBMITTED this 6th day of November, 2018.

PUBLIC UTILITIES COMMISSION OF NEVADA
REGULATORY OPERATIONS STAFF

By:  for
Shelly Cassity, Assistant Staff Counsel

PROOF OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by electronic mail to the recipient's current electronic mail address properly addressed to:

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DATED at Carson City, Nevada, on the 6th day of November, 2018.



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