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Agenda 2-19; Item No. 3C Draft Order for discussion at agenda.

THIS ORDER IS NOT A FINAL ORDER AND MAY BE SUBSTANTIALLY REVISED PRIOR TO ENTRY OF A FINAL ORDER BY THE PUBLIC UTILITIES COMMISSION OF NEVADA

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Application of LV Stadium Events Company, LLC to)
purchase energy, capacity, and/or ancillary services from a) Docket No. 18-09003
provider of new electric resources.)
_____)

At a general session of the Public Utilities Commission of Nevada, held at its offices on January 30, 2019.

PRESENT: Chair Ann Wilkinson
Commissioner Ann Pongracz
Commissioner CJ Manthe
Assistant Commission Secretary Trisha Osborne

[PROPOSED] ORDER

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

I. INTRODUCTION

On September 7, 2018, LV Stadium Events Company, LLC (the “Stadium”) filed with the Public Utilities Commission of Nevada (“Commission”) an Application, designated as Docket No. 18-09003, to purchase energy, capacity, and/or ancillary services from a provider of new electric resources (the “Application”). The Stadium filed the Application pursuant to the Nevada Revised Statutes (“NRS”) and the Nevada Administrative Code (“NAC”), Chapters 703, 704, and 704B, including, but not limited to, NAC 704B.340 and 704B.380.

II. SUMMARY

The Commission conditionally grants the Application, subject to the satisfaction of the compliances and directives delineated in this Order.

III. PROCEDURAL HISTORY

- On September 7, 2018, the Stadium filed the Application.
- On September 12, 2018, the Commission issued a Notice of Application.
- On September 13, 2018, the Attorney General's Bureau of Consumer Protection ("BCP") filed a Notice of Intent to Intervene pursuant to NRS Chapter 228.
- On October 3, 2018, 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.
- The Regulatory Operations Staff of the Commission ("Staff") participates as a matter of right pursuant to NRS 703.301.
- On October 22, 2018, the Commission issued a Notice of Prehearing Conference.
- On November 6, 2018, the Commission held a prehearing conference. The Stadium, NPC, BCP, and Staff (collectively the "Parties") made appearances.
- On November 7, 2018, the Presiding Officer issued a Procedural Order, which established a procedural schedule.
- On November 13, 2018, Staff filed its Final Impact Analysis.
- On November 20, 2018, the Presiding Officer held a continued prehearing conference. The Parties made appearances.
- On November 28, 2018, the Presiding Officer issued Procedural Order No. 2, establishing an amended procedural schedule.
- On December 4, 2018, the Presiding Officer held a continued prehearing conference. The Parties made appearances.
- On December 4, 2018, the Stadium filed Direct Testimony.
- On December 4, 2018, NPC filed its Alternative Impact Analysis.
- On December 14, 2018, the Commission issued a Notice of Hearing.
- On December 18, 2018, NPC, BCP, and Staff each filed Direct Testimony.
- On December 28, 2018, the Stadium filed Rebuttal Testimony.

- On January 3, 2019, the Presiding Officer held a hearing. The Parties made appearances. At the conclusion of the hearing, the Presiding Officer admitted Exhibits 1 through 9 and Confidential Exhibits 1 through 3 into the record.
- On January 4, 2019, the Stadium filed an amendment to its Application.
- On January 11, 2019, Tenaska Power Services Co. (“Tenaska”) filed a late-filed Petition for Leave to Intervene (“PLTI”).
- On January 14, 2019, Tenaska filed an amended PLTI.
- On January 23, 2019, the Presiding Officer issued Procedural Order No. 3, designating the Stadium’s amendment to its Application as Exhibit 10 and directing Stadium to submit as a late-filed exhibit a copy of its Western Systems Power Pool (“WSPP”) Master Agreement.
- On January 24, 2019, the Presiding Officer issued an Order granting Tenaska’s PLTI.
- On January 24, 2019, Tenaska, on behalf of Stadium, filed the WSPP Master Agreement in response to Procedural Order No. 3. Pursuant to NAC 703.5274(8), Tenaska requests that its filing receive confidential treatment.
- On January 25, 2019, the Presiding Officer issued a Protective Order, granting Stadium’s request for a protective order and confidential treatment for certain information included in its Application.

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 this "10-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 an application 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 September 7, 2018, the Stadium filed its Application with the Commission. (Ex. 1.) The 11-page Application contains two exhibits: the Stadium's letter of intent dated August 3, 2018 (the "Letter of Intent"); and a confidential exhibit which contains customer-specific engineering information and equipment descriptions. (*Id.*) Attached to the Letter of Intent was a letter dated March 8, 2018, from the Stadium to NV Energy stating that NV Energy should not plan for the Stadium's load in light of the Stadium's intent to avail itself of the NRS 704B process. (*Id.* at Ex. 1 at Att. 1.)

9. The Stadium requests the Commission issue an order authorizing the Stadium to purchase energy, capacity, and ancillary services from a provider of new electric resources pursuant to NRS Chapter 704B and NAC Chapter 704B. (*Id.* at 10.) The Stadium states it recently began construction of a National Football League ("NFL") stadium project that is within NPC's service territory. (*Id.* at 1.) The Stadium represents that it currently only takes construction power from NPC through its general contractor and permanent service has not been established. (*Id.*) The Stadium states that on August 3, 2018, pursuant to NAC 704B.320, it served Staff, BCP, and NPC with its Letter of Intent notifying these parties of the Stadium's intent to purchase energy, capacity, and ancillary services from a provider of new electric resources. (*Id.* at 2.) According to the Stadium, representatives from the Stadium, Staff, BCP,

and NPC met on August 24, 2018, to discuss the information included in the Letter of Intent.

(*Id.*) The Stadium states that it has satisfied all of the statutory and regulatory requirements associated with NRS Chapter 704B. (Ex. 2 at 4.)

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

10. 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.

11. The Stadium states that “LV Stadium Events Company, LLC” is an eligible customer that will be located at 3333 Al Davis Way, Las Vegas, Nevada, 89118. (Ex. 1 at 1.) The Stadium also provides its contact information. (*Id.*)

12. The Stadium states it is an “eligible customer” under NRS 704B.080 because it is a “non-governmental commercial end-use customer in the service territory of [NPC] and will consume during the 12 months immediately following the date of commencement 8,760,000 kilowatt hours or more of energy at its contiguous property locations or its service locations that are treated as a single service location for billing purposes.” (*Id.* at 2-3.) According to the Stadium, a review of its Load Summary and Load Forecast (for which the Stadium seeks a protective order) indicates that the Stadium will, upon completion, require 22 MW of capacity to operate.¹ (Ex. 2 at 17-18.) The Stadium states the Load Forecast shows that, during the 12 months following the date of commencement, as the Stadium ramps up full operation, it will consume over 33,000,000 kilowatt-hours (“kWh”) of energy. (*Id.* at 18.)

¹ The Stadium lists 18 MW in its Application, but Mr. Phillips updates this number to 22 MW in his prepared direct testimony. See Ex. 2 at 9.

13. The Commission finds the Stadium satisfied the requirements of NRS 704B.310(2)(a) and NAC 704B.320(2)(a) by submitting eligible customer information and information demonstrating its eligibility. NRS 704B.080 defines an “eligible customer” as a “nongovernmental commercial or industrial end-use customer that has an average annual load of one megawatt [(“MW”)] or more in the service territory of an electric utility.” NAC 704B.300(1) requires a Commission’s determination that an eligible customer’s service location will consume 8,760,000 kWh or more of energy in the service territory of the utility during the 12 months immediately following the date of commencement. The future energy consumption forecasted by the Stadium would meet that threshold. No party challenges the Stadium’s average load and anticipated annual consumption projections.

14. The Commission concurs that the Stadium will meet the definition of an “eligible customer” under the relevant statutory and code requirements if the project is constructed and operates according to the specifications submitted with the Application and testimony proffered by the Stadium in this Docket. To ensure that the Stadium’s load indeed qualifies the Stadium as an eligible customer, within 12 months of when the Stadium begins taking service from its provider of new electric resources, the Stadium must file a letter with the Commission notifying the Commission when it has consumed 8,760,000 kWh of electricity.

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))

15. 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.

16. The Stadium did not identify a provider of new electric resources in its Application. (*See* Ex. 1 at 3.) However, the Stadium requested a deviation from the provider information submission requirements of NAC 704B.320(2)(b).² (*Id.* at 8-10.) As of the date of filing its Application, the Stadium stated it had commenced a request for proposals (“RFP”) process to select its provider of new electric resources. (*Id.* at 3.) On November 2, 2018, in a confidential exhibit attached to its legal brief, the Stadium provided the Commission with a confidential list identifying five responders to its RFP. Thereafter, the Stadium publicly identified Tenaska as its provider of new electric resources during the hearing on the Application held on January 3, 2019. (Tr. at 6.) On January 4, 2019, the Stadium filed an amendment to the Application in which it memorialized its selection of Tenaska as its provider.

17. Accordingly, while NAC 704B.175 does not authorize the Commission to permit deviation from statutory requirements in NRS Chapter 704B, such as the identification of the provider, Stadium’s request for deviation is moot given its ultimate, but significantly late, identification of Tenaska as its provider.

18. Stadium also states that it will acquire firm energy from a “new electric resource,” as that term is defined under NRS 704B.110, in the form of Schedule C Confirmation(s) to the Western Systems Power Pool (“WSPP”) Master Agreement. (Ex. 1 at 5; Ex. 2 at 10; Ex. 8 at 23-24.) The Stadium further represents that, upon exiting, it has no intention of taking service directly from generation assets that are owned by or contractually committed to NV Energy. (Ex. 1 at 5; Ex. 2 at 10.) The Stadium also states it will require its provider to develop a compliance

² NAC 704B.175 allows deviation from the provisions of NAC Chapter 704B if good cause appears and if the Commission finds the deviation to be in the public interest and not contrary to stature.

policy regarding purchasing new electric resources subject to approval by the Commission. (Ex. 2 at 10.)

19. Consistent with its prior decisions,³ the Commission finds that power obtained through market resources that are not directly sourced from a Nevada Power generation asset qualify as a “new electric resource” under NRS 704B.110. Therefore, to ensure continued compliance with the new electric resource requirements, the Commission orders a compliance item consistent with Stadium’s assertion that it will require its provider (now identified as Tenaska) to develop a policy ensuring that the power utilized to serve its load will not be sourced from generation assets that are owned by or contractually committed to NV Energy.

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

20. Pursuant to NAC 704B.320(2)(c), an application filed 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.

21. The Stadium did not provide its points of delivery information. Pursuant to NAC 704B.175, the Stadium requested a deviation from the points of delivery information submission requirements of NAC 704B.320(2)(c). (Ex. 1 at 8-10.) The Stadium states that, because the Las Vegas Stadium is not yet constructed, no information regarding points of delivery can be submitted with this Application but that the Stadium will provide that information as it is

³ See Docket Nos. 15-05002, 15-05006, 15-05017.

developed and will notify the Commission of specific points of delivery before the date of commencement. (*Id.* at 3; Ex. 2 at 7.)

22. The Commission grants the requested deviation because it is not contrary to statute. Furthermore, considering that the Stadium is still under construction, the Commission finds that it is not contrary to the public interest to allow the Stadium to submit its points of delivery information after the filing of the Application. The Commission notes that the points of delivery information may be submitted with the distribution service agreement pursuant to the timeline set forth in NAC 704B.370. No party in this Docket identified a need to access the points of delivery information at this time. The Stadium shall file the points of delivery information as soon as practicable but in no event later than the deadline set in this Order for filing of a completed and fully-executed distribution service agreement.

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

23. 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.

24. 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.

25. NAC 704B.320(2)(d) requires eight categories of information. With its Application, the Stadium provided the following list of the terms it anticipates will be included in the proposed transaction between the Stadium and its, at the time, unidentified provider (the “Underlying Contract”):

- (a) For the duration of the Underlying Contract, the Stadium stated: “[t]he initial term of the Agreement;”⁴
- (b) For the amount of energy, capacity, or ancillary services to be purchased, the Stadium stated: “the full amount required by the [Stadium];”
- (c) For the identity of the scheduling coordinator, the Stadium stated that it will be its provider;
- (d) For the written confirmation from the scheduling coordinator, the Stadium submitted nothing;
- (e) For the point of receipt, the Stadium stated: “anticipated to be the Mead Substation but may change depending on which [p]rovider is selected;”
- (f) For the maximum number of megawatts or megawatt-hours to be delivered, the Stadium estimated 61,000 MWh annually with an average hourly load of approximately 7 MW and a peak load of 18 MW;⁵

⁴ The Stadium initially identified April 1, 2019, as the service commencement date to begin purchasing energy, capacity, and ancillary services from its provider of new electric resources. (Ex. 1 at 4.) With his testimony dated December 4, 2018, Stadium-witness Nicholas Phillips subsequently updated the commencement date to June 1, 2019. (Ex. 2 at 5.) During the hearing on January 3, 2019, the Stadium for the first time identified October 1, 2019, as the commencement date. (Tr. at 135, 138.)

⁵ The Stadium later revised the estimate of its peak load to 22 MW.

- (g) For the information regarding the nature of the product being purchased, including whether the product is firm, the Stadium stated: “the energy expected to be purchased is expected to be firm;”⁶
- (h) For the information regarding termination and notice provisions, the Stadium stated: “Termination and notice provisions;” and
- (i) For the information regarding load ramps, the Stadium stated that it expects no significant increases or decreases in load; however, in the Letter of Intent, the Stadium stated that, during sporting events held at the Stadium, the Stadium anticipates transition from a base load of 5 MW to 18 MW for a period of 2.5 to 3 hours. (Ex. 1 at 4-5; Ex. 1 at Ex. 1 at 5; Ex. 2 at 8-9.)

26. Given the incomplete nature of Stadium’s Application, and the fact that Stadium has complied with some of the foregoing provisions at different stages of these proceedings, the Stadium shall file all of the information responsive to NRS 704B.310(2)(c) and NAC 704B.320(2)(d) in a single compliance filing within 30 days from the date of issuance of this Order.

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

27. 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.

28. The Stadium represents that it anticipates purchasing all ancillary services from NPC pursuant to the terms of the Open Access Transmission Tariff (“OATT”). (Ex. 1 at 5.) In

⁶ As discussed above, Stadium states that it will acquire firm energy in the form of Schedule C Confirmations(s) to the Western Systems Power Pool Master Agreement from its provider that will satisfy NRS 704B.110. (Ex. 1 at 5; Ex. 2 at 10.)

its Letter of Intent, the Stadium stated that its provider is expected to purchase the following ancillary services from NV Energy under NV Energy's OATT: (1) Scheduling, System Control, & Dispatch; (2) Reactive Supply & Voltage Control; (3) Regulation & Frequency Response; (4) Energy Imbalance Service; (5) Spinning Reserve Service; (6) Supplemental Reserve Service; and (7) Loss Compensation Service. (*Id.* at Ex. 1 at 6.)

29. The Commission finds that the Stadium's Application sufficiently includes the ancillary services information.

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

30. 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.

31. The Stadium states that the new electric resources may be within or outside NV Energy's control area. (*Id.* at Ex. 1 at 6.)

32. Given Stadium did not even select its provider until hearing, Stadium obviously did not know whether its new electric resources would be delivered from within or outside of the control of NV Energy. Therefore, as a compliance item, Stadium shall submit information responsive to NAC 704B.320(f) within 30 days of the issuance of this Order.

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

33. 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.

34. The Stadium contends that, pursuant to NAC 704B.340(1)(a)(2), it is an eligible customer pursuant to Section 1.14(ii) of NPC's OATT because it will be taking service from NPC pursuant to Nevada's retail access program. (Ex. 1 at 3.) The Stadium agrees, pursuant to NAC 704B.340(1)(a)(2), to pay, to the extent applicable and reasonable, all costs for system impact studies, facilities studies and construction of facilities that may be required under the OATT to obtain the necessary transmission service. (*Id.* at 6.) The Stadium states that it will provide the studies to the Commission if they are completed. (*Id.*)

35. The Commission finds that the Application contains information responsive to NAC 704B.340(1)(a). Pursuant to Section 1.14 of NPC's OATT, "any eligible customer taking unbundled Transmission Service pursuant to a Retail Open Access Program ... is an [OATT] Eligible Customer and shall take service pursuant to Part IV of the Tariff." The 704B process falls within the definition of Retail Open Access Program. The Commission notes that no party challenged the Stadium's assertion that it is an OATT eligible customer pursuant to Section 1.14(ii). Upon review of Section 1.14 of NPC's OATT, the Commission finds that the Stadium has met the requirement of NAC 704B.340(1)(a) as an OATT eligible customer that agreed to

pay all costs for system impact studies, costs for construction, and other costs required under NPC's OATT.

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. The Stadium states that each of the Stadium's points of delivery will be equipped with time-of-use meters and necessary communication systems pursuant to NAC 704B.340(1)(b) before the date of commencement. (Ex. 1 at 6.)

38. The Stadium's inability to submit the time-of-use meter information is understandable in light of its inability to even provide the points of delivery information. In this Order, the Commission grants the Stadium's deviation request with respect to the points of delivery information, and, for that reason, the Commission excuses the Stadium's non-compliance with the time-of-use meter submission information. However, the Stadium shall submit the time-of-use meter information at the same time as it submits its points of delivery information pursuant to paragraph 22.

I. Applicable system impact studies or facilities studies completed for the transmission service request (NAC 704B.340(1)(c))

39. Pursuant to NAC 704B.340(1)(c), an application filed pursuant to NRS Chapter 704B must contain any applicable system impact studies or facilities studies completed for the transmission service request.

40. The Stadium states that no system impact or facilities studies have been required or completed to date. (Ex. 1 at 6.) The Stadium represents it will provide the studies to the Commission if such impact studies or facilities studies are completed. *Id.*

41. The Commission finds that the Stadium met the application filing requirement of NAC 704B.340(1)(c). Neither NPC nor any other party argues that the Stadium is required to complete system impact or facilities studies.

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

42. 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.

43. 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.

44. Neither in its initial Application nor at the time of hearing was the Stadium able to provide any information regarding the 10-percent contract. However, on January 4, 2019, the Stadium did file an amendment to the Application, submitting a binding offer from the Stadium to NPC to assign the 10-percent contract to NPC. (Ex. 10.)

45. The Commission finds that the Stadium still needs to comply with NRS 704B.320(3) and NAC 704B.340(1)(f). The statutory requirement to provide the 10-percent contract information is mandatory and allows no deviation. Such information must include,

without limitation, the price of power under the 10-percent contract, the duration of the contract, and the amount of power to be purchased under the contract.

46. Accordingly, the Stadium shall file the 10-percent contract information responsive to NRS 704B.320(3) and NAC 704B.340(1)(f) within 30 days from the issuance of this Order.

K. Application Compliance

47. Given the amount of compliances that must be ordered to ensure that approval of Stadium's Application will not be contrary to the public interest, the Commission is compelled to address the difficulties it faces in carrying out its statutory charge under NRS 704B.310 when it must assess an application with missing and incomplete information that is ultimately required by existing law. While there is no law that governs when an NRS 704B application should be filed, there are a number of laws under NRS and NAC 704B that require the submission of information and data that collectively aid the Commission's analysis of proposed transactions under NRS 704B. This information and data is required at the time the 704B application is filed, presumably because the Commission must review these proposed transactions within a statutorily-prescribed, 150-day timeline.⁷

48. While the Commission is inclined to continue to take a pragmatic approach to effectuate its responsibilities under NRS 704B, as it has in this Docket, incomplete 704B applications increasingly frustrate the Commission's ability to carry out its statutory duty of ensuring that approval of these proposed transactions is not contrary to the public interest. Given this concern, the Commission urges Staff, BCP, and NV Energy – all of whom routinely meet (pursuant to NAC 704B.330⁸) with NRS 704B applicants in advance of NRS 704B filings – to

⁷ See NRS 704B.310(8).

⁸ NAC 704B.330 Letter of intent to file application: Meetings and discussions; duty to provide and update certain data and information. (NRS 704B.200)

notify the Commission of missing and/or incomplete information necessary for the parties and Commission to effectively evaluate proposed 704B transactions.

VI. APPLICATION APPROVAL

49. 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 the Stadium’s Application.

A. Public Interest

50. 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. Approximately 15 calendar days before the date on which an eligible customer files an application, the eligible customer, the electric utility and the Regulatory Operations Staff shall meet, in person or telephonically, to discuss the information included with the letter of intent and to identify any issues of concern with respect to the proposed transaction. Not later than 5 working days before the date of the meeting, the Bureau of Consumer Protection must be notified of the meeting, and the Bureau of Consumer Protection may participate fully in the meeting.

2. The provisions of this section do not preclude the eligible customer, the electric utility, the Regulatory Operations Staff or the Bureau of Consumer Protection from meeting or conferring as often as they deem necessary to accomplish the objectives of this section.

3. The Regulatory Operations Staff shall identify any additional data and information that it will need from the electric utility and the eligible customer to carry out the provisions of this section and the format that the electric utility and the eligible customer must use to provide and update the data and information. The electric utility and the eligible customer shall provide and update the data and information in such manner and at such times as the Regulatory Operations Staff may request.

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

Party Positions

Stadium

51. The Stadium argues that its proposed transaction to purchase energy, capacity, and/or ancillary services from its provider is in the public interest and that NPC and NPC's remaining customers will be held harmless as a result of the Stadium's transition to distribution-only service ("DOS") even in the event that the Commission imposes no impact fee. (Ex. 2 at 20-21.) Allowing the Stadium to take DOS will allow it to purchase lower and more flexibly priced electricity on the open market, thus advancing its ability to grow its business and generate jobs. (*Id.* at 21.) The Stadium states that, because there will be no financial impact on NPC or its remaining customers, the Stadium should not be required to pay an impact fee. (*Id.* at 4-5.)

52. The Stadium notes that, on March 8, 2018, it informed NPC of the Stadium's plan to file its Application and requested that NPC not plan to serve the Stadium's load. (*Id.* at 24.) The Stadium highlights that NPC acknowledged that the retail energy sales and demand forecasts used in its recent Joint IRP did not include retail sales to the Stadium. (*Id.* at 27.)

53. The Stadium states that, generally, an impact fee is meant to compensate the utility and remaining ratepayers for the costs of the electric system that the departing customer would have borne over the period of time it takes new load to replace the departing load. (*Id.* at 21.) The Stadium notes that Staff's Final Impact Analysis concludes that there can be no measurable adverse material impact to NPC or its remaining customers as a result of the Stadium's departure, as NPC was not forecasting and planning for the Stadium's load. (Ex. 2 at 25.) The Stadium agrees with Staff's analysis. (*Id.* at 26.) The Stadium states that it has no

