

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Joint Petition of the Regulatory Operations Staff and)
Nevada Power Company d/b/a NV Energy (“Nevada)
Power”) requesting the Commission accept a)
stipulation regarding violations of Nevada’s One Call) Docket No. 22-12008
Law by Nevada Power.)
_____)
)

At a general session of the Public Utilities
Commission of Nevada, held at its offices
on January 24, 2023.

PRESENT: Chair Hayley Williamson
Commissioner C.J. Manthe
Commissioner Tammy Cordova
Assistant Commission Secretary Trisha Osborne

ORDER

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

I. INTRODUCTION

On December 8, 2022, the Regulatory Operations Staff (“Staff”) of the Public Utilities
Commission of Nevada (“Commission”) and Nevada Power (together, the “Parties”) filed with
the Commission a joint petition, designated as Docket No. 22-12008, requesting that the
Commission accept a stipulation (the “stipulation,” attached as Attachment A), regarding
violations of Nevada’s One Call Law¹ by Nevada Power.

II. SUMMARY

The Commission grants the joint petition and accepts the stipulation.

III. PROCEDURAL HISTORY

- On December 8, 2022, the Parties filed the joint petition. The joint petition was filed pursuant to Nevada Revised Statutes (“NRS”) and the Nevada Administrative Code (“NAC”) Chapters 455, 703, and 704, including, but not limited to, NRS 455.170 and NAC 703.540.
- On December 9, 2022, the Commission issued a Notice of Joint Petition.

¹ “Nevada’s One Call Law” or “One Call Law” is a term generally used to refer to Chapters 455 of the Nevada Revised Statutes (“NRS”) and the Nevada Administrative Code (“NAC”).

- On January 18, 2023, the Commission's Office of General Counsel filed a briefing memorandum.
- On January 24, 2023, the Commission adopted General Counsel's recommendation to grant the joint petition and accept the stipulation.

IV. JOINT PETITION

1. The Parties state that On October 3, 2022, an excavator struck and damaged a 3-phase primary electric line owned by Nevada Power at the intersection of Raiders Way and Executive Terminal Drive in Henderson, Nevada. (Stipulation at 1.) After performing its investigation, Staff determined that the excavator had a proper dig ticket and that Nevada Power marked the area as clear of underground facilities on September 14, 2022. (*Id.*)

2. The Parties agree that Nevada Power violated NRS 455.130 and NAC 455.125. (*Id.* at 3.) Nevada Power consents to the imposition of a civil penalty in the amount of \$25,000.00 for these violations of Nevada's One Call Law to be paid within 30 days from the date of the issuance of a Commission order granting the joint petition and accepting the stipulation. (*Id.*)

3. The Parties provide that, in reaching a settlement and consistent with NRS 455.170(5), the following factors were considered:

(1). The gravity of Nevada Power's violations, including the following facts: Nevada Power failed to locate and mark a 3-phase primary electric line, serious injury could have resulted from contact with the line, no injuries resulted from the contact with the line, and the damage resulted in a State Reportable Accident as governed by NAC 704.228 through 704.250;²

(2). Nevada Power's good faith in attempting to achieve compliance with NRS 455.080 through 455.180, inclusive, both before and after the violations, including the fact that Nevada Power did not mark the 3-phase primary line in accordance with NRS 455.130 and NAC 455.125;

(3). Nevada Power's history of previous violations of Nevada's One Call Law,

² This incident was reportable because the damage caused was in excess of \$50,000; the incident was reported in Docket No. 22-01001.

specifically that Nevada Power failed to mark an electric line that it had incorrectly identified as a customer-owned service line in Docket No. 22-05019;³

(4). The willfulness or negligence of the Nevada Power's violations, including the similarity between this incident and the one in Docket No. 22-05019;⁴

(5). The timeliness of the notification of the violations, including the fact that Staff was notified via email of the damage shortly after it occurred by Nevada Power's claims department;

(6). The cooperation of Nevada Power, including the fact that Nevada Power cooperated with Staff's personnel, providing detailed information about the incident to Staff; and

(7). Whether interruption of service occurred, including the fact that the incident resulted in an outage that impacted 36 customers, beginning at 7:28 a.m. on October 3, 2022, and resolved at 8:12 a.m. on October 4, 2022.

(*Id.* at 2-3.)

Applicable Law

4. Pursuant to NRS 455.170, the Commission is charged with enforcing Nevada's One Call Law. The instant joint petition and accompanying stipulation seek to resolve issues which implicate certain provisions of Nevada's One Call Law, specifically NRS 455.130 and NAC 455.125.

5. Pursuant to NRS 455.130(1), "operators shall . . . locate and identify the subsurface installations and, if known, the number of subsurface installations that are affected by the proposed excavation."

³ Docket No. 22-05019, *Joint Petition of [Staff] and [Nevada Power] requesting the Commission accept a stipulation regarding violations of Nevada's One Call Law by Nevada Power*, regarded a violation of Nevada's One Call law on a service line that Nevada Power failed to appropriately identify that was subsequently damaged in an excavation. During the marking, Nevada Power believed that the power line was customer-owned; however, after an investigation, it was determined that the power line was owned by Nevada Power. Docket No. 22-05019 was filed with the Commission on May 16, 2022, and involved an incident that occurred on December 2, 2021.

⁴ As discussed in the stipulation, Staff proposes that Nevada Power's failure to mark subsurface utilities in this Docket is a repeat violation of Nevada Power's failure to mark that was the subject of Docket No. 22-05019. Nevada Power disagrees and asserts that the two incidents are separate and distinct. However, the Parties stipulated that any determination of similarity between the two incidents is unnecessary for the purpose of this joint petition.

6. Pursuant to NAC 455.125:

1. An operator . . . shall locate and identify all subsurface installations of the operator that are in use . . . and are located within the affected area of the proposed excavation or demolition and shall:
 - (a) Mark the approximate location of the subsurface installations located and identified as required by NRS 455.133 and NAC 455.130

7. The Parties seek the imposition of a civil penalty pursuant to NRS 455.170. NRS 455.170(4) states that “the propriety of any settlement or compromise concerning a penalty” for a violation of Nevada’s One Call Law shall be determined by the Commission after considering whether the amount agreed upon in the settlement is consistent with the required considerations listed under NRS 455.170(5).

Commission Discussion and Findings

8. The Commission agrees with the Parties and finds that that Nevada Power violated Nevada’s One Call Law in the incident detailed above. The Commission finds that a settlement consisting of a civil penalty in the amount of \$25,000.00 is appropriate and adequately considers the list of factors under NRS 455.170(5). Therefore, the imposition of the Parties’ recommended civil penalty is appropriate.

9. The Commission also agrees with the Parties and finds that, as a compliance item, Nevada Power shall submit payment of \$25,000.00 to the Commission for deposit into the State General Fund within thirty (30) days from the date of issuance of a Commission order granting the joint petition and accepting the stipulation.

10. The Commission finds that the stipulation complies with the requirements of NAC 703.845 in that it settles issues related to the instant proceedings and does not seek relief that the Commission is not otherwise empowered to grant. The Commission finds that the

stipulation is a reasonable, consensus resolution of the issues in this proceeding. Therefore, the Commission accepts the stipulation.

11. Any agreements and recommendations contained in the stipulation, but not expressly addressed herein, are either agreements by the Parties regarding matters non-essential to the disposition of this docket or are recommendations for specific findings that do not require delineation give the Commission's acceptance of the stipulation.

Therefore, it is ordered:

1. The joint petition filed by the Regulatory Operations Staff and Nevada Power Company d/b/a NV Energy, designated as Docket No. 22-12008, is granted.

2. The stipulation filed by the Regulatory Operations Staff of the Commission and Nevada Power Company d/b/a NV Energy, attached hereto as Attachment A, is accepted.

3. The Commission's approval of the stipulation does not constitute precedent regarding any legal or factual issue.

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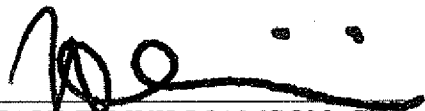
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Compliance

4. Within thirty (30) days of the date of the issuance of this Order, Nevada Power Company d/b/a NV Energy shall submit to the Public Utilities Commission of Nevada payment of a civil penalty in the amount of \$25,000.00 for deposit in the State General Fund.

By the Commission,



HAYLEY WILLIAMSON, Chair



C.J. MANTHE, Commissioner



TAMMY CORDOVA, Commissioner

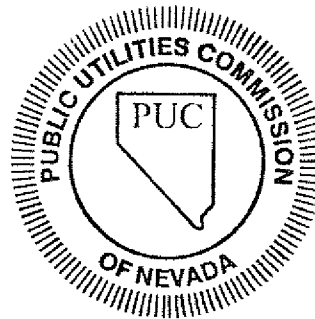
Attest: 

TRISHA OSBORNE,
Assistant Commission Secretary

Dated: Carson City, Nevada

2/8/23

(SEAL)



ATTACHMENT A

1 **BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

2 Joint Petition of the Regulatory Operations Staff and
3 Nevada Power Company d/b/a NV Energy (“Nevada
4 Power”) requesting the Commission accept a
5 stipulation regarding violations of Chapter 455 of the
6 Nevada Revised Statutes and Nevada Administrative
7 Code by Nevada Power. /

Docket No. 22-120 _____

8 **STIPULATION**

9 COME NOW, the Regulatory Operations Staff (“Staff”) of the Public Utilities
10 Commission of Nevada (“Commission”) and Nevada Power Company d/b/a NV Energy
11 (“Nevada Power” and collectively with Staff, the “Parties”), pursuant to Nevada Revised
12 Statutes (“NRS”) 455.170, and hereby submit this Stipulation to the Commission in full
13 settlement of the matters at issue.

14 WHEREAS, on October 3, 2022, Maile Concrete (“Maile”), who had obtained a valid dig
15 ticket, pursuant to NRS 455.110, was conducting excavation work at the intersection of Raiders Way
16 and Executive Terminal Drive in Henderson, Nevada. While utilizing an auger, Maile struck and
17 damaged a 3-phase primary electric line. Operators of subsurface facilities were required to locate
18 their facilities pursuant Maile’s dig ticket on or before September 14, 2022. Nevada Power marked
19 the area of excavation clear of facilities on September 14. Staff’s Gas Pipeline Engineering Division
20 investigated the incident for adherence with Chapter 455 of the NRS and Nevada Administrative Code
21 (“NAC”).

22 WHEREAS, pursuant to NRS 455.130 and NAC 455.125, an operator of a subsurface
23 facility shall locate and identify their subsurface installations that are affected by the proposed
24 excavation within two working days of receipt of notification of the proposed excavation. If no
25 subsurface installations are present, the operator shall provide notification that the area is clear.
26 Based upon information gathered through Staff’s investigation, Staff determined that Nevada
27 Power incorrectly marked the area of excavation as clear of any Nevada Power subsurface
28 installations.

1 WHEREAS, pursuant to NRS 455.170(5), in determining the amount of the penalty or
2 the amount agreed upon in a settlement or compromise, the Commission shall consider:

- 3 (a) The gravity of the violation;
4 (b) The good faith of the person charged with the violation in
5 attempting to comply with the provisions of NRS 455.080 to 455.180,
6 inclusive, before and after the violation;
7 (c) Any history of previous violations of the provisions of NRS 455.080
8 to 455.180, inclusive, by the person charged with the violation;
9 The willfulness or negligence of the person charged with the violation in failing to
10 comply with the provisions of NRS 455.080 to 455.180, inclusive;
11 (e) The timeliness of notification of the violation to the Public Utilities
12 Commission of Nevada by the person charged with the violation;
13 (f) The cooperation of the person charged with the violation in the
14 investigation and repair of any damage caused by the violation;
15 and
16 (g) Whether an interruption of services occurred as a result of the
17 violation.

18 In reaching a settlement, the Parties considered the following:

- 19 (a) Gravity of violations. Nevada Power failed to locate and mark a 3-phase primary electric
20 line. Serious injury could have resulted from contact with that line. No injuries resulted
21 from the contact with the line in this instance. The damage did result in a State
22 Reportable Accident as governed by NAC 704.228 *et seq.*¹
- 23 (b) Good faith in attempting to comply before/after violation. Nevada Power did not mark
24 the 3-phase primary line in accordance with NRS 455.130 and NAC 455.125.
- 25 (c) History of violations. Nevada Power failed to mark an electric line that it had
26 incorrectly identified as a customer owned service line in Docket No. 22-05019.
- 27 (d) Willfulness or negligence in failing to comply. Staff believes that the instant incident of
28 failure to mark a subsurface installation represents a repeated violation of NRS 455.130
and NAC 455.125 given the incident that was the subject of Docket No. 22-05019.
Nevada Power disagrees that the instant incident represents a repeated violation of NRS
455.130 and NAC 455.125 as Nevada Power views the two incidents as being different

¹ The damage cause in excess of \$50,000 in damages to Nevada Power facilities. *See*. Report filed by Nevada Power on November 14, 2022, in Docket No. 22-01001.

1 categories of violation. Staff and Nevada Power have agreed that a stipulated
2 characterization of the instant incident is not necessary to resolve this matter.

3 (e) Timeliness of notification to Staff of violation. Staff was notified via email of the damage
4 shortly after it occurred by Nevada Power's claims department.

5 (f) Cooperation in the investigation and repair of any damage Nevada Power cooperated
6 with Staff's personnel, providing detailed information about the incident to Staff.

7 (g) Interruption of services. The incident resulted in an outage that impacted 36 customers.
8 The outage began at 7:28 a.m. on October 3, 2022, and repairs were completed and full
9 power was restored at 8:12 a.m. on October 4, 2022.

10 WHEREAS, under NRS 455.170, Staff estimates that Nevada Power could be subject to a
11 civil penalty of at least \$47,500 for the violations discussed above.

12 WHEREAS, the Parties negotiated a mutually acceptable settlement of this matter,
13 which includes a civil penalty.

14 NOW THEREFORE, in light of the foregoing recitals and mutual agreement reflected in this
15 Stipulation, the Parties agree and recommend that the Commission accept the following:

16 1. The Parties agree that Nevada Power violated NRS 455.130, and NAC 455.125.
17 2. The Parties agree that pursuant to NRS 455.170, Nevada Power will pay a civil
18 penalty for the violations listed in Paragraph 1 above. The Parties agree that a settlement consisting
19 of a total civil penalty in the amount of \$25,000 is appropriate.

20 3. As a compliance item, Nevada Power agrees to submit payment in the total amount of
21 \$25,000 to the Commission for deposit in the State General Fund within thirty (30) days from the date of
22 issuance of the Commission's Order accepting this Stipulation.

23 4. Nevada Power agrees to not seek recovery of the cost of repair associated with the
24 October 3 damage from ratepayers and will remove all such costs from its next general rate case.

25 5. Neither this Stipulation, nor its terms, nor the Commission's acceptance of the
26 recommendations contained in this Stipulation, shall have any precedential effect in any other proceeding
27 before the Commission, a court of law, or any other state government regulatory body, nor shall it be
28 admissible or otherwise described or used in any proceeding hereafter for any purpose.

1 6. This Stipulation is made upon the express understanding that it constitutes a negotiated
2 settlement. The provisions of this Stipulation are not severable. In the event this Stipulation is not accepted by
3 the Commission without change, it shall be deemed withdrawn without prejudice to any claims or
4 contentions which may have been made by any Party.

5 7. In accordance with NAC 703.845, this Stipulation settles only issues relating to the
6 present proceeding and seeks relief that the Commission is empowered to grant.

7 8. This Stipulation may be executed in one or more counterparts, all of which together
8 shall constitute the original executed document. This Stipulation may be executed by electronic
9 transmission, which signatures shall be as binding and effective as original signatures.

10
11 This Stipulation is entered into by each Party as of the date entered below.

12
13
14 **REGULATORY OPERATIONS STAFF OF THE**
15 **PUBLIC UTILITIES COMMISSION OF NEVADA**

16 By: /s/ Don Lomoljo
17 Donald Lomoljo
18 Staff Counsel

Dated: 12/8/2022

19 **NEVADA POWER COMPANY d/b/a NV ENERGY**

20
21 By: /s/ Michael Knox
22 Michael Knox
23 Senior Attorney

Dated: 12/8/2022