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23-03004

Public Utilities Commission of Nevada  
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September 12, 2023

Trisha Osborne  
Assistant Commission Secretary  
Public Utilities Commission of Nevada  
1150 East William Street  
Carson City, NV 89701

Re: Docket No. 23-03004

Dear Ms. Osborne:

Please accept for filing the Petition for Reconsideration filed on behalf of the Bureau of Consumer Protection in the above-referenced docket.

Should you have any questions regarding this filing, please contact me at (775) 684-1169.

Sincerely,

ERNEST FIGUEROA  
Consumer Advocate

/s/ Whitney Digesti  
WHITNEY DIGESTI  
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WD:jw  
cc: Parties of Record

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

2   Joint Application of Nevada Power Company )  
3   d/b/a NV Energy and Sierra Pacific Power    )  
4   Company d/b/a NV Energy for approval of    )  
5   the cost recovery of the regulatory assets    )           Docket No. 23-03004  
6   relating to the development and            )  
7   implementation of their Joint Natural       )  
8   Disaster Protection Plan.                    )  
9                   \_\_\_\_\_ )

8                   **PETITION FOR RECONSIDERATION**

9           COMES NOW, the Office of the Nevada Attorney General’s Bureau of Consumer  
10   Protection (“BCP”) before the Public Utilities Commission of Nevada (“Commission”)  
11   pursuant to Nevada Administrative Code (“NAC”) 703.801 and respectfully requests that  
12   the Commission reconsider its Order of August 28, 2023 (hereinafter referred to as  
13   “Order”). Specifically, the BCP respectfully requests that the Commission reconsider Order  
14   paragraphs 205-211 and ordering paragraph 13, those noted as the subject of  
15   Commissioner Tammy Cordova’s dissent to the Order. Those sections of the Order pertain  
16   to the Commission’s approval of Nevada Power Company’s (“NPC”) and Sierra Pacific  
17   Power Company’s (“SPPC”) (collectively the “Companies”) proposed statewide<sup>1</sup> Natural  
18   Disaster Protection Plan (“NDPP”) rate whereby operations & maintenance and  
19   administrative & general (“OMAG”) costs are recovered from all NV Energy ratepayers  
20   based on inaccurate implications that “necessitate” at least a partial socialization of the  
21   NDPP.

22   ///

23   ///

24   \_\_\_\_\_  
25   <sup>1</sup> NPC and SPPC are only two of 15 electric utilities in the state of Nevada and their combined service areas  
26   only cover approximately 50 percent of the state. Hence, it is inaccurate to refer to the NDPP rate as a  
27   statewide rate. As BCP stated in testimony in Docket No. 23-03003, the correct terminology for the NDPP  
28   OMAG rate is a “holding company” rate. (See Exhibit 401 in Docket No. 23-030003 at 6:13 – 7:20.)  
Nonetheless, for consistency with the Commission's terminology, BCP will use the term “statewide” rate in  
this Petition.

1 **I. STANDARD FOR RECONSIDERATION**

2 Pursuant to NAC 703.801:

3 (a) A petition for reconsideration must specifically: (a) Identify each  
4 portion of the challenged order which the petitioner deems to be  
5 unlawful, unreasonable or based on erroneous conclusions of law or  
6 mistaken facts; and

7 (b) Cite those portions of the record, the law or the rules of the  
8 commission which support the allegations in the petition. The petition  
9 may not contain additional evidentiary matter or require the  
10 submission or taking of evidence.

11 **II. ARGUMENT IN SUPPORT OF PETITION**

12 While the Commission has plenary power over regulating rates, that power is not  
13 without limitations. *See Nevada Power Co. v. Eighth Jud. Dist. Ct. of Nevada ex rel. Cnty.*  
14 *of Clark*, 120 Nev. 948, 957, 102 P.3d 578, 584 (2004). The Commission may only authorize  
15 public utilities to charge rates that are “just and reasonable.” *Id.* (citing NRS 704.040(2)).  
16 Guidelines for determining whether the Commission has authorized rates that are just and  
17 reasonable are found in NRS 703.373(11) and include: that a Commission’s decision must  
18 not be made upon unlawful procedure; be affected by other error of law; be clearly erroneous  
19 in view of the reliable, probative and substantial evidence on the whole record; or be  
20 arbitrary or capricious or characterized by abuse of discretion. *See* NRS 703.373(11)(c-f).

21 In this case, the Commission rejected the BCP and nearly every intervenor  
22 witnesses’ credible concerns and recommendations regarding NPC and SPPC’s NDPP  
23 single statewide rate for OMAG costs, effectively requiring NPC’s customers to pay for  
24 \$19.6 million in 2022 NDPP OMAG costs incurred by SPPC and in SPPC’s service territory  
25 (this transfer of costs from SPPC to NPC is referred in this Petition as the “cost shift”).<sup>2</sup> In

26 <sup>2</sup> The Commission’s Order refers to the cost shift as “cost allocation” in Paragraphs 205-211. It is a mistaken  
27 fact to claim that the recovery of costs recorded in the regulatory asset account of one public utility from  
28 customers of a different public utility is a “cost allocation”. There was no dispute to the fact that all NDPP  
OMAG expenditures that were recorded in either NPC’s NDPP regulatory asset accounts or SPPC’s NDPP  
regulatory asset accounts in 2022 were direct costs for the respective public utilities. Direct costs are assigned  
– not allocated – to the utility that can be specifically identified as where the cost was incurred.

1 ordering the cost shift, the Commission incorrectly claimed that there was substantial  
2 evidence to support the continued use of the cost shift used in Docket Nos. 21-03004 and  
3 22-03006.

4 For the reasons described below, the BCP implores the Commission to reconsider  
5 paragraphs 205-211 and ordering paragraph 13 of the Order, as these paragraphs ordering  
6 the cost shift are both procedurally and substantively unlawful and unreasonable,  
7 exceeding the limits of the Commission's plenary power, and therefore must be  
8 reconsidered and reversed.

9 **A. The Cost Shift Ordered in Paragraphs 205-211 and Ordering Paragraph**  
10 **13 of the Order is Procedurally Unlawful.**

11 1. The Commission's Order Shifting OMAG Costs from Northern to Southern  
12 Nevada Ratepayers is Not Supported by Substantial Evidence in the Record.

13 The Commission's Order must be supported by substantial evidence in the record. A  
14 decision that lacks support in the form of substantial evidence is arbitrary or capricious,  
15 and thus an abuse of discretion that warrants reversal. *Cannon Cochran Mgmt. Servs., Inc.*  
16 *v. Figueroa*, 136 Nev. 442, 443, 468 P.3d 827, 829 (2020) (citing *Tighe v. Las Vegas Metro.*  
17 *Police Dep't*, 110 Nev. 632, 634, 877 P.2d 1032, 1034 (1994); see also NRS 703.373(11)(e)  
18 and NRS 703.373(11)(f). "Substantial evidence is that which a reasonable mind might  
19 accept as adequate to support a decision." *Cannon Cochran Mgmt. Servs., Inc. v. Figueroa*,  
20 136 Nev. at 443, 468 P.3d at 829.

21 In this docket, the Companies failed to provide sufficient evidence to support its  
22 request to shift OMAG costs from SPPC to NPC ratepayers. In fact, the substantial  
23 evidence on the record necessitates that the cost shift ordered in this case to be reversed.  
24 In the 2022 NDPP case, Docket No. 22-03006, the Commission ordered a cost shift of \$30.9  
25 million of OMAG NDPP costs to be shifted from SPPC to NPC ratepayers. See Docket No.  
26 22-03006, David Chairez Testimony at Table 3. The Companies' joint application was void  
27 of evidence to support this cost shift, and the only testimony of the Companies' witnesses  
28

1 cited to in the 2022 Order was that “most Nevadans will benefit from the NDPP because  
2 natural disasters are wide-reaching events regardless of where they occur because of their  
3 environmental impacts, potential for personal injury, and the overall impact on the state  
4 as a whole.” Docket No. 22-03006, Order, Oct. 12, 2022, at ¶ 150.

5 As the Commission admitted in its 2022 Order, “the NDPP cost allocation is still in  
6 its early stages and further refinements will be necessary in the future to safeguard against  
7 inequities, including any that might exist among SPPC’s customers.” *Id.* at ¶ 152. As such,  
8 the Commission directed the Companies to provide evidence to further assess or quantify  
9 the socialized benefits supporting the cost shift that caused inequities to NPC ratepayers.  
10 *See id.* As a consequence of the Companies failing to provide evidence to support the cost  
11 shift in the 2022 NDPP docket, the Commission ordered the Companies in Directive 4 to  
12 “provide a detailed analysis and supporting testimony with their 2023 Natural Disaster  
13 Protection Plan Annual Cost Recovery filing addressing how to assess or quantify the  
14 socialized benefits associated with the Natural Disaster Protection Plan costs.” *See Order,*  
15 *at ¶ 205.*

16 In the instant docket, the Companies attempted to comply with Directive 4 by filing  
17 the analysis and direct testimony of Jeremy Aguero. However, Mr. Aguero’s analysis and  
18 supporting testimony was woefully deficient and failed to provide any evidence that  
19 supported the Companies’ request to cost shift from SPPC to NPC. The opinion that the  
20 Companies did not adequately assess or quantify the socialized benefits as required in  
21 Directive 4 was nearly unanimous in this docket.<sup>3</sup> The expert witness for Southern Nevada  
22 Gaming Group, Nevada Resort Association, MGM Resorts International, and Caesars  
23 Enterprise Services, Mark Garrett, provided the following testimony:

24 There is nothing in the body of the testimony that complies with Commission’s  
25 Directive 4. In other words, there is nothing in the testimony that quantifies  
the economic impact on southern Nevada from a state-wide allocation of these

26 <sup>3</sup> The only parties that did not believe that the Companies’ attempt to comply with Directive 4 was  
27 inadequate were the Applicants themselves, and NNIEU.

1 costs. To the contrary, Mr. Aguero actually admits that there is ‘almost no  
2 measurable economic effect on Clark County’ from a disaster in a rural area  
of the state . . .

3 *See* Garrett Direct Testimony at p. 21:22-29.

4 Similarly, Bradley Mullins, expert witness for intervenors Smart Energy Alliance  
5 and Wynn Las Vegas, LLC testified that “the study, however, does not quantify the  
6 socialized benefits associated with NDPP costs by region, nor the direct benefits received  
7 by the respective service areas.” *See* Mullins Direct Testimony at p. 9:6-8. Staff witness  
8 Miguel Perez stated that “Mr. Aguero’s testimony is theoretical, thus its usefulness in  
9 quantifying socialized benefits is extremely limited . . . [n]either NV Energy nor Mr. Aguero  
10 attempts to quantify the reduction in risk due to NDPP projects or quantify the expected  
11 benefits due to risk reduction.” *See* Perez Direct Testimony at p. 11: 21-28. Additionally,  
12 Staff expert Emmanuel Macatangay recommended in the accompanying NDPP plan that  
13 the Commission should open an investigation and rulemaking docket on refining the rate  
14 design component of NDPP. *See* Docket 23-03003, Macatangay Testimony at 12: 16-19.

15 BCP economist Patrick Morton provided a thorough analysis on how Mr. Aguero’s  
16 testimony failed to comply with Directive 4, stating:

17 The analysis provide by the utilities to the Commission is questionable and is  
18 better characterized as an “attempted” analysis that ultimately falls short of  
19 the Commission’s requirements . . . the ratios, alone, are unhelpful and do not  
amount to reliable substantial evidence demonstrating the value and benefits  
of the components of NDPP.

20 *See* Patrick Morton Direct Testimony at (specific cite for this testimony).<sup>4</sup>

21 The Companies were ordered to provide evidence to support their request to shift  
22 costs from SPPC to NPC but failed to provide the substantial evidence and meet their  
23 burden of proof to satisfy the Commission’s directive. In light of the evidentiary record – or  
24 lack thereof – Commission Cordova issued a Competing Order on August 28, 2023  
25 (“Competing Order”) in which she stated that NV Energy failed to provide the required  
26

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27 <sup>4</sup> For Patrick Morton’s complete analysis see pgs. 6-9.

1 evidence:

2 NV Energy attempted to provide substantial evidence to warrant a deviation  
3 from cost-of-service principles in the testimony of Mr. Aguero; however . . . Mr.  
4 Aguero’s testimony was theoretical and did not adequately assess or quantify  
5 the societal benefits associated with NDPP costs. The Commission finds  
6 insufficient evidence supporting a departure from cost-of-service principles in  
7 this case.

8 *See* Competing Order, Docket 23-03004, August 28, 2023, at ¶ 209.

9 Ultimately, Commissioner Cordova’s proposed decision was not adopted and the  
10 Order in this case continued the use of the Companies’ faulty cost-shifting methodology  
11 once again. The irony is that while the Chair and the Acting Commissioner approved the  
12 cost shift, they simultaneously commented on the deficiency of Mr. Aguero’s analysis and  
13 testimony, admitting that “the Commission finds that the method used does not adequately  
14 assess or quantify the socialized benefits associated with NDPP costs. Because the analysis  
15 is limited its usefulness in quantifying the socialized benefits of NDPP projects is limited.”

16 *See* the Chair’s Proposed Order, Docket 23-03004, August 28, 2023, at ¶ 230.

17 The paragraphs ordering the cost shift ignore the mountain of evidence against the  
18 cost shift as well as the absence of evidence to support the cost shift. The rationale in  
19 paragraphs 205-211 is not supported by evidence from the Companies or any other party.  
20 Rather, the Commission uses its own analysis to justify its decision. This decision is not  
21 supported by substantial evidence in the record and is, consequentially, arbitrary,  
22 capricious, and an abuse of discretion. As a result, it is unlawful and unreasonable, and  
23 requires reconsideration and reversal.

24 **2. The cost shift unlawfully shifts the burden of proof.**

25 The cost shift section of the Order, namely paragraphs 205-211 and ordering  
26 paragraph 13, fails to adhere to the statutorily mandated burden of proof in utility cases.  
27 The burden of demonstrating that a change in rates is just, reasonable, and in the public  
28 interest is on the utility. *Southwest Gas Corp. vs. PUC*, 504 P.3d 503, 510-511, n.4 (Nev.



1 2022); *see also* NAC 703.2231.

2 The Commission’s order on cost shift unlawfully shifts the burden onto Staff, BCP,  
3 and other intervenors. This burden shift took place last year in Docket No. 22-03006 and  
4 has continued on in this docket. Specifically, in the 22-03006 Order, the Commission  
5 acknowledged the ratemaking principle that costs must match the flow of benefits. *See*  
6 Docket No. 22-03006 Order, Oct. 12, 2022, ¶ 150. The Commission also acknowledged that  
7 the Companies failed to provide an assessment or analysis of quantified societal benefits.  
8 *Id.* at ¶ 151 (noting “the absence of quantitative analysis addressing whether and to what  
9 extent one service territory experiences greater benefits than the other. . .”). The  
10 Commission even gave the Companies another chance to provide the evidence that was  
11 missing by issuing Directive 4. *See generally* Order, Docket No. 22-03006, Oct. 12, 2022.

12 Even though the Commission was aware that the Companies failed to provide  
13 substantial evidence on this issue, the Commission adopted the cost shift, claiming it was  
14 the fault of the other parties: “those parties fail[ed] to present substantial evidence  
15 quantifying or adequately comparing the relative benefits of the proposed NDPP programs  
16 and projects.” *Id.* at ¶ 151. In other words, the Commission ordered the cost shift in Docket  
17 22-03006 after 1) recognizing the Companies had not provided sufficient evidence thereby  
18 failing to meet their burden, and 2) claiming the intervenors had failed to provide the  
19 evidence. Thus, the Commission unlawfully shifted the burden from the Companies to the  
20 intervenors in deciding to adopt the cost shift last year.

21 In this docket, the Commission had a chance to correct its unlawful burden shift and  
22 re-analyze and rule on this issue in this case, but ultimately failed to do so – and again put  
23 the Companies’ responsibility on other parties. That is, as discussed above, the Commission  
24 directed the Companies to provide substantial evidence to support its request to shift the  
25 costs from SPPC to NPC in Directive 4. Instead of determining the Companies’ failure to  
26 meet their burden necessitates that the Companies’ request must be denied, the

1 Commission continued the unlawful burden shift, stating that “the Commission finds  
2 insufficient evidence supporting a departure from the compromise methodology it adopted  
3 in Docket Nos. 21-03004 and 22-03006.” *See* Order at ¶ 209.

4 On top of the Order giving the Companies their requested cost shift despite the lack  
5 of evidence, it also gives the Companies yet another bite of the apple next year:

6 To more fully examine the reasonableness of cost allocation for costs incurred  
7 pursuant to NRS 704.7983, the Commission directs NV Energy to perform a  
8 more directed economic analysis of the benefits attributable to the NDPP to  
be presented in the next cost recovery application.<sup>5</sup>

9 The burden and standard of proof in the NDPP dockets on this cost shift issue has  
10 become meaningless. The Commission continues to rule in favor of the Companies’ filings,  
11 despite the Companies’ failure to meet their burden of proof, rather than the substantial  
12 evidence on the record, and gives the Companies chance after chance to provide evidence  
13 (all while acknowledging the Companies’ failure to provide evidence). This practice is  
14 unlawful, unreasonable, based on erroneous conclusions of law and mistaken facts, and  
15 requires reconsideration and reversal. It is the very arbitrary and capricious conclusion  
16 that the Commission stated it could not make.<sup>6</sup>

17 **B. The cost shift ordered in Paragraphs 205-211 and Ordering Paragraph 13**  
18 **of the Order is substantively unjust and unreasonable.**

19 Disregard of the substantial evidence on the record and shifting the statutory burden  
20 of proof are grounds for reconsideration and reversal. But in addition, what makes the  
21 ordered cost shift arguably most disturbing is that it is substantively unjust and  
22 unreasonable – violating clear and fundamental laws governing the utility industry. The  
23 following outlines the cost shift’s substantive violations of law, necessitating

24  
25 <sup>5</sup> Order, Docket No. 23-03004, August 28, 2023, at ¶211. This addition was submitted by Sam Crano in a tie  
breaking vote for Order in Docket 23-03004.

26 <sup>6</sup> “Though the Commission is not bound by stare decisis and must not engage in ad hoc rulemaking, it must  
27 not make decisions that are arbitrary and capricious and unsupported by the record evidence. (NRS  
28 703.373).” Order, Docket No. 23-03004, August 28, 2023, at ¶ 208.

1 reconsideration and reversal.

- 2 1. The cost shift is unjust and unreasonable because NV Energy, a holding company,  
3 cannot collect rates from ratepayers.

4 NPC, SPPC, and the Commission have attempted to justify the unjust and  
5 unreasonable cost shift by pointing to the definition of “electric utility” used in NRS.7983.  
6 Specifically, the claim is that because NRS 703.7983 refers to NRS 704.7571 for the  
7 definition of “electric utility,” per NRS 704.7571(1)(c), a holding company of an electric  
8 utility such as NV Energy Inc. is the electric utility that collects NDPP rates from  
9 ratepayers. *See* Modified Final Order, Docket 20-02031, October 5, 2020, at ¶ 74. However,  
10 this claim is unjust and unreasonable because using NV Energy Inc. as the electric utility  
11 from which NDPP rates are issued and collected violates other laws. A statutory  
12 interpretation that causes a violation of other laws must be avoided.<sup>7</sup> In ordering the cost  
13 shift, the Commission uses NV Energy Inc. as the definition of electric utility under the  
14 NDPP statute. This interpretation violates other binding laws in the following ways:

- 15 a. *The Commission does not have jurisdiction over holding companies such as NV*  
16 *Energy Inc.*

17 NRS 704.001(1) provides the Commission with the authority to “regulate public  
18 utilities to the extent of its jurisdiction.” Public utilities are defined, in pertinent part, as  
19 “[a]ny plant or equipment . . . within this State for the production, delivery or furnishing  
20 for or to other persons . . . heat, gas, coal slurry, light, power in any form. . .” NRS  
21 704.020(2)(a). The Commission has jurisdiction to set rates for public utilities. However,  
22 the term “holding company” is conspicuously missing from the jurisdictional statute.  
23

24  
25 <sup>7</sup> Courts must interpret seemingly conflicting statutes to avoid the conflict and give effect to Congress's  
26 intent by examining the complete framework of related legislation. *Doe v. Kamehameha Sch./Bernice*  
27 *Pauahi Bishop Est.*, 295 F. Supp. 2d 1141 (D. Haw. 2003), *aff'd in part, rev'd in part*, 416 F.3d 1025 (9th  
28 Cir. 2005), *rev'd in part on reconsideration*, 470 F.3d 827 (9th Cir. 2006), and *aff'd*, 470 F.3d 827 (9th Cir.  
2006).

1           Moreover, NRS 704.033(1) provides, in pertinent part, that “the Commission shall  
2 levy and collect an annual assessment from all public utilities . . . subject to the jurisdiction  
3 of the Commission.” The Commission has never levied such a tax on NV Energy, Inc.  
4 because, as a holding company and not an electric utility, it is outside of the jurisdiction of  
5 the Commission. As such, the holding company cannot be plugged in as the electric utility  
6 in the NDPP statute context because doing so would mean that the Commission is  
7 unlawfully authorizing a company outside its jurisdiction to charge utility rates.

8           *b. NV Energy, Inc. does not hold a CPCN – a prerequisite for providing public*  
9 *utility services in Nevada.*

10           NRS 704.330 provides that in order to own, operate, and control a public utility such  
11 as an electric utility in Nevada, one must first obtain a certificate of public convenience  
12 and necessity (“CPCN”) from the Commission. It is a prerequisite to be considered a public  
13 utility and only those who have a CPCN have authority to provide public utility services  
14 in Nevada. The only two electric utilities that hold the prerequisite CPCNs in Nevada are  
15 NPC and SPPC.<sup>8</sup> The holding company NV Energy, Inc. does not have a CPCN and  
16 therefore it cannot be considered an electric utility in this state.

17           *c. NV Energy, Inc. does not have service territories, customers, or electric*  
18 *infrastructure because it is not a lawful utility in Nevada.*

19           The two legitimate electric utilities in Nevada – NPC and SPPC – have distinct  
20 service territories that are legally described in each utility’s respective CPCNs.<sup>9</sup> NPC’s and  
21 SPPC’s service territories are specific service territories pursuant to NRS 704.330(6),  
22 which prohibits overlap of service territories. The reference to “service territory of the  
23 electric utility” in NRS 704.7983(2)(a) and NRS 704.7983(5) can only mean the two electric  
24

25 \_\_\_\_\_  
26 <sup>8</sup> See NPC’s CPCN 613, sub 11 at: <http://pucweb1.state.nv.us/PDF/AXImages/CPC/1143.pdf>; See SPPC’s  
CPCN 685, sub 20 at: <http://pucweb1.state.nv.us/PDF/AXImages/CPC/773.pdf>.

27 <sup>9</sup> See *id.*

1 utilities that have service territories in Nevada. NV Energy, Inc. does not have a service  
2 territory and therefore cannot be considered an electric utility.

3 Moreover, NV Energy, Inc. does not have any customers. Common sense tells us a  
4 holding company without electric utility customers cannot be an electric utility as the  
5 primary function of the electric utility is to provide electric services to customers. Further,  
6 using a holding company as the definition would make other provisions of the statute that  
7 refer to charging rates *to customers* nonsensical. *See City Plan Dev. v. State, Labor*  
8 *Comm'r*, 121 Nev. 419, 435, 117 P.3d 182, 192 (2005) (noting that a statutory  
9 interpretation leading to an absurd result must be avoided.). Lastly, the holding company  
10 does not own any electrical infrastructure.<sup>10</sup> The infrastructure is owned by either NPC or  
11 SPPC. An entity that owns no electrical infrastructure cannot charge people a utility rate  
12 for electric service that it does not and cannot provide.

13 *d. NV Energy, Inc. never filed an NDPP Application.*

14 The fact that NPC and SPPC have each filed an NDPP application in NDPP dockets  
15 thus far as two separate electric utilities filing joint NDPP applications is an admission  
16 that NV Energy, Inc. cannot be treated as the electric utility for purposes of NDPP. The  
17 joint application provides that the d/b/a of both NPC and SPPC is “NV Energy”. However,  
18 the use of a d/b/a means “doing business as,” or using a fictitious name to conduct a  
19 business. The legal names of the two public utilities that filed applications in this docket  
20 are Nevada Power Company [Entity Number – C9862-1998 and Nevada Business ID –  
21 NV19981212884] and Sierra Pacific Power Company [Entity Number – C63-1965 and  
22 Nevada Business ID – NV19651000537] according to the corporate files of these two  
23  
24

25 <sup>10</sup> The one exception to this: NV Energy, Inc. does have a 20 percent ownership interest in LS Power’s  
26 DesertLink 500 kV transmission line that traverses approximately 60 miles from the Harry Allen  
27 Substation to the Eldorado Substation that supports the flow of energy in and out California via the  
28 California Independent System Operator. *See* PUCN Docket No. 21-02024 and DesertLink’s  
website: <https://desertlinktransmission.com/>.

1 business entities on the Nevada Secretary of State’s Nevada Business Search website.<sup>11</sup>  
2 NV Energy, Inc. did not file the application in docket 23-03003, 23-03004, or any of the  
3 NDPP dockets from years past. Further, NRS 78.039 requires the names of corporations in  
4 Nevada to be distinguishable.<sup>12</sup> In contrast to the distinguishable legal names that Nevada  
5 Power Company and Sierra Pacific Power Company have on file with the Nevada Secretary  
6 of State, a fictitious business name is not exclusive and not distinguishable.

7       If the holding company was the electric utility, why has it not filed for recovery of  
8 the NDPP costs? Perhaps it is because of the legal problems provided herein – including  
9 that the Commission does not have jurisdiction to allow the holding company to charge  
10 rates. It is a disregard of the laws governing public utilities to require the two separate  
11 electric utilities to file the application but then order that the holding company is the legal  
12 electric utility under the statute to justify the cost shift. Such an unlawful order requires  
13 reconsideration and reversal.

14       2. The ordered cost shift is unjust and unreasonable because it violates the cost  
15 causation principle.

16       The cost shift continues to violate cost-of-service principles, including the cost-  
17 causation principle. The cost causation principle is a bedrock of Nevada utility law and  
18 utility law in general.<sup>13</sup> The Nevada Supreme Court has defined the cost-causation  
19 principle to mean “all approved rates must reflect to some degree the costs actually caused  
20

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21 <sup>11</sup> Nevada Secretary of State, *Silver Flume Nevada’s Business Portal*,  
22 <https://esos.nv.gov/EntitySearch/OnlineEntitySearch> (last visited September 9, 2023).

23 <sup>12</sup> NRS 78.039(1) provides that “The name proposed for a corporation must be distinguishable on the records  
24 of the Secretary of State from the names of all other artificial persons formed, organized, registered or  
25 qualified pursuant to the provisions of this title that are on file in the Office of the Secretary of State and all  
26 names that are reserved in the Office of the Secretary of State pursuant to the provisions of this title. If a  
27 proposed name is not so distinguishable, the Secretary of State shall return the articles of incorporation  
28 containing the proposed name to the incorporator, unless the written, acknowledged consent of the holder of  
the name on file or reserved name to use the same name or the requested similar name accompanies the  
articles of incorporation.”

<sup>13</sup> NARUC, *Electric Utility Cost Allocation Manual*, at 13, available at  
<https://pubs.naruc.org/pub/53A3986F-2354-D714-51BD-23412BCFEDFD>.

1 by the customer who must pay them; or, put in the majority's terms, there must exist a  
2 direct nexus between the benefit the customer draws from a utility and the charges  
3 assessed against that customer.” See *Dep't of Health & Hum. Servs., Aging & Disability*  
4 *Servs. Div. v. Pub. Utilities Comm'n of Nevada*, 131 Nev. 1350 (2015). The Court of Appeals  
5 for the D.C. Circuit explained that “[e]lectric utilities must charge just and reasonable  
6 rates. For decades, the Commission and the courts have understood this requirement to  
7 incorporate a cost-causation principle – the rates charged for electricity should reflect the  
8 costs of providing it. See *KN Energy, Inc. vs. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992).

9 Additionally, the cost causation principle is reflected throughout the chapter governing  
10 electric utilities in Nevada, NRS Chapter 704. For example, NRS 704.110 requires  
11 individually certificated electric utilities to separately seek cost recovery for costs incurred  
12 in each utility’s respective service territory under plans such as this one. See NRS  
13 704.110(3). This widely accepted principle was even acknowledged as such by  
14 Commissioner Cordova in this docket, noting that the cost-of-service principle “is the  
15 standard in Nevada” and essentially means that the “cost causer pays for the cost.” See  
16 *Competing Order* at ¶ 207.

17 The cost causation principle has been ignored by all but Commissioner Cordova in this  
18 docket contrary to Nevada law. To order \$19.6 million in costs incurred in SPPC service  
19 territory to be recovered from NPC customers is a violation of the cost causation principle.  
20 The Modified Final Order paragraphs 205-211 and ordering paragraph 13 violates this  
21 principle and is, therefore, unjust and unreasonable, necessitating reconsideration.

22 3. The cost shift is unlawful because it violates Section 13(4) of the Commission’s  
23 NDPP regulation, LCB File No. R085-19, and is therefore *ad hoc* rulemaking.

24 Section 13(4) of the NDPP regulation provides for NDPP cost recovery. There is no  
25 allowance in this regulation for a shifting of costs recorded in SPPC’s regulatory asset  
26 accounts to be paid by NPC’s customers.  
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1 Section 13(4) of LCB File No. R085-19 provides:

2  
3 4. An electric utility shall annually submit to the Commission a request to clear the  
4 accumulated balance in a regulatory asset or liability account created pursuant to  
5 subsection 1 and include the account in the request. The request must include:

6 (a) A proposed period for recovery and amortization of the regulatory asset or  
7 liability that ensures that the utility does not recover more than the actual  
8 accumulated balance of the account;

9 (b) A detailed reconciliation of the amount of recovery requested to the approved  
10 budget items, showing carrying charges separately; and

11 (c) Proposed rate design and rates by customer class for the annual recovery  
12 requested in a separate line item on a customer's bill.

13 The Commission's NDPP regulations define "electric utility" as NPC and SPPC,  
14 separately. Section 7 of the regulations provides, in pertinent part:

15 1. An electric utility shall, on or before March 1, 2020, and on or before March 1 of  
16 every third year thereafter, submit a natural disaster protection plan to the  
17 Commission. Two or more electric utilities that are affiliated through common  
18 ownership and that have an interconnected system for the transmission of  
19 electricity may submit a joint natural disaster protection plan. A natural disaster  
20 protection plan may be an amended version of a previous plan.

21 *See Sec. 7 of LCB File No. R085-19. (Emphasis added).*

22 Thus, per the Commission's very own NDPP regulations, NPC and SPPC must have  
23 separate regulatory asset accounts and collect rates separately from each electric utility's  
24 separate customers. The Commission's Second Modified Final Order in Docket Nos. 20-  
25 02031/2 clearly required that there be four separate NDPP regulatory asset accounts: (1)  
26 NPC-Distribution; (2) NPC-Transmission; (3) SPPC-Distribution; and (4) SPPC-  
27 Transmission.<sup>14</sup> There is no allowance in the regulations to shift costs from SPPC's NDPP  
28 regulatory asset account to be paid (cleared) by NPC's customers. Furthermore, the  
customer classes for NPC and SPPC are distinct – single-family residential for NPC's  
customers is more limited than SPPC's domestic service that includes churches. Therefore,  
this regulation is clearly referring to NPC and SPPC as separate electric utilities. In

<sup>14</sup> See Second Modified Final Order in Docket Nos. 20-02031/32 at ¶ 391.



1 addition to the other laws it violates, the ordered cost shift also is in direct conflict with the  
2 NDPP regulations.

3 The ordered cost shift contradicts and violates other laws. Therefore, it is  
4 substantively unlawful requiring that it be reversed. *See Albios v. Horizon Communities,*  
5 *Inc.*, 122 Nev. 409, 418, 132 P.3d 1022, 1028 (2006) (recognizing that whenever possible,  
6 the court must interpret a rule or statute in harmony with other rules and statutes.) (*citing*  
7 *Allianz Ins. Co.*, 109 Nev. at 993, 860 P.2d at 723.).

8 **C. The Rationales contained in the Order do not justify the cost shift.**

9 Section A of this Petition provides that the cost shift ordered in paragraphs 205-211  
10 and ordering paragraph 13 is procedurally unlawful and Section B provides that it is  
11 substantively unlawful. Section C provides that the rationales contained in Order, once  
12 scrutinized, do not hold up legally or factually as justification for the cost shift. Specifically,  
13 the Order offers two rationales to support its unlawful decision: 1) “The public policy behind  
14 the NDPP has statewide implications that necessitate at least partial socialization of the  
15 NDPP;” and 2) the law itself – SB 329, codified in NRS 704.7983 – supports the socialization  
16 of OMAG costs. *See Order at ¶¶205-207.* For the following reasons, neither of these  
17 rationales have a basis in law or fact, and therefore, should bear no weight when it comes  
18 to justification of the cost shift.

19 1. The public policy rationale fails to provide lawful justification for the cost shift.

20 Claiming that public policy supports the collection of NDPP costs statewide seems  
21 convincing at first glance but is ultimately riddled with legal issues.

22 First, there is no evidentiary support that the public policy behind SB 329 calls for  
23 a statewide NDPP rate. Indeed, the only policy discussed in the language in NRS 704.7983  
24 is the requirement to implement measures to protect against, prevent, and mitigate natural  
25 disasters in Nevada. In fact, the Commission even acknowledges that cost allocation is  
26 never mentioned in the statute and a cost shift is never prescribed. *See Order at ¶ 206.* The  
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1 Commission’s order of the cost shift based on its claim that the statewide rate is the policy  
2 of the NDPP statute – when the statute is silent on the subject – is *ad hoc* rulemaking. *See*  
3 *Las Vegas Transit Sys., Inc. v. Las Vegas Strip Trolley*, 105 Nev. 575, 578, 780 P.2d 1145,  
4 1147 (1989). Thus, the order shifting OMAG costs is based on the Commission’s policy  
5 opinions rather than public policy language contained in the statute and is therefore  
6 unlawful *ad hoc* rulemaking.

7       Second, the Commission’s public policy argument is flawed. The Commission uses  
8 the following rationale to claim that the public policy of SB 329 requires a statewide rate:  
9 “SB 329 protects the entire state from natural disasters and thus has statewide  
10 implications . . . if there is a statewide cost associated with response and recovery related  
11 to a natural disaster, then some portion of the costs associated with mitigating the risk of  
12 natural disasters would appropriately be recovered statewide.” *Id.* at ¶ 205. In other words,  
13 because the statute is intended to protect the whole state from natural disasters, then  
14 OMAG costs should be recovered equally from all ratepayers of NPC and SPPC. However,  
15 there is no causal connection between natural disasters (potentially) affecting the whole  
16 state and the implementation of an equal statewide rate. One does not cause or justify the  
17 other, especially because the state has two public utilities that provide electric service and  
18 the majority of the NDPP costs are incurred in the SPPC service territory. Indeed, a  
19 jurisdictional rate could be implemented, and the purpose of the statute would still be  
20 achieved. The Commission’s logic conflates the purpose of the statute with the appropriate  
21 cost recovery and claims it is the statute’s public policy. There are two distinct issues – 1)  
22 the policy behind SB 329, and 2) how and from whom to collect NDPP costs from ratepayers  
23 of two distinct utility companies. To claim it is one in the same – without any support from  
24 statutory language or history – is an abuse of discretion.

25       Similarly, statements made at the Agenda Meeting on August 28, 2023, by both  
26 Acting Commissioner and the Chair regarding health and safety do not justify the  
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1 unreasonableness of the Order. Specifically, the Chair provided lengthy remarks about the  
2 Camp Fire in California, the Winter Storm Erie, the recent fires in Lahaina, Hawaii, and  
3 Hurricane Hilary. The Acting Commissioner also cited to health and safety benefits as  
4 being an impetus of the NDPP. These remarks are unrelated to the issues of cost shifting,  
5 and certainly cannot be used to justify the order. To be clear, the BCP takes no issue with  
6 the NDPP in general. As the entity statutorily tasked with representing the interests of  
7 the ratepayers, the BCP supports protecting the health and safety of Nevada ratepayers  
8 and has an interest in reasonable and lawful measures taken to prevent and mitigate harm  
9 and damage caused by natural disasters and notes that regardless of SB 329, the  
10 Companies already have duty to provide safe and reliable service. But that is not the issue  
11 in this Petition. The BCP takes issue with the decision to alter the reasonable and just  
12 premise that the cost causer pays. Because the health and safety concerns are separate  
13 from the decision to shift NDPP costs, and the Companies already have a duty to provide  
14 safe and reliable service, the general health and safety statements fail to justify a cost shift.

15 Moreover, the Commission's attempt in the Order to justify the cross-subsidy from  
16 NPC's customers to SPPC's customer by referencing the fact that NPC and SPPC jointly  
17 dispatch their generating units though the ON Line does not overcome the hurdle. See  
18 Order at ¶207. In approving the indefinite Joint Dispatch Agreement in Docket No. 15-  
19 03001, the Commission made it clear that there were to be no cross-subsidies because of  
20 joint dispatch:

21 The Commission finds that because the Companies are not merged,  
22 inaccuracies in cost to serve values for generation resources may cause  
23 customers in one retail service territory to subsidize customers in another  
24 retail service territory. In addition, the Commission finds that an accurate  
25 cost to serve value is important in determining bid prices used for  
26 participating in CAISO's EIM. The Commission finds that retail customers  
27 in Nevada Power and Sierra's service territories should be assured that they  
28 are not subsidizing the costs associated with the maintenance of either's

1 generating units when they are used during EIM transactions.<sup>15</sup> (Emphasis  
2 added).

3 Third, assuming *arguendo* the public policy was to have a statewide OMAG rate for  
4 all NPC and SPPC ratepayers, such a policy should not be implemented if it causes a  
5 violation of other laws. *See Albios v. Horizon Communities, Inc.* at 418 (noting that a  
6 statutory interpretation must allow the statute to be in harmony with other laws.). As  
7 discussed in Section B above, the Commission ordering the same rate for all OMAG costs  
8 to be collected equally from NPC and SPPC ratepayers – in effect, shifting costs from SPPC  
9 to NPC – is unjust and unreasonable. Therefore, the public policy rationale necessarily  
10 fails as a justification for the cost shift.

11 2. The legislative history of SB 329 is irrelevant on the issue of cost shift and does  
12 not support the ordered cost shift.

13 Paragraph 206 of the Commission’s Order states that “SB 329 addresses the  
14 statewide significance of natural disasters, such as wildfires.” The Commission then offers  
15 former Senator Brook’s introduction of SB 329 to the Senate Committee on Growth and  
16 Infrastructure as evidence of legislative history supporting a statewide rate:

17 Nevada is no stranger to natural disasters. From increased wildfires which  
18 have burned north to south earthquakes . . . such events have often posed a  
19 danger to our public safety, our economy, and critical infrastructure such as  
20 the electric grid. Because of this reality, we owe it to ourselves to take  
21 proactive measures against natural disasters.

22 Legislative history is not persuasive as a justification for the cost shift ordered in  
23 paragraphs 205 through 211 of the Order because 1) legislative history is irrelevant on this  
24 issue, and 2) the legislative history does not support the cost shift.

25 First, the legislative history is irrelevant on the issue of cost shifting. Legislative  
26 history is considered to discern statutory intention only if the plain language of the statute  
27 is ambiguous. *See Valenti v. State, Dep't of Motor Vehicles*, 131 Nev. 875, 879, 362 P.3d 83,

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28 <sup>15</sup> *See* Commission Order in Docket No. 15-03001, dated July 27, 2015, at ¶ 50.

1 85 (2015). A statute's silence about a topic does not necessarily create ambiguity about the  
2 statute's treatment of that topic. *See Story Cnty. Wind, LLC v. Story Cnty. Bd. of Rev.*, 990  
3 N.W.2d 282, 287 (Iowa 2023). Rather, a statute's silence on a topic often means that the  
4 unmentioned topic is simply not covered by the statute. *Id.* (citing Antonin Scalia & Bryan  
5 A. Garner, *Reading Law: The Interpretation of Legal Texts* 93 (2012) [hereinafter *Scalia &*  
6 *Garner*] (“The principle that a matter not covered is not covered is so obvious that it seems  
7 absurd to recite it.”)).<sup>16</sup>

8 The plain language of SB 329 is not ambiguous, but rather, is simply silent on the  
9 topics of cost shifting and cost allocation. *See Order at ¶206.* Silence on this issue must not  
10 be misconstrued as ambiguity – the Legislature in enacting SB 329 did not provide unclear  
11 direction on whether to implement a statewide rate between NPC and SPPC to recover  
12 NDPP costs, but rather, simply did not address this topic at all. As such, a need to review  
13 legislative history is not triggered in this matter.

14 Second, assuming *arguendo* a legislative history review and analysis was somehow  
15 triggered, the legislative history of SB 329 does not support a cost shift such as the one  
16 ordered in paragraphs 205-211 and ordering paragraph 13 of the Order. The Chris Brooks  
17 statement cited in Paragraph 206 of the Order makes no mention of NDPP cost allocation  
18 and cannot reasonably be interpreted as a piece of legislative history providing for or  
19 supporting the implementation of an NDPP rate that shifts costs from SPPC to NPC.  
20 Moreover, a review of all of the legislative history of the 19 state senators and 37 other

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21 <sup>16</sup> *Emerson v. Sch. Bd. of Indep. Sch. Dist. 199*, 809 N.W.2d 679, 683 (Minn. 2012) (citing *Premier Bank*, 785  
22 N.W.2d at 760, provides:

23 Silence in a statute regarding a particular topic does not render the statute unclear or  
24 ambiguous unless the statute is susceptible of more than one reasonable interpretation. Put  
25 differently, we must resolve whether the statutory construction issue here involves a failure  
26 of expression or an ambiguity of expression. If the legislature fails to address a particular  
27 topic, our rules of construction forbid adding words or meaning to a statute that are purposely  
28 omitted or inadvertently overlooked. The dissent contends that we depart from established  
methods of statutory interpretation by finding ambiguity in legislative silence and by adding  
words to the statute.

1 members of the Nevada Assembly who voted for SB 329 also does not provide any direction  
2 as to how the cost should be borne by the two jurisdictions involved. Silence in the  
3 legislative history cannot lend any clarity regarding interpretation of a statute. *See Encino*  
4 *Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1143, 200 L. Ed. 2d 433 (2018) (citing *Avco*  
5 *Corp. v. Department of Justice*, 884 F.2d 621, 625 (C.A.D.C.1989).

### 6 III. CONCLUSION

7 The cost shift was ordered in the absence of substantial evidence to justify it, despite  
8 the mountain of evidence against it. The ordered cost shift 1) requires the Commission to  
9 unjustly and unreasonably consider a holding company an electric utility, 2) violates the  
10 cost causation principle, and 3) contradicts binding NDPP regulations. Despite claims  
11 made in the Order, public policy and legislative history do not necessitate, justify, or  
12 otherwise support the cost shift. For these reasons, the ordered cost shift exceeds the  
13 Commission's plenary power. Pursuant to NAC 703.801, the ordered cost shift must be  
14 reconsidered and reversed.

15 Based on the foregoing, the BCP respectfully requests that the Commission  
16 reconsider and reverse its approval of the cost shift, as reflected in Order paragraphs 205-  
17 211 and ordering paragraph 13.

18 Respectfully submitted September 12, 2023.

19  
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1 **CERTIFICATE OF SERVICE**

2 Docket No. 23-03004

3 I certify that I am an employee of the Bureau of Consumer Protection and that on  
4 this day I have served the foregoing document upon all parties of record in this proceeding  
5 by emailing or mailing a true copy thereof, properly addressed with postage prepaid or  
6 forwarded as indicated below to:

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Dated: September 12, 2023

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