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17-06003

Public Utilities Commission of Nevada
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Filed For: Bureau of Consumer Protection

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Bureau of Consumer Protection



ERNEST D. FIGUEROA
Consumer Advocate
Chief Deputy Attorney General

STATE OF NEVADA
BUREAU OF CONSUMER PROTECTION

Northern Office
100 N. Carson Street
Carson City, Nevada 89701

MARK J. KRUEGER
Consumer Counsel
Chief Deputy Attorney General

Southern Office
10791 W. Twain Avenue, Suite 100
Las Vegas, Nevada 89135

January 30, 2018

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

Re: Docket Nos. 17-06003 and 17-06004

Dear Ms. Osborne:

Please accept for filing the Answer to Petitions for Clarification and/or Reconsideration of the Bureau of Consumer Protection in the above-referenced dockets.

Should you have any questions regarding this filing, please contact me at (702) 486-3793.

Sincerely,

ERNEST D. FIGUEROA
Consumer Advocate

MICHAEL SAUNDERS
Senior Deputy Attorney General
Bureau of Consumer Protection
10791 West Twain Avenue, Suite 100
Las Vegas, NV 89135-3022

MS/bj

cc: Parties of Record

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BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Application of Nevada Power Company d/b/a NV)
Energy for authority to adjust its annual revenue)
requirement for general rates charged to all classes) Docket No. 17-06003
of electric customers and for relief properly related)
thereto.)

Application of Nevada Power Company d/b/a NV)
Energy for approval of new and revised) Docket No. 17-06004
depreciation and amortization rates for its electric)
and common accounts.)

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**ANSWER OF THE BUREAU OF CONSUMER PROTECTION
TO PETITIONS FOR RECONSIDERATION AND/OR CLARIFICATION**

COMES NOW, the Bureau of Consumer Protection ("BCP") and files this Answer
with the Public Utilities Commission of Nevada ("Commission") in the above-captioned
dockets, pursuant to NAC 703.801.

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INTRODUCTION

On December 29, 2017, the Commission issued an Order in the above-captioned
dockets. On January 16, 2018, the following parties filed for reconsideration and/or
clarification of the Order: Nevada Power Company ("Nevada Power" or "NPC") filed a
Petition for Clarification; the Commission's Regulatory Operation's Staff ("Staff") filed a
Petition for Clarification and Reconsideration; the Southern Nevada Gaming Group
("SNGG") filed a Petition for Partial Reconsideration; and the Smart Energy Alliance
("SEA") filed a Petition for Reconsideration and Clarification.

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ANSWER

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A. Nevada Power and Staff Petitions

The BCP is not opposed to the requests in the Staff or Nevada Power petitions. The
requests in those petitions appear reasonable to BCP. With specific respect to Staff's
request for clarification as to when carrying charges should begin for 704B impact fees,
the BCP, as presented in this case, believes that carrying charges on impact fees should

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1 begin to apply when Nevada Power receives those revenues.¹ Also, the BCP concurs with
2 the inconsistency that Staff has identified with regard to the rate and accounting
3 treatment that paragraph 309 has ordered with regard to the Higgins Transformer
4 Replacement Project. If it is the Commission's intent to include the Higgins Transformer
5 Replacement Project in rate base – whether recorded within a Plant in Service account or
6 a Regulatory Asset account – the Commission should *not* authorize Nevada Power to also
7 accrue carry on such balance. If it is the Commission's intention to exclude the Higgins
8 Transformer Replacement Project from rate base, but nonetheless does not to desire
9 Nevada Power to absorb a permanent loss of “return” on such investment, it should order
10 the recording of the Net Book Value of the Higgins Transformer Replacement Project
11 within a Regulatory Asset account where it would also be authorized to accrue carry.

12 **B. SNGG Petition**

13 The BCP supports the granting of SNGG's petition. The SNGG requests that the
14 Commission reconsider the Order in light of the passage of the Tax Cuts and Jobs Act of
15 2017. Like SNGG, the BCP does believe that the Commission, as the entity responsible for
16 providing customers with just and reasonable rates, should specifically consider the effect
17 of the tax reform legislation on the Company's revenue requirement and the rates that the
18 Company charges customers. As the SNGG states, the Commission should “... impose a
19 mechanism to ensure that 100% of the savings associated with corporate tax reform are
20 sent to NPC's ratepayers.”²

21 To that end, the BCP recently sent a letter to the Commission requesting an
22 investigation be opened to examine ways in which Nevada's ratepayers could receive the
23 benefits of the reduction in corporate income taxes under the tax reform legislation.
24 (Letter attached hereto as Attachment 1). As an aside, the BCP is heartened that Nevada
25 Power stated in the cover letter to its petition that it “... intends to make a filing with the
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27 ¹ Ex. 65, Testimony of James Dittmer at pg. 30, lns. 17-22. (Also, see Order at para. 178).

28 ² SNGG Petition at pg. 3, lns. 12-13.

1 Commission to further reduce electric prices ... to reflect the impact of the Tax Cuts and
2 Jobs Act of 2017.”

3 **C. SEA Petition**

4 The BCP supports the granting of SEA’s petition with respect to reconsideration of
5 the over-earnings sharing mechanism in light of the passage of the tax reform legislation
6 and as to the issue of the clarification of when carrying charges should begin for 704B
7 impact fees. The BCP agrees with SEA that carrying charges on impact fees should begin
8 to apply when Nevada Power receives those revenues.

9 As to SEA’s requested relief regarding the Interclass Subsidy Charges to DOS
10 Customers, the BCP is in agreement with many of the arguments contained in SEA’s
11 petition on that issue. However, given the facts in this case, the BCP believes that the
12 Commission’s findings and conclusions are supported by the substantial evidence in the
13 case and therefore the rates approved by the Commission for all customer classes are just
14 and reasonable as required by NRS 704.040(1). The BCP agrees with Staff that the
15 Commission has discretion to deviate from the class revenue requirement proposed by
16 Nevada Power and determine the appropriate class revenue requirement and rates.³

17 While NRS 704.110(3) requires Nevada Power to use a historic test year to
18 determine its proposed revenue requirement and therefore BCP believes that Nevada
19 Power should likewise use historic test year operating data to allocate the revenue
20 requirement to the customer classes (embedded cost of service), there is no state statute
21 that requires the Commission to use a marginal cost of service study or an embedded cost
22 of service study in the setting of rates.

23 The cost of service study is just a regulatory tool for the Commission to consider in
24 the setting of rates for various customer classes. In fact, the Commission’s own
25 regulations state that Commission will consider the electric utility’s marginal cost of
26 service study in determining class revenue responsibility, but does not require that it be
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28 ³ Ex. 199 at 3:23 – 3:25.

1 the only consideration the Commission uses in setting just and reasonable
2 rates. Specifically, NAC 704.660 provides:

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4 **NAC 704.660 Consideration of marginal cost of service in
determining class revenue requirements.)**

5 The Commission will consider a utility's marginal (incremental) cost of
6 service to each class of customer in determining the revenue required from
that class.

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8 While BCP provided evidence that an embedded cost of service study that excludes energy
9 costs which are recovered through the base tariff energy rate, uses a 4-coincident peak
10 allocator for the generation and transmission functional costs, and a non-coincident peak
11 allocator for distribution functional costs can allocate customer class cost responsibility
12 substantially different than Nevada Power's marginal cost-of-service study; the BCP did
13 not recommend a different class cost responsibility in this case than that in Nevada
14 Power's marginal cost of service study.⁴ The BCP's witness highlighted the fact that it
15 was not possible in this case to perform an embedded cost of service study because Nevada
16 Power's accounting records do not currently have the level of detail required to perform an
17 embedded cost of service study.⁵

18 The "Interclass Rebalancing Rate" paid by DOS customers is a result of the
19 marginal cost of service study that was used in this proceeding. No party, including the
20 BCP, recommended using a different cost of service study in this proceeding to set rates as
21 this was the only detailed cost of service study in this proceeding. The Commission
22 ordered Nevada Power to provide an embedded cost of service study in its next general
23 rate case ("GRC") proceeding in the interest of better understanding the relative costs of
24 providing service to different customer classes.⁶ However, until such time that Nevada
25 Power prepares an embedded cost of service study in its next GRC as ordered by the

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27 ⁴ Ex. 188 at 12:23 – 13:4.

28 ⁵ Tr. at 1885:15 – 1887:12.

⁶ Order ¶602.

1 Commission, the BCP agrees with the Commission in this proceeding that the "Interclass
2 Rebalancing Rate" should not be different than that calculated in Nevada Power's
3 Statement O without more compelling evidence and analysis.⁷

4 **CONCLUSION**

5 Based on the foregoing, the BCP is not opposed to the requests in the Staff and
6 Nevada Power petitions. The BCP supports the granting of SNGG's petition regarding
7 reconsideration of the Order in light of the Tax Cuts and Jobs Act of 2017. Finally, the
8 BCP, like it did with respect to the SNGG petition, supports SEA's petition regarding
9 reconsideration of the Order and the effect of the tax reform legislation, and also the
10 BCP's supports SEA's request for clarification of the issue as to when carrying charges
11 should begin for 704B impact fees; however, the BCP recommends the denial of SEA's
12 request for reconsideration as to "Interclass Rebalancing Rate" paid by DOS customers.

13 Respectfully submitted January 30, 2018.

14 ERNEST FIGUEROA
15 Consumer Advocate

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17 Michael Saunders
18 Senior Deputy Attorney General
19 msaunders@ag.nv.gov
20 Bureau of Consumer Protection
21 10791 West Twain Avenue, Suite 100
22 Las Vegas, NV 89135-3022
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28 ⁷ Order ¶612.

Attachment 1



ERNEST D. FIGUEROA
Consumer Advocate
Chief Deputy Attorney General

STATE OF NEVADA
BUREAU OF CONSUMER PROTECTION

MARK J. KRUEGER
Consumer Counsel
Chief Deputy Attorney General

Northern Office
100 N. Carson Street
Carson City, Nevada 89701

Southern Office
10791 W. Twain Avenue, Suite 100
Las Vegas, Nevada 89135

January 16, 2018

The Honorable Joseph C. Reynolds, Chairman
The Honorable Ann C. Pongracz, Commissioner
The Honorable Bruce H. Breslow, Commissioner
Public Utilities Commission of Nevada
1150 East William Street
Carson City, NV 89701

Re: Request for Investigation regarding Large Investor Owned Utilities to Capture Tax Savings for Nevada Ratepayers

Dear Mr. Chairman and Commissioners:

On December 22, 2017, President Trump signed the *Tax Cuts and Jobs Act*, which reduces the federal income tax rate for investor-owned utilities from 35 to 21 percent. Unless the Commission reduces the Nevada Investor Owned Utilities (IOU) revenue requirement tax rate from 35 percent to the effective rate of 21 percent, Nevada utility ratepayers of the large IOU¹ will overpay for their electric, water and gas service by tens of millions of dollars.

The *Tax Cuts and Jobs Act* raises two primary concerns with respect to overpayment by ratepayers: (1) the level of corporate income tax expense in existing rates for IOUs is now over-inflated, and (2) the balance of excess deferred income taxes recovered from customers will result in an unexpected windfall to the utilities at the benefit of ratepayers.

The enactment of the *Tax Cuts and Jobs Act* has spurred utility commissions and regulators across the United States to take action to address the reality that the federal corporate income tax rate has been reduced and consumers will potentially overpay for utilities. For instance, PacifiCorp², has been subject to regulatory action in California, Oregon, Utah and Washington State. Specifically, in California and Washington State, PacifiCorp itself requested a tracker of the full impact of the tax act.³ In Oregon, the Commission Staff has requested that

¹ Large investor owned utilities having the greatest impact to Nevada ratepayers are those with \$2 million or more in revenues.

² PacificCorp operates as Pacific Power in Oregon, Washington and California, and as Rocky Mountain Power in Utah. PacificCorp is also a subsidiary of Berkshire Hathaway Energy, as is NV Energy.

³ *In the Matter of the Application of PacifiCorp (U 901 E) for Approval of a Tax Reform Memorandum Account Effective January 1, 2018.* (Application No. A1712019).

Letter to Nevada Public Utilities Commission Re: *Request for an Investigation for Investor Owned Utilities to Capture Tax Savings for Nevada Ratepayers*

January 16, 2018

Page 2 of 2

deferred amounts be recorded in FERC Account 254, Other Regulatory Liabilities. In Utah, the Utah Association of Energy Users commenced an action before the Utah Commission for accounting orders to defer accounting treatment of the benefits associated with the tax act.

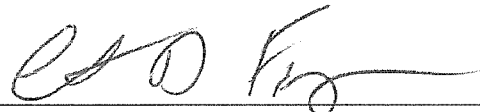
Many state and territorial commissions have opened and continue to open dockets to address the effects of the *Tax Cuts and Jobs Act*; these include: Arizona, the District of Columbia, Indiana, Kentucky, Maine, Michigan, Minnesota, Montana, New Hampshire, North Carolina, Ohio, West Virginia, and Wyoming to name a few.

The last major federal tax reform occurred in 1986, and at that time most utility regulators eventually moved for recalculation of revenue requirement to reflect the decrease in the federal corporate tax rate. See, e.g. *Reduction in Federal Income Tax Rates*, D.P.U. 87-21-A, p.5 (1987), cited in D.P.U. 17-05 (Mass).

Accordingly, the Bureau of Consumer Protection is seeking that the Commission use its plenary powers over rates to open an investigatory docket into the just and reasonableness of all applicable rates recovered by the large IOUs with respect to the revenue requirement for federal corporate income taxes similar to what is being done in numerous other state jurisdictions, and take any other necessary steps to ensure Nevada ratepayers timely receive the benefits as a result of this process. Thank you for your consideration of this very important matter.

Sincerely,

NEVADA BUREAU OF
CONSUMER PROTECTION



ERNEST D. FIGUEROA

Consumer Advocate

100 N. Carson St.

Carson City, NV 89701

EDF/pes

cc: NV Energy
Southwest Gas Corp.
GBWC
Regulatory Staff

CERTIFICATE OF SERVICE

Docket Nos. 17-06003 and 17-06004

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

STAFF COUNSEL PUBLIC UTILITIES COMMISSION OF NEVADA 1150 E. WILLIAM STREET CARSON CITY, NV 89701 pucn.sc@puc.nv.gov	TAMMY CORDOVA PUBLIC UTILITIES COMMISSION OF NEVADA 1150 E. WILLIAM STREET CARSON CITY, NV 89701 tcordova@puc.nv.gov
ELIZABETH ELLIOT NV ENERGY 6100 NEIL ROAD RENO, NV 89511 BElliot@nvenergy.com	TREVOR DILLARD NV ENERGY PO BOX 10100 RENO, NV 89520 regulatory@nvenergy.com
NV ENERGY regulatory@nvenergy.com	
SYLVIA HARRISON (Tesla) MCDONALD CARANO, LLP 100 WEST LIBERTY STREET, 10 TH FL RENO, NV 89501 sharison@mcdonaldcarano.com ablack@mcdonaldcarano.com	KEVIN AUERBACHER (Tesla) 601 13 TH STREET WASHINGTON, DC 20005 kauerbacher@tesla.com
LUCAS M. FOLETTA CURT R. LEDFORD (Southern Nevada Gaming Group) MCDONALD CARANO WILSON LLP 100 WEST LIBERTY STEET, 10TH FLOOR RENO, NV 89501 lfoletta@mcdonaldcarano.com cledford@mcdonaldcarano.com ablack@mcdonaldcarano.com	C. DAN BLACK ANDREW J. WALTON VIVINT SOLAR, INC. 1800 WEST ASHTON BOULEVARD LEHL, UTAH 84043 dblack@vivintsolar.com andrew.walton@vivintsolar.com
AMIE SABO CHIEF COUNSEL CAESARS ENTERPRISE SERVICE, LLC ONE CAESARS PLACE DRIVE LAS VEGAS, NV 89109 asabo@caesars.com	JOSHUA D. WEBER (Smart Energy Alliance) DAVISON VAN CLEVE, PC 33 SW TAYLOR STREET, SUITE 400 PORTLAND, OR 97204 jd@dvclaw.com

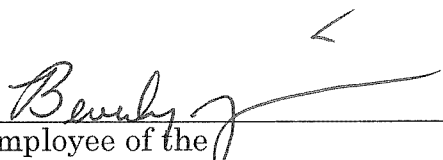
1 2 3 4	ROBERT G. JOHNSTON REGINA M. NICHOLS NCARE 550 WEST MUSSER STREET, H CARSON CITY, NV 89703-4997 Robert.johnston@westernresources.org rnichols@westernresources.org	KEVIN T. FOX (Sunrun) KEYES & FOX LLP 1580 LINCOLN STREET, SUITE 880 DENVER, CO 80203 kfox@kfwlaw.com
5 6 7	ALEX MCDONOUGH SUNRUN INC. 595 MARKET STREET, 29 TH FLOOR SAN FRANCISCO, CA 94105 Alexander.mcdonough@sunrun.com	FRED SCHMIDT (MGM) HOLLAND & HART LLP 377 SOUTH NEVADA STREET CARSON CITY, NV 89703 fschmidt@hollandhart.com
8 9 10 11	DONALD BROOKHYSER (Nevada Cogeneration Associates #1 and #2) ALCANTAR & KAHL, LLP 121 SW SALMON STREET, SUITE 1100 PORTLAND, OR 97204 deb@a-klaw.com	WILLIAM PETERSON (Wynn) SNELL & WILMER, LLP 50 WEST LIBERTY STREET, SUITE 510 RENO, NV 89501 wpeterson@swlaw.com
12 13 14	DAVID BENDER (Vote Solar) EARTHJUSTICE 3916 NAKOMA ROAD MADISON, WI 53711 dbender@earthjustice.org	RICK GILLIAM (Vote Solar) 590 REDSTONE DRIVE, SUITE 100 BROOMFIELD, CO 80020 rick@votesolar.org
15 16 17 18	SARA GERSEN (Vote Solar) EARTHJUSTICE 800 WILSHIRE BOULEVARD, SUITE 1000 LOS ANGELES, CA 90017 sgersen@earthjustice.org	STEVE W. CHRISS (Director, Energy And Strategy Analysis Walmart) 2001 SE TENTH STREET BENTONVILLE, ARKANSAS 72716-0550 Stephen.Chriss@walmart.com
19 20 21 22 23	VICKI M. BALDWIN (Walmart) PARSONS BEHLE & LATIMER 201 SOUTH MAIN STREET, SUITE 1800 SALT LAKE CITY, UTAH 84111 vbaldwin@parsonsbehle.com	TODD G. GLASS HEATHER L. CURLEE (Vivint Solar) WILSON SONSINI GOODRICH & ROSATI 702 FIFTH AVENUE, SUITE 5100 SEATTLE, WA 98104 tglass@wsgr.com hcurlee@wsgr.com
24 25 26 27 28		

1 JOHN K. GALLAGHER
2 PAUL D. QUANDT
(Vivint Solar)
3 GUILD GALLAGHER & FULLER, LTD.
100 WEST LIBERTY STREET, SUITE 800
4 P.O. BOX 2838
RENO, NV 89501
5 kgallagher@ggfltd.com
pquandt@ggfltd.com

ANDREW J. UNSICKER, MAJ, USAF
LANNY L. ZIEMAN, CAPT, USAF
EBONY PAYTON
AFLOA/JACE-ULFSC
139 BARNES DRIVE, SUITE 1
TYNDALL AIR FORCE BASE, FL 32403
andrew.unsicker@us.af.mil
lanny.zieman@us.af.mil
ebony.payton.ctr@us.af.mil

6 THOMAS A. JERNIGAN, GS-14, USAF
AFCEC/JA
139 BARNES DRIVE, SUITE 1
7 TYNDALL AIR FORCE BASE, FL 32403
8 thomas.jernigan.3@us.af.mil

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10 Dated: January 30, 2018

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12 An Employee of the
13 Bureau of Consumer Protection
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