

STATEMENT REGARDING SMALL BUSINESS IMPACT (NRS 233B.0608)

LCB File No. R110-15 (PUCN Docket No. 15-06044)

- 1. A description of the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.**

N/A. See Informational Statement accompanying the Regulation, Question Nos. 2-5 and 12.

Pursuant to NRS 233B.0608 (1), the Regulatory Operations Staff ("Staff") of the Public Utilities Commission of Nevada (the "Commission") conducted an investigation to determine whether the proposed regulation is likely to: (a) Impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business. In a Memorandum filed on January 7, 2016, Staff memorialized its conclusion that the proposed regulation is not likely to impose a direct and significant economic burden on small businesses, and is not likely to directly restrict the formation, operation or expansion of a small business. See Attachment 1 hereto.

On January 22, 2016, the Commission issued an Order adopting the findings of Staff's Memorandum which was filed on January 7, 2016, and specifically found that the proposed regulation is not likely to impose a direct and significant economic burden on small businesses, and is not likely to directly restrict the formation, operation or expansion of a small business. See Attachment 2 hereto.

NRS 233B.0608 (2)(a) only requires an agency to consult with owners and officers of small businesses "if an agency determines pursuant to subsection 1 that a proposed regulation *is* likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business..." (emphasis added). Given the Commission's determination that the proposed regulation is not likely to impose a direct and significant economic burden on small businesses, and is not likely to directly restrict the formation, operation or expansion of a small business, the PUCN is not statutorily mandated to make this inquiry, as no such "affected" small businesses exist.

- 2. The manner in which the analysis was conducted.**

See Attachments 1 and 2. Staff used a version of the Delphi method that incorporates elements of the Policy Delphi method to determine the potential impact of a regulation on small businesses.

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3. **The estimated economic effect of the proposed regulation on the small businesses which it is to regulate, including, without limitation:**
(a) **Both adverse and beneficial effects; and**
(b) **Both direct and indirect effects.**

See Informational Statement accompanying the Regulation, Question No. 7. See also Attachments 1 and 2.

4. **A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.**

N/A. *See Attachments 1 and 2.*

Pursuant to NRS 233B.0608 (1), Staff conducted an investigation to determine whether the proposed regulation is likely to: (a) Impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business. In a Memorandum filed on January 7, 2016, Staff memorialized its conclusion that the proposed regulation is not likely to impose a direct and significant economic burden on small businesses, and is not likely to directly restrict the formation, operation or expansion of a small business. *See Attachment 1.*

On January 22, 2016, the Commission issued an Order adopting the findings of Staff's Memorandum which was filed on January 7, 2016, and specifically found that the proposed regulation is not likely to impose a direct and significant economic burden on small businesses, and is not likely to directly restrict the formation, operation or expansion of a small business. *See Attachment 2.*

NRS 233B.0608 (2)(c) only requires an agency to consider methods to reduce the impact of a proposed regulation on small businesses "if an agency determines pursuant to subsection 1 that a proposed regulation *is* likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business..." (emphasis added). Given the Commission's determination that the proposed regulation is not likely to impose a direct and significant economic burden on small businesses, and is not likely to directly restrict the formation, operation or expansion of a small business, the Commission is not statutorily mandated to make this inquiry as there are no impacts on small businesses and no methods that were considered for reducing the non-existent impacts.

5. **The estimated cost to the agency for enforcement of the proposed regulation.**

See Informational Statement accompanying the Regulation, Question No. 8. See also Attachment 1.

6. **If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

N/A. *See also* Informational Statement accompanying the Regulation, Question No. 11.

7. **If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.**


See Informational Statement accompanying the Regulation, Questions Nos. 9 and 10. *See also* Attachment 1.

8. **The reasons for the conclusion of the agency regarding the impact of a regulation on small businesses.**

The Commission complied with NRS 233B.0608 by making a concerted effort to determine whether the proposed regulation imposes a direct and significant economic burden upon small businesses, or directly restricts the formation, operation or expansion of a small business. The Commission concluded that no such impacts would occur from the adoption of the proposed regulation based upon the well-reasoned investigation of its Staff.

I, STEPHANIE MULLEN, Executive Director of the Public Utilities Commission of Nevada, certify that, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and the information contained in the statement was prepared properly and is accurate.

DATED this 8 day of April, 2016.



STEPHANIE MULLEN
Executive Director
PUBLIC UTILITIES COMMISSION OF NEVADA

ATTACHMENT 1

**PUBLIC UTILITIES COMMISSION OF NEVADA
MEMORANDUM**

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RECEIVED-PUBLIC
UTILITIES COMMISSION
OF NEVADA-CARSON CITY

DATE: December 28, 2015

TO: The Commission

Via Anne-Marie Cuneo, DRO *AMC*

Tammy Cordova, Staff Counsel *TC/mc2*

FROM: Jennifer Diffley, Legal Case Manager, Staff Counsel Division *JD/mc2*

SUBJECT: Small Business Impact Report

Agenda Number 01-16; Item Number 5A; Docket Number 15-06044,
Rulemaking to adopt regulations in accordance with Senate Bill 87 of the 78th
(2015) Session of the Nevada Legislature authorizing the Commission to modify
resource plans submitted by certain public utilities.

I. Summary

On June 24, 2015, the Public Utilities Commission of Nevada ("Commission") voted to open a rulemaking to amend, adopt, and/or repeal regulations in accordance with Senate Bill ("SB") 87 of the 78th (2015) Session of the Nevada Legislature, which authorizes the Commission to modify resource plans submitted by certain public utilities.

On December 9, 2015, after holding a workshop and submitting the proposed regulations to the Legislative Council Bureau, the Presiding Officer issued a Procedural Order that directed the Commission's Regulatory Operations Staff ("Staff") to conduct an investigation pursuant to Nevada Revised Statutes ("NRS") 233B.0608(1) regarding whether the proposed regulations, attached as Attachment 1 to Procedural Order 1, are likely to:

- a. impose a direct and significant economic burden upon a small business; or
- b. directly restrict the formation, operation or expansion of a small business.

The Presiding Officer directed Staff to place this report with the results of the investigation, along with a statement identifying the methodology used, on the January 13, 2016, regularly scheduled Utility Agenda Meeting, Agenda 01-16. This Briefing Memo constitutes the Staff Report regarding the Small Business Impact of the proposed regulations.

II. Background and Methodology

NRS 233B.0608(1) requires an agency to make a concerted effort to determine whether a proposed regulation is likely to:

- (a) impose a direct and significant economic burden upon small businesses; or
- (b) directly restrict the formation, operation or expansion of small business.

A small business is defined in NRS 233B.0382 as a business conducted for profit which employs fewer than 150 full-time or part-time employees.

NRS 233B.0608(3) requires that an agency considering a proposed regulation "...shall prepare a statement identifying the methods used by the agency in determining the impact of a proposed regulation on a small business and the reasons for the conclusions of the agency."

In accordance with NRS 233B.0608(3), Staff used a version of the Delphi method that incorporates elements of the Policy Delphi method to determine the potential impact of a regulation on small businesses. The Delphi method is a systematic interactive forecasting method based on independent inputs of selected experts. It recognizes the value of expert opinion, experience and intuition and allows the use of limited information when full scientific knowledge is lacking.

In this instance, the participants were members of the Regulatory Operations Staff, and included one Financial Analyst, two Economists, and one Engineer. The participants were all involved in the rulemaking in this docket and are most knowledgeable about the proposed regulations and subject matter of the rulemaking. Each participant in the exercise used his or her background and expertise to reflect upon and analyze the impact of the regulations on small businesses.

III. Small Business Impact Analysis

The proposed regulations amend existing regulations, and provide for the modification by the Commission of the action plans and amendments to the action plans of certain utilities. The proposed regulations also authorize a public utility to consent to or reject some or all of the modifications.

The participants considered any immediate and/or long-term adverse effects of the regulation on the utility, the businesses regulated by the regulation, and the public generally. Participants also evaluated any economic burden of the proposed regulation, whether the proposed regulation directly restricts the formation, operation or expansion of a small business, and any costs to the Commission for enforcement and administration of the proposed regulation.

Immediate Adverse Effects

Allowing the Commission to modify the action plans and amendments to the action plans of certain utilities may require the utility to expend additional resources to evaluate and gain approval of action plans in the future. The participants noted that this possible adverse effect is not directly related to the proposed regulation. Further, this potential effect is a result of the authorizing statute, SB 87, rather than the proposed regulation itself.

The participants determined that there would be no adverse effects to any businesses regulated by the regulations. One participant noted that the possible additional administration costs that a utility may incur as a result of the proposed regulation would be included in retail rates and may have an adverse effect on the public generally. Again, this potential effect is a result of the authorizing statute, SB 87.

Long-Term Adverse Effects

As discussed above, the proposed regulation may have a long-term adverse effect on the utility as a result of increased administrative costs and on the public generally as a result of including those administrative costs in retail rates. However, these effects are a result of the authorizing statute, not as a direct result of the proposed regulations.

Immediate Beneficial Effects

One participant noted that the proposed regulation allows the Commission to modify a utility's proposed action plan as opposed to simply accepting or rejecting the plan, which may have a beneficial effect to the public in general if the regulation results in improved action plans with less regulatory costs. Every participant agreed that there would be no immediate beneficial effects on the utility nor the businesses regulated by the regulations. As noted above, any potential beneficial effect is a result of the authorizing statute, SB 87, not as of a direct result of the proposed regulations.

Long-Term Beneficial Effects

The participants do not believe that there would be any long-term beneficial effects other than those beneficial effects discussed above, and are a result of the authorizing statute, not as a direct result of the proposed regulations.

Cost to the Commission to enforce or administer the proposed regulation

The participants agreed that the proposed regulation will not have an additional cost to the Commission.

Restriction of the formation, operation, or expansion of small businesses

The participants agreed that the proposed regulation is not likely to directly or indirectly restrict the formation, operation, or expansion of small businesses.

As a result of the investigation, Staff has concluded that the proposed regulations are not likely to: (1) impose a direct and significant economic burden upon small business; or (b) directly restrict the formation, operation, or expansion of small business. Therefore, a small business impact statement pursuant to NRS 233B.0608(2) is not required.

IV. Notice and Subsequent Action

On December 9, 2015, the Presiding Officer issued a Procedural Order with the proposed regulations attached, which directed Staff to conduct an investigation pursuant to NRS 233B.0608(1) to determine whether the proposed regulations were likely to (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business. The Procedural Order directed Staff to present a report of the results to the Commission for action at the January 13, 2016, regularly scheduled Utility Agenda Meeting, Agenda 01-16

V. Conclusion and Recommendations

Staff recommends that, in accordance with NRS 233B.0608(1), the Commission find that the proposed regulations are not likely to impose a direct or significant economic burden on a small business, nor to restrict the formation, operation or expansion of a small business.

Staff further recommends that, pursuant to NRS 233B.0608(3), the Commission state that the Delphi method was used in the determination of the impact of the proposed regulations on small business.

ATTACHMENT 2

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Rulemaking to adopt regulations in accordance with)
Senate Bill 87 of the 78th (2015) Session of the Nevada)
Legislature authorizing the Commission to modify)
resource plans submitted by certain public utilities.)
_____)

Docket No. 15-06044

At a general session of the Public Utilities
Commission of Nevada, held at its offices
on January 13, 2016.

PRESENT: Chairman Paul A. Thomsen
 Commissioner Alaina Burtenshaw
 Commissioner David Noble
 Assistant Commission Secretary Trisha Osborne

ORDER

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

I. INTRODUCTION

The Commission opened a rulemaking, designated as Docket No. 15-06044, to amend, adopt, and/or repeal regulations in accordance with Senate Bill 87 of the 78th (2015) Session of the Nevada Legislature ("SB 87") authorizing the Commission to modify resource plans submitted by certain public utilities.

II. SUMMARY

The proposed regulation in Docket No. 15-06044 is not likely to impose a direct and significant economic burden upon small businesses, and is not likely to directly restrict the formation, operation, or expansion of a small business. Therefore, a small business impact statement pursuant to Nevada Revised Statutes ("NRS") 233B.0608(2) is not required.

III. PROCEDURAL HISTORY

- On June 24, 2015, Commission opened a rulemaking to amend, adopt, and/or repeal regulations in accordance with SB 87 authorizing the Commission to modify resource plans submitted by certain public utilities.
- This rulemaking is being conducted by the Commission pursuant to the NRS and the Nevada Administrative Code ("NAC"), Chapters 233B, 703 and 704, including but not limited to SB 87 and NRS 703.025, 703.150, 704.210.

- On July 9, 2015, the Commission issued a Notice of Rulemaking and Notice of Request for Proposed Language and Comments and Notice of Workshop.
- The Regulatory Operations Staff ("Staff") of the Commission participates as matter of right pursuant to NRS 703.301.
- On August 12, 2015, Staff filed Comments including a draft of proposed regulations.
- On August 17, 2015, Nevada Power Company d/b/a NV Energy ("Nevada Power") and Sierra Pacific Power Company d/b/a NV Energy ("Sierra" and together with Nevada Power, "NV Energy") filed Comments.
- On August 18, 2015, the Commission held a workshop. The Attorney General's Bureau of Consumer Protection ("BCP"), NV Energy, and Staff made appearances. The draft regulations, the comments, and a procedural schedule were discussed.
- On August 24, 2015, and consistent with the Presiding Officer's directive at the August 18, 2015, workshop, NV Energy filed proposed revised language to the draft regulations filed by Staff.
- On September 25, 2015, the proposed regulations were sent to the Legislative Counsel Bureau ("LCB") for pre-adoption review.
- On October 22, 2015, the Commission received the revised proposed regulations from LCB.
- On December 9, 2015, the Presiding Officer issued Procedural Order No. 1 with the revised proposed regulation attached. Staff was directed to conduct an investigation pursuant to NRS 233B.0608 to determine whether the proposed regulation is likely to: (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business.
- On January 7, 2016, Staff filed a briefing memorandum regarding its small business impact report.
- On January 13, 2016, at Agenda 1-16, the Commission accepted Staff's Small Business Impact Report and adopted Staff's recommendation contained therein. This Order memorializes the Commission's decision.

IV. SMALL BUSINESS IMPACT REPORT

Staff Position

1. Staff conducted a Delphi Method exercise that incorporates elements of the Policy Delphi Method to determine the impact of the proposed regulation on small businesses. The

Delphi Method is a systematic, interactive, forecasting method based on independent inputs of selected experts. This Method recognizes the value of expert opinion, experience, and intuition and allows the use of limited information when full scientific knowledge is lacking. In this instance, the participants were members of Staff. Each participant in the exercise used his or her background and expertise to reflect upon and analyze the impact of the proposed regulations on small businesses.

2. Staff states that the proposed regulation: (1) amends existing regulations, and provides for the modification by the Commission of the action plans and amendments to the action plans of certain utilities; and (2) authorizes a public utility to consent to or reject some or all of the modifications.

3. Staff states that the proposed regulation will have both immediate and long-term adverse effects, but that these effects stem from the authorizing statute, SB 87, and not from the proposed regulation. Specifically, the proposed regulation allowing the Commission to modify the action plans and amendments to the action plans of certain utilities may require the utility to expend additional resources to evaluate and gain approval of action plans in the future. Staff states that while there would be no adverse effects to any businesses regulated by the regulations, the additional costs incurred by the utility may be reflected in rates, which may have an adverse effect on the public generally. However, Staff states that any potential adverse effect, both immediate and long-term, are a result of the authorizing statute and therefore not a direct result of the proposed regulation.

4. Staff states that the proposed regulation produces neither immediate nor long-term beneficial effects. Staff notes that there could be beneficial effects to the public in general given that the proposed regulation allows the Commission to modify action plans and amendments to

the action plans of certain utilities rather than simply rejecting them, but that these beneficial effects are a result of the authorizing statute and therefore not a direct result of the proposed regulation.

5. Staff states that the proposed regulation will not have an additional cost to the Commission.

6. Based on the foregoing, Staff's report recommends that the Commission find that the proposed regulation in Docket No. 15-06044 is not likely to impose a direct and significant economic burden on small businesses, and is not likely to directly restrict the formation, operation or expansion of a small business. Therefore, Staff states that a small business impact statement pursuant to NRS 233B.0608(2) is not required.

7. Staff further recommends that, pursuant to NRS 233B.0608(3), the Commission note in this Order that the Delphi method was used in the determination of the impact of the proposed regulations on small business.

Commission Discussion and Findings

8. At a utility agenda meeting held on January 13, 2016, the Commission voted to accept Staff's report and adopt Staff's recommendation.

9. Pursuant to NRS 233B.0608(1), the Commission finds that the proposed regulation is not likely to impose a direct or significant economic burden upon small businesses, and is not likely to directly restrict the formation, operation, or expansion of a small business. Therefore, the Commission finds that a small business impact statement pursuant to NRS 233B.0608(2) is not required.

10. The Commission finds that the Delphi method was used in the determination of the impact of the proposed regulation on small business.


11. Accordingly, the Commission finds that the provisions of NRS 233B.0608 have been met.

THEREFORE, it is ORDERED that:

1. The proposed regulation in Docket No. 15-06044 is not likely to impose a direct and significant economic burden upon small businesses, and is not likely to directly restrict the formation, operation, or expansion of a small business.

2. The Commission may correct any errors that have occurred in the drafting or issuance of the Order without further proceedings.

By the Commission,


Trisha Osborne,
Assistant Commission Secretary
on behalf of the Commissioners

Certified: 
STEPHANIE MULLEN,
Executive Director

Dated: Carson City, Nevada

01.22.16

(SEAL)

