

January 25, 2016

Ms. Debra Corp  
Legislative Counsel Bureau  
401 South Carson Street  
Carson City, NV 89701

Re: LCB File No. R116-15 (PUCN Docket #15-05025)

Dear Ms. Corp:

We believe the PUCN has violated NRS in the adoption of this Regulation and LCB, as well as the Legislation Commission, would be remiss in approving this Regulation. The PUCN's deficient fulfillment of NRS requirements are contained in NRS 233B.0608(2)(a) and NRS 233B.0609(1)(a).

During the last workshop (January 6, 2016) on this docket, PUCN Hearing Officer Donald Lomoljo, a Nevada licensed attorney, was apprised of the legal deficiencies by one of the participants, Fred Voltz. Mr. Lomoljo never publicly addressed or satisfactorily resolved the legal problems raised by the PUCN's actions. He remained silent. As a court reporter was present, there is a transcript of everything said at the workshop, but not available to the ratepaying public without a surcharge.

These problems were again raised on January 13, 2016 before the three PUCN Commissioners at their agenda meeting during public comment. Again, no one from the PUCN commented and no research was done by any one of the 16 attorneys on staff at the PUCN, including two attorney Commissioners. The PUCN voted to proceed with the Regulation now before the LCB. (You will see the agenda meeting public comments outlining the precise legal problems as an attachment to this letter.)

We take great exception with Mr. Lomoljo's January 21, 2016 transmittal letter to you. In its fifth paragraph, Mr. Lomoljo claims the Commission "made a well-reasoned finding that the proposed regulation will cause no significant impact on small businesses. . ." Without any practical foundation, this conclusion was based on five PUCN employees lacking any small business experience gathering in a room and using a computer model to arrive at this unrealistic conclusion.

The December 4, 2015 PUCN report, included in Mr. Lomoljo's submission to you, describes the Delphi method and steps taken to allegedly replicate the mindset of small business people. No effort

was made to actually consult with small business owners, as NRS requires. The PUCN failed to explain the absence of readily-available small businessperson input in its documentation and processes.

Applying a reasonable person test to the 78<sup>th</sup> Legislature's intent in passing SB 151, the majority sought natural gas expansions for economic development, but expected that the PUCN would flesh out adequate controls so that benefits would exceed costs and expansions would not be foolishly pursued.

The PUCN failed to require pre-project surveys of prospective customers for an adequate interest level so that ratepayer money would not be inappropriately spent. Sufficient interest, properly documented by a prospective utility, serves as a safeguard against natural gas utilities promoting projects with no economic benefit. For example, Southwest Gas receives an 8.22% PUCN-approved return on investment regardless of the number of participants or the merit of the investments they expect to be reimbursed for from all ratepayers.

We believe the PUCN needs to re-do the small business documentation required to support this proposed regulation per NRS provisions after the utility has fully disclosed projected costs to the prospective and current utility customers.

Sincerely,

/s/ Angel De Fazio

/s/ Fred Voltz

Attachment (1)

*PUCN Utility Agenda 1-16—First Public Comment Period—Fred Voltz*

The following comments reference item 3A on today's agenda.

Approval of the draft Regulation submitted by the presiding Hearing Officer creates a number of fundamental legal problems and would conflict with black-letter law contained in a variety of statutes.

The nebulous definitions of direct and indirect benefits give a gas utility excessive latitude to charge all types of proximate and distant customers for service expansions. If the gas utility has made no pre-planning effort to gauge business owner and property owner interest in paying for expansion costs and gas service, including appliance replacement and private property gas delivery equipment, the subsidies required from all ratepayers if few actually sign up for service expansion could be substantial.

The failure to meet the provisos of NRS 233B.0608 and .0609 in the draft Regulation should concern the Commission.

Section 2 (a) of .0608 requires that: "Insofar as practicable, consult with owners and officers of small businesses that are likely to be affected by the proposed regulation." Instead, the Regulatory Operations employees assembled five career bureaucrats with no small business experience, and, without any hard evidence or attempt to contact small businesses, arbitrarily determined that there was "no significant economic burden or restriction to the formation, operation or expansion of a small business." No explanation was offered why small business owners could not be consulted.

.0609 Section 1(a) requires "a description of the manner in which comment was solicited from affected small businesses, a summary of their response. . ." This information is non-existent. Section 1(c) calls for the "estimated economic effect of the proposed regulation on the small businesses which it is to regulate." There are no category numbers, no range of numbers and no summary numbers. Regulatory Operations employees made no reasonable, good-faith effort to comply with either Section 1(a) and 1(c) before it issued its December 4, 2015 Small Business Impact Report, approved by the Commission.

The draft Regulation before the Commission today fails to include these safeguards so that gas expansions will not be undertaken when there is no real demand, pre-determined by the gas utility before it expends significant sums toward disruptive expansions, and which it expects to recover during the rate-making process from all its ratepayers, not just the ones who are receiving new service, if the expansion costs are high and the actual new participants are few.

Perhaps most surprising, these issues were brought up in the workshop, but with no follow-up or follow-through by the various layers of PUC employees; the issues, questions and protective language submissions were completely ignored.

The proposed Regulation needs its legal deficiencies corrected before it can prudently proceed.

Please enter these comments in today's meeting record as an exhibit

*PUCN Utility Agenda 1-16—Second Public Comment Period—Fred Voltz*

With 2016 a year when NV Energy's Sierra Pacific subsidiary will be filing a general rate case, the current level of PUC-approved return to the company deserves renewed attention.

Because the PUC has established 9.75% as the magic number, even though NVE has just one stockholder, Mid-American Energy, this excessive return bears no relationship to high-quality corporate bond returns, or the U.S. Treasury's 10-Year T-Bond, sitting at 2.10% yield. The 9.75% number is wildly excessive in the context of other competing investment vehicles.

NVE has no competitive risk to factor into "acceptable" rates of return given its virtual monopoly status within its service territories.

Most pension funds, both public and private, are fortunate to generate 4-5% annual returns in today's volatile equity and bond markets across all asset classes using seasoned, professional investment managers.

On a second theme, there is a huge conflict of interest when the PUC calculates and sets the mill tax to fund most of its annual operating budget, but benefits when the PUC approves rates and rate increases for the utilities it regulates. The higher the utility rates and utility company revenues, the more revenue the PUC receives from the hidden mill tax buried in therm and kilowatt hour charges.

A more equitable approach would be to cease the hidden mill tax altogether and secure funding through the legislature's regular appropriation process from the general fund. Such a change removes the taint of self-dealing and would be a more constructive use of bill draft requests vs. the unnecessary and inappropriate removal of PUC salary caps such as the PUC unsuccessfully pursued in the 78<sup>th</sup> Legislature in league with the Colorado River Commission. It is worth noting that there has been no massive departure of existing PUC employees since SB 46's 2015 failure, as was inaccurately forecasted and threatened by PUC management.

Please enter these comments in today's meeting record as an exhibit.