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Agency: Public Utilities Commission

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Classification: ☐ PROPOSED ☒ ADOPTED BY AGENCY ☐ EMERGENCY

Brief description of action: Rulemaking to adopt regulations in accordance with Assembly Bill 465 ("AB 465") (2019), pertaining to the Expanded Solar Access Program of electric utilities.

Authority citation other than 233B: This matter is being conducted by the Public Utilities Commission pursuant to the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code Chapters 703 and 704, including but not limited to NRS 703.025 and 704.210 and AB 465.

Notice date: January 25, 2021, and February 23, 2021.

Hearing dates: February 17, 2021, and March 25, 2021.

Date of Adoption by Agency: April 14, 2021 (Temporary).

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Rulemaking to amend, adopt, and/or repeal)
regulations in accordance with Assembly Bill 465) Docket No. 19-06028
(2019).)
_____)

At a general session of the Public Utilities
Commission of Nevada, held at its offices
on April 13, 2021.

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

ORDER

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

I. INTRODUCTION

On June 18, 2019, the Commission opened a rulemaking docket to implement Assembly Bill 465 ("AB 465") (2019). This matter was designated as Docket No. 19-06028.

II. SUMMARY

The proposed regulations, appended hereto as Attachment 1, are adopted as temporary regulations.

III. PROCEDURAL HISTORY

- On June 18, 2019, the Commission opened a rulemaking docket to implement AB 465.
- This matter is being conducted pursuant to the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC"), Chapters 233B, 703, and 704, including, but not limited to, NRS 703.025 and 704.210 and AB 465.
- On August 9, 2019, the Commission issued a Notice of Rulemaking, Notice of Request for Comments, and Notice of Workshop.
- On September 9, 2019, the Sierra Club and Western Resource Advocates ("WRA"), Nevada Power Company d/b/a NV Energy ("NPC") and Sierra Pacific Power Company d/b/a NV Energy ("SPPC" and together with NPC, "NV Energy") the Regulatory Operations Staff of the Commission ("Staff"), and Bombard Renewable Energy ("Bombard") filed comments.

- On September 9, 2019, the Nevada Bureau of Consumer Protection (“BCP”) filed a Letter stating that it will not submit initial comments but may file reply comments.
- On September 10, 2019, Chispa Nevada et al. filed comments.
- On September 12, 2019, Nevada Assemblywoman Daniele Monroe-Moreno filed comments.
- On September 23, 2019, Staff, BCP, and NV Energy filed reply comments.
- On October 1, 2019, the Commission held a workshop. Staff, NV Energy, BCP, Sierra Club, WRA, Faith Organizing Alliance, and Nevada Department of Employment, Training and Rehabilitation (“DETR”) made appearances. Participants discussed comments, reply comments, and a procedural schedule.
- On October 2, 2019, the Presiding Officer issued Procedural Order No. 1.
- On October 14, 2019, participants held a conference call to discuss priorities and topics for the upcoming informal workshops and conference calls.
- On October 28, 2019, participants in the October 14, 2019, conference call filed with the Commission a status update regarding the October 14, 2019, conference call.
- On October 29, 2019, participants held an informal workshop.
- On November 1, 2019, participants in the informal workshop filed with the Commission a status update regarding the progress made during the informal workshop.
- On November 12, 2019, participants held a conference call.
- On November 15, 2019, participants in the November 12, 2019, conference call filed with the Commission a status update from the November 12, 2019, conference call, as well as a consensus decision as to whether participants are prepared to proceed with an informal or formal workshop on Wednesday, December 4, 2019.
- On November 20, 2019, the Commission issued a Notice of Workshop and an Amended Notice of Informal Workshop.
- On December 4, 2019, participants held an informal workshop.
- On December 5, 2019, the City of Las Vegas filed comments.
- On December 6, 2019, the Commission issued a Notice of Workshop.
- On January 16, 2020, the Commission held a workshop. Staff, BCP, NV Energy, WRA, Sierra Club, Faith Organizing Alliance, City of Las Vegas, Renew Nevada, Nevada Governor’s Office of Energy, International Brotherhood of Workers Local Union 396 and International

Brotherhood of Workers Local 1245 (“IBEW”), Grid Alternatives, and Bombard made appearances. At the workshop, Grid Alternatives presented an informational slideshow presentation.

- On January 21, 2020, the Presiding Officer issued Procedural Order No. 2.
- On January 29, 2020, participants held an informal workshop.
- On March 3, 2020, participants held an informal workshop.
- On March 10, 2020, NV Energy filed a status update with the Commission.
- On March 12, 2020, BCP and DETR filed comments.
- On March 13, 2020, the Commission held a continued workshop. Staff, BCP, NV Energy, Sierra Club, WRA, Faith Organizing Alliance, Renew Nevada, Grid Alternatives, the Nevada Conservation League (“NCL”), and DETR made appearances. Participants described draft regulations, a procedural schedule, and non-consensus items.
- On March 31, 2020, NV Energy filed a Workforce Development Plan on behalf of Senator Brooks and Assemblywoman Monroe-Moreno as discussed at the March 13, 2020, workshop.
- On April 21, 2020, the Presiding Officer issued Procedural Order No. 3 requesting comments on draft regulations appended thereto.
- On May 29, 2020, NV Energy, Sierra Club and WRA, BCP, and Staff filed comments.
- On June 12, 2020, NV Energy, Sierra Club and WRA, BCP, and Staff filed reply comments.
- On July 8, 2020, the Presiding Officer sent proposed regulations to the Legislative Counsel Bureau (“LCB”).
- On July 9, 2020, the Presiding Officer issued Procedural Order No. 4.
- On November 4, 2020, LCB returned revised proposed regulations.
- On November 9, 2020, the Presiding Officer issued Procedural Order No. 5 requesting a Small Business Impact Report and scheduling a workshop and hearing.
- On November 16, 2020, the Commission issued a Notice of Workshop and Notice of Hearing.
- On December 3, 2020, Staff filed its Small Business Impact Report (“Report”).
- On December 9, 2020, at a regularly scheduled agenda, the Commission pulled Staff’s Report from consideration.

- On December 9, 2020, the Presiding Officer issued Procedural Order No. 6 cancelling a scheduled workshop and hearing and requesting that Staff conduct and file a rate impact analysis (“RIA”).
- On January 5, 2021, Staff filed the requested RIA.
- On January 20, 2021, the Commission issued a Notice of Intent to Act Upon a Regulation, Notice of Workshop, and Notice of Hearing.
- On January 21, 2021, the Commission issued an Order finding that the proposed regulation is not likely to impose a direct and significant economic burden upon small businesses.
- On January 25, 2021, the Commission issued an Amended Notice of Intent to Act Upon a Regulation, Notice of Workshop, and Notice of Hearing.
- On February 12, 2021, NCL, NV Energy, and Staff filed comments.
- On February 16, 2021, Chispa Nevada and BCP filed comments.
- On February 16, 2021, the Commission held a workshop. Staff, BCP, NV Energy, Chispa Nevada, Renew Nevada, Sierra Club, WRA, and MGM Resorts International and Caesars Enterprise Services, LLC (together, “MGM and Caesars”) made appearances.
- On February 17, 2021, the Commission held a hearing. Staff, BCP, NV Energy, WRA, Sierra Club, Renew Nevada, and MGM and Caesars made appearances.
- On February 18, 2021, the Presiding Officer issued Procedural Order No. 7 soliciting comments from interested participants regarding the draft regulation.
- On February 23, 2021, the Commission issued a Notice of Intent to Act Upon a Regulation and Notice of Hearing.
- On February 26, 2021, Staff, NV Energy, Sierra Club and WRA, MGM and Caesars, BCP, and City of Las Vegas filed comments.
- On March 25, 2021, the Commission held a hearing. Staff, BCP, NV Energy, WRA and Sierra Club, and MGM and Caesars made appearances.

IV. REGULATIONS

1. The proposed regulations, appended hereto as Attachment 1, implement AB 465, pertaining to the Expanded Solar Access Program (“ESAP”) of electric utilities.

2. Sections three through nine of the proposed regulations define “disadvantaged business,” “eligible premises customer,” “expanded solar access program plan,” “expanded solar access program rate,” “low-income eligible customer,” “non-contiguous geographic locations,” and “nonprofit organization.”

3. Section ten establishes limits on the amount of energy which may be allocated to certain categories of customers under the ESAP.

4. Section eleven requires an electric utility to submit an ESAP plan to the Commission every 3 years, and to file with the Commission an informational report regarding the ESAP on or before March 1 of each calendar year following the calendar year in which the Commission approves the initial ESAP plan. Section eleven also requires the utility scale solar resources included in the ESAP plan to be approved by the Commission as part of the electric utility’s triennial resource plan.

5. Section twelve establishes the information that an electric utility must include in its ESAP plan.

6. Section thirteen establishes requirements for eligible customers to apply to participate in an ESAP and requires applicants to be selected through a lottery system.

7. Section fourteen establishes requirements for the selection of the geographic locations for community-based solar resources.

8. Section fifteen establishes the method for calculating the rate charged to participants in the ESAP, replacing the base tariff energy rate (“BTER”) and deferred energy accounting adjustment (“DEAA”).

9. Section fifteen also requires the Commission to adjust certain rates charged to low-income customers to ensure that such customers receive a lower energy rate.

10. Section sixteen establishes the process for an electric utility to recover the costs of implementing an ESAP.

11. Section sixteen also requires an electric utility to use the portfolio energy credits (“PECs”) acquired by implementing the ESAP to meet its portfolio standard and allocates PECs generated from community-based solar resources between the electric utility implementing the expanded solar access program and its distribution-only service customers on a load ratio basis.

Summary of Public Comments in 233B Workshop and Hearings

Staff’s Comments

12. Before the 233B Workshop and Hearings, Staff filed written comments and then also participated in the 233B Workshop and Hearings. Staff provided numerous edits to the draft regulations, which the Commission took into consideration and incorporated into the draft regulations attached as Attachment 1.¹

13. Staff states it wants to provide clarification on statements made during the 233B Hearing on February 17, 2021. (Staff’s February 26, 2021, Comments at 1.) Staff states that when referring to what is meant by “the opportunity for a lower rate” in the ESAP statute (NRS 704.7865(2)(f)(4)), NV Energy confirmed that its interpretation of that phrase means that customers will have the opportunity to be subject to a rate that is lower than the rate they would otherwise pay if the customers were to install rooftop solar on their own. (*Id.*, quoting 2-17-21 Tr. at 23.) Staff states that it does not agree with this characterization of the statutory language. (*Id.*) Staff states that it believes the phrase “opportunity for a lower rate” in NRS

¹ At Hearing, Staff raised the issue of requiring the filing of direct testimony supporting the ESAP. (3-25-21 Tr. at 44-49.) The Commission notes that a presiding officer may direct a party to submit prepared testimony and accompanying exhibits pursuant to NAC 703.710(1).

704.7865(2)(f)(4) refers to a rate that is lower than the otherwise applicable BTER and DEAA that the customer would be required to pay but for his/her participation in the ESAP. (*Id.*)

NV Energy's Comments

14. Before the 233B Workshop and Hearings, NV Energy filed written comments and then also participated in the 233B Workshop and Hearings. NV Energy provided numerous edits to the draft regulations, all of which the Commission took into consideration and some of which are incorporated into the draft regulations attached as Attachment 1. The comments below highlight areas where NV Energy's comments either provide additional clarification to or diverge from the attached draft regulations.

15. NV Energy states that it was directly involved in drafting the ESAP legislation and because distributed solar energy resources are at a premium compared to utility-solar energy resources, NV Energy's intent was to blend the costs of the utility-scale solar energy resources with the costs of the smaller distributed solar energy resources to drive costs down in an effort to facilitate participation. (2-16-21 Tr. at 231-233.) NV Energy states that the ESAP does not guarantee a discount, which was never discussed when NV Energy developed the legislation, except the low-income discount. (*Id.*) NV Energy states that the ESAP does not guarantee everybody a lower rate than what they would otherwise pay. (*Id.* at 234.) NV Energy states that that is not the intent of the ESAP and that NV Energy knew ESAP was going to cost more. (*Id.*) NV Energy states that rooftop solar costs more compared to the BTER. (*Id.* at 234-235.)

16. NV Energy states that, with respect to distribution only service ("DOS") customers, the ESAP is a public program cost, and NV Energy specifically wrote that language into the legislation that DOS customers are going to pay because this is a public program cost, not just the low-income discount, but all project costs. (2-16-21 Tr. at 235.)

17. NV Energy states that the ESAP systems are distributed resources. (2-16-21 Tr. at 235.) NV Energy states that these distributed resources benefit the distribution grid. (*Id.*) NV Energy states that the intent, and the “pure language” of the law, says the ESAP will be paid for as a distribution expense, which means all customers pay for this, including DOS customers. (*Id.*)

18. NV Energy states that under AB 465, a community-based solar resource is defined as “a component of the distribution system of the electric utility.” (NV Energy’s February 12, 2021, Comments at 3.) NV Energy states that as such, the ESAP costs are a component of the distribution system of the electric utility. (*Id.*) NV Energy states that DOS customers do not pay the BTER and DEAA rates, which are updated quarterly. (*Id.*) NV Energy states that because the draft regulations direct the utility to track and recover the low-income discount quarterly through the BTER/DEAA rates, which DOS customers do not pay, DOS customers are not contributing to their fair ratio of the low-income discount and project costs. (*Id.*) NV Energy requests the regulations to continue to track the discount quarterly, but recover those costs through the ESAP public policy rate, which will be spread to all customers, including DOS customers. (*Id.*) NV Energy states that this more fairly addresses this cost and equally spreads those costs to all customers. (*Id.*) NV Energy proposes changing the recovery to an annual, rather than quarterly, basis. (*Id.*)

19. NV Energy states that, contrary to BCP’s assertions, the regulations do not deviate from cost-of-service, because everything calculated is related to the actual costs to either build or get an authorized rate of return that is approved by the Commission. (2-17-21 Tr. at 28.) NV Energy states it believes AB 465 allows for those costs of service costs to be collected from the distribution system. (*Id.*)

BCP's Comments

20. Before the 233B Workshop and Hearings, BCP filed written comments and then also participated in the 233B Workshop and Hearings. BCP provided numerous edits to the draft regulations, all of which the Commission took into consideration and some of which are incorporated into the draft regulations attached as Attachment 1. The comments below highlight areas where BCP's comments diverge from or provide clarification to the attached draft regulations.

21. BCP states that it does not support any rate discounts for ESAP customers other than the low-income residential discount required by NRS 704.7865(2)(f)(5). (BCP's February 26, 2021, Comments at 2-3.) BCP states that the ESAP rate will be whatever it calculates to be—whether it be higher or lower than the BTER/DEAA energy rate paid by all other bundled customers—and will be the energy rate paid by ESAP participants in place of the BTER/DEAA. (*Id.*) BCP states that it agrees with NV Energy that it is more practical to recover any amounts recoded in the ESAP low-income regulatory asset account on an annual basis rather than a quarterly basis. (*Id.* at 3-4.) BCP states that, furthermore, the annual recovery of the ESAP low-income regulatory asset account would be consistent with the annual recovery of the ESAP regulatory asset account for incurred costs in Section 16(3). (*Id.* at 4.)

22. Regarding section 16.3 of the draft regulations, BCP does not have any proposed changes but does highlight a potential for double-recovery of a return-on and return-of NV Energy's investment in community-based solar resources. (BCP's February 26, 2021, Comments at 4.) BCP states that the ESAP rate paid for by customers participating in the ESAP already includes a return-on and return-of NV Energy's investment in community-based solar resources. (*Id.*) BCP states that it is not appropriate for NV Energy to calculate an additional return-on and

return-of its investment in ESAP community-based solar resources. (*Id.*) BCP states that the burden will be on NV Energy in future applications to recover any amounts recorded in the ESAP regulatory assets to clearly demonstrate that it is not seeking double recovery of a return-on and return-of its investment in ESAP community-based solar resources. (*Id.*)

23. BCP states that there is no statutory authority for the Commission to charge non-participating ESAP customers the administrative costs associated with the ESAP. (BCP's February 26, 2021, Comments at 5.) BCP states that the Nevada Legislature has specifically provided for the recovery of administrative costs by statute of the Renewable Generations programs in NRS Chapter 701B and the Energy Efficiency and Conservation programs in NRS 704.785. (*Id.* at 5-6.) BCP states that the ESAP does not contain similar language regarding passing on the administrative costs of the ESAP to non-participating customers. (*Id.* at 6.) BCP states that the only subsidy allowed under AB 465 to be charged to non-participating customers is that of the low-income discount and that the ESAP was intended to be a stand-alone program with its costs covered by participating customers. (*Id.*)

24. BCP states that the ESAP involves costs and investments that are related to the production function in the cost-of-service, not the distribution function. (BCP's February 26, 2021, Comments at 7.) BCP states that DOS customers do not pay for costs and investments that are functionalized as production in their general rates, but only for costs and investments that are functionalized as distribution. (*Id.*) BCP states that whether one is setting general rates or surcharge rates, cost-of-service principles must be followed for rate-regulated accounting. (*Id.*) BCP states that, in its view, there can be no greater violation of cost-of-service principles than intentionally functionalizing costs and investments that are indisputably functionalized as production to distribution just so DOS customers are subject to those costs and investments. (*Id.*)

25. BCP states that NV Energy's argument for requiring DOS customers to pay for ESAP costs and investments that are properly functionalized as production in the Federal Energy Regulatory Commission's Uniform System of Accounts and a cost-of-service study is the definition of community-based solar resource in NRS 704.7865(6)(b): "'Community-based solar resource' means a solar resource which has a nameplate capacity of not more than 1 megawatt and is owned and operated by the electric utility and connected to and used as a component of the distribution system of the electric utility." (BCP's February 26, 2021, Comments at 7.) BCP states that NV Energy's argument is without merit and ignores definitions of "utility scale solar resource" in NRS 704.7865(6)(o) and "solar resource" in NRS 704.7865(6)(m). (*Id.*) BCP states that in addition, NV Energy's argument ignores the definition of "distribution system" and "transmission system" in its Engineering Requirements for Design Standard for Parallel Generation of 10 Megawatts or Less (RE-1). (*Id.* at 7-9.)

MGM and Caesars' Comments

26. Before the 233B Workshop and Hearings, MGM and Caesars filed written comments and then also participated in the 233B Workshop and Hearings. MGM and Caesars provided edits to the draft regulations, all of which the Commission took into consideration and some of which are incorporated into the draft regulations attached as Attachment 1. The comments below highlight areas where MGM and Caesars' comments either provide clarification to or diverge from the attached draft regulations.

27. MGM and Caesars state that public policy costs or the ESAP recoverable from all utility customers are limited to the costs associated with any low-income eligible customer discount. (MGM and Caesars' February 26, 2021, Comments at 3.) MGM and Caesars state that section 16(4) of the draft regulations is inconsistent with AB 465, codified at 704.7865, which

only provides for a subsidy by non-participating customers for costs related to providing low-income eligible customers a lower rate. (*Id.*) MGM and Caesars state it is also inconsistent with general and long-established cost of services principles used by the Commission under Nevada law to establish just and reasonable rates. (*Id.*) MGM and Caesars state that DOS customers pay for wire costs on the utility's distribution system, not generation which DOS customers buy from an alternative provider. (*Id.*) MGM and Caesars state that while there is agreement that DOS customers do pay the public policy costs for the low-income eligible customer discount, this does not include all costs as laid out in section 16(4) of the draft regulation. (*Id.*)

28. MGM and Caesars state that AB 465 did not guarantee a lower rate to ESAP participants, other than low-income eligible customers and did not provide for a fully subsidized ESAP. (MGM and Caesars' February 26, 2021, Comments at 3-4.)

Sierra Club and WRA Comments

29. Before the 233B Workshop and Hearings, WRA and Sierra Club filed written comments and then also participated in the 233B Workshop and Hearings. Sierra Club and WRA provided edits to the draft regulations, all of which the Commission took into consideration and some of which are incorporated into the draft regulations attached as Attachment 1. The comments below highlight areas where Sierra Club and WRA's comments either provide clarification to or diverge from the attached draft regulations.

30. Sierra Club and WRA state that they support the specific components of the proposed regulations that spread the cost of the ESAP across all ratepayers of a utility. (Sierra Club and WRA's February 26, 2021, Comments at 1.) Sierra Club and WRA state without such a mechanism, the ESAP simply cannot support itself, especially in light of the mandate that low-income customers must receive a lower rate. (*Id.*) Sierra Club and WRA state that the proposed

regulations also ensure that non-participating ratepayers and DOS customers help cover the costs of the ESAP, and that these businesses and individuals do receive numerous benefits from the ESAP, such as greater access to clean energy, which results in cleaner air. (*Id.* at 1-2.) Sierra Club and WRA state that another benefit of adding distributed resources to the built environment is to conserve the vast open spaces and wild parts of Nevada, which benefits Nevada's tourism, hospitality, and recreational industries. (*Id.*) Sierra Club and WRA state that programs like the ESAP make Nevada a more attractive place to live and attract top talent to Nevada that our state continues to need in the workforce. (*Id.*)

City of Las Vegas Comments

31. The City of Las Vegas states that it is in support of the proposed regulations as drafted, and states that the regulations for the ESAP will be a benefit to residents in Las Vegas. (City of Las Vegas February 26, 2021, Comments at 1.)

Chispa Nevada Comments

32. Before the 233B Workshop and Hearings, Chispa Nevada filed written comments and then also participated in the 233B Workshop. Chispa Nevada provided edits to the proposed regulations regarding input from non-profit organizations serving communities of color and low-income Nevadans as well as input regarding marketing for the ESAP being culturally and linguistically appropriate that the Commission incorporated into the draft regulations attached as Attachment 1.

33. Chispa Nevada states that, if implemented appropriately, AB 465 could achieve important progress in expanding access to solar energy and jobs. (2-16-21 Tr. at 281.) However, Chispa Nevada states that it is concerned that certain proposals in the rulemaking do not equitably address the importance of ensuring that the benefits of solar energy reach all

communities in Nevada. (*Id.*) Chispa Nevada states it is concerned that low-income communities of color will not be a part of the planning process for workforce education, training, and job placement, and therefore less likely to benefit from these programs. (*Id.*) Chispa Nevada states we need to ensure that these opportunities effectively reach these communities and there are no outreach gaps. (*Id.* at 281-282.) Chispa Nevada states that, similarly, for locating these solar programs, the community must be actively consulted and engaged in choosing the locations. (*Id.* at 282.) Chispa Nevada states it would also like to improve the criteria for how low-income customers and low-income communities are identified so that we target low-income communities of color that are disproportionately suffering from the pollution and cause associated with dirty fossil fuel energy. (*Id.*)

Renew Nevada Comments

34. Before the 233B Workshop and Hearings, Renew Nevada filed written comments and then also participated in the 233B Workshop. Renew Nevada states that it supports the regulations to implement AB 465. (2-16-21 Tr. at 283.) Renew Nevada states that expanded solar access is the first step to address the lack of equality in access to solar energy and green jobs for renters and communities of color. (*Id.* at 283-284.) Renew Nevada states that it is critical to enact these regulations quickly so that we can develop a meaningful ESAP plan. (*Id.*)

Commission Discussion and Findings

35. Based on the foregoing, the Commission finds that it is in the public interest to adopt as temporary the proposed regulations attached hereto as Attachment 1.

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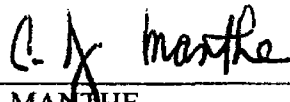
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THEREFORE, it is ORDERED:


1. The proposed regulations, attached hereto as Attachment 1, are ADOPTED AS TEMPORARY.

By the Commission,


HAYLEY WILLIAMSON,
Chair and Presiding Officer


C.J. MANTHE,
Commissioner

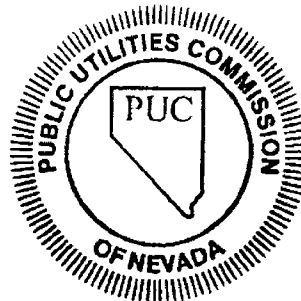

TAMMY CORDOVA,
Commissioner

Attest: 
TRISHA OSBORNE,
Assistant Commission Secretary

Dated: Carson City, Nevada

4/14/21

(SEAL)



ATTACHMENT 1

**PROPOSED REGULATION OF THE
PUBLIC UTILITIES COMMISSION OF NEVADA**

LCB File No. R136-20

April 13, 2021

AUTHORITY: §§1-16, NRS 703.025, 704.210 and 704.7865.

A REGULATION relating to electric utilities; limiting the amount of energy that may be allocated to certain categories of customers under an expanded solar access program; requiring an electric utility to submit to the Public Utilities Commission of Nevada an expanded solar access program plan; establishing the application and selection process for an expanded solar access program; establishing requirements for the selection of locations for community-based solar resources; establishing requirements for rates charged under an expanded solar access program; authorizing an electric utility to recover certain costs of implementing an expanded solar access program; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires: (1) an electric utility to offer an expanded solar access program to eligible customers within its service territory; and (2) the Public Utilities Commission to adopt regulations establishing standards for the expanded solar access program. (NRS 704.7865)

Section 10 of this regulation establishes limits on the amount of energy which may be allocated to certain categories of customers under the expanded solar access program.

Section 11 of this regulation requires an electric utility to: (1) submit an expanded solar access program plan to the Commission every 3 years; and (2) file with the Commission an informational report regarding the expanded solar access program on or before March 1 of each calendar year following the calendar year in which the Commission approves the initial expanded solar access program plan of the electric utility. **Section 11** requires the utility scale solar resources included in the expanded solar access program plan to be approved by the Commission as part of the electric utility's triennial resource plan.

Section 12 of this regulation establishes the information which an electric utility is required to include in its expanded solar access program plan.

Section 13 of this regulation establishes requirements for eligible customers to apply to participate in an expanded solar access program and requires applicants to be selected through a lottery system.

Section 14 of this regulation establishes requirements for the selection of the geographic locations for community-based solar resources.

Section 15 of this regulation establishes the method for calculating the rate charged to participants in the expanded solar access program which replaces the base tariff energy rate and deferred energy accounting adjustment. **Section 15** also requires the Commission to adjust certain rates charged to low-income customers to ensure that such customers receive a lower energy rate.

Section 16 of this regulation establishes the process for an electric utility to recover the costs of implementing an expanded solar access program. **Section 16** also authorizes an electric utility to use the portfolio energy credits acquired by implementing the expanded solar access program to meet its portfolio standard.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 16, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 16, inclusive, of this regulation unless the context otherwise requires, the words and terms defined in sections 3 to 9, inclusive, have the meanings ascribed to them in those sections.*

Sec. 3. *“Disadvantaged business” has the meaning ascribed to it in NRS 704.7865.*

Sec. 4. *“Eligible premises customer” means a customer who is a fully bundled residential customer of an electric utility who cannot install solar resources on the customer’s premises due to physical or ownership constraints on the premises.*

Sec. 5. *“Expanded solar access program plan” means the expanded solar access program plan submitted to the Commission by an electric utility pursuant to section 11 of this regulation.*

Sec. 6. *“Expanded solar access program rate” means a fixed-rate charge approved by the Commission to be charged to customers participating in an expanded solar access program, which replaces the base tariff energy rate and the deferred energy accounting adjustment and which is adjusted in accordance with the quarterly calculations of the Commission.*

Sec. 7. *“Low-income eligible customer” has the meaning ascribed to it in NRS 704.7865.*

Sec. 8. *“Non-contiguous geographic locations” means two geographic locations that are not adjoining along a boundary or consisting of parts that adjoin.*

Sec. 9. *“Nonprofit organization” means an organization which qualifies as tax exempt pursuant to section 501(c) of the Internal Revenue Code, 26 U.S.C. § 501(c).*

Sec. 10. *1. An electric utility that primarily serves densely populated counties shall ensure that the amount of energy provided annually through its expanded solar access program does not exceed:*

- (a) 60,000 megawatt-hours to low-income eligible customers;*
- (b) 60,000 megawatt-hours to disadvantaged businesses and nonprofit organizations; and*
- (c) 120,000 megawatt-hours to eligible premises customers.*

2. An electric utility that primarily serves less densely populated counties shall ensure that the amount of energy provided annually through its expanded solar access program does not exceed:

- (a) 40,000 megawatt-hours to low-income eligible customers;*
- (b) 40,000 megawatt-hours to disadvantaged businesses and nonprofit organizations; and*
- (c) 80,000 megawatt-hours to eligible premises customers.*

3. An electric utility shall set forth in its expanded solar access program plan a reserve amount for the categories of customers listed in subsections 1 and 2, as applicable, to ensure

that the size of the expanded solar access program does not exceed the limits set forth in subsection 1 of NRS 704.7865.

4. As used in this section:

(a) “Electric utility that primarily serves densely populated counties” has the meaning ascribed to it in NRS 704.110.

(b) “Electric utility that primarily serves less densely populated counties” has the meaning ascribed to it in NRS 704.110.

Sec. 11. 1. On or before December 1, 2020, and every 3 years thereafter, an electric utility shall submit an expanded solar access program plan to the Commission for approval.

2. An electric utility may file an amendment to an expanded solar access program plan that has been approved by the Commission provided that another expanded solar access program plan submitted by the utility is not pending before the Commission.

3. Two or more utilities that are affiliated through common ownership may jointly file an expanded solar access program plan or amendment pursuant to this section.

4. Utility scale solar resources which are included in an expanded solar access program plan must be approved by the Commission in an order issued pursuant to NRS 704.751.

5. On or before March 1 of each calendar year following the calendar year in which the Commission approved the initial expanded solar access program plan of an electric utility, the electric utility shall file an informational report with the Commission which details:

(a) For the immediately preceding calendar year:

(1) The number of applications for the program received by the electric utility;

(2) The number of individuals who voluntarily left the program; and

- 1
- (3) The number of participants remaining in the program at the end of the calendar year.*
 - (b) The status of any community-based solar resources including, without limitation, the construction, maintenance and operation of such solar resources.*
 - (c) The production of energy by community-based solar resources and utility scale solar resources which are included in the program.*
 - (d) The amount of energy subscribed and whether the reserve capacity is adequate.*
 - (e) Information regarding the expanded solar access program rate, including, without limitation, revenues received and costs incurred by the utility.*
 - (f) Any workforce statistics related to the program that are available to the electric utility.*
 - (g) The number and types of calls to the customer service department of the utility relating to the program.*
 - (h) The number of individuals that did not return recertification documentation.*

Sec. 12. *The expanded solar access program plan of an electric utility must include the following information:*

- 1. A list of actions for which the electric utility is seeking approval by the Commission, including, without limitation, the electric utility's selection of community-based solar resources and utility scale solar resources to be included in the expanded solar access program. The Commission will not approve the list of actions unless the proposed actions ensure that the expanded solar access program utilizes a reasonable mixture of community-based solar resources and utility scale solar resources.*
- 2. A list of the utility scale solar resources to be used in determining the expanded solar access program rate.*

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3. *The criteria, which must be developed using stakeholder input, to be used by the electric utility to create an initial list of non-contiguous geographic locations for community-based solar resources and the process, which must include receiving input from stakeholders, for selecting final site locations for community-based solar resources. An electric utility may, in subsequent expanded solar access program plans or amendments, after consultation with stakeholders, propose modifications to the criteria and process for selecting the community-based solar resource locations and, when necessary, indicate any proposed new community-based solar resource locations.*

4. *A schedule for the selection, construction and operation of the community-based solar resources dedicated to the expanded solar access program that complies with the requirements of paragraph (h) of subsection 2 of NRS 704.7865 and considers the amount of energy that is subscribed, the amount of energy that is expected to be subscribed and the reserve energy.*

5. *A description of the electric utility's process for community participation in the naming of community-based solar resources.*

6. *Information on how the electric utility plans to compensate community-based solar site hosts including, without limitation, the terms of any form lease agreements, purchase agreements or easements.*

7. *Information regarding a solar workforce innovations and opportunities program, developed by the Department of Employment, Training and Rehabilitation in conjunction with potential employers, interested nonprofit organizations, and the International Brotherhood of Electrical Workers, or its successor organization, to provide workforce education, training and job placement. The solar workforce innovations and opportunities program must accomplish the following:*

(a) Leverage existing plans and programs within the Department of Employment, Training and Rehabilitation to reduce administrative costs.

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(b) Ensure that at least one job fair open to the public is conducted in each community or neighboring low-income community, as needed for recruitment, where a community-based solar resource is planned to be built. The job fair must be coordinated with the Department of Employment, Training and Rehabilitation, private solar or electrical installation companies, local schools and colleges, the International Brotherhood of Electrical Workers, or its successor organization, including, without limitation, representatives from the Joint Apprenticeship Training Center, and other interested stakeholders, as practicable, to provide educational resources and training and to solicit potential qualified applicants.

(c) Establish a selection process to refer qualified applicants to the International Brotherhood of Electrical Workers, or its successor organization, for adequate training. Qualified applicants may be selected to participate in appropriate contracted positions to aid in the construction, maintenance and operation of community-based solar projects.

(d) Determine job titles, detail quality compensation and establish benefits for the contracted positions.

8. A description of the application and selection process for eligible customers, including, without limitation, annual rules for recertification, disenrollment and relocation of customers enrolled in the expanded solar access program.

9. A plan for marketing the expanded solar access program, which includes marketing that is linguistically appropriate.

10. The proposed annual budget for each of the expanded solar access program plan components, including, without limitation, marketing, community outreach and program administration.

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11. *Criteria for identifying traditionally underrepresented groups for the purposes of determining qualifying owners of a disadvantaged business. Qualifications for a disadvantaged business may be developed in coordination with a governmental agency or nonprofit organization with relevant expertise.*

12. *Criteria for identifying and establishing the boundaries of a community with higher levels of low-income eligible customers. An electric utility shall utilize available tools and work with appropriate government agencies, including, without limitation, the Division of Welfare and Supportive Services of the Department of Health and Human Services, to the extent practicable, to develop the criteria necessary to determine the boundaries of a community with higher levels of low-income eligible customers.*

13. *A description of expanded solar access program rate components and methodology for developing participant charges.*

Sec. 13. 1. *A low-income eligible customer, disadvantaged business, nonprofit organization or eligible premises customer located within the service territory of an electric utility may apply to participate in the expanded solar access program of the electric utility.*

2. *An electric utility may cooperate with the Housing Division of the Department of Business and Industry, the Division of Welfare and Supportive Services of the Department of Health and Human Services or any other state, county or local governmental entity, or any nonprofit organization, to develop eligibility criteria and verification processes for a low-income eligible customer.*

3. *A disadvantaged business must include in its application to participate in an expanded solar access program:*

(a) *A copy of its State or local business license;*

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(b) Documentation demonstrating that more than 50 percent of the owners of the business are women, veterans, members of a racial or ethnic minority group or otherwise part of a traditionally underrepresented group according to the criteria included in the expanded solar access program plan approved by the Commission; and

(c) A signed affidavit of eligibility with supporting evidence that confirms that each owner of the business does not have a net worth of more than \$250,000, not including equity held in the business or in a primary residence.

4. A nonprofit organization must include in its application to participate in an expanded solar access program an affirmation or determination letter from the Internal Revenue Service indicating that the organization is exempt from taxation pursuant to section 501(c) of the Internal Revenue Code, 26 U.S.C. § 501(c).

5. An eligible premises customer must include in his or her application to participate in an expanded solar access program a written statement certifying that the customer cannot install solar resources on his or her premises due to physical or ownership constraints on the premises. For the purpose of determining whether an eligible premises customer is eligible to participate in an expanded solar access program, a financial constraint preventing the customer from installing solar resources on his or her premises does not constitute a physical constraint on such an installation. An eligible premises customer may include in his or her application building or property schematics or pictures demonstrating that the eligible premises customer cannot install solar resources on his or her premises due to physical or ownership constraints on the installation of solar resources on his or her premises.

6. The expanded solar access program plan year runs from January 1 to December 31 of each calendar year.

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7. *Applicants for participation in an expanded solar access program must be selected on the basis of a lottery system which each electric utility shall set forth in its expanded solar access program plan. Each electric utility shall also include in its expanded solar access program plan a description of any interim enrollment process that the electric utility intends to use.*

8. *Participants in an expanded solar access program will be enrolled in the program for 1 year but may withdraw from participation at any time. At the end of the expanded solar access program term, a participant may renew participation in the program without participating in the selection lottery if the participant notifies the electric utility of the participant's intention to remain in the program and resubmits any documents that meet the requirements contained in subsection 3, 4 or 5, as applicable.*

9. *A customer's participation in the program may be terminated by the electric utility as provided in an expanded solar access program plan that has been approved by the Commission.*

Sec. 14. 1. *In selecting the host sites for community-based solar resources connected to the distribution system, an electric utility must consider and provide greater weight to the following locations:*

(a) A location in a disadvantaged or low-income community.

(b) A location in an area determined by an electric utility or the Commission to have high locational value which includes, without limitation, an area that has optimum solar output, an area for which it is possible to obtain the necessary permits, an area that provides community services or benefits or an area that provides a grid benefit.

2. *An electric utility shall provide a reasonable justification for its selection of a host site as the site for a community-based solar resource. If it is impracticable for an electric utility to site a community-based solar resource in a community with higher levels of low-income eligible*

customers, the electric utility shall provide adequate rationale for why the selected site is appropriate.

Sec. 15. *1. The expanded solar access program rate for all customers participating in the program must be calculated as 30 percent of the weighted average of the rates for new utility-scale solar resources accepted by the Commission in an order pursuant to NRS 704.751 and selected for use in determining the ESAP rate pursuant to NRS 704.7865(2)(f)(1), as approved by the Commission, and community-based solar resources approved as part of the expanded solar access program plan, plus 70 percent of the base tariff energy rate and deferred energy accounting adjustment, adjusted to remove the expanded solar access program resources. The expanded solar access program rate will replace a participating customer's base tariff energy rate and deferred energy accounting adjustment.*

2. The Commission will adjust the expanded solar access program rate charged to low-income customers as necessary to guarantee that such customers receive a lower energy rate as required by NRS 704.7865.

3. Customers participating in the expanded solar access program shall pay any other applicable charges, including, without limitation, the universal energy charge, franchise fees, the renewable energy program rate and the base tariff general rates, except that the Commission may reduce one or more of these charges for low-income customers to ensure that such customers receive a lower rate as required by NRS 704.7865.

4. Any expanded solar access program rate discount, including, without limitation, any low-income customer discount, must be tracked by the electric utility separately in a regulatory asset and recovered from all utility customers, including distribution-only service customers, on a

quarterly basis in conjunction with an electric utility's quarterly filing made pursuant to NRS 704.110.

5. Expanded solar access rate revenues paid by participating customers must be applied to the deferred energy accounting balance in the same manner as the base tariff energy rate and the deferred energy accounting adjustment rates.

Sec. 16. 1. All of the costs of implementing an expanded solar access program, with the exception of any rate discount tracked pursuant to subsection 4 of section 15 of this regulation, must be accounted for in the books and records of an electric utility in regulatory asset accounts which are separate from costs and amounts attributable to any other activity. All such accounts must be maintained in a manner that will allow costs and amounts attributable to specific programs to be readily identified. The calculation for the regulatory asset account for the capital costs of a community-based solar resource begins on the last day of the month following the date on which the resource is made available as a community-based solar resource.

2. An electric utility shall recover all prudent and reasonable expenditures of implementing the expanded solar access program, provided that such expenditures arise out of actions that have been approved by the Commission as part of the electric utility's expanded solar access program plan.

3. An electric utility must submit the regulatory asset accounts associated with the expanded solar access program to the Commission with the electric utility's annual deferred energy accounting adjustment application submitted pursuant to NRS 704.187, with proposals to recover the accumulated balance of the expanded solar access program costs and for the recovery of and return on the costs for the construction or acquisition of any community-based solar resource dedicated to the expanded solar access program by the electric utility.

4. All expenditures related to the expanded solar access program are public policy costs that must be charged to all customer classes of an electric utility, including distribution-only customers.

5. The portfolio energy credits generated:

(a) from the expanded solar access program will be used for renewable portfolio standard compliance by the electric utility implementing the expanded solar access program; and

(b) from community-based solar resources shall be allocated between the electric utility implementing the expanded solar access program and its distribution-only service customers on a load ratio basis.

NOTICE OF ADOPTION OF REGULATION

On April 14, 2021, the Public Utilities Commission of Nevada adopted a temporary regulation, assigned LCB File No. R136-20 (Docket No. 19-06028), which pertains to Chapter 704 of the Nevada Administrative Code. A copy of the adopted temporary regulation is attached.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R136-20

1. A clear and concise explanation of the need for the adopted regulation.

Assembly Bill (“AB”) 465 (2019), passed in 2019, requires the Public Utilities Commission of Nevada (the “Commission”) to adopt regulations pertaining to the implementation of an expanded solar access program (“ESAP”). This regulation implements AB 465 (2019), by establishing standards and requirements for the ESAP program.

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

(a) Copies of the proposed regulation, notice of intent to act upon the regulation and notice of workshop and hearing were sent by U.S. mail and email to persons who were known to have an interest in the subjects of noticing and interventions. These documents were also made available at the website of the PUCN, <http://puc.nv.gov>, mailed to all county libraries in Nevada, published in the following newspapers:

Ely Times
Las Vegas Review Journal
Reno Gazette-Journal
Tonopah Times-Bonanza,

and posted at the following locations:

Public Utilities Commission
1150 East William Street
Carson City, Nevada 89701

Public Utilities Commission
9075 West Diablo Drive, Suite 250
Las Vegas, Nevada 89148

(b) Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy (together “NV Energy”), the Regulatory Operations Staff (“Staff”) of the Commission, Bombard Renewable Energy, the Sierra Club and Western Resource Advocates, Chispa Nevada, Nevada Assemblywoman Daniele Monroe-Moreno, the Attorney General’s Bureau of Consumer Protection (“BCP”), the City of Las Vegas, the Nevada Department of Employment, Training, and Rehabilitation (“DETR”), the Nevada Conservation League, and MGM Resorts International and Caesars Enterprise Services, LLC (together, “MGM and Caesars”) filed comments in the matter. Commenters raised concerns about the rates charged to participants of the ESAP program, the electric utility’s allocation and recovery of costs resulting from implementing the ESAP program, portfolio energy credit allocation, and providing equitable access to the ESAP program for all communities in Nevada.

(c) Copies of the transcripts of the proceedings are available for review at the offices of the PUCN, 1150 East William Street, Carson City, Nevada 89701 and 9075 West Diablo Drive, Suite 250, Las Vegas, Nevada 89148.

3. The number of persons who:

- (a) Attended the February 17, 2021, hearing: 11**
- (b) Testified at the February 17, 2021, hearing: 8**
- (c) Attended the March 25, 2021, hearing: 6**
- (d) Testified at the March 25, 2021, hearing: 5**
- (e) Submitted written comments: 11**

4. For each person identified in paragraphs (b), (d), and (e) of number 3 above, the following information if provided to the agency conducting the hearing:

- (a) Name;**
- (b) Telephone number;**
- (c) Business address;**
- (d) Business telephone number;**
- (e) Electronic mail address; and**
- (f) Name of entity or organization represented.**

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Reno, NV 89511

5. A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public.

The summary may be obtained as instructed in the response to question 2(c).

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

Proposed revisions to the regulation proposed by the commenters and participants were generally incorporated in the regulation.

7. **The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include: both adverse and beneficial effects, and both immediate and long-term effects.**

(a) Estimated economic effect on the businesses which they are to regulate.

The regulation is expected to have minimal adverse effects on businesses in both the immediate and long-term.

(b) Estimated economic effect on the public which they are to regulate.

The regulation is expected to have minimal adverse effects on the public in both the immediate and long-term.

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

Any costs associated with the regulation are considered incremental in nature.

9. **A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

The regulation does not overlap any other State, governmental agency, or federal regulations.

10. **If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

N/A

11. **If the 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

12. **If the proposed regulation is likely to impose a direct and significant burden upon a small business or directly restrict the formation, operation or expansion of a small business, what methods did the agency use in determining the impact of the regulation on a small business?**

Staff conducted a Delphi Method exercise to determine the impact of this proposed regulation on small businesses. The Delphi Method is a systematic, interactive, forecasting method based on independent inputs of selected experts. In this instance, the participants were members of Staff. Each participant in the exercise used his background and expertise

to reflect upon and analyze the impact of the proposed regulation on small businesses. Additionally, Staff performed a Rate Impact Analysis (“RIA”) based on information in the Joint Application by NV Energy for approval of an ESAP program, filed in Docket no. 20-12003. Staff’s RIA took into consideration various assumptions about the ESAP program to arrive at an estimate of the potential range of the total annual ESAP program costs. Staff’s RIA, additionally, estimated the range of potential rate impacts to small businesses.

The Commission relied on Staff’s RIA and an assessment of potential bill impacts to small businesses and found that the proposed regulation does not impose a direct and significant economic burden upon small businesses, nor does it directly restrict the formation, operation, or expansion of a small business, and therefore a small business impact statement pursuant to NRS 233B.0608(2) is not required. This finding was memorialized in an Order issued in Docket No. 19-06028 on January 21, 2021.

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Rulemaking to amend, adopt, and/or repeal regulations in)
accordance with Assembly Bill 465 (2019).)

) Docket No. 19-06028

At a general session of the Public Utilities
Commission of Nevada, held at its offices
on January 13, 2021.

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

ORDER

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

I. INTRODUCTION

On June 18, 2019, the Commission opened a rulemaking, designated as Docket No. 19-06028, to amend, adopt, and/or repeal regulations in accordance with Assembly Bill 465 (2019) (“AB 465”).

II. SUMMARY

The proposed regulation in Docket No. 19-06028 is not likely to impose a direct and significant economic burden upon small business nor is it likely to directly restrict the formation, operation, or expansion of small business. Therefore, no further analysis, outreach, or preparation of a small business impact statement is necessary pursuant to Nevada Revised Statutes (“NRS”) 233B.0608(2).

III. PROCEDURAL HISTORY

- On June 18, 2019, the Commission initiated a rulemaking to amend, adopt, and/or repeal regulations in accordance with AB 465. This matter was designated as Docket No. 19-06028.
- This matter is being conducted pursuant to the NRS and the Nevada Administrative Code (“NAC”), Chapters 233B, 703, 704, including, but not limited to, NRS 703.025, 704.210, and 704.7865.
- On August 9, 2019, the Commission issued a Notice of Rulemaking, Notice of Request for Comments, and Notice of Workshop.

- On September 9, 2019, the Sierra Club and Western Resource Advocates (“WRA”), Nevada Power Company d/b/a NV Energy (“NPC”) and Sierra Pacific Power Company d/b/a NV Energy (“SPPC”) (together, “NV Energy”), the Regulatory Operations Staff (“Staff”) of the Commission, and Bombard Renewable Energy (“Bombard”) filed comments.
- On September 9, 2019, the Nevada Bureau of Consumer Protection (“BCP”) filed a Letter stating that it will not submit initial comments but may file reply comments.
- On September 10, 2019, Chispa Nevada filed comments.
- On September 12, 2019, Nevada Assemblywoman Daniele Monroe-Moreno filed comments.
- On September 23, 2019, Staff, BCP, and NV Energy filed reply comments.
- On October 1, 2019, the Commission held a workshop. Staff; NV Energy; BCP; Sierra Club; WRA; Faith Organizing Alliance; and Nevada’s Department of Employment, Training, and Rehabilitation (“DETR”) made appearances. The participants discussed comments, reply comments, and a procedural schedule.
- On October 2, 2019, the Presiding Officer issued Procedural Order No. 1.
- On October 14, 2019, the participants held a teleconference to discuss priorities and topics for the upcoming informal workshops and teleconferences.
- On October 28, 2019, the participants in the October 14, 2019, teleconference filed with the Commission and emailed to Ms. Jeanne Mortimer, the Presiding Officer’s Administrative Attorney, a status update regarding the October 14, 2019, teleconference.
- On October 29, 2019, the participants held an informal workshop.
- On November 1, 2019, the participants in the informal workshop filed with the Commission and emailed to Ms. Jeanne Mortimer, the Presiding Officer’s Administrative Attorney, a status update regarding the progress made during the informal workshop.
- On November 12, 2019, the participants held a teleconference.
- On November 15, 2019, the participants in the November 12, 2019, teleconference filed with the Commission and emailed to Ms. Jeanne Mortimer, the Presiding Officer’s Administrative Attorney, a status update from the November 12, 2019, teleconference, as well as a consensus decision as to whether the participants were prepared to proceed with an informal or formal workshop on Wednesday, December 4, 2019.
- On November 20, 2019, the Commission issued an Amended Notice of Informal Workshop.
- On December 4, 2019, the participants held an informal workshop.

- On December 6, 2019, the Commission issued a Notice of Workshop.
- On January 16, 2020, the Commission held a workshop. Staff, BCP, NV Energy, WRA, Sierra Club, Faith Organizing Alliance, City of Las Vegas, Renew Nevada, Nevada Governor's Office of Energy, International Brotherhood of Workers Local Union 396 and International Brotherhood of Workers Local 1245 ("IBEW"), Grid Alternatives, and Bombard made appearances. At the workshop, Grid Alternatives presented an informational slideshow.
- On January 21, 2020, the Presiding Officer issued Procedural Order No. 2.
- On January 29, 2020, the participants held an informal workshop.
- On March 3, 2020, the participants held an informal workshop.
- On March 10, 2020, NV Energy filed a status update with the Commission.
- On March 12, 2020, BCP and DETR filed comments.
- On March 13, 2020, the Commission held a continued workshop. Draft regulations, a procedural schedule, and non-consensus items were discussed.
- On April 21, 2020, the Presiding Officer issued Procedural Order No. 3 requesting comments on a draft regulation attached to the procedural order.
- On May 29, 2020, NV Energy, WRA, BCP, and Staff filed comments.
- On June 12, 2020, NV Energy, WRA, BCP, and Staff filed reply comments.
- On July 8, 2020, the Presiding Officer sent a proposed regulation to the Legislative Counsel Bureau ("LCB").
- On July 9, 2020, the Presiding Officer issued Procedural Order No. 4.
- On November 4, 2020, LCB returned a revised proposed regulation.
- On November 9, 2020, the Commission issued Procedural Order No. 5 requesting a Small Business Impact Report from Staff and scheduling a workshop and hearing.
- On November 16, 2020, the Commission issued a Notice of Workshop and Notice of Hearing.
- On December 3, 2020, Staff filed its Small Business Impact Report. In its Small Business Impact Report, Staff did not take a position as to whether the proposed regulation is likely to

impose a direct and significant economic burden on a small business, or restrict the formation, operation, or expansion of a small business.

- On December 9, 2020, the Presiding Officer issued Procedural Order No. 6 cancelling a scheduled workshop and hearing and requesting that Staff conduct and file a rate impact analysis (“RIA”).
- On January 5, 2021, Staff filed the requested RIA.

IV. SMALL BUSINESS IMPACT REPORT

Staff’s Rate Impact Analysis

1. Staff explains that Procedural Order No. 6 required Staff to conduct and file an RIA that determines or estimates a range of potential rate impacts to small businesses for the purpose of informing the Commission as to whether the proposed regulation is likely to impose a significant economic burden on a small business or directly restrict the formation, operation, or expansion of a small business. (Staff’s RIA at 1.) Staff further explains that during the Commission’s meeting on December 9, 2020, Chair Williamson noted that NV Energy’s Joint Expanded Solar Access Program (“ESAP”) Application in Docket No. 20-12003 (the “Joint Application”) could provide instructive numbers for Staff’s RIA. (*Id.*) Staff states that although the information and figures filed in NV Energy’s Joint Application are incomplete and have not been vetted by any party or approved by the Commission, Staff utilized the information in the filing as the best information available for the purpose of providing the Commission with the requested RIA. (*Id.*)

2. Staff states that its RIA considers various assumptions, and it estimates that the potential range of the total annual ESAP costs for constructing at least three community-based solar resources (“CBSRs”) and up to ten CBSRs will be approximately \$3 million to \$5 million for NPC’s service territory and approximately \$2 million to \$3 million for SPPC’s service territory. (*Id.* at 1-2.) Staff estimates that the range of potential rate impacts to small businesses

under an ESAP Plan in which at least three CBSRs and up to ten CBSRs are constructed will be approximately \$0.00014 per kilowatt-hour (“kWh”) to \$0.00021 per kWh in NPC’s territory, and \$0.00016 per kWh to \$0.00030 per kWh in SPPC’s service territory. (*Id.* at 2.)

3. Staff explains that it made various assumptions regarding the ESAP Energy Rate for its analysis, including the weighted cost of solar energy, Base Tariff Energy Rate (“BTER”) and Deferred Energy Accounting Adjustment (“DEAA”) figures, and the ESAP Energy Rate calculation. (*Id.*)

4. With respect to the weighted cost of solar energy, Staff states that in NV Energy’s Joint Application, NV Energy calculated the estimated ESAP energy rate by utilizing six utility-scale solar projects that were approved by the Commission in Docket No. 18-06003, and one CBSR (the Mohave solar resource project approved by the Commission in Docket No. 20-07023). (*Id.*) Staff states that NV Energy provided a CBSR price per megawatt-hour (“MWh”) of \$92.90 for the Mohave solar project. (*Id.*) Staff provides that it utilized these same solar resources to calculate the estimated ESAP energy rate in its impact analysis. (*Id.*) Staff states that NV Energy’s Joint Application further calculated the ESAP energy rate by taking 15 percent of the weighted average of the utility-scale solar resource costs and 15 percent of the weighted average of the CBSR costs. (*Id.*) Staff explains that because NV Energy’s weighting methodology resulted in an ESAP rate that is higher than the BTER/DEAA, Staff took a simpler approach to ensure that the estimated ESAP rate was lower than the BTER/DEAA rate. (*Id.*) Accordingly, Staff states that it calculated 30 percent of the total weighted average of the utility-scale solar resources and CBSR costs. (*Id.*)

5. With respect to the BTER/DEAA figures that it utilized, Staff states that it assumed that the deviation requested in NV Energy’s Joint Application from Section 15.1 of the

proposed regulations would be granted. (*Id.*) Staff states that the proposed regulations provide that the ESAP rate calculation will include 70 percent of the BTER rather than 70 percent of the BTER and DEAA. (*Id.*) Staff states that it utilized the four-month average projected BTER and DEAA obtained from NV Energy. (*Id.*)

6. Regarding the ESAP rate calculation, Staff explains that, pursuant to Section 15.1 of the proposed regulations, it calculated 30 percent of the total weighted average cost of the utility-scale solar resources and CBSR costs plus 70 percent of the four-month average projected BTER/DEAA rate. (*Id.*)

7. Regarding ESAP costs, Staff made certain assumptions regarding CBSR costs, operations and maintenance (“O&M”) costs, lease payments, administration costs, subscription levels, depreciation, costs of capital and rates of return, low-income discounts, and base tariff general rates (“BTGR”). (*Id.* at 3.)

8. With respect to CBSR costs, in calculating the estimated non-energy costs associated with the ESAP program, Staff’s RIA figures assume that each CBSR constructed for the ESAP is the same capacity (350 KWh) and price (\$1.5 million) as the Mohave solar resource. (*Id.*) Staff states that because NRS 704.7865 authorizes the construction of CBSRs with up to one megawatt (“MW”) of capacity each, and the cost of each resource will vary depending on the type of solar structure built, the actual capacities and pricing for the CBSRs utilized in the program may fluctuate and the resulting estimated ESAP rates and program costs will fluctuate accordingly. (*Id.*)

9. Staff states that O&M cost information associated with the CBSRs was not included in NV Energy’s Joint Application. (*Id.*) Staff states that it assumes that the O&M costs will constitute one percent of the total cost of one CBSR (i.e., \$15,000). (*Id.*) Staff states that

this estimate is based upon its professional judgement reviewing various resource projects submitted by multiple public utilities. (*Id.*)

10. Staff states that its assumptions for lease payment figures were obtained from information provided confidentially by NV Energy in response to a data request in Docket No. 20-07023 (NV Energy's Fourth Amendment to its Integrated Resource Plan). (*Id.*) Staff states that it assumes a lease payment for each CCSR resource at the high end of the range provided for purposes of impact analysis and notes that the final program costs may fluctuate higher or lower depending on the final approved lease payment amounts for each CCSR resource. (*Id.*)

11. Staff explains that NV Energy's Joint Application estimates administration costs for its ESAP to be approximately \$1.2 million with 60 percent allocated to NPC and 40 percent allocated to SPPC. (*Id.*) Staff provides that any changes to these proposed allocations would affect the resulting costs applied and rates charged to each service territory. (*Id.*) Staff further provides that, should the actual costs of the program be greater or less than the estimates included in the Joint Application, its RIA would be affected accordingly. (*Id.*)

12. Staff states that for purposes of its RIA, it assumed that the ESAP would be fully subscribed and, therefore, the total ESAP MWh utilized in the calculation for NPC's and SPPC's service territories would be 240,000 MWh and 160,000 MWh, respectively. (*Id.*) Staff states that if the program is not fully subscribed, the just and reasonable costs associated with the unsubscribed portion of the program will be passed onto all ratepayers pursuant to Section 16(4) of the proposed regulation and affect the RIA accordingly. (*Id.*)

13. Staff explains that it assumed a depreciation schedule of 20 years for each of the CCSRs owned by NV Energy, which Staff states is based upon the estimated life of installed solar facilities utilized in the power purchase agreements executed pursuant to Assembly Bill

405 of the 2017 Nevada Legislative Session. (*Id.* at 3-4.) Staff states that if the CBSRs do not last 20 years or last longer than 20 years, its RIA would be affected accordingly. (*Id.* at 4.)

14. Staff states that the cost of capital and rate of return information utilized for its RIA were based on the applicable figures approved in NV Energy's most recent general rate cases for NPC and SPPC (Docket Nos. 20-06003 & 19-06002, respectively). (*Id.*)

15. Staff states that it did not include a low-income discount amount in its RIA for NPC or SPPC because Staff's calculation of the estimated ESAP rate is already lower than the otherwise applicable BTER/DEAA rate; however, if the Commission were to require or authorize the ESAP rate to be a specific percentage below the otherwise applicable rate for low-income participants, then Staff states that any costs associated with deriving the lower rate(s) would need to be included in the low-income discount costs and/or included in the calculation of the costs that will be passed onto remaining ratepayers, and would affect the analysis accordingly. (*Id.*)

16. Staff states that in calculating the estimated rate impact that will be experienced by all customer classes, it incorporated the following categories of estimated costs into the BTGR: CBSR construction costs, CBSR rate of return (because the CBSRs will be owned by NV Energy), CBSR O&M, CBSR lease payments, ESAP administration costs, the "difference" between the ESAP rate and the otherwise applicable BTER/DEAA that non-participating ratepayers will be required to pay, and any costs that will be passed onto other customers to ensure low-income customers, per NRS 704.7865, (and possibly other participants) get a lower rate (together, the "Estimated BTGR Cost Categories"). (Staff's RIA at 4.) Staff states that assuming no additional low-income discount is needed because the ESAP rate is lower than the otherwise applicable BTER/DEAA, it estimates that the total costs are reflected in its RIA. (*Id.*)

Staff states that if the Commission were to reject the inclusion of any of its Estimated BTGR Cost Categories or authorize additional costs to be included in the Estimated BTGR Cost Categories, or add/remove cost categories in the BTGR, then it would affect the RIA accordingly. (*Id.*)

Commission Discussion and Findings

17. NRS 233B.0608 requires the following: Before conducting a workshop for a proposed regulation pursuant to NRS 233B.061, an agency shall make a concerted effort 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.

18. The Commission finds that the proposed regulation is not likely to impose a direct and significant economic burden on small business, nor is it likely to directly restrict the formation, operation or expansion of small business. The Commission makes this determination relying on Staff's RIA and an assessment of potential bill impacts to small businesses. After conducting an analysis using the Delphi method to provide an initial report and then conducting the RIA, Staff provided an RIA with a range of potential rate impacts to small businesses under an ESAP Plan in which at least three CBSRs and up to ten CBSRs are constructed. The RIA range is estimated to be approximately \$0.00014 per kWh to \$0.00021 per kWh in NPC's territory, and \$0.00016 per kWh to \$0.00030 per kWh in SPPC's service territory.

19. The bill impact for a small business is dependent upon the amount of electricity that it consumes during a monthly billing period. For example, for NPC, the estimated average bill impact for the GS (General Service) rate class, which is approximately 75,256 meters/customers, averaging electricity usage of 640 kWh per month, is \$0.09 per month (\$1.08

per year) for three CBSRs and 0.14 per month (\$1.64 per year) for ten CBSRs. The estimated average bill impact for NPC's LGS-1 (Large General Service) rate class, which is approximately 31,836 meters/customers, averaging electricity usage of 10,104 kWh per month is \$1.42 per month (\$17.02 per year) for three CBSRs and \$2.15 per month (\$25.85 per year) for ten CBSRs. For SPPC's GS-1 (General Service) rate class, which is approximately 41,048 meters/customers, averaging 1,289 kWh of electricity usage per month, the estimated average bill impact for three CBSRs is \$0.20 per month (\$2.42 per year), and for ten CBSRs, it is \$0.39 per month (\$4.70 per year). Notably, even if the ten-CBSRs scenario occurs, the potential bill impact will occur gradually because the CBSRs may take years to permit and construct.

20. The Commission is mindful of the importance of a small business impact analysis conducted in the current COVID-19 pandemic environment and the economic downturn that has resulted from it. The Commission does not take lightly its duties under NRS 233B.0608 to make a concerted effort to determine whether the proposed regulation is likely to create a direct and significant economic burden on small businesses, or directly restrict the formation, operation, or expansion of small businesses. The Commission ordered the extra RIA analysis to fully examine, with the best information available, any likely potential direct and significant economic burdens to small business. The RIA contains a range of potential scenarios and rate impacts that, even at the highest ends of the ranges, appear unlikely to meaningfully affect the financial health of a small business. Therefore, the Commission finds that the incremental potential impact of the proposed regulation on a small business is not likely to impose the direct *and significant* economic burden contemplated under NRS 233B.0608, nor is the proposed regulation likely to directly *restrict the formation, operation or expansion* of small business.

21. The Commission notes that Staff's RIA is based on multiple assumptions, which the Commission also takes into account when considering the potential financial impact of the regulation. The assumptions reflect the requirements of AB 465, which requires at least three but no more than ten CBSRs, as well as MWh capacity requirements and limits for the CBSRs. The requirements of AB 465 drive many of the range assumptions of the RIA, which the Commission also considers when determining whether there is an economic burden on small businesses as a result of the regulation. In this case, the regulation implements a program required by AB 465.

22. Finally, the Commission notes that small businesses that qualify for the ESAP may see economic benefits from the Program. AB 465 requires the development of a workforce innovations program, as well as a program designed to expand solar access to low-income residents as well as disadvantaged and nonprofit businesses and those that cannot access traditional rooftop solar. The Commission's regulation to implement AB 465 creates a program for workforce development as well as provisions to establish rates for a viable program for disadvantaged businesses and nonprofit businesses for expanded solar access.

23. The Commission finds that the requirements of NRS 233B.0608(1) have been satisfied.

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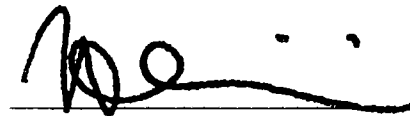
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THEREFORE, it is ORDERED:

1. The proposed regulation in Docket No. 19-06028 is not likely to impose a direct and significant economic burden upon a small business, nor is it likely to directly restrict the formation, operation, or expansion of a small business.

By the Commission,




HAYLEY WILLIAMSON
Chair and Presiding Officer

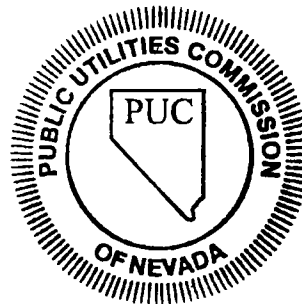


C.J. MANTHE
Commissioner



TAMMY CORDOVA
Commissioner

Attest: 
TRISHA OSBORNE
Assistant Commission Secretary



Certified: /s/ Stephanie Mullen
STEPHANIE MULLEN
Executive Director

Dated: Carson City, Nevada

 11/21/21

(SEAL)

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

LCB File No. R136-20 (PUCN Docket No. 19-06028)

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 (“PUCN”) 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 December 3, 2020, Staff memorialized its conclusion that the proposed regulation does impose a direct economic burden upon small businesses, however, it did not have sufficient information to determine if the impact would be significant. *See* Attachment 1 hereto.

On January 5, 2021, Staff filed a Rate Impact Analysis based on various assumptions of an ESAP program to estimate a potential range of the total annual ESAP costs and a range of potential rate impacts to small businesses.

On January 21, 2021, the PUCN issued an Order relying on Staff’s Rate Impact Analysis and an assessment of potential bill impacts to small businesses and specifically found that the proposed regulation does not impose a direct and significant economic burden upon small businesses, nor does it directly restrict the formation, operation or expansion of a small business. *See* Attachment 3 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 PUCN’s determination that the proposed regulation does not impose a direct and significant economic burden upon small businesses or 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, 2, and 3. Staff used a version of the Delphi method that incorporates elements of the Staff Delphi method to determine the potential impact of a regulation on small businesses. Additionally, Staff conducted a Rate Impact Analysis based on various assumptions of an ESAP program to estimate a potential range of the total annual ESAP costs and a range of potential rate impacts to small businesses.

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, 2, and 3.

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, 2, and 3.

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. Staff also performed a Rate Impact Analysis to estimate the potential rate impact of the regulation on small businesses.

On January 21, 2021, the PUCN issued an Order relying on the findings of Staff and an assessment of potential bill impacts to small businesses, and specifically found that the proposed regulation does not impose a direct and significant economic burden upon small businesses, nor does it directly restrict the formation, operation or expansion of a small business. *See* Attachment 3.

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 PUCN’s determination that the proposed regulation does not impose a direct and significant economic burden upon small businesses or directly restrict the formation, operation or expansion of a small business, the PUCN is not statutorily mandated to make this inquiry as there are no direct and significant 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.

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

The PUCN 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 PUCN concluded that no such impacts would occur from the adoption of the proposed regulation based upon the well-reasoned investigation and analysis performed by Staff.

I, STEPHANIE MULLEN, Executive Director of the PUCN, 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 20 day of May, 2021.



STEPHANIE MULLEN
Executive Director
PUBLIC UTILITIES COMMISSION OF NEVADA

ATTACHMENT 1

**PUBLIC UTILITIES COMMISSION OF NEVADA
MEMORANDUM**

DATE: November 24, 2020

TO: The Commission
Via: Anne-Marie Cuneo, DRO

FROM: Shelly Cassity, Assistant Staff Counsel

SUBJECT: Small Business Impact Report
Agenda 26-20; Item No. 5A; Docket No. 19-06028;
Rulemaking to amend, adopt, and/or repeal regulations in accordance with
Assembly Bill 465 (2019).

I. Summary

The Public Utilities Commission of Nevada (“Commission”) opened a rulemaking docket to implement Assembly Bill 465 (2019) (“AB 465”). The Commission designated the matter as Docket No. 19-06028.

On August 9, 2019, the Commission issued a Notice of Rulemaking, Notice of Request for Comments, and Notice of Workshop.

On September 9, 2019, comments were filed by the Regulatory Operations Staff (“Staff”), the Bureau of Consumer Protection (“BCP”), Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy (together “NV Energy”), Sierra Club and Western Resource Advocates (“WRA”), Bombard Renewable Energy, and Chispa Nevada et al. On September 12, 2019, comments were filed by Assemblywoman Daniele Monroe-Moreno.

On September 23, 2019, Reply Comments were filed by Staff, BCP, and NV Energy.

On October 1, 2019, a workshop was conducted by the Commission.

On October 2, 2019, Procedural Order No. 1 was issued, setting forth a procedural schedule discussed during the Workshop.

On October 28, November 1, and November 15 of 2019, NV Energy filed status updates requested in Procedural Order No. 1.

On November 20, 2019, the Commission issued a Notice of Workshop and an Amended Notice of Informal Workshop.

On December 4, 2019, an informal workshop was conducted by the Commission.

On December 5, 2019, comments were filed by the City of Las Vegas.

On December 6, 2019, the Commission issued a Notice of Workshop.

On January 16, 2020, a workshop was conducted by the Commission and was continued to March 13, 2020.

On January 21, 2020, the Commission issued Procedural Order No. 2, adopting a procedural schedule. That same day, GRID Alternatives filed the PowerPoint presented at the Workshop held on January 16.

On January 29 and March 3 of 2020, the participants conducted informal workshops.

On March 10, 2020, NV Energy filed a status update as requested by the Presiding Officer at the January 16 Workshop.

On March 12, 2020, comments were filed by the BCP and the Department of Employment, Training and Rehabilitation.

On March 13, 2020, the continued workshop was conducted by the Commission.

On March 31, 2020, NV Energy filed a Workforce Development Plan on behalf of Senator Brooks and Assemblywoman Monroe-Moreno as discussed at the March 13 Continued Workshop.

On April 21, 2020, the Commission issued Procedural Order No. 3, adopting a procedural schedule.

On May 29, 2020, comments were filed by Staff, BCP, NV Energy, Sierra Club and WRA. Reply comments were filed on June 12, 2020, by Staff, BCP, NV Energy, Sierra Club and WRA.

On July 9, 2020, the Commission issued Procedural Order No. 4, advising that proposed regulations attached to the Order were submitted to the Legislative Counsel Bureau ("LCB") for pre-adoption review and approval.

On November 5, 2020, proposed regulations received from the LCB were filed with the Commission.

On November 9, 2020, the Presiding Officer issued Procedural Order No. 5 directing Staff to conduct an investigation pursuant to Nevada Revised Statutes ("NRS") 233B.0608(1) regarding whether the proposed regulations, attached as Attachment 1 to that procedural order, are likely to impact small business.

The Order directed Staff to conduct an investigation into whether the proposed regulations are likely to affect small businesses as contemplated in NRS 233B.0608(1) and to present a report of the results of this investigation along with a statement identifying the methodology used in determining the impact on small business. Staff was further directed to place this report on the Commission's open meeting, scheduled for December 9, 2020, for Commission consideration.

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(1) further requires that the assessment must be made prior to conducting a workshop regarding the proposed regulation.

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.”

Two Staff Economists, two Staff Financial Analysts, and one Staff Engineer, all of whom were involved in the rulemaking in this Docket and are the most knowledgeable about the proposed regulations, participated in this analysis.

This briefing memo constitutes the Staff Report regarding the Small Business Impact of the proposed regulations.

II. Investigation and Analysis

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, all of whom were involved in the rulemaking in this Docket and are the most familiar with the 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. The participants noted the following:

Immediate Adverse Effects:

As discussed more fully to follow, Staff anticipates that the proposed regulations will have a direct, immediate adverse effect on small businesses. However, without more information regarding the expanded solar access program (“ESAP”) costs, costs of the community-based solar resources (“CBSRs”), the number of CBSRs that are anticipated to be built under the ESAP, and the number of customers expected to participate in the ESAP, Staff cannot definitively conclude that the proposed regulations are or are not likely to have a significant immediate adverse effect on small businesses.

AB 465, which has been codified at NRS 704.7865, mandates that an ESAP be offered by an electric utility within its service territory to eligible customers who certify they cannot install solar resources on their premises. Pursuant to Section 2 of the statute, the Commission is required to adopt regulations establishing standards for the ESAP program including: (a) community participation in the siting and naming of CBSRs used in the program; (b) the development of solar workforce innovations and opportunity programs related to constructing,

maintaining, and operating the CBSRs; (c) the creation of an ESAP rate to be charged to eligible customers that replaces the base tariff energy rate (“BTER”) and deferred energy accounting adjustment (“DEAA”); (d) a process for siting CBSRs in communities with higher levels of low-income eligible customers and providing compensation to host sites; (e) the utilization of at least one utility scale solar resource and at least three but not more than ten CBSRs in the ESAP; and (f) an application process for determining eligibility and participation of customers in the ESAP. Sections 3 and 4 of the statute require the utility to file an ESAP plan for approval by the Commission to implement the ESAP.

Under Section 16(4) of the proposed regulations implementing the above legislation, which are attached to Procedural Order No. 5, “[a]ll costs related to the [ESAP] are public policy costs that must be charged to all customer classes of an electric utility.” Staff anticipates that such costs will include: the cost to construct, maintain, and operate the CBSRs and the cost of the utility scale solar resources utilized in the ESAP; utility’s costs to administer, advertise, and otherwise implement the ESAP; costs to compensate CBSR host sites; costs incurred to ensure low-income eligible customers pay an ESAP rate that is lower than the current BTER/DEAA. While NRS 704.7865(2)(f)(3) mandates that the cost to ensure low-income eligible customers receive a lower ESAP rate must be allocated to all customer classes of the utility, it does not mandate that all of the costs of the ESAP program be recovered from all customer classes of the utility. The statute provides the Commission with the flexibility to determine how the ESAP program costs should be recovered. The proposed regulations specifically require that all program costs be borne by “all customer classes of an electric utility,” which includes non-participating small businesses. Requiring all ratepayers to pay all Commission-approved ESAP program costs (per the proposed regulations) will result in a higher rate increase than requiring all ratepayers to pay only the cost of lowering the ESAP rates for low-income participants (what the statute requires). In other words, the impact on small business is directly caused by Section 16(4) of the proposed regulations and not the implementing statute. Modifications could be made to the proposed regulations to mitigate the impact to small businesses, including only requiring the costs, if any, associated with undersubscription of the ESAP program or to ensure that low income customers get a lower ESAP rate be charged to all customer classes of the utility, rather than all ESAP program costs being borne by all customer classes. As written, however, Staff anticipates that the proposed regulations will have a direct, immediate adverse effect on non-participating small businesses as the utility rates charged to these small businesses (and all non-participating customer classes) will increase immediately as a direct result of the inclusion of the ESAP costs in their rates.

An analysis on whether the direct immediate adverse effect on small business is likely to be significant or not cannot be performed at this time. Pursuant to the proposed regulations, the increase in rates experienced by non-participating small businesses will be experienced by all non-participating customer classes—not just small businesses. However, even minimal cost sharing during an ongoing pandemic and economic recession could be considered as likely to significantly impact small businesses in Nevada, or could impact the ability of the small business to operate or expand, depending on restrictions that have been imposed on those businesses in response to the pandemic as well as electricity usage due to varying business models. Unfortunately, there is currently insufficient information available to Staff regarding the costs associated with the ESAP to conduct a small business impact analysis. The information that Staff will require to conduct the requisite analysis and prepare a small business impact statement include the following:

- (1) Costs associated with constructing, maintaining, and operating the CBSRs. In Docket No. 20-07023, NV Energy's most recent integrated resource plan application amendment, NV Energy sought Commission approval to utilize one 350 kW CBSR in the ESAP. However, no information was provided concerning the cost to construct, maintain, and operate the proposed CBSRs. The magnitude of the cost associated with each CBSR may vary widely since there are various locations and types of CBSRs that may be constructed for this program. Without the cost information for each CBSR, Staff is unable to calculate or even estimate the costs associated with the ESAP that must, according to the regulations, be borne by all customer classes of the utility, including small businesses.
- (2) Number of CBSRs anticipated to be utilized in the ESAP. The statute requires the construction of at least three but not more than ten CBSRs. However, without the information requested in item #1 above, Staff is unable to compare what the cost would be when constructing three CBSRs versus the cost associated with constructing ten CBSRs. Further, the cost of constructing one CBSR may not necessarily be indicative of the cost of all community solar projects. While the cost to construct three CBSRs may not be significant when passed onto remaining customers, the same may not be true if the utility constructs up to ten CBSRs, and such costs must be passed onto all non-participating customer classes per the regulation.
- (3) Number of customers, including low-income customers, expected to participate in the ESAP. The cost of the ESAP that will be passed onto all non-participating customer classes will depend on the number of eligible customers that participate in the ESAP. Section 15 of the proposed regulations provide that eligible customers will pay an ESAP rate, which replaces the current BTER/DEAA rate, that is 30% of the weighted average of the rates for new utility-scale solar resources plus 70% of the BTER.¹

More information is needed as to whether and how any energy storage component of the utility-scale solar resources will be factored into the ESAP rate. While new utility-scale solar resources comprise some of the cheapest resources owned by the utility, the energy storage resources that are typically combined with the solar resources are more costly. NRS 704.7865(2)(f)(1) requires that the ESAP rate be "based on ... a new utility scale resource accepted by the Commission." Depending on how the statute is interpreted when determining the ESAP rate, and whether the energy storage resource costs are included in the new utility-scale solar resource cost, could impact what costs will ultimately shift to non-participating customers. In addition, because the newer utility-scale solar resources are the cheaper resources that are included in the BTER and are the resources that will likely be used for purposes of calculating 30% of the weighted average of the rates for new utility-scale solar resources, and only 70% of the BTER will be included in the ESAP rate, it is likely to result in an ESAP rate that is lower than the otherwise applicable BTER and will shift costs to non-participating customers.

Additionally, the greater the number of eligible customers who participate in the ESAP, the greater the number of customers who will be permitted to pay less than their

¹ Participating customers will also pay other applicable charges such as the BTGR, universal energy charge, renewable energy program rate, etc.

current share of the BTER that is recovered by the utility from these customers. In other words, as more customers participate in the ESAP, the amount of unrecovered BTER costs will increase and this increased amount will be recovered from the utility's remaining, non-participating customers through increased rates. Moreover, the regulations authorize the Commission to further adjust the ESAP rate charged to low-income customers as necessary to guarantee they receive a lower energy rate. The resulting significance of the above impacts on non-participating customers, including small business, will depend, in part, upon the number of customers expected to participate in the ESAP, including the number of low-income customers eligible to participate.

- (4) Categories of ESAP costs that will be allowed for recovery by the utility. Section 16 of the proposed regulations provides that all the costs of implementing the ESAP must be accounted for in the utility's books and records in regulatory asset accounts. The utility "shall recover all prudent and reasonable expenditures of implementing the [ESAP]" that "arise out of actions that have been approved by the Commission as part of the electric utility's [ESAP] plan." As noted above, Staff anticipates that such costs will include: the cost to construct, maintain, and operate the CBSRs and any non-BTER costs associated with the utility scale solar resources utilized in the ESAP; utility's costs to administer, advertise, and otherwise implement the ESAP, which considering the potentially intricate public involvement process in selecting and naming CBSR sites, may require additional utility employees who are dedicated to facilitating this process; costs to compensate CBSR host sites; costs incurred to ensure low-income eligible customers pay an ESAP rate that is lower than the current BTER/DEAA. However, cost information supporting such utility actions or activities are not available to Staff to evaluate whether the costs that will be charged to all non-participating customer classes are likely to significantly impact small businesses.

Immediate Beneficial Effects:

Staff does not anticipate that the proposed regulations will have direct and significant immediate beneficial effects on small businesses. Pursuant to NRS 704.7865, direct and significant immediate beneficial effects may be experienced by certain small businesses that are not currently able to install solar on their premises by being given access to solar through the ESAP process. These entities must be able to provide documentation demonstrating they are either a disadvantaged business (as defined in NRS 704.7865(6)(c)) or a nonprofit organization, and if selected as host sites, will receive compensation for allowing use of their premises to site a CBSR utilized in the ESAP. In addition, low-income eligible customers will have the opportunity to have access to solar and to pay a lower rate under the program, and participating small businesses will have stability, predictability, and the opportunity for a lower rate by participating in the program. However, the foregoing immediate beneficial effects are a direct result of AB 465 (NRS 704.7865) and not the proposed regulations.

Long-Term Adverse Effects:

For more information regarding the adverse effects that will be experienced by small businesses, please see the discussion and analysis under the "Short-Term Adverse Effects" section above. Similar to short-term adverse effects, Staff anticipates that the proposed

regulations will have direct long-term adverse effects on small businesses. Because there is no sunset provision included in either AB 465 or the proposed regulations, the ESAP is a program that may be offered in perpetuity, or until modified or discontinued by the Legislature. Thus, the direct adverse effects previously discussed may be experienced by small businesses in the long-term. However, as previously discussed, without more information concerning the cost and the number of CBSRs that will be implemented as a result of the proposed regulations, Staff is unable to determine the significance of the direct long-term adverse impact on small businesses. Staff will require additional information to assess the likelihood of the proposed regulations having a significant impact on small business.

Long-Term Beneficial Effects:

Similar to the short-term beneficial effects outlined above, Staff does not anticipate that the proposed regulations will have direct and significant long-term beneficial effects on small businesses. Pursuant to NRS 704.7865, direct and significant long-term beneficial effects may be experienced by certain small businesses that are not currently able to install solar on their premises by being given access to solar through the ESAP process. These entities must be able to provide documentation demonstrating they are either a disadvantaged business (as defined in NRS 704.7865(6)(c)) or a nonprofit organization, and if selected as host sites, will receive compensation for allowing use of their premises to site a CBSR utilized in the ESAP. Because there is no sunset provision included in either AB 465 or the proposed regulations, the ESAP is a program that may be offered in perpetuity until canceled or discontinued by the Legislature. Thus, the direct beneficial effects may be experienced by certain small businesses in the long-term. In addition, low-income eligible customers will have the opportunity to have access to solar and to pay a lower rate under the program, and participating small businesses will have stability, predictability, and the opportunity for a lower rate by participating in the program, all of which may be experienced in the long-term if they continue to be eligible and elect to participate in the program. In addition, the State's policy of continuing investments in renewable energy will be achieved. However, the foregoing long-term beneficial effects are a direct result of AB 465 (NRS 704.7865) and not the proposed regulations.

Cost to the Commission to enforce or administer the proposed regulation, including start-up and ongoing costs:

Under the proposed regulations, the Commission and Staff will incur additional workload to review and approve the ESAP plans and informational reports filed by an electric utility. In addition, the Commission and Staff will need to review the just and reasonableness of the program costs in an electric utility's general rate case. However, any additional costs or workload to the Commission and Staff associated with the proposed regulations can be absorbed by the Commission's and Staff's existing resources.

Considering the foregoing discussion, if the information identified above is made available to Staff and a determination is made that the proposed regulations are likely to have a direct and significant impact on small businesses, Staff will require further guidance from the Commission as to what selection process should be undertaken to determine the impact on small businesses. However, Staff understands that the costs of the CBSRs cannot be accurately known until after all of sites have been selected and the overall cost of the program will depend on the number of participants, which cannot be predetermined. The proposed regulations prescribe that all customers classes will share in the cost of the ESAP, and so there is no specific category of small

businesses that will likely be directly impacted by the proposed regulations. Moreover, businesses face varying levels of economic hardship in response to state and local government restrictions imposed to combat the effects of the pandemic. Staff requests that the Commission provide additional guidance as to which small businesses it would like Staff to contact for purposes of completing a small business impact statement.

As a result of the investigation, Staff has concluded that the proposed regulations are likely to impose a direct economic burden upon small business, but that the significance of that economic burden is unknowable at this time and an analysis of the impact of small business cannot be performed. Therefore, Staff is unable to determine whether the proposed regulation will directly restrict the formation, operation, or expansion of small business. Based on the foregoing, Staff is unable to conclude that a small business impact statement pursuant to NRS 233B.0608(2) is or is not required.

III. Notice and Subsequent Action

On November 9, 2020, the Presiding Officer issued Procedural Order No. 5 directing 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.

IV. Conclusions and Recommendations

Staff recommends that, in accordance with NRS 233B.0608(1), the Commission find that the proposed regulations are likely to impose a direct economic burden on a small business, but that, without additional information, the significance of such economic burden on a small business is not currently knowable, and whether the proposed regulations will or will not restrict the formation, operation or expansion of small businesses cannot be definitively determined at this time. Staff would recommend that the Commission conduct ongoing small business impact analyses prior to approving any ESAP plan or CBSRs requested to be included in the ESAP rate that will be charged to all non-participating ratepayers, including small businesses.

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



STEVE SISOLAK
Governor

STATE OF NEVADA
PUBLIC UTILITIES COMMISSION

HAYLEY WILLIAMSON
Chair

C.J. MANTHE
Commissioner

TAMMY CORDOVA
Commissioner

STEPHANIE MULLEN
Executive Director

January 5, 2021

Trisha Osborne, Assistant Commission Secretary
PUBLIC UTILITIES COMMISSION OF NEVADA
1150 East William Street
Carson City, NV 89701

RE: Docket No. 19-06028 – Rate Impact Analysis

Dear Ms. Osborne:

The Regulatory Operations Staff of the Commission ("Staff") is filing this letter pursuant to Paragraph 37(c) of the Commission's Procedural Order No. 6 ("P.O. 6") in Docket No. 19-06028. In P.O. 6, the Commission orders the following:

... c) On or before TUESDAY, JANUARY 5, 2021, Staff shall conduct and file with the Commission a rate impact analysis that determines or estimates a range of potential rate impact to small businesses for the purpose of informing the Commission as to whether the proposed regulation is likely to impose a significant economic burden on a small business or directly restrict the formation, operation, or expansion of a small business.

During the Commission's regularly scheduled agenda meeting held on December 9, 2020, Chair Hayley Williamson stated "...we do have an expanded solar access program filing that came in on December 1 that contains program numbers that will likely be instructive..." The expanded solar access program ("ESAP") filing referenced by the Chair is the Joint Application filed by Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy ("Sierra" and together, "NV Energy") in Docket No. 20-12003 ("Joint Application"). Although the information and figures filed in the Joint Application are incomplete and have not been vetted by any party or approved by the Commission, Staff is utilizing the information in the filing as the best information available for the purpose of providing the Commission with the rate impact analysis ordered.

In preparing the estimated potential rate impacts to small businesses, Staff's impact analysis takes into consideration various assumptions, which are discussed in more detail in the paragraphs that follow. Staff estimates that the potential range of the total annual ESAP program costs for constructing at least three community based solar resources ("CBSRs") and up to ten CBSRs will

be approximately \$3,000,000 to \$5,000,000 for Nevada Power's service territory, and approximately \$2,000,000 to \$3,000,000 for Sierra's service territory.¹ Staff estimates that the range of potential rate impacts to small businesses under an ESAP Plan in which at least three CBSRs and up to ten CBSRs are constructed will be approximately \$0.00014/kWh to \$0.00021/kWh in Nevada Power's service territory, and \$0.00016/kWh to \$0.00030/kWh in Sierra's service territory.

Assumptions Explained

ESAP Energy Rate

Weighted Cost of Solar: In the Joint Application, in calculating the estimated ESAP energy rate, NV Energy has utilized six utility-scale solar projects that were approved by the Commission in Docket No. 18-06003, and one CBSR, which is the Mojave solar resource project approved by the Commission in Docket No. 20-07023. In the Joint Application, NV Energy provided a CBSR price per MWh of \$92.90/MWh for the Mohave solar project. Staff utilized these same solar resources to calculate the estimated ESAP energy rate in its impact analysis. In the Joint Application, NV Energy further calculated the ESAP energy rate by taking 15% of the weighted average of the utility-scale solar resource costs, and 15% of the weighted average of the CBSR cost. Because this weighting methodology results in an ESAP rate that is higher than the BTER/DEAA, Staff took a simpler approach to ensure the estimated ESAP rate was lower than the BTER/DEAA rate. Staff calculated 30% of the total weighted average of the utility-scale solar resources and CBSR costs.²

BTER/DEAA: In arriving at the BTER/DEAA figures utilized, Staff assumes the deviation requested in NV Energy's Joint Application from Section 15.1 of the proposed regulation is granted. The proposed regulation states that the ESAP rate calculation will include 70 percent of the BTER, rather than 70 percent of the BTER and deferred energy accounting adjustment ("DEAA"). Staff utilized the four-month average projected BTER and DEAA obtained from NV Energy.

ESAP Energy Rate Calculation: To calculate the estimated ESAP energy rate pursuant to Section 15.1 of the proposed regulation, Staff calculated 30% of the total weighted average cost of the utility-scale solar resources and CBSR costs plus 70% of the four-month average projected BTER/DEAA rate.

¹ NRS 704.7865(h) requires that "at least three but not more than ten" CBSRs be built within each utility's service territory.

² The weighting methodology used in this impact analysis is intended to be informative only and is not meant to be representative of any position Staff may take in Docket No. 20-12003.

Program Costs:

CBSR Costs: In calculating the estimated non-energy costs associated with the ESAP program, Staff's impact analysis figures assume that each CBSR constructed for this program is the same capacity (350 KWh) and price (\$1,500,000) as the Mohave solar resource. Because NRS 704.7865 authorizes the construction of CBSRs up to 1 MW of capacity each, and the cost of each resource will vary depending on the type of solar structure built, the actual capacities and pricing for the CBSRs utilized in the program may be larger or smaller, or more expensive or less expensive than the Mohave resource, and the resulting estimated ESAP rates and program costs will fluctuate accordingly.

O&M: Cost information regarding the operations and maintenance ("O&M") costs associated with the CBSRs was not included in NV Energy's Joint Application. In the analysis, Staff assumes that the O&M costs will constitute one percent (1%) of the total cost of one CBSR (i.e., \$15,000). This estimate is based on Staff's professional judgment reviewing various utility resource projects submitted by multiple public utilities.

Lease Payments: The assumptions for the lease payment figures were obtained from information provided confidentially by NV Energy in response to a data request in Docket No. 20-07023 (NV Energy's IRP 4th Amendment). Staff assumes a lease payment for each CBSR resource at the high end of the range provided for purposes of the impact analysis. The final program costs may fluctuate higher or lower depending on the final approved lease payment amounts for each CBSR resource.

Administration Costs: NV Energy states in the Joint Application that it estimates administration costs for the program to be approximately \$1,200,000.³ NV Energy further allocates 60% of this cost to its Nevada Power service territory and 40% of the costs to its Sierra service territory. Any changes to these allocations proposed by NV Energy (e.g., splitting 50/50 or 40/60 rather than 60/40, etc.) will impact the resulting costs applied (and rates charged) to each service territory. In addition, should the actual costs of the program be greater or less than the estimates included in the Joint Application, it will affect the impact analysis accordingly.

Subscription: For purposes of this impact analysis, Staff is assuming that the program is fully subscribed and therefore the total ESAP MWhs utilized in the calculation for Nevada Power's service territory is 240,000 MWhs and for Sierra's service territory is 160,000 MWhs, pursuant to NRS 704.7865(1). If the program is not fully subscribed, the just and reasonable costs associated with the unsubscribed portion of the program will pass onto all ratepayers pursuant to Section 16(4) of the proposed regulations and affect the impact analysis accordingly.

Depreciation: Staff assumes a depreciation schedule of 20 years for each of the CBSRs owned by NV Energy. This figure is based on the estimated life of installed solar facilities utilized in the

³ NV Energy's ESAP Plan at page 11 cites a total proposed annual budget of \$1,195,000. Staff rounded up for purposes of the impact analysis.

power purchase agreements executed pursuant to Assembly Bill 405 from the 2017 Nevada Legislative Session. If the CBSRs do not last 20 years or last longer than 20 years, this will affect the impact analysis accordingly.

Cost of Capital/ROR: The cost of capital and rate of return information utilized were based on the applicable figures approved in NV Energy's most recent general rate cases for Nevada Power and Sierra (Docket No. 20-06003 for Nevada Power; Docket No. 19-06002 for Sierra).

Low-income Discount: Staff did not include a low-income discount amount in the impact analysis for Nevada Power and Sierra because Staff's calculation of the estimated ESAP rate is already lower than the otherwise applicable BTER/DEAA rate. However, if the Commission were to require or authorize the ESAP rate be a specific percentage below the otherwise applicable BTER/DEAA rate (e.g., 10% below) to provide for a lower ESAP rate for participants or to provide for an even lower ESAP rate for low-income participants, then any costs associated with deriving the lower rate(s) will need to be included in the low-income discount costs and/or included in the calculation of the costs that will be passed onto remaining ratepayers, and will affect the impact analysis accordingly.

Base Tariff General Rate ("BTGR"): In calculating the estimated rate impact that will be experienced by all customer classes, Staff incorporated the following categories of estimated costs into the BTGR: CBSR construction costs, CBSR rate of return (since the CBSRs will be owned by NV Energy), CBSR O&M, CBSR lease payments, ESAP administration costs, the "difference" between the ESAP rate and the otherwise applicable BTER/DEAA that remaining ratepayers will be required to pay, and any costs that will be passed onto remaining customers to ensure low-income customers per NRS 704.7865 (and possibly other participants) get a lower rate. Assuming no additional low-income discount is needed since the ESAP rate is lower than the otherwise applicable BTER/DEAA, Staff's estimates for the total program costs are reflected in the figures referenced above. If the Commission were to reject the inclusion of any of the above BTGR costs or authorize additional costs be included in the above categories, or add/remove cost categories in the BTGR, then it will affect the impact analysis accordingly.

If you have any questions, please contact me directly at scassity@puc.nv.gov.

Sincerely,

/s/ Shelly Cassity
Shelly A. Cassity
Assistant Staff Counsel

SAC/mj
cc: Parties of Record

PROOF OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by electronic mail to the recipient's current electronic mail address properly addressed to:

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DATED at Las Vegas, Nevada, on the 5th day of January, 2021.

/s/Michelle Jackson
An employee of the Public Utilities
Commission of Nevada

ATTACHMENT 3

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Rulemaking to amend, adopt, and/or repeal regulations in)
accordance with Assembly Bill 465 (2019).)

) Docket No. 19-06028

At a general session of the Public Utilities
Commission of Nevada, held at its offices
on January 13, 2021.

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

ORDER

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

I. INTRODUCTION

On June 18, 2019, the Commission opened a rulemaking, designated as Docket No. 19-06028, to amend, adopt, and/or repeal regulations in accordance with Assembly Bill 465 (2019) (“AB 465”).

II. SUMMARY

The proposed regulation in Docket No. 19-06028 is not likely to impose a direct and significant economic burden upon small business nor is it likely to directly restrict the formation, operation, or expansion of small business. Therefore, no further analysis, outreach, or preparation of a small business impact statement is necessary pursuant to Nevada Revised Statutes (“NRS”) 233B.0608(2).

III. PROCEDURAL HISTORY

- On June 18, 2019, the Commission initiated a rulemaking to amend, adopt, and/or repeal regulations in accordance with AB 465. This matter was designated as Docket No. 19-06028.
- This matter is being conducted pursuant to the NRS and the Nevada Administrative Code (“NAC”), Chapters 233B, 703, 704, including, but not limited to, NRS 703.025, 704.210, and 704.7865.
- On August 9, 2019, the Commission issued a Notice of Rulemaking, Notice of Request for Comments, and Notice of Workshop.

- On September 9, 2019, the Sierra Club and Western Resource Advocates (“WRA”), Nevada Power Company d/b/a NV Energy (“NPC”) and Sierra Pacific Power Company d/b/a NV Energy (“SPPC”) (together, “NV Energy”), the Regulatory Operations Staff (“Staff”) of the Commission, and Bombard Renewable Energy (“Bombard”) filed comments.
- On September 9, 2019, the Nevada Bureau of Consumer Protection (“BCP”) filed a Letter stating that it will not submit initial comments but may file reply comments.
- On September 10, 2019, Chispa Nevada filed comments.
- On September 12, 2019, Nevada Assemblywoman Daniele Monroe-Moreno filed comments.
- On September 23, 2019, Staff, BCP, and NV Energy filed reply comments.
- On October 1, 2019, the Commission held a workshop. Staff; NV Energy; BCP; Sierra Club; WRA; Faith Organizing Alliance; and Nevada’s Department of Employment, Training, and Rehabilitation (“DETR”) made appearances. The participants discussed comments, reply comments, and a procedural schedule.
- On October 2, 2019, the Presiding Officer issued Procedural Order No. 1.
- On October 14, 2019, the participants held a teleconference to discuss priorities and topics for the upcoming informal workshops and teleconferences.
- On October 28, 2019, the participants in the October 14, 2019, teleconference filed with the Commission and emailed to Ms. Jeanne Mortimer, the Presiding Officer’s Administrative Attorney, a status update regarding the October 14, 2019, teleconference.
- On October 29, 2019, the participants held an informal workshop.
- On November 1, 2019, the participants in the informal workshop filed with the Commission and emailed to Ms. Jeanne Mortimer, the Presiding Officer’s Administrative Attorney, a status update regarding the progress made during the informal workshop.
- On November 12, 2019, the participants held a teleconference.
- On November 15, 2019, the participants in the November 12, 2019, teleconference filed with the Commission and emailed to Ms. Jeanne Mortimer, the Presiding Officer’s Administrative Attorney, a status update from the November 12, 2019, teleconference, as well as a consensus decision as to whether the participants were prepared to proceed with an informal or formal workshop on Wednesday, December 4, 2019.
- On November 20, 2019, the Commission issued an Amended Notice of Informal Workshop.
- On December 4, 2019, the participants held an informal workshop.

- On December 6, 2019, the Commission issued a Notice of Workshop.
- On January 16, 2020, the Commission held a workshop. Staff, BCP, NV Energy, WRA, Sierra Club, Faith Organizing Alliance, City of Las Vegas, Renew Nevada, Nevada Governor's Office of Energy, International Brotherhood of Workers Local Union 396 and International Brotherhood of Workers Local 1245 ("IBEW"), Grid Alternatives, and Bombard made appearances. At the workshop, Grid Alternatives presented an informational slideshow.
- On January 21, 2020, the Presiding Officer issued Procedural Order No. 2.
- On January 29, 2020, the participants held an informal workshop.
- On March 3, 2020, the participants held an informal workshop.
- On March 10, 2020, NV Energy filed a status update with the Commission.
- On March 12, 2020, BCP and DETR filed comments.
- On March 13, 2020, the Commission held a continued workshop. Draft regulations, a procedural schedule, and non-consensus items were discussed.
- On April 21, 2020, the Presiding Officer issued Procedural Order No. 3 requesting comments on a draft regulation attached to the procedural order.
- On May 29, 2020, NV Energy, WRA, BCP, and Staff filed comments.
- On June 12, 2020, NV Energy, WRA, BCP, and Staff filed reply comments.
- On July 8, 2020, the Presiding Officer sent a proposed regulation to the Legislative Counsel Bureau ("LCB").
- On July 9, 2020, the Presiding Officer issued Procedural Order No. 4.
- On November 4, 2020, LCB returned a revised proposed regulation.
- On November 9, 2020, the Commission issued Procedural Order No. 5 requesting a Small Business Impact Report from Staff and scheduling a workshop and hearing.
- On November 16, 2020, the Commission issued a Notice of Workshop and Notice of Hearing.
- On December 3, 2020, Staff filed its Small Business Impact Report. In its Small Business Impact Report, Staff did not take a position as to whether the proposed regulation is likely to

impose a direct and significant economic burden on a small business, or restrict the formation, operation, or expansion of a small business.

- On December 9, 2020, the Presiding Officer issued Procedural Order No. 6 cancelling a scheduled workshop and hearing and requesting that Staff conduct and file a rate impact analysis (“RIA”).
- On January 5, 2021, Staff filed the requested RIA.

IV. SMALL BUSINESS IMPACT REPORT

Staff’s Rate Impact Analysis

1. Staff explains that Procedural Order No. 6 required Staff to conduct and file an RIA that determines or estimates a range of potential rate impacts to small businesses for the purpose of informing the Commission as to whether the proposed regulation is likely to impose a significant economic burden on a small business or directly restrict the formation, operation, or expansion of a small business. (Staff’s RIA at 1.) Staff further explains that during the Commission’s meeting on December 9, 2020, Chair Williamson noted that NV Energy’s Joint Expanded Solar Access Program (“ESAP”) Application in Docket No. 20-12003 (the “Joint Application”) could provide instructive numbers for Staff’s RIA. (*Id.*) Staff states that although the information and figures filed in NV Energy’s Joint Application are incomplete and have not been vetted by any party or approved by the Commission, Staff utilized the information in the filing as the best information available for the purpose of providing the Commission with the requested RIA. (*Id.*)

2. Staff states that its RIA considers various assumptions, and it estimates that the potential range of the total annual ESAP costs for constructing at least three community-based solar resources (“CBSRs”) and up to ten CBSRs will be approximately \$3 million to \$5 million for NPC’s service territory and approximately \$2 million to \$3 million for SPPC’s service territory. (*Id.* at 1-2.) Staff estimates that the range of potential rate impacts to small businesses

under an ESAP Plan in which at least three CBSRs and up to ten CBSRs are constructed will be approximately \$0.00014 per kilowatt-hour (“kWh”) to \$0.00021 per kWh in NPC’s territory, and \$0.00016 per kWh to \$0.00030 per kWh in SPPC’s service territory. (*Id.* at 2.)

3. Staff explains that it made various assumptions regarding the ESAP Energy Rate for its analysis, including the weighted cost of solar energy, Base Tariff Energy Rate (“BTER”) and Deferred Energy Accounting Adjustment (“DEAA”) figures, and the ESAP Energy Rate calculation. (*Id.*)

4. With respect to the weighted cost of solar energy, Staff states that in NV Energy’s Joint Application, NV Energy calculated the estimated ESAP energy rate by utilizing six utility-scale solar projects that were approved by the Commission in Docket No. 18-06003, and one CBSR (the Mohave solar resource project approved by the Commission in Docket No. 20-07023). (*Id.*) Staff states that NV Energy provided a CBSR price per megawatt-hour (“MWh”) of \$92.90 for the Mohave solar project. (*Id.*) Staff provides that it utilized these same solar resources to calculate the estimated ESAP energy rate in its impact analysis. (*Id.*) Staff states that NV Energy’s Joint Application further calculated the ESAP energy rate by taking 15 percent of the weighted average of the utility-scale solar resource costs and 15 percent of the weighted average of the CBSR costs. (*Id.*) Staff explains that because NV Energy’s weighting methodology resulted in an ESAP rate that is higher than the BTER/DEAA, Staff took a simpler approach to ensure that the estimated ESAP rate was lower than the BTER/DEAA rate. (*Id.*) Accordingly, Staff states that it calculated 30 percent of the total weighted average of the utility-scale solar resources and CBSR costs. (*Id.*)

5. With respect to the BTER/DEAA figures that it utilized, Staff states that it assumed that the deviation requested in NV Energy’s Joint Application from Section 15.1 of the

proposed regulations would be granted. (*Id.*) Staff states that the proposed regulations provide that the ESAP rate calculation will include 70 percent of the BTER rather than 70 percent of the BTER and DEAA. (*Id.*) Staff states that it utilized the four-month average projected BTER and DEAA obtained from NV Energy. (*Id.*)

6. Regarding the ESAP rate calculation, Staff explains that, pursuant to Section 15.1 of the proposed regulations, it calculated 30 percent of the total weighted average cost of the utility-scale solar resources and CBSR costs plus 70 percent of the four-month average projected BTER/DEAA rate. (*Id.*)

7. Regarding ESAP costs, Staff made certain assumptions regarding CBSR costs, operations and maintenance (“O&M”) costs, lease payments, administration costs, subscription levels, depreciation, costs of capital and rates of return, low-income discounts, and base tariff general rates (“BTGR”). (*Id.* at 3.)

8. With respect to CBSR costs, in calculating the estimated non-energy costs associated with the ESAP program, Staff’s RIA figures assume that each CBSR constructed for the ESAP is the same capacity (350 KWh) and price (\$1.5 million) as the Mohave solar resource. (*Id.*) Staff states that because NRS 704.7865 authorizes the construction of CBSRs with up to one megawatt (“MW”) of capacity each, and the cost of each resource will vary depending on the type of solar structure built, the actual capacities and pricing for the CBSRs utilized in the program may fluctuate and the resulting estimated ESAP rates and program costs will fluctuate accordingly. (*Id.*)

9. Staff states that O&M cost information associated with the CBSRs was not included in NV Energy’s Joint Application. (*Id.*) Staff states that it assumes that the O&M costs will constitute one percent of the total cost of one CBSR (i.e., \$15,000). (*Id.*) Staff states that

this estimate is based upon its professional judgement reviewing various resource projects submitted by multiple public utilities. (*Id.*)

10. Staff states that its assumptions for lease payment figures were obtained from information provided confidentially by NV Energy in response to a data request in Docket No. 20-07023 (NV Energy's Fourth Amendment to its Integrated Resource Plan). (*Id.*) Staff states that it assumes a lease payment for each CBSR resource at the high end of the range provided for purposes of impact analysis and notes that the final program costs may fluctuate higher or lower depending on the final approved lease payment amounts for each CBSR resource. (*Id.*)

11. Staff explains that NV Energy's Joint Application estimates administration costs for its ESAP to be approximately \$1.2 million with 60 percent allocated to NPC and 40 percent allocated to SPPC. (*Id.*) Staff provides that any changes to these proposed allocations would affect the resulting costs applied and rates charged to each service territory. (*Id.*) Staff further provides that, should the actual costs of the program be greater or less than the estimates included in the Joint Application, its RIA would be affected accordingly. (*Id.*)

12. Staff states that for purposes of its RIA, it assumed that the ESAP would be fully subscribed and, therefore, the total ESAP MWh utilized in the calculation for NPC's and SPPC's service territories would be 240,000 MWh and 160,000 MWh, respectively. (*Id.*) Staff states that if the program is not fully subscribed, the just and reasonable costs associated with the unsubscribed portion of the program will be passed onto all ratepayers pursuant to Section 16(4) of the proposed regulation and affect the RIA accordingly. (*Id.*)

13. Staff explains that it assumed a depreciation schedule of 20 years for each of the CBSRs owned by NV Energy, which Staff states is based upon the estimated life of installed solar facilities utilized in the power purchase agreements executed pursuant to Assembly Bill

405 of the 2017 Nevada Legislative Session. (*Id.* at 3-4.) Staff states that if the CBSRs do not last 20 years or last longer than 20 years, its RIA would be affected accordingly. (*Id.* at 4.)

14. Staff states that the cost of capital and rate of return information utilized for its RIA were based on the applicable figures approved in NV Energy's most recent general rate cases for NPC and SPPC (Docket Nos. 20-06003 & 19-06002, respectively). (*Id.*)

15. Staff states that it did not include a low-income discount amount in its RIA for NPC or SPPC because Staff's calculation of the estimated ESAP rate is already lower than the otherwise applicable BTER/DEAA rate; however, if the Commission were to require or authorize the ESAP rate to be a specific percentage below the otherwise applicable rate for low-income participants, then Staff states that any costs associated with deriving the lower rate(s) would need to be included in the low-income discount costs and/or included in the calculation of the costs that will be passed onto remaining ratepayers, and would affect the analysis accordingly. (*Id.*)

16. Staff states that in calculating the estimated rate impact that will be experienced by all customer classes, it incorporated the following categories of estimated costs into the BTGR: CBSR construction costs, CBSR rate of return (because the CBSRs will be owned by NV Energy), CBSR O&M, CBSR lease payments, ESAP administration costs, the "difference" between the ESAP rate and the otherwise applicable BTER/DEAA that non-participating ratepayers will be required to pay, and any costs that will be passed onto other customers to ensure low-income customers, per NRS 704.7865, (and possibly other participants) get a lower rate (together, the "Estimated BTGR Cost Categories"). (Staff's RIA at 4.) Staff states that assuming no additional low-income discount is needed because the ESAP rate is lower than the otherwise applicable BTER/DEAA, it estimates that the total costs are reflected in its RIA. (*Id.*)

Staff states that if the Commission were to reject the inclusion of any of its Estimated BTGR Cost Categories or authorize additional costs to be included in the Estimated BTGR Cost Categories, or add/remove cost categories in the BTGR, then it would affect the RIA accordingly. (*Id.*)

Commission Discussion and Findings

17. NRS 233B.0608 requires the following: Before conducting a workshop for a proposed regulation pursuant to NRS 233B.061, an agency shall make a concerted effort 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.

18. The Commission finds that the proposed regulation is not likely to impose a direct and significant economic burden on small business, nor is it likely to directly restrict the formation, operation or expansion of small business. The Commission makes this determination relying on Staff's RIA and an assessment of potential bill impacts to small businesses. After conducting an analysis using the Delphi method to provide an initial report and then conducting the RIA, Staff provided an RIA with a range of potential rate impacts to small businesses under an ESAP Plan in which at least three CBSRs and up to ten CBSRs are constructed. The RIA range is estimated to be approximately \$0.00014 per kWh to \$0.00021 per kWh in NPC's territory, and \$0.00016 per kWh to \$0.00030 per kWh in SPPC's service territory.

19. The bill impact for a small business is dependent upon the amount of electricity that it consumes during a monthly billing period. For example, for NPC, the estimated average bill impact for the GS (General Service) rate class, which is approximately 75,256 meters/customers, averaging electricity usage of 640 kWh per month, is \$0.09 per month (\$1.08

per year) for three CBSRs and 0.14 per month (\$1.64 per year) for ten CBSRs. The estimated average bill impact for NPC's LGS-1 (Large General Service) rate class, which is approximately 31,836 meters/customers, averaging electricity usage of 10,104 kWh per month is \$1.42 per month (\$17.02 per year) for three CBSRs and \$2.15 per month (\$25.85 per year) for ten CBSRs. For SPPC's GS-1 (General Service) rate class, which is approximately 41,048 meters/customers, averaging 1,289 kWh of electricity usage per month, the estimated average bill impact for three CBSRs is \$0.20 per month (\$2.42 per year), and for ten CBSRs, it is \$0.39 per month (\$4.70 per year). Notably, even if the ten-CBSRs scenario occurs, the potential bill impact will occur gradually because the CBSRs may take years to permit and construct.

20. The Commission is mindful of the importance of a small business impact analysis conducted in the current COVID-19 pandemic environment and the economic downturn that has resulted from it. The Commission does not take lightly its duties under NRS 233B.0608 to make a concerted effort to determine whether the proposed regulation is likely to create a direct and significant economic burden on small businesses, or directly restrict the formation, operation, or expansion of small businesses. The Commission ordered the extra RIA analysis to fully examine, with the best information available, any likely potential direct and significant economic burdens to small business. The RIA contains a range of potential scenarios and rate impacts that, even at the highest ends of the ranges, appear unlikely to meaningfully affect the financial health of a small business. Therefore, the Commission finds that the incremental potential impact of the proposed regulation on a small business is not likely to impose the direct *and significant* economic burden contemplated under NRS 233B.0608, nor is the proposed regulation likely to directly *restrict the formation, operation or expansion* of small business.

21. The Commission notes that Staff's RIA is based on multiple assumptions, which the Commission also takes into account when considering the potential financial impact of the regulation. The assumptions reflect the requirements of AB 465, which requires at least three but no more than ten CBSRs, as well as MWh capacity requirements and limits for the CBSRs. The requirements of AB 465 drive many of the range assumptions of the RIA, which the Commission also considers when determining whether there is an economic burden on small businesses as a result of the regulation. In this case, the regulation implements a program required by AB 465.

22. Finally, the Commission notes that small businesses that qualify for the ESAP may see economic benefits from the Program. AB 465 requires the development of a workforce innovations program, as well as a program designed to expand solar access to low-income residents as well as disadvantaged and nonprofit businesses and those that cannot access traditional rooftop solar. The Commission's regulation to implement AB 465 creates a program for workforce development as well as provisions to establish rates for a viable program for disadvantaged businesses and nonprofit businesses for expanded solar access.

23. The Commission finds that the requirements of NRS 233B.0608(1) have been satisfied.

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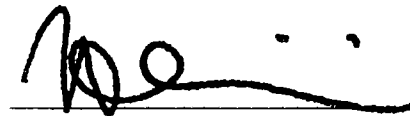
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THEREFORE, it is ORDERED:

1. The proposed regulation in Docket No. 19-06028 is not likely to impose a direct and significant economic burden upon a small business, nor is it likely to directly restrict the formation, operation, or expansion of a small business.

By the Commission,




HAYLEY WILLIAMSON
Chair and Presiding Officer

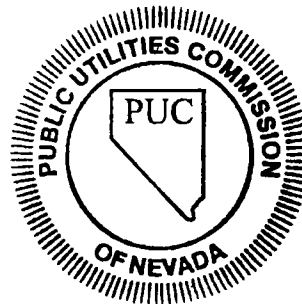


C.J. MANTHE
Commissioner



TAMMY CORDOVA
Commissioner

Attest: 
TRISHA OSBORNE
Assistant Commission Secretary



Certified: /s/ Stephanie Mullen
STEPHANIE MULLEN
Executive Director

Dated: Carson City, Nevada

 11/21/21

(SEAL)