

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

LCB File No. R044-21 (PUCN Docket No. 18-12021)

- 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 April 22, 2022, Staff memorialized its conclusion 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 1.

On May 10, 2022, the PUCN issued an Order adopting the findings of Staff 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 2.

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 and 2. 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.

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

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

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

N/A. See Attachments 1 and 2.

Pursuant to NRS 233B.0608(1), Staff conducted an investigation to determine whether the proposed regulation is likely to: (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business.

On May 10, 2022, the PUCN issued an Order adopting the findings of Staff 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 2.

NRS 233B.0608(2)(c) only requires an agency to consider methods to reduce the impact of a proposed regulation on small businesses “*if* an agency determines pursuant to subsection 1 that a proposed regulation *is* likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business” (emphasis added). Given the 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 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 Informational Statement accompanying the Regulation, Question No. 11.

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

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

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

The 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 of 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 16 day of October, 2024.



STEPHANIE MULLEN,
Executive Director
PUBLIC UTILITIES COMMISSION OF NEVADA

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Investigation and Rulemaking to evaluate whether)
Nevada regulations, specifically Nevada Administrative)
Code sections 704.9492 and 704.9496, are fully) Docket No. 18-12021
consistent with federal Public Utility Regulatory Policies)
Act authorities.)
_____)

At a general session of the Public Utilities
Commission of Nevada, held at its offices
on April 26, 2022.

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

The Commission opened an investigation and rulemaking, designated as Docket No. 18-12021 (“Investigation and Rulemaking”), to evaluate whether Nevada regulations, specifically Nevada Administrative Code (“NAC”) sections 704.9492 and 704.9496, are fully consistent with federal Public Utility Regulatory Policies Act (“PURPA”) authorities.

II. SUMMARY

The proposed regulation in Docket No. 18-12021 is neither likely to impose a direct and significant economic burden upon small businesses, nor is it likely to directly restrict the formation, operation, or expansion of a small business. Therefore, a small business impact statement pursuant to Nevada Revised Statutes (“NRS”) 233B.0608(2) is not required.

III. PROCEDURAL HISTORY

- On December 21, 2018, the Commission opened the Investigation and Rulemaking.
- The Commission is conducting this Investigation and Rulemaking pursuant to NRS and NAC Chapters 703 and 704, including, but not limited to, NRS 703.025 and 704.210.

- On March 8, 2019, the Commission issued a Notice of Investigation and Notice of Request for Comments.
- On May 1, 2019, Nevada Cogeneration Associates #1 and #2 (“NCA”), 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 of the Commission (“Staff”), and Vote Solar each filed comments.
- On May 21, 2019, NCA filed reply comments.
- On May 22, 2019, Staff and Vote Solar filed reply comments.
- On June 5, 2019, NV Energy, Staff, and Vote Solar filed reply comments.
- On June 10, 2019, Vote Solar filed a Motion to Strike or, in the Alternative, for Leave to file Surreply Comments (“Vote Solar Motion”).
- On June 17, 2019, NV Energy filed a Response in Opposition to Vote Solar’s Motion.
- On July 3, 2019, the Hearing Officer issued a Procedural Order granting Vote Solar’s Motion in the alternative.
- On July 19, 2019, Vote Solar filed additional reply comments.
- On October 31, 2019, the Commission issued an order accepting the Hearing Officer’s proposed Report on Consistency of NAC Sections 704.9492 and 704.9496 with Federal Public Utility Regulatory Policies Act Authorities (the “Report”).
- On November 1, 2019, the Presiding Officer issued Procedural Order No. 2.
- On November 15, 2019, Vote Solar filed a Petition for Reconsideration.
- On November 22, 2019, NCA, NV Energy, Vote Solar, and Staff each filed comments.
- On December 3, 2019, NV Energy and Staff each filed Answers to Vote Solar’s Petition for Reconsideration.
- On December 13, 2019, NV Energy and Staff each filed reply comments.

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- On December 19, 2019, the Commission issued an Order regarding Vote Solar’s Petition for Reconsideration.
- On September 14, 2021, the Commission transmitted a draft of the proposed regulation to the Legislative Counsel Bureau (“LCB”) for pre-adoption review, pursuant to NRS 233B.063.
- On January 5, 2022, LCB transmitted the proposed regulation (LCB File No. R044-21) to the Commission in revised form.
- On February 4, 2022, the Presiding Officer issued Procedural Order No. 3, requesting Staff perform an investigation pursuant to NRS 233B.0608(1) regarding whether the proposed regulation is likely to: impose a direct and significant economic burden upon small businesses; or directly restrict the formation, operation, or expansion of small business.
- On April 22, 2022, Staff filed with the Commission its Small Business Impact Report (“Staff’s Report”), attached hereto as Attachment 1.

IV. SMALL BUSINESS IMPACT REPORT

Staff’s Report

1. Staff conducted a Delphi Method exercise to determine the impact of the proposed regulation on small businesses. The Delphi Method is a systematic, interactive, forecasting method based on independent inputs of selected experts. In this instance, the participants were members of Staff. Each participant in the exercise used his or her background and expertise to reflect upon and analyze the impact of the proposed regulation on small businesses.
2. Staff states that the proposed regulation will neither directly restrict the formation, operation, or expansion of small businesses, nor will the proposed regulation have immediate adverse effects on small businesses. Staff further states that it does not anticipate that the proposed regulation will have direct and significant immediate beneficial effects on small businesses.
3. Staff provides that the regulation is intended to ensure that the estimated long-

term avoided costs filed by public utilities in Nevada as part of their integrated resource plans are consistent with governing federal PURPA requirements. Additionally, Staff states that the proposed regulation simply revises the frequency and form of data supporting the rates for long-term avoided costs that are filed with the Commission, but that the requirement to file estimated long-term avoided cost methodology and rates did not change.

4. Staff states that it does not anticipate that the proposed regulation will have direct, long-term adverse effects on small businesses or direct and significant long-term beneficial effects on small businesses.

5. Staff states that under the proposed regulation, the Commission and Staff may incur minimal additional workload to review and approve the more frequent filing of long-term avoided costs (i.e., every two years under the proposed regulation, as opposed to every three years under the current regulation). Staff provides that any additional costs or workload to the Commission and Staff associated with the proposed regulation can be absorbed by existing resources.

6. Based on the foregoing, Staff recommends that the Commission find that the proposed regulation in Docket No. 18-12021 is neither likely to impose a direct and significant economic burden on small businesses nor directly restrict the formation, operation or expansion of a small business.

Commission Discussion and Findings

7. The Commission finds that the proposed regulation is neither likely to impose a direct or significant economic burden upon small businesses, nor is it likely to directly restrict the formation, operation, or expansion of a small business. Therefore, a small business impact statement pursuant to NRS 233B.0608(2) is not required.

8. The Commission finds that the Delphi method was used in the determination of the impact of the proposed regulation on small businesses. The Commission further finds that the provisions of NRS 233B.0608 have been met.

THEREFORE, it is ORDERED:

1. The proposed regulation in Docket No. 18-12021 is neither likely to impose a direct and significant economic burden upon small businesses, nor is it likely to directly restrict the formation, operation, or expansion of a small business.

By the Commission,

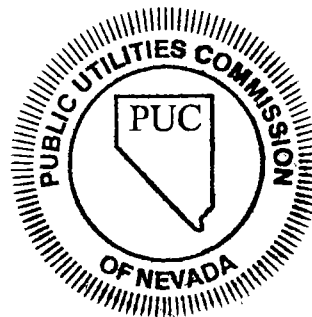


TRISHA OSBORNE,
Assistant Commission Secretary
On behalf of the Commissioners

Certified: /s/ Stephanie Mullen
STEPHANIE MULLEN,
Executive Director

Dated: Carson City, Nevada

 5/10/22



(SEAL)

ATTACHMENT 1

**PUBLIC UTILITIES COMMISSION OF NEVADA
MEMORANDUM**

DATE: March 15, 2022

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

FROM: Shelly Cassity, Assistant Staff Counsel

SUBJECT: Small Business Impact Report
Agenda 08-22; Item No. 4A; Docket No. 18-12021;
Investigation and Rulemaking to evaluate whether Nevada regulations, specifically Nevada Administrative Code sections 704.9492 and 704.9496, are fully consistent with federal Public Utility Regulatory Policies Act authorities.

I. Summary

The Public Utilities Commission of Nevada (“Commission”) opened an investigation and rulemaking docket to evaluate whether Nevada regulations, specifically Nevada Administrative Code (“NAC”) sections 704.9492 and 704.9496, are fully consistent with federal Public Utility Regulatory Policies Act (“PURPA”) authorities. The Commission designated the matter as Docket No. 18-12021.

On March 8, 2019, the Commission issued a Notice of Investigation and Notice of Request for Comments.

On May 1, 2019, comments were filed by the Regulatory Operations Staff (“Staff”), Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy (together “NV Energy”), Nevada Cogeneration Associates #1 and #2 (“NCA”), and Vote Solar.

On May 21, 2019, responsive comments were filed by NCA.

On May 22, 2019, responsive comments were filed by Staff and Vote Solar.

On June 5, 2019, reply comments were filed by NV Energy, Staff, and Vote Solar.

On June 10, 2019, Vote Solar filed a Motion to Strike or, in the Alternative, for Leave to file Surreply Comments (“Motion”).

On June 17, 2019, NV Energy filed a Response in Opposition to Vote Solar’s Motion.

On July 3, 2019, the Presiding Officer issued a Procedural Order granting Vote Solar’s Motion in the alternative.

On July 19, 2019, Vote Solar filed additional reply comments.

On October 31, 2019, the Commission issued an order accepting the Hearing Officer's proposed Report on Consistency of NAC Sections 704.9492 and 704.9496 with Federal PURPA authorities (the "Report").

On November 1, 2019, the Presiding Officer issued Procedural Order No. 2, setting forth a procedural schedule.

On November 15, 2019, Vote Solar filed a Petition for Reconsideration ("Petition").

On November 22, 2019, NV Energy, NCA, Vote Solar, and Staff each filed comments in response to Procedural Order No. 2.

On December 3, 2019, NV Energy and Staff each filed Answers to Vote Solar's Petition.

On December 13, 2019, NV Energy and Staff each filed reply comments in response to Procedural Order No. 2.

On December 19, 2019, the Commission issued an order regarding Vote Solar's Petition for Reconsideration.

On September 14, 2021, the Administrative Attorney mailed a letter to the Nevada Attorney General's Legislative Counsel Bureau ("LCB") with a copy of the proposed regulation attached.

On January 5, 2022, the Administrative Attorney filed, on behalf of LCB, the returned proposed regulation (LCB File No. R044-21) in revised form.

On February 4, 2022, the Presiding Officer issued Procedural Order No. 3 directing Staff to conduct an investigation pursuant to Nevada Revised Statutes ("NRS") 233B.0608(1) regarding whether the proposed regulation, attached as Attachment 1 to that procedural order, is likely to impact small business.

The Order directed Staff to conduct an investigation into whether the proposed regulation is 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 last open meeting of the Commission in April 2022, currently scheduled for April 26, 2022, 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.”

One Staff Economist and two Staff Engineers, all of whom were involved in the rulemaking in this Docket and are the most knowledgeable about the proposed regulation, participated in this analysis.

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

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 regulation on small businesses. The participants noted the following:

Immediate Adverse Effects:

Staff does not anticipate that the proposed regulation will have a direct, immediate adverse effect on small businesses. The proposed regulation is intended to ensure that the estimated long-term avoided costs filed by public utilities in Nevada as part of their integrated resource plans (“IRPs”) are consistent with governing federal PURPA requirements. While the proposed regulation simply revises the frequency and form of data supporting the rates for long-term avoided costs that are to be filed with the Commission, the requirement to file estimated long-term avoided cost methodology and rates did not change.

Immediate Beneficial Effects:

Staff does not anticipate that the proposed regulation will have direct and significant immediate beneficial effects on small businesses. The proposed regulation is intended to ensure that the estimated long-term avoided costs filed by public utilities as part of their IRPs are consistent with federal PURPA requirements. While the proposed regulation revises the frequency and form of data supporting the rates for long-term avoided costs that are to be filed with the Commission, the requirement to file estimated long-term avoided cost methodology and rates did not change.

Long-Term Adverse Effects:

Similar to short-term adverse effects, Staff does not anticipate that the proposed regulation will have direct, long-term adverse effects on small businesses for the reasons discussed above.

Long-Term Beneficial Effects:

Similar to the short-term beneficial effects, Staff does not anticipate that the proposed regulation will have direct and significant long-term beneficial effects on small businesses for the reasons discussed above.

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

Under the proposed regulation, the Commission and Staff may incur minimal additional workload to review and approve the more frequent filing of long-term avoided costs (i.e., every two years under the proposed regulation, as opposed to every three years under the current regulation). However, any additional costs or workload to the Commission and Staff associated with the proposed regulation can be absorbed by the Commission's and Staff's existing resources.

III. Notice and Subsequent Action

On February 4, 2022, the Presiding Officer issued Procedural Order No. 3 directing Staff to conduct an investigation pursuant to NRS 233B.0608(1) 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.

IV. Conclusions and Recommendations

Staff recommends that, in accordance with NRS 233B.0608(1), the Commission find that the proposed regulation is not likely to impose a direct economic burden on a small business or to restrict the formation, operation or expansion of 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 regulation on small business.