

PUBLIC UTILITIES COMMISSION OF NEVADA
MEMORANDUM

DATE: November 14, 2023

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

FROM: Donald Lomoljo, Staff Counsel

SUBJECT: Small Business Impact Report
Agenda 21-23; Item No. 4A; Docket No. 19-06029;
Rulemaking to amend, adopt, and/or repeal regulations in accordance with Senate Bill 547 (2019).

I. Summary

On July 5, 2019, the Public Utilities Commission of Nevada (“Commission”) opened a rulemaking docket to amend, adopt, and/or repeal regulations in accordance with Senate Bill 547 (2019). The Commission designated this matter as Docket No. 19-06029.

On November 9, 2021, the Presiding Officer issued Procedural Order No. 6, requesting draft language for Phase Four of the Rulemaking and setting a workshop for December 21, 2021.¹

On November 23, 2021, the Commission issued a Notice of Workshop.

On December 10, 2021, MGM Resorts International (“MGM”) and Caesars Enterprise Services (“Caesars”) filed comments. On December 13, 2021, Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy (collectively, “NVE”) and the Regulatory Operations Staff of the Commission (“Staff”) filed draft regulation language. On December 21, 2021, the Nevada Bureau of Consumer Protection (“BCP”) filed edits to the regulation filed by NVE. On December 21, 2021, the Commission held a workshop. Appearances were made by Staff; NVE; Nevada gold Mines, LLC (“NGM”); BCP; MGM, and Caesars; Wynn Las Vegas, LLC; and Smart Energy Alliance.

On December 21, 2021, the Presiding Officer issued Procedural Order No.7, including revised draft language for Phase Four and requesting comments regarding that language. On December 28, 2021 an amended Procedural Order No.7 was issued, modifying the comment schedule.

On January 14, 2022, NVE, BCP, MGM and Caesars, Shell Energy North America (US) L.P. (“Shell”), and Staff filed comments. On January 20, 2022, the Latin Chamber of Commerce Nevada filed comments. On January 24, 2022, the Nevada Alliance for Retired Americans and the Henderson Chamber of Commerce filed Reply Comments. On January 25, 2022, Nevada Workers for Clean and Affordable Energy, NGM, Shell, MGM and Caesars, BCP, NVE, and Staff filed Reply Comments. On January 28, 2022, the Nevada State AFL-CIO filed Reply Comments.

¹ Previous procedural history is omitted and only procedural history connected to Phase Four is recited herein.

On February 1, 2022, Western Resource Advocates, the Nevada Conservation League, the Southwest Energy Efficiency Project, the Sierra Club (collectively, the “Conservation Advocates”) and the Chamber of Vegas filed Reply Comments. On February 3, 2022, Peppermill Casinos Inc. (“Peppermill”) filed Reply Comments. On February 7, 2022, the Conservation Advocates filed Amended Reply Comments.

On February 4, 2022, the Commission issued a Notice of Workshop to be held on February 22, 2022. On February 22, 2022, the Commission held a workshop. Appearances were made by Staff; NVE; BCP; Nevada Workers for Clean Affordable Energy; Peppermill; MGM, and Caesars; Shell; NGM; and the Conservation Advocates.

On March 8, 2022, the Presiding Officer submitted a proposed Phase Four regulation to the Legislative Counsel Bureau (“LCB”) for review.

On August 12, 2022, the Presiding Officer filed a letter attaching the proposed Phase Four regulation returned from LCB in revised form.

On August 15, 2022, the Presiding Officer issued Procedural Order No. 8, directing Staff to conduct an investigation pursuant to Nevada Revised Statutes (“NRS”) 233B.0608(1) regarding whether the proposed Phase Four regulation, provided as Attachment 1 to the Procedural Order, is likely to impact small business. The Procedural Order directed Staff 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 and the reasons supporting the conclusions of the report. Staff was further directed to place this report on an agenda for Commission consideration not later than the open meeting of the Commission scheduled for September 13, 2022.

On September 8, 2022, Staff filed a Briefing Memorandum recommending that the Commission determine that the proposed Phase Four regulation is not likely to impose a direct and significant economic burden on a small business, or to restrict the formation, operation, or expansion of a small business.

On September 20, 2022, the Commission issued an Order finding that the proposed Phase Four regulation is not likely to impose a direct and significant economic burden on a small business, or to restrict the formation, operation, or expansion of a small business.

On September 18, 2023, the Presiding Officer submitted a revised proposed Phase Two regulation to the Legislative Counsel Bureau (“LCB”) for review.

On October 18, 2023, the Presiding Officer filed a letter attaching the revised proposed Phase Two regulation returned from LCB in revised form.

On October 20, 2023, the Presiding Officer issued Procedural Order No. 9, directing Staff to conduct an investigation pursuant to NRS 233B.0608(1) regarding whether the revised proposed Phase Two regulation, provided as Attachment 1 to the Procedural Order, is likely to impact small business. The Procedural Order directed Staff 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 and the reasons supporting the conclusions of the report. Staff was further

directed to place this report on an agenda for Commission consideration not later than the open meeting of the Commission scheduled for November 28, 2023.

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 Engineer and two Staff Economists, all of whom were involved in the rulemaking in this Docket and all of whom are some of 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 opinions, experience, and intuition and allows the use of limited information when full scientific knowledge is lacking.

In this instance, the participants were members of Staff, all of whom were involved in the rulemaking in this Docket and who are most familiar with the subject matter of the rulemaking. Each participant in the exercise used their background and expertise to reflect upon and analyze the impact of the regulation on small businesses. A consensus position became clear following receipt of the written responses from the Delphi participants.

Immediate Adverse Effects:

The proposed regulation will not directly restrict the formation, operation, or expansion of small businesses. The proposed regulation will not have immediate adverse effects on small businesses.

This regulation is intended to affect certain large businesses who want to return to bundled electric service and would not affect new business formation, expansion, or operation. The regulation is intended to prevent harm to existing utility customers.

Immediate Beneficial Effects:

The proposed regulation will not have any immediate beneficial effect on small businesses.

Long-Term Adverse Effects:

The proposed regulation will not have any long-term adverse effects on small businesses.

Long-Term Beneficial Effects:

The proposed regulation will not have long-term beneficial effects on small businesses.

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

The Commission will not incur greater costs to administer the proposed regulation.

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

III. Notice and Subsequent Action

On October 20, 2023, the Presiding Officer issued Procedural Order No. 9, attaching the revised proposed Phase Two regulation. The Procedural Order directed 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, in accordance with NRS 233B.0608(1), the Commission find the revised proposed Phase Two regulation is not likely to impose a direct and significant economic burden on a small business, or to restrict the formation, operation, or expansion of a small business.

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