

**PUBLIC UTILITIES COMMISSION OF NEVADA
MEMORANDUM**

DATE: December 20, 2021

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

FROM: Meredith Barnett, Assistant Staff Counsel, Staff Counsel Division

SUBJECT: Small Business Impact Report
Agenda No. 26-21; Item No. 6A Docket No. 19-06029;
Rulemaking to amend, adopt, and/or repeal regulations in accordance with Senate Bill 547 (2019).

I. Summary

On June 18, 2019, the Public Utilities Commission of Nevada (“Commission”) opened a rulemaking to amend, adopt, and/or repeal regulations in accordance with Senate Bill 547 (2019) (“SB 547”). This matter was designated as Commission Docket No. 19-06029.

On July 5, 2019, the Commission issued a Notice of Rulemaking and Notice of Workshop. The Commission scheduled a Workshop on July 25, 2019.

On July 25, 2019, the Hearing Officer held a Workshop. Appearances were made by: Caesars Enterprise Services, LLC; Google, LLC; the Nevada Office of Attorney General Bureau of Consumer Protection (“BCP”); Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy (collectively “NV Energy”); Peppermill Casinos Inc. d/b/a Peppermill Resort Spa Casino; Shell Energy North America (US) L.P.; Tenaska Power Services Co. (“Tenaska”); Western Resource Advocates; and the Regulatory Operations Staff (“Staff”) of the Commission.¹

On August 12, 2019, the Hearing Officer issued a Procedural Order separating the docket into three phases. Phase 1 addresses integrated resource planning aspects of SB 547, Phase 2 would address the provider of new electric service licensing, and Phase 3 would address the revised exit application process.

On February 26, 2020, the Hearing Officer held a Workshop. NV Energy, Tenaska, Interwest, BCP and Staff made appearances and Phase 2 draft regulation language was discussed in addition to continued development of Phase 1 and Phase 3 draft regulations.

On March 4, 2020, the Phase 2 draft regulations, which establish provisions relating to the licensure and reporting of a provider of new electric resources, were forwarded to the Legislative Counsel Bureau (“LCB”) for pre-adoption review and approval.

¹ On July 24, 2019, Interwest Energy Alliance (“Interwest”) filed Comments. On January 27, 2020, the Solar Energy Industries Association filed late-filed Comments.

After an informal stakeholder process and multiple workshops, the proposed regulations for Phases 1 and 3 were forwarded to the LCB on May 27, 2020.

On November 30, 2020, the Phase 2 regulations were returned from LCB in revised form.

On December 7, 2020, the Presiding Officer issued Procedural Order No. 3 directing Staff to conduct an investigation regarding Phase 2 regulations pursuant to Nevada Revised Statutes (“NRS”) 233B.0608(1). Staff filed a Small Business Impact Report with the Commission on January 7, 2021. On January 21, 2021, the Commission issued an order finding the proposed Phase 2 regulations were not likely to impose a direct and significant economic burden or restrict the formation, operation or expansion of small business.

On October 9, 2021, Phase 1 and Phase 3 regulations were returned from LCB in revised form.

On November 2, 2021, the Presiding Officer issued Procedural Order No. 5 directing Staff to conduct an investigation pursuant to 233B.0608(1) regarding whether the proposed regulations for Phase 1 and Phase 3 of this Docket attached as Attachment 1 to Procedural Order No. 5 are likely to:

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

Procedural Order No. 5 ordered 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, including all the information required by NRS 233B.0609(1), along with a statement identifying the methodology used in determining the impact on small business. Staff was further directed to place this report on an agenda for Commission consideration not later than the last open agenda meeting of the Commission in 2021.

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 Financial Analyst, two Staff Economists and one Staff Engineer, all of whom were involved in the rulemaking in this Docket and who are 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 four of whom were involved in the rulemaking and who are 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 that:

Immediate Adverse Effects:

The proposed Phase 1 regulation will not impose a direct and significant economic burden upon small businesses, nor will it directly restrict the formation, operation or expansion of small businesses. Therefore, Staff does not anticipate that the proposed regulations will have an immediate direct and significant adverse effects on small businesses.

The proposed Phase 1 and Phase 3 regulations pertain to amendments made to NRS 704.741, NRS 704.746 and NRS 704B that require a utility that supplies electricity in the state to include in their integrated resource plan an annual limit on the total amount of energy and capacity that eligible customers that have an average annual load of one megawatt or more may purchase from a provider of new electric resources. These new regulations will impact larger customers, which are not likely considered small businesses, and the electric utility. The regulations also require changes to certain procedures by which an eligible customer applies to take electric service from a provider of new electric resources. These proposed regulations apply to larger customers and are not likely to adversely affect small businesses directly. Any impacts would be due to SB 547, not the proposed regulations.

Limiting and planning for providers of new electric resources supplying energy, capacity or ancillary services in this state with Commission approval is not likely to have an impact on small businesses.

Immediate Beneficial Effects:

Staff does not anticipate that the proposed regulations will have direct and significant immediate beneficial effects on small businesses. As discussed above, setting limits on the energy, capacity and ancillary services to be provided from new electric services and planning for the energy, capacity or ancillary services from providers of new electric resources is not likely to have an impact on small businesses.

Long-Term Adverse Effects:

Similar to the immediate adverse effects outlined previously, Staff does not anticipate that the proposed regulations will have any direct and significant long-term adverse effects on small businesses. Any impacts would be due to SB 547, not the proposed regulations.

Long-Term Beneficial Effects:

Similar to the immediate beneficial effects outlined herein, Staff does not anticipate that the proposed regulations will have direct and significant long-term beneficial effects on small businesses.

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

Under the proposed regulations, the Commission may incur additional workload due to the newly required information in the utility's integrated resource plan. However, the required application process is a result of SB 547, not the proposed regulations.

As a result of the investigation, Staff has concluded that the proposed regulations are 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 November 2, 2021, 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 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 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.