Agenda 15-17; Item No. 3C

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Joint Application of Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy for Approval of Tariff Schedules and Rates Pursuant to Assembly Bill 405.	)))))	Docket No. 17-07026

At a general session of the Public Utilities Commission of Nevada, held at its offices on September 1, 2017.

PRESENT: JOSEPH C. REYNOLDS, Chairman and Presiding Officer
ANN C. PONGRACZ, Commissioner
TRISHA OSBORNE, Assistant Commission Secretary

ORDER GRANTING IN PART AND DENYING IN PART
JOINT APPLICATION BY NV ENERGY ON ASSEMBLY BILL 405

EXECUTIVE SUMMARY

Sometimes the best way to move forward is to take a step back, adjust direction, and re-start again. This is what Nevada is doing with rooftop solar and Net Energy Metering (NEM).

In the aftermath of missteps in Nevada with NEM, a landmark disruption of the *status quo* of rooftop solar and NEM policies and laws in Nevada has taken place. Assembly Bill (AB) 405 was passed by the Nevada State Legislature and signed into law by Governor Brian Sandoval on June 15, 2017, with one clear and unequivocal goal: "[P]rovide for the immediate reestablishment of the rooftop solar market in this State." Section 1 of AB 405.

To timely implement AB 405, the Public Utilities Commission of Nevada (PUCN) held expedited proceedings. The purpose of the proceedings and this decision is to implement AB 405 and to provide as much clarity and certainty as possible to NEM customers (either current or prospective), the rooftop solar industry, and NV Energy.

With the express repeal of NRS 704.7735 (formerly known as Senate Bill 374 (2015)), Nevada law now returns to the monthly netting of electricity delivered by a utility and electricity fed back to the grid by a customer-generator, *e.g.*, rooftop solar system owner. AB 405 monetizes the transaction and sets in place a statutory framework that guarantees a NEM customer-generator anywhere from ninety-five percent (95%) to seventy-five percent (75%) of the retail value for his or her net excess electricity. Meaning, the NEM customer-generator will be paid for the net electricity he or she fed back to the grid beyond what was delivered to the NEM customer-generator by NV Energy over the monthly billing period. This part is new.

Pursuant to the mandates of AB 405, the PUCN directs that parity be restored to all ratepayers of the same rate class, whether NEM customer-generators or not—we are in this together.

The plain language of AB 405 establishes firm 80 megawatt tiers consistent with legislative intent. Any other reading leads to absurd and unpredictable results. The PUCN construes AB 405 to establish a simple and certain pathway forward for prospective NEM customer-generators, solar companies returning to Nevada, and NV Energy by tracking both the applied-for and installed cumulative megawatt capacity.

NV Energy will not sustain any fiscal loss due to AB 405 with the authorization of a regulatory asset. Rate design issues will be properly addressed in the pending general rate case in Docket Nos. 17-06003 and 17-06004 without any prejudice to any party or the public. Examination of the costs within the regulatory asset will occur in a future general rate case to ensure that recovery of those costs are not unreasonable.

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INTRODUCTION

Before REYNOLDS, JOSEPH C., Chairman and Presiding Officer.

Assembly Bill (AB) 405 represents a landmark disruption of the *status quo* of rooftop solar and Net Energy Metering (NEM) policies and laws in Nevada. It was specifically intended, by design, to "provide for the *immediate* reestablishment of the rooftop solar market in this State. Sec. 1 of AB 405 (emphasis added). It was also intended to achieve the clear goals of creating new jobs and "[a]dvancing the development of renewable energy using the natural solar resources of this State." Section 1 and subsections (1) and (2) of AB 405. Passed by an overwhelming majority in both houses of the Nevada State Legislature during the 79th Legislative Session, it was signed into law by Governor Brian Sandoval on June 15, 2017.[1]

On July 28, 2017, Nevada Power Company and Sierra Pacific Power Company (hereinafter collectively referred to as "NV Energy") filed a Joint Application with the Public Utilities Commission of Nevada (PUCN), pursuant to Section 32.5(1) of AB 405,[2] seeking to amend its tariffs and to *increase* the monthly basic service charge levied against nearly all of its approximately 738,114 non-NEM and NEM single-family residential ratepayers in Nevada by approximately $4.00 per month in southern Nevada and by approximately $2.25 per month in northern Nevada.[3] In its filing, NV Energy also proposed to decrease the basic monthly service charge of a small class of 469 NEM single-family ratepayers by approximately $1.25.[4]

In the Joint Application, NV Energy proposed to decrease the volumetric per-kilowatt-hour charge for electricity for all of its non-NEM and NEM single-family residential ratepayers. NV Energy referred to this new rate design as a post-AB 405 "combined" or "blended" rate applicable to most all of its Nevada ratepayers.

NV Energy also raised what it believed to be drafting errors or omissions in the language of AB 405 that were creating "uncertainty" for current and potential future NEM participants.

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[1] Section 34(1) of AB 405 provides that Sections 25 through 28.5 and Sections 29 through 33 of the legislation become effective upon "passage and approval."

[2] AB 405 has yet to be codified in the Nevada Revised Statutes.

[3] The exact amount of the proposed monthly increases were $3.82 in southern Nevada and $2.33 in northern Nevada. 8/21/17 Hearing Exhibit 1 at Application Exhibit C p.11.

[4] The exact amount of the proposed monthly decrease was $1.33 in southern Nevada and none applicable in northern Nevada. 8/21/17 Hearing Exhibit 1 (filing Application Exhibit C p.11).

8/21/17 Hearing Exhibit 1 at Cover Letter p. 3. NV Energy requested that the PUCN conduct an expedited review of its Joint Application and issue an order implementing its newly-proposed tariffs and basic service charge increases, as well as resolve its complained-of legal deficiencies in AB 405, by September 1, 2017.[5] Having held a multi-day hearing, reviewed all legal briefs, and considered the arguments and factual evidence offered by NV Energy and the intervening parties, the PUCN hereby orders NV Energy's Joint Application on AB 405 GRANTED IN PART AND DENIED IN PART.[6]

STANDARDS OF REVIEW

The PUCN has dual responsibilities. It is responsible for ensuring that any charges imposed on Nevada utility customers are "just and reasonable," *see* NRS 704.001(4); NRS 704.120(1), which is a statutorily-imposed standard consistent with the PUCN's responsibility to "[p]rotect, further and serve the public interest." *See* NRS 703.151(1). Yet, the PUCN is also legally required to balance the public interest with the interest of shareholders of a public utility to ensure that the utility has "the opportunity to earn a fair return on their investments . . . ." NRS 704.001(4). The touchstone of any PUCN proceeding should be achieving fairness and reasonableness in addressing the concerns of both the public *and the utility*.

The PUCN has broad authority to fix and remedy rates and charges that are unjust, unreasonable, discriminatory or preferential. *See* NRS 704.120(1). An order by the PUCN will be upheld by a higher court on judicial review when it is "within the legal framework of the law, and based on substantial evidence in the record." *Nevada Power Co. v. Public Utilities Commission of Nevada (PUCN), et al.*, 122 Nev. 821, 834, 138 P.3d 486, 494 (2006) (other internal citations and quotations omitted). Substantial evidence is that which "'a reasonable mind might accept as adequate to support a conclusion.'" *Id.* (quoting *State, Emp. Security v. Hilton Hotels*, 102, 606, 608, 729 P.2d 497, 498 (1986)).

Great deference is afforded to the PUCN's "interpretation of its governing statutes or regulations," *see Dutchess Business Service, Inc. v. Nevada State Board of Pharmacy*, 124 Nev. 701, 709, 191 P.3d 1159, 1165 (2008), and a higher court will not "reweigh the evidence" or

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[5]Section 34(2) of AB 405 provides that Sections 1 through 24 of the legislation become effective on September 1, 2017.

[6] Given the expedited nature of these proceedings, only the pertinent procedural and factual history necessary to the PUCN's analysis will be addressed below either in the summary or in the context of analyzing a specific issue. Complete copies of all the pleadings and transcripts of the hearings are available for a more thorough review.

substitute its judgment on factual questions. *Nevada Power Co.*, 122 Nev. at 495, 138 P.3d at 494; NRS 703.373 (11). Evaluating the credibility of witness testimony and the weight to be given to it resides well-within the province of the PUCN, *i.e.*, fact finder. *See In the Matter of TR v. State*, 119 Nev. 646, 649, 80 P.3d 1276, 1278 (2003). This standard holds true even when expert testimony is conflicting. *See Allen v. State*, 99 Nev. 485, 487-88, 665 P.2d 238 (1983). Indeed, the Nevada Supreme Court has recognized that "[e]xpert testimony is not binding on the trier of fact; [he or she] can either accept or reject the testimony as they see fit." *Id.*

The PUCN may also take "[n]otice of judicially cognizable facts and generally recognized technical or scientific facts within the specialized knowledge of the agency," NRS 233B.123(5), and its final decisions "shall be deemed reasonable and lawful" and have operative effect unless they are set aside by a higher court on review upon a showing of clear error or abuse of discretion. *See* NRS 703.373(9) and (11); *see also* NRS 703.374(2). With the above standards of review in mind, the relevant procedural history of the expedited proceedings on AB 405 and then the pertinent issues before the PUCN will be discussed below.

RELEVANT PROCEDURAL HISTORY

On August 1, 2017, the PUCN issued a formal written Notice informing the public of its receipt of NV Energy's Joint Application, as well as NV Energy's proposed revisions to tariff schedules and rates pursuant to AB 405. In this Notice, the PUCN directed members of the public on how to view a copy of NV Energy's Joint Application and invited the public to comment.[7]

Pursuant to Nevada Administrative Code (NAC) Chapter 703, petitions for leave to intervene had to be filed by interested parties by August 16, 2017, and a Prehearing Conference was set to occur at the PUCN on August 17, 2017.

On August 11, 2017, the Presiding Officer issued a Procedural Order granting NV Energy's request for accelerated treatment of its proposals in its Joint Application. In the Procedural Order, expedited hearings and pre- and post-hearing briefing timelines were set, and the focus of the PUCN's inquiry was limited to "*only* the relevant factual and legal issues that the PUCN must resolve to implement AB 405 by September 1, 2017." (Emphasis in original).

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[7] The following written public comments were received: AARP of Nevada disagreed with NV Energy's proposal to increase the basic service charge outside of a General Rate Case and expressed concern that the proposal wwould have an unfair impact on senior citizens who live on a fixed income; Solar Energy Industries Association (SEIA) also disagreed with NV Energy's proposal and interpretation of AB 405 and urged the PUCN to reject it; and, Mr. Bruce Rugar stated that the Time-Of-Use (TOU) proposal in NV Energy's Joint Application needed some further clarification.

The following five parties petitioned for (and were promptly granted) leave to intervene: Vivint Solar; Sunrun; Nevadans for Clean Affordable Reliable Energy (NCARE); Vote Solar; and, Tesla (formerly Solar City) (hereinafter collectively "the Solar Advocates and Companies"). The Office of the Nevada Attorney General, Bureau of Consumer Protection (BCP) and the PUCN Regulatory Operations Staff (PUCN Staff) also participated as a matter of law. *See* NRS 228.380-.390 and NRS 703.301, respectively.

On August 17, 2017, the prehearing conference was held where all parties appeared and made legal arguments. During the prehearing conference, the parties were informed that the implementation of AB 405 largely consisted of "questions of law" and limited the legal scope of the proceedings. 08/17/17 Hearing Transcript at 8. A procedural schedule and witness logistics were agreed-upon for the upcoming hearing. On August 18, 2017, consolidated prehearing briefs were jointly filed by the three solar companies—Sunrun, Tesla, and Vivint Solar—and the two solar advocacy groups—Vote Solar and NCARE. PUCN Staff also filed a brief.

On August 21, 2017, the hearing began and lasted three days. All parties gave opening remarks on how best to implement AB 405. In its case-in-chief, NV Energy called John McGinley, Executive of Regulatory Analysis, Policy and Strategy; and, Laura Walsh, Director of Regulatory Analysis, Policy and Strategy. Tesla called Marc Kolb, Director of Policy and Business Development. Vivint Solar called Dan Black, Chief Legal Officer and Executive Vice President. BCP called David Chairez, Regulatory Manager, and Bing Young, Senior Regulatory Analyst. PUCN Staff called Dr. Yasuji Otsuka, Manager of the Resource Market Analysis Division. On rebuttal, NV Energy re-called McGinley and Walsh. It also called Sarah Chatterjee, Manager of Customer Information Systems and Application Development, and Jesse Murray, Director of Renewable Energy Programs. Before the hearing concluded, all parties gave closing remarks. Post-hearing briefs were filed by all parties by the end of the next day.

SCOPE OF PUCN PROCEEDINGS ON ASSEMBLY BILL 405

The fundamental analysis in this case concerns the true meaning of AB 405. Because the meaning of a statute is largely a question of law, it is important to initially recount the maxims of statutory interpretation.

Principles of Statutory Interpretation

It is well-settled in Nevada that "when a statute is facially clear" it should be given its plain meaning. *Public Employees Benefits Program v. Las Vegas Metropolitan Police Department*, 124

Nev. 138, 144, 179 P.3d 542, 546 (2008). There is no need to examine or probe legislative intent. *Id.* The Nevada Supreme Court has held that "great deference" is afforded to "an agency's interpretation of a statute the agency is charged with enforcing." *State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co*, 116 Nev. 290, 293, 995 P.2d 482, 485 (2000). However, when the plain language of a statute is ambiguous, then it is appropriate to examine legislative intent and to "interpret the statute's language in accordance with reason and public policy." *Lader v. Warden*, 121 Nev. 682, 687, 120 P.3d 1164, 1167 (2008).

Statutory language may become ambiguous when it is capable of two or more reasonable interpretations. *Clark County v. Southern Nevada Health District*, 128 Nev. Adv. Op. 58, __, 289 P.3d 212, 215 (2012). A statute should be interpreted to avoid absurd or unreasonable results. *Williams v. Clark County District Attorney*, 118 Nev. 473, 485, 50 P.3d 536, 543 (2002). "[W]ords within a statute must not be read in isolation, and statutes must be construed to give meaning to all of their parts and language within the context of the purpose of the legislation." *Banegas v. State Indus. Ins. System*, 117 Nev. 222, 228, 19 P.3d 245, 250 (2001). "The title of a statute may also be considered in determining legislative intent." *Id.* at 230, 19 P.3d at 250. When the legislature enacts a statute, the Nevada Supreme Court "presumes that it does so 'with full knowledge of existing statutes relating to the same subject.'" *Div. of Insurance v. State Farm*, 116 Nev. at 295, 995 P.2d at 486 (quoting *City of Boulder v. General Sales Drivers*, 101 Nev. 117, 118-19, 694 P.2d 498, 500 (1985)).

If separate statutory provisions are conflicting, both provisions should be construed "in a manner to avoid conflict and promote harmony." *See Beazer Homes Nevada, Inc. v Dist. Ct.*, 120 Nev. 575, 587, 97 P.3d 1132, 1140 (2004). "[O]missions of subject matters from statutory provisions are presumed to be intentional." *Department of Taxation v. Daimler Chrysler Services North America*, 121 Nev. 541, 547, 119 P.3d 135, 139 (2005). But, any proper statutory inquiry must examine "the context and the spirit of the law or the causes which induced the Legislature to act . . . [and] the entire subject matter and policy may be involved as an interpretive aid." *Orion Portfolio Services v. County of Clark, Ex Rel. University Medical Center of Southern Nevada*, 126 Nev. 397, 403, 245 P.3d 527, 531 (2010) (internal citations and quotations omitted). Upon review, a court has a duty to "construe statutes as a whole, so that all provisions are considered together and, to the extent practicable, reconciled and harmonized." *Id.* Each of the above-referenced maxims of statutory construction guide the PUCN's analysis.

Prehearing Ruling Limiting the Tariff Filing

NV Energy contends in its Joint Application that the newly-proposed statewide increases in the basic service charges and proposed reductions in certain volumetric charges were necessary to implement AB 405. *See* 8/21/17 Hearing Exhibit 1 at Cover Letter p. 1-4. Section 32.5(1) of AB 405 permitted NV Energy to file a tariff. However, neither the plain language nor the context of AB 405 contemplated or required a rate design proceeding of that breadth. Accordingly, the scope of the Joint Application was limited to only those issues necessary and relevant to implement AB 405 by September, 1, 2017. All parties agreed with this prehearing decision, except NV Energy. NV Energy argued that its newly-proposed tariff was necessary in this proceeding in order to achieve revenue neutrality in its rates and that reviewing the impact of AB 405 on its rates should not occur in the pending Nevada Power Company general rate case in Docket Nos. 17-06003 and 17-06004.

As a threshold matter, it is worth recognizing that one of the purposes of a prehearing conference before the PUCN is to "[f]ormulate or simplify the issues involved in the proceeding." NAC 703.655(1)(a). In doing so, the PUCN has the authority to "expedite the orderly conduct and disposition of the proceedings." NAC 703.655(1)(i). Moreover, the PUCN "may raise an issue *sua sponte* if it gives the parties an adequate notice and an opportunity to respond." *Magnum Opes Construction v. Sanpete Steel Corporation*, Docket No. 60016 (Order of Affirmance, November 1, 2013) (citing *Boulder City v. Boulder Excavating, Inc.*, 124 Nev. 749, 755, 191 P.3d 1175, 1179 (2008), and *Soebbing v. Carpet Barn, Inc.*, 109 Nev. 78, 83, 847 P.2d 731, 735 (1993)). Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." NRS 48.015.

The prehearing decision to limit the scope of the proceeding on the Joint Application was made as a matter of law and did not require factual evidence. All parties were given notice in the Order Setting Expedited Proceedings on Assembly Bill 405 issued prior to the prehearing: "The purpose of these proceedings is to address *only* the relevant factual and legal issues that the PUCN must resolve to implement AB 405 by September 1, 2017." *See* Docket No. 17-07026, at 2 (*Order Setting Expedited Proceedings on Assembly Bill* 405, August 11, 2017). NV Energy was given an opportunity to respond and argue regarding the decision, and it did. *See, e.g.*, 08/17/17 Hearing Transcript at 32-41; 08/21/17 Hearing Transcript at 11-29.

However, NV Energy's proposal to increase the monthly basic service charge for *all* single-family residential customers throughout Nevada in the course of its Joint Application on the implementation of AB 405 is rejected at this time for numerous reasons explained further below.

RATE DESIGN ISSUES PROPERLY BELONG IN A GENERAL RATE CASE

Nevada law provides that every three (3) years a public utility shall file with the PUCN a General Rate Application regarding any proposed future changes to the costs and rates to its customers. *See* NRS 704.110(1). Once filed, the PUCN has a firm deadline of 210 days by which to either approve or disapprove the proposed changes. *See* NRS 704.110(2). General rate cases traditionally encompass three phases: (1) cost of capital; (2) depreciation and revenue requirement; and (3) rate design. Whether by intention or coincidence, the triennial general rate case for Nevada Power Company (which encompasses southern Nevada) is pending in Docket Nos. 17-06003 and 17-06004. The most consistent and reasonable reading of AB 405 is that it permits a new tariff review only where it is necessary to implement certain provisions of AB 405 by the upcoming statutory deadlines. This interpretation of AB 405 is supported by several factors.

Rate Stability

It has long been recognized in the arena of utility regulation that a key aspect of a sound rate structure is the "[s]tability and predictability of the rates themselves, with a minimum of unexpected changes seriously adverse to ratepayers and with a sense of historical continuity." Bonbright, James C.; Danielsen, Albert L.; Kamerschen, David R., *Principles of Public Utility Rates,* Public Utilities Reports, Inc., 383 (1988). Even when there may be cause for a pre-general rate case adjustment, it is normal practice for utility commissions "to let existing rate levels stand, subject to minor revisions in the rate pattern, until there appears to be an impelling reason for a new general rate case." *Id.* at 198. Increasing the basic service charge for Nevadans in September (as we enter the holiday season) and, possibly, again in January after a general rate case would unnecessarily invite controversy and cause unfairness by condensing proceedings within such a short time.[8]

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[8] While equity and shareholder interests are essential in proper regulation, there is no definition or *per se* requirement to achieve revenue neutrality in AB 405 or other Nevada laws governing PUCN decisions. Revenue neutrality is a financial principle, and NV Energy is not incorrect to argue for it as a goal. But the principle of revenue-neutrality must be balanced against the equally important principle of rate stability.

Timing

More importantly, whether it by coincidence or not, a general rate case proceeding for southern Nevada is pending before the PUCN and hearings have yet to begin. As discussed above, NRS 704.110(2) provides 210 days for these proceedings to occur because they often involve volumes of documents, numerous witnesses, and lengthy hearings. Here, a little over 30 days will have occurred between NV Energy's filing of its Joint Application on July 28, 2017, and the deadline for implementing AB 405 on September 1, 2017. It is unreasonable to presume that the Nevada State Legislature ever intended for the PUCN to conduct a full rate re-design that would financially impact a majority of Nevadans.

No Prejudice

NAC 703.740(1) provides that the PUCN "may consolidate two or more dockets in any one hearing when it appears that the issues are substantially the same and that the rights of the parties will not be prejudiced by a consolidated hearing." It is important to recognize that each of the five intervening Solar Advocates and Companies, *i.e.*, Tesla, Vivint Solar, Sunrun, NCARE, and Vote Solar, have already been granted intervention and are currently participating in the pending Nevada Power Company general rate case in Docket Nos. 17-06003 and 17-06004. The BCP and PUCN Regulatory Staff are also actively participating in the general rate case. All parties have received both actual and constructive notice of relevant arguments and materials, and they each have the ability to fully participate in addressing all issues. Merging rate design or broader tariff issues regarding the basic service or volumetric charges arising from AB 405 will reduce administrative costs and provide for continuity and full inquiry before broader changes are made. There is no prejudice.[9]

Noticing

Both NV Energy and BCP have expressed concerns about the sufficiency of noticing and due process if the blended rate proposal in NV Energy's Joint Application is merged into the general rate case. Yet, these concerns appear unwarranted.

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[9] To the extent NV Energy remains concerned about the certification period, NAC 704.586 provides that the certification required by NRS 704.110 for a general rate case may be supplemented with "an explanation of the adjustments to recorded data which show the effects, on an annualized basis, of known and expected changes in circumstance." Moreover, if requested to do so, the PUCN will allow for supplemental discovery or modification of applicable deadlines to accommodate the parties in the general rate case.

First, public noticing of the general rate case broadly informs all-the-world that NV Energy seeks from the PUCN "authority to adjust its annual revenue requirement for general rates charges to all classes of electric customers and for relief properly related thereto." *See PUCN Notice of Application*, Docket Nos. 17-06003 and 17-06004, issued on June 14, 2017. Thus, NV Energy's proposed to re-design rates due to AB 405 falls squarely within the subject matter identified in the notice for the general rate case. Second, public noticing of the Joint Applications on AB 405 informed all-the-world that NV Energy seeks from the PUCN "approval of tariff schedules and rates . . . ." *See PUCN Notice of Joint Application*, Docket No. 17-07026, issued on August 1, 2017. Moreover, the PUCN has the following consumer sessions scheduled over the next several weeks: September 11, 2017 (Las Vegas), September 12, 2017 (Las Vegas), September 14, 2017 (Reno), and September 20, 2017 (Elko), which will provide additional notice and opportunity for Nevadans to participate. Third, as state above, all parties have received both constructive and actual notice of the issues. Fourth, the PUCN will extend any necessary hearing or discovery schedule reasonably necessary to accommodate a request from any party in the general rate case, including NV Energy. Finally, all pleadings, public documents, and hearings have been fully transparent and available to the public through the PUCN's video link and internet website.

Given each of these considerations in their totality, principles of rate stability, timing, absence of discernable prejudice, and cumulative public noticing strongly militate in favor of addressing the broader rate implications of AB 405 in the pending general rate case for Nevada Power Company and in a future general rate case for Sierra Pacific Power Company.

While some actions are mandated by AB 405, others will be addressed as advisory in an attempt to bring clarity and certainty to ratepayers, NV Energy, and the solar industry as it looks to renew in Nevada.

AUTHORIZATION OF REGULATORY ASSET

The PUCN has a legal duty to not only protect ratepayers, but to protect the utility as well. *Compare* NRS 703.151(1), *with* NRS 704.001(4). NV Energy argued that in light of the PUCN's decision to limit any rate increases during the AB 405 proceedings that it may result in a revenue under-collection and legal deficiency if it is not granted a regulatory asset to track any under-collection of revenue associated with NEM. 08/23/17 Hearing Transcript at 581-84. Both BCP and PUCN Regulatory Staff oppose NV Energy's request. Yet, NV Energy's request is appropriate and has merit.

The purpose of a regulatory asset is to acknowledge a potential liability for a utility's ratepayers and to provide a type of safety net for utilities and investors. It has been explained as follows:

> Utility companies may incur large expenses in various ways—storm damages, installation of new facilities, increase taxes and so forth. These expenses, if passed immediately on to ratepayers, could create havoc. An immediate recovery of such expenses could case sudden upward increases in rates, commonly termed 'rate shock.' In order to avoid rate shock, public utility commissions often will permit utility companies to recover their expenses from ratepayers on a deferred basis, listing the ratepayers' debt as a 'regulatory asset.' A regulatory asset is, therefore, a future debt of the ratepayers that can be passed on, together with interest, to the ratepayers.

Office of Consumer Counsel v. Department of Public Utility Control, 905 A.2d 1, 7 (Conn. 2006) (quoting *Office of Consumer Counsel v. Dept. of Public Utility Control*, 742 A.2d 1257, ___ (2000)). While it may be speculative as to whether and how much NV Energy may under-collect, (if it does so at all), fairness swings both ways. The PUCN has a legal duty to ensure NV Energy has an opportunity to earn a fair rate of return on its investment and be kept financially viable, especially as energy goals and technologies in Nevada evolve and grow. However, this is not a guarantee that there is no risk to the utility. Good cause appearing, and to accommodate this period of regulatory lag, the PUCN authorizes regulatory assets to protect NV Energy against any under-collection of revenues as Nevada's rooftop solar laws develop.

RESTORING NEM CUSTOMERS TO SAME CLASSES AS EVERYONE ELSE

Section 31(5) of AB 405 prohibits NV Energy from "assign[ing] a customer-generator to a rate class other than the rate class to which the customer-generator would belong if the NEM customer-generator did not have a net metering system." Accordingly, the PUCN hereby directs NV Energy to place all new NEM customer-generators who have submitted applications after June 15, 2017, into the rate class they would be in if they were not NEM customer-generators.

Temporary NMR-G Rate Rider until AB 405 Full Implementation

As an interim measure and accommodation, NV Energy has been placing new NEM customers who have applied-for and installed a system after the June 15, 2017 (the effective date under AB 405) in the NMR-G rate rider until NV Energy is able to comply with the PUCN's decisions and directives. NV Energy has been doing this because the NMR-G rate rider contains

what are widely believed to be the most favorable NEM terms. Tesla, Sunrun, and Vivint Solar do not oppose this measure as a stop-gap to protect NEM customers' interests. *See* 08/24/17 Post Hearing Brief of Sunrun, Tesla, and Vivint Solar at 9-10. This approach is reasonable under the circumstances and NV Energy is directed to continue it until the applicable provisions of AB 405 can be implemented.

Prior NEM Customers May Elect to Migrate to the New AB 405 Rate

Section 24(7) of AB 405 gives a NEM customer-generator the right to "remain within the existing broad rate class to which the resident would belong in the absence of a net metering system or a system that generates renewable energy." However, Section 28.3(5) of AB 405 provides that a customer-generator with a system smaller than 25 kilowatts, who applied for NEM prior to the passage of AB 405, may "submit a request to be treated for all purposes . . . as a customer-generator who accepted the offer of the utility for net metering on the date of submitting the request." In other words, NEM customer-generators can elect to "Get back to where you once belonged." *See* The Beatles, lyrics from the song *Get Back* and the album *Let It Be* (1970). But they are not required to migrate back to their otherwise-applicable rate class if they are happy with their current rates. This election is not a requirement. It is an option and/or opportunity, if the customer-generator believes that the terms of AB 405 are more favorable. It applies to all NEM customer-generators with a system of 25 kilowatts or less installed prior to June 15, 2017. The PUCN directs NV Energy to create a simple process for pre-June 15, 2017, NEM customer-generators to elect to migrate to AB 405, and to notify those customers within 60 days from the date of this order.

ELIMINATION OF DISPARATE CHARGES TO NEM RATEPAYERS

Section 31.2I of AB 405 provides that NV Energy "shall not charge the customer-generator any fee or charge that is different than that charged to other customers of the utility in the rate class to which the customer-generator would belong if the customer-generator did not have a net metering system." *See also* Section 24(7) of AB 405. The purpose of this section is obvious: to create parity between NEM and non-NEM customers. Currently, NEM customer-generators in the NMR-A, *i.e.*, laddered rate class pursuant to the PUCN Order in 2015 in Docket Nos. 15-07041 and 15-07042, pay monthly basic service charges higher than non-NEM customers. For example, single family residential customers of Nevada Power Company pay a monthly basic service charge of $12.75; however, NEM single family residential customers in the same service territory pay a monthly basic service charge of $17.90—a difference of $5.15 per month. Accordingly, all

charges or fees levied against any NEM customer-generators that are higher than non-NEM customers in the same rate class must immediately be reduced.

RETURN OF MONTHLY NET ENERGY METERING

NV Energy argues that Sections 28.3 of AB 405 creates a new NEM paradigm that allows any new NEM customer (post-June 15, 2017) or previous NEM customer with a system 25 kilowatts or less to migrate to AB 405 rates and receive anywhere from ninety-five percent (95%) to seventy-five percent (75%) of the retail value of electricity a homeowner produces and sends to the grid. NV Energy views the term "excess electricity" in Section 28.3(1) of AB 405 to mean any electricity a customer-generator exports to the grid. NV Energy believes that the Nevada State Legislature intended to retain the buy-sell framework on an hourly basis that was adopted by NV Energy in response to the PUCN's 2015 and 2016 NEM orders, *see* Orders in Docket Nos. 15-07041 and 15-07042, Docket Nos. 16-07028 and 16-07029, and Docket Nos. 16-06006 through 16-06009. NV Energy maintains that the Nevada State Legislature never intended to return to traditional net metering as it existed in Nevada prior to 2015.

However, the Solar Advocates and Companies strongly disagree with NV Energy. They contend that the plain language of Section 28.3 of AB 405, as well as other provisions of AB 405 and Nevada law, compel the return to the pre-2015 NEM paradigm, which allowed for a netting of kilowatts rather than monetary value. The Solar Advocates and Companies also maintain that the Nevada State Legislature's express repeal of NRS 704.7735 (formerly SB 374 (2015))—the law upon which the PUCN's 2015-16 decisions were predicated—is evidence of its intent to return to the traditional monthly NEM structure and restore this aspect of the pre-2015 framework. The Solar Advocates and Companies contend that the Nevada State Legislature's decision to leave the pre-2015 definitions and framework for NEM intact and largely undisturbed shows that the Legislature meant to return to the pre-2015 NEM framework with some narrowly-focused changes that affect relatively small portions of the excess electricity produced by NEM systems. They also contend that the ninety-five percent (95%) to seventy-five percent (75%) tiered framework set forth in Section 28.3 of AB 405 was meant to monetize *via* statute a value for netted electricity and establish a compensation scheme by which a NEM customer-generator is entitled to receive from NV Energy for the "excess electricity" he or she sends back to the grid.

The heart of the disagreement between the parties comes down to the following question: What does the phrase "excess electricity" mean? Does it include *all* energy produced by a NEM

customer-generator and sent to the grid, irrespective of how much electricity is delivered by NV Energy? Or does it mean the difference, *i.e.*, what is left over or is extra, between how much electricity a NEM customer-generator produces and sends to the grid *minus* how much electricity the NEM customer-generator was delivered from NV Energy on a monthly basis,[10] irrespective of when during that month is delivered or exported.

Here, the interpretation of AB 405 advanced by the Solar Advocates and Companies is supported by both the plain language of the law and legislative intent. The decision of the Nevada State Legislature to expressly repeal SB 374 and to keep intact and largely undisturbed and alive the seminal provisions of NRS Chapter 704 that have defined and governed NEM in Nevada since its inception in 1997 indicates a clear desire to restore the historical practice of monthly netting. It is not properly within the province of the PUCN to second-guess or speculate as to what the Nevada State Legislature may or may not have intended with AB 405. Rather, the PUCN must examine the Nevada State Legislature's actions through the lens of its expressly stated intent: to immediately re-establish the rooftop solar industry in Nevada.

Impact of the Full Repeal of NRS 704.7735 (Senate Bill 374)

The highly-controversial decisions from the PUCN in 2015 and early 2016 in Docket Nos. 15-07041 and 15-07042 arose from reliance upon SB 374. *See* Order on Reconsideration and Rehearing, February 12, 2016, 104-107. Indeed, SB 374 was the most-consistently cited and relied upon law in that 122-page decision.

Senate Bill 374, later codified as NRS 704.7735, "placed regulatory authority over the net metering program" with the PUCN, "charging that entity with maintaining fairness between customers of the net metering program and non-net metering customers and giving it certain tools to do so." *No Solar Tax Pac v. Citizens for Solar and Energy Fairness*, Docket No. 70143 (Order of Affirmance, August 4, 2016).[11] Those tools included the express authority to establish separate rate classes between NEM and non-NEM customers, set terms and conditions for enrollment and

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[10] Language in Section 28.3(2) of AB 405 that references "the time" at which a kilowatt hour of electricity is sent back to the grid is most reasonably construed to refer to the "[t]ime-variant rate schedule," which will "incorporate different rates for different times of the day," pursuant to Section 27(5)(d), and will be considered in future proceedings in this docket by the PUCN pursuant to Section 27.

[11] Nevada Rule of Appellate Procedure (NRAP) 36(c)(3) permits citation to an unpublished order of the Nevada Supreme Court.

participation in the NEM program, set rates and charges, and eliminate any unreasonable cost shifting. *See* NRS 704.7735.

It was upon the authority of NRS 704.7735 that the PUCN adopted the buy/sell framework and moved away from traditional NEM that had existed in Nevada prior to 2015. Section 33 of AB 405 expressly repealed NRS 704.7735 in its totality and, in doing so, removed the cornerstone of the PUCN's most divisive decision.

Nevada Law Requires Monthly Net Energy Metering (NEM)

The plain language of AB 405, read in conjunction with provisions of NRS Chapter 704, supports the return of traditional monthly kilowatt net metering to Nevada.

NEM is clearly defined by Nevada law to mean the act of "***measuring the difference between the electricity*** supplied by a utility and the electricity generated by a customer-generator which is fed back to the utility over the applicable billing period." NRS 704.769 (Emphasis added). Moreover, a NEM system is defined by Nevada law to mean a system or facility for the generation of electricity that is "intended primarily ***to offset part or all*** of the customer-generator's requirements for electricity." NRS 704.771(1)(a)(5) (Emphasis added). Nevada law further provides that "[t]he billing period for net metering must be [ ] monthly . . . ." NRS 704.775(1). Perhaps the most important provision within NRS Chapter 704 relevant to this analysis are the provisions of NRS 704.775(2)(b) and (2)(c), which prescribe the billing methodology for a NEM transaction between a utility and customer-generator. NRS 704.775(2)(b) provides: "If the electricity supplied by the utility exceeds the electricity generated by the customer-generator which is fed back to the utility during the billing period, the customer-generator must be billed for ***the net*** electricity supplied by the utility." (Emphasis added).

In other words, if the NEM customer-generator uses more electricity *after netting* than he or she produced and fed back to the grid, then he or she owes NV Energy the full price of that kilowatt-hour of electricity just like non-NEM customers in their respective rate classes. NRS 704.775(2)(a) provides that the net metering measurement "shall" be "the net electricity produced or consumed during the billing period [monthly pursuant to NRS 704.775(1)]." NRS 704.775(2)(c) and (3) address what happens to the NEM customer-generator's monthly-netted electricity. In the absence of Section 28.3 of AB 405, it would be carried forward or banked without any monetary compensation. It could perpetually, *but only*, be used as a kilowatt credit to offset the electricity delivered by the utility during the next monthly netting period.

Nevada law has no provision mentioning, let alone defining, the "buy/sell" arrangement—that was a product of SB 374. Nevada law also defines NEM, sets the method for netting, and states that the billing period is to occur "monthly." NRS 704.775(2) provides the compensation for only excess electricity that exists after subtracting the amount of electricity delivered by the utility in kilowatt-hours from the amount of electricity exported to the grid by the NEM customer-generator. Construing the plain language of these provisions, Nevada law provides that "excess electricity" is the amount of electricity produced by the NEM customer-generator that exceeds the amount of electricity delivered by the utility in a monthly billing period.

Had the Nevada State Legislature intended to eliminate traditional monthly NEM or embrace an hourly "buy/sell" relationship, it must be presumed that they would have expressly repealed or modified the above-referenced NEM provisions in NRS Chapter 704. They did not. Irrespective of whether NV Energy is advocating for sound policy, its proposal is not consistent with the law.

Monetization: Importance of Section 28.3 of Assembly Bill 405

With few exceptions, prior to AB 405 a NEM customer-generator received no payment or monetary value for the excess electricity he or she sent to the grid after netting the difference with the electricity delivered by the utility pursuant to NRS 704.775(2)(c). However, Section 28.3 of AB 405 changes that dynamic. That provision explicitly requires the monetization of excess electricity and established a statutory framework to value rooftop solar generation beyond the compensation provided in the form of a one-to-one offset of kilowatt-hours delivered during the monthly billing period. More specifically, Section 28.3(1) of AB 405 "provide[s] to the customer-generator a credit for each kilowatt-hour of excess electricity governed by paragraI(c) of subsection 2 of NRS 704.775 that is generated by the customer-generator." Section 28.3(2) of AB 405 further provides that "[t]he credit for each kilowatt-hour of excess electricity . . . must equal a percentage . . . of the rate the customer-generator would have paid for a kilowatt-hour of electricity supplied by the utility at the time the customer-generator fed the kilowatt-hour of electricity back to the grid."

Section 28.3(3) then provides that "[t]he percentage to be used to determine the credit . . . of excess electricity" must equal one of four tiers of ninety-five percent (95%), eighty-eight percent (88%), eighty-one percent (81%), or seventy-five percent (75%). These provisions are important because they specifically concern only the excess electricity of the customer-generator under NRS

704.775(2)(c) and it is the first time that a *statutory* framework in Nevada attempts to set a baseline value for excess rooftop solar generation.

Netting Excess Electricity

Applying the plain language and relevant provisions within NRS Chapter 704 the excess electricity referenced in Section 28.3 of AB 405 is the *difference*, *i.e.*, the net, at the end of a month between the total amount of electricity the customer-generated fed to the grid and the total amount of electricity the utility delivered to the customer-generator. Whoever sends more to the other gets paid. If the utility delivers more to the NEM customer-generator, then the NEM customer-generator must pay the utility the full retail value of the electricity (note: the customer-generator must still pay the public purpose charges on *all* delivered electricity from the utility whether it is netted out or not + basic service charge + local taxes). If the NEM customer-generator sends more, *i.e.*, excess, electricity to the grid than was delivered to him or her by the utility, then the utility must pay the customer-generator up to ninety-five percent (95%) or at the least seventy-five percent (75%) of the retail value of the electricity (Base Tariff Energy Rate (BTER), Base Tariff General Rate (BTGR), Deferred Energy Accounting Adjustment (DEAA)). Simple.

THE PLAIN LANGUAGE AND THE 80 MEGAWATT TIERS

AB 405 establishes four tiers of monetary compensation for NEM customer-generators who send excess electricity to the grid. These tiers (or levels or tranches) represent a percentage of the retail value to be paid for each excess kilowatt-hour created by a NEM customer-generator after monthly netting. They are: ninety-five percent (95%), eighty-eight percent (88%), eighty-one (81%), and seventy-five percent (75%), respectively. More specifically, section 28.3(3)(a) of AB 405 provides in relevant part:

> The percentage to be used to determine the credit . . . for each kilowatt-hour of excess electricity must equal:
>
> (a) Ninety-five percent, if the customer-generator accepts the offer of the utility for net meterng:
>
> (1) On or after the effective date of this section [June 15, 2017]; and
>
> Before the date on which the Commission determines and post on its Internet website its determination that the cumulative installed capacity of not more than 25 kilowatts for customer-generators who accepted the offer of the utility for net metering on or after the effective date of this section is equal to ***80 megawatts*** . . . .

(Emphasis added).

Section 28.3(3) contains nearly identical language for the remaining three tiers. Reading the plain language of these subsections, AB 405 is clear and facially unambiguous that the Nevada State Legislature intended to expressly limit the tiers to 80 megawatts. This plain reading of the statute is supported by the fact that the phrase "80 megawatts" appears four separate times in this section. No qualifying terms or language creating any deviation from this limit appear anywhere in AB 405. Had the Nevada State Legislature intended for 80 megawatts to be a soft and flexible goal, they could have easily done so and expressed that intent with other terminology. It did not. Certainly, 80 megawatts is a hard stop. Otherwise, it means nothing at all.

Even *arguendo*, looking beyond the plain language, an 80-megawatt hard limit is both logical and reasonable. Four tiers, each of 80 megawatts, totals 320 megawatts (with an open-ended final tier). This would constitute more installed-rooftop solar capacity than Nevada has seen over the past 20 years—since NEM's inception in 1997. *See* NRS 704.773(1) (setting a statutory limit of 235 megawatts (amended by AB 405)). More-than-doubling Nevada's rooftop solar capacity is consistent with the express purpose of AB 405—more solar generation in Nevada.

Nevertheless, the Solar Advocates and Companies argue that Section 28.3 of AB 405 provides for the possibility of more than 80 megawatts of capacity being allowed in each tier. Section 28.3(5) provides in pertinent part:

> Except as otherwise provided in this subsection, for the purposes of this section, a customer-generator shall be deemed to accept the offer of the utility for net metering on the date the customer-generator submits to the utility a complete application to install a net metering system within the service area of the utility. . . .

The Solar Advocates and Companies contend that the guarantee of receiving the highest open tier at the time of application of NEM set forth in Section 28.3(5), which is separate from the closing of the tier altogether by the PUCN after the cumulative installed capacity for that tier is reached, evinces an intent by the Nevada State Legislature to allow the 80 megawatt limit to be exceeded. However, the PUCN finds that the Solar Advocates and Companies advance an interpretation that leads to the absurd result of a allowing a limitless number of NEM applicants applying for and being entitled to the compensation provided under a particular tier even after more than 80 megawatts of installed capacity is reached. It would perpetuate uncertainty and render the 80 megawatt limits relatively meaningless. Applying the law in the manner proposed by the Solar

Advocates and Complies exposes a loophole that supports an untenable policy.

The Solar Advocates and Companies respond to the concern of a limitless number of NEM applications by mutually agreeing to a PUCN-imposed 12-month limit for rooftop solar projects to be completed. In other words, a prospective NEM customer would be given a one-year deadline to complete the installation of his or her system or lose his or her place in line. There is statutory precedence in other solar programs for a 12-month limit. *See* NRS 701B.255(6). However, no such language appears within AB 405 and it still does not overcome the plain language of the 80-megawatt limits discussed above. Fortunately, however, the tension between Section 28.3(3)(a) and Section 28.3(5) is reconcilable and can be reasonably harmonized in a workable manner within the existing statutory framework.

Certainty for the NEM Application Process

The intent to provide greater certainty and clarity for the prospective NEM customer is evident throughout AB 405, most notably in Section 24, which sets forth "the Renewable Energy Bill of Rights," *see* Section 23 and Sections 2 through 20 of AB 405, which set forth the requirements of a NEM contract. *See* Section 24(5) of AB 405. Section 16(5) of AB 405 provides that a rooftop solar company must provide a prospective NEM customer with, among other things, notice of the following:

> The payments made during the first year of the agreement for the price of electricity, which includes, without limitation, the price per kilowatt-hour of electricity and the price per monthly system electrical output.

Like buying a home, deciding to purchase or lease a NEM system can be a significant long-term financial investment. It constitutes a contractual relationship. A prospective NEM customer cannot make a fully-informed decision about the benefits of the purchase unless he or she has a guarantee of what compensation her or she will receive on their netted excess electricity sent to the grid. A prospective NEM customer cannot reasonably be expected to make an informed decision without knowing what tier he or she fall into any more than a prospective homebuyer would take out a mortgage without knowing the applicable interest rate. Accordingly, a simple and understandable process for guaranteeing a prospective NEM customer a tier level is necessary.

Guaranteed Tier Based on Applied-For Capacity

NV Energy testified at the Hearing that its PowerClerk software is capable of time-stamping and tracking NEM applications filed with the utility. *See* 08/23/17 Hearing Transcript

at 443-456. More importantly, PowerClerk is a tested, reliable, and well-known system that is capable of tracking both applied-for megawatts and megawatts of completed projects. *See* Exhibit 15 (Testimony of Jesse E. Murray), at 11-12.

Reading Section 28.3(3)(a) together with Section 28.3(5), a NEM customer-generator shall be *guaranteed* a specific tier rate based upon the cumulative *applied-for* capacity. The most reasonable interpretation of these provisions is that the Nevada State Legislature intended for eligibility for each 80-megawatt tier to be managed based on the amount of applied-for capacity at the time the prospective customer submits his or her NEM application with the utility. The first 80 megawatts of applicants is guaranteed to receive compensation under the first tier, and the next 80 megawatts of applicants is guaranteed to receive compensation under the second tier, and so on. The application-based guarantee sets the floor, which can increase with attrition. Otherwise, as explained above, an absurd result of limitless NEM applications in any given tier can occur and render the plain 80 megawatt language meaningless. This interpretation is simple. It is orderly. It is easy. It is reasonable.

Judicial notice is taken that approximately 32,070 residents of Nevada filed an application with NV Energy for NEM systems in 2015-16 for the 'grandfathered' NEM rate. *See* Docket No. 16-07028. Of those applicants, 5,528 had yet to complete installation in February 2017. *See* Docket No. 17-03028. Based on this information, the attrition rate is approximately seventeen percent (17%). A prospective NEM applicant that falls out of the queue will create an opening for the next applicant in line to move up. This process will occur until the PUCN formally closes the tier when the 80-megawatt limit of installed capacity is reached. At that point, the tier is closed. Hope for a better rate is gone.

PUCN Website

The word "determination" is defined to mean "a judicial decision settling and ending a controversy." Webster's New Collegiate Dictionary, 310 (1977). It is a word granting discretion. It appears twice in a single sentence as "determines" and "determination" in the context of describing the PUCN's authority to post on its website when the 80 megawatt limit of installed-capacity for a tier is reached. Applying that discretion, the PUCN intends to post both applied and installed capacity cumulative amounts on its website. The applied-for megawatts will be posted on the PUCN website from information provided by PowerClerk and NV Energy each business day. The installed capacity amounts will be posted on the PUCN website after being publically-

noticed and reviewed by the PUCN at the next available agenda meeting. The procedure set forth in Section 28.3(4) of AB 405 is otherwise clear and shall govern remaining aspects of the process.

Consistent with Legislative Intent

One of the express purposes of AB 405 is to foster momentum in the rooftop solar market in Nevada. It also creates a financial incentive for prospective NEM customers to invest in solar sooner rather than later, *i.e.*, the sooner an application is filed the better percentage of credit for excess electricity may be guaranteed. PowerClerk also provides fairness, transparency, and will track information. It is tested and fits squarely within the intent and purposes of AB 405. The industry-standard 12-month timeline for an application to proceed with full installation will only help move the process forward.[12]

PUBLIC PURPOSE CHARGES AND FEES

A portion of monthly electric bills include what are commonly-referred to as 'public purpose' charges and/or taxes and/or fees. These levies help low-income Nevada residents and also serve to promote renewable energy goals and programs. They appear as the Universal Energy Charges (UEC), the Renewable Energy Program Rate (REPR), the Temporary Renewable Energy Program Rate (TRED), the Energy Efficiency rates (EE), and the Merrill Lynch rate (ML).[13] Each of these charges serves a public policy goal beyond the cost of a kilowatt-hour of electricity.

Mandatory Charges on All Delivered Electricity from Utility

Section 31(7) of AB 405 amends NRS 704.773 but undeniably sets forth that a NEM customer-generator must still pay these same charges as other customers in his or her rate class on all "energy delivered by the utility to the customer generator." They cannot be netted out or avoided as a matter of law.

Not Calculated in Excess Electricity Payment

Tesla, Sunrun, and Vivint Solar have agreed that the payment for netted excess energy pursuant to Section 28.3 of AB 405 should not include any percentage of the public purpose charges. *See* 08/24/17 Post Hearing Brief of Sunrun, Tesla, and Vivint Solar, at 7-8. It is reasonable to conclude that the Nevada State Legislature did not intend to base the ninety-five percent (95%) through seventy-five (75%) excess energy compensation on public purpose costs.

[12] Given that no 80-megawatt tier has been reached as a matter of fact, the interpretation of these sections of AB 405 are advisory and declaratory. *See* NAC 703.825.

[13] The ML is only paid by Nevada Power Company customers.

Accordingly, the payment for excess electricity shall be based upon the retail cost of the electricity *only*—the Base Tariff General Rate (BTGR), the Base Tariff Energy Rate (BTER), and the Deferred Energy Accounting Adjustment (DEAA).

FINDINGS AND COMPLIANCE DIRECTIVES

The PUCN hereby finds and directs NV Energy to complete the following items:

a) The PUCN finds that the legislation supports the positions of Vivint Solar, Sunrun, Tesla, NCARE and Vote Solar with respect to monthly netting of the kilowatt-hours delivered to and the kilowatt-hours received by the utility from customers who apply and install solar energy systems of 25 kilowatts or less on or after June 15, 2017, for the purposes of determining the kilowatt-hours subject to the excess energy credit calculation.

b) The PUCN finds that the legislation supports the position of NV Energy with respect to the timing of the closure of the 80-megawatt tiers. Applications will be accepted and guaranteed for each tier until 80 megawatts of applied-for capacity in that tier is reached. Once the installed capacity is determined by the PUCN to have been reached, the tier will be permanently closed.

   i. NEM applications shall be submitted and managed through NV Energy's PowerClerk software.

   ii. The date and time stamps assigned by the PowerClerk software shall be used to place the applications in a queue.

   iii. Applicants will have twelve (12) months from the time their application is dated and time stamped to install their rooftop solar system. Should the applicant fail to have their system installation completed, they will be required to re-apply in the then-available tier. This does not apply to a system that has been completed but has not been inspected and energized by NV Energy. As applicants in higher tiers drop out, applicants in the lower tiers may move up.

c) Customers who apply for and install systems of 25 kilowatts or less on or after June 15, 2017, shall be placed in the applicable rate classes:

   i. For Nevada Power Company, the applicable rate classes are Single Family Residential (RS), Multi-Family Residential (RM), Large Residential (LRS) and General Service (GS).

ii. For Sierra Pacific Power Company, the applicable rate classes are Single Family Residential (D-1), Multi-Family Residential (DM-1) and Small General Service (GS-1).

iii. No changes to time of use rate structures are to be implemented at this time. Time of use rates will be addressed in a subsequent phase of the instant docket and Nevada Power Company's pending general rate case.

d) The excess energy credit rate for the first 80-megawatt tier shall be effective as soon as possible, but not later than December 1, 2017. Customers who apply for and complete installation of systems of 25 kilowatts or less between June 15, 2017, and November 30, 2017, shall be placed in the applicable rate class with a temporary NMR-G rate rider. Upon full implementation of the AB 405 tariff, the temporary NMR-G rate rider customers will migrate to the new tariff.

e) All NEM customer-generators whose systems have a capacity of not more than 25 kilowatts and had installed systems prior to June 15, 2017, will have the option of transitioning to monthly netting and the excess energy credit rider consistent with AB 405 and this Order. NV Energy shall have 60 days from the effective date of this Order to inform customers of this option and to create a simple and easy process for activating it.

f) The excess energy credit shall be calculated as a percentage of the sum of the Base Tariff General Rate (BTGR), the Base Tariff Energy Rate (BTER) and the Deferred Energy Accounting Adjustment (DEAA). The public policy charges relating to the Universal Energy Charge (UEC), Renewable Energy Program Rate (REPR), Temporary Renewable Energy Development rate (TRED), Energy Efficiency rates (EE) and, for Nevada Power Company only, Merrill Lynch (ML), are excluded from the calculation of the excess energy credit.

g) The PUCN finds that Nevada Power Company should address the combined customer rate classes for cost of service and rate design purposes in its currently-pending general rate case application. The procedural schedule for Docket Nos. 17-06003 and 17-06004 is amended to provide that rate design certification testimony and schedules will be filed with the PUCN by 5:00 p.m. on September 8, 2017.

h) The PUCN finds that a regulatory asset for Nevada Power Company should be established to address any under collection from June 15, 2017, and through the conclusion of the pending general rate case.

i) Nevada Power Company's regulatory asset will be for those NEM customer-generators who have installed a system of 25 kilowatts or less

after June 15, 2017. The regulatory asset shall be calculated as the difference between the general rate revenues (basic service charge + BTGR) and the cost-based rates used to establish the NMR-A rate rider. The regulatory asset shall accrue carrying charges.

j) The PUCN finds that the existing regulatory asset for Sierra Pacific Power Company in Docket Nos. 16-06006 through 16-06009 should be amended to address any under collection from June 15, 2017, until its next general rate case.

k) Sierra Pacific Power Company shall continue to calculate general rate (basic service charge + Base Tariff General Rate (BTGR)) annual revenue per NEM customer (by rate class) for those customers who installed solar energy systems under the 6 megawatt cap established in Docket No. 16-06006 and for those customers who apply for and install solar energy systems of 25 kilowatts or less on or after June 15, 2017, using the cost-based rates established in Docket Nos. 16-06006 through 16-06009. Sierra Pacific Power Company shall compare the general rate revenue collected monthly from NEM customers to the annual per-customer revenue divided by twelve. Sierra Pacific Power Company shall record the difference in a regulatory asset account with carrying charges.

l) Sierra Pacific Power Company shall calculate and track the difference between the BTER and DEAA that would be paid on delivered kilowatt-hours and the amount paid on the monthly net kilowatt-hours for those customers who installed solar energy systems under the 6 megawatt cap established in Docket Nos. 16-06006 through 16-06009 and for those customers who apply for and install solar energy systems of 25 kilowatts or less on or after June 15, 2017.

m) Sierra Pacific Power Company shall calculate and track the difference between the excess energy credit paid and the alternate credit rate identified in Item 11.ii on page 58 of the PUCNs Order in Docket Nos. 16-06006 through 16-06009 for those customers who installed solar energy systems under the 6 megawatt cap established in Docket No. 16-06006 through 16-06009 and for those customers who apply for and install solar energy systems of 25 kilowatts or less on or after June 15, 2017.

n) Nevada Power Company shall calculate and track the difference between the BTER and DEAA that would be paid on delivered kilowatt-hours and the amount paid on the monthly net kilowatt-hours for those customers currently taking service under the NMR-A rate rider who elect to transition to the new excess energy credit rider and for those customers who apply for and install solar energy systems of 25 kilowatts or less on or after June 15, 2017.

o) Nevada Power Company shall calculate and track the difference between the excess energy credit paid and the long-term avoided cost for those customers currently taking service under the NMR-A rate rider who elect to transition to the new excess energy credit rider and for those customers who apply for and install solar energy systems of 25 kilowatts or less on or after June 15, 2017.

p) NV Energy shall submit an outreach and education plan to address the changes in net metering and how these will be communicated to its customers by September 30, 2017.

q) NV Energy shall submit tariffs for Nevada Power Company and Sierra Pacific Power Company to reflect the findings in this Order by September 30, 2017, to be effective no later than December 1, 2017.

r) All NEM customer-generators shall have their basic service charge set equal to non-NEM ratepayers in their rate class.

s) NV Energy shall transmit to the PUCN the on each business day the cumulative applied-for rooftop solar megawatt capacity and, in accordance with Section 28.3(4) of AB 405, shall transmit prior to the 15th day of each month the cumulative installed rooftop solar megawatt capacity.

FUTURE PROCEEDINGS

The PUCN will hold separate and/or future proceedings as required to comply with AB 405 regarding the establishment of optional time-variant rate schedules in Section 27.1, the investigatory docket to establish a methodology to determine the impact (if any) of net metering on rates in Section 28.5(1), and the adoption of permanent regulations prescribing the form and substance for a net metering tariff and standard contract in Section 31(9).

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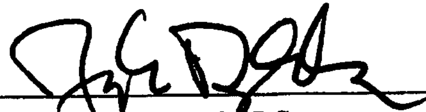
CONCLUSION

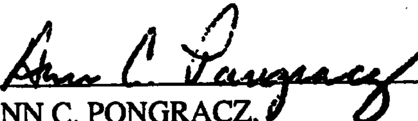
Having thoroughly reviewed and considered all papers, pleadings, arguments, transcripts, and evidentiary exhibits, the PUCN finds and concludes that NV Energy's Joint Application on AB 405 is GRANTED IN PART AND DENIED IN PART.

It is so ORDERED this on this 1st Day of September, 2017.

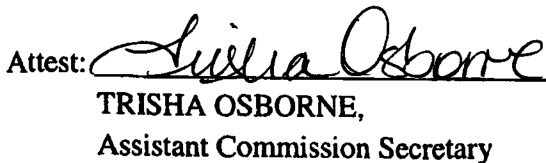
By:



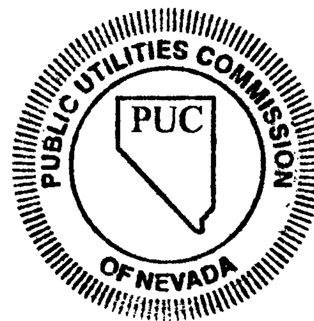
JOSEPH C. REYNOLDS,
Chairman and Presiding Officer



ANN C. PONGRACZ,
Commissioner

Attest: 

TRISHA OSBORNE,
Assistant Commission Secretary



Dated: Carson City, Nevada

9.1.17

(SEAL)