

IN THE SUPREME COURT OF THE STATE OF NEVADA

RURAL TELEPHONE COMPANY,

Case No. 69612

Appellant,

District Court Case No.  
15 OC 00188 1B

vs.

PUBLIC UTILITIES COMMISSION  
OF NEVADA, AN ADMINISTRATIVE  
AGENCY OF THE STATE OF NEVADA,

Respondent.

---

**JOINT APPENDIX**

**VOLUME 2**

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**CHRONOLOGICAL APPENDIX  
TO APPEAL FROM THE ORDER DENYING MOTION TO DISMISS  
FOR LACK OF JURISDICTION, DENYING MOTION FOR  
EXTENSION OF TIME, STRIKING OPENING BRIEF, AND  
DISMISSING PETITION FOR JUDICIAL REVIEW ENTERED  
DECEMBER 8, 2015**

<b>DOCUMENT</b>	<b>DATE</b>	<b>VOL</b>	<b>JA NO.</b>
Petition for Judicial Review	08/19/2015	1	0001-0063
Summons	08/26/2016	1	0064-0067
Motion to Seal Records	09/18/2015	1	0068-0077
Notice of Non-Opposition	09/18/2015	1	0078-0080
Stipulation to Limit Record for Judicial Review and Order Thereon	09/18/2015	1	0081-0089
Certification of Record of Docket No. 14-11006 (Excluding disc of documents and disc of confidential documents)	09/18/2015	1	0090-0099
Order Sealing Records	10/02/2015	1	0100-0101
Order on Stipulation to Limit Record for Judicial Review	10/02/2015	1	0102
Motion for Extension of Time (First Request)	10/16/2015	1	0103-0114
Opposition to Petitioner's Motion for Extension of Time and Countermotion to Dismiss	10/26/2015	1	0115-0145
Reply to Opposition to Motion for Extension of Time and Opposition to Countermotion to Dismiss	11/03/2015	1	0146-0204
Request for Submission	11/03/2015	1	0205-0207
Reply to Petitioner's Opposition to Respondent's Countermotion to Dismiss	11/13/2015	1	0208-0219
Request For Submission	11/13/2015	1	0220-0221

Rural Telephone Company's Brief in Support of Petition for Judicial Review	11/18/2015	2	0222-0271
Order Denying Motion to Dismiss for Lack of Jurisdiction, Denying Motion for Extension of Time, Striking Opening Brief, and Dismissing Petition for Judicial Review	12/08/2015	2	0272-0279
Notice of Entry of Order	12/09/2015	2	0280-0290
Notice of Appeal	01/14/2016	2	0291-0293

**ALPHABETICAL APPENDIX  
TO APPEAL FROM THE ORDER DENYING MOTION TO DISMISS  
FOR LACK OF JURISDICTION, DENYING MOTION FOR  
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Stipulation to Limit Record for Judicial Review and Order Thereon	09/18/2015	1	0081-0089
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CERTIFICATE OF APPENDIX - NRAP 30(g)(1)

In compliance with NRAP 30(g)(1), I hereby certify that this Joint Appendix consists of true and correct copies of the papers in the District Court file.

DATED this 5<sup>th</sup> day of July, 2016.

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9 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
10 IN AND FOR CARSON CITY

12 RURAL TELEPHONE COMPANY,

13 Petitioner,

14 vs.

15 PUBLIC UTILITIES COMMISSION OF  
16 NEVADA, an administrative agency of the  
State of Nevada,

17 Respondent.  
18 \_\_\_\_\_/

19 RURAL TELEPHONE COMPANY'S BRIEF  
20 IN SUPPORT OF  
21 PETITION FOR JUDICIAL REVIEW  
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1 **RURAL TELEPHONE COMPANY'S BRIEF IN SUPPORT OF**  
2 **PETITION FOR JUDICIAL REVIEW**

3 Petitioner, RURAL TELEPHONE COMPANY ("Rural" or "Petitioner"), by and  
4 through its attorneys, ALLISON MacKENZIE, LTD. hereby submits the following Brief in support  
5 of its Petition for Judicial Review.

6 **I.**

7 **JURISDICTIONAL STATEMENT**

8 Nevada Revised Statutes ("NRS") 703.373 provides for judicial review of final  
9 decisions of the Public Utilities Commission of Nevada ("Commission"). A party of record to a  
10 proceeding before the Commission is entitled to judicial review of the final decision of the  
11 Commission upon the exhaustion of all administrative remedies by the party seeking judicial review.  
12 NRS 703.373(1). A petition for judicial review must be filed within thirty (30) days after final  
13 action by the Commission on reconsideration or rehearing. NRS 703.373(3). The Commission  
14 issued its Modified Order after reconsideration on July 22, 2015. (Record on Appeal ("ROA") at  
15 Volume ("Vol.") 6, pp. 1992-2048.) Rural timely filed its Petition for Judicial Review on August  
16 19, 2015.

17 **II.**

18 **STANDARD OF REVIEW ON APPEAL**

19 Judicial review of a final decision of the Commission must be conducted by the Court  
20 without a jury and be confined to the record. NRS 703.373(8). NRS 703.373(9) provides that the  
21 final decision of the Commission shall be deemed reasonable and lawful until reversed or set aside in  
22 whole or in part by the Court. The burden of proof is on the petitioner to show that the final decision  
23 is invalid pursuant to NRS 703.373(11).

24 NRS 703.373(11) provides that the Court shall not substitute its judgment for that of  
25 the Commission as to the weight of the evidence on questions of fact. The Court may affirm the  
26 decision of the Commission or set it aside in whole or in part if substantial rights of the petitioner  
27 have been prejudiced because the final decision of the Commission is:

- 28 (a) In violation of constitutional or statutory provisions;

- (b) In excess of the statutory authority of the Commission;
- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;
- (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) Arbitrary or capricious or characterized by abuse of discretion.

The Court reviews a Commission decision for legal error or abuse of discretion. Nevada Power Co. v. Public Utilities Com'n of Nevada, 122 Nev. 821, 834, 138 P.3d 486, 495 (2006) citing Nevada Power Co. v. Dist. Ct., 120 Nev. 948, 958, 102 P.3d 578, 585 (2004); NRS 703.373. The Court will uphold a Commission decision so long as it is just and reasonable, "within the framework of the law and based on substantial evidence in the record". Id., (quoting Silver Lake Water v. Public Serv. Com'n, 107 Nev. 951, 954, 823 P.2d 266, 268 (1991)). In the absence of an abuse of discretion on the part of the utility and in the absence of a showing of lack of good faith, inefficiency or improvidence, and if the amounts in question are reasonable and are actually paid, the Commission should not substitute its judgment for that of management. Public Serv. Comm'n v. Elv Light and Power Company, 80 Nev. 312, 324, 393 P.2d 305, 311 (1964). Knowledge acquired over an extended period of rate regulation is not a substitute for evidence. Id., 80 Nev. at 329, 393 P.2d at 314. The Court has the duty to correct an arbitrary reduction of a rate base in order to prevent confiscation of a utility company's property. Bell Tel. Co. v. Public Serv. Com'n, 70 Nev. 25, 34, 42, 253 P.2d 602, 606, 610 (1953).

Rural is not asking the Court in this appeal to reweigh the evidence or substitute its judgment for that of the Commission on factual questions. Rural's issues on appeal relate to the Commission's failure to follow the law. Because the Commission failed to follow the law, Rural's rights have been prejudiced by the Commission's decision and Rural's Petition for Judicial Review should be granted.

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III.

**STATEMENT OF THE ISSUES**

The issues presented by this request for judicial review are as follows:

(a) Whether Rural's due process rights were violated by the Commission's policy advisor's adversarial, investigatory and prosecutorial role during the hearing in light of the prohibition contained in NRS 233B.122 and the Commission's other arbitrary and capricious actions and unlawful procedure as shown in the record in Docket No. 14-11006.

(b) Whether the Commission erred by reallocating expenses incurred by Rural in the test year from regulated services to non-regulated services based on a reallocation methodology using a proxy prepared almost twenty years ago for two other large telecommunication providers based on their specific costs for different products and services.

(c) Whether the Commission erred in setting Rural's rates in accordance with the "sharing" methodology proposed by Staff and adopted as new Commission policy not found in previous Commission decisions or lawfully adopted by the Commission by regulation.

(d) Whether the Commission improperly excluded Telecom Plant Under Construction ("TPUC") from rate base in this case.

IV.

**STATEMENT OF THE CASE**

On November 7, 2014, Rural filed with the Commission an Application, designated as Docket No. 14-11006, for authority to establish its annual revenue requirement for telephone service rates; establish new charges, fees, and rules for telephone customers; adjust intrastate access charges; establish a draw from the Nevada Universal Service Fund ("NUSF"); reflect changes in the cost of capital; modify depreciation rates; and for other relief properly related thereto ("Application"). (ROA at Vol. 2, pp. 159-377.) On December 31, 2014, Rural filed an Amendment to its Application ("Amended Application"). (ROA at Vol. 2, pp. 378-415.)

In its Application, Rural requested certain interim rate relief to avoid the loss of federal high cost support which the Commission denied on January 30, 2015. (ROA at Vol. 1, pp. 96-107.)

1 On April 16 and 17, 2015, the Presiding Officer held a hearing on Rural's Amended  
2 Application at which Rural and the Regulatory Operations Staff of the Commission ("Staff")  
3 participated. (ROA at Vol. 3, pp. 1184-1423; Vol. 7, pp. Conf. 259-337.) Prior to the hearing, Rural  
4 timely filed motions to strike certain testimony of the Staff witnesses as required by the  
5 Commission's rules of practice and procedure to preserve its objections to the testimony. (ROA at  
6 Vol. 1, pp. 131-139.) At the hearing, the Presiding Officer denied Rural's motions to strike certain  
7 testimony of the Staff witnesses. (ROA at Vol. 3, p. 1258.) A written Order was entered by the  
8 Presiding Officer on May 27, 2015. (ROA at Vol. 6, pp. 1707-1719.)

9 At the hearing on April 17, 2015, one of the policy advisors of the Commission  
10 sitting on the hearing panel aggressively questioned Rural and requested certain information from  
11 Rural to be submitted as late filed exhibits. (ROA at Vol. 7, pp. Conf. 307-311, 313, 315, 319-320,  
12 322, 325.) Rural's case, its direct and rebuttal evidence, and Staff's case, its direct evidence, were  
13 completed on April 17, 2015. The Presiding Officer subsequently issued Procedural Order No. 3 on  
14 April 21, 2015 requiring Rural to submit the information on May 1, 2015. (ROA at Vol. 4, pp.  
15 1424-1429.) On April 24, 2015 Rural filed a Motion to Strike and Motion to Disqualify to preserve  
16 its objections on the record to the Commission's actions and procedure. (ROA at Vol. 4, pp. 1430-  
17 1453.) The Motion to Disqualify was based on the policy advisor's violation of NRS 233B.122 by  
18 acting in an adversarial and prosecutorial role while performing an adjudicatory function, all in  
19 violation of Rural's due process rights. (ROA at Vol. 4, pp. 1436-1438.) The Presiding Officer  
20 issued Procedural Order No. 5 on May 4, 2015, ordering Rural to submit additional information prior  
21 to the May 6, 2015 continued hearing. (ROA at Vol. 4, pp. 1583-1588.)

22 On May 6, 2015, the Presiding Officer held a continued hearing at which Rural and  
23 Staff participated. (ROA at Vol. 5, pp. 1611-1665; Vol. 7, pp. Conf. 435-555.) At the beginning of  
24 the continued hearing the Presiding Officer denied Rural's Motion to Strike and Motion to  
25 Disqualify. (ROA at Vol. 5, pp. 1619-1620.) Rural's continuing objection to the procedure and  
26 admittance of the evidence was noted for the record. (ROA at Vol. 5, pp. 1621-1623; Vol. 7, pp.  
27 Conf. 551-552.) Formal orders denying Rural's Motion to Strike and Motion to Disqualify were  
28 entered by the Presiding Officer on May 27, 2015. (ROA at Vol. 6, pp. 1720-1734.)

1 On May 29, 2015, the Commission issued an Order granting Rural's Amended  
2 Application as modified by the Commission's Order ("Order"). (ROA at Vol. 6, pp. 1735-1791.)  
3 The Commission's Order granted Rural's Amended Application in part and denied recovery of  
4 certain expenses incurred by Rural's regulated operations during the test year, disallowed certain  
5 investment Rural proposed to be recovered in rate base and adopted monthly rates for Rural's  
6 customers higher than proposed by Rural in its Amended Application based on a rate design which  
7 adopted as new policy a "sharing" principle proposed by Staff. Id.

8 On June 12, 2015, Rural filed a Petition for Reconsideration with the Commission  
9 and Staff filed a Petition for Clarification. (ROA at Vol. 6, pp. 1871-1890.)

10 On July 22, 2015, the Commission issued its Order granting Rural's Petition for  
11 Reconsideration in part and denying it in part. (ROA at Vol. 6, pp. 1913-1991.) On reconsideration,  
12 the Commission essentially affirmed its previous Order issued May 29, 2015 with regard to the  
13 issues raised by Rural in its Petition for Reconsideration. (ROA at Vol. 6, pp. 1918-1933.) Staff's  
14 Petition for Clarification was granted. (ROA at Vol. 6, pp. 1932-1934.)

15 On July 22, 2015, the Commission issued its Modified Order. (ROA at Vol. 6, pp.  
16 1992-2048.)

17 V.

18 **STATEMENT OF FACTS, PRIOR PROCEEDINGS**  
19 **AND GENERAL RATEMAKING PRINCIPLES**

20 Rural is an Idaho corporation qualified and doing business as a foreign corporation  
21 under the laws of the State of Nevada. (ROA at Vol. 2, p. 165.) Rural is a public utility as defined  
22 in NRS Chapter 704, subject to the jurisdiction of the Commission. Id. Rural holds Certificate of  
23 Public Convenience and Necessity designated CPC 854, Sub 3 issued by the Commission  
24 authorizing Rural to provide local exchange telephone service in portions of rural Washoe County  
25 and rural Elko County, Nevada. (ROA at Vol. 2, pp. 165-166.) Rural is a "rural telephone  
26 company" under federal law and a small-scale provider of last resort ("SSPLR") and an eligible  
27 telecommunications carrier under Nevada law. (ROA at Vol. 2, p. 167.) Rural serves approximately  
28



1 817 residential and business customers in Nevada. (ROA at Vol. 2, p. 167.) Rural has been a public  
2 utility in Nevada since approximately 1981. (ROA at Vol. 2, p.166.)

3 In October, 2003, the Commission opened an investigation into the rates and charges  
4 of Rural designated as Docket No. 03-10004. (ROA at Vol. 2, p. 604.) On January 6, 2005, the  
5 Commission issued its Compliance Order in Docket No. 03-10004. (ROA at Vol. 2, pp. 604-616.)  
6 In its Compliance Order, the Commission noted that Staff expressed concerns with Rural's affiliate  
7 transactions, however Staff did not propose any adjustments with respect to these transactions.  
8 (ROA at Vol. 2, pp. 612-613.) In its Compliance Order, the Commission also noted that Staff  
9 expressed concerns with perceived accounting irregularities. (ROA at Vol. 2, p. 613.) Staff  
10 contended Rural did not allocate a fair share of corporate common cost to its other operations. Id.  
11 Rural's witness testified Rural uses a non-regulated factor to allocate common activity costs to non-  
12 regulated operations in accordance with the Federal Communications Commission ("FCC") cost  
13 allocation rules and the Uniform System of Accounts. Id. The Commission specifically found that  
14 the methodology used by Rural to allocate common costs to non-regulated activities was reasonable.  
15 Id. In this case, Rural allocated common costs to non-regulated activities in accordance with the  
16 FCC cost allocation rules and the Uniform System of Accounts per the Commission's approval in  
17 Docket No. 03-10004. (ROA at Vol. 2, pp. 477-479, 481-482.)

18 In Docket No. 03-10004, the Commission also considered Construction Work in  
19 Progress ("CWIP") or Telecom Plant Under Construction ("TPUC") for Rural's fiber optic cable  
20 project spanning Rural's North Fork exchange and into Frontier's Elko Exchange. (ROA at Vol. 2,  
21 p. 609.) In its Compliance Order issued in Docket No. 03-10004, the Commission stated it would  
22 consider allowing CWIP in rate base if it was to be in service before the new rates were put into  
23 effect. However, because Rural could not give the Commission a completion date for the fiber optic  
24 project at that time, the Commission disallowed CWIP from rate base. Id.

25 In this case, Rural did give the Commission a completion date for its North Fork  
26 exchange to Elko fiber optic cable project, December of 2014. (ROA at Vol. 2, p. 876.) The fiber  
27 optic project is used and useful in providing local telephone service to Rural's Nevada customers.  
28 Id. The plant was in service before the new rates in this case went into effect. (ROA at Vol. 2, pp.

1 878-879.) Staff did not dispute these facts nor is there any evidence in the record to dispute these  
2 facts.

3 Staff testified it performed a comprehensive evaluation of all sales and expenses, cost  
4 of capital, taxes, rate base, and various other factors to arrive at a revenue requirement for Rural.  
5 (ROA at Vol. 2, p. 911.) The difference between the calculated revenue requirement and Staff's and  
6 Rural's test period revenue requirement produces a revenue deficiency figure. (ROA at Vol. 2, pp.  
7 911, 942.) In other words, this is the amount that revenue needs to increase in order to provide Rural  
8 a fair rate of return on its investment in utility rate base. (ROA at Vol. 2, p. 911.) The Commission  
9 authorized Rural to withdraw funds from the NUSF in its Modified Order to offset its revenue  
10 deficiency. (ROA at Vol. 6, pp. 2046-2047.)

## 11 VI.

### 12 ARGUMENT

#### 13 A. RURAL'S DUE PROCESS RIGHTS WERE VIOLATED BY THE 14 COMMISSION POLICY ADVISOR'S ADVERSARIAL, INVESTIGATORY 15 AND PROSECUTORIAL ROLE DURING THE HEARING WHEN HE ALSO 16 ACTED AS AN ADJUDICATOR.

##### 17 1. NRS 233B.122 prohibits an agency member from acting as an 18 investigator or prosecutor and an adjudicator in the same case.

19 The Commission's Presiding Officer, Commissioner Rebecca Wagner, was assisted  
20 at the hearing and in this proceeding by her policy adviser, Mr. Steven Traxler ("Mr. Traxler").  
21 (ROA at Vol. 3, p. 1193.) Pursuant to the Commission's website, Mr. Traxler is part of the Policy  
22 Analysis Division of the Commission, described as follows:

23 "Policy Analysis is responsible for providing policy, technical support and  
24 advice to the Commissioners on various aspects of utility issues including  
25 telecommunications, electric, gas, water and sewer. This involves  
26 evaluating, analyzing and interpreting utility data; drafting opinions,  
27 orders and regulations and ensuring they are technically accurate,  
28 consistent and complete; and providing policy and technical assistance to  
the Commission during hearings and rulemaking sessions. The Policy  
Analysis also provides policy and technical assistance to General Counsel  
during all proceedings before state and federal courts as well as federal  
regulatory agencies."<sup>1</sup>

<sup>1</sup> See <http://puc.nv.gov/>. In contrast, the Commission's website describes the Staff's function as follows: Regulatory  
Operations Staff ("Staff") appears and participates in cases before the Commission as an independent party, balancing  
the interests of ratepayers and utility shareholders to ensure safe and reliable service at a reasonable cost. Id.

1 Mr. Traxler's questions to Rural and Staff witnesses at the hearing in this matter and  
2 his request for exhibits to supplement the record as set forth in Procedural Order Nos. 3 and 5  
3 advocated a particular result, that certain affiliate transactions occurring in 1999 and 2001  
4 respectively were not appropriate or not properly recorded. (ROA at Vol. 3, pp. 1277-1287, 1306-  
5 1309, 1403-1409; Vol. 4, pp. 1427-1428, 1588; Vol. 5, pp. 1651-1652, 1653-1663; Vol. 7, pp. Conf.  
6 276-288, 302-336, 445-454, 457-459, 463-475, 477-494, 511-516, 518, 520-545, 548-551.)

7 NRS 233B.122(1) states unequivocally that "no agency member who acts as an  
8 investigator or prosecutor in any contested case may take any part in the adjudication of such case."  
9 Disqualification is required of any agency member who acts as an investigator or prosecutor and  
10 then intends to take any part in the adjudication of the matter. NRS 233B.122(2) provides for the  
11 replacement of any officer of an agency who disqualifies himself or herself or is disqualified from  
12 participating in the adjudication of any contested case in which a decision will be rendered which is  
13 subject to judicial review. Mr. Traxler is a policy advisor with the Commission, a member of the  
14 hearing panel in this case, and a member of said agency. (ROA at Vol. 3, p. 1193.) There is no  
15 question that this matter is a contested case. See NRS 233B.032. Mr. Traxler's questions and  
16 request for information crossed the line such that he was improperly acting as a prosecutor in an  
17 adversarial role in this case while taking part in the adjudication of this matter.

18 There is no case law in Nevada directly on point but the Nevada Supreme Court has  
19 commented on this issue. The Court stated that considering the Legislature's adoption of NRS  
20 233B.122, instances can be imagined in which an agency member participating in an adjudicatory  
21 function, "could be seen to have crossed the line into the prosecutorial and adversarial role" and, in  
22 such a case, "the hearing would have to be invalidated by reason of [violations of NRS 233B.122]  
23 but also because of the inherent unfairness of a hearing officer's acting in a prosecutorial role."  
24 State Dept. of Motor Vehicles v. Thompson, 102 Nev. 176, 178, 717 P.2d 580, 581 (1986)(The  
25 Court held a hearing officer did not act in a prosecutorial role requiring disqualification in  
26 producing, marking and offering Department exhibits and questioning witnesses with questions  
27 requiring a narrative response).

Further, courts in California, which have adopted an Administrative Procedure Act with language similar to that of NRS 233B.122(1), have recognized that “the combination of prosecutorial and adjudicative functions is the most problematic combination for procedural due process purposes.” Nightlife Partners v. City of Beverly Hills, 108 Cal.App.4<sup>th</sup> 81, 93 (2003) (citing Howitt v. Superior Court, 3 Cal.App.4<sup>th</sup> 1575, 1585 (1992)). That court went on to note that “a prosecutor, by definition, is a partisan advocate for a particular position or point of view” and that “such a role is inconsistent with the objectivity expected of administrative decision-makers.” Id. In the Nightlife Partners v. City of Beverly Hills case, the California court held the plaintiffs were denied the minimum constitutional requirements of due process in an administrative hearing where a city attorney advising the hearing officer had represented the city in its initial denial of plaintiffs’ permit renewal application.

Botsko v. Davenport Civil Rights Com’n, 774 N.W. 2d 841 (2009) provides a comprehensive overview of the law relating to due process claims in administrative proceedings. Id. at 847-853. Due process always involves a constitutional floor of a “fair trial in a fair tribunal”. Id. at 848 citing Withrow v. Larkin, 421 US 35, 46, 95 S.Ct. 1456, 1464 (1975). The most serious problem in the context of combining investigative, prosecutorial and adjudicative rules is where the same person within an agency performs both *prosecutorial* and *adjudicative* roles. Id. at 849. “The primary purpose separating prosecutorial from adjudicative functions is to screen the decisionmaker from those who have a ‘will to win’ – ‘a psychological commitment to achieving a particular result because of involvement on the agency’s team.’” Id., citing *Michael Asimow, When the Curtain Falls: Separation of Functions in the Federal Administrative Agencies*, 81 Colum. L.Rev. 759, 773 (1981). The Botsko court also quoted with approval the following language from Howitt v. Superior Court, 3 Cal.App.4<sup>th</sup> 1575, 1585, 5 Cal.Rptr.2d 196, 202 (1992):

“A different issue is presented, however, where *advocacy* and decision-making roles are combined. By definition, an advocate is a partisan for a particular client or point of view. The role is inconsistent with true objectivity, a constitutionally necessary characteristic of an adjudicator.”

The Botsko court stated:

“Many of these cases find that such a combination poses so great a risk that due process has been violated without a showing of actual prejudice.

1 See, e.g., *Gonzales v. McEuen*, 435 F.Supp. 460, 465 (D.C.Cal.1977);  
2 *Dorr v. Wyo. Bd. of Certified Pub. Accountants*, 21 P.3d 735, 745  
3 (Wyo.2001). The ordinary requirement of actual bias or prejudice in  
4 separation of functions challenges does not apply because the risk of  
5 impartiality is thought to be too great when an advocate with the "will to  
6 win" also has a role in the adjudication of the dispute. *Nightlife Partners*  
7 *v. City of Beverly Hills*, 108 Cal.App.4<sup>th</sup> 81, 133 Cal.Rptr.2d 234, 246  
8 (2003).

9 Botsko, 774 N.W. 2d at 850. Finally, the Botsko court observed:

10 On the other hand, as in *Nightlife*, when a staff member becomes involved  
11 in the plaintiffs' litigation strategy or assumes a personal commitment to a  
12 particular result, he or she becomes an adversary with the "will to win."  
13 Asimow, 81 Colum. L.Rev. at 778. In *Withrow* terminology, when an  
14 agency staffer functions as an advocate, experience teaches that the  
15 probability of actual bias is too high to allow the staffer to also participate  
16 in the adjudicative process. See, e.g., *Gonzales*, 435 F.Supp. at 464-65  
17 (finding procedural due process violation without showing of bias where  
18 school district attorneys acted as prosecutors and then as legal advisors to  
19 the board in school expulsion matter); *Schmidt v. Indep. Sch. Dist. No. 1*,  
20 *Aitkin*, 349 N.W. 2d 563, 568 (Minn.Ct.App. 1984) (finding procedural  
21 due process violation where counsel presented case for terminating  
22 teacher, advised board chairman on legal rulings, and drafted and  
23 presented the findings of fact and conclusions of law).

24 Id. at 852.

25 As the transcript and Procedural Order No. 3 reveal, Mr. Traxler requested the  
26 following information to be submitted by Rural as late filed exhibits:

- 27 1. Any evidence of the real estate lease provided in the Confidential  
28 Attachment NMM-24 that was an exhibit in the record in Docket No. 03-  
10004.
2. Any evidence of leases associated with the equipment listed in the  
Confidential Attachment NMM-34 that was an exhibit in the record in  
Docket No. 03-10004.
3. The real property appraisal report prepared by Analytix Appraisal  
Group for Rural in March of 1999.
4. Rural's 1999 Annual Report filed with the Commission.
5. Documents reflecting the accounting entries by Rural of the sale of  
the warehouse and Glens Ferry, Idaho, office building in July of 1999.  
Include (1) the impact on both the buildings account and accumulated  
depreciation – buildings account and (2) the actual initial in-service dates  
for the warehouse and the office building, if the actual in-service dates are  
not known, provide the approximate year of in-service for each building.

6. Written account by an independent third party consultant that provided the rationale for the sale of the warehouse and Glens Ferry, Idaho, office building in July of 1999.

7. Supporting analysis for the \$3,000.00 monthly lease rate of the Central Office building performed prior to the execution of the Addendum to Commercial Lease Agreement, provided as part of the Confidential Attachment NMM-24, which supports Rural's decision to lease the building.

8. Rate of return assumptions underlying the \$3,000.00 monthly lease rate of the Central Office building, including information about the cost of the building.

9. Any documents demonstrating the basis for the \$16.80 residential service rate Rural had in place prior to the 2005 rate decrease.

(ROA at Vol. 4, pp. 1427-1428.) Procedural Order No. 5 required Rural to present additional information to the Commission prior to the May 6, 2015 hearing regarding the affiliate transactions: "... data indicating the original cost of the Central Office building and any other information pertinent to its decision to lease the Central Office Building, rather than purchase or construct, at the time of executing the Addendum to Commercial Lease Agreement, provided as part of the Confidential Attachment NMM-24." (ROA at Vol. 4, p. 1588).

The hearing was continued for another day so Mr. Traxler could question Rural witnesses related to the late filed exhibits. (ROA at Vol. 3, pp. 1412-1413, 1415-1416.) Mr. Traxler started the third day of the hearing with his questions to Rural witnesses related to the late filed exhibits. (ROA at Vol. 5, p. 1622.) The Presiding Officer stated regarding the procedure that day: "Mr. Traxler will be walking through the documents that were filed to make sure we understand." Id. Essentially all of the questions asked of Rural witnesses on the third day of the hearing were asked by Mr. Traxler. The hearing went from approximately 10:00 a.m. to approximately 2:30 p.m. (ROA at Vol. 5, p. 1612; Vol. 7, p. Conf. 554.) None of the information required to be provided by Rural by Procedural Orders No. 3 and No. 5 related to Rural's Amended Application or any adjustments proposed by Staff. For the most part, Mr. Traxler was not asking questions requiring a narrative response or clarification questions. (See *e.g.*, ROA at Vol. 7, pp. Conf. 304-307, 312-313, 321, 324, 326, 331-332, 334-335, 480-488, 490-494, 515-516, 520-531, 534-539.)

1 Here, Mr. Traxler, an advisor to the Presiding Officer, took it upon himself to  
2 advocate for a particular position in the hearing in this matter. Mr. Traxler questioned several Staff  
3 witnesses at the hearing on April 16-17, 2015 with questions that can only be interpreted to have the  
4 intent of coaxing said witnesses into taking the position that certain lease arrangements between  
5 Rural and its affiliates for office space and certain equipment used by Rural ought to be accounted  
6 for differently than they have been since 1999 and 2001, respectively. (ROA at Vol. 3, pp. 1277-  
7 1287, 1306-1309; Vol. 7, pp. Conf. 276-288.) During the rebuttal portion of the hearing, Mr. Traxler  
8 offered a similar line of questioning to Rural's witnesses. (ROA at Vol. 3, pp. 1403-1409; Vol. 7,  
9 pp. Conf. 302-336.) The third day of the hearing was more of the same. (ROA at Vol. 5, pp. 1651-  
10 1652, 1653-1663; Vol. 7, pp. Conf. 445-454, 457-459, 463-475, 477-494, 511-516, 518, 520-545,  
11 548-551.)

12 Mr. Traxler allowed the Staff witnesses to provide surrebuttal testimony to Rural's  
13 rebuttal testimony. (ROA at Vol. 3, pp. 1277-1281, 1285-1287, 1309-1310; Vol. 7, pp. Conf. 276-  
14 288.) Surrebuttal testimony is not allowed by the Commission's rules of practice and procedure as  
15 Rural has the burden of proof. See NAC 703.695(1)(a). Further, NAC 703.695(2) provides that  
16 questions to "clarify testimony" provided by witnesses may be asked at any time by any policy  
17 advisor for the Commission. As the record on appeal above indicates, orders to produce evidence  
18 and questions eliciting testimony for matters not at issue by Rural's Application or by the parties to  
19 the case, are not questions to "clarify testimony". The record shows Mr. Traxler also sought to  
20 rehabilitate Staff witnesses after Rural's cross-examination and could not refrain from asking a Rural  
21 witness more questions after Rural's counsel's redirect. (ROA at Vol. 3, pp. 1337-1339; Vol. 5, pp.  
22 1651-1652.)

23 Mr. Traxler was advocating a position with a "will to win" in addition to any  
24 positions put forth by witnesses for Staff. An example of Mr. Traxler's "will to win" is found at  
25 ROA at Vol. 7, pp. Conf. 547-551, where Mr. Traxler attempts to rehabilitate the testimony of  
26 Rural's witness after redirect questions from Rural's counsel concerning one of Mr. Traxler's  
27 hypotheticals. None of the direct prepared testimony for any of Staff's witnesses made any  
28 recommendations to the Commission that adjustments be made for the aforementioned affiliate

1 transactions.<sup>2</sup> Staff's own attorney offered no redirected questioning to her own witnesses of these  
2 issues or any cross examination thereof to Rural's witnesses. Instead, Mr. Traxler took upon himself  
3 a prosecutorial role to advocate for accounting adjustments not at issue by the parties to this case.  
4 Apparently he disagreed with the parties' positions in this contested matter and the parties' position  
5 in the previous docket that no adjustments to the 1999 and 2001 affiliate transactions were  
6 warranted. Advocating such a position is inherently unfair to Rural as discussed above.

7 Mr. Traxler's conduct crossed the line as he was acting in an adversarial and  
8 prosecutorial role. Actual bias or prejudice is not required to be shown. Because the probability of  
9 actual bias is too high, Mr. Traxler could not also participate in the adjudicative process. Botsko,  
10 774 N.W. 2d at 852. Mr. Traxler advised the Commissioner who presided over Rural's hearing. He  
11 combined his adjudicatory role with a prosecutorial role. His role was inconsistent with the  
12 objectivity expected of administrative decision makers. Having adopted a prosecutorial and  
13 adversarial role, Mr. Traxler was barred from taking part in the adjudication of this matter by NRS  
14 233B.122(1) in violation of Rural's procedural due process rights. Therefore, Rural respectfully  
15 requests that the Court rule Mr. Traxler's conduct disqualified him from participating in the  
16 adjudication of this matter and invalidated the hearing on Rural's Application.

17 2. The other unlawful procedures in this case underscore Mr. Traxler's  
18 adversarial and prosecutorial role.

19 a. Mr. Traxler's inquiries were barred as a matter of law by the doctrine  
20 of administrative *res judicata*.

21 Principles of *res judicata* prohibited the Commission from reopening and re-litigating  
22 issues that were investigated and raised by Staff and addressed by the Commission in a prior  
23 contested hearing in Docket No. 03-10004. *Res judicata* is the legal principle that a final judgment  
24 on the merits by a tribunal having jurisdiction is conclusive between parties to a proceeding as to all  
25 matters that were or could have been litigated in that proceeding. The Nevada Supreme Court has  
26 held that the principle of *res judicata* applies to administrative proceedings. See Britton v. City of  
27 North Las Vegas, 106 Nev. 690, 692-93, 799 P.2d 568, 569 (1990). Further action to re-litigate the  
28 same issues or issues that could have been litigated is barred as a matter of law.

<sup>2</sup> This is consistent with the position Staff took in Docket No. 03-10004, wherein no proposals were made to adjust for these very same affiliate transactions.



1 In order for the doctrine to apply, three elements must be present: (1) the issue in the  
2 prior adjudication is identical to the issue presented here; (2) there must have been a final judgment  
3 on the merits in the prior adjudication; and (3) the parties must be the same in the current and prior  
4 adjudications. Id. (citing Horvath v. Gladstone, 97 Nev. 594, 596, 637 P.2d 531, 533 (1981)).<sup>3</sup>

5 The newly created and unnoticed issues presented by Mr. Traxler's line of questions  
6 and demand for information to supplement the record involved whether the affiliate transactions  
7 which occurred in 1999 and 2001 were appropriate and properly recorded. (ROA at Vol. 3, pp.  
8 1277-1287, 1306-1309, 1403-1409; Vol. 4, pp. 1427-1428, 1588; Vol. 5, pp. 1651-1652, 1653-1663;  
9 Vol. 7, pp. Conf. 276-288, 302-336, 445-454, 457-459, 463-475, 477-494, 511-516, 518, 520-545,  
10 548-551.) Those affiliate transactions were at issue in Docket No. 03-10004. In that docket, Staff  
11 Financial Analyst, Jeffrey Galloway, investigated and analyzed the same affiliate transactions raised  
12 in the current docket by Mr. Traxler's line of questions. (ROA at Vol. 5, pp. 1600-1602.) Neither  
13 Mr. Galloway nor anyone else with Staff proposed any adjustments to the affiliate transactions, just  
14 as Staff refrained from doing so in Docket No. 14-11006. Staff, in the earlier docket, certainly could  
15 have proposed adjustments, but chose not to. Thus, the issue of adjustments to affiliate transactions  
16 was one that was or could have been litigated in the prior adjudication.

17 The Commission entered a final order in Docket No. 03-10004 in which it (i) noted  
18 Staff's concerns with the affiliate transactions, (ii) noted that no proposed adjustments to the affiliate  
19 transactions were made, and (iii) made no adjustments to the affiliate transactions. (ROA at Vol. 2,  
20 p. 612.) There is no question that the prior adjudication was finally decided on the merits. (ROA at  
21 Vol. 2, pp. 604-616.)

22 Finally, Rural and Staff are the same parties in this and the prior adjudication before  
23 the Commission. Therefore, all three prongs of the *res judicata* inquiry are satisfied and the  
24 Commission was precluded from reopening the inquiry into the affiliate transactions in this  
25 proceeding.

26 Instead of stopping its policy advisor from re-litigating issues Staff chose not to  
27 address in Docket No. 03-10004 and Docket No. 14-11006, the Presiding Officer allowed Mr.

28 <sup>3</sup> Collateral estoppel would also apply. See Roberts v. Las Vegas Valley Water Dist., 849 F. Supp. 1393, 1400 (D.C. Nevada 1994).

1 Traxler to continue prosecuting the issues against Rural which should have been barred by the  
2 doctrine of *res judicata*. The unlawful procedure was brought to the Commission's attention by  
3 Rural's Motion to Disqualify and Motion to Strike filed during the course of the proceeding. (ROA  
4 at Vol. 4, pp. 1430-1453.) Rural attempted to stop the unlawful procedure by Mr. Traxler during the  
5 hearing so it could be corrected, but the Presiding Officer denied Rural's Motions. (ROA at Vol. 5,  
6 pp. 1619-1620.)

7 **b. The Commission's notice of the matters to be considered in Docket No.**  
8 **14-11006 did not include the issues prosecuted by Mr. Traxler.**

9 On January 9, 2015, the Commission issued a public notice setting this matter for  
10 hearing on April 16-17, 2015 (the "Notice"). (ROA at Vol. 1, pp. 2-6.) The Notice outlines Rural's  
11 Application and the matters that were to be considered at the hearing. *Id.* The Notice also indicated  
12 that Rural's Application is available for viewing. *Id.* There is nothing in Rural's Application or in  
13 the Notice to indicate that the matter of affiliate transactions occurring in 1999 or 2001 or that had  
14 already been adjudicated in Docket No. 03-10004 were going to be considered in the hearing in this  
15 matter.

16 Further, the questioning by Mr. Traxler and supplemental information ordered to be  
17 submitted by the Commission were outside the issues presented by Rural and Staff in the docket and  
18 outside the record evidence before the Commission presented by Rural and Staff. The Commission  
19 introduced evidence into the record not offered by any party.<sup>4</sup> The purpose of this evidence was to  
20 support Mr. Traxler's questions of the parties' witnesses - - - not evidence to assist in clarifying any  
21 testimony or evidence presented by Staff or Rural. Rather, such questioning and supplemental  
22 information advocated Mr. Traxler's belief that affiliate transactions occurring in 1999 and in 2001  
23 should be part of this record, after all evidence pertinent to the issues of Rural's Application and this  
24 hearing had been submitted by Rural and Staff. Because this questioning and evidence was being  
25 elicited and presented during the Commission's questioning by Mr. Traxler of Rural's and Staff's  
26 witnesses and the Commission was not a party to this proceeding, Rural had no notice of where the  
27 Commission was going on these issues, no understanding of what impact the Commission's position

28 <sup>4</sup> The Commission wanted these exhibits to be offered by Rural. Rural only provided the exhibits because it was  
ordered to submit them. (ROA at Vol. 5, p. 1625.) Rural noted this on the record. (ROA at Vol. 5, pp. 1625, 1638.)

1 may have on the revenue requirement requested by Rural in its Application and Rural had no  
2 opportunity to defend or rebut whatever adjustment the Commission was contemplating on these  
3 issues.

4 Relevant portions of NRS 233B.121 require the notice of hearing in a contested case  
5 contain reference to particular statutes and authorities involved in the matter and a short and plain  
6 statement of all matters to be considered at the hearing. Neither Rural nor the public were put on  
7 notice that consideration of affiliate transactions occurring in 1999 and 2001 would be considered or  
8 addressed and such matters were not properly before the Commission. See Southwest Gas v. Public  
9 Serv. Com'n, 86 Nev. 662, 669, 474 P.2d 379 (1970). (Commission required to give adequate notice  
10 to a utility before the commencement of a hearing of matters to be considered and matters not  
11 noticed are not properly before the Commission.) To the extent the 1999 and 2001 affiliate  
12 transactions were peripherally mentioned in Staff's prepared testimony, Rural moved to strike such  
13 testimony as not relevant prior to the hearing as required by the Commission's rules of practice and  
14 procedure. (ROA at Vol. 1, pp. 137-138.) Thus, their consideration at this hearing was improper  
15 and another example of the unlawful procedure of the Commission and unlawful nature of Mr.  
16 Traxler's conduct at the hearing.

17 **B. THE COMMISSION ERRED BY REALLOCATING EXPENSES FROM**  
18 **REGULATED SERVICES TO NON-REGULATED SERVICES.**

19 The Commission discussion of the reallocation of expenses from regulated services to  
20 non-regulated services is found at Paragraphs 106-110 of its Modified Order. (ROA at Vol. 6, pp.  
21 2033-2034.) The Commission adopted Staff's reasoning that Rural failed to directly assign and  
22 allocate sufficient avoidable cost expense to non-regulated DSL Internet service and found  
23 appropriate Staff's approach of applying the avoided cost allocation factor to all interstate operating  
24 expenses. (ROA at Vol. 6, pp. 2033-2034.) The Commission's determination is unlawful for  
25 several reasons.

26 First, the Commission previously recognized that the methodology used by Rural to  
27 allocate common costs to non-regulated activities was reasonable based upon the FCC cost  
28 allocation rules and the Uniform System of Accounts. (ROA at Vol. 2, pp. 613, 886-887.) In fact,

1 NAC 703.25032 in the general provisions for changes in rates of telecommunication providers  
2 defines the Uniform System of Accounts. The provisions of NAC 703.25032 apply to a rate case  
3 filed by a small scale provider of last resort per NAC 703.2504(1). The Commission adopted by  
4 reference the Uniform System of Accounts for Class A and B Telephone Companies. NAC 704.645.  
5 Rural is a Class B Telephone Company. (ROA at Vol. 2, p. 181.)

6 In this case, Rural used the non-regulated factor to allocate common activity costs to  
7 non-regulated operations in accordance with the FCC cost allocation rules and the Uniform System  
8 of Accounts as recognized by the Commission as appropriate in Rural's last rate case docket. (ROA  
9 at Vol. 2, pp. 477-479, 481-482, 999-1000.) In this docket, without notice to Rural that it was  
10 adopting a new methodology, and in addition to following the FCC cost allocation rules and the  
11 Uniform System of Accounts, the Commission further allocated common activity costs to non-  
12 regulated operations by applying a new avoided cost allocation factor. (ROA at Vol. 6, p. 2034.)  
13 The adoption of a new standard, not set forth anywhere or properly adopted by the Commission, to  
14 apply to Rural during the course of this proceeding is unlawful.

15 The standard by which operating expenses are reviewed is the reasonable and prudent  
16 standard. A utility is entitled to a presumption that expenses were prudently incurred. If interveners  
17 raise "serious doubt" as to the prudence of an expenditure, the burden shifts back to the utility to  
18 prove the questioned expenditure was prudent. The standard for determining prudence is the  
19 standard of care a reasonable person would be expected to exercise under the circumstances as they  
20 existed at the time of the action. Public Service Commission v. Ely Light & Power Co., 80 Nev.  
21 312, 324, 393 P.2d 305, 311 (1964). In the Ely Light & Power Co. case, the Nevada Supreme Court  
22 stated: "It is the commission's duty to regulate rates but not to manage the utility's business. (cite  
23 omitted). In the absence of an abuse of discretion on the part of the utility and in the absence of  
24 showing lack of good faith, inefficiency or improvidence and if the amounts in question are  
25 reasonable . . . the Commission should not substitute its judgment for that of management." Id.  
26 citing numerous cases including West Coast Gas v. Public Utilities Commission of Ohio, 294 U.S.  
27 63, 55 S. Ct. 544 (1935). See also Nevada Power Co. v. Public Utilities Com'n of Nevada, 122 Nev.  
28 821, 834, 138 P.3d 486, 495 (2006) (applying prudence presumption in deferred energy proceeding

1 and finding that evidence presented by interveners was legally insufficient to rebut presumption that  
2 the utility's decision to forgo certain transactions was prudent.)

3 In this case, there is no testimony that the expenses Rural incurred were not prudent  
4 and reasonable. The Commission's disallowance hinges on Staff's disagreement with the way the  
5 expenses were allocated between regulated and non-regulated activities. The testimony cited by the  
6 Commission in its Modified Order in support of its findings actually supports Rural's position (ROA  
7 at Vol. 2, pp. 1401-1402 cited in Paragraphs 106 and 108 of the Commission's Modified Order) or  
8 shows that Staff's adjustment was based on the Staff's witness' erroneous assumption that because  
9 there were no labor hours allocated to the internet service those costs were pushed to the regulated  
10 side and confirms there was an indirect allocation of common expenses in Rural's cost study  
11 contrary to the statement made in Paragraph 108 of the Commission's Modified Order. (ROA at  
12 Vol. 7, pp. Conf. 294-295 cited in Paragraph 108 of the Commission's Modified Order.). On  
13 rebuttal, Rural's witnesses explained that Rural uses an outside company to provide its internet  
14 service and that is why there are little or no labor hours allocated to the internet service. (ROA at  
15 Vol. 2, pp. 1401-1402). Once facilities are in place, internet is for the most part self-maintaining.  
16 The labor hours are *de minimis* for turning on/off service and employee time for customer service  
17 calls is very minimal. (ROA at Vol. 2, p. 886). There was no evidence contradicting management's  
18 statements of what occurs to provide internet service and the Commission's findings are not  
19 supported by the evidence and ignore or misconstrue the evidence rebutting Staff's assumptions.  
20 Because the Commission's findings are not supported by evidence, the substantial rights of Rural  
21 have been prejudiced by the Commission's decision.

22 The Commission's determination is troubling because the disallowance of operating  
23 expenses is not based upon any standard particular to Rural or recognized by law and there is no way  
24 Rural would know that if Staff disagreed with its cost allocation performed in accordance with FCC  
25 standards, Rural's legitimate operating expenses could be disallowed based on the data of other  
26 companies, over 20 years old, involving other services. There is no case law that supports the  
27 Commission's adjustment to Rural's operating expenses and the Commission's decision was  
28 therefore arbitrary and capricious.

1 As Staff pointed out in its testimony, in previous proceedings when the Commission  
2 has sought to reallocate expenses from one service to another for telecommunications providers, the  
3 Commission has recognized that it must investigate and adopt regulations requiring an avoided cost  
4 study to be performed by the utility for that purpose. (ROA at Vol. 2, p. 1001.) The Staff witness  
5 testified:

6 "One approach is to estimate the costs/expenses that Rural would have  
7 avoided if the Internet service was provided by an independent ISP while  
8 Rural remains just as a wholesale DSL transmission service provider. In  
9 fact, in establishing resale discount factors pursuant to the  
10 Telecommunication Act of 1996, the Commission already visited this  
11 issue. The Commission investigated this issue in Docket No. 96-9035,  
12 adopted regulations (NAC 704.75991 to 704.75996) in Docket No. 97-  
1104, and determined that CenturyLink (formerly Sprint) would avoid  
21.00% of its total operating costs as it becomes a wholesale provider with  
no retail operations in Docket No. 97-12047 and that Nevada Bell would  
avoid 18.05% of its total operating costs as it becomes a wholesale  
provider with no retail operations in Docket No. 97-12046. (footnotes  
omitted.)

13 Id.

14 In this case, the Commission performed no investigation, did not act according to  
15 adopted regulations and did not require a company specific avoided cost study approved and vetted  
16 in a separate filing prior to disallowing Rural's incurred costs. Cf. (ROA at Vol. 2, pp. 1155-1183;  
17 Vol. 2, pp. 539-554 and NAC 704.75992.) The Commission used as a proxy, the average of the  
18 results from avoided cost studies prepared in 1997, almost 20 years ago, for Nevada Bell and Sprint,  
19 two large telecommunications providers, based upon their specific costs for totally different services.  
20 The average used by the Commission has no relation to Rural's specific costs nor was it derived  
21 from a review of Rural's specific costs. Further, the 1997 avoided cost studies were not related to  
22 regulated and non-regulated services provided by a small scale provider of last resort or used in the  
23 context of a rate case for setting retail rates for a small scale provider of last resort. Rather, those  
24 avoided cost studies related to the provision and pricing of wholesale telecommunications services  
25 by the telecommunications providers to other telecommunications carriers. (ROA at Vol. 2, p. 1001;  
26 Vol. 2, pp. 503-505.) If the Commission is going to reallocate Rural's expenses related to the  
27 provision of regulated and non-regulated services under the guise of avoided costs, it must use  
28 information and data specific to Rural, and not use as a proxy, the data of other companies, almost

1 20 years old, related to the provision of other services for other purposes. The Commission's Order  
2 acknowledges the avoided costs are only estimates in Paragraph 100 at page 38: "To remove the  
3 retail expenses of Internet service from regulated expense accounts, Staff proposes to estimate the  
4 costs that Rural would have avoided . . . ." (Emphasis added). (ROA at Vol. 6, p. 2030.) The  
5 Commission's regulations that have been adopted to address *resale* avoided cost studies recognize  
6 and require the most current data for the utility be used, not estimates. See NAC 704.75996(1)(a).  
7 For these reasons, the Commission's Modified Order reallocating expenses was unlawful and  
8 prejudicial to Rural.

9           The provision of non-regulated retail Internet access is dependent on the regulated  
10 wholesale DSL transmission service provided by Rural. (ROA at Vol. 2, p. 504.) DSL transmission  
11 is an interstate service regulated by the FCC and includes an allocation of the common costs that the  
12 Commission seeks to assign to non-regulated. Id. As a result, any costs associated with the  
13 provision of DSL transmission must first be assigned to the interstate jurisdiction and any  
14 subsequent allocation of these costs to retail Internet service should be made from the interstate  
15 costs. Id. The Commission did not perform these steps in its reallocation of costs and its  
16 reallocation is simply wrong.

17           In addition, the Commission has previously recognized that it must investigate and  
18 adopt regulations for avoided cost studies for telecommunications providers. See NAC 704.75992 *et*  
19 *seq.*; ROA at Vol. 2, p. 1001. Those regulations relate to the provision and pricing of wholesale  
20 telecommunication services by telecommunication providers to other telecommunication carriers  
21 and do not apply in this case. There are no regulations adopted by the Commission requiring an  
22 avoided cost study to reallocate expenses between regulated and non-regulated services for purposes  
23 of setting retail rates of small scale providers of last resort. If the Commission desires such a  
24 requirement, it needs to adopt regulations effectuating such a policy so that its actions comply with  
25 NRS Chapter 233B and the Nevada Supreme Court's holding in Public Service Com'n of Nevada v.  
26 Southwest Gas Corp., 99 Nev. 268, 272-273, 662 P.2d 624, 627-628 (1983). If the Commission  
27 desires to amend its existing regulations to require avoided cost studies for small providers of last  
28 resort in rate cases, it also needs to follow the APA's rulemaking process. Lab'or Com'n of State of

1 Nevada v. Littlefield, 123 Nev. 35, 40, 153 P.3d 26, 29 (2007). (Because additions, deletions, or  
2 substantial modifications of worker classifications amount to directives of general applicability,  
3 which establish policies and interpret law, such determinations implicate the APA.) It is not  
4 appropriate for the Commission to adopt new standards and rules to apply to Rural in lieu of  
5 complying with the APA's rulemaking process. Id.

6 C. **THE COMMISSION ERRED IN SETTING RURAL'S RATES IN**  
7 **ACCORDANCE WITH THE NEW "SHARING" METHODOLOGY**  
8 **ADOPTED AS NEW COMMISSION POLICY.**

9 The Commission's Modified Order discusses rate design in Paragraphs 144-148.  
10 (ROA at Vol. 6, pp. 2044-2046.) The Commission adopted Staff's proposed rate design. Id. at  
11 2044. Staff had public policy concerns about the use of NUSF funds to make up a small scale  
12 provider of last resort's revenue deficiency on a dollar for dollar basis. (ROA at Vol. 2, p. 987  
13 (Q&A 13, Q&A 14).) Staff's rate design was based upon Staff's *sharing principle* it proposed be  
14 adopted in order that draws from the NUSF addressed Staff's policy concerns. (ROA at Vol. 2, pp.  
15 949 (Q&A 17), 980-981, 989; Vol. 3, pp. 1348, 1354.)

16 Per Staff's testimony, the purpose of NUSF high-cost support is to assist a small scale  
17 provider of last resort ("SSPLR"), which serves "high-cost" areas, to make its local rates reasonably  
18 comparable to the rates charged for similar services in urban areas. (ROA at Vol. 2, p. 980.) In  
19 summary, the NUSF is to ensure that all Nevadans have access to telephone service at affordable  
20 rates by providing support to furnish services to: (1) persons in unserved or underserved areas; (2)  
21 public facilities (such as elementary and secondary public schools and public libraries); (3) providers  
22 of health care; (4) persons with low-income; and (5) persons in rural, insular and high-cost areas at  
23 rates which are reasonably comparable to those charged for similar services in urban areas. The  
24 concept and purpose of the NUSF mirrors the federal universal service principles and requirements  
25 described in Section 254 of the Communications Act of 1934, as amended (47 USC 254). Id. (ROA  
26 at Vol. 2, p. 984.)

27 Staff's witnesses correctly stated in their testimony the existing requirements for a  
28 small scale provider of last resort to receive funding from the NUSF for high-cost support purposes.



1 (ROA at Vol. 2, p. 944 (Q&A 7), 986 (Q&A 12).)<sup>5</sup> The Staff witness advocating policy testified that  
2 the requirements that a SSPLR must meet to receive NUSF high-cost support are:

3 First of all, it must be serving "high-cost" areas and its local rates must be  
4 geographically averaged throughout its service territory. In addition,  
5 pursuant to NAC 704.68048, an applicant's interstate and intrastate  
6 switched access rates must be in parity and its monthly rates for basic  
7 service "must be reasonably comparable to rates charged for similar  
8 services in urban areas."

9 (ROA at Vol. 2, p. 986; see also Vol. 2, p. 944.) There are no other requirements in the  
10 Commission's regulations to receive high cost support from the NUSF. See NAC 704.68046,  
11 704.68048.

12 However, as the Staff witness testified:

13 "The purpose of my testimony is to provide Staff *policy analysis* and  
14 recommendations concerning the Application of Rural Telephone  
15 Company ("Rural") . . . ."

16 "Specifically, I discuss Rural's requested revenue requirement and the  
17 interplay between its proposed rates for local services and its request for  
18 the Nevada Universal Service Fund ("NUSF") to support its local services.  
19 In doing so, I support Staff's recommended rate design sponsored by Staff  
20 witness Cristina Zuniga and address certain *public policy issues* related to  
21 the use of the NUSF high-cost support."

22 (Emphasis added.) (ROA at Vol. 2, p. 979.) The Staff witness went on to testify as to the policy he  
23 urged the Commission to adopt applicable to all small providers:

24 "Further, as the NUSF is a state-established subsidy mechanism, a simple  
25 *sharing principle should be adopted* – that is, an applicant who requests a  
26 greater support from the NUSF, on a per loop basis, must also generate  
27 greater revenues from its customers."

28 (Emphasis added.) (ROA at Vol. 2, p. 981.)

29 "However, I have significant concerns about the *public policy*  
30 *implications* of providing NUSF high-cost support to make up for *any*  
31 revenue requirement deficiency on a dollar-to-dollar basis. While there  
32 would be causes in which a full recovery of a revenue requirement  
33 deficiency with NUSF support is justified, my concern lies with the belief  
34 SSPLRs appear to hold that NUSF should *always* make up for any revenue  
35 requirement deficiency on a dollar-to-dollar basis."

36 <sup>5</sup> Existing regulations require that a small scale provider of last resort's monthly basic recurring flat rates for basic  
37 service be reasonably comparable to rates charged for similar services in urban areas, not custom calling features. See  
38 NAC 704.68048(1).

1 (Emphasis added.) (ROA at Vol. 2, p. 987.)

2 "I believe that there should be a positive correlation between NUSF  
3 support and rate design, specifically, how much revenue is generated by  
4 rates for local services and how much revenue is supported by the NUSF.  
5 As more support is needed (i.e., more subsidy provided from Nevada  
6 telecommunications service users), rates for local exchange and network  
7 services must be raised (i.e., more revenues generated from the applicant's  
8 regulated service customers). This is a *simple sharing principle* when a  
9 subsidy is provided, subject to the purpose of NUSF support – that is, rates  
10 must be still reasonably comparable to rates in urban areas. Staff witness  
11 Cristina Zuniga provides Staff's rate design with this in mind."

8 (Emphasis added.) (ROA at Vol. 2, p. 989.)

9 Notwithstanding the existing requirements contained in the regulations set forth  
10 above, Staff imposed an additional requirement, its *sharing principle*, in proposing its rate design to  
11 receive high cost support. (ROA at Vol. 2, pp. 980-981, 989; Vol. 2, p. 949 (Q&A 17).) The Staff  
12 rate design witness admitted: "So other factors went into my reasonable range besides just the  
13 NUSF requirements", and "However, in this rate case we're also trying to meet the revenue  
14 requirement, and so I proposed higher rates in an effort to better meet the revenue requirements".  
15 (ROA at Vol. 3, pp. 1348, 1354.) The *sharing principle* is not contained in any existing regulations  
16 adopted by the Commission. More importantly, these proceedings are not the proper place for  
17 advocacy for the adoption of new policies by the Commission. Rather, those matters are reserved  
18 for rulemaking proceedings as governed by NRS Chapter 233B.

19 NRS 233B.038(1)(a) defines "regulation" to include "[a]n agency rule, standard,  
20 directive or statement of general applicability which effectuates or interprets law or policy, or  
21 describes the organization, procedure or practice requirements of any agency." Before considering  
22 the adoption of a regulation, Nevada agencies must comply with the strict notice and hearing  
23 requirements set forth in NRS 233B.060 *et. seq.* Thus, when considering a standard or statement of  
24 general applicability to Commission proceedings, which would effectuate policy, the Commission  
25 must, for instance, give a minimum of thirty (30) days' notice to the public in which the Commission  
26 sets forth, among other information, the reasons for the proposed regulation, the estimated costs and  
27 economic effects of the proposed regulations, and the time and place set for a public hearing at  
28 which the proposed regulation is to be heard. NRS 233B.0603(1). Further, the Commission is

1 required to hold public workshops and prepare a small business impact statement concerning  
2 proposed regulations. See e.g., NRS 233B.0601 and NRS 233B.0608.

3 Staff clearly wanted the Commission to adopt policies that would limit or restrict a  
4 small scale provider of last resort from receiving NUSF funding for revenue requirement  
5 deficiencies on a dollar-to-dollar basis. (ROA at Vol. 2, pp. 981-982, 989.) Indeed, this is made  
6 more evident when considering that Staff has offered similar testimony on multiple occasions in  
7 recent dockets. See e.g., Docket No. 13-06007, Otsuka Prepared Testimony, at pp. 11-12; Docket  
8 No. 14-06002, Otsuka Prepared Testimony, at pp. 14-15.<sup>6</sup> Staff's testimony from those Dockets is  
9 attached hereto as **Exhibit "1"** for the Court's convenience.

10 The Commission cannot adopt Staff's rate design which adopts policy without  
11 complying with the APA. The Nevada Supreme Court has ruled that where the Commission's action  
12 amounts to "promulgating a regulation which was of such general consequence and impact as to be  
13 governed by the rule-making requirement of the Administrative Procedure Act," and that the APA  
14 was not strictly followed, the action "should be declared null and void." Public Service Com'n of  
15 Nevada v. Southwest Gas Corp., 99 Nev. 268, 272-273, 662 P.2d 624, 627-628 (1983). The Court  
16 noted that although the order in that case was directed to one utility only, it had a "general  
17 applicability" which affected other gas utilities and their customers. Id. 99 Nev. at 273, 662 P.2d at  
18 627. The order in that case related to rate design as does this Commission determination. The Court  
19 held the order was of such major policy concern (rate design moving to full volumetric pricing) and  
20 of such significance to all utilities and consumers that it could not be characterized as a simple  
21 adjudication in a contested case and outside the statutory definition of a regulation as urged by the  
22 Commission. Id.

23 Further, the Commission's action adopting the *sharing principle* in this case  
24 improperly places a limit on the amount Rural can draw from the NUSF based upon it being similar  
25 to the level of NUSF support of other small providers of last resort approved by the Commission in  
26 the last two years. (ROA at Vol. 2, p. 981.) Again, no such requirement is contained in the  
27 Commission's regulations nor has there been a limit imposed by the Commission on the size of the

28 <sup>6</sup> The parties in the cited Dockets stipulated to resolve the docket and, therefore, the Commission was not tasked with determining whether or not to consider Dr. Otsuka's testimony considering public policy.

1 NUSF. If the Commission wants to adopt a policy that every carrier's draw must be similar or that  
2 limits the size of the NUSF, the Commission must adopt such policies through regulations pursuant  
3 to NRS Chapter 233B and apply such regulations consistently. The *sharing principle* is based upon  
4 Staff's NUSF results-orientated rate design and not upon the rate design standards contained in  
5 existing NUSF regulations. It is not based upon an objective standard that Rural can meet to set  
6 rates but upon Staff's subjective unwritten policy. No one but Staff knows how much "sharing" is  
7 required or appropriate under its *sharing principle*. Staff cited no Commission precedent or  
8 authority which supports its proposed rate design. It is patently prejudicial and deprives a party of  
9 due process when a party is required to satisfy an arbitrary standard that is unknown.

10 Finally, the Commission's general rate making authority provided by NRS 704.001,  
11 NRS 704.110 and NRS 704.120 does not negate the applicability of existing NUSF regulations or  
12 allow the Commission to create new requirements to draw from the NUSF under the guise of its  
13 general rate making authority as it contends in its Modified Order. (ROA at Vol. 6, p. 2045, ¶146.)  
14 By creating the NUSF and adopting the NUSF regulations, the Commission *has* articulated its rate  
15 design policy when a small scale provider of last resort seeks to meet its revenue requirement with a  
16 disbursement from the NUSF. The Commission cannot ignore the NUSF regulations and place a  
17 new standard in place under the guise of setting just and reasonable rates under its general rate  
18 making authority. For these reasons, the rate design adopted by the Commission is unlawful and  
19 must be reconsidered based upon existing regulations.

20 **D. THE COMMISSION IMPROPERLY EXCLUDED TELECOM PLANT**  
21 **UNDER CONSTRUCTION FROM RATE BASE.**

22 The Modified Order at Paragraphs 118-122 sets forth the Commission's discussion  
23 and findings related to Telecom Plant Under Construction ("TPUC") also known as Construction  
24 Work in Progress ("CWIP").<sup>7</sup> (ROA at Vol. 6, pp. 2037-2039.) The Commission's Modified Order  
25 discusses three apparent reasons for disallowing TPUC from rate base.

26  
27  
28 <sup>7</sup> There is no dispute this telecom plant is now used and useful in providing service to Rural's customers. (ROA at Vol. 2, p. 876.) The Staff's witness acknowledged on cross examination that not allowing a utility to earn a return on plant that was used and useful in providing utility service was not fair to the utility. (ROA at Vol. 3, p. 1375.)

1 The Commission disallowed Rural's TPUC because Rural did not make a  
2 certification filing nor an expected change in circumstances filing to show the plant was used and  
3 useful. See Paragraph 118. (ROA at Vol. 6, p. 2037.) This finding does not make sense. Rural  
4 included TPUC in rate base as required by the Commission's Form E. See NAC 703.27132(1)(b)(5)  
5 and (ROA at Vol. 2, p. 192, Exhibit 1 at 34, line 24.) At the end of the test year, that was the status  
6 of the plant. There is no requirement in the Commission's regulations that a utility must submit a  
7 certification filing or an expected change in circumstance filing to earn a return on plant recorded as  
8 TPUC. Staff acknowledged in its written testimony that there is no statute or regulation that  
9 disallows TPUC from rate base. (ROA at Vol. 2, pp. 914-915.) If the disallowance of TPUC from  
10 rate base is the policy of the Commission, then the Commission needs to promulgate regulations  
11 adopting such a policy and revise its forms to take out TPUC on Form E for purposes of determining  
12 a small scale provider of last resort's rate base.

13 The Commission acknowledges in Paragraph 119 that the three most recent dockets  
14 involving small scale providers of last resort provide no support one way or the other as to whether  
15 or not the Commission follows the Capitalization method. (ROA at Vol. 6, p. 2038.) The  
16 Commission relied upon Staff's general testimony that in numerous unidentified dockets involving  
17 electric and gas utilities, construction work in progress has not been allowed in rate base. The  
18 Commission's Modified Order states: "Staff's statement supports its assertion that the Commission  
19 generally follows the Capitalization method." (ROA at Vol. 6, p. 2038, Paragraph 120.) This  
20 finding is not supported by a fair reading of the evidence.

21 First, Staff's witness acknowledged that a small scale provider of last resort is not a  
22 utility similar to a gas or electric utility. (ROA at Vol. 2, pp. 599, 941; Vol. 3, pp. 1322-1323.)  
23 Second, the Commission's finding that it generally follows the Capitalization method is contrary to  
24 the Commission's prior determinations regarding CWIP for small scale providers of last resort.  
25 Those prior determinations indicate that the Commission does not follow the Capitalization method  
26 for small scale providers of last resort. (ROA at Vol. 2, p. 609, Docket No. 03-10004, Paragraph 29  
27 at page 6: "The Commission would consider allowing CWIP in rate base if it is to be in service  
28 before the new rates are put in effect, however, RTC could not give the Commission a completion

1 date.”) Exhibit 18 at 31, also showed that in Docket No. 01-7002, paragraph 8 at page 2 of the  
2 Commission Order issued February 25, 2002, the Commission stated: “*CWIP is normally a rate*  
3 *base item that allows the utility to receive a return on their investment.* (Emphasis added). (ROA  
4 at Vol. 2, p. 898.) The Commission further stated: “In addition, Humboldt’s witness testified that  
5 all the CWIP projects would be in-service by the end of the first quarter of 2002. Therefore, the  
6 Commission finds that CWIP should remain in the rate base”.<sup>8</sup> *Id.* Thus, the Commission’s finding  
7 in this case that it generally follows the Capitalization method and therefore CWIP should not be  
8 allowed in rate base is simply incorrect with regard to proceedings involving a small scale provider  
9 of last resort.

10 Finally, the Commission’s statement that Rural failed to justify the \$1,470,388  
11 claimed as Construction Work in Progress (“CWIP”) and the three reasons given for such failure in  
12 Paragraph 121 of the Modified Order mischaracterizes the record in this case. Staff did not propose  
13 an adjustment to CWIP based on Rural’s failure to justify the amount claimed as CWIP. Rather,  
14 Staff’s adjustment was a blanket disallowance of CWIP in rate base purportedly because the  
15 Commission follows the Capitalization method. (ROA at Vol. 2, p. 914-917; Vol. 3, p. 1332.) The  
16 testimony relied upon in the Commission’s Order was Staff’s cross examination of Rural’s witness  
17 and Exhibit C-1. During the cross examination cited to in the Order, Rural’s witness indicated  
18 several times he did not know the answer to the Staff’s question and would have to refer that  
19 question to Rural’s other witnesses present at the hearing. (ROA at Vol. 3, pp. 1220-1221, 1228-  
20 1229.) On redirect, the Rural witness again indicated that Rural’s other witnesses could explain the  
21 entries on Exhibit C-1. (ROA at Vol. 3, pp. 1236-1237.) The Commission (and Staff) declined to  
22 question Rural’s other witnesses about Ex. C-1 and the amount claimed as CWIP when Rural’s  
23 witnesses with the information were available for cross examination. (ROA at Vol. 3, pp. 1246-  
24 1247, 1254-1257.)<sup>9</sup> Rural told the Commission that these witnesses could provide the explanation.  
25 The Commission declined to ask any questions. (ROA at Vol. 3, pp. 1247-1248.) Rural made an

26  
27 <sup>8</sup> There was no mention or requirement in these two cases of a certification filing or an expected change in circumstance  
filing for purposes of allowing CWIP in rate base.

28 <sup>9</sup> At that point, Rural was not allowed to supplement its direct testimony of these Rural witnesses or ask any redirect  
questions of the witness on these issues because Staff did not ask any cross-examination questions.

1 offer of proof indicating that these witnesses could explain the issues. (ROA at Vol. 3, p. 1247.)  
2 Notwithstanding these witnesses were available to address the issues raised on cross examination  
3 and clarify the record, the Commission failed to allow an explanation and clarification on the record  
4 with regard to the amount claimed as CWIP. To then characterize these circumstances in its  
5 Modified Order as Rural's "failure" to justify the amount claimed, is fundamentally unfair and  
6 violates Rural's due process rights to a fair and unbiased hearing with a full opportunity to be heard.

7  
8 **VII.**

9 **CONCLUSION**

10 For all the foregoing reasons, the Court should grant Rural's Petition for Judicial  
11 Review.

12 **VIII.**

13 **AFFIRMATION**

14 The undersigned does hereby affirm that the preceding document does not contain the  
15 Social Security number of any person.

16 DATED this 18<sup>th</sup> day of November, 2015.

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CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

X Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada

       Hand-delivery

       Facsimile

fully addressed as follows:

Carolyn Tanner, Esq.  
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DATED this 18<sup>th</sup> day of November, 2015.

  
NANCY FONTENOT



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## INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages Excluding Cover Page</u>
"1"	Staff's Testimony from Dockets	14

4835-0156-7529, v. 1

**EXHIBIT “1”**

**EXHIBIT “1”**

**PUBLIC UTILITIES COMMISSION OF NEVADA**  
**Docket No. 13-06007**

**Prepared Direct Testimony of**  
**Yasuji Otsuka, Ph.D., on behalf of the**  
**Regulatory Operations Staff**

1. Q. Please state your name, occupation, and business address.

A. My name is Yasuji Otsuka. I am the Manager of the Resource and Market Analysis Division for the Regulatory Operations Staff ("Staff") of the Public Utilities Commission of Nevada ("Commission"). My business address is 1150 East William Street, Carson City, Nevada 89701.

2. Q. Does Attachment YO-1 summarize your professional background?

A. Yes, it does.

3. Q. What is the purpose of your testimony?

A. The purpose of my testimony is to provide Staff's recommendations concerning the Application of Rio Virgin Telephone Company d/b/a Reliance Connects ("Rio Virgin") for authority to establish its annual revenue requirement for telephone service rates; establish new charges, fees, and rules for telephone customers; establish draw from the Nevada Universal Service Fund; reflect changes in the cost of capital; modify depreciation rates; and for other relief properly related thereto. Specifically, the purpose of my testimony is to provide Staff's recommendation regarding Rio Virgin's request for an annual draw from the Nevada Universal Service Fund ("NUSF") of \$737,992 for the calendar year 2014. In addition, I will discuss Rio Virgin's mishandling of Safety Net Additive support it received from the federal Universal Service Fund ("USF").

Staff witnesses Mr. Fred Buck provides Staff's proposed revenue requirement figure for Rio Virgin and Mr. Manuel Lopez proposes Staff's rate design through which Rio Virgin recovers the revenue requirement.

1 4. Q. What is your recommendation to the Commission regarding the issues outlined  
2 in Question and Answer ("Q&A") 3?

3 A. I recommend that the Commission:

- 4 (1) Order that Rio Virgin reduce its intrastate expenses by the amount of  
5 \$567,917, which is allocated to Nevada from \$647,568 that Rio Virgin  
6 received as Safety Net Additive support in the test year from the federal USF;  
7 and,  
8 (2) Deny Rio Virgin's request of an annual draw of \$737,992 from the NUSF for  
9 the year 2014.

10  
11 **Recommendation No. 1: The Commission should order that Rio Virgin reduce its intrastate**  
12 **expenses by the amount of \$567,917, which is allocated to Nevada from \$647,568 that Rio**  
13 **Virgin received as Safety Net Additive in the test year from the federal USF.**

14 5. Q. What is Safety Net Additive support?

15 A. Safety Net Additive ("SNA") is part of the High Cost Support program that the  
16 Federal Communications Commission ("FCC") established to advance the availability  
17 of telecommunications and advanced services to customers at affordable rates – the  
18 principle known as "universal service." As local exchange carriers are reluctant to  
19 provide such services in high cost areas, or they provide such services only at very  
20 high rates, the High Cost Support program was established to support those local  
21 exchange carriers to provide telecommunications and advanced services at rates that  
22 are reasonably comparable to those charged for similar services in urban areas. The  
23 High Cost Support program is a federally mandated subsidy mechanism in which  
24 those who reside in high-cost areas and carriers which serve those customers are  
25 financially supported by all telecommunications users.

26 The primary support mechanism under the FCC's High Cost program is High-  
27 Cost Loop (HCL) support, which is provided to carriers operating in high-cost areas.  
28 Specifically, HCL support is paid to those rural carriers whose per-loop cost is higher

1 areas, who could not otherwise have access to telecommunications service at  
2 affordable rates. Thus, a small-scale provider of last resort ("PLR") must demonstrate  
3 that as the provider serves customers in a high-cost area, rates lowered to levels  
4 "reasonably comparable to those charged for similar services in urban areas" will not  
5 generate revenues enough to cover the cost including a fair return on and of  
6 investment. Humboldt demonstrated that in its request for NUSF high-cost support in  
7 Docket No. 13-04036. However, Rio Virgin did not provide any evidence that it  
8 operates in a high-cost area.

9 In fact, as shown in Attachment YO-2, Rio Virgin's loop cost is below the  
10 national average and it has not received HCL support from the federal USF. If  
11 anything, this request is related more to the line loss Rio Virgin may have been  
12 experiencing – putting Rio Virgin in a tenuous position in which it wants to raise rates  
13 but higher rates may lead to losing more customers to competitors. While it is  
14 speculation, one way out of this difficult situation is perhaps to keep the rates low  
15 enough to discourage competitors and obtain NUSF support to make up a revenue  
16 deficiency caused by such low rates.

17 18. Q. What are the likely consequences if the Commission grants Rio Virgin's NUSF  
18 high-cost support request without any factual examination?

19 A. There are at least three undesirable likely consequences I can identify. First, if small-  
20 scale PLRs have free and full access to NUSF support solely because they cannot meet  
21 their revenue requirements for reasons unrelated to the high cost of providing  
22 telecommunications services, there will be no reason for small-scale PLRs to be  
23 efficient providers. As inefficiency will be supported by a subsidy from all  
24 telecommunications users in the State through the NUSF, an inefficient small-scale  
25 PLR which serves customers in a relatively low-cost area could ask for and obtain  
26 NUSF support. In fact, the access to the NUSF will not be limited to small-scale  
27 PLRs as other PLRs in urban areas have been losing customers (and revenue sources)  
28 to competitors at a much faster speed than small-scale PLRs have been experiencing.

1           Second, the telecommunications industry is a technology driven industry and it  
2 has been changing dramatically to the point that an important revenue source has been  
3 shifting away from local exchange and access services to broadband and video  
4 services which can also be delivered through the same loop which was built to provide  
5 telecommunications services. If a free-flow of subsidy through the NUSF is allowed  
6 as discussed above – that is, any revenue deficiency by small scale PLRs is recovered  
7 through NUSF high-cost support, those providers will be encouraged to provide  
8 broadband and other revenue generating services through affiliates. It should be noted  
9 that while the Commission does not regulate broadband service pursuant to NRS  
10 704.684, the same statute allows the Commission to “consider any revenues, costs and  
11 expenses that a small-scale provider of last resort derives from providing a broadband  
12 service, if the Commission is determining the rates of the provider under a general rate  
13 application that is filed pursuant to subsection 3 of NRS 704.110.”

14           Third, the federal and the State’s telecommunications policies have been to  
15 increase customer choice while maintaining universal service. To achieve these  
16 seemingly conflicting goals, the federal USF and the NUSF have been playing the key  
17 role by providing financial assistance so that carriers which operate in high-cost areas  
18 can meet their revenue requirements while lowering rates to levels “reasonably  
19 comparable to those charged for similar services in urban areas.” If NUSF support is  
20 provided to fend off competitors, it will be a misuse of the NUSF as such support is  
21 being used to reduce customer choice. Not only are the State’s intrastate  
22 telecommunications users asked to contribute more to the NUSF, their contribution  
23 will be used to reduce the choice available to the applicant’s customers. This, I  
24 believe, is contrary to the federal and State’s policy goal of increasing customer choice  
25 for telecommunications services.  
26  
27  
28

**PUBLIC UTILITIES COMMISSION OF NEVADA**

**Docket No. 14-06002**

**Prepared Direct Testimony of  
Yasuji Otsuka, Ph.D., on behalf of the  
Regulatory Operations Staff**

1. Q. Please state your name, occupation, and business address.

A. My name is Yasuji Otsuka. I am the Manager of the Resource and Market Analysis Division for the Regulatory Operations Staff ("Staff") of the Public Utilities Commission of Nevada ("Commission"). My business address is 1150 East William Street, Carson City, Nevada 89701.

2. Q. Does Attachment YO-1 summarize your professional background?

A. Yes, it does.

3. Q. What is the purpose of your testimony?

A. The purpose of my testimony is to provide Staff's policy analysis concerning the Application of Lincoln County Telephone System, Inc. ("Lincoln County" or the "Company") for authority to establish its annual revenue requirement for telephone service rates; to establish new charges, fees, and rules for telephone customers; to adjust intrastate access charges; to establish draw from the Nevada Universal Service Fund; to reflect changes in the cost of capital; to modify depreciation rates; and for other relief properly related thereto.

Specifically, I discuss the Company's revenue requirement of \$2,092,858, which is greater relative to its size and the geographical characteristics of the area it serves when compared to other Nevada small-scale providers of last resort. I also discuss the interplay between the Company's request to keep local service rates relatively low and the Company's request to ask other telecommunications users in Nevada to pay \$522,649 through the Nevada Universal Service Fund ("NUSF"), which is more than the \$484,505 that the Company projects to generate from its local services with its proposed "modest" rate increases. In doing so, while I do not offer specific recommendation to the Commission, I do support Staff's recommended rate

1 design sponsored by Ms. Cristina Zuniga and address certain public policy concerns  
2 related to the use of the NUSF to support those who reside in high-cost areas.  
3

4 **Purpose of the NUSF, Lincoln County's NUSF Support Request and Justification**

5 **4. Q. What is the purpose of the NUSF?**

6 A. The NUSF was established by the Nevada Legislature and is also known as the "fund  
7 to maintain the availability of telephone service."<sup>1</sup> In particular, the 2007 Nevada  
8 Legislature revised Nevada Revised Statutes ("NRS") 704.6873 to read in pertinent  
9 part as follows:<sup>2</sup>

10 **NRS 704.6873 Adoption of regulations regarding**  
11 **telecommunication service furnished to certain public facilities,**  
12 **providers of health care, low income persons and rural, insular and**  
13 **high-cost areas.**

- 14 1. Commission shall adopt regulations that require each  
15 telecommunication provider furnishing service to:  
16 (a) An elementary or secondary public school; or  
17 (b) A public library,  
18 to establish discounts in the rates for the telecommunication  
19 services that the provider furnishing to that school or library. The  
20 amount of discount must be determined by the Commission in a  
21 manner that is consistent to the provision of 47 U.S.C. § 254.  
22 2. The Commission shall adopt regulations that require each  
23 telecommunication provider furnishing service to:  
24 (a) Public or private nonprofit providers of health care which  
25 serve persons in rural areas; or  
26 (b) Persons with low income and persons in rural, insular and  
27 high-cost areas,  
28 to ensure that such providers of health care and persons have access  
to telecommunication services that are reasonably comparable to  
those services available in urban areas and that the rates for such  
services charged by the telecommunication provider are reasonably  
comparable to those charged in the urban areas, to the extent  
required by the provisions of 47 U.S.C. § 254.  
3. The Commission shall adopt regulations which set forth the  
requirements for eligibility for:  
(a) ...  
(1) ...  
(2) ...

27 <sup>1</sup> See Nevada Revised Statutes ("NRS") 704.013.

28 <sup>2</sup> NRS 704.6873 was further revised by the 2013 Legislature in Senate Bill 41. However, the portion cited in my  
testimony was not affected by the Bill.



1 Christian's statements that there is no facility-based wireline competitor and that  
2 wireless service is complementary to the Company's wireline service. Specifically,  
3 Mr. Christian, the President and General Manager of Lincoln County, states in his  
4 Direct Testimony (at Q&A 26) that "some customers may access Voice over Internet  
5 Protocol services through their broadband service, but Lincoln is the only facilities-  
6 based provider of regulated telephone service and wireline broadband access within its  
7 service territory."

8 Regarding wireless competition, Mr. Christian states in his Direct Testimony at  
9 Q&A 29:

10 Lincoln understands that wireless services must necessarily have some  
11 effect on demand for wireline services, but wireline service remains a  
12 vital service for its customers. There are some significant remote areas  
13 in Lincoln's service territory where wireless does not work or does not  
14 work well. As a consequence, wireline services still remain critical to  
15 serving the needs of the community. These services remain essential to  
16 public safety given their reliability and E911 capabilities. In addition,  
17 anchor institutions depend on the higher broadband speed capabilities  
18 that only the wireline network can provide. Even wireless providers  
19 themselves depend on the availability of backhaul transport from  
20 Lincoln's wireline network. Therefore, we do not view wireless  
21 services as a substitute for wireline services. Rather, they are  
22 complementary to each other, and both are necessary to meet the need  
23 of the community. (Emphasis added).

24 Lincoln County's NUSF Support Request in Perspective and Public Policy Implication

25 13. Q. Does Lincoln County receive federal high-cost loop ("HCL") support, which is  
26 awarded to certain rural carriers to assist them providing telecommunications  
27 service in high-cost areas at affordable rates?

28 A. Yes. Table 1 below lists Nevada's small-scale providers of last resort and shows the  
amounts of federal USF for HCL support, which is now known as the Connect  
America Fund, they have received since January 2011 pursuant to 47 CFR § 54,  
Subpart M (High Cost Loop Support for Rate-of-Return Carriers). Lincoln County  
has received HCL support in the amounts of \$68,988 (in 2011), \$21,396 (in 2012),  
\$4,698 (in 2013) and \$55,792 (in 2014, January through July).

**Table 1: HCL Support (January 2011 through July 2014)**

Company	2011 Jan – Dec	2012 Jan – Dec	2013 Jan - Dec	2014 Jan – July
Beehive Telephone	\$252,204	\$189,516	\$188,736	\$170,706
Churchill County Telephone	\$1,800,807	\$1,984,128	\$2,040,204	\$1,260,559
Filer Mutual	\$0	\$0	\$0	\$0
Humboldt	\$1,122,144	\$1,119,257	\$1,101,366	\$587,430
Moapa Valley	\$0	\$0	\$0	\$0
Rio Virgin	\$0	\$0	\$0	\$0
Rural Telephone	\$498,354	\$438,549	\$490,884	\$274,191
<b>Lincoln County Telephone</b>	<b>\$68,988</b>	<b>\$21,396</b>	<b>\$4,698</b>	<b>\$55,792</b>

(Source: USAC High Cost Disbursement Data)

While Table 1 shows which small-scale providers in Nevada are serving “high-cost” service areas, it does not provide more detailed information of how high the cost of service in each of those areas is. For that purpose, Table 2 below provides for each carrier the unseparated (i.e., before federal-state jurisdictional separation) loop cost per working loop, the number of USF loops,<sup>10</sup> the unseparated loop revenue requirement and the annual expense adjustment projections. Those figures were calculated by the National Exchange Carrier Association (“NECA”)<sup>11</sup> with data submitted by its member carriers pursuant to 47 CFR § 54, Subpart M. Table 2 shows that while Lincoln County serves a ‘high-cost’ area, its cost of service (on a working loop basis) is not as high as other small-scale providers. For example, Beehive Telephone Company’s average loop cost of \$4,733 is more than six times higher and Humboldt Telephone Company’s average loop cost of \$2,240 is almost three times higher than the Lincoln County’s average loop cost of \$766 in its study area.<sup>12</sup>

<sup>10</sup> Note that carriers are directed to count loops based on 47 CFR § 54.1305(i), which states, “For universal support purposes, working loops are defined as the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service.” Accordingly, the number of access lines and the number of USF loops are not necessarily the same.

<sup>11</sup> The NECA is a membership association of small and independent local exchange carriers.

<sup>12</sup> Note that Rio Virgin operates in Nevada and Arizona, and the figures provided in Table 2 are combined for both states.

**Table 2: Unseparated Loop Cost, Loop RR and Expense Adjustments (as of 12/31/2012)**

Company	Average Loop Cost	Number of Loops	Unseparated Loop RR	Projected Expense Adjustments
Beehive Telephone	\$4,732.82	139	\$657,862	\$419,023
Churchill County Telephone	\$1,107.22	9,078	\$10,051,353	\$2,681,209
Filer Mutual	\$358.14	521	\$186,592	\$0
Humboldt	\$2,239.70	900	\$2,015,730	\$1,030,241
Moapa Valley	\$502.57	2,936	\$1,475,556	\$0
Rio Virgin (1)	\$498.83	8,841	\$4,410,141	\$0
Rural Telephone	\$1,411.03	870	\$1,227,593	\$455,193
<b>Lincoln County</b>	<b>\$765.57</b>	<b>2,326</b>	<b>\$1,780,716</b>	<b>\$120,913</b>

(Source: NECA 2013 USF Data Submission with the FCC)

14. Q. The Commission has reviewed two similar cases (i.e., a general rate case combined with NUSF high-cost support request) last year in Docket No. 13-04036 (Humboldt) and Docket No. 13-06007 (Rio Virgin). How does Lincoln County's Application compare to those two cases?

A. Table 3 below compares the last year's applications of Humboldt and Rio Virgin to this Application. Column (b) shows the revenue requirements approved by the Commission for Humboldt and Rio Virgin,<sup>13</sup> along with the revenue requirement requested by Lincoln County and the revenue requirement by Lincoln County with Staff's recommended adjustments. Column (c) provides the number of loops for Humboldt (as of 12/31/2012), Rio Virgin (as of 12/31/2012) and Lincoln County (as of 12/31/2013).<sup>14</sup> Note that the dates of observing the loop counts are different. Those dates were selected so that the test year of each case matches the number of loops reported to the NECA and the FCC. Column (d) is obtained by dividing column

<sup>13</sup> The revenue requirement figures approved for Humboldt and Rio Virgin are from the Commission's orders in Docket No. 13-04036 and Docket No. 13-06007, respectively.

<sup>14</sup> The numbers of loops for Humboldt and Rio Virgin are from *NECA 2013 USF Data Submission with the FCC*. Rio Virgin's loop count was adjusted by a factor of 0.877 to reflect Nevada's share of access lines. Lincoln County's number of loop was obtained from the Company's response to Staff Data Request ("DR") 88, which was claimed confidential. The figure will become public with *NECA 2014 USF Data Submission with the FCC* (on 10/1/2014). Staff DR 88 is provided as Attachment YO-2.

(b) by column (c), which shows the intrastate revenue requirement per loop for each of the three cases.

In addition to the state revenue requirement information, Table 3 also provides some cost information to serve in each service area. Column (e) is the unseparated (i.e., before jurisdictional separation) USF loop cost per working loop in the service area,<sup>15,16</sup> and column (f) provides the amount of federal high-cost support those carriers received on a per loop basis during each carrier's test year, which is 2012 for Humboldt and Rio Virgin and 2013 for Lincoln County.<sup>17</sup> Column (g) is the USF loop cost net of the federal high-cost loop support they received on a per loop basis (i.e., column (g) = column (e) – column (f)). The unseparated loop cost less the federal high-cost loop support in column (g) can be considered as the loop cost responsibility left to the State on a per loop basis.

**Table 3: State Revenue Requirement and Unseparated Loop Cost**

a	b	c	d	e	f	g
Company	State			Unseparated (per loop)		
	Rev. Req.	Number of Loop	Rev. Req. per loop (b)/(c)	USF Loop Cost	Fed USF High-Cost Support	Net USF Loop Cost (e)-(f)
Humboldt (approved)	\$534,538	900	\$594	\$2,240	\$1,244	\$996
Rio Virgin (approved)	\$2,775,262	7,754	\$358	\$499	\$73	\$426
Lincoln (requested)	\$2,092,858					
Lincoln (w/ Staff adj.)	\$1,861,853					

(Sources are described in footnotes 13 through 17)

<sup>15</sup> The loop cost figures for Humboldt and Rio Virgin were obtained from NECA's 2013 USF Data Submission with the FCC. Lincoln County's loop cost was calculated with the data provided in Staff DR 88 (Attachment YO-2) following the algorithm provided by the NECA (Attachment YO-3). While the data was claimed confidential, the figure provided here will become public with NECA 2014 USF Data Submission with the FCC (on 10/1/2014).

<sup>16</sup> See 47 CFR § 54.1308 for the calculation methodology.

<sup>17</sup> The federal high-cost support figure for Humboldt is from Docket No. 13-04036 and was divided by column (c) to obtain the federal high-cost support per loop. The federal high-cost support figure for Rio Virgin was from Staff DR 112 in Docket No. 13-06007 (provided as Attachment YO-4). The figure was adjusted to be Nevada specific (by multiplying by the Nevada access line share of 0.877) and was divided by column (c) to obtain a per loop figure. Lincoln County's high-cost support figure (\$42,205) was from the Direct Testimony of Staff witness Nichole Matzek and was divided by column (c) to obtain a per loop figure.

1 As expected, Rio Virgin's intrastate revenue requirement of \$358 per loop is  
2 the lowest loop cost per loop reflecting the relatively low cost conditions to serve  
3 (with the unseparated loop cost of \$499 and the net loop cost of \$426). However, it is  
4 noteworthy that Lincoln County's requested revenue requirement of \$[REDACTED] per loop in  
5 this case is significantly greater than Humboldt's revenue requirement per loop of  
6 \$594, despite the fact that the unseparated USF loop cost for Humboldt of \$2,240 is  
7 almost [REDACTED] times greater than Lincoln County's \$[REDACTED] unseparated USF loop cost on a  
8 per loop basis. Even on the net USF loop cost basis, as shown in column (g), which  
9 can be viewed as the loop cost responsibility left to the State, Humboldt's loop cost of  
10 \$996 per loop is significantly higher than Lincoln County's average loop cost of \$[REDACTED],  
11 implying that Lincoln County's intrastate revenue requirement should be, on a per  
12 loop basis, lower than Humboldt's intrastate revenue requirement.

13 Staff's recommended adjustments lower Lincoln County's intrastate revenue  
14 requirement per loop to \$[REDACTED]. However, the underlying observation does not change.  
15 Despite the fact that Lincoln County serves areas in which the cost to serve is less than  
16 Humboldt's, and even after accounting for federal high-cost supports received,  
17 Lincoln County's revenue requirement per loop is significantly higher than  
18 Humboldt's.

19 15. Q. Why do you think that Lincoln County's intrastate revenue requirement per loop  
20 is so high compared with Humboldt and Rio Virgin, even after accounting for  
21 federal high-cost supports and even with Staff's recommended adjustments?

22 A. It is difficult to pinpoint what is really causing the high intrastate revenue requirement  
23 per loop for Lincoln County, which is far greater than Humboldt's and Rio Virgin's.  
24 Most likely, it is due to a combination of several factors. One possible contributing  
25 factor that Staff noticed in its investigation is the fact that the Company provides a  
26 high quality of service and has been working hard to extend its high quality service to  
27 all community members. One example of the Company's such effort is its high  
28 quality and wide availability of broadband service, which appear to be better than the

1 broadband services available in Nevada from other telecommunications carriers. On  
2 that, Mr. Christian states in his Direct Testimony (at Q&A 38):

3 98% of customers in all of Lincoln's exchanges have access to the 4/1  
4 Mbps minimum standard. 75% of customers in the Pinoche, Panaca,  
5 Caliente, Alamo, and Coyote exchanges have access to at least 25  
6 Mbps download speed. I believe that 50% of customers in the above  
exchanges also have access to 50 Mbps download speed. A variety of  
different internet service packages are provided by LCTurbonet within  
the capabilities of the network.

7 Another example is the Company's efforts to extend its service to development  
8 projects. Unfortunately, however, some of the developments did not materialize as  
9 projected, which increased the cost of service, on the average. This issue is also  
10 discussed by Staff witness Peter Young.

11 16. Q. Is it your opinion that Lincoln County should not be providing high quality and  
12 technologically-advanced telecommunications services (e.g., loops capable of  
13 providing greater bandwidth and high speed broadband services) to its  
14 community and serve as the provider of last resort when a service request is  
15 made?

16 A. No. The Company's efforts to better serve the community should be lauded, and it  
17 may perhaps reflect the fact that the three generations of the Christian family have  
18 been providing telecommunications service since 1926 and that the family has strong  
19 roots in and ties with the community. However, while the Company's upgrading to  
20 and expansion of "high-quality and technologically-advanced services" to its  
21 customers is commendable,<sup>18</sup> the issue remains; who should pay for the cost of  
22 service? Should the cost of service be paid by the Company's customers or should it  
23 be shared, as requested by the Company, by all other telecommunication service users  
24 in Nevada who do not receive benefits from the service?

25  
26  
27  
28  

---

<sup>18</sup> See the Direct Testimony of John Christian at Q&A 36.

1 17. Q. What is your opinion regarding Lincoln County's request that almost half of the  
2 revenue requirement for its local network services be paid by other Nevada  
3 telecommunications users?

4 A. As discussed above, the Company's high cost of service, which is presented as its  
5 high intrastate revenue requirement per loop, is not really due to the geography of the  
6 Company's service territory. Lincoln County's average loop cost in its service area is  
7 only slightly higher than the national threshold loop cost to receive HCL support, and  
8 it is much lower than other small-scale providers in Nevada such as Humboldt's.

9 Instead, Lincoln County's high cost of service appears to reflect "high quality  
10 and technically-advanced services" that the Company provides or extended such high-  
11 quality services to prospective customers in its service territory, which have not  
12 materialized as planned. Moreover, other telecommunications users in Nevada but  
13 outside the Company's service territory did not demand and do not use such services.  
14 Thus, the first rule to apply is to ask the direct beneficiaries of the services, who are  
15 the Company's customers, to pay for the services and examine whether the rates  
16 charged for such services adversely affect universal service within the Company's  
17 service territory. In this regard, Staff witness Ms. Zuniga demonstrates in her  
18 testimony that the rates, which will fully recover the Company's intrastate revenue  
19 requirement (as adjusted by Staff), are reasonably comparable to the urban rates  
20 charged for similar services contemporaneously as well as in its historical perspective.  
21 Accordingly, Ms. Zuniga recommends the Commission deny Lincoln County's NUSF  
22 support request.

23 18. Q. Do you see any public policy implication if Lincoln County's request for NUSF  
24 high-cost support was granted in this proceeding?

25 A. Yes. As discussed above, the NUSF was established to ensure that all Nevadans have  
26 access to telephone service at affordable rates. Specifically, high-cost support is to  
27 provide financial assistance to carriers which serve customers who will otherwise not  
28 have access to telecommunications service due to its geography. As it has been

1 receiving federal HCL support, the Company has been recognized to serve a "high-  
2 cost" service area. However, cost condition figures such as USF loop costs show that  
3 the Company's cost to service is only slightly higher than the national average, which  
4 suggests that its intrastate revenue requirement should not be as high as those carriers  
5 which serve high "high-cost" areas such as Humboldt.

6 Lincoln County's high revenue requirement is perhaps due to the Company's  
7 efforts to better serve the community. However well-intentioned it may be, such  
8 business effort still must be balanced by the economics of supply and demand. No  
9 business provides services if it does not believe that the cost of providing the services  
10 will not be recovered by its customers. If the Commission grants Lincoln County's  
11 request for NUSF support in this docket despite Staff's demonstration that its revenue  
12 requirement is fully met by rates comparable to urban rates, this first rule of business  
13 will be violated. If providing and extending a "high-quality and technologically-  
14 advanced services" to a community where members of the community cannot afford  
15 the service is encouraged (with no reference to its business case), there will be more  
16 carriers following the same path. Consequently, Nevada telecommunications users  
17 will be asked to contribute more to the NUSF to support services they do not receive  
18 that are possibly of higher quality than what they receive and, perhaps, may end up  
19 paying for speculative investments they did not demand.

20  
21 **Conclusion**

22 19. Q. Please summarize your testimony.

23 A. In responding to Lincoln County's request for NUSF high-cost support, a state  
24 revenue requirement must be determined first and which has been done by other Staff  
25 witnesses. Second, rates for local services must be established to recover the revenue  
26 requirement while special attention is being provided to ensure that such rates will not  
27 adversely affect universal service within the Company's service territory. Staff  
28 witness Ms. Zuniga demonstrated that local service rates that are increased to levels



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2015 DEC -8 AM 11:39

SUSAN HERRIWETHER  
CLERK

BY SW DEPUTY

FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

RURAL TELEPHONE COMPANY,

CASE NO. 15 OC 00188 1B

Plaintiff,

DEPT. 2

vs.

PUBLIC UTILITIES COMMISSION OF  
NEVADA, an administrative agency  
of the State of Nevada,

Defendant.

ORDER DENYING MOTION TO  
DISMISS FOR LACK OF  
JURISDICTION, DENYING  
MOTION FOR EXTENSION OF  
TIME, STRIKING OPENING BRIEF,  
AND DISMISSING PETITION FOR  
JUDICIAL REVIEW

PROCEDURAL BACKGROUND

Rural Telephone Company (Rural) filed a motion to extend the deadline for its opening brief by 30 days. The Public Utilities Commission of Nevada (Commission) opposed the motion and filed a counter-motion to dismiss the petition for judicial review on grounds that Rural's failure to timely file its opening brief divested the court of subject matter jurisdiction, or alternatively that the court lacks authority to extend the opening brief deadline.

FACTS

Rural timely filed a petition for judicial review. The parties agreed Rural's opening brief was due October 19, 2015.

On October 15, 2015, Rural requested the Commission stipulate to a 30 day extension to file its opening brief. The Commission indicated it would not

1 oppose a ten day extension. On October 16, 2015, Rural filed its motion for a 30  
2 day extension which the Commission opposed. Rural filed its opening brief on  
3 November 18, 2015, 60 after the statutory deadline.

#### 4 5 ANALYSIS

6 **Did Rural's failure to timely file its opening brief divest the court of**  
7 **subject matter jurisdiction?**

8 The Commission argued the NRS 703.373(6) 30 day deadline for the  
9 filing of an opening brief is mandatory and jurisdictional. In support of its  
10 jurisdiction argument the Commission: 1) pointed out that NRS 703.373(6) says  
11 a petitioner *must* file its opening brief within 30 days; 2) pointed out that NRS  
12 233B.133(6) provides that for good cause a court may extend the briefing  
13 deadlines, but NRS 703.373 contains no such provision; 3) cited cases which it  
14 argued demonstrate that compliance with the 30 day deadline is mandatory.

15 Rural: 1) correctly countered that the cases cited by the Commission dealt  
16 with the timely filing of the petition for judicial review or notice of appeal, as  
17 opposed to briefing deadlines; and 2) pointed out the Commission indicated it  
18 would not oppose an extension.

19 The Commission cited *Fitzpatrick v. State*<sup>1</sup> for the proposition that absent  
20 NRS 233B.133(6)'s deadline extension provision, the failure to submit a timely  
21 opening brief divests the court of jurisdiction. That is not what *Fitzpatrick* held.  
22 That court stated: "... if the petition for judicial review is timely filed, NRS  
23 233B.133 allows the district court to accept a tardy memorandum of points and  
24 authorities in support of the petition."<sup>2</sup> That court did not say an untimely brief  
25 divests the court of jurisdiction.

26  
27 <sup>1</sup>107 Nev. 486, 813 P.2d 1004 (1991).

28 <sup>2</sup>*Id.* 488.

1 As to the Commission's argument that NRS 703.373(6) is mandatory: a  
2 statute may be mandatory and not jurisdictional. As to Rural's argument that the  
3 Commission stipulated to the extension: a party cannot create jurisdiction by  
4 stipulation.

5 The Commission recognized that this court obtained jurisdiction when  
6 Rural timely filed its Petition for Judicial Review. The Commission failed to  
7 present any persuasive legal authority that NRS 703.373 or other statute  
8 eliminates existing jurisdiction if a petitioner fails to timely file an opening brief.  
9 The court concludes it obtained jurisdiction when Rural timely filed its petition  
10 for judicial review, and failure to timely file an opening brief does not divest the  
11 court of jurisdiction.

12  
13 **Does the court have authority to grant Rural's request for an**  
14 **extension of the opening brief deadline?**

15 The law Rural cited in its motion for an extension does not apply to  
16 Commission judicial reviews.

17 The Commission argued: 1) Rural's motion should be denied because it  
18 failed to cite any applicable authority to support its motion; 2) the opening brief  
19 deadline is mandatory and, unlike NRS 233B.133(6), NRS 703.373 does not  
20 provide that a court may, for good cause, extend the opening brief deadline; 3)  
21 the motion is moot because the motion for an extension does not toll the  
22 statutory time-line; and 4) Rural offered no valid excuse for noncompliance with  
23 the filing deadline. Commission pointed out that one of purposes of AB 17, the  
24 2011 bill which amended NRS 703.373, was to fast-track the judicial review  
25 process.

26 Rural responded: 1) that by the AB 17 amendments to NRS 703.373 the  
27 legislature intended a judicial review process of four to six months and since  
28 strict adherence to the NRS 703.373 deadlines would result in a hearing on the

1 petition in 110 days, the statute clearly allows for some flexibility in filing briefs;  
2 and 2) Rural's request for a 30 day extension, on its own, will not result in the  
3 judicial review process taking more than six months. Rural cited no legal  
4 authority to support its position and failed to rebut the Commission's legal  
5 arguments.

6  
7 *Court authority to grant extensions of Commission judicial review of the*  
8 *opening brief deadline*

9 In *Washoe County v. Otto*<sup>3</sup> the Nevada Supreme Court stated:

10 Generally, "[c]ourts have no inherent appellate jurisdiction over  
11 official acts of administrative agencies except where the legislature has  
12 made some statutory provision for judicial review." *Crane v.*  
13 *Continental Telephone*, 105 Nev. 399, 401, 775 P.2d 705, 706 (1989).  
14 Thus, "[w]hen the legislature creates a specific procedure for review of  
15 administrative agency decisions, such procedure is controlling." *Id.*;  
16 see also *Fitzpatrick v. State, Dep't of Commerce*, 107 Nev. 486, 488,  
17 813 P.2d 1004, 1005 (1991) (applying this reasoning to the APA) ....

18 The issue in *Otto* was jurisdiction, not brief deadlines. But since this court  
19 does not have inherent jurisdiction over Commission administrative decisions,  
20 the court must enforce the statutory procedures implemented by the legislature.  
21 Here, the legislature enacted NRS 703.373 giving the court jurisdiction to  
22 judicially review Commission administrative decisions. Included in that statute  
23 are mandatory fast-track deadlines for filing briefs. NRS 703.373 does not  
24 expressly give the court authority to extend the opening brief deadline.

25 The Commission's Assistant General Counsel and Utilities Hearing  
26 Officer testified at a February 9, 2011, legislative hearing on AB 17 regarding the  
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28 The reason for the fast-track review of commission decisions is  
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<sup>3</sup>128 Nev. A.O. 40, 282 P.3d 719, 724 (2012).

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3 rates. If that happened, a Commission decision would go into effect  
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5 effect. That would have the effect of spiking the rates. The other  
6 issue is carrying charges. Once Commission decisions are issued  
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11 charges – basically interest on these monies that either the  
12 Commission or the ratepayers are going to have to pay. The shorter  
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15 Lastly, with regards to money there is what is called  
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20 some people that are going to get that refund without having paid  
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provide reliable and adequate service.

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19 What NRS 233B.039 does .... It allows for *extended briefing* ....  
20 Those were never things that were contemplated for judicial review  
21 of the Commission. It was a question of whether to follow NRS  
22 703.373 or NRS 233B.039 judicial review provisions.<sup>4</sup>

23 The legislature, at the Commission’s request, used NRS 233B.133 as a  
24 template in formulating NRS 703.373.<sup>5</sup> The Commission did not request and the  
25 legislature did not include in NRS 703.373 a provision similar to NRS  
26 233B.133(6) which authorizes a court, for good cause, to extend the time allowed

---

27 <sup>4</sup>Minutes of the Meeting of the Assemb. Comm. on Government Affairs,  
28 Seventy-Sixth Session, Feb. 9, 2011, pp. 45-47. (Emphasis added.)

<sup>5</sup>Id. Mar. 25, 2011, Ex. G.

1 for filing briefs. In light of the fact that one of primary purposes of AB 17 was to  
2 fast-track Commission judicial reviews, the Commission's and the legislature's  
3 failure to confer on courts the authority to expressly grant extensions of briefing  
4 deadlines appears to be intentional.

5 The court concludes that it does not have authority to grant Rural a 30  
6 day extension over the Commission's objection. This conclusion does no violence  
7 to the words of NRS 703.373; gives effect to the legislature's decision not to  
8 expressly confer upon courts the authority to extend the deadline for filing an  
9 opening brief; furthers the fast-track purpose of the statute; and provides some  
10 certainty to the fast-track procedures. As to the last point, providing certainty to  
11 fast-track procedures: this court's conclusion eliminates the delay inherent in  
12 litigating motions for extensions.

13 The court does not conclude that courts can never extend the deadline for  
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15 authority to grant an extension. For example, if the Commission stipulated to a  
16 continuance a court may have inherent authority to grant an extension. Here,  
17 even if the Commission stipulated to a continuance it stipulated to ten days and  
18 Rural did not file its opening brief until thirty days after the statutory deadline.  
19 Rural provided no legal authority to support the proposition that the court has  
20 inherent authority to grant a 30 day extension over the objection of the  
21 Commission.

22 The court concludes it does not, under these circumstances, have  
23 authority to grant a 30 day extension to the opening brief deadline.

24  
25 ***Failure to cite supporting legal authority***

26 The failure of a moving party to file a memorandum of points and  
27 authorities in support of a motion shall constitute a consent to the denial of the  
28

1 motion.<sup>6</sup> Because Rural failed to cite any legal authority to support its motion for  
2 an extension its motion must be denied for that reason as well.

3  
4 **ORDER**

5 **IT IS ORDERED:**

6 The Commission's motion to dismiss on grounds that Rural's failure to  
7 timely file its opening brief divested the court of subject matter jurisdiction is  
8 denied.

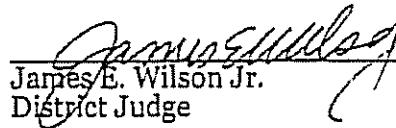
9 Rural's motion to extend the opening brief deadline by 30 days is denied  
10 and Rural's untimely filed Opening Brief is stricken.

11 The Commission's Counter-Motion to Dismiss Rural's Petition for  
12 Judicial Review is granted.

13  
14 **NRS 703.373(10) precedence**

15 This court is aware that NRS 703.373(10) gives judicial reviews of  
16 Commission administrative decisions priority over any civil action of a different  
17 nature pending in the court. Court procedures were deficient and this case was  
18 not submitted for a decision until after Rural filed a request to submit and even  
19 then the matter was not immediately presented to the court for decision. The  
20 court's procedures have been modified to correct the deficiencies. The court  
21 apologizes for the delay.


22 December 8, 2015.

23  
24   
James E. Wilson Jr.  
District Judge

25  
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28 \_\_\_\_\_  
<sup>6</sup> FJDCR 15(5).

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Karen Peterson, Esq.  
402 N. Nevada Street  
Carson City, NV 89703

  
Gina Winder  
Judicial Assistant



Carolyn Tanner, Esq., NV Bar No. 5520  
Roman Borisov, Esq., NV Bar No. 12705  
1150 E. William Street  
Carson City, NV 89701-3109  
Tel: (775) 684-6152  
Fax (775) 684-6188

REC'D & FILED  
2015 DEC -9 AM 10:45  
SUSAN HERRIETHEN  
CLERK  
BY V. Alegria  
DEPUTY

Attorneys for: *Public Utilities Commission of Nevada*

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

Rural Telephone Company,

Petitioner,

vs.

Public Utilities Commission of Nevada, an  
Administrative agency of the State of Nevada,

Respondent.

CASE NO. 15-OC-001881B

DEPT. II

NOTICE OF ENTRY OF ORDER

NOTICE IS HEREBY GIVEN that on the 8th day of December, 2015, the Court entered an  
*Order Denying Motion to Dismiss for Lack of Jurisdiction, Denying Motion for Extension of Time,*  
*Striking Opening Brief, and Dismissing Petition for Judicial Review* in the above-entitled matter. A  
copy of said Order is attached hereto as Exhibit 1.

DATED this 9th day of December, 2015.

by: 

ROMAN BORISOV, ESQ.  
Nevada Bar No. 12705  
1150 East William Street  
Carson City, NV 89701  
Tel: 775-684-6152  
Fax: 775-684-6186  
rborisov@puc.nv.gov  
*Attorney for Respondent, the Public  
Utilities Commission of Nevada*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Public Utilities Commission of Nevada, and that, on this date, I have served the foregoing *Notice of Entry of Order*, with a copy of an *Order Denying Motion to Dismiss for Lack of Jurisdiction, Denying Motion for Extension of Time, Striking Opening Brief, and Dismissing Petition for Judicial Review* attached, in Case No. 15 OC 001881B by hand delivery, true and correct copies thereof, in properly addressed envelopes, in Carson City, Nevada, to the following:

Karen A. Peterson, Esq.  
Allison MacKenzie, Ltd.  
402 North Division Street  
Carson City, NV 89703  
*Attorney for Rural Telephone Company*

DATED this 9th day of December, 2015.

  
ELIZABETH AVRAM

## **EXHIBIT 1**

REC'D & FILED

2015 DEC -8 AM 11:39

SUSAN HERRIWETHER  
CLERK

BY SW DEPUTY

FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

RURAL TELEPHONE COMPANY,

CASE NO. 15 OC 00188 1B

Plaintiff,

DEPT. 2

vs.

PUBLIC UTILITIES COMMISSION OF  
NEVADA, an administrative agency  
of the State of Nevada,

Defendant.

ORDER DENYING MOTION TO  
DISMISS FOR LACK OF  
JURISDICTION, DENYING  
MOTION FOR EXTENSION OF  
TIME, STRIKING OPENING BRIEF,  
AND DISMISSING PETITION FOR  
JUDICIAL REVIEW

PROCEDURAL BACKGROUND

Rural Telephone Company (Rural) filed a motion to extend the deadline for its opening brief by 30 days. The Public Utilities Commission of Nevada (Commission) opposed the motion and filed a counter-motion to dismiss the petition for judicial review on grounds that Rural's failure to timely file its opening brief divested the court of subject matter jurisdiction, or alternatively that the court lacks authority to extend the opening brief deadline.

FACTS

Rural timely filed a petition for judicial review. The parties agreed Rural's opening brief was due October 19, 2015.

On October 15, 2015, Rural requested the Commission stipulate to a 30 day extension to file its opening brief. The Commission indicated it would not

1 oppose a ten day extension. On October 16, 2015, Rural filed its motion for a 30  
2 day extension which the Commission opposed. Rural filed its opening brief on  
3 November 18, 2015, 60 after the statutory deadline.

#### 4 5 ANALYSIS

6 **Did Rural's failure to timely file its opening brief divest the court of**  
7 **subject matter jurisdiction?**

8 The Commission argued the NRS 703.373(6) 30 day deadline for the  
9 filing of an opening brief is mandatory and jurisdictional. In support of its  
10 jurisdiction argument the Commission: 1) pointed out that NRS 703.373(6) says  
11 a petitioner *must* file its opening brief within 30 days; 2) pointed out that NRS  
12 233B.133(6) provides that for good cause a court may extend the briefing  
13 deadlines, but NRS 703.373 contains no such provision; 3) cited cases which it  
14 argued demonstrate that compliance with the 30 day deadline is mandatory.

15 Rural: 1) correctly countered that the cases cited by the Commission dealt  
16 with the timely filing of the petition for judicial review or notice of appeal, as  
17 opposed to briefing deadlines; and 2) pointed out the Commission indicated it  
18 would not oppose an extension.

19 The Commission cited *Fitzpatrick v. State*<sup>1</sup> for the proposition that absent  
20 NRS 233B.133(6)'s deadline extension provision, the failure to submit a timely  
21 opening brief divests the court of jurisdiction. That is not what *Fitzpatrick* held.  
22 That court stated: "... if the petition for judicial review is timely filed, NRS  
23 233B.133 allows the district court to accept a tardy memorandum of points and  
24 authorities in support of the petition."<sup>2</sup> That court did not say an untimely brief  
25 divests the court of jurisdiction.

26  
27 <sup>1</sup>107 Nev. 486, 813 P.2d 1004 (1991).

28 <sup>2</sup>*Id.* 488.

1 As to the Commission's argument that NRS 703.373(6) is mandatory: a  
2 statute may be mandatory and not jurisdictional. As to Rural's argument that the  
3 Commission stipulated to the extension: a party cannot create jurisdiction by  
4 stipulation.

5 The Commission recognized that this court obtained jurisdiction when  
6 Rural timely filed its Petition for Judicial Review. The Commission failed to  
7 present any persuasive legal authority that NRS 703.373 or other statute  
8 eliminates existing jurisdiction if a petitioner fails to timely file an opening brief.  
9 The court concludes it obtained jurisdiction when Rural timely filed its petition  
10 for judicial review, and failure to timely file an opening brief does not divest the  
11 court of jurisdiction.

12  
13 **Does the court have authority to grant Rural's request for an**  
14 **extension of the opening brief deadline?**

15 The law Rural cited in its motion for an extension does not apply to  
16 Commission judicial reviews.

17 The Commission argued: 1) Rural's motion should be denied because it  
18 failed to cite any applicable authority to support its motion; 2) the opening brief  
19 deadline is mandatory and, unlike NRS 233B.133(6), NRS 703.373 does not  
20 provide that a court may, for good cause, extend the opening brief deadline; 3)  
21 the motion is moot because the motion for an extension does not toll the  
22 statutory time-line; and 4) Rural offered no valid excuse for noncompliance with  
23 the filing deadline. Commission pointed out that one of purposes of AB 17, the  
24 2011 bill which amended NRS 703.373, was to fast-track the judicial review  
25 process.

26 Rural responded: 1) that by the AB 17 amendments to NRS 703.373 the  
27 legislature intended a judicial review process of four to six months and since  
28 strict adherence to the NRS 703.373 deadlines would result in a hearing on the

1 petition in 110 days, the statute clearly allows for some flexibility in filing briefs;  
2 and 2) Rural's request for a 30 day extension, on its own, will not result in the  
3 judicial review process taking more than six months. Rural cited no legal  
4 authority to support its position and failed to rebut the Commission's legal  
5 arguments.

6  
7 *Court authority to grant extensions of Commission judicial review of the*  
8 *opening brief deadline*

9 In *Washoe County v. Otto*<sup>3</sup> the Nevada Supreme Court stated:

10 Generally, "[c]ourts have no inherent appellate jurisdiction over  
11 official acts of administrative agencies except where the legislature has  
12 made some statutory provision for judicial review." *Crane v.*  
13 *Continental Telephone*, 105 Nev. 399, 401, 775 P.2d 705, 706 (1989).  
14 Thus, "[w]hen the legislature creates a specific procedure for review of  
15 administrative agency decisions, such procedure is controlling." *Id.*;  
16 see also *Fitzpatrick v. State, Dep't of Commerce*, 107 Nev. 486, 488,  
17 813 P.2d 1004, 1005 (1991) (applying this reasoning to the APA) ....

18 The issue in *Otto* was jurisdiction, not brief deadlines. But since this court  
19 does not have inherent jurisdiction over Commission administrative decisions,  
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21 Here, the legislature enacted NRS 703.373 giving the court jurisdiction to  
22 judicially review Commission administrative decisions. Included in that statute  
23 are mandatory fast-track deadlines for filing briefs. NRS 703.373 does not  
24 expressly give the court authority to extend the opening brief deadline.

25 The Commission's Assistant General Counsel and Utilities Hearing  
26 Officer testified at a February 9, 2011, legislative hearing on AB 17 regarding the  
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28 The reason for the fast-track review of commission decisions is  
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Those were never things that were contemplated for judicial review  
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4 deadlines appears to be intentional.

5 The court concludes that it does not have authority to grant Rural a 30  
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24  
25 ***Failure to cite supporting legal authority***

26 The failure of a moving party to file a memorandum of points and  
27 authorities in support of a motion shall constitute a consent to the denial of the  
28

1 motion.<sup>6</sup> Because Rural failed to cite any legal authority to support its motion for  
2 an extension its motion must be denied for that reason as well.

3  
4 **ORDER**

5 **IT IS ORDERED:**

6 The Commission's motion to dismiss on grounds that Rural's failure to  
7 timely file its opening brief divested the court of subject matter jurisdiction is  
8 denied.

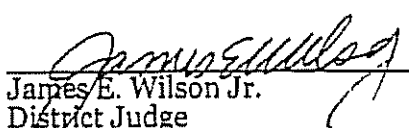
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11 The Commission's Counter-Motion to Dismiss Rural's Petition for  
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13  
14 **NRS 703.373(10) precedence**

15 This court is aware that NRS 703.373(10) gives judicial reviews of  
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18 not submitted for a decision until after Rural filed a request to submit and even  
19 then the matter was not immediately presented to the court for decision. The  
20 court's procedures have been modified to correct the deficiencies. The court  
21 apologizes for the delay.

22 December 8, 2015.

23  
24   
James E. Wilson Jr.  
District Judge

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<sup>6</sup> FJDCR 15(5).

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1 KAREN A. PETERSON, ESQ.  
Nevada State Bar No. 0366  
2 JUSTIN M. TOWNSEND, ESQ.  
Nevada State Bar No. 12293  
3 ALLISON MacKENZIE, LTD.  
402 North Division Street  
4 Carson City, NV 89703  
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5 Facsimile: (775) 882-7918  
Email: [kpeterson@allisonmackenzie.com](mailto:kpeterson@allisonmackenzie.com)  
6 Email: [jtownsend@allisonmackenzie.com](mailto:jtownsend@allisonmackenzie.com)

7 Attorneys for Petitioner,  
RURAL TELEPHONE COMPANY  
8  
9

10 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
11 IN AND FOR CARSON CITY  
12

13 RURAL TELEPHONE COMPANY,

14 Petitioner,

15 vs.

16 PUBLIC UTILITIES COMMISSION OF  
17 NEVADA, an administrative agency of the  
State of Nevada,

18 Respondent.  
19 \_\_\_\_\_

Case No. 15 OC 00188 1B

Dept. No. II

20 NOTICE OF APPEAL

21 Notice is hereby given that RURAL TELEPHONE COMPANY, Petitioner above-  
22 named, by and through its attorneys, ALLISON MacKENZIE, LTD., hereby appeals to the Supreme  
23 Court of Nevada from the *Order Denying Motion to Dismiss for Lack of Jurisdiction, Denying*  
24 *Motion for Extension of Time, Striking Opening Brief, and Dismissing Petition for Judicial Review*  
25 entered in this action on the 8<sup>th</sup> day of December, 2015.

26 ///

27 ///

28 ///

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2016 JAN 14 PM 4:33  
SUSAN MERRIN  
BY \_\_\_\_\_ CLERK  
DEPT. II


ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

AFFIRMATION

The undersigned does hereby affirm that the preceding document does not contain the Social Security number of any person.

DATED this 14<sup>th</sup> day of January, 2016.

ALLISON MacKENZIE, LTD.  
402 North Division Street  
Carson City, NV 89703-4168

By:   
KAREN A. PETERSON, ESQ.  
Nevada State Bar No. 0366  
JUSTIN M. TOWNSEND, ESQ.  
Nevada State Bar No. 12293

Attorneys for Petitioner,  
RURAL TELEPHONE COMPANY

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- ☒ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- ☐ Hand-delivery
- ☐ Facsimile
- ☐ Federal Express, UPS, or other overnight delivery
- ☐ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

Carolyn Tanner, Esq.  
Roman Borisov, Esq.  
Public Utilities Commission of Nevada  
1150 East William Street  
Carson City, NV 89701

DATED this 14th day of January, 2016.

  
NANCY FONTENOT

4820-9595-7292, v. 1

## **CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(c)(1), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- ☐ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada
- ☐ Hand-delivery - via Reno/Carson Messenger Service
- ☒ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures

fully addressed as follows:

Garrett C. Weir, Esq.  
Hayley A. Williamson, Esq.  
[gweir@puc.nv.gov](mailto:gweir@puc.nv.gov)  
[hwilliamson@puc.nv.gov](mailto:hwilliamson@puc.nv.gov)

DATED this 5<sup>th</sup> day of July, 2016.

/s/ Nancy Fontenot  
NANCY FONTENOT

1 KAREN A. PETERSON, ESQ.  
Nevada State Bar No. 0366  
2 JUSTIN M. TOWNSEND, ESQ.  
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7 Attorneys for Petitioner,  
RURAL TELEPHONE COMPANY

REC'D & FILED  
2015 NOV -3 PM 3: 32  
SUSAN MERRINETHES  
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BY

10 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
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12  
13 RURAL TELEPHONE COMPANY,

14 Petitioner,

15 vs.

16 PUBLIC UTILITIES COMMISSION OF  
17 NEVADA, an administrative agency of the  
State of Nevada,

18 Respondent.  
19 \_\_\_\_\_

Case No. 15 OC 00188 1B

Dept. No. II

20 **REPLY TO OPPOSITION TO MOTION FOR EXTENSION OF TIME AND**  
21 **OPPOSITION TO COUNTERMOTION TO DISMISS**

22 Petitioner, RURAL TELEPHONE COMPANY ("Rural"), by and through its  
23 attorneys, ALLISON MacKENZIE, LTD., hereby replies to the Opposition to Motion for Extension  
24 of Time and opposes the Countermotion to Dismiss filed by the Public Utilities Commission of  
25 Nevada ("Commission"). This Reply and Opposition is made and based upon the following  
26 Memorandum of Points and Authorities and all other papers and pleadings on file in this matter.

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### Introduction

The Commission's sole argument in opposition to Rural's request for an extension of time to file its opening brief in this action is that NRS 703.373 provides no statutory mechanism for extending the deadlines set forth in the statute. The Commission asserts, therefore, that the deadlines are "jurisdictional and mandatory" and may not be extended. In support of its contention, the Commission refers to the legislative history of Assembly Bill 17, which was passed in 2011 during the 76<sup>th</sup> Session of the Nevada Legislature. The Commission fails to acknowledge, however, that the very same legislative history provides no support for its contention that requesting an extension of time to file an opening brief deprives a court of jurisdiction of a timely filed petition for judicial review of a Commission's decision.

Further, the case law offered in support of the Commission's Opposition only supports a finding that the late filing of an appeal and/or petition for judicial review is jurisdictional. In this case, Petitioner's Petition for Judicial Review was filed before expiration of the jurisdictional deadline. The case law says nothing about whether the filing of an opening brief is jurisdictional. There being no law to support the Commission's jurisdictional argument, there is no basis for the Commission's Countermotion to Dismiss.

Finally, Respondent's argument that the briefing deadlines are mandatory and jurisdictional is undermined by its own acknowledgment that it did not oppose a 10-day extension of time for Petitioner to file its opening brief. If the time frames set in the statute for filing briefs were jurisdictional and mandatory, Respondent would have no authority to agree to a 10-day extension of time as it did on October 16, 2015.

For these reasons, Rural respectfully requests that the Court grant Rural's Motion for Extension of Time to file its Opening Brief no later than November 18, 2015. Further, Rural requests an order denying the Commission's Countermotion to Dismiss.

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II.

ARGUMENT

A. The deadlines contained in NRS 703.373 were designed to produce review of Commission decisions by a Court within 4-6 months of the filing of a petition for judicial review and nothing more.

The Commission points out that the passage of AB17 in 2011 confines judicial review of Commission decisions to the statutory review provisions set forth in NRS Chapter 703. However, the Commission's reliance on the legislative history of AB 17 in concluding that no deadline set forth therein may be extended is belied by the language of the very legislative history cited to by the Commission.

The Commission notes that "[o]ne of the purposes behind enacting AB 17 was to accelerate the judicial review of the Commission's decisions with the aim to fit such review within a four to six months timeframe, instead of the nine to thirty months timeframe that can occur for petitions for judicial review filed under NRS Chapter 233B." Opposition, p. 4, ll. 11-14 (citing AB 17: The Applicability of the Nevada Administrative Procedure Act to the Public Utilities Commission of Nevada; Hearing on AB 17 Before the S. Comm. On Gov't Affairs, 2011 Leg., 76<sup>th</sup> Sess. 8-9 (Nev. Mar. 25, 2011)).

To reiterate the legislative intent behind AB 17, the bill's purpose was to exempt the Commission from the judicial review procedure of NRS Chapter 233B so that only the Commission judicial review provisions in NRS Chapter 703 were applicable, resulting in four to six months for judicial review of the Commission's decisions. See Legislative History of AB 17, attached hereto as Exhibit "1", Minutes of Senate Committee on Government Affairs, March 25, 2011, Exhibit F; Minutes of Senate Committee on Government Affairs, April 27, 2011, Exhibit D. That stated purpose is repeated throughout the testimony offered in support of AB 17 before both the Senate and the Assembly. See Minutes of the Assembly Committee on Government Affairs, February 9, 2011, pp. 44-48; Minutes of the Assembly Committee on Government Affairs, March 11, 2011, pp. 3-4; Minutes of the Senate Committee on Government Affairs, March 25, 2011, pp. 8-9; Minutes of the Senate Committee on Government Affairs, April 27, 2011, pp. 9-10; Minutes of the Senate Committee on Government Affairs, May 13, 2011, pp. 10-12.

Setting a time frame of four to six months necessarily allows for some latitude in the briefing deadlines set forth in NRS Chapter 703. The deadlines at issue here are found in NRS 703.373. First, a petition for judicial review must be filed within thirty (30) days after final action by the Commission on reconsideration. NRS 703.373(3). Within thirty (30) days of the timely filing of a petition for judicial review the Commission must file a certified copy of the record on appeal. NRS 703.373(5). Next, within thirty (30) days of notice that the record has been filed the petitioner files its opening brief. NRS 703.373(6). The Commission then has thirty (30) days from the filing of the opening brief to file a reply brief. NRS 703.373(7). Finally, after the aforementioned briefing is complete, the Court sets a hearing on twenty (20) days' notice to the parties. NRS 703.373(7). As the handwritten notes on Exhibits E and G from the Senate Committee on Government Affairs indicate, the briefing schedule language was taken from NRS 233B.133. The legislative history shows the main purpose of the amendments to AB 17 were to require a petitioner to exhaust its administrative remedies and to set a time frame for the Commission to submit the administrative record on appeal to the Court. See Minutes of the Senate Committee on Government Affairs, March 25, 2011, pp. 8-9 and Exhibit G; April 27, 2011, pp. 9-10 and Exhibit D; and May 13, 2011, pp. 10-12 and Exhibit F. There was no discussion in any manner or at any time before the Legislature that time frames set in NRS 703.373 for filing briefs were jurisdictional or mandatory for the court to retain jurisdiction over the action for judicial review.

If all of the aforementioned deadlines are strictly adhered to, the hearing on the petition will be heard approximately 110 days, or less than four months, from the filing of the petition for judicial review. As set forth in the legislative history of AB 17, the review process is designed to take anywhere from four to six months. Clearly, therefore, the statute allows for some flexibility in filing briefs.

Moreover, Rural's request for a thirty (30) day extension of time to file the opening brief, on its own, will not remove the instant Petition for Judicial Review from the desired four to six month review process envisioned by NRS 703.373. The Petition for Judicial Review was timely filed on August 18, 2015. The outer limit of the desired review window is therefore February 18, 2015. If Rural's request for a thirty (30) day extension is granted, the required briefing would be

1 completed as early as December 18, 2015, which gives the Court sufficient time to set the matter for  
2 hearing with twenty (20) days' notice to the parties. Even if the Commission needs additional time  
3 to file its reply brief, the review of this matter should be completed in less than six months. This  
4 flexibility was clearly anticipated by the Legislature and, on that basis, Rural respectfully requests  
5 that the Court grant Rural's reasonable request for a thirty (30) day extension of time.

6 **B. The deadline to file the opening brief is not jurisdictional.**

7 The Commission asserts that Rural's failure to file its opening brief on or before  
8 October 18, 2015 is jurisdictional and, on that basis, moves for dismissal of Rural's Petition. In  
9 support of its contention, the Commission cites Nevada case law that it asserts stands for the  
10 proposition that the deadlines set forth in NRS 703.373 are jurisdictional. The Commission cites  
11 Reno Sparks Convention Visitors Auth. v. Jackson, 112 Nev. 62, 910 P.2d 267 (1996); State Indus.  
12 Ins. System v. Partlow-Hursh, 101 Nev. 122, 696 P.2d 462 (1985); and Seino v. Employers Ins. Co.  
13 of Nevada, 121 Nev. 146, 111 P.3d 1107 (2005). In each of these cases, the appellants failed to  
14 timely file an appeal of an administrative determination. The Supreme Court held, in each case, that  
15 where the deadline to appeal was not expressly modifiable, that deadline was mandatory and  
16 jurisdictional – in other words, the petitioner lost his/her appeal rights. The statutes at issue in the  
17 aforementioned cases dealt only with the timely filing of an appeal, not later deadlines that might  
18 apply to the subsequent judicial review process. In contrast to these cited cases, Rural timely filed  
19 its Petition for Judicial Review and that fact is not disputed by the Commission. The Jackson,  
20 Partlow-Hursh, and Seino cases cited by the Commission stand only for the proposition that the  
21 filing of a petition for judicial review of an administrative determination must be timely made or  
22 appeal rights are lost. They have no bearing on any later deadlines applicable to the judicial review  
23 process and certainly not those found in NRS 703.373 relating to the filing of briefs in this matter.

24 Indeed, a review of Nevada case law reveals that all cases discussing the  
25 jurisdictional question of administrative appeals deal only with the timely filing of the petition for  
26 judicial review itself, not any of the later deadlines that may be involved in the applicable judicial  
27  
28

1 review process.<sup>1</sup> Here, Rural has timely filed its Petition for Judicial Review. This Court therefore  
2 has jurisdiction over this matter and may grant an extension of time to file the opening brief.

3 **C. The Commission was willing to agree to a 10-day extension, which belies its**  
4 **arguments that the deadline at issue is jurisdictional.**

5 The Commission's argument that the deadline to file the opening brief is  
6 jurisdictional is belied by its own attorney's acquiescence to an extension of time and the invitation  
7 to file a motion if a longer extension of time was needed. See Exhibit 1 to Rural's Motion at ¶¶ 8-9;  
8 see also email dated October 16, 2015 from Roman Borisov, Administrative Attorney to the  
9 Commission, to Rural's counsel, a copy of which is incorporated herein by reference and attached  
10 hereto as Exhibit "2". The tenor of Mr. Borisov's email is such that the Commission was opposed  
11 to a longer extension solely on the basis that it was worried about its workload in November and  
12 December. Rural's Motion addresses this concern by noting that it would agree to any extension of  
13 time needed by the Commission as a result of any extension given to Rural. Never at any time prior  
14 to the filing of its Opposition did the Commission mention its position that failure to file an opening  
15 brief by the deadline in NRS 703.373 allegedly deprived the Court of jurisdiction of Rural's appeal.  
16 In fact, counsel for the Commission *asked* Rural to file a motion with the Court if Rural's counsel  
17 wanted a longer continuance. The Commission should be estopped to now argue the failure of  
18 Petitioner to submit its opening brief within the time frame contained in NRS 703.373 deprives the  
19 Court of jurisdiction.

20 All attorneys in Nevada swear to conduct themselves in a civil and professional  
21 manner when dealing with opposing counsel. See Supreme Court Rule 73 (civility language added  
22 in May 2014). In 2014, the State Bar of Nevada commissioned a survey to study civility among  
23 Nevada attorneys and encouraged all Nevada attorneys to participate. One of the survey questions  
24 asked whether any of a set of acts of uncivility had occurred to the respondent attorneys. One of the  
25 defined acts of uncivility was the refusal to grant a reasonable request for an extension. In  
26 November 2014, the Nevada Bar reported the results of the survey and noted that one of the more

27 <sup>1</sup> The Commission's argument that the time frames in NRS 703.373 (other than for filing a petition for judicial review)  
28 are jurisdictional leads to nonsensical results. Under the Commission's argument, the failure by the Commission to file  
the record on appeal or to file a reply brief within the time frames set forth in the statute would require the Court to  
automatically grant the Petitioner the relief it requested in its petition for judicial review.

1 frequently encountered uncivil behaviors included “not agreeing to reasonable requests.” Elana  
2 Turner Graham, *Message from the President: Civility Survey Results*, 22 Nev. Law., Iss. 11 at 4  
3 (Nov. 2014). Civility is an important issue to the State Bar of Nevada. Furthermore, granting  
4 reasonable requests for extension of time is a simple and civil practice that is expressly condoned by  
5 the Nevada Supreme Court. See NRCP 3.2(b) (providing that a Nevada attorney is not precluded  
6 from granting reasonable requests for extension of time).

7 Further, as noted above, a thirty (30) day extension of time to November 18, 2015  
8 does not remove this review from the desired four to six month review window. The Commission’s  
9 refusal to grant a request for extension was not reasonable. Accordingly, the Court should grant  
10 Rural’s motion for extension of time.

11 **D. The Commission’s Countermotion to Dismiss should be denied.**

12 The Commission’s sole contention in support of its Countermotion to Dismiss is that  
13 the deadline to file the opening brief in this matter is jurisdictional and Rural has no mechanism for  
14 extending the deadline or filing the opening brief after the original deadline has passed. As set forth  
15 above, the deadline is not jurisdictional. Further, the Commission has acquiesced to an extension of  
16 time to file the opening brief, albeit not a sufficient extension. Because the deadline is not  
17 jurisdictional and Rural has set forth the bases for its request for extension, the Commission’s  
18 Countermotion to Dismiss must be denied. Moreover, Nevada Courts are cautioned that dismissal  
19 for procedural errors “should be used only in extreme situations” and should be weighed against,  
20 among other factors, “the policy favoring adjudication on the merits.” See Nevada Power Co. v.  
21 Fluor Illinois, 108 Nev. 638, 645, 837 P.2d 1354, 1359 (1992); see also Miles v. State, 120 Nev. 383,  
22 385-386, 91 P.3d 588, 589-590 (2004) (Defective post-conviction writ of habeas corpus verification  
23 did not deprive the district court of jurisdiction and permitting an improper verification to be cured  
24 serves to promote, rather than hinder, the policy objectives of district court’s resolution of timely  
25 presented claims); Forman v. Eagle Thrifty Drugs & Markets, Inc., 89 Nev. 533, 536, 516 P.2d  
26 1234, 1236 (1973) (reversed on other grounds) (appeal would not be dismissed for want of  
27 jurisdiction on grounds of defective notice of appeal where procedural technicality did not materially  
28 mislead the opposing party).

1 The Commission does not contend its substantial rights have been prejudiced by  
2 Petitioner's request for an extension of time to file its opening brief or that it has been materially  
3 affected by Petitioner's procedural request. Accordingly, the Commission's motion to dismiss  
4 should be denied.

5 A proposed Order Denying the Commission's Motion to Dismiss is attached hereto as  
6 Exhibit "3".

7 **III.**

8 **CONCLUSION**

9 For the foregoing reasons, Rural respectfully requests an extension of time to file its  
10 opening brief to November 18, 2015 and denial of the Commission's Countermotion to Dismiss.

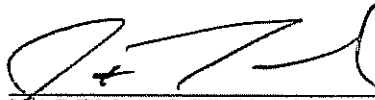
11 **AFFIRMATION**

12 The undersigned does hereby affirm that the preceding document does not contain the  
13 Social Security number of any person.

14 DATED this 3<sup>rd</sup> day of November, 2015.

15 ALLISON MacKENZIE, LTD.  
16 402 North Division Street  
17 Carson City, NV 89703-4168

18 By:

19   
20 KAREN A. PETERSON, ESQ.  
21 Nevada State Bar No. 0366  
22 JUSTIN M. TOWNSEND, ESQ.  
23 Nevada State Bar No. 12293

24 Attorneys for Petitioner,  
25 RURAL TELEPHONE COMPANY  
26  
27  
28

CERTIFICATE OF SERVICE


Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- ☒ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- ☐ Hand-delivery
- ☐ Facsimile
- ☐ Federal Express, UPS, or other overnight delivery
- ☐ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

Carolyn Tanner, Esq.  
Roman Borisov, Esq.  
Public Utilities Commission of Nevada  
1150 East William Street  
Carson City, NV 89701

DATED this 3<sup>rd</sup> day of November, 2015.

  
NANCY FONTENOT



INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description of Exhibit</u>	<u>No. of Pages (Excluding tab)</u>
"1"	Legislative History of AB 17	43
"2"	Email from Roman Borisov dated October 16, 2015	1
"3"	[Proposed] Order Denying Motion to Dismiss	2

4827-3252-3050, v. 2

# **EXHIBIT “1”**

MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-Sixth Session  
February 9, 2011

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 8:02 a.m. on Wednesday, February 9, 2011, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/76th2011/committees/](http://www.leg.state.nv.us/76th2011/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Marilyn K. Kirkpatrick, Chair  
Assemblywoman Irene Bustamante Adams, Vice Chair  
Assemblyman Elliot T. Anderson  
Assemblywoman Teresa Benitez-Thompson  
Assemblyman John Ellison  
Assemblywoman Lucy Flores  
Assemblyman Ed A. Goedhart  
Assemblyman Pete Livermore  
Assemblyman Harvey J. Munford  
Assemblywoman Dina Neal  
Assemblywoman Peggy Pierce  
Assemblyman Lynn D. Stewart  
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

Minutes ID: 124

\*CM124\*

JA0157

**STAFF MEMBERS PRESENT:**

Susan Scholley, Committee Policy Analyst  
Cynthia Carter, Committee Manager  
Jenny McMenomy, Committee Secretary  
Olivia Lloyd, Committee Assistant

**OTHERS PRESENT:**

Steve Sisolak, Vice Chair, Board of Commissioners, Clark County  
Donald G. Burnette, County Manager, Clark County  
Ted J. Olivas, Director of Administrative Services, City of Las Vegas  
Elizabeth N. Fretwell, City Manager, City of Las Vegas  
Shari Buck, Mayor, City of North Las Vegas  
Maryann Ustick, Acting City Manager, City of North Las Vegas  
Roger Tobler, Mayor, Boulder City  
Teresa J. Thienhaus, Director, Department of Personnel  
Danny L. Thompson, representing the Nevada State American Federation  
of Labor-Congress of Industrial Organizations (AFL-CIO)  
Romaine Gilliland, Administrator, Division of Welfare and Supportive  
Services, Department of Health and Human Services  
David S. Noble, Assistant General Counsel and Utilities Hearings Officer,  
Public Utilities Commission of Nevada

**Chair Kirkpatrick:**

[Roll was called.] I would like to welcome everyone to the Committee on Government Affairs. This is my fourth session on Government Affairs, and my third session as the Chair of the Committee. We will have good policy and good discussion. We have great new members that are going to change the way we do things in this Committee. We have five returning members and seven freshmen. We also have a freshman Vice Chair. On this Committee, we have a very diverse group and a great representation of the state from rural to urban areas. We can bring a lot of discussion to our Committee. I would like everyone to introduce themselves.

**Assemblyman Livermore:**

I come from Assembly District 40, which is Carson City. I come from a background of local government. I served 12 years on the Carson City Board of Supervisors, and I am a 50-year resident of Carson City.

**Assemblywoman Benitez-Thompson:**

I am Teresa Benitez-Thompson from Reno, and I am excited to serve on the Committee.

days a week from eight to five for many of the reasons that have been stated, including availability for the public and adequate access. Also from a furlough perspective, which is something we have all been challenged with, one of the things that we have done as a division is to choose to run our offices at half staff two Fridays per month. We have sent out public notices so that people would be clearly aware of when our offices were open and closed. I did want to indicate that while we appreciate the flexibility, we believe that it is important for the Division of Welfare and Supportive Services to continue to operate five days a week from eight to five.

**Chair Kirkpatrick:**

If there is no other comment on A.B. 37, I will close the hearing. [There was none.]

I will now open the hearing on Assembly Bill 17.

**Assembly Bill 17:** Revises the applicability of the Nevada Administrative Procedure Act to the Public Utilities Commission of Nevada. (BDR 18-455)

**David S. Noble, Assistant General Counsel and Utilities Hearings Officer, Public Utilities Commission of Nevada:**

Before you today is A.B. 17 which is a proposal from the Public Utilities Commission (PUC) to clarify which revisions of the *Nevada Revised Statutes* (NRS) are applicable to judicial review for PUC decisions. In NRS 233B.039, subsection 3, paragraph (c) which states that the special provisions of NRS Chapter 703 for judicial review of decisions of the PUC prevail over the general provisions of this chapter, is deleted. It also inserts subsection 5, paragraph (d), which states that the provisions of this chapter do not apply to judicial review decisions of the PUC.

I would like to give a brief history of judicial review as it pertains to PUC decisions. For the last 92 years the commission has had its own judicial review provision, starting in 1919 with the implementation of the Public Utilities Act. In 1967, when the state adopted the Administrative Procedure Act (APA) with regards to contested cases and judicial review of administrative decisions, the predecessor of the PUC, the Public Service Commission, testified on that bill. Section 12, which states that if any provision conflicts with the judicial review provisions of the commission the judicial review provisions of the commission shall govern, was implemented. In 1977, Senate Bill No. 62 of the 59th Session came before the Legislature and that adopted the APA process for promulgation of regulations. The language that was revised in NRS 233B.039 stated that the special provisions for judicial review of Public Services

Commission (PSC) prevail over the general provisions of this chapter. In 1983, the Legislature took out Senate Bill No. 177 of the 62nd Session and that was a bill put forward by the commission to streamline and fast-track the commission's judicial review process. It conformed the venue provisions in NRS Chapter 703 to those of the APA and it also clarified the scope of review of the district court by adopting the language contained in the APA. That would not have been done if NRS 703.373 was merged with the judicial review provisions of NRS 233B.039.

What has happened is the language that now exists, that we would like to delete and replace with the new language, is left open to interpretation, and that is exactly what has happened in various district courts and with various judges within those courts. They have tried to meld NRS 233B.039 with NRS 703.373. In fact, NRS 703.373 is meant to be a stand-alone judicial review provision for the commission.

The reason for the fast-track review of commission decisions is based on two premises: money and infrastructure. All commission decisions basically touch on one of these two issues. With regards to money, there is the issue of rate stability. The commission has, in its process, general rate cases—that is a top-down review of all utilities operations, revenues, and recovery rates which are on a two- to three-year cycle. If the judicial review process of a decision takes one, two, or three years you have the potential of a spike in rates. If that happened, a commission decision would go into effect at the same time that a Supreme Court decision would go into effect. That would have the effect of spiking the rates. The other issue is carrying charges. Once commission decisions are issued they are deemed effective. Unless there is an injunction they go into effect immediately. Those binding rates are then recovered by ratepayers. If there is subsequently a refund or additional monies to be recovered from or to the ratepayers there are carrying charges—basically interest on these monies that either the PUC or the ratepayers are going to have to pay. The shorter the time frame for judicial review that we have, the less carrying charges there are.

Lastly, with regards to money there is what is called "intergenerational equities". When a rate goes into effect there is a certain pool of ratepayers. If judicial review takes one to three years that pool of ratepayers changes over that time and there is not an equal comparison. If a refund needs to be issued, there are some people that are going to get that refund without having paid previously and others who are no longer in the area that should have gotten that refund.

With regards to utility infrastructure we have resource planning proceedings. This deals with utilities throughout the state that are regulated by us. A person does this through a construction permit or a resource planning process where they get approval to build something. They need to have certainty in a short amount of time as to whether or not they can go forward with their building. When the state was booming, it was very difficult for the PUC to even keep up with the growth. They need to have finality to know whether or not they can build that infrastructure in order to provide reliable and adequate service.

Over the last few years our judicial review has been taking longer and longer because the courts have been trying to meld NRS 233B.039 with NRS 703.373 and we have not been able to get consistency with the courts to do the fast-track process that is called for in NRS 703.373. That is why we have brought forward this bill for your consideration.

**Chair Kirkpatrick:**

Can you give that history to the Committee that you were discussing earlier? Are there any questions?

**Assemblywoman Flores:**

Under NRS 703.373 who oversees the process? Is this meant to take it out of the court system?

**David Noble:**

This stays within the purview of the district court and the Supreme Court. Under NRS 703.373, an aggrieved party has 90 days to appeal to the district court; either the First Judicial District court in Carson City or the district court where their primary business is located. The commission or any other party to that case has 30 days to file an answer. We are supposed to be prepared to go to trial within 20 days. For PUC, these matters take precedence over all other civil matters in district court. There is the provision that once there is a district court decision it can be appealed to the Supreme Court.

For a little more background, many states have fast-tracked judicial review. In fact, in Idaho PUC decisions go directly to the Idaho Supreme Court. We are not asking for that here. We actually think that having the district court review is a good way of weeding out issues for the Supreme Court.

**Assemblywoman Flores:**

This does not take away any remedies for the court? This is simply an expedited process through the court system?

**David Noble:**

The standards by which a PUC decision can be overturned are in NRS 703.373 and those are specific and have always trumped any provisions in NRS 233B.039, as far as the basis for overturning a PUC decision.

**Chair Kirkpatrick:**

We have a lot of questions.

**Assemblywoman Neal:**

You mentioned in your testimony that you were seeking to shorten the process and now you want to be exempt from the court doing judicial review on PUC decisions. Is that correct?

**David Noble:**

No, under NRS 703.373 there is a process for judicial review already. What NRS 233B.039 does on top of that is to allow for cross-petitions. It allows for extended briefing and new evidence to come in. Those were never things that were contemplated for judicial review of the PUC. It is strictly a procedural mechanism. It was a question of whether to follow NRS 703.373 or NRS 233B.039 judicial review provisions.

**Assemblyman Anderson:**

This is basically just for the Judicial Branch, to make sure that they are not creating confusion and going at cross-purposes?

**David Noble:**

This is partly for the Judicial Branch so that they are not confused about what is the appropriate process of review for appeal of a PUC decision. Given that there is always turnover with district court judges there is not that institutional knowledge of how to deal with a PUC decision. We are separate and apart from all other administrative agencies. Often these cases come in and we have to communicate with the clerk and the administrator for the judge hearing the case and go through the process described in the two statutes. It is covered in both places. The confusion lies in whether the language states that there are special provisions in NRS 703.373 which prevail. That creates, in attorneys' minds, the idea that there is some wiggle room. Attorneys will try to overlap them. When you actually diagram it out there is no overlap. They are mutually exclusive.

**Assemblywoman Benitez-Thompson:**

Under the status quo where the two statutes are confused by the court, how long is this process taking? Under this bill how would you see that time frame change?



**Chair Kirkpatrick:**

I think once you put this on paper for everyone in the Committee it is going to make a lot more sense.

**David Noble:**

The time frame for district court review, which is all that this affects, is currently nine months to two and a half years. The way it should work is three to six months.

**Chair Kirkpatrick:**

Does anyone have any other questions? I do have some opposition. Is there anyone in support that would like to come forward now? Is there anyone that is neutral? Mr. Noble, did you have any final comments?

**David Noble:**

I did have the American Civil Liberties Union (ACLU) contact me at the beginning of the Committee hearing this morning and say that they did have opposition but said they were not able to testify. I plan on contacting them this afternoon and seeing what their concerns are and if we can work with them on those concerns.

**Chair Kirkpatrick:**

I will close the hearing on A.B. 17. At this time we will go to public comment. We did run out of time on the whole consolidation of local government. We can do video conferencing at another time.

The meeting is adjourned [at 11:00 a.m.].

RESPECTFULLY SUBMITTED:

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Jenny McMenomy  
Committee Secretary

APPROVED BY:

---

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: \_\_\_\_\_

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Sixth Session  
March 11, 2011**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 8:03 a.m. on Friday, March 11, 2011, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/76th2011/committees/](http://www.leg.state.nv.us/76th2011/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Marilyn K. Kirkpatrick, Chair  
Assemblywoman Irene Bustamante Adams, Vice Chair  
Assemblyman Elliot T. Anderson  
Assemblywoman Teresa Benitez-Thompson  
Assemblyman John Ellison  
Assemblywoman Lucy Flores  
Assemblyman Ed A. Goedhart  
Assemblyman Pete Livermore  
Assemblyman Harvey J. Munford  
Assemblywoman Dina Neal  
Assemblywoman Peggy Pierce  
Assemblyman Lynn D. Stewart  
Assemblywoman Melissa Woodbury

**COMMITTEE MEMBERS ABSENT:**

None

Minutes ID: 430



JA0164

**GUEST LEGISLATORS PRESENT:**

Assemblyman Steven Brooks, Clark County Assembly District No. 19  
Assemblyman John Ocegüera, Clark County Assembly District No. 16  
Assemblywoman Debbie Smith, Washoe County Assembly  
District No. 30

**STAFF MEMBERS PRESENT:**

Susan Scholley, Committee Policy Analyst  
Cyndie Carter, Committee Manager  
Sheryl Burrows, Committee Secretary  
Olivia Lloyd, Committee Assistant

**OTHERS PRESENT:**

Mike Willden, Director, Department of Health and Human Services  
Stacey Crowley, Director/Acting Commissioner of Energy, Nevada State  
Office of Energy, Office of the Governor  
Vincenta Montoya, Chair, Si Se Puede Latino Democratic Caucus  
Charles Perry, President, Nevada Health Care Association  
Lydia Ball, Executive Director, Clean Energy Project NV  
Rose McKinney-James, representing Solar Alliance  
Michael Murphy, Coroner, Office of the Coroner/Medical Examiner,  
Clark County; representing Clark County  
Chris Ferrari, representing Nevada Contractors Association  
Judy Stokey, Executive, Government and External Affairs, NV Energy  
Mathew Taylor, representing Nevada Registered Agents Association  
Paula Berkley, representing Food Bank of Northern Nevada  
Carole Vilardo, President, Nevada Taxpayers Association; representing  
Clark County Priorities Committee  
Bart Mangino, representing Clark County School District  
Deborah Evans, State Director, Nevada Juneteenth Committee,  
National Juneteenth Observance Foundation  
Cadence Matijevich, Program Manager, Office of the City Manager,  
City of Reno  
John Cahill, Clark County Public Administrator  
Dianna Alba, Clark County Clerk  
Tera Burbank, Private Citizen, Las Vegas, Nevada  
Elizabeth Brickfield, Private Citizen, Las Vegas, Nevada

**Chair Kirkpatrick:**

[Happy Birthday to Chair Kirkpatrick sung. Roll called.]

We will go a little bit out of order today because the Speaker and the Speaker Pro Tempore have a bill. I have a committee bill. We will have to be a little bit flexible. We also have a work session. We will start with the work session. Everyone should have a binder. We will start with Assembly Bill 16.

Assembly Bill 16: Provides for additional compensation to be paid to certain senior psychiatrists and senior physicians employed by the Department of Corrections for being available to be called in to work during periods in which they are not regularly scheduled to work. (BDR 23-451)

**Susan Scholley, Committee Policy Analyst:**

[She read from work session document (Exhibit C).]

**Chair Kirkpatrick:**

Are there any questions? I know that we went over this and asked many questions. If there are no questions, I will take a motion.

ASSEMBLYWOMAN PIERCE MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 16.

ASSEMBLYMAN ELLISON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Assembly Bill 17: Revises the applicability of the Nevada Administrative Procedure Act to the Public Utilities Commission of Nevada. (BDR 18-455)

**Susan Scholley, Committee Policy Analyst:**

[She read from work session document (Exhibit D).]

**Chair Kirkpatrick:**

Is there any discussion? This was the bill that was very complicated. We went back and revisited, so it should be good. Is there a motion?

ASSEMBLYMAN STEWART MOVED TO DO PASS  
ASSEMBLY BILL 17.

ASSEMBLYMAN LIVERMORE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Assembly Bill 37: Revises provisions relating to the hours of operation of state offices. (BDR 23-422)

Susan Scholley, Committee Policy Analyst:  
[She read from work session document (Exhibit E).]

Chair Kirkpatrick:

It could be 8 a.m. to 5 p.m., Monday through Friday, or 8:30 a.m. to 5:30 p.m., 9 a.m. to 6 p.m., 7 a.m. to 6 p.m. Monday through Thursday. I also believe the 30-day notice is important for people who are coming to visit. I know that was one of your concerns, Mr. Ellison. The 30-day notice should give them a little time to adjust. Is there any other discussion? I will take a motion.

ASSEMBLYMAN STEWART MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 37.

ASSEMBLYMAN ELLISON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Assembly Bill 42: Authorizes a county to dispose of certain real property acquired from the Federal Government in certain circumstances without obtaining an appraisal. (BDR 20-187)

Susan Scholley, Committee Policy Analyst:  
[She read from work session document (Exhibit F).]

Chair Kirkpatrick:

One of the big selling points on this is that the federal government can come in at any time at that airport and take everything back.

Assemblyman Goedhart:

I am not sure what the population is in Nye County, but with the new census we need to move that figure up closer to 50,000. That would ensure that the Tonopah Airport in Nye County falls within this bill.

Committee Action:  
Do Pass \_\_\_\_\_  
Amend & Do Pass \_\_\_\_\_  
Other \_\_\_\_\_

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Assembly Committee on Government Affairs

This measure may be considered for action during today's work session.

March 11, 2011

**Assembly Bill 17**

**Revises the applicability of the Nevada Administrative Procedure Act to the Public Utilities Commission of Nevada. (BDR 18-455)**

**Sponsored by:** Assembly Committee on Government Affairs  
(On Behalf of the Public Utilities Commission of Nevada)

**Date Heard:** February 9, 2011

**Fiscal Impact:** Effect on Local Government: No  
Effect on the State: No

Assembly Bill 17 clarifies that judicial review of contested cases involving utilities is controlled by *Nevada Revised Statutes* 703.301 through 703.377, which specifically applies to the Public Utilities Commission of Nevada. This clarification is accomplished by exempting the PUCN from the judicial review provisions of Chapter 233B (Administrative Procedures Act) that are generally applicable to other State agencies.

**Testimony:** David Noble, Assistant General Counsel for the PUCN, testified on the bill. There was no other testimony but Mr. Noble advised the Committee that the American Civil Liberties Union had contacted him about its concerns with the bill but would not be able to testify that day. Mr. Noble testified that he would contact the ACLU and attempt to resolve its concerns.

**Amendments:** No amendments were proposed at the hearing.

**Special Note:** Rebecca Gasca from the ACLU sent this e-mail on February 28, 2011:

"Thanks for your patience, David. We are square! Our concerns have been addressed. I appreciate your willingness to work with me. Thanks, Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada."

MINUTES OF THE  
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-sixth Session  
March 25, 2011

The Senate Committee on Government Affairs was called to order by Chair John J. Lee at 8:05 a.m. on Friday, March 25, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 5100, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator John J. Lee, Chair  
Senator Mark A. Manendo, Vice Chair  
Senator Michael A. Schneider  
Senator Joseph (Joe) P. Hardy  
Senator James A. Settelmeyer

GUEST LEGISLATORS PRESENT:

Senator Allison Copening, Clark County Senatorial District No. 6

STAFF MEMBERS PRESENT:

Michael Stewart, Policy Analyst  
Heidi Chlarson, Counsel  
Martha Barnes, Committee Secretary

OTHERS PRESENT:

Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association  
David S. Noble, Assistant General Counsel, Public Utilities Commission of Nevada  
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada  
Rusty McAllister, President, Professional Fire Fighters of Nevada  
Terry K. Graves, Nevada Motor Transport Association  
John Russell, Northern Nevada Laborers

Senate Committee on Government Affairs

March 25, 2011

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Barry Smith, Nevada Press Association, Inc.

Jay Parmer, Builders Association of Northern Nevada

Jenny Reese, Nevada Association of Realtors

Jim Feser, Ridgeline Development

Sheena Beaver, Builders Association of Western Nevada

Mark Turner, Black Pine Construction

James M. Wright, Chief, State Fire Marshal Division, Department of Public Safety

Ray Bizal, National Fire Protection Association

Ron Lynn, Director, Development Services, Clark County; Nevada Organization of Building Officials

Brian Kerzetski, President, Plumbing, Heating and Cooling Contractors of Nevada; Vice President, Universal Plumbing and Heating Company

Richard Lisle, Executive Director, Mechanical Contractors Association of Southern Nevada

Peter Krueger, Subcontractor Legislative Coalition

Stacey Giomi, President, Nevada Fire Chiefs Association; Fire Chief, Carson City

Terry Taylor, Northern Area Director, Fire Prevention Association of Nevada; Nevada International Association of Arson Investigators

Mike Myers, Fire Chief, City of Las Vegas

Kelly Blackmon, Deputy Fire Chief, Clark County Fire Department

Fulton Cochran, Deputy Fire Marshal, City of Henderson

J. David Fraser, Executive Director, Nevada League of Cities and Municipalities

David Bowers, City Engineer, City of Las Vegas

Doug Stevens, Fire Chief, City of Henderson

Kevin McOsker, Manager of Building Inspections, Clark County Department of Development Services

Greg Esposito, Business Representative, Plumbers, Pipefitters and Service Technicians Locals 525 and 350; Southern Nevada Building and Construction Trades Council

Dan Musgrove, City of North Las Vegas

Randy Soltero, Sheet Metal Workers Local 88

Danny Thompson, Executive Secretary Treasurer, Nevada State AFL-CIO

Paul McKenzie, Building and Construction Trades Council of Northern Nevada, AFL-CIO

Modesto Gaxiola, United Union of Roofers, Waterproofers and Allied Workers, Southern Nevada Local 162

Terri Barber, Chief Legislative Advocate, City of Henderson

Wes Henderson, Deputy Director, Nevada Association of Counties



safe campus. I know the Attorney General of Utah sent us a letter, but he should clean up his own mess in southern Utah in Colorado City and keep his nose out of our business. He has no credibility in this Committee or this Legislative Building. This is Nevada. I cannot tell you how upset this bill makes me.

THE MOTION CARRIED. (SENATOR SCHNEIDER VOTED NO.)

\* \* \* \* \*

CHAIR LEE:

The first order of business from today's agenda is Assembly Bill 17.

ASSEMBLY BILL 17: Revises the applicability of the Nevada Administrative Procedure Act to the Public Utilities Commission of Nevada. (BDR 18-455)

DAVID S. NOBLE (Assistant General Counsel, Public Utilities Commission of Nevada):

Assembly Bill 17 is the Public Utilities Commission (PUC) proposal to get the Commission back on the 4- to 6-month, fast-track judicial review of its decisions (Exhibit F). The Commission has its own judicial review provisions under *Nevada Revised Statute* (NRS) 703, and those specifically prevail over the judicial review provisions of NRS 233B. The language in NRS 233B has caused some confusion in the district courts where the judiciary review takes place. In fact, there have been various interpretations from district court to district court and judge to judge within those district courts. The courts have tried to mesh the two frameworks together, and instead of having a fast-track, 4- to 6-month judicial review, it is taking upwards of 9 months to 30 months for judicial review at the district court level. The language in A.B. 17 proposes to clarify that the judicial review provisions in NRS 703 apply, and only apply, to judicial review of PUC decisions.

Following discussions with various stakeholders, the major utilities we regulate and attorneys who represent various interests before the Commission, we have proposed an amendment (Exhibit G) to A.B. 17. The amendment attempts to address two additional concerns. One is the exhaustion of administrative remedies. The Commission has a framework for reconsideration or rehearing of Commission decisions under *Nevada Administrative Code* 703.801. Once a

party receives a decision from the Commission, the party is going directly to court without asking for reconsideration or rehearing. Several times over the past year, we requested the court stay the proceedings so we would have an opportunity to reconsider or rehear the information. In some cases, we have actually revised our decision.

The other element of the proposed amendment is to provide a specific time frame to obtain the Commission's record of proceedings before the court in order to be incorporated into the briefs of the various parties. It also amends the time frame for briefing to 120 days. We cleaned up language in NRS 703 to ensure consistency with NRS 233B.

CHAIR LEE:

Could you please summarize the fast-track program and the 20-day rule?

MR. NOBLE:

Once the issues have been briefed and are before the court, the parties must be prepared to go to hearing in 20 days. The judicial review takes precedence over all other civil matters before the district court. Because the Commission deals with billion dollar rate cases and approval of construction permits for billion dollar facilities, it has been determined that judicial review of Commission decisions needs to go on a fast track for a final determination in district court so it can move forward.

CHAIR LEE:

This bill addresses those issues to the court?

MR. NOBLE:

Yes. We have gone from a fast track of 4 months' to 6 months' total time for a decision from district court. Over the past couple of years, the time period has been anywhere from 9 months to 30 months.

CHAIR LEE:

I will close the hearing on A.B. 17 and open the hearing on Senate Bill 377.

**SENATE BILL 377:** Establishes provisions authorizing public-private partnerships for certain projects. (BDR 22-297)

## Explanation for AB 17 (2011)

### Public Utilities Commission of Nevada

**BACKGROUND**—The Public Utilities Commission of Nevada (“PUCN”) conducts hearings and issues decisions in contested cases involving utility matters. Parties can sue the PUCN in district court, if they do not like the final decision.

**PROBLEM**—District courts are taking 9-30 months instead of 4-6 months for judicial review of the PUCN’s decisions, because the courts try to merge the judicial review provisions in NRS Chapter 233B (Administrative Procedures Act) with the PUCN’s fast track judicial review provisions in NRS Chapter 703.

**HISTORY**—The PUCN has had its own judicial review provisions for 92 years beginning with the Public Utilities Act of 1919. The Nevada Legislature has specifically provided that the PUCN’s judicial review provisions take precedence over the general judicial review provisions in the Administrative Procedures Act (See SB 192 (1967) and SB 62 (1977)). The Nevada Legislature later simplified the procedure for judicial review of PUCN decisions in order to fast track the process (See SB 177 (1983)).

**FAST TRACK**—Fast track judicial review is necessary for PUCN decisions to ensure that utilities provide reliable and adequate service at just and reasonable rates for customers.

**SOLUTION**—Specifically exempt the PUCN from the judicial review provisions in NRS Chapter 233B so that only the PUCN’s fast track judicial review provisions in NRS Chapter 703 are applicable, resulting in 4-6 months for judicial review of the PUCN’s decisions.

Public Utilities Commission of Nevada  
Proposed Amendment to AB 17  
Contact: David Noble 775-684-6123

NRS 703.330:

1. A complete record must be kept of all hearings before the Commission. All testimony at such hearings must be taken down by the stenographer appointed by the Commission or, under the direction of any competent person appointed by the Commission, must be reported by sound recording equipment in the manner authorized for reporting testimony in district courts. The testimony reported by a stenographer must be transcribed, and the transcript filed with the record in the matter. The Commission may by regulation provide for the transcription or safekeeping of sound recordings. The costs of recording and transcribing testimony at any hearing, except those hearings ordered pursuant to NRS 703.310, must be paid by the applicant. If a complaint is made pursuant to NRS 703.310 by a customer or by a political subdivision of the State or municipal organization, the complainant is not liable for any costs. Otherwise, if there are several applicants or parties to any hearing, the Commission may apportion the costs among them in its discretion.

~~[2. If a petition is served upon the Commission as provided in NRS 703.373 for the bringing of an action against the Commission, before the action is reached for trial, the Commission shall file a certified copy of all proceedings and testimony taken with the clerk of the court in which the action is pending.]~~ (LANGUAGE NOW APPEARS IN 703.373(5))

[3] 2. A copy of the proceedings and testimony must be furnished to any party, on payment of a reasonable amount to be fixed by the Commission, and the amount must be the same for all parties.

[4] 3. The provisions of this section do not prohibit the Commission from:

(a) Restricting access to the records and transcripts of a hearing pursuant to paragraph (a) of subsection 3 of NRS 703.196.

(b) Protecting the confidentiality of information pursuant to NRS 704B.310, 704B.320 or 704B.325.

NRS 703.373:

1. Any party of record to a proceeding before the Commission is entitled to judicial review of the final decision upon exhaustion of all administrative remedies by the party of record seeking judicial review.

2. Proceedings for review may be instituted by filing a petition for judicial review in the District Court in and for Carson City, in and for the county in which the party of record seeking judicial review resides, or in and for the county where the act on which the proceeding is based occurred. ~~[A petition must be filed within 90 days after the service of the final decision of the Commission or, if a rehearing is held, within 30 days after the decision thereon. Copies of the petition must be served upon the Commission and all other parties of record.]~~ (LANGUAGE NOW APPEARS IN 703.373(3))

3. A petition for judicial review must be filed within 30 days after final action by the Commission on reconsideration or rehearing, or if the Commission takes no action on reconsideration or rehearing, within 30 days after the date reconsideration or rehearing is

deemed denied. Copies of the petition for judicial review must be served upon the Commission and all other parties of record.

4. The Commission shall participate in the judicial review. Any party of record desiring to participate in the judicial review must file a statement of intent to participate in the petition for judicial review and serve the statement upon the Commission and every party within 15 days after service of the petition for judicial review. (LANGUAGE TAKEN FROM 233B.130 (3))

5. Within 30 days after the service of the petition for judicial review or such time as is allowed by the court, the Commission shall transmit to the reviewing court a certified copy of the entire record of the proceeding under review, including a transcript of the evidence resulting in the final decision of the Commission. The record may be shortened by stipulation of the parties to the proceedings. (LANGUAGE TAKEN FROM 233B.131)

6. A petitioner who is seeking judicial review must serve and file a memorandum of points and authorities within 30 days after the Commission gives notice to the parties that the record of the proceeding under review has been filed with the court. (LANGUAGE TAKEN FROM 233B.133 (1))

~~[3. The Commission and other defendants shall file their answers to the petition within 30 days after the service thereof, whereupon the action is at issue and they must be ready for a hearing upon 20 days' notice to either party.]~~ (LANGUAGE NOW APPEARS IN 703.373 (7))

7. The Commission and any other respondents shall serve and file a reply memorandum of points and authorities within 30 days after service of the memorandum of points and authorities, whereupon the action is at issue and the parties must be ready for a hearing upon 20 days' notice. (LANGUAGE TAKEN FROM 233B.133 (2))

~~[4. The review must be conducted by the court without a jury and be confined to the record. In cases of alleged irregularities in procedure before the Commission, not shown in the record,~~

proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.] (LANGUAGE NOW APPEARS IN 703.373 (8))

8. Judicial review of a final decision of the Commission must be:

(a) Conducted by the court without a jury; and

(b) Confined to the record.

In cases concerning alleged irregularities in procedure before the Commission that are not shown in the record, the court may receive evidence concerning the irregularities. (LANGUAGE TAKEN FROM 233B.135 (1))

9. The final decision of the Commission shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the court. Burden of proof is on the petitioner to show that the final decision is invalid pursuant to subsection 11. (LANGUAGE TAKEN FROM 233B.135 (2))

{5} 10. All actions brought under this section have precedence over any civil action of a different nature pending in the court.

{6} 11. The court shall not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact. The court may affirm the decision of the Commission or set it aside in whole or in part if substantial rights of the {appellant} petitioner have been prejudiced because the {administrative findings, inferences, conclusions or decisions are} final decision of the Commission is:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the Commission;
- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;
- (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

(f) Arbitrary or capricious or characterized by abuse of discretion.

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MINUTES OF THE  
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-sixth Session  
April 27, 2011

The Senate Committee on Government Affairs was called to order by Chair John J. Lee at 9:09 a.m. on Wednesday, April 27, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator John J. Lee, Chair  
Senator Mark A. Manendo, Vice Chair  
Senator Michael A. Schneider  
Senator Joseph (Joe) P. Hardy  
Senator James A. Settelmeyer

GUEST LEGISLATORS PRESENT:

Assemblyman Harvey J. Munford, Assembly District No. 6  
Assemblyman John Ocegüera, Assembly District No. 16

STAFF MEMBERS PRESENT:

Michael Stewart, Policy Analyst  
Heidi Chlarson, Counsel  
Cynthia Ross, Committee Secretary

OTHERS PRESENT:

Cadence Matijevich, City of Reno  
Jennifer Lazovich, Pardee Homes of Nevada

CHAIR LEE:

I open this meeting with Assembly Bill (A.B.) 174.

ASSEMBLY BILL 174: Designates June 19 as Juneteenth Day in Nevada.  
(BDR 19-137)

SENATOR HARDY:

Have you been apprised of any agency having temporary regulations wanting to make them permanent or wanting to change them before they become permanent?

ASSEMBLYMAN OCEGUERA:

No, I have not been contacted by agencies saying they want to make changes.

CHAIR LEE:

The hearing on A.B. 403 is closed. We will move into a work session. The first bill is A.B. 17.

ASSEMBLY BILL 17: Revises the applicability of the Nevada Administrative Procedure Act to the Public Utilities Commission of Nevada. (BDR 18-455)

MICHAEL STEWART (POLICY ANALYST):

Assembly Bill 17 was brought to us on behalf on the Public Utilities Commission of Nevada (PUCN). It clarifies that judicial review of decisions by the PUCN is exempt from NRS 233B, which is the Nevada Administrative Procedure Act. There is a conceptual amendment (Exhibit D).

The amendment, Exhibit D, was proposed by David Noble of the PUCN. It addresses the issue of judicial review of decisions of the PUCN. The PUCN has experienced problems with the judicial review process. The PUCN notes that parties suing the PUCN have not exhausted their administrative remedies, leading to unnecessary lawsuits that the PUCN could have resolved in many cases had the parties requested reconsideration. Also, there is no specific time frame for filing with the district court the PUCN's record of proceedings for reference in the parties' legal briefs.

The amendment would require parties to exhaust their administrative remedies with the PUCN prior to suing the PUCN, require the PUCN to file its record of proceedings with the district court prior to parties filing legal briefs, update the language in NRS 703 to make it consistent with NRS 233B and maintain the same four- to six-month time frame for judicial review as set forth in NRS 233B. The amendment in Exhibit D provides that the judicial review provisions in NRS 703 are the applicable judicial review provisions rather than those found in NRS 233B.

Senate Committee on Government Affairs  
April 27, 2011  
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CHAIR LEE:

This bill has to do with getting information out, but there were issues with the district courts.

SENATOR SCHNEIDER:

Where were the lawsuits coming from? For instance, were they from the public, environmental groups or NV Energy?

CHAIR LEE:

I cannot answer that question, and there is no one to speak to the bill. We will set this bill aside. The next work session bill is A.B. 97.

ASSEMBLY BILL 97: Revises the Charter of the City of Sparks to make various changes in provisions concerning city government. (BDR S-535)

MR. STEWART:

Assembly Bill 97 revises the Charter of the City of Sparks to make various changes in provisions concerning City government. It amends the Charter to authorize the City Manager to appoint department heads and other persons in executive, administrative or professional positions and to revise the organizational chart and listing of appointive positions. It also adds the prohibitions on certain types of discrimination and provides for the selection of a mayor pro tem (Exhibit E). There are no amendments.

Testimony indicated that this amendment to the Sparks City Charter was vetted and approved by the Sparks Charter Committee.

SENATOR MANENDO MOVED TO DO PASS A.B. 97.

SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:

The next work session bill is A.B. 166.

Committee Action:  
Do Pass \_\_\_\_\_  
Amend & Do Pass \_\_\_\_\_  
Other \_\_\_\_\_

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**Senate Committee on Government Affairs**

This measure may be considered for action during today's work session.

April 27, 2011

**ASSEMBLY BILL 17**

Revises the applicability of the Nevada Administrative Procedure Act to the Public Utilities Commission of Nevada. (BDR 18-455)

Sponsored by: Assembly Committee on Government Affairs (On Behalf of the Public Utilities Commission of Nevada)  
Date Heard: March 25, 2011  
Fiscal Impact: Effect on Local Government: No  
Effect on the State: No

Assembly Bill 17 clarifies that judicial review of decisions by the Public Utilities Commission of Nevada is exempt from Chapter 233B (Nevada Administrative Procedure Act) of the *Nevada Revised Statutes* (NRS).

**Conceptual Amendment:**

1. The following amendment, presented by David Noble, Public Utilities Commission of Nevada (PUCN), addresses the issue of judicial review of decisions of the PUCN. An explanation and copy of the amendment is attached. The amendment explanation notes that the PUCN has experienced some problems with the current judicial review process. Specifically, the PUCN notes that "parties suing the PUCN have not exhausted their administrative remedies, leading to unnecessary lawsuits that the PUCN could have often-times resolved had the parties requested reconsideration" and "there is no specific timeframe for filing with the District Court the PUCN's record of proceedings for reference in the parties' legal briefs." Therefore, the PUCN proposes the following amendment:

- Require parties to exhaust their administrative remedies with the PUCN prior to suing the PUCN;
- Require the PUCN to file its record of proceedings with the District Court prior to parties filing legal briefs;
- Update the language in NRS Chapter 703 consistent with Chapter 233B of the NRS; and
- Maintain the same 4 to 6 month timeframe for judicial review as is currently set forth in Chapter 233B of the NRS.

Please see attached explanation and amendment.

*(proposed by David Noble, Public Utilities Commission of Nevada)*

<b>EXHIBIT D: Senate Committee on Government Affairs</b>	
Date: 4/27/11	Page: 1 of 7

JA0182

# Public Utilities Commission of Nevada

## Proposed Amendment to AB 17

### Statement of Intent

**BACKGROUND**—The Public Utilities Commission of Nevada (“PUCN”) conducts hearings and issues decisions in contested cases involving utility matters. Parties can sue the PUCN in district court, if they do not like the final decision.

**PROBLEM**—Besides the problem with District Courts trying to merge the judicial review provisions in NRS Chapter 233B (Administrative Procedures Act) with the PUCN’s fast track judicial review provisions in NRS Chapter 703, the PUCN has encountered the following problems on judicial review:

1—Parties suing the PUCN have not exhausted their administrative remedies, leading to unnecessary lawsuits that the PUCN could have often-times resolved had the parties requested reconsideration.

2—There is no specific timeframe for filing with the District Court the PUCN’s record of proceedings for reference in the parties’ legal briefs.

**SOLUTION**—Besides specifically exempting the PUCN from the judicial review provisions in NRS Chapter 233B so that only the PUCN’s fast track judicial review provisions in NRS Chapter 703 are applicable, the PUCN proposes the following:

1—Require parties to exhaust their administrative remedies with the PUCN prior to suing the PUCN.

2—Require the PUCN to file its record of proceedings with the District Court prior to parties filing legal briefs.

3—Update the language in NRS Chapter 703 consistent with NRS Chapter 233B

4—Maintain the same 4-6 month timeframe for judicial review.

Public Utilities Commission of Nevada  
Proposed Amendment to AB 17  
Contact: David Noble 775-684-6123

NRS 703.330:

1. A complete record must be kept of all hearings before the Commission. All testimony at such hearings must be taken down by the stenographer appointed by the Commission or, under the direction of any competent person appointed by the Commission, must be reported by sound recording equipment in the manner authorized for reporting testimony in district courts. The testimony reported by a stenographer must be transcribed, and the transcript filed with the record in the matter. The Commission may by regulation provide for the transcription or safekeeping of sound recordings. The costs of recording and transcribing testimony at any hearing, except those hearings ordered pursuant to NRS 703.310, must be paid by the applicant. If a complaint is made pursuant to NRS 703.310 by a customer or by a political subdivision of the State or municipal organization, the complainant is not liable for any costs. Otherwise, if there are several applicants or parties to any hearing, the Commission may apportion the costs among them in its discretion.

~~[2. If a petition is served upon the Commission as provided in NRS 703.373 for the bringing of an action against the Commission, before the action is reached for trial, the Commission shall file a certified copy of all proceedings and testimony taken with the clerk of the court in which the action is pending.]~~ (LANGUAGE NOW APPEARS IN 703.373(S))

~~{3}~~ 2. A copy of the proceedings and testimony must be furnished to any party, on payment of a reasonable amount to be fixed by the Commission, and the amount must be the same for all parties.

~~{4}~~ 3. The provisions of this section do not prohibit the Commission from:

(a) Restricting access to the records and transcripts of a hearing pursuant to paragraph (a) of subsection 3 of NRS 703.196.

(b) Protecting the confidentiality of information pursuant to NRS 704B.310, 704B.320 or 704B.325.

#### NRS 703.373:

1. Any party of record to a proceeding before the Commission is entitled to judicial review of the final decision upon exhaustion of all administrative remedies by the party of record seeking judicial review.

2. Proceedings for review may be instituted by filing a petition for judicial review in the District Court in and for Carson City, in and for the county in which the party of record seeking judicial review resides, or in and for the county where the act on which the proceeding is based occurred. ~~[A petition must be filed within 90 days after the service of the final decision of the Commission or, if a rehearing is held, within 30 days after the decision thereon. Copies of the petition must be served upon the Commission and all other parties of record.]~~ (LANGUAGE NOW APPEARS IN

3. A petition for judicial review must be filed within 30 days after final action by the Commission on reconsideration or rehearing, or if the Commission takes no action on reconsideration or rehearing, within 30 days after the date reconsideration or rehearing is

703.373(3))

deemed denied. Copies of the petition for judicial review must be served upon the Commission and all other parties of record.

4. The Commission shall participate in the judicial review. Any party of record desiring to participate in the judicial review must file a statement of intent to participate in the petition for judicial review and serve the statement upon the Commission and every party within 15 days after service of the petition for judicial review. (LANGUAGE TAKEN FROM 233B.130 (3))

5. Within 30 days after the service of the petition for judicial review or such time as is allowed by the court, the Commission shall transmit to the reviewing court a certified copy of the entire record of the proceeding under review, including a transcript of the evidence resulting in the final decision of the Commission. The record may be shortened by stipulation of the parties to the proceedings. (LANGUAGE TAKEN FROM 233B.131)

6. A petitioner who is seeking judicial review must serve and file a memorandum of points and authorities within 30 days after the Commission gives notice to the parties that the record of the proceeding under review has been filed with the court. (LANGUAGE TAKEN FROM 233B.133 (1))

~~{3. The Commission and other defendants shall file their answers to the petition within 30 days after the service thereof, whereupon the action is at issue and they must be ready for a hearing upon 20 days' notice to either party.}~~ (LANGUAGE NOW APPEARS IN 703.373 (7))

7. The Commission and any other respondents shall serve and file a reply memorandum of points and authorities within 30 days after service of the memorandum of points and authorities, whereupon the action is at issue and the parties must be ready for a hearing upon 20 days' notice. (LANGUAGE TAKEN FROM 233B.133 (2))

~~{4. The review must be conducted by the court without a jury and be confined to the record. In cases of alleged irregularities in procedure before the Commission, not shown in the record,~~



~~proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.~~ (LANGUAGE NOW APPEARS IN 703.373(2))

8. Judicial review of a final decision of the Commission must be:

(a) Conducted by the court without a jury; and

(b) Confined to the record.

In cases concerning alleged irregularities in procedure before the Commission that are not shown in the record, the court may receive evidence concerning the irregularities. (LANGUAGE TAKEN FROM 233B.135(1))

9. The final decision of the Commission shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the court. Burden of proof is on the petitioner to show that the final decision is invalid pursuant to subsection 11. (LANGUAGE TAKEN FROM 233B.135(2))

~~{5}~~ 10. All actions brought under this section have precedence over any civil action of a different nature pending in the court.

~~{6}~~ 11. The court shall not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact. The court may affirm the decision of the Commission or set it aside in whole or in part if substantial rights of the ~~{appellant}~~ petitioner have been prejudiced because the ~~{administrative findings, inferences, conclusions or decisions are}~~ final decision of the Commission is:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the Commission;
- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;
- (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

(f) Arbitrary or capricious or characterized by abuse of discretion.

**MINUTES OF THE  
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-sixth Session  
May 13, 2011**

The Senate Committee on Government Affairs was called to order by Chair John J. Lee at 8:08 a.m. on Friday, May 13, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator John J. Lee, Chair  
Senator Mark A. Manendo, Vice Chair  
Senator Michael A. Schneider  
Senator Joseph (Joe) P. Hardy  
Senator James A. Settelmeyer

**GUEST LEGISLATORS PRESENT:**

Assemblyman John C. Ellison (Assembly District No. 33)

**STAFF MEMBERS PRESENT:**

Michael Stewart, Policy Analyst  
Heidi Chlarson, Counsel  
Cynthia Ross, Committee Secretary

**OTHERS PRESENT:**

Ronald P. Dreher, Peace Officers Research Association of Nevada  
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association  
Chuck Callaway, Las Vegas Metropolitan Police Department  
Michelle Jotz, Las Vegas Police Protective Association Metro, Inc.; Southern Nevada Conference of Police and Sheriffs  
Mary Keating, Office of the State Controller  
David S. Noble, Assistant General Counsel, Utilities Hearings Officer, Public Utilities Commission of Nevada  
Javier Trujillo, City of Henderson  
Gary Schmidt

Senate Committee on Government Affairs  
May 13, 2011  
Page 10

the information as public record, but we support their desire to get more information available to the public.

CHAIR LEE:

The hearing is closed on A.B. 276. We will move into work session. We have 14 bills. The first bill is A.B. 1.

**ASSEMBLY BILL 1 (1st Reprint)**: Requires periodic reporting of financial information by certain governmental entities. (BDR S-49)

MICHAEL STEWART (Policy Analyst):

Assembly Bill 1 came to us from Assemblywoman Kirkpatrick. It requires certain governmental entities to file quarterly reports with the Interim Finance Committee (IFC) concerning the collection of taxes and fees. Reports must be filed by the Department of Business and Industry; the Department of Employment, Training and Rehabilitation; the Department of Motor Vehicles; the Department of Taxation; the Office of the Secretary of State; the Office of the State Controller; and the State Gaming Control Board. Reports must be filed starting July 1, 2011, and ending May 30, 2013 (Exhibit E).

The bill also requires each occupational and professional licensing board to file a report with the IFC and the Legislative Commission no later than December 1. This bill is an extension of the reporting requirements approved in A.B. No. 193 of the 75th Session. No amendments were offered.

SENATOR SETTELMAYER MOVED TO DO PASS A.B. 1.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

CHAIR LEE:

The second work session bill is A.B. 17.

**ASSEMBLY BILL 17**: Revises the applicability of the Nevada Administrative Procedure Act to the Public Utilities Commission of Nevada. (BDR 18-455)

MR. STEWART:

Assembly Bill 17 came to us from the Public Utilities Commission of Nevada (PUCN). The bill clarifies that judicial review of decisions by PUCN is exempt from NRS 233B, the Nevada Administrative Procedure Act. There is a conceptual amendment proposed by the PUCN (Exhibit F).

The amendment was provided by David Noble of the PUCN and addresses the issue of judicial review of decisions by the PUCN. An explanation of the amendment is in Exhibit F. The PUCN notes that parties suing PUCN did not exhaust their administrative remedies, leading to unnecessary lawsuits that PUCN often could have resolved had the parties requested reconsideration. Also, there is no specific time frame for filing PUCN's record of proceedings for reference in the parties' legal briefs with a district court.

The amendment requires parties to exhaust their administrative remedies with PUCN prior to suing PUCN. It requires PUCN to file its record of proceedings with the district court prior to parties filing legal briefs. It makes language in NRS 703 consistent with NRS 233B and maintains the same four- to six-month time frame for judicial review as is set forth in NRS 233B.

SENATOR HARDY:

Is there a time limit for exhausting remedies?

DAVID S. NOBLE (Assistant General Counsel, Utilities Hearings Officer, Public Utilities Commission of Nevada):

In the Commission's petition for reconsideration regulations, the aggrieved party has to file the petition for reconsideration within ten business days from the effective date of the order. The Commission has 40 days upon which to act or set the petition for reconsideration for a rehearing.

SENATOR HARDY:

Are remedies exhausted in 50 days, or does that mean a hearing can be scheduled to occur in 30 days, 60 days or 6 months?

MR. NOBLE:

If PUCN takes no action on the petition for reconsideration, it is exhausted within 40 days. If PUCN brings it back for reconsideration or a rehearing, the time period is open-ended until PUCN issues the final order.

Senate Committee on Government Affairs  
May 13, 2011  
Page 12

SENATOR HARDY:  
Is there a definition for "exhausted"?

MR. NOBLE:  
No definitive backstop time frame exists as to when there will be a rehearing or ongoing reconsideration. The PUCN is cognizant of construction deadlines and money deadlines where the utility needs to collect money paid by the ratepayers. The PUCN wants to get its decisions out quickly.

SENATOR SETTELMAYER:  
How would individuals know their administrative remedies are exhausted?  
Would a notice be sent?

MR. NOBLE:  
Very few parties practicing before the PUCN are pro per. Involved attorneys would be familiar with PUCN practices and procedures and would know what NRS states in regard to exhaustion of administrative remedies and PUCN's reconsideration regulations. When a pro per person appears before PUCN, the presiding officer and the parties work with that person to ensure the person knows his or her rights.

CHAIR LEE:  
What does pro per mean?

MR. NOBLE:  
Pro per is when a person is appearing without legal counsel.

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS AS  
AMENDED A.B. 17.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

Committee Action:  
Do Pass \_\_\_\_\_  
Amend & Do Pass \_\_\_\_\_  
Other \_\_\_\_\_

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## Senate Committee on Government Affairs

This measure may be considered for action during today's work session.

May 13, 2011

### ASSEMBLY BILL 17

Revises the applicability of the Nevada Administrative Procedure Act to the Public Utilities Commission of Nevada. (BDR 18-455)

Sponsored by: Assembly Committee on Government Affairs (On Behalf of the Public Utilities Commission of Nevada)  
Date Heard: March 25, 2011; April 27, 2011 (previous work session)  
Fiscal Impact: Effect on Local Government: No  
Effect on the State: No

Assembly Bill 17 clarifies that judicial review of decisions by the Public Utilities Commission of Nevada (PUCN) is exempt from Chapter 233B (Nevada Administrative Procedure Act) of the *Nevada Revised Statutes* (NRS).

#### Conceptual Amendment:

1. The attached amendment, presented by David Noble, PUCN, addresses the issue of judicial review of decisions of the PUCN. An explanation of the amendment is also attached. The amendment explanation notes that the PUCN has experienced some problems with the current judicial review process. Specifically, the PUCN notes that "parties suing the PUCN have not exhausted their administrative remedies, leading to unnecessary lawsuits that the PUCN could have often-times resolved had the parties requested reconsideration" and "there is no specific timeframe for filing with the District Court the PUCN's record of proceedings for reference in the parties' legal briefs." Therefore, the PUCN proposes the attached amendment, which:

- Requires parties to exhaust their administrative remedies with the PUCN prior to suing the PUCN;
- Requires the PUCN to file its record of proceedings with the District Court prior to parties filing legal briefs;
- Updates the language in NRS Chapter 703 by making it consistent with Chapter 233B of the NRS; and
- Maintains the same 4 to 6 month timeframe for judicial review as is currently set forth in Chapter 233B of the NRS.

*(proposed by David Noble, Public Utilities Commission of Nevada)*

# Public Utilities Commission of Nevada

## Proposed Amendment to AB 17

### Statement of Intent

**BACKGROUND**—The Public Utilities Commission of Nevada (“PUCN”) conducts hearings and issues decisions in contested cases involving utility matters. Parties can sue the PUCN in district court, if they do not like the final decision.

**PROBLEM**—Besides the problem with District Courts trying to merge the judicial review provisions in NRS Chapter 233B (Administrative Procedures Act) with the PUCN’s fast track judicial review provisions in NRS Chapter 703, the PUCN has encountered the following problems on judicial review:

- 1—Parties suing the PUCN have not exhausted their administrative remedies, leading to unnecessary lawsuits that the PUCN could have often-times resolved had the parties requested reconsideration.
- 2—There is no specific timeframe for filing with the District Court the PUCN’s record of proceedings for reference in the parties’ legal briefs.

**SOLUTION**—Besides specifically exempting the PUCN from the judicial review provisions in NRS Chapter 233B so that only the PUCN’s fast track judicial review provisions in NRS Chapter 703 are applicable, the PUCN proposes the following:

- 1—Require parties to exhaust their administrative remedies with the PUCN prior to suing the PUCN.
- 2—Require the PUCN to file its record of proceedings with the District Court prior to parties filing legal briefs.
- 3—Update the language in NRS Chapter 703 consistent with NRS Chapter 233B
- 4—Maintain the same 4-6 month timeframe for judicial review.



Public Utilities Commission of Nevada  
Proposed Amendment to AB 17  
Contact: David Noble 775-684-6123

NRS 703.330:

1. A complete record must be kept of all hearings before the Commission. All testimony at such hearings must be taken down by the stenographer appointed by the Commission or, under the direction of any competent person appointed by the Commission, must be reported by sound recording equipment in the manner authorized for reporting testimony in district courts. The testimony reported by a stenographer must be transcribed, and the transcript filed with the record in the matter. The Commission may by regulation provide for the transcription or safekeeping of sound recordings. The costs of recording and transcribing testimony at any hearing, except those hearings ordered pursuant to NRS 703.310, must be paid by the applicant. If a complaint is made pursuant to NRS 703.310 by a customer or by a political subdivision of the State or municipal organization, the complainant is not liable for any costs. Otherwise, if there are several applicants or parties to any hearing, the Commission may apportion the costs among them in its discretion.

~~[2. If a petition is served upon the Commission as provided in NRS 703.373 for the bringing of an action against the Commission, before the action is reached for trial, the Commission shall file a certified copy of all proceedings and testimony taken with the clerk of the court in which the action is pending.]~~ (LANGUAGE NOW APPEARS IN 703.373(5))

~~{3}~~ 2. A copy of the proceedings and testimony must be furnished to any party, on payment of a reasonable amount to be fixed by the Commission, and the amount must be the same for all parties.

~~{4}~~ 3. The provisions of this section do not prohibit the Commission from:

(a) Restricting access to the records and transcripts of a hearing pursuant to paragraph (a) of subsection 3 of NRS 703.196.

(b) Protecting the confidentiality of information pursuant to NRS 704B.310, 704B.320 or 704B.325.

NRS 703.373:

1. Any party of record to a proceeding before the Commission is entitled to judicial review of the final decision upon exhaustion of all administrative remedies by the party of record seeking judicial review.

2. Proceedings for review may be instituted by filing a petition for judicial review in the District Court in and for Carson City, in and for the county in which the party of record seeking judicial review resides, or in and for the county where the act on which the proceeding is based occurred. ~~[A petition must be filed within 90 days after the service of the final decision of the Commission or, if a rehearing is held, within 30 days after the decision thereon. Copies of the petition must be served upon the Commission and all other parties of record.]~~ (LANGUAGE NOW APPEARS IN 703.373(3))

3. A petition for judicial review must be filed within 30 days after final action by the Commission on reconsideration or rehearing, or if the Commission takes no action on reconsideration or rehearing, within 30 days after the date reconsideration or rehearing is

deemed denied. Copies of the petition for judicial review must be served upon the Commission and all other parties of record.

4. The Commission shall participate in the judicial review. Any party of record desiring to participate in the judicial review must file a statement of intent to participate in the petition for judicial review and serve the statement upon the Commission and every party within 15 days after service of the petition for judicial review. (LANGUAGE TAKEN FROM 233B.130 (3))

5. Within 30 days after the service of the petition for judicial review or such time as is allowed by the court, the Commission shall transmit to the reviewing court a certified copy of the entire record of the proceeding under review, including a transcript of the evidence resulting in the final decision of the Commission. The record may be shortened by stipulation of the parties to the proceedings. (LANGUAGE TAKEN FROM 233B.131)

6. A petitioner who is seeking judicial review must serve and file a memorandum of points and authorities within 30 days after the Commission gives notice to the parties that the record of the proceeding under review has been filed with the court. (LANGUAGE TAKEN FROM 233B.133 (1))

~~[3. The Commission and other defendants shall file their answers to the petition within 30 days after the service thereof, whereupon the action is at issue and they must be ready for a hearing upon 20 days' notice to either party.]~~ (LANGUAGE NOW APPEARS IN 703.343 (7))

7. The Commission and any other respondents shall serve and file a reply memorandum of points and authorities within 30 days after service of the memorandum of points and authorities, whereupon the action is at issue and the parties must be ready for a hearing upon 20 days' notice. (LANGUAGE TAKEN FROM 233B.133 (2))

~~[4. The review must be conducted by the court without a jury and be confined to the record. In cases of alleged irregularities in procedure before the Commission, not shown in the record,~~

~~proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.~~ (LANGUAGE NOW APPEARS IN 703.373(2))

8. Judicial review of a final decision of the Commission must be:

(a) Conducted by the court without a jury; and

(b) Confined to the record.

In cases concerning alleged irregularities in procedure before the Commission that are not shown in the record, the court may receive evidence concerning the irregularities. (LANGUAGE TAKEN FROM 233B.135(1))

9. The final decision of the Commission shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the court. Burden of proof is on the petitioner to show that the final decision is invalid pursuant to subsection 11. (LANGUAGE TAKEN FROM 233B.135(2))

~~{5}~~ 10. All actions brought under this section have precedence over any civil action of a different nature pending in the court.

~~{6}~~ 11. The court shall not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact. The court may affirm the decision of the Commission or set it aside in whole or in part if substantial rights of the ~~{appellant}~~ petitioner have been prejudiced because the ~~{administrative findings, inferences, conclusions or decisions are}~~ final decision of the Commission is:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the Commission;
- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;
- (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

(f) Arbitrary or capricious or characterized by abuse of discretion.

# **EXHIBIT “2”**

## Karen Peterson

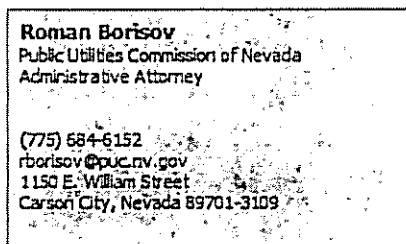
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**From:** Roman Borisov <rborisov@puc.nv.gov>  
**Sent:** Friday, October 16, 2015 10:21 AM  
**To:** Karen Peterson  
**Cc:** 'nforento@allisonmackenzie.com'; Carolyn E. Tanner; Elizabeth Avram  
**Subject:** Rural extension

Good morning Karen,

We are not opposed to a 10-day extension, but, considering the Commission's anticipated workload in November/December, we would ask that you file a motion with the Court if you would like a longer continuance.

Thank you.



*This message, including any attachments, is the property of the Public Utilities Commission of Nevada and is solely for the use of the individual or entity intended to receive it. It may contain confidential and proprietary information, and any unauthorized review, use, disclosure and distribution is prohibited. If you are not the intended recipient(s) or if you have received this message in error, please permanently delete it, and contact the sender by reply email.*

# **EXHIBIT “3”**



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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

RURAL TELEPHONE COMPANY,  
Petitioner,  
vs.

Case No. 15 OC 00188 1B  
Dept. No. II

PUBLIC UTILITIES COMMISSION OF  
NEVADA, an administrative agency of the  
State of Nevada,  
Respondent.

ORDER DENYING COUNTERMOTION TO DISMISS

The Court having reviewed Respondent's Countermotion to Dismiss and all the  
papers and pleadings related to such Countermotion, and good cause appearing,

IT IS HEREBY ORDERED that Respondent's Countermotion to Dismiss is  
DENIED.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
JAMES E. WILSON, JR.  
DISTRICT COURT JUDGE

///

1 Submitted by:

2 **ALLISON MacKENZIE, LTD.**

402 North Division Street

3 Carson City, NV 89703

Telephone: (775) 687-0202

4 Facsimile: (775) 882-7918

5  
6 By: 

KAREN A. PETERSON, ESQ.

Nevada State Bar No. 0366

JUSTIN M. TOWNSEND, ESQ.

8 Nevada State Bar No. 12293

9 Attorneys for Petitioner,

RURAL TELEPHONE COMPANY

10  
11 4852-5690-5253, v. 1

1 KAREN A. PETERSON, ESQ.  
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7 Attorneys for Petitioner,  
RURAL TELEPHONE COMPANY

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SUSAN HERRIN ET AL  
CLERK

BY J. HARKLEROAD

8  
9  
10 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
11 IN AND FOR CARSON CITY

12 RURAL TELEPHONE COMPANY,

13 Petitioner,

14 vs.

15 PUBLIC UTILITIES COMMISSION OF  
16 NEVADA, an administrative agency of the  
State of Nevada,

17 Respondent.  
18 \_\_\_\_\_

Case No. 15 OC 00188 1B

Dept. No. II

19 REQUEST FOR SUBMISSION

20  
21 It is hereby requested that Petitioner's Motion for Extension of Time (First Request),  
22 filed on October 16, 2015 in the above-entitled matter be submitted to the Court for decision. The  
23 undersigned certifies that a copy of this request has been served on all counsel of record in this  
24 proceeding.

25 AFFIRMATION

26 The undersigned does hereby affirm that the preceding document does not contain the  
27 Social Security number of any person.

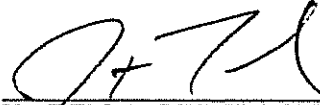
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DATED this 3<sup>rd</sup> day of November, 2015.

ALLISON MacKENZIE, LTD.  
402 North Division Street  
Carson City, NV 89703-4168

By:



KAREN A. PETERSON, ESQ.  
Nevada State Bar No. 0366  
JUSTIN M. TOWNSEND, ESQ.  
Nevada State Bar No. 12293

Attorneys for Petitioner,  
RURAL TELEPHONE COMPANY

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CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- ☒ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- ☐ Hand-delivery
- ☐ Facsimile
- ☐ Federal Express, UPS, or other overnight delivery
- ☐ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

Carolyn Tanner, Esq.  
Roman Borisov, Esq.  
Public Utilities Commission of Nevada  
1150 East William Street  
Carson City, NV 89701

DATED this 3<sup>rd</sup> day of November, 2015.

  
NANCY FONTENOT

4825-2274-3338, v 1

Carolyn Tanner, Esq., NV Bar No. 5520  
Roman Borisov, Esq., NV Bar No. 12705  
1150 E. William Street  
Carson City, NV 89701-3109  
Tel: (775) 684-6152  
Fax (775) 684-6188

REC'D & FILED

2015 NOV 13 PM 2:40

SUSAN HENRIWETTER  
CLERK

BY \_\_\_\_\_ DEPUTY

G. Cooper

Attorneys for: *Public Utilities Commission of Nevada*

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR CARSON CITY**

Rural Telephone Company,

Petitioner,

vs.

Public Utilities Commission of Nevada, an  
Administrative agency of the State of Nevada,

Respondent.

CASE NO. 15-OC-001881B

DEPT. II

**REPLY TO PETITIONER'S OPPOSITION TO RESPONDENT'S**

**COUNTERMOTION TO DISMISS**

COMES NOW, Respondent, Public Utilities Commission of Nevada (the "Commission"), by and through the undersigned counsel, and hereby files this Reply to Petitioner's Opposition to Respondent's Countermotion to Dismiss pursuant to the Rules of Practice for the First Judicial District Court, Rule 15.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. Introduction**

The Commission's Countermotion to Dismiss (the "Countermotion") should be granted because Rural Telephone Company ("Rural") violated a mandatory statutory deadline, and no valid authority exists to cure Rural's failure to comply with the statute. In an attempt to save its Petition, Rural inappropriately relies on its faulty legislative history analysis of a clear and unambiguous statute and blames a one-sentence e-mail reply from the Commission's counsel for the predicament Rural has created for itself.

///

1           **II.     Argument**

2    A.     The Countermotion to Dismiss Should Be Granted Because Rural Failed to File  
3       Its Opening Brief Within the Time Period Allotted by NRS 703.373(6).

4           Rural argues that the Countermotion should be denied because “Rural has set forth the bases for  
5 its request for extension.” Rural’s Opposition, p. 7, ll. 17-18. The Commission agrees that Rural has in  
6 fact set forth the bases for its request for extension. Unfortunately for Rural, it has offered none that  
7 apply.

8           Rural fails to identify any authority that would permit Rural to file its Opening Brief after the  
9 lapse of the statutorily-established deadline. In its Opposition/Countermotion, the Commission  
10 comprehensively demonstrates that the grounds cited by Rural for the extension are inapplicable to this  
11 proceeding. It is telling that Rural does not attempt to counter the Commission’s argument. In fact, in  
12 the Opposition, Rural completely reverses its position from that articulated in the Motion for Extension  
13 of Time. Rural went from citing NRS 233B.133(6) as the basis for its extension request (Motion for  
14 Extension, p. 2, ll. 12-14) to echoing the Commission’s statement that only NRS Chapter 703 applies to  
15 the judicial review of the Commission’s decisions. (Opposition, p. 3, ll. 17-20). Rural also abandons its  
16 argument that NRAP 31(b)(3) applies to this proceeding.

17    B.     The Countermotion to Dismiss Should Be Granted Because the NRS 703.373(6)  
18       Statutorily-Established Timeline Is Mandatory.

19           *1. Strict compliance with statutory timelines applies broadly and is not limited to cases*  
20           *that involve initiation of an administrative appeal.*

21           Rural argues that strict compliance with statutory timelines is limited to the *initiation* of an  
22 administrative appeal – filing a petition for judicial review. Rural is wrong on this point. The Nevada  
23 Supreme Court’s principle of deeming a time limit mandatory where the statute is silent as to whether  
24 the time limit can be excused has been applied outside the narrow confines that Rural identifies.

25           For instance, in Leven v. Frev, the Nevada Supreme Court ruled that the judgment renewal  
26 statute’s three-day timeline must be strictly followed because “[t]he Legislature did not provide for any  
27 deviations from this requirement, and we perceive no reason to extend this period in contravention of  
28 the Legislature’s clear and express language.” 123 Nev. 399, 408, 409, 168 P.3d 712, 718, 719 (2007).  
Thus, Leven strictly enforced the timeline applicable to the judgment renewal statute after finding no

1 legal ground to deviate from the mandatory time limit.<sup>1</sup>

2 Moreover, the Nevada Supreme Court applied the strict statutory compliance principle to the  
3 timeline for filing an opening brief in an administrative appeal setting. In Fitzpatrick v. State ex rel.,  
4 Dept. of Commerce, Ins. Div., the Court indicated that, absent the NRS 233B.133(6)'s time extension  
5 provision, the petitioner's failure to submit a timely opening brief divests the district court of jurisdiction.  
6 107 Nev. 486, 488-89, 813 P.2d 1004, 1005-06 (1991).

7 NRS 703.373(6) does not contain a time extension provision similar to NRS 233B.133(6) or any  
8 provision that would allow for a deviation from the 30-day requirement. The statutory language is clear  
9 and unambiguous. Accordingly, compliance with the NRS 703.373(6)'s 30-day filing timeline is  
10 mandatory.

11 *2. NRS 703.373 Does Not Distinguish Between the Timeline for Filing an Opening Brief*  
12 *and the Timeline for Filing a Petition for Judicial Review.*

13 NRS 703.373 uses nearly identical language to set forth the 30-day subsection (3) timeline to  
14 initiate a petition for judicial review and the 30-day subsection (6) timeline to file an opening brief. Both  
15 subsections contain mandatory and non-discretionary "*must file*" language. Rural acknowledges that its  
16 failure to file a petition for judicial review in accordance with subsection (3) would have been fatal to  
17 this action (Rural's Opposition, p. 5, ll. 16-19); however, when looking at essentially identical language  
18 of subsection (6), Rural arrives at the opposite conclusion and demands that it receive double the time  
19 provided for in subsection (6) to file its Opening Brief. Rural's position is inconsistent. Rural simply  
20 tries to bend the statutory language to suit whatever particular set of circumstances in which it finds itself  
21 - if Rural is compliant with a timeline, it acknowledges that the timeline is mandatory; if Rural fails to  
22 meet a timeline set in the same statute using the same language, Rural argues that the timeline is flexible.

23 *3. Disregarding the 30-day timeline would render NRS 703.373(6) meaningless.*

24 With no applicable provision authorizing a deviation from the NRS 703.373(6) timeline, Rural  
25 asks this Court to simply disregard the statute's 30-day provision. In Stockmeier v. Psychological

26  
27 <sup>1</sup> Other examples of dismissals for failure to meet statutory timelines include mechanics' liens cases see e.g., Cox Const.  
28 Co., LLC v. CH2 Investments, LLC, 296 P.3d 1202, 1204 (Nev. 2013) (a lien was found to be untimely and action  
dismissed because the plaintiff filed the lien after the 90-day period provided for in NRS 108.226 had lapsed) and  
dismissals for failure to meet Nevada's statute of limitations provisions contained within NRS Chapter 11.



1 Review Panel, the Nevada Supreme Court stated that statutes should be interpreted “to give meaning to  
2 each of their parts, such that, when read in context, none of the statutory language is rendered mere  
3 surplusage.” 122 Nev. 534, 540, 135 P.3d 807, 810 (2006). Rural’s request necessarily makes NRS  
4 703.373(6) meaningless.

5 4. *Rural fails to make an argument that the NRS 703.373(6) timeline can be modified.*

6 Rural’s acknowledgment that NRS 703.373 was modeled after NRS 233B provisions belies its  
7 argument that NRS 703.373 timelines can be modified. While NRS 233B.133(6) clearly allows the court  
8 to extend the time for filing memoranda upon a showing of good cause, a similar provision is noticeably  
9 absent from NRS 703.373. “It is ordinarily presumed that the legislature, by deleting an express portion  
10 of a law, intended a substantial change in the law.” McKay v. Board of Sup’rs of Carson City, 102 Nev.  
11 644, 650, 730 P.2d 438, 442 (1986). Here, the Legislature purposefully chose not to include an extension  
12 of time provision within NRS 703.373 to streamline judicial review of the Commission’s decisions as  
13 explained in the Commission’s Opposition and Countermotion. p. 4, ll. 9-20.

14 Rural further argues that, under the Commission’s logic, the Commission would lose an appeal  
15 if it fails to timely submit the record or if it fails to file a response brief on time. Rural’s Opposition, p.  
16 6, fn. 1. Rural deems such result nonsensical. In making this argument, Rural once again ignores the  
17 clear statutory language that distinguishes subsection (5) of the statute from subsection (6). NRS  
18 703.373(5) reads:

19 Within 30 days after the service of the petition for judicial review *or such time*  
20 *as is allowed by the court*, the Commission shall transmit to the reviewing  
court a certified copy of the entire record of the proceeding under review...

21 (Emphasis added.)

22 The “or such time as is allowed by the court” portion of NRS 703.373(5) explicitly authorizes the Court  
23 to modify the timeline to transmit the certified administrative record. In sharp contrast to NRS  
24 703.373(5), subsection (6) gives no authority to the Court to modify the submission timeline of Rural’s  
25 Opening Brief. Rural asks this Court to read into NRS 703.373 the language that the Legislature left  
26 out.

27 ///

28 ///

1           5. *Rural cites no case law where a court disregarded a statutory timeline.*

2           Rural states “Nevada Courts are cautioned that dismissal for procedural errors ‘should be used  
3 only in extreme situations’ and should be weighed against, among other factors, ‘the policy favoring  
4 adjudication on the merits’.” However, the three cases Rural cites do not support Rural’s statement.  
5 None of the three cases dealt with a procedural deadline. None of the three cases even use the phrase  
6 “procedural errors.” The word “procedure” does not even appear in two of the three cases. The primary  
7 case Rural cites in support of its argument, Nevada Power Co. v. Fluor Illinois, 108 Nev. 638, 837 P.2d  
8 1354 (1992), actually overturned a lower court’s dismissal for failure to obey a discovery order  
9 precluding a demolition of a key piece of evidence in the case – hardly a procedural error. 108 Nev. at  
10 645. Another case cited by Rural, Miles v. State, 120 Nev. 383, 91 P.3d 588 (2004), dealt with the issue  
11 of authenticity of a signature on the original verified habeas corpus petition. Finally, Forman v. Eagle  
12 Thrifty Drugs & Markets, Inc., 89 Nev. 533, 516 P.2d 1234 (1973), in relevant part, addressed the issue  
13 of implications of a wrong judgment referenced in the appeal notice.

14       C. The Countermotion to Dismiss Should Be Granted Because NRS 703.373 Does  
15       Not Condition Its Mandatory Timelines on Substantial Interests and Because the  
16       Commission Has Clear Substantial Interests in Expedient Review of Its Rate-  
17       Setting Decisions.

18           Rural argues that the Commission has no substantial interest that would be prejudiced by Rural’s  
19 failure to meet a statutory timeline. Rural’s argument fails because it is both wrong in premise and in  
20 the conclusion it draws. First, NRS 703.373 does not condition its mandatory timelines on substantial  
21 interests of the Commission. Second, the Commission’s substantial interests behind the strict timelines  
22 within NRS 703.373 were clearly articulated within the legislative history Rural cites and attaches to its  
23 Opposition, as well as other statutory mandates.

24           The Commission is tasked with setting fair and reasonable rates for customers of various utilities  
25 operating in this State. NRS 704.040. Rural’s Petition filed with this Court attempts to change the  
26 telephone rates set by the Commission on May 29, 2015.<sup>2</sup> The legislative history provided by Rural  
27 identifies three separate grounds for adhering to the accelerated judicial review timelines within NRS

28       <sup>2</sup> NRS 703.373(9) provides that “[t]he final decision of the Commission shall be deemed reasonable and lawful until  
reversed or set aside ... by the court.”

1 703.373. Exhibit 1 to Rural's Opposition, *Minutes of the Meeting of the Assembly Committee on*  
2 *Government Affairs, February 9, 2011, p. 45.* Each of those grounds falls within the Commission's  
3 mandate of setting fair and reasonable rates. The first substantial interest is to provide rate stability to  
4 Rural's ratepayers without allowing a rate spike. The second substantial interest is to preclude or  
5 minimize carrying charges that may fall on Rural's ratepayers. The third substantial interest is to  
6 preclude "intergenerational equities" that increase the longer Rural takes to pursue this Petition for  
7 Judicial Review. Thus, when Rural fails to abide by statutory timelines set forth in NRS 703.373, the  
8 Commission's interests in fulfilling its mandate to provide stable rates, preclude carrying charges, and  
9 minimize "intergenerational equities" are harmed.

10 D. The Countermotion to Dismiss Should Be Granted Because Rural's Analysis of  
11 the Legislative History with Respect to the Four-to-Six Months Judicial Review  
12 Timeline Is Misplaced.

13 After abandoning its arguments under NRS Chapter 233B and NRAP, Rural now argues that the  
14 Court may look to the legislative history of NRS 703.373(6) despite the clear and unambiguous language  
15 of the statute. Rural essentially asks this Court to ignore the mandatory language of NRS 703.373(6),  
16 which states that the "petitioner ... *must* serve and file a memorandum of points and authorities within  
17 30 days after the Commission" files the administrative record. *Emphasis added.* Rural's analysis of the  
18 legislative history is both irrelevant and flawed.

19 *1. Rural's legislative history analysis is irrelevant because the statutory provisions of NRS*  
20 *703.373 are clear and unambiguous.*

21 It is well-settled in Nevada that, where a statute is clear on its face, a court may not go beyond  
22 the language of the statute in determining the Legislature's intent. Thompson v. District Court, 100 Nev.  
23 352, 354, 683 P.2d 17, 19 (1984). Here, the mandatory filing timeline language is clear, and even Rural  
24 does not argue that it is ambiguous. Accordingly, Rural's legislative history analysis is irrelevant and  
25 cannot be considered.

26 *2. Rural's analysis of the legislative history is based on flawed logic.*

27 Even if the Court could look beyond the four corners of the statute, Rural's analysis misses the  
28 mark because it is logically flawed. Rural's argument boils down to the notion that, because the

1 legislative history alludes to a four-to-six months timeline for judicial review, it must *necessarily* follow  
2 that statutorily-mandated timelines are flexible. Rural's argument is flawed because there could be a  
3 myriad of reasons for the built-in flexibility. For instance, Rural neglects to account for the most  
4 important part of the judicial review process – the time it takes the Court to evaluate the parties'  
5 arguments and issue a well-reasoned decision. Rural calculates that, even without the extension, the  
6 Court can hold a hearing on the Petition in 110 days from the day of filing at the earliest. Rural's  
7 Opposition, p. 4, ll. 19-21. Based on this 110-day calculation, the four-to-six months judicial review  
8 timeline will leave the Court a minimum of 10 days and a maximum of 70 days to issue a decision. It is  
9 far more likely that this flexible period to issue a decision is meant to accommodate the Court's calendar;  
10 not to allow Rural to procrastinate and then disregard a statutory timeline. If Rural and the Commission  
11 were both to receive 30-day extensions as Rural proposes, the Court would have 10 days to evaluate the  
12 Commission's decisions on issues underlying this regulated telecommunication utility rate case or risk  
13 missing a legislatively-set target date. Thus, Rural's conclusion that references to a four-to-six months  
14 judicial review period in the legislative history *must necessarily* mean that the statutorily-established  
15 timelines can be modified is nonsensical: a far more likely reason is to give the Court sufficient time to  
16 prepare a well-reasoned opinion.

17 E. Rural Tries to Fault the Commission Even Though Rural Alone Is Responsible for  
18 Placing Itself in This Predicament.

19 Rural waited until two judicial days before the statutory deadline, of which it has known for  
20 months, to first approach the Commission with its request to double the time to file the Opening Brief.  
21 Rural offered no reasons for the extension request. **Exhibit 1.** In good faith and trying to be  
22 accommodating, the Commission, realizing that time is of the essence, promptly responded in the spirit  
23 of civility Rural references in its Opposition. The Commission responded to Rural's request without  
24 being apprised of the reasons for Rural's request or the authorities upon which Rural was relying in  
25 making its request.

26 Rural now argues that, with a simple, informal, one-sentence reply email, the Commission  
27 trapped Rural and should now be estopped from informing this Court of the applicable statutes and case  
28 law. Rural's argument presumes that between the time of Rural's extension request on October 15 and

1 the Commission's response in the morning of October 16, the assigned counsel for the Commission  
2 dropped all of his other tasks, reviewed all of the applicable law, learned that no authority for an  
3 extension exists (and that no motion for extension would be a tolling motion), assumed that Rural knew  
4 none of that, and emailed Rural's counsel a misleading response. Rural's accusation is without merit.  
5 The undersigned counsel simply stated that the Commission cannot agree to a 30-day extension, would  
6 entertain a stipulation for a 10-day extension, and, if Rural insists on having a 30-day extension, it should  
7 file a motion. The undersigned counsel's informal response did not indicate that he had taken any  
8 position on the arguments made in motions pending before this Court.

9       Regardless, it is not the job of an adverse party to guard the opposing party against any possible  
10 pitfall in which such party may find itself. Moreover, Rural cannot fault the Commission's counsel for  
11 not vetting the applicable law at the time of Rural's last minute request because, as clear from Rural's  
12 Motion for Extension of Time and Opposition to the Countermotion, Rural was ignorant of the applicable  
13 law even when it filed a formal request for an extension with the Court. Notably, the undersigned  
14 counsel's e-mail did not state that the Commission would not oppose Rural's motion for a 30-day  
15 extension; there was no promise to file a Notice of Non-Opposition as the Commission had done with  
16 respect to Rural's Motion to Seal. The Commission simply operated on the principle that, if it is  
17 unwilling to agree to a request of an adverse party, such adverse party should ask the Court for the relief  
18 it seeks, and the appropriate way to do so is via a motion.

19       Rural argues that the Commission agreed to a 10-day extension. This is irrelevant. The parties  
20 never agreed to a stipulation for any extension: Rural rejected the offer without reason, and ten days has  
21 long since passed. In retrospect, with no legal authority available in support of the extension request,  
22 the Commission would not ultimately be able to sign a stipulation for an extension. Considering that  
23 Rural cited NRS 233B.133 and NRAP 31(b)(3) in its Motion as the bases for the extension, counsel for  
24 the Commission would have committed a legal error were he to sign a stipulation for an extension based  
25 on those authorities. Now, Rural attempts to turn the Commission's prompt and accommodating  
26 response against it in accordance with an old maxim of "no good deed goes unpunished" and expects the  
27 Commission's counsel to simply disregard the statutory mandates of NRS 703.373 and acquiesce to  
28 Rural employing inapplicable provisions of NRS 233B and NRAP. Such course of action would

1 constitute incompetence on the part of the Commission's counsel, not civility.

2 **III. Conclusion**

3 For all of the foregoing reasons, the Commission respectfully requests that this Court grant the  
4 Counter-motion to Dismiss.

5  
6 DATED this 13th day of November, 2015.

7 Respectfully Submitted by:

8  
9 

10 CAROLYN TANNER, ESQ.

Nevada Bar No. 5520

11 ROMAN BORISOV, ESQ.

Nevada Bar No. 12705

12 1150 East William Street

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13 Tel: 775-684-6152

Fax: 775-684-6186

14 rborisov@puc.nv.gov

15 *Attorneys for Respondent, the Public*  
16 *Utilities Commission of Nevada*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Public Utilities Commission of Nevada, and that on this date I have served copies of the foregoing **REPLY TO PETITIONER'S OPPOSITION TO RESPONDENT'S COUNTERMOTION TO DISMISS** in Case No. 15 OC 001881B by hand delivery, true and correct copies thereof, in properly addressed envelopes, at Carson City, Nevada, to the following:

Karen A. Peterson, Esq.  
Allison MacKenzie, Ltd.  
402 North Division Street  
Carson City, NV 89703

DATED this 13th day of November, 2015.

  
ELIZABETH AVRAM

# EXHIBIT 1



Roman Borisov

---

From: Karen Peterson <KPeterson@allisonmackenzie.com>  
Sent: Thursday, October 15, 2015 12:36 PM  
To: Roman Borisov; Carolyn E. Tanner  
Subject: Rural Petition for Judicial Review

Hi,

I am not going to be able to get Rural's opening brief done by the due date of Monday September 19<sup>th</sup>. Would General Counsel being willing to stipulate to a 30 day extension of time for Rural to file its opening brief? Thank you.

Karen A. Peterson, Esq.  
Allison MacKenzie, Ltd.  
402 N. Division Street  
P.O. Box 646  
Carson City, NV 89702  
(775) 687-0202 telephone  
(775) 882-7918 fax  
email: [kpeterston@allisonmackenzie.com](mailto:kpeterston@allisonmackenzie.com)

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Carolyn Tanner, Esq., NV Bar No. 5520  
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DEPUTY

*Attorneys for Public Utilities Commission of Nevada*

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR CARSON CITY**

Rural Telephone Company,

Petitioner,

vs.

Public Utilities Commission of Nevada, an  
Administrative agency of the State of Nevada,

Respondent.

CASE NO. 15-OC-001881B

DEPT. II

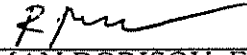
**REQUEST FOR SUBMISSION**

Pursuant to Rule 15(6) of the Rules of Practice for the First Judicial District Court, the Public Utilities Commission of Nevada ("Commission"), by and through its legal counsel, respectfully requests that the Commission's Countermotion to Dismiss be submitted to the Court for decision.

The parties have exhausted their respective briefs, and the matter is thus ready for submission to the Court. The Commission previously submitted a proposed order as Attachment 4 to Opposition to Petitioner's Motion for Extension of Time and Countermotion to Dismiss filed on October 26, 2015.

DATED this 13th day of November, 2015.

by:

  
ROMAN BORISOV, ESQ.  
Nevada Bar No. 12705  
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Carson City, NV 89701  
Tel: 775-684-6152  
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rborisov@puc.nv.gov

*Attorney for Respondent, the Public  
Utilities Commission of Nevada*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Public Utilities Commission of Nevada, and that on this date I have served copies of the foregoing **REQUEST FOR SUBMISSION** in Case No. 15 OC 001881B by hand delivery, in properly addressed envelopes, in Carson City, Nevada, to the following:

Karen A. Peterson, Esq.  
Allison MacKenzie, Ltd.  
402 North Division Street  
Carson City, NV 89703

DATED this 13th day of November, 2015.

  
ELIZABETH AVRAM

1 Carolyn Tanner, Esq., NV Bar No. 5520  
2 Roman Borisov, Esq., NV Bar No. 12705  
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6 Fax (775) 684-6188

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2015 SEP 18 PM 2:52

SUSAN MERRIWETHER  
CLERK

BY \_\_\_\_\_ DEPUTY

5 Attorney for: *Public Utilities Commission of Nevada*

6 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR CARSON CITY**

8 Rural Telephone Company,

9 Petitioner,

10 vs.

11 Public Utilities Commission of Nevada, an  
12 Administrative agency of the State of Nevada,  
13 Public Utilities Commission of Nevada,

14 Respondent.

CASE NO. 15-OC-001881B

DEPT. II

15 **STIPULATION TO LIMIT RECORD FOR JUDICIAL REVIEW AND ORDER THEREON**

16 COMES NOW, Petitioner Rural Telephone Company ("Rural") and Respondent Public  
17 Utilities Commission of Nevada ("Commission") (collectively, "the Parties"), by and through the  
18 undersigned counsel, and hereby file this Stipulation to Limit Record for Judicial Review.

19 Pursuant to the Rules of Practice for the First Judicial District Court, Rule 15, the Parties rely  
20 on the following points and authorities in support of the Stipulation to Limit Record for Judicial  
21 Review:

22 Pursuant to Nevada Revised Statutes ("NRS") 703.373, Rural has filed a Petition for Judicial  
23 Review ("Petition") of the Commission's Order, issued on July 22, 2015, in Docket No. 14-11006.  
24 The Petition was served upon the Commission on August 20, 2015.

25 ///

26 ///

27 ///

28 ///

1 NRS 703.373(5) reads:

2 Within 30 days after the service of the petition for judicial review or such time as is  
3 allowed by the court, the Commission shall transmit to the reviewing court a certified  
4 copy of the entire record of the proceeding under review, including a transcript of the  
evidence resulting in the final decision of the Commission. *The record may be shortened  
by stipulation of the parties to the proceedings.*

5 (emphasis added).

6 To increase efficiency and avoid costs, delay, and waste, the Parties have agreed that  
7 submission of the entire record of Docket No. 14-11006 is unnecessary and that only the following  
8 portions of the Commission's official record are relevant to this Court's review of the Commission's  
9 July 22, 2015, Order:

10	FILING DATE	DESCRIPTION
11	11/07/2014	Original Filing Rural Telephone Confidential 000001-000001
12	11/14/2014	Notice Application & Prehearing 000002-000006
13	12/5/2014	Notice Of Commenter AT&T Nevada 000007-000011
14	12/11/2014	Transcript Prehearing Conference 000012-000027
15	12/16/2014	Order Procedural Order 000028-000031
16	12/18/2014	Transcript Prehearing Conference (Vol. 2) 000032-000043
17	12/24/2014	Comment Staff 000044-000049
18	12/24/2014	Comment Rural Telephone 000050-000059
19	12/31/2014	Comment Rural Telephone Reply 000060-000066
20	12/31/2014	Amendment To Filing Rural Telephone Confidential 000067-000067
21	12/31/2014	Comment Staff Reply 000068-000085
22	01/09/2015	Notice Consumer Sessions & Hearing 000086-000090
23	01/12/2015	Order Procedural Order No. 2 000091-000095
24	01/30/2015	Order Interim Order 000096-000107
25	02/02/2015	Report Rural Telephone 000108-000109
26	02/02/2015	Report Staff 000110-000112
27	03/02/2015	Report Rural Telephone 000113-000114
28	03/02/2015	Report Staff 000115-000117

1	03/25/2015	Testimony	Staff Transmittal Letter	000118-000121
2	03/25/2015	Testimony	Staff Confidential	000122-000124
3	04/01/2015	Report	Staff	000125-000126
4	04/01/2015	Report	Rural Telephone	000127-000128
5	04/08/2015	Testimony	M. Martell Confidential	000129-000130
6	04/08/2015	Motion to Strike	Rural Telephone Motion	000131-000139
7	04/10/2015	Misc Correspondence	Rural Telephone Transmittal Letter	000140-000141
8	04/13/2015	Motion/Response	Staff Response	000142-000150
9	04/15/2015	Motion/Reply	Rural Telephone Reply	000151-000158
10	04/16/2015	Exhibit	1	000159-000377
11	04/16/2015	Exhibit	2	000378-000415
12	04/16/2015	Exhibit	3	000416-000418
13	04/16/2015	Exhibit	4	000419-000419
14	04/16/2015	Exhibit	5	000420-000433
15	04/16/2015	Exhibit	6	000434-000435
16	04/16/2015	Exhibit	7	000436-000438
17	04/16/2015	Exhibit	8	000439-000442
18	04/16/2015	Exhibit	9	000443-000474
19	04/16/2015	Exhibit	10	000475-000483
20	04/16/2015	Exhibit	13	000484-000489
21	04/16/2015	Exhibit	14	000490-000644
22	04/16/2015	Exhibit	15	000645-000657
23	04/16/2015	Exhibit	16	000658-000838
24	04/16/2015	Exhibit	11	000839-000866
25	04/16/2015	Exhibit	17	000867-000867
26	04/16/2015	Exhibit	18	000868-000908
27	04/16/2015	Exhibit	19	000909-000940
28	04/16/2015	Exhibit	20	000941-000941

1	04/16/2015	Exhibit	21	000942-000971
2	04/16/2015	Exhibit	22	000972-000978
3	04/16/2015	Exhibit	23	000979-001050
4	04/16/2015	Exhibit	List	001051-001055
5	04/16/2015	Exhibit	Confidential List	001056-001057
6	04/17/2015	Exhibit	24	001058-001061
7	04/17/2015	Exhibit	25	001062-001064
8	04/17/2015	Exhibit	27	001065-001085
9	04/17/2015	Exhibit	28	001086-001097
10	04/17/2015	Exhibit	32	001098-001154
11	04/17/2015	Exhibit	33	001155-001174
12	04/17/2015	Exhibit	34	001175-001183
13	04/21/2015	Transcript	Hearing (Vol. 1)	001184-001368
14	04/21/2015	Transcript	Hearing (Vol. 2)	001369-001421
15	04/21/2015	Transcript	Hearing (Vol. 1) Confidential	001422-001422
16	04/21/2015	Transcript	Hearing (Vol. 2) Confidential	001423-001423
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18	04/24/2015	Motion	Rural Telephone Motion	001430-001453
19	04/28/2015	Order	Procedural Order No. 4	001454-001458
20	04/30/2015	Motion	Staff Response	001459-001473
21	05/01/2015	Report	Rural Telephone	001474-001475
22	05/01/2015	Report	Staff	001476-001478
23	05/01/2015	Other	Rural Telephone	001479-001581
24	05/01/2015	Other	Rural Telephone Confidential	001582-001582
25	05/04/2015	Order	Procedural Order No. 5	001583-001588
26	05/05/2015	Motion/Reply	Rural Telephone Reply	001589-001599
27	05/06/2015	Exhibit	35	001600-001606
28	05/06/2015	Exhibit	36	001607-001609

1	05/06/2015	Exhibit	37	001610-001610
2	05/11/2015	Transcript	Hearing (Vol. 3)	001611-001664
3	05/12/2015	Transcript	Hearing (Vol. 3) Confidential	001665-001665
4	05/13/2015	Order	Procedural Order No.6	001666-001671
5	05/18/2015	Other	Rural Telephone	001672-001681
6	05/19/2015	Order	Procedural Order No. 7	001682-001688
7	05/21/2015	Other	Rural Telephone	001689-001703
8	05/26/2015	Other	Staff	001704-001706
9	05/27/2015	Order	Motion to Strike Testimony Denied	001707-001719
10	05/27/2015	Order	Motions to Strike/Disqualify Denied	001720-001734
11	05/29/2015	Order	Granted	001735-001791
12	06/01/2015	Compliance Filing	Rural Telephone	001792-001815
13	06/02/2015	Compliance Filing	Rural Telephone	001816-001830
14	06/03/2015	Compliance Filing	Rural Telephone Supplement	001831-001834
15	06/03/2015	Tariff Approved	PUC	001835-001846
16	06/04/2015	Compliance Filing	Rural Telephone	001847-001854
17	06/05/2015	Compliance Filing	Rural Telephone Errata	001855-001862
18	06/09/2015	Tariff Approved	PUC	001863-001870
19	06/12/2015	Reconsideration	Staff	001871-001876
20	06/12/2015	Reconsideration	Rural Telephone	001877-001890
21	06/26/2015	Reconsideration	Rural Telephone Answer	001891-001894
22	06/26/2015	Reconsideration	Staff Answer	001895-001912
23	07/22/2015	Order	Reconsideration/Clarification Granted	001913-001991
24	07/22/2015	Order	Modified Order	001992-002048
25	04/16/2015	Exhibit C-2	Publicly Released Portions of Exhibit C-2	002049-002070
26	04/17/20105	Exhibit C-6	Rural's General Ledger 1999 Buildings	002071-002073
27			Sale Entries	
28	05/06/2015	Exhibit C-7	Confidential Portions of the Application	002074-002075



1	05/06/2015	Exhibit C-8	Confidential Portions of Amendment to	002076-002077
2			the Application	
3			<b>CONFIDENTIAL DOCUMENTS</b>	
4	04/16/2015	Exhibit C-1	Response to Staff's Dr 111	CONF000001-CONF000008
5	04/16/2015	Exhibit C-2	Portions of Prepared Direct	CONF000009-CONF000171
6			Testimony of Nichole Matzek	
7	04/16/2015	Exhibit C-3	Portions of Prepared Direct	CONF000172-CONF000209
8			Testimony of Yasuji Otsuka	
9	04/16/2015	Exhibit C-4	Portions of Prepared Rebuttal	CONF000210-CONF000212
10			Testimony of Mark Martell	
11	04/17/2015	Exhibit C-5	Real Property Summary	CONF000213-CONF000258
12			Appraisal Report by Analytix	
13			Appraisal Group 1999	
14	04/21/2015	Hearing Transcript Vol 1	4-17-2015 Hearing	CONF000259-CONF000297
15	04/21/2015	Hearing Transcript Vol 2	4-17-2015 Hearing	CONF000298-CONF000337
16				
17	05/06/2015	Exhibit C-9	Real Property Appraisal Report	CONF000338-CONF000434
18			by Analytix Appraisal Group	
19			2008	
20	05/12/2015	Hearing Transcript Vol 3	05-06-2015 Hearing	CONF000435-CONF000555
21	///			
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23	///			
24	///			
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28	///			

1 Therefore, the Parties respectfully request that this Court grant the Stipulation to Limit Record  
2 for Judicial Review.

3 DATED this 13 day of September, 2015.

4 Respectfully Submitted,

6 by: 

7 ROMAN BORISOV, ESQ.  
8 Nevada Bar No. 12705  
9 1150 East William Street  
10 Carson City, NV 89701  
11 Tel: 775-684-6152  
12 Fax: 775-684-6186  
13 rborisov@puc.nv.gov  
14 *Attorney for Respondent, the Public*  
15 *Utilities Commission of Nevada*

14 by: 

15 KAREN A. PETERSON, ESQ.  
16 Nevada Bar No. 0366  
17 Allison MacKenzie, Ltd.  
18 402 North Division Street  
19 Carson City, NV 89703  
20 Tel. 775-687-0202  
21 Fax 775-882-7918  
22 kpeterson@allisonmackenzie.com  
23 *Attorney for Petitioner, Rural Telephone*  
24 *Company*

Public Utilities Commission of Nevada  
1150 E. William Street  
Carson City, NV 89701-3109

**AFFIRMATION**  
Pursuant to NRS 239B.030/603.040A  
(Initial Appearance)

The undersigned does hereby affirm that upon the filing of additional documents in the above matter, an Affirmation will be provided ONLY if the document contains a social security number (NRS 239B.030) or "personal information" (NRS 603A.040), which means a natural person's first name or first initial and last name in combination with any one or more of the following data elements:

1. Social Security number.
2. Driver's license number or identification card number.
3. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.

The term does not include publicly available information that is lawfully made available to the general public.

Dated the 12 day of September, 2015.

by: 

ROMAN BORISOV, ESQ.  
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Fax: 775-684-6186  
rborisov@puc.nv.gov  
*Attorney for Respondent, the Public  
Utilities Commission of Nevada*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Public Utilities Commission of Nevada, and that on this date I have served copies of the foregoing **STIPULATION TO LIMIT THE RECORD FOR JUDICIAL REVIEW AND ORDER THEREON** in Case No. 15 OC 001881B by delivering to the Nevada Department of General Services true and correct copies thereof, in properly addressed envelopes, by hand delivery in Carson City, Nevada, to the following:

Karen A. Peterson, Esq.  
Allison MacKenzie, Ltd.  
402 North Division Street  
Carson City, NV 89703

DATED this 18<sup>th</sup> day of September, 2015.

  
ELIZABETH AVRAM

Carolyn Tanner, Esq., NV Bar No. 5520  
Roman Borisov, Esq., NV Bar No. 12705  
1150 E. William Street  
Carson City, NV 89701-3109  
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REC'D & FILED  
2015 SEP 18 PM 2:49  
SUSAN MERRIWETHER  
CLERK  
BY \_\_\_\_\_  
DEPUTY

Attorney for: *Public Utilities Commission of Nevada*

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

Rural Telephone Company,

Petitioner,

vs.

Public Utilities Commission of Nevada, an  
Administrative agency of the State of Nevada,  
Public Utilities Commission of Nevada,

Respondent.

CASE NO. 15-OC-001881B

DEPT. II


CERTIFICATION OF RECORD OF DOCKET NO. 14-11006

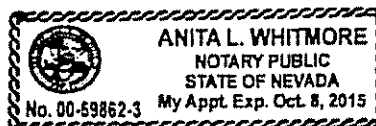
I, ELIZABETH AVRAM, Legal Research Assistant for the Public Utilities Commission of Nevada  
pursuant to NRS 703.373(5) hereby certify that the documents submitted herewith comprise the record  
before the Commission in Docket No. 14-11006.

DATED this 18th day of September, 2015.

  
ELIZABETH AVRAM, Legal Research Assistant for  
the Public Utilities Commission of Nevada

SUBSCRIBED and SWORN to before me  
this 18th day of SEPTEMBER, 2015.

  
NOTARY PUBLIC



Carolyn Tanner, Esq., NV Bar No. 5520  
Roman Borisov, Esq., NV Bar No. 12705  
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Attorney for: *Public Utilities Commission of Nevada*

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR CARSON CITY**

Rural Telephone Company,

Petitioner,

vs.

Public Utilities Commission of Nevada, an  
Administrative agency of the State of Nevada,  
Public Utilities Commission of Nevada,

Respondent.

CASE NO. 15-OC-001881B

DEPT. II

**RECORD OF DOCKET NO. 14-11006**

**INDEX OF VOLUMES**

Dated the 12 day of September, 2015.

by:

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Utilities Commission of Nevada*

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20	05/01/2015	Report	Staff	001476-001478
21	05/01/2015	Other	Rural Telephone	001479-001581
22	05/01/2015	Other	Rural Telephone Confidential	001582-001582
23	05/04/2015	Order	Procedural Order No. 5	001583-001588
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10	05/27/2015	Order	Motions to Strike/Disqualify Denied	001720-001734
11	05/29/2015	Order	Granted	001735-001791
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13	06/02/2015	Compliance Filing	Rural Telephone	001816-001830
14	06/03/2015	Compliance Filing	Rural Telephone Supplement	001831-001834
15	06/03/2015	Tariff Approved	PUC	001835-001846
16	06/04/2015	Compliance Filing	Rural Telephone	001847-001854
17	06/05/2015	Compliance Filing	Rural Telephone Errata	001855-001862
18	06/09/2015	Tariff Approved	PUC	001863-001870
19	06/12/2015	Reconsideration	Staff	001871-001876
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22	06/26/2015	Reconsideration	Staff Answer	001895-001912
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24	07/22/2015	Order	Modified Order	001992-002048
25	04/16/2015	Exhibit C-2	Publicly Released Portions of Exhibit C-2	002049-002070
26	04/17/20105	Exhibit C-6	Rural's General Ledger 1999 Buildings	002071-002073
27			Sale Entries	
28	05/06/2015	Exhibit C-7	Confidential Portions of the Application	002074-002075

1	05/06/2015	Exhibit C-8	Confidential Portions of Amendment to	002076-002077
2			the Application	
3			<b>VOLUME 7 (Confidential Documents)</b>	
4	04/16/2015	Exhibit C-1	Response to Staff's Dr 111	CONF000001-CONF000008
5	04/16/2015	Exhibit C-2	Portions of Prepared Direct	CONF000009-CONF000171
6			Testimony of Nichole Matzek	
7	04/16/2015	Exhibit C-3	Portions of Prepared Direct	CONF000172-CONF000209
8			Testimony of Yasuji Otsuka	
9	04/16/2015	Exhibit C-4	Portions of Prepared Rebuttal	CONF000210-CONF000212
10			Testimony of Mark Martell	
11	04/17/2015	Exhibit C-5	Real Property Summary	CONF000213-CONF000258
12			Appraisal Report by Analytix	
13			Appraisal Group 1999	
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18	05/06/2015	Exhibit C-9	Real Property Appraisal Report	CONF000338-CONF000434
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20			2008	
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Disc Containing Volumes 1 through 6 of Certified Record

Disc Containing Volume 7 of Certified Record – Confidential Materials

FILED UNDER SEAL

**AFFIRMATION**  
**Pursuant to NRS 239B.030/603.040A**  
**(Initial Appearance)**

The undersigned does hereby affirm that upon the filing of additional documents in the above matter, an Affirmation will be provided ONLY if the document contains a social security number (NRS 239B.030) or "personal information" (NRS 603A.040), which means a natural person's first name or first initial and last name in combination with any one or more of the following data elements:

1. Social Security number.
2. Driver's license number or identification card number.
3. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.

The term does not include publicly available information that is lawfully made available to the general public.

Dated the   1   day of September, 2015.

by: \_\_\_\_\_

ROMAN BORISOV, ESQ.  
Nevada Bar No. 12705  
1150 East William Street  
Carson City, NV 89701  
Tel: 775-684-6152  
Fax: 775-684-6186  
rborisov@puc.nv.gov  
*Attorney for Respondent, the Public  
Utilities Commission of Nevada*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Public Utilities Commission of Nevada, and that on this date I have served copies of the foregoing **CERTIFICATION OF RECORD AND RECORD OF DOCKET NO 14-11006** in Case No. 15 OC 001881B by delivering to the Nevada Department of General Services true and correct copies thereof, in properly addressed envelopes, for hand delivery in Carson City, Nevada, to the following:

Karen A. Peterson, Esq.  
Allison MacKenzie, Ltd.  
402 North Division Street  
Carson City, NV 89703

DATED this 18<sup>th</sup> day of September, 2015.

  
ELIZABETH AVRAM

REC'D & FILED  
2015 OCT -2 PM 4:44  
SUSAN HERRIWETHER  
CLERK  
BY V. Alegria  
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

RURAL TELEPHONE COMPANY,

Petitioner,

vs.

PUBLIC UTILITIES COMMISSION OF  
NEVADA, an administrative agency of the  
State of Nevada,

Respondent.

Case No. 15 OC 00188 1B

Dept. No. II

ORDER SEALING RECORDS

The Court having reviewed the Motion to Seal Records filed by RURAL TELEPHONE COMPANY, the response of the PUBLIC UTILITIES COMMISSION OF NEVADA not opposing the motion, and this matter having been fully reviewed by the Court, which finds that the requirements of Rule 3 of the Nevada Rules for Sealing and Redacting Court Records ("SRCR") are satisfied, and good cause appearing,

The Court finds that the public interest in privacy outweighs the public interest in access to open court records based upon NRS 703.190, NRS 703.196 and NAC 703.5274, which require that certain confidential exhibits and confidential transcripts not be made available to the public, that the PUBLIC UTILITIES COMMISSION OF NEVADA has maintained the confidentiality of the confidential exhibits and confidential transcripts in Docket No. 14-11006 and its records and file and that such confidentiality should continue to be maintained in this civil action.

1            THEREFORE IT IS HEREBY ORDERED that the confidential exhibits and  
2 confidential transcripts of the administrative record in Docket No. 14-11006 submitted by the  
3 PUBLIC UTILITIES COMMISSION OF NEVADA be sealed and the Clerk of the Court is hereby  
4 ordered to comply with SRCR 3 for maintaining sealed court records and shall prevent access to the  
5 sealed court records until further order of this Court.

6            DATED this 1 day of October, 2015.

7  
8  
9              
10            JAMES E. WILSON, JR.  
11            DISTRICT COURT JUDGE

11 Submitted by:

12 ALLISON MacKENZIE, LTD.  
13 402 North Division Street  
14 Carson City, NV 89703  
15 Telephone: (775) 687-0202  
16 Facsimile: (775) 882-7918

17 By: /s/ Karen A. Peterson  
18 KAREN A. PETERSON, ESQ.  
19 Nevada State Bar No. 0366

20 Attorneys for Petitioner,  
21 RURAL TELEPHONE COMPANY

22 4831-8201-4504, v. 2  
23  
24  
25  
26  
27  
28



Carolyn Tanner, Esq., NV Bar No. 5520  
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REC'D & FILED  
2015 OCT -2 PM 4:44  
SUSAN HERRIWEATHER  
CLERK  
BY W. J. Wilson  
DEPUTY

Attorney for: *Public Utilities Commission of Nevada*

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

Rural Telephone Company,

Petitioner,

vs.

Public Utilities Commission of Nevada, an  
Administrative agency of the State of Nevada,  
Public Utilities Commission of Nevada,

Respondent.

CASE NO. 15-OC-001881B

DEPT. II

ORDER ON STIPULATION TO LIMIT RECORD FOR JUDICIAL REVIEW

Good cause appearing, IT IS HEREBY ORDERED that the forgoing Stipulation to Limit  
Record for Judicial Review is GRANTED.

DATED this 1 day of October, 2015.

  
HON. JAMES WILSON  
DISTRICT COURT JUDGE

1 KAREN A. PETERSON, ESQ.  
Nevada State Bar No. 0366  
2 ALLISON MacKENZIE, LTD.  
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5 Attorneys for Petitioner,  
6 RURAL TELEPHONE COMPANY

REC'D & FILED

2015 OCT 16 PM 3:26

SUSAN MERRIWETHER  
CLERK

BY V. Alegria  
DEPUTY

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8  
9 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
10 IN AND FOR CARSON CITY

11  
12 RURAL TELEPHONE COMPANY,

13 Petitioner,

14 vs.

15 PUBLIC UTILITIES COMMISSION OF  
16 NEVADA, an administrative agency of the  
State of Nevada,

17 Respondent.  
18 \_\_\_\_\_/

Case No. 15 OC 00188 1B

Dept. No. II

19 MOTION FOR EXTENSION OF TIME  
20 (First Request)

21 Petitioner, RURAL TELEPHONE COMPANY ("Rural"), by and through its  
22 attorneys, ALLISON MacKENZIE, LTD., hereby respectfully requests an extension of time of thirty  
23 (30) days to file its Opening Brief in support of its Petition for Judicial Review in this matter. The  
24 Opening Brief is currently due on Monday, October 19, 2015 and will be due on Wednesday,  
25 November 18, 2015 if the Court grants Rural's Motion for Extension of Time. General Counsel for  
26 Respondent, PUBLIC UTILITIES COMMISSION OF NEVADA ("Commission") was contacted  
27 regarding this request. General Counsel for Respondent indicated that they did not oppose a ten (10)  
28 day extension of time. See, Affidavit in Support of Motion for Extension of Time attached hereto as

1 Exhibit "1" at ¶9. Because Petitioner needs a 30 day extension, Rural files this Motion pursuant to  
2 Rule 15 of the First Judicial District Court Rules and moves the Court for an order granting this  
3 Motion. This Motion is made and based upon the following Memorandum of Points and Authorities  
4 and all other papers and pleadings on file in this matter.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 NRS 703.373(8) provides that judicial review of a final decision of the Commission  
7 must be conducted by the court without a jury and confined to the record. Thus, this proceeding is in  
8 the nature of an appeal. NRAP Rule 31(b)(3) provides for motions for extensions of time for filing a  
9 brief. The motion shall include the date when the brief is due; the number of extensions of time  
10 previously granted; whether any previous requests for extensions of time have been denied or denied  
11 in part; the reasons or grounds why an extension is necessary; and the length of the extension  
12 requested and the date on which the brief would become due. NRS 233B.133(6) provides that the  
13 court, for good cause shown, may extend the times allowed in that statute for filing memoranda of  
14 points and authorities in NRS 233B judicial review proceedings.

15 Petitioner's Opening Brief is due Monday, October 19, 2015. Id. at ¶3. The  
16 undersigned consulted with her client and Petitioner has no objection to its counsel requesting this  
17 extension. Id. at ¶7. On Thursday, October 15, 2015, counsel for Petitioner asked counsel for  
18 Respondent if counsel would stipulate to a 30 day extension of time for Petitioner to file its Opening  
19 Brief. Id. at ¶8. On Friday, October 16, 2015, counsel for Respondent responded indicating they  
20 were not opposed to a 10-day extension, but, considering the Commission's anticipated workload in  
21 November/December, they would ask that Petitioner file a motion with the Court if it would like a  
22 longer continuance. Id. at ¶9.

23 Petitioner respectfully requests a 30 day extension of time until November 18, 2015  
24 to file its Opening Brief in this matter. No previous extensions of time have been requested or  
25 denied for filing Petitioner's Opening Brief. Id. at ¶13. The issues of this appeal are complex and  
26 counsel will not be able to complete Petitioner's Opening Brief by October 19, 2015. Id. at ¶¶5-6.  
27 The 10 day extension until October 29, 2015 proposed by Respondent will not be enough time for  
28 counsel to complete Petitioner's Opening Brief because counsel for Petitioner is involved in a four

1 day hearing before the Commission in Las Vegas from October 26 through October 29, 2015 and is  
2 not available the next ten days based on that previously scheduled Commission hearing. Id. at ¶10.  
3 In addition, counsel for Petitioner is scheduled to be out of the office the week of November 2-6,  
4 2015. Id. at ¶11. Accordingly, Petitioner respectfully requests a 30 day extension of time until  
5 November 18, 2015 to file its Opening Brief in this matter. Counsel for Petitioner will stipulate to  
6 any extension of time counsel for Respondent may need to accommodate its anticipated workload in  
7 November/December as a result of this request by Petitioner to extend the time for filing its Opening  
8 Brief in this matter. Id. at ¶12.

9 WHEREFORE, Rural requests that this Court grant its Motion for Extension of Time  
10 and allow Rural a thirty (30) day extension to and including Wednesday, November 18, 2015. A  
11 proposed Order Granting Motion for Extension of Time is attached hereto as Exhibit "2".

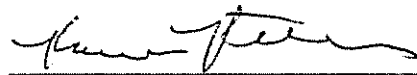
12 AFFIRMATION

13 The undersigned does hereby affirm that the preceding document does not contain the  
14 Social Security number of any person.

15 DATED this 16<sup>th</sup> day of October, 2015.

16 ALLISON MacKENZIE, LTD.  
17 402 North Division Street  
18 Carson City, NV 89703-4168

19 By:



20 KAREN A. PETERSON, ESQ.  
21 Nevada State Bar No. 0366  
22 Attorneys for Petitioner,  
23 RURAL TELEPHONE COMPANY  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- X Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]  
       Hand-delivery  
       Facsimile  
       Federal Express, UPS, or other overnight delivery  
       E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

Carolyn Tanner, Esq.  
Roman Borisov, Esq.  
Public Utilities Commission of Nevada  
1150 East William Street  
Carson City, NV 89701

DATED this 16<sup>th</sup> day of October, 2015.

  
NANCY FONTENOT

INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description of Exhibit</u>	<u>No. of Pages (Excluding tab)</u>
"1"	Affidavit in Support of Motion for Extension of Time	3
"2"	[Proposed] Order Granting Motion for Extension of Time	2

4826-9306-4233, v. 1

# EXHIBIT "1"

1 KAREN A. PETERSON, ESQ.  
Nevada State Bar No. 0366  
2 ALLISON MacKENZIE, LTD.  
402 North Division Street  
3 Carson City, NV 89703  
Telephone: (775) 687-0202  
4 Facsimile: (775) 882-7918  
Email: [kpeterson@allisonmackenzie.com](mailto:kpeterson@allisonmackenzie.com)

5 Attorneys for Petitioner,  
6 RURAL TELEPHONE COMPANY

7  
8  
9 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
10 IN AND FOR CARSON CITY

11  
12 RURAL TELEPHONE COMPANY,

13 Petitioner,

14 vs.

15 PUBLIC UTILITIES COMMISSION OF  
16 NEVADA, an administrative agency of the  
State of Nevada,

17 Respondent.  
18

Case No. 15 OC 00188 1B

Dept. No. II

19 AFFIDAVIT IN SUPPORT OF MOTION FOR EXTENSION OF TIME

20 KAREN A. PETERSON, ESQ., being first duly sworn, does hereby solemnly swear  
21 and affirm, under penalty of perjury that the foregoing assertions are true:

22 1. I am an attorney licensed to practice law in the State of Nevada and I am a  
23 shareholder of ALLISON MacKENZIE, LTD.

24 2. I am counsel for Petitioner, RURAL TELEPHONE COMPANY.

25 3. The Opening Brief of Petitioner is due to be filed and served on Monday,  
26 October 19, 2015 pursuant to NRS 703.373(6).

27 4. Affiant is the attorney at ALLISON MacKENZIE, LTD. who is familiar with  
28 the case and who is qualified and responsible for preparing and filing Petitioner's Opening Brief.



1           5.       Because of the complexity of the issues involved in this appeal, additional  
2 time is needed in the final preparation of Petitioner's Opening Brief.

3           6.       The undersigned is not able to complete Petitioner's Opening Brief by  
4 October 19, 2015.

5           7.       The undersigned consulted with her client and Petitioner has no objection to  
6 its counsel requesting this extension.

7           8.       On Thursday, October 15, 2015, counsel for Petitioner asked counsel for  
8 Respondent if counsel would stipulate to a 30 day extension of time for Petitioner to file its Opening  
9 Brief.

10          9.       On Friday, October 16, 2015, counsel for Respondent responded indicating  
11 they were not opposed to a 10-day extension, but, considering the Commission's anticipated  
12 workload in November/December, they would ask that Petitioner file a motion with the Court if it  
13 would like a longer continuance.

14          10.      The 10 day extension proposed by Respondent until October 29, 2015 will not  
15 be enough time for counsel to complete Petitioner's Opening Brief because counsel for Petitioner is  
16 involved in a four day hearing before the Commission in Las Vegas from October 26 through  
17 October 29, 2015 and is not available the next ten days based on that previously scheduled  
18 Commission hearing.

19          11.      Counsel for Petitioner is scheduled to be out of the office the week of  
20 November 2-6, 2015.

21          12.      Counsel for Petitioner will stipulate to any extension of time counsel for  
22 Respondent may need to accommodate its anticipated workload in November/December as a result  
23 of Petitioner's request to extend the time for filing its Opening Brief in this matter.

24          13.      This is the first request for an extension of time requested by Petitioner to file  
25 its Opening Brief.

26          14.      Based on the foregoing, counsel respectfully requests this Court approve this  
27 motion for extension of time and enter its order extending the time for filing and serving Petitioner's  
28 Opening Brief to and including Wednesday, November 18, 2015.

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

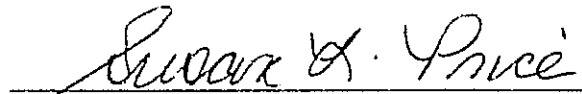
AFFIRMATION

The undersigned does hereby affirm that the preceding document does not contain the Social Security number of any person.

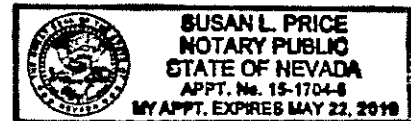
  
KAREN A. PETERSON

STATE OF NEVADA           )  
  : ss.  
CARSON CITY                )

On October 16, 2015, personally appeared before me, a Notary Public, KAREN A. PETERSON, personally known (or proved) to me to be the person whose name is subscribed to the foregoing document, and who acknowledged to me that she executed the foregoing document.

  
NOTARY PUBLIC

4845-6464-1577, v. 1



# **EXHIBIT “2”**

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

RURAL TELEPHONE COMPANY,

Case No. 15 OC 00188 1B

Petitioner,

Dept. No. II

vs.

PUBLIC UTILITIES COMMISSION OF  
NEVADA, an administrative agency of the  
State of Nevada,

Respondent.

ORDER GRANTING MOTION FOR EXTENSION OF TIME

The Court having reviewed Petitioner's Motion for Extension of Time (First Request), and good cause appearing,

IT IS HEREBY ORDERED that Petitioner's Motion for Extension of Time is GRANTED. Petitioner's Opening Brief is due Wednesday, November 18, 2015.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
JAMES E. WILSON, JR.  
DISTRICT COURT JUDGE

///

///

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
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E-Mail Address: law@allisonmackenzie.com

Submitted by:

**ALLISON MacKENZIE, LTD.**


402 North Division Street

Carson City, NV 89703

Telephone: (775) 687-0202

Facsimile: (775) 882-7918

By:



KAREN A. PETERSON, ESQ.

Nevada State Bar No. 0366

Attorneys for Petitioner,  
RURAL TELEPHONE COMPANY

4842-5491-8441, v. 1

Carolyn Tanner, Esq., NV Bar No. 5520  
Roman Borisov, Esq., NV Bar No. 12705  
1150 E. William Street  
Carson City, NV 89701-3109  
Tel: (775) 684-6152  
Fax (775) 684-6188

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SUSAN HERRINGBETH  
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BY \_\_\_\_\_ DEPUTY

Attorneys for: *Public Utilities Commission of Nevada*

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY**

Rural Telephone Company,

Petitioner,

vs.

Public Utilities Commission of Nevada, an  
Administrative agency of the State of Nevada,

Respondent.

CASE NO. 15-OC-001881B

DEPT. II

**OPPOSITION TO PETITIONER'S MOTION FOR EXTENSION OF TIME  
AND  
COUNTERMOTION TO DISMISS**

COMES NOW, Respondent, Public Utilities Commission of Nevada (the "Commission"), by and through the undersigned counsel, and hereby files this Opposition to Petitioner's Motion for Extension of Time and Countermotion to Dismiss pursuant to the Rules of Practice for the First Judicial District Court, Rule 15.

Petitioner filed its Motion for Extension of Time (the "Motion") with this Court on Friday, October 16, 2015, and served the Commission with a copy of the Motion on Monday, October 19, 2015 – the day the underlying Opening Brief, for which Petitioner sought an extension, was due. The Commission hereby respectfully requests that this Court deny the Motion and dismiss Petitioner's appeal.

///

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///

1 MEMORANDUM OF POINTS AND AUTHORITIES  
2 (OPPOSITION)

3 **I. Introduction**

4 Petitioner's motion presumes that the Nevada Revised Statutes ("NRS") and various Nevada  
5 procedural rules offer Petitioner an unlimited buffet of timelines and deadlines from which it is free to  
6 pick and choose. Petitioner initiated this judicial review under NRS 703.373 *et seq.* These statutory  
7 provisions offer an exclusive and comprehensive set of timelines applicable to judicial review of the  
8 Commission's decisions. Such timelines are mandatory and jurisdictional. Petitioner cites  
9 inapplicable authorities in an attempt to double the time required by law, 30 days, to file an Opening  
10 Brief that is already past due. The Motion should be denied as absent any legal basis and as moot.

11 **II. Argument**

12 A. Petitioner's Motion Should Be Denied Because Petitioner Failed to  
13 Provide Any Legal Basis for the Extension Request.

14 Petitioner cites the Nevada Rules of Appellate Procedure ("NRAP") 31(b)(3) as the authority  
15 for filing the Motion. However, the NRAP do not apply to this district court proceeding because  
16 NRAP 1(a) clearly limits the scope of the rules to "govern procedure in the Supreme Court of Nevada  
17 and the Nevada Court of Appeals." NRAP will only apply if this Court loses jurisdiction over this  
18 proceeding - if either party to this case files an appeal to the Supreme Court of Nevada pursuant to  
19 NRS 703.376.

20 Petitioner also cites NRS 233B.133(6) as the authority to allow an extension of time upon a  
21 showing of good cause. Petitioner neglects to acknowledge that NRS 233B.133 is inapplicable to the  
22 judicial review of the Commission's decisions. It is well-established that NRS 703.373 provides  
23 exclusive time limits applicable to the judicial review of the Commission's decisions. The notion that  
24 the timelines and other provisions set out in NRS 233B.133 apply to the judicial review of the  
25 Commission's decisions was soundly rejected with the passage of Assembly Bill 17 of the 76th  
26 Session of the Nevada Legislature ("AB 17"). With the passage of AB 17, the Nevada Legislature  
27 amended NRS 233B.039(5) to unequivocally state that "[t]he provisions of this chapter [NRS 233B]  
28 do not apply to ... [t]he judicial review of the Public Utilities Commission of Nevada."

1 As further support of this clear mandate of the Legislature, NRS 233B.133 directly conflicts  
2 with NRS 703.373 and cannot be harmonized. Whereas NRS 233B.133(1) allows a petitioner 40 days  
3 to file a memorandum of points and authorities subsequent to the agency's notice of filing of the  
4 administrative record with the court, NRS 703.373 allows only 30 days. Whereas NRS 233B.133(3)  
5 allows a petitioner to file a reply to the agency's response, NRS 703.373 contains no provision that  
6 allows a reply from the petitioner. Whereas NRS 233B.133(4) allows the parties an option to request a  
7 hearing within seven days of the briefings closure, NRS 703.373(7) provides that the parties *must* be  
8 ready for a hearing upon 20 days' notice following the submission of the Commission's brief. And,  
9 whereas NRS 233B.133(6) allows the Court to extend the timeline for filing memoranda upon a  
10 showing of good cause, no such provision exists in NRS 703.373. Thus, the Petitioner is precluded  
11 from the timelines set forth in NRS 233B.133 and bound by those set forth in NRS 703.373. Petitioner  
12 cites no authority that would allow a contrary determination.

13 With neither NRAP 31(b)(3) nor NRS 233B.133(6) applicable to this proceeding, the Motion  
14 should be denied because Petitioner failed to provide any valid legal basis for the extension request.

15 B. Petitioner's Motion Should Be Denied as Moot

16 Petitioner first reached out to the Commission about extending the time to file its Opening  
17 Brief on Thursday, October 15, 2015 – just two judicial days before the Monday, October 19, Opening  
18 Brief filing deadline. Petitioner offered no reasons for the requested continuance. On Monday,  
19 October 19, 2015, the day the opening brief was due, the Commission was served with the Motion.

- 20 1. *Petitioner's Motion for Extension of Time is now moot*  
21 *because the Motion does not toll the statutory timeline.*

22 NRS 703.373 *et seq.* does not contain any provision that would toll the jurisdictional time limit  
23 to file a petition for judicial review. In fact, Petitioner cites no authority that would allow the Motion  
24 to toll the mandatory timelines of NRS 703.373. In sum, Petitioner failed to file the Opening Brief by  
25 the due date, and the Motion is not a tolling motion. Thus, as set forth in detail below, the Court now  
26 lacks jurisdiction over this matter and the Motion is moot.

27 Notably, counsel for Petitioner faced no extraordinary circumstances that necessitated the filing  
28 of the Motion in the eleventh hour. NRS 703.373 provides clear and unambiguous timelines. When



Petitioner's counsel initiated this action for judicial review on August 19, 2015, she knew that, pursuant to NRS 703.373(5), the Commission had 30 days to submit the administrative record to the Court, and that, pursuant to NRS 703.373(6), Petitioner would have 30 days to file its Opening Brief from the time of the submission. Thus, counsel for Petitioner had a two-month notice of the approximate due date of the Opening Brief yet filed the Motion for an extension just one judicial day before the due date.

2. *Petitioner's failure to file a timely Opening Brief divests this Court of jurisdiction.*

Besides not containing any provision that would toll the time to file an opening brief, NRS 703.373 *et seq.* contains no provision for an extension of time at all. Such absence is not accidental but is by design. One of the purposes behind enacting AB 17 was to accelerate the judicial review of the Commission's decisions with the aim to fit such review within a four to six months timeframe, instead of the nine to thirty months timeframe that can occur for petitions for judicial review filed under NRS Chapter 233B. *See AB 17: The Applicability of the Nevada Administrative Procedure Act to the Public Utilities Commission of Nevada: Hearing on A.B. 17 Before the S. Comm. On Gov't Affairs*, 2011 Leg., 76th Sess. 8-9 (Nev. Mar. 25, 2011). This legislative intent of expediency is exhibited elsewhere; for instance, NRS 703.373(10) gives precedence to the judicial review of actions brought under NRS 703.373 over any other civil action pending before the Court.<sup>1</sup> As a result, while NRS 233B.133 allows for the extension of time for filing memoranda of points and authorities, NRS 703.373 is purposefully devoid of such a provision.

The Nevada Supreme Court holds that, where the statute is silent as to whether or not the time limit can be excused, the time period for perfecting an appeal is generally considered to be *jurisdictional and mandatory*. (Emphasis added.) Reno Sparks Convention Visitors Auth. v. Jackson, 112 Nev. 62, 66-67, 910 P.2d 267, 270 (1996) (*citing to State Indus. Ins. System v. Partlow-Hursh*, 101 Nev. 122, 124-25, 696 P.2d at 463-64 (1985).) With NRS 703.373 *et seq.* silent on the subject of time limit deviation, the time limits within NRS 703.373 are jurisdictional and mandatory, and a violation of

<sup>1</sup> Additionally, pursuant to NRAP 17(a)(9), appellate review of Commission decisions is retained by the Nevada Supreme Court and entirely bypasses the Nevada Appellate Court process.

1 such time limits serves as the basis for a dismissal. In fact, the Nevada Supreme Court has consistently  
2 upheld dismissals of appeals for violations of time limits that are jurisdictional and mandatory. *See*  
3 *e.g.*, Reno Sparks Convention Visitors Auth., 112 Nev. 62, 910 P.2d 267 (1996); State Indus. Ins.  
4 System v. Partlow-Hursh, 101 Nev. 122, 696 P.2d 462 (1985); Seino v. Employers Ins. Co. of Nevada,  
5 121 Nev. 146, 111 P.3d 1107 (2005).<sup>2</sup> Such a result is also consistent with the general tenet that  
6 statutory “time and manner” requirements are strictly construed, whereas substantial compliance may  
7 be sufficient for “form and content” requirements. *See e.g.*, Leven v. Frey, 123 Nev. 399, 408, 168  
8 P.3d 712, 718 (2007); Einhorn v. BAC Home Loans Servicing, LP, 128 Nev. Adv. Op. 61, 290 P.3d  
9 249, 254 (2012). Thus, by failing to file its Opening Brief by the due date and failing to cite any  
10 applicable authority for the time limit deviation, Petitioner provided this Court with a clear basis for  
11 the dismissal of this appeal.

12 On the other hand, granting the Motion would amount to the establishment of a judicial review  
13 timeline in contravention of the timeline statutorily set forth by the Legislature without any authority  
14 for such action. It is worth noting that the statutory schedule established in NRS 703.373(6) works  
15 independently from the Court’s calendar as the filing of the opening brief does not require any  
16 response from the Court.

17 Thus, the plain reading of the relevant provisions within NRS Chapter 703, the legislative  
18 intent behind such provisions, and clear case law directly on point preclude consideration of the  
19 Motion. Accordingly, the Motion should be denied as moot and Petitioner’s appeal should be  
20 dismissed.

21 C. Petitioner’s Motion Should Be Denied Because Petitioner Offers No  
22 Valid Excuse for Noncompliance with the Filing Deadline

23 Petitioner’s counsel essentially stated that she would not be able to comply with the filing  
24 deadline because “[t]he issues of this appeal are complex.” The complexity of the issues surrounding  
25 this appeal should have come as no surprise to counsel who has been immersed with the issues  
26

27  
28 <sup>2</sup> Similarly to the legislative intent to expedite the appeals process behind NRS 703.373, the *Seino* Court found that the Legislature included the NRS 616C.315(3)(b) time limit provision “to ‘shorten the overall administrative process’ of a worker’s compensation claim.” *Seino*, 121 Nev. 146, 150, 111 P.3d 1107, 1110 (2005).

1 underlying this appeal for over a year and who lists public utilities law as the first of her specialty  
2 practice areas. Moreover, the Petition for Judicial Review filed with this Court raises issues identical  
3 to those found in the Petitioner's Petition for Reconsideration filed with the Commission on June 12,  
4 2015. In fact, Petitioner is precluded from raising issues on review that fall outside of that record.  
5 NRS 703.373(8).

6 Counsel's allusions to the October 26-29 hearing and to being out of the office the week of  
7 November 2-6 are irrelevant because these dates fall a week and two weeks after the October 19  
8 Opening Brief filing deadline. Furthermore, the October 26 hearing was noticed to Petitioner's  
9 counsel on August 12, 2015, and counsel's participation in that proceeding is limited to a single  
10 discrete issue. **Attachment 1: Procedural Order, Commission Docket Nos. 15-06065 and 15-07004;**  
11 **Attachment 2: Petition for Leave to Intervene and Order on Petition for Leave to Intervene of**  
12 **Northern Nevada Industrial Electric Users, Commission Docket No. 15-07004.**<sup>3</sup> Counsel had more  
13 than enough time to prepare and file with this Court an Opening Brief, which was due prior to the  
14 unrelated Commission hearing scheduled for October 26. Moreover, the Nevada Supreme Court has  
15 recently stated that "counsel's caseload was not a valid excuse for noncompliance with filing  
16 deadlines." Rusk v. Nevada State Bd. of Architecture, Interior Design & Residential Design, No.  
17 61844, 2013 WL 3969678, at \*1 (Nev. July 30, 2013) (unpublished opinion).

18 MEMORANDUM OF POINTS AND AUTHORITIES  
19 (COUNTERMOTION TO DISMISS)

20 **I. Argument**

21 As discussed in the Opposition, Petitioner's Motion for Extension of Time must be denied  
22 because (1) it is absent of any legal basis, (2) moot, and (3) offers no valid excuse for noncompliance  
23 with the filing deadline. Also, as discussed in the Opposition, NRS 703.373 *et seq.* contain no  
24 provision that would excuse Petitioner's failure to meet a mandatory time limit. Consequently,  
25 Petitioner has no legal mechanism to file its Opening Brief after the deadline, the Court is divested of  
26 jurisdiction, and the Petition must be dismissed.

27 \_\_\_\_\_  
28 <sup>3</sup> Counsel for Petitioner represents Northern Nevada Industrial Electric Users ("NNIEU") in Docket No. 15-07004. The Commission limited NNIEU's participation in Nevada Power's resource planning proceeding to "issues regarding the ON-Line capital cost allocation." NNIEU members are not customers of Nevada Power, which primarily serves Clark County.

Such a result may seem harsh; however, as stated in the Opposition, Nevada law is clear - where the statute is silent on the modification of applicable deadlines, the time limit prescribed is jurisdictional and mandatory. In contrast to the NRAP and NRS Chapter 233B, NRS 703.373 *et seq.* provides no authority for modification of the timelines established by the Legislature. The fact that the Petitioner failed to cite any applicable authority for the Motion is very telling. Furthermore, as stated in the Opposition, the Nevada Supreme Court has consistently upheld dismissals of appeals for violations of time limits that are jurisdictional and mandatory. *See e.g., Reno Sparks Convention Visitors Auth.*, 112 Nev. 62, 910 P.2d 267 (1996); *State Indus. Ins. System v. Partlow-Hursh*, 101 Nev. 122, 696 P.2d 462 (1985); *Seino v. Employers Ins. Co. of Nevada*, 121 Nev. 146, 111 P.3d 1107 (2005). Thus, the applicable law simply does not allow Petitioner to file its Opening Brief after the due date.

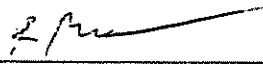
CONCLUSION

For all of the foregoing reasons, the Commission respectfully requests that this Court deny Petitioner's Motion for Extension of Time and, consequently, dismiss this appeal for Petitioner's failure to meet the jurisdictional and mandatory time limit.

A proposed Order denying Petitioner's Motion for Extension of Time is attached as **Attachment 3**; a proposed Order granting Respondent's Countermotion to Dismiss is attached as **Attachment 4**.

DATED this 26th day of October, 2015.

Respectfully Submitted,

by:   
CAROLYN TANNER, ESQ.  
Nevada Bar No. 5520  
ROMAN BORISOV, ESQ.  
Nevada Bar No. 12705  
1150 East William Street  
Carson City, NV 89701  
Tel: 775-684-6152  
Fax: 775-684-6186  
rborisov@puc.nv.gov  
*Attorneys for Respondent, the Public  
Utilities Commission of Nevada*

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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Public Utilities Commission of Nevada, and that on this date I have served copies of the foregoing **OPPOSITION TO PETITIONER'S MOTION FOR EXTENSION OF TIME AND COUNTERMOTION TO DISMISS** in Case No. 15 OC 001881B by hand delivery, in properly addressed envelopes, at Carson City, Nevada, to the following:

Karen A. Peterson, Esq.  
Allison MacKenzie, Ltd.  
402 North Division Street  
Carson City, NV 89703

DATED this 26th day of October, 2015.

  
\_\_\_\_\_  
ELIZABETH AVRAM

# **ATTACHMENT 1**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

Application of Sierra Pacific Power Company d/b/a NV	)	
Energy for approval of its 2015 Annual Demand Side	)	
Management Update Report as it relates to the Action	)	Docket No. 15-06065
Plan of its 2014-2033 Integrated Resource Plan.	)	
<hr/>	)	
	)	
Application of Nevada Power Company d/b/a NV	)	
Energy for approval of its 2016-2035 Triennial	)	Docket No. 15-07004
Integrated Resource Plan and 2016-2018 Energy Supply	)	
Plan.	)	
<hr/>	)	

**PROCEDURAL ORDER**

The Presiding Officer makes the following findings and conclusions:

1. On June 30, 2015, Sierra Pacific Power Company d/b/a NV Energy ("SPPC") filed an Application with the Public Utilities Commission of Nevada ("Commission") for approval of its 2015 Annual Demand Side Management Update Report as it relates to the Action Plan of its 2014-2033 Integrated Resource Plan ("IRP"). This matter has been designated as Docket No. 15-06065.
2. Docket No. 15-06065 is filed pursuant to the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC"), Chapters 703 and 704, including, but not limited to, NAC 703.535 and 704.934(8).
3. On July 1, 2015, Nevada Power Company d/b/a NV Energy ("NPC") filed an Application with the Commission for approval of its 2016-2035 IRP and 2016-2018 Energy Supply Plan. This filing has been designated by the Commission as Docket No. 15-07004.
4. Docket No. 15-07004 is made pursuant to the NRS and the NAC, Chapters 703 and 704, including but not limited to NRS 704.741 *et seq.* and NAC 704.9005 *et seq.*
5. On July 7, 2015, the Commission issued a Notice of Application for Approval of

DATE <u>NOBLE</u>	
FOR <u>8 / 11 / 15</u> AT <u>2 : 15</u> <u>P</u> <u>M</u>	
REVIEWED & APPROVED BY	DATE
<input type="checkbox"/> ADMIN / ASST ( _____ )	____ / ____ / ____
<input checked="" type="checkbox"/> COMM COUNSEL <u>DSN Rk 4w</u>	<u>8 / 11 / 15</u>
<input type="checkbox"/> SECRETARY / ASST SEC _____	____ / ____ / ____
<input type="checkbox"/> OTHER ( _____ )	____ / ____ / ____



2015 Annual Demand Side Management Update Report in Docket No. 15-06065.

6. On July 7, 2015, the Commission issued a Notice of Prehearing Conference in Docket No. 15-06065.
7. On July, 7, 2015, the Commission issued a Notice of Application and a Notice of Prehearing Conference in Docket No. 15-07004.
8. The Regulatory Operations Staff ('Staff') of the Commission participates as a matter of right pursuant to NRS 703.301 in Docket Nos. 15-06065 and 15-07004.
9. On July 8, 2015, the Attorney General's Bureau of Consumer Protection (BCP) filed a Notice of Intent to Intervene pursuant to NRS 228.360 in Docket No. 15-07004.
10. On July 17, 2015, the BCP filed a Notice of Intent to Intervene pursuant to NRS 228.360 in Docket No. 15-06065.
11. On July 29, 2015, Nevadans for Clean Affordable Reliable Energy (NCARE) filed a Petition for Leave to Intervene (PLTI) in Docket No. 15-06065.
12. On July 28-29, 2015, the Alliance for Solar Choice ('TASC'), Griffith Energy, LLC ('Griffith Energy'), NCARE, the Northern Nevada Industrial Electric Users (NNIEU)<sup>1</sup>, Southern Nevada Hotel Group ('SNHG'),<sup>2</sup> Southern Nevada Water Authority ('SNWA'), and Switch Ltd. ('Switch') filed PLTIs in Docket No. 15-07004.
13. On August 6, 2015, the Commission held a prehearing conference in Docket No. 15-06065. BCP, SPPC, and Staff made appearances. The Presiding Officer excused NCARE from appearing.

---

<sup>1</sup> NNIEU is comprised of EP Minerals, LLC, Heavenly Valley, Limited Partnership, Columbia Properties Tahoe, LLC d/b/a Montbleu Resort Casino & Spa, Nevada Cement Company, John Ascuaga's Nugget, Premier Magnesia, LLC, the Ridge Tahoe Property Owners' Association, Saint Mary's Regional Medical Center, Inc., and Renown Health.

<sup>2</sup> SNHG is comprised of Boyd Gaming Corporation, Wynn Las Vegas, LLC, Las Vegas Sands Corp., MGM Resorts International Operations, Inc., Station Casinos LLC, and Caesars Entertainment Corporation.

14. On August 6, 2015, the Commission held a prehearing conference in Docket No. 15-07004. BCP, Griffith Energy, NCARE, NNIEU, NPC, SNHG, SNWA, Staff, and TASC made appearances. The Presiding Officer excused Interwest from appearing. Switch did not appear.

**A. Consolidation of Dockets**

15. Pursuant to NAC 703.740, the Presiding Officer finds that the issues in Docket Nos. 15-06065 and 15-07004 are substantially similar and that the rights of the parties will not be prejudiced by a consolidated hearing. The Presiding Officer further finds that consolidation of the dockets will promote administrative efficiency. Therefore, Docket Nos. 15-06065 and 15-07004 are consolidated for hearing purposes.

**B. Supplemental Information**

16. The Commission requests additional information on the following:
- a. Are the industry standards that govern ADM Associate's independent measurement and verification work sufficient moving forward? Why?
  - b. Are there instances now or in the future in which the results of measurement and verification work warrant acceleration? If so, under what circumstances could or should this occur?
  - c. Should demand side management programs target overall energy reductions, peak energy reductions, or both? Why?
  - d. Should the Commission approve the expenditure of any monies for use of new solar thermal energy sources pursuant to NRS 704.741(3), if the program is not cost effective?

**C. Procedural Schedule**

17. The following procedural schedule is hereby established:

Phase 1: Energy Supply Plan

- a. PREPARED DIRECT TESTIMONY by Staff and interveners shall be filed with the Commission and served on all parties of record on or before

FRIDAY, SEPTEMBER 4, 2015, at 2:00 p.m.

- b. PREPARED REBUTTAL TESTIMONY by NPC shall be filed with the Commission and served on all parties of record on or before MONDAY, SEPTEMBER 21, 2015, at 2:00 p.m.
- c. A HEARING will be held beginning on TUESDAY, SEPTEMBER 29, 2015, at 10:00 a.m. The hearing will be continued from day to day, if necessary. The hearing rooms have been reserved for September 29-30, 2015.

Phase 2: All Remaining Issues

- a. PREPARED SUPPLEMENTAL DIRECT TESTIMONY by NPC and SPPC shall be filed with the Commission and served on all parties of record on or before WEDNESDAY, SEPTEMBER 9, 2015 at 2:00 p.m.
- b. PREPARED DIRECT TESTIMONY by Staff and interveners shall be filed with the Commission and served on all parties of record on or before TUESDAY, OCTOBER 6, 2015, at 2:00 p.m.
- c. PREPARED REBUTTAL TESTIMONY by NPC and SPPC shall be filed with the Commission and served on all parties of record on or before TUESDAY, OCTOBER 20, 2015, at 2:00 p.m.
- d. A HEARING will be held beginning on MONDAY, OCTOBER 26, 2015, at 10:00 a.m. The hearing will be continued from day to day, if necessary. The hearing rooms have been reserved for October 26-29, 2015.

**D. Discovery**

18. If, pursuant to NAC 703.680(10), a party seeks resolution of a dispute concerning discovery, the party may request a telephone conference with the Presiding Officer and the other parties in lieu of filing a motion.


19. Pursuant to NAC 703.690, the Presiding Officer shall issue appropriate interim orders.


THEREFORE, it is ORDERED that:

1. Docket Nos. 15-06065 and 15-07004 are CONSOLIDATED for hearing purposes.

2. The procedures set forth in paragraphs 16-18 are ADOPTED.
3. The Commission may correct any errors that occurred in the drafting or issuance of this Order without further proceedings.

By the Commission,

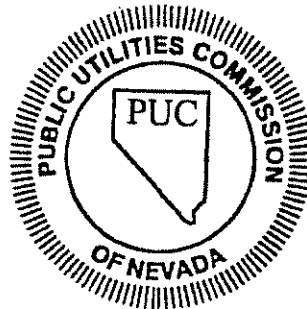
  
\_\_\_\_\_  
DAVID NOBLE  
Commissioner and Presiding Officer

Attest:   
\_\_\_\_\_  
TRISHA OSBORNE,  
Assistant Commission Secretary

Dated: Carson City, Nevada

8.12.15

(SEAL)



## **ATTACHMENT 2**

15-07004

Public Utilities Commission of Nevada  
Electronic Filing

Submitted: 7/28/2015 12:02:09 PM

Reference: 19bbbc43-4c6d-4667-a955-ec25a6ce6cba

Filed For: Northern Nevada Industrial Electric Users

In accordance with NRS Chapter 719,  
this filing has been electronically signed and filed  
by: /s KAREN A PETERSON ESQ

-----  
By electronically filing the document(s),  
the filer attests to the authenticity of the electronic signature(s) contained therein.

-----  
This filing has been electronically filed and deemed to be signed by an authorized  
agent or  
representative of the signer(s) and  
Northern Nevada Industrial Electric Users

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Application of Nevada Power Company d/b/a NV )  
Energy for approval of its 2016-2035 Triennial )  
Integrated Resource Plan and 2016-2018 Energy )  
Supply Plan. )  
\_\_\_\_\_ )

Docket No. 15-07004

PETITION FOR LEAVE TO INTERVENE

COME NOW, EP MINERALS, LLC; HEAVENLY VALLEY, LIMITED PARTNERSHIP; COLUMBIA PROPERTIES TAHOE, LLC dba MONTBLEU RESORT CASINO & SPA; NEVADA CEMENT COMPANY; JOHN ASCUAGA'S NUGGET; PREMIER MAGNESIA, LLC; THE RIDGE TAHOE PROPERTY OWNERS' ASSOCIATION; SAINT MARY'S REGIONAL MEDICAL CENTER, INC., and RENOWN HEALTH, hereinafter referred to as "Petitioners" and/or the "Northern Nevada Industrial Electric Users (NNIEU)", by and through their attorneys ALLISON MacKENZIE, LTD., and hereby submit to the Public Utilities Commission of Nevada ("Commission"), pursuant to NAC 703.580, 703.585 and 703.590 of the Rules of Practice and Procedure of the Commission, their Petition for Leave to Intervene in the above-referenced filing made by Nevada Power Company d/b/a NV Energy ("NPC" or "Applicant") with the Commission in Docket No. 15-07004. In support of this Intervention, Petitioners make the following representations:

I. Communications regarding this Intervention should be sent to the following:

(1) Geoffrey B. Inge  
KTM, Inc.  
777 29<sup>th</sup> Street, Suite 200  
Boulder, CO 80303-2315  
Telephone: (303) 442-2719  
[gbinge@ktminc.com](mailto:gbinge@ktminc.com)

~ and ~

(2) Karen A. Peterson, Esq.  
Patrick V. Fagan, Esq.  
Allison MacKenzie, Ltd.  
P. O. Box 646  
Carson City, Nevada 89702  
Telephone: (775) 687-0202  
Fax: (775) 882-7918  
Cell: (775) 721-5320  
[kpeterson@allisonmackenzie.com](mailto:kpeterson@allisonmackenzie.com)  
[pfagan@allisonmackenzie.com](mailto:pfagan@allisonmackenzie.com)

2. By its Application filed in Docket No. 15-07004, NPC is requesting approval of its Triennial Integrated Resource Plan ("IRP") covering the period of 2016 – 2035; approval of its Plan of Action for the three year period 2016 – 2018 ("Action Plan"); and approval of its Energy Supply Plan for the period year 2016 – 2018 ("ESP").

3. NAC 703.595 provides that if a person has a direct and substantial interest in the subject of the proceeding and that party's participation in the proceeding will not unduly broaden the issues, the Commission may grant that person leave to intervene. NAC 703.580 provides that a person has a direct and substantial interest in a proceeding if the person claims an interest in the property or transaction which is the subject of the proceeding and the person is so situated that the disposition of the proceeding will impair the ability of the person to protect that interest, unless the person is adequately represented by existing parties.

4. NPC's Application seeks approval of a reallocation of the One Nevada Transmission Line ("ON Line") capital costs from 95% to NPC and 5% to Sierra Pacific Power Company ("SPPC") to 70% to NPC and 30% to SPPC. Members of the NNIEU will be directly impacted by any modifications to the currently approved 95% to NPC and 5% to SPPC capital cost allocation for ON Line.



5. Petitioners are large commercial/industrial electric customers of SPPC. As customers of SPPC, Petitioners have a direct and substantial interest in the issues raised with regard to the ON Line capital cost allocation sought to be adjusted by NPC and related amendments to the currently approved IRP. The Applicant states in its Application the ON Line analysis is set forth in the Supply-Side Plan. Petitioners, after reviewing the above-referenced filing by Applicant, state that they will be affected by actions taken by the Commission in Docket No. 15-07004. No other party to these proceedings possesses the insight or knowledge of Petitioners' businesses to evaluate the impact of this Application upon their operations in Nevada. Therefore, it is in the public interest that Petitioners be granted leave to intervene as parties and be fully represented as their interests may appear at any public hearings scheduled by the Commission. Based on the above and foregoing, Petitioners have a direct and substantial interest in Docket No. 15-07004.

6. Petitioners intend to provide testimony and other evidence to the Commission in any hearing to be scheduled in Docket No. 15-07004.

7. By their Petition, Petitioners request that if a hearing is scheduled in this matter, Petitioners be permitted to participate as parties as their interest may appear in this proceeding.

8. Petitioners further request that they be served with copies of all discovery, pleadings, testimony, workpapers and exhibits heretofore produced or filed or as may be produced or filed hereafter by any party in interest.

WHEREFORE, EP MINERALS, LLC; HEAVENLY VALLEY, LIMITED PARTNERSHIP; COLUMBIA PROPERTIES TAHOE, LLC dba MONTBLEU RESORT CASINO & SPA; NEVADA CEMENT COMPANY; JOHN ASCUAGA'S NUGGET; PREMIER MAGNESIA, LLC; THE RIDGE TAHOE PROPERTY OWNERS' ASSOCIATION; SAINT

MARY'S REGIONAL MEDICAL CENTER, INC., and RENOWN HEALTH, respectfully request that the Commission enter its Order:

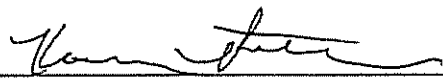
1. Granting the Petition filed herein so as to permit Petitioners the right to participate fully as interveners, as their interests may appear in Docket No. 15-07004, and to grant such Petition in all other respects;

2. Permitting Petitioners to participate as interveners in any public hearing scheduled to determine the filing in Docket No. 15-07004; and

3. For such other and further relief as the Commission deems just and proper.

DATED this 28<sup>th</sup> day of July, 2015.

ALLISON MacKENZIE, LTD.

By:   
KAREN A. PETERSON, Esq.  
State Bar No. 366  
PATRICK V. FAGAN, Esq.  
State Bar No. 660  
P. O. Box 646  
Carson City, NV 89702  
Telephone: (775) 687-0202  
[kpeterson@allisonmackenzie.com](mailto:kpeterson@allisonmackenzie.com)  
[pfagan@allisonmackenzie.com](mailto:pfagan@allisonmackenzie.com)

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., and that on this day I served a copy of the foregoing document, by emailing and/or mailing a copy thereof, properly addressed, with postage prepaid, to the following:

Staff Counsel  
Public Utilities Commission  
1150 E. William Street  
Carson City, NV 89701-3109  
[Pucn.sc@puc.nv.gov](mailto:Pucn.sc@puc.nv.gov)

Tamara Cordova  
Public Utilities Commission  
9097 West Diablo Dr., Suite 250  
Las Vegas, NV 89148  
[tcordova@puc.nv.gov](mailto:tcordova@puc.nv.gov)

Elizabeth Elliot  
Trevor Dillard  
NV Energy  
P.O. Box 10100  
Reno, NV 89520  
[belliot@nvenergy.com](mailto:belliot@nvenergy.com)  
[regulatory@nvenergy.com](mailto:regulatory@nvenergy.com)

Paul E. Stuhff  
Senior Deputy Attorney General  
Attorney General's Office  
Bureau of Consumer Protection  
10791 West Twain Avenue, Suite 100  
Las Vegas, NV 89135-3022  
[pstuhff@ag.nv.gov](mailto:pstuhff@ag.nv.gov)  
[Bcpserv@ag.nv.gov](mailto:Bcpserv@ag.nv.gov)

DATED this 28<sup>th</sup> day of July, 2015.

  
\_\_\_\_\_  
NANCY FONTENOT

**BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

Application of Nevada Power Company d/b/a NV	)	
Energy for approval of its 2016-2035 Triennial	)	
Integrated Resource Plan and 2016-2018 Energy	)	Docket No. 15-07004
Supply Plan.	)	
_____	)	

**ORDER ON PETITION FOR LEAVE TO INTERVENE OF  
NORTHERN NEVADA INDUSTRIAL ELECTRIC USERS**

The Presiding Officer in this Docket makes the following findings and conclusions:

1. On July 1, 2015, Nevada Power Company d/b/a NV Energy ("NPC") filed an Application with the Public Utilities Commission of Nevada ("Commission") for approval of its 2016-2035 Triennial Integrated Resource Plan ("IRP") and 2016-2018 Energy Supply Plan. This filing has been designated by the Commission as Docket No. 15-07004.

2. The filing is made pursuant to the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC"), Chapters 703 and 704, including but not limited to NRS 704.741 *et seq.* and NAC 704.9005 *et seq.*

3. The Regulatory Operations Staff ("Staff") of the Commission participates as a matter of right pursuant to NRS 703.301.

4. On July, 7, 2015, the Commission issued a Notice of Application and a Notice of Prehearing Conference.

5. On July 8, 2015, the Attorney General's Bureau of Consumer Protection ("BCP") filed a Notice of Intent to Intervene pursuant to NRS 228.360.

6. On July 28, 2015, EP Minerals, LLC, Heavenly Valley, Limited Partnership, Columbia Properties Tahoe, LLC d/b/a Montbleu Resort Casino & Spa, Nevada Cement Company, John Ascuaga's Nugget, Premier Magnesia, LLC, The Ridge Tahoe Property Owners' Association, Saint Mary's Regional Medical Center, Inc., and Renown Health (collectively,

AGENCY COMMAND		10
FILED BY <u>DAVE NOBLE</u>		
EXPIRATION <u>8 / 10 / 15</u> AT <u>3 : 01</u> <u>P</u> M		
REVIEWED & APPROVED BY:		DATE
_____ 1ST ASST. ( )		<u>  /  /  </u>
✓ <u>  </u> COUNSEL <u>DSN FOR GCW</u>		<u>8 / 10 / 15</u>
_____ 2ND ASST SEC.		<u>  /  /  </u>
_____ _____ _____		<u>  /  /  </u>

Northern Nevada Industrial Electric Users ("NNIEU")) filed a Petition for Leave to Intervene ("PLTI").

7. On August 6, 2015, the Commission held a prehearing conference.

#### **PLTI**

##### **NNIEU Position**

8. NNIEU states that they are large commercial/industrial electric customers of SPPC. As customers of SPPC, NNIEU have a direct and substantial interest in the issues raised with regard to the ON-Line capital cost allocation sought to be adjusted by NPC and related amendments to the currently approved IRP. No other party to these proceedings possesses the insight or knowledge of NNIEU's businesses to evaluate the impact of this Application upon their operations in Nevada. Therefore, it is in the public interest to grant NNIEU's PLTI.

##### **BCP Position**

9. BCP recommends granting NNIEU's PLTI, limited to the allocation of ON-Line costs.

##### **NPC Position**

10. NPC recommends granting NNIEU's PLTI, limited to the allocation of ON-Line costs.

##### **Staff Position**

11. Staff recommends granting NNIEU's PLTI, limited to the allocation of ON-Line costs.

##### **Commission Discussion and Findings**

12. NAC 703.595 requires that a petitioner demonstrate a direct and substantial interest in the proceeding in order to participate as a party. NAC 703.580(2) provides that a

person has a direct and substantial interest in a proceeding if the person claims an interest relating to the property or transaction which is the subject of the proceeding and the disposition of the proceeding will impair or impede the person's ability to protect that interest.

13. The Presiding Officer finds that NNIEU have a direct and substantial interest in Docket No. 15-07004 because NPC's proposals regarding the ON-Line capital cost allocation sought to be adjusted by NPC will affect the electric rates, charges, and service provided by NPC to NNIEU.

14. The Presiding Officer finds that NNIEU's intervention will not unduly broaden the issues in this proceeding because NNIEU's purpose for intervening is directly related to the subject matter of this proceeding.

15. Pursuant to NAC 703.690, the Presiding Officer may issue appropriate interim orders.

THEREFORE, it is ORDERED that:

1. The Petition for Leave to Intervene of Northern Nevada Industrial Electric Users in Docket No. 15-07004 is GRANTED, limited to issues regarding the ON-Line capital cost allocation.

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2. The Commission may correct any errors that occurred in the drafting or issuance of this Order without further proceedings.

By the Commission,



DAVID NOBLE  
Commissioner and Presiding Officer

Attest:

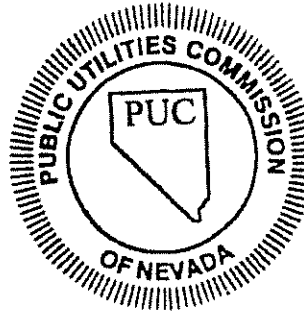


TRISHA OSBORNE  
Assistant Commission Secretary

Dated: Carson City, Nevada

8.12.15

(SEAL)





## **ATTACHMENT 3**

Carolyn Tanner, Esq., NV Bar No. 5520  
Roman Borisov, Esq., NV Bar No. 12705  
1150 E. William Street  
Carson City, NV 89701-3109  
Tel: (775) 684-6152  
Fax (775) 684-6188

Attorneys for: *Public Utilities Commission of Nevada*

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY**

Rural Telephone Company,

Petitioner,

vs.

Public Utilities Commission of Nevada, an  
Administrative agency of the State of Nevada,

Respondent.

CASE NO. 15-OC-001881B

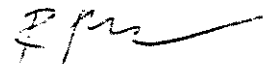
DEPT. II

**ORDER**

Good cause appearing, IT IS HEREBY ORDERED that Petitioner's Motion for Extension of Time submitted on October 16, 2015, is DENIED.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2015.

HON. JAMES WILSON  
DISTRICT COURT JUDGE

Submitted by: 

ROMAN BORISOV, ESQ.  
Nevada Bar No. 12705  
1150 East William Street  
Carson City, NV 89701  
Tel: 775-684-6152  
Fax: 775-684-6186  
rborisov@puc.nv.gov  
*Attorney for Respondent, the Public  
Utilities Commission of Nevada*

# **ATTACHMENT 4**

1 Carolyn Tanner, Esq., NV Bar No. 5520  
2 Roman Borisov, Esq., NV Bar No. 12705  
3 1150 E. William Street  
4 Carson City, NV 89701-3109  
5 Tel: (775) 684-6152  
6 Fax (775) 684-6188

7 Attorneys for: *Public Utilities Commission of Nevada*

8 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
9 **IN AND FOR CARSON CITY**

10 Rural Telephone Company, )

11 Petitioner, )

12 vs. )

CASE NO. 15-OC-001881B

13 Public Utilities Commission of Nevada, an )  
14 Administrative agency of the State of Nevada, )

DEPT. II

15 Respondent. )

16 **ORDER**

17 Good cause appearing, IT IS HEREBY ORDERED that Respondent's Countermotion to  
18 Dismiss submitted on October 22, 2015, is GRANTED.

19 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

20 HON. JAMES WILSON  
21 DISTRICT COURT JUDGE

22 Submitted by: 

23 ROMAN BORISOV, ESQ.  
24 Nevada Bar No. 12705  
25 1150 East William Street  
26 Carson City, NV 89701  
27 Tel: 775-684-6152  
28 Fax: 775-684-6186  
rborisov@puc.nv.gov  
*Attorney for Respondent, the Public  
Utilities Commission of Nevada*

IN THE SUPREME COURT OF THE STATE OF NEVADA

RURAL TELEPHONE COMPANY,

Appellant,

vs.

PUBLIC UTILITIES COMMISSION  
OF NEVADA, AN ADMINISTRATIVE  
AGENCY OF THE STATE OF NEVADA,

Respondent.

---

Electronically Filed  
Jul 06 2016 11:12 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court  
Case No.  
District Court Case No.  
15 OC 00188 1B

**JOINT APPENDIX**

**VOLUME 1**

KAREN A. PETERSON, NSB 366  
[kpeterson@allisonmackenzie.com](mailto:kpeterson@allisonmackenzie.com)  
DAWN M. ELLERBROCK, NSB 7327  
[dellerbrock@allisonmackenzie.com](mailto:dellerbrock@allisonmackenzie.com)  
S. JORDAN WALSH, NSB 13481  
[jwalsh@allisonmackenzie.com](mailto:jwalsh@allisonmackenzie.com)  
**ALLISON MacKENZIE, LTD.**  
402 North Division Street  
Carson City, NV 89703  
Telephone: (775) 687-0202  
Facsimile: (775) 882-7918

Attorneys for Appellant,  
RURAL TELEPHONE COMPANY

**CHRONOLOGICAL APPENDIX  
TO APPEAL FROM THE ORDER DENYING MOTION TO DISMISS  
FOR LACK OF JURISDICTION, DENYING MOTION FOR  
EXTENSION OF TIME, STRIKING OPENING BRIEF, AND  
DISMISSING PETITION FOR JUDICIAL REVIEW ENTERED  
DECEMBER 8, 2015**

<b>DOCUMENT</b>	<b>DATE</b>	<b>VOL</b>	<b>JA NO.</b>
Petition for Judicial Review	08/19/2015	1	0001-0063
Summons	08/26/2016	1	0064-0067
Motion to Seal Records	09/18/2015	1	0068-0077
Notice of Non-Opposition	09/18/2015	1	0078-0080
Stipulation to Limit Record for Judicial Review and Order Thereon	09/18/2015	1	0081-0089
Certification of Record of Docket No. 14-11006 (Excluding disc of documents and disc of confidential documents)	09/18/2015	1	0090-0099
Order Sealing Records	10/02/2015	1	0100-0101
Order on Stipulation to Limit Record for Judicial Review	10/02/2015	1	0102
Motion for Extension of Time (First Request)	10/16/2015	1	0103-0114
Opposition to Petitioner's Motion for Extension of Time and Countermotion to Dismiss	10/26/2015	1	0115-0145
Reply to Opposition to Motion for Extension of Time and Opposition to Countermotion to Dismiss	11/03/2015	1	0146-0204
Request for Submission	11/03/2015	1	0205-0207
Reply to Petitioner's Opposition to Respondent's Countermotion to Dismiss	11/13/2015	1	0208-0219
Request For Submission	11/13/2015	1	0220-0221

Rural Telephone Company's Brief in Support of Petition for Judicial Review	11/18/2015	2	0222-0271
Order Denying Motion to Dismiss for Lack of Jurisdiction, Denying Motion for Extension of Time, Striking Opening Brief, and Dismissing Petition for Judicial Review	12/08/2015	2	0272-0279
Notice of Entry of Order	12/09/2015	2	0280-0290
Notice of Appeal	01/14/2016	2	0291-0293

**ALPHABETICAL APPENDIX  
TO APPEAL FROM THE ORDER DENYING MOTION TO DISMISS  
FOR LACK OF JURISDICTION, DENYING MOTION FOR  
EXTENSION OF TIME, STRIKING OPENING BRIEF, AND  
DISMISSING PETITION FOR JUDICIAL REVIEW ENTERED  
DECEMBER 8, 2015**

<b>DOCUMENT</b>	<b>DATE</b>	<b>VOL</b>	<b>JA NO.</b>
Certification of Record of Docket No. 14-11006 (Excluding disc of documents and disc of confidential documents)	09/18/2015	1	0090-0099
Motion for Extension of Time (First Request)	10/16/2015	1	0103-0114
Motion to Seal Records	09/18/2015	1	0068-0077
Notice of Appeal	01/14/2016	2	0291-0293
Notice of Entry of Order	12/09/2015	2	0280-0290
Notice of Non-Opposition	09/18/2015	1	0078-0080
Opposition to Petitioner's Motion for Extension of Time and Countermotion to Dismiss	10/26/2015	1	0115-0145
Order Denying Motion to Dismiss for Lack of Jurisdiction, Denying Motion for Extension of Time, Striking Opening Brief, and Dismissing Petition for Judicial Review	12/08/2015	2	0272-0279
Order on Stipulation to Limit Record for Judicial Review	10/02/2015	1	0102
Order Sealing Records	10/02/2015	1	0100-0101
Petition for Judicial Review	08/19/2015	1	0001-0063
Reply to Opposition to Motion for Extension of Time and Opposition to Countermotion to Dismiss	11/03/2015	1	0146-0204
Reply to Petitioner's Opposition to Respondent's Countermotion to Dismiss	11/13/2015	1	0208-0219



Request for Submission	11/03/2015	1	0205-0207
Request For Submission	11/13/2015	1	0220-0221
Rural Telephone Company's Brief in Support of Petition for Judicial Review	11/18/2015	2	0222-0271
Stipulation to Limit Record for Judicial Review and Order Thereon	09/18/2015	1	0081-0089
Summons	08/26/2016	1	0064-0067

CERTIFICATE OF APPENDIX - NRAP 30(g)(1)

In compliance with NRAP 30(g)(1), I hereby certify that this Joint Appendix consists of true and correct copies of the papers in the District Court file.

DATED this 5<sup>th</sup> day of July, 2016.

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9 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
10 IN AND FOR CARSON CITY

11  
12 RURAL TELEPHONE COMPANY,

13 Petitioner,

14 vs.

15 PUBLIC UTILITIES COMMISSION OF  
16 NEVADA, an administrative agency of the  
State of Nevada,

17 Respondent.  
18 \_\_\_\_\_

Case No. 15000018810

Dept. No. JF

19 PETITION FOR JUDICIAL REVIEW

20 RURAL TELEPHONE COMPANY ("Rural" or "Petitioner"), by and through its  
21 attorneys, ALLISON MacKENZIE, LTD., hereby petitions the First Judicial District Court of the  
22 State of Nevada In and For Carson City, for judicial review of a final decision rendered by  
23 Respondent, Public Utilities Commission of Nevada ("Commission") in Docket No. 14-11006. In  
24 support of its Petition, Petitioner states and alleges as follows:

25 1. This Petition is being filed pursuant to Nev. Rev. Stat. §703.373(1), which  
26 provides that "[a]ny party of record to a proceeding before the Commission is entitled to judicial  
27 review of the final decision upon the exhaustion of all administrative remedies by the party of record  
28 seeking judicial review." Petitioner asserts that a Modified Order ("Modified Order") issued by

1 Respondent Commission in Docket No. 14-11006 on July 22, 2015 is a final decision subject to  
2 judicial review of this Court, and should be vacated in part as more fully set forth herein.

3           2. Rural is an Idaho corporation qualified and doing business as a foreign  
4 corporation under the laws of the State of Nevada. Rural is a public utility as defined in NRS  
5 Chapter 704, subject to the jurisdiction of the Commission. Rural holds Certificate of Public  
6 Convenience and Necessity designated CPC 854, Sub 3 issued by the Commission authorizing Rural  
7 to provide local exchange telephone service in portions of rural Washoe County and Elko County,  
8 Nevada. Rural is a "rural telephone company" under federal law and a small-scale provider of last  
9 resort and an eligible telecommunications carrier under Nevada law. Rural serves approximately  
10 817 residential and business customers in Nevada.

11           3. Respondent Commission is an administrative agency of the State of Nevada  
12 created pursuant to Nev. Rev. Stat. §703.020. The Commission is authorized to supervise and  
13 regulate the operation and maintenance of public utilities and telephone service pursuant to Nev.  
14 Rev. Stat. Chapters 703 and 704 and consistent with federal law.

15           4. On November 7, 2014, Rural filed with the Commission an Application,  
16 designated as Docket No. 14-11006, for authority to establish its annual revenue requirement for  
17 telephone service rates; establish new charges, fees, and rules for telephone customers; adjust  
18 intrastate access charges; establish a draw from the Nevada Universal Service Fund ("NUSF");  
19 reflect changes in the cost of capital; modify depreciation rates; and for other relief properly related  
20 thereto ("Application"). Rural filed the Application in accordance with the Nevada Revised Statutes  
21 ("NRS") and the Nevada Administrative Code ("NAC"), Chapters 703 and 704, including, but not  
22 limited to, NRS 704.100, NRS 704.110 and NRS 704.120 and NAC 703.2715 et seq., NAC  
23 703.27116 et seq., NAC 704.68046 and NAC 704.68048.

24           5. In its Application, Rural requested certain interim rate relief to avoid the loss  
25 of federal high cost support which the Commission denied on January 30, 2015.

26           6. On December 31, 2014, Rural filed an Amendment to its Application  
27 ("Amended Application").  
28

1           7.     On April 16 and 17, 2015, the Presiding Officer held a hearing on Rural's  
2 Amended Application at which Rural and the Regulatory Operations Staff of the Commission  
3 ("Staff") participated. Prior to the hearing, Rural timely filed motions to strike certain testimony of  
4 the Staff witnesses. At the commencement of the hearing, the Presiding Officer denied Rural's  
5 motions to strike certain testimony of the Staff witnesses.

6           8.     At the hearing on April 16-17, 2015, one of the policy advisors of the  
7 Commission sitting on the hearing panel questioned Rural and requested certain information from  
8 Rural to be submitted as late filed exhibits. The Presiding Officer subsequently issued Procedural  
9 Order No. 3 on April 21, 2015 requiring Rural to submit the information on May 1, 2015. On April  
10 24, 2015 Rural filed its Motion to Strike and Motion to Disqualify to preserve its objections on the  
11 record to the Commission's actions and procedure. The Motion to Disqualify was based on the  
12 policy advisor's violation of NRS 233B.122 by acting in an adversarial and prosecutorial role while  
13 performing an adjudicatory function, all in violation of Rural's due process rights.

14           9.     On May 6, 2015, the Presiding Officer held a continued hearing at which  
15 Rural and Staff participated. At the beginning of the continued hearing the Presiding Officer denied  
16 Rural's Motion to Strike and Motion to Disqualify. Rural's continuing objection to the procedure  
17 and admittance of the evidence was noted for the record. Formal orders denying Rural's Motion to  
18 Strike and Motion to Disqualify were entered by the Presiding Officer on May 27, 2015.

19           10.    On May 29, 2015, the Commission issued an Order granting Rural's  
20 Amended Application ("Order") as modified by the Commission's Order. The Court's Order  
21 granted Rural's Amended Application in part and denied recovery of certain expenses incurred by  
22 Rural's regulated operations during the test year, disallowed certain investment Rural proposed to be  
23 recovered in rate base and adopted monthly rates for Rural's customers higher than proposed by  
24 Rural in its Amended Application based on a rate design which adopted as new policy a "sharing"  
25 principle proposed by Staff.

26           11.    On June 12, 2015, Rural filed a Petition for Reconsideration with the  
27 Commission and Staff filed a Petition for Clarification.  
28

12. On July 22, 2015, the Commission issued its Order granting Rural's Petition for Reconsideration in part and denying it in part. On reconsideration, the Commission essentially affirmed its previous Order issued May 29, 2015 with regard to the issues raised by Rural in its Petition for Reconsideration. Staff's Petition for Clarification was granted.

13. On July 22, 2015, the Commission issued its Modified Order. A true and correct copy of the Commission's July 22, 2015 Modified Order is attached hereto as **Exhibit "1"**. Thus, the Modified Order is a final decision under Nev. Rev. Stat. §703.373 and reviewable by this Court.

14. The hearing process of the Commission and final decision rendered by the Commission in Docket No. 14-11006 are erroneous as a matter of law, in violation of constitutional or statutory provisions, in excess of the statutory authority of the Commission, made upon unlawful procedure, affected by other error of law, clearly erroneous in view of the reliable, probative and substantial evidence of the whole record in Docket No. 14-11006, arbitrary, capricious and characterized by abuse of discretion, all to the prejudice and detriment of Rural and its rights.

15. The issues presented by this request for judicial review are as follows:

(a) Whether the Commission erred by reallocating expenses incurred by Rural in the test year from regulated services to non-regulated services based on a reallocation methodology using a proxy prepared almost twenty years ago for two other large telecommunication providers based on their specific costs for different products and services.

(b) Whether the Commission improperly excluded Telecom Plant Under Construction ("TPUC") from rate base in this case.

(c) Whether the Commission erred in setting Rural's rates in accordance with the "sharing" methodology proposed by Staff and adopted as new Commission policy not found in previous Commission decisions or lawfully adopted by the Commission by regulation.

(d) Whether Rural's due process rights were violated by the Commission's adversarial, investigatory and prosecutorial role during the hearing in light of

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1 the prohibition contained in NRS 233B.122 and the Commission's other arbitrary and  
2 capricious actions and unlawful procedure as shown in the record in Docket No. 14-11006.

3 WHEREFORE, Petitioner prays for judgment on its Petition for Judicial  
4 Review as follows:

5 1. That the Court vacate and declare void portions of the Commission's  
6 Modified Order issued in Docket No. 14-11006 as follows:

7 (a) Paragraphs 106 – 110 of the Commission's Modified Order;

8 (b) Paragraphs 118 – 122 of the Commission's Modified Order; and

9 (c) Paragraphs 144 – 148 of the Commission's Modified Order.

10 2. If the Court vacates Paragraphs 144 – 148 of the Commission's Modified  
11 Order, that Rural's residential rate be set at \$16.00 per month, subject to refund, reconciliation or  
12 other true-up, until the Commission adopts new rates in accordance with the Court's decision so  
13 Rural does not lose further federal high cost support based upon the Commission's unlawful  
14 Modified Order.

15 3. That the Court determine that the Commission's proceedings and  
16 determination violated the due process rights of Rural and was made upon arbitrary and capricious  
17 actions and unlawful procedure, all the detriment and harm of Rural.

18 4. For such other and further relief as the Court deems just and proper.


19 **AFFIRMATION**

20 The undersigned does hereby affirm that the preceding document does not contain the  
21 Social Security number of any person.

22 DATED this 19<sup>th</sup> day of August, 2015.

23 ALLISON MacKENZIE, LTD.  
24 402 North Division Street  
25 Carson City, NV 89703-4168

26 By:



27 KAREN A. PETERSON, ESQ.  
28 Nevada State Bar No. 0366

Attorneys for Petitioner,  
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## INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages (Excluding tab)</u>
Exhibit 1	Commission's July 22, 2015 Modified Order	56

4839-8442-0647, v. 2



**EXHIBIT “1”**

**EXHIBIT “1”**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

Application of Rural Telephone Company for authority )	
to establish its annual revenue requirement for telephone )	
service rates; establish new charges, fees, and rules for )	Docket No. 14-11006
telephone customers; establish draw from the Nevada )	
Universal Service Fund; reflect changes in the cost of )	
capital; modify depreciation rates; and for other relief )	
properly related thereto. )	
_____ )	

At a general session of the Public Utilities  
Commission of Nevada, held at its offices  
on July 17, 2015.

PRESENT:   Chairman Alaina Burtenshaw  
              Commissioner Rebecca D. Wagner  
              Commissioner David Noble  
              Assistant Commission Secretary Trisha Osborne

**MODIFIED ORDER**

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

**I.     INTRODUCTION**

Rural Telephone Company ("Rural") filed with the Commission an Application, designated as Docket No. 14-11006, for authority to establish its annual revenue requirement for telephone service rates; establish new charges, fees, and rules for telephone customers; adjust intrastate access charges; establish draw from the Nevada Universal Service Fund ("NUSF"); reflect changes in the cost of capital; modify depreciation rates; and for other relief properly related thereto ("Application").

Rural filed the Application in accordance with the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC"), Chapters 703 and 704, including, but not limited to, NRS 704.100, 704.110, and 704.120 and NAC 703.2715 et seq., 703.27116 et seq., 704.68046, and 704.68048. Pursuant to NAC 703.5274, Rural requested confidential treatment of information submitted under seal with the Application.

**II.    SUMMARY**

The Commission grants the amended Application as modified by this Order.

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### III. PROCEDURAL HISTORY

- On November 7, 2014, Rural filed the Application.
- On November 14, 2014, the Commission issued a Notice of Application for Authorization to Increase Rates and Charges for Telecommunications Service and to Receive Funding for Telecommunications Service to Rural Areas and Notice of Prehearing Conference.
- The Regulatory Operations Staff of the Commission ("Staff") participates as a matter of right pursuant to NRS 703.301.
- On December 5, 2014, Nevada Bell Telephone Company d/b/a AT&T and AT&T Wholesale ("AT&T") filed a Notice of Intent to Participate as a Commenter and Comments.
- On December 10, 2014, the Presiding Officer held a prehearing conference at which Rural and Staff participated.
- On December 16, 2014, the Presiding Officer issued a Procedural Order directing the parties to submit comments and reply comments addressing the basis for the interim relief Rural had requested.
- On December 17, 2014, the Presiding Officer held a continued prehearing conference at which Rural and Staff participated.
- On December 24, 2014, Rural and Staff filed comments in response to the Procedural Order.
- On December 31, 2014, Rural and Staff filed reply comments in response to the comments filed on December 24, 2014.
- On December 31, 2014, Rural filed an Amendment to the Application.
- On January 9, 2015, the Commission issued a Notice of Consumer Sessions and Notice of Hearing.
- On January 12, 2015, the Presiding Officer issued Procedural Order No. 2 establishing a procedural schedule.
- On January 23, 2015, Rural filed a letter containing a reconciliation of all the changes made to the Application forms previously filed by Rural.
- On January 30, 2015, the Commission issued an Interim Order denying Rural's request for interim relief.
- On February 2, 2015, Rural and Staff filed their respective monthly status reports on data requests.

- On March 2, 2015, Rural and Staff filed their respective monthly status reports on data requests.
- On March 25, 2015, Staff filed Prepared Direct Testimonies of Nichole Matzek, Yasuji Otsuka, Peter Young, Percival Lucban, Richard Phillips, and Cristina Zuniga.
- On April 1, 2015, Staff re-filed Prepared Direct Testimony of Yasuji Otsuka.
- On April 1, 2015, Rural and Staff filed their respective monthly status reports on data requests.
- On April 6, 2015, Staff re-filed Prepared Direct Testimony of Nichole Matzek.
- On April 8, 2015, Rural filed Prepared Rebuttal Testimonies of Mark Martell and Chad Duval and a Motion to Strike Testimony and Attachment of Witnesses ("Motion to Strike").
- On April 8, 2015, Staff filed an Errata to the Prepared Direct Testimony of Christina Zuniga.
- On April 10, 2015, Rural filed bates-stamped copies of the previously submitted documents.
- On April 13, 2015, Staff filed a Response to Rural's Motion to Strike.
- On April 14, 2015, Rural filed an Errata to the Prepared Rebuttal Testimony of Mark Martell.
- On April 15, 2015, Rural filed a Reply to Staff's Response to the Motion to Strike.
- On April 16 and 17, 2015, the Presiding Officer held a hearing at which Rural and Staff participated.
- On April 21, 2015, the Presiding Officer issued Procedural Order No. 3 establishing a procedural schedule.
- On April 24, 2015, Rural filed Motion to Strike and Motion to Disqualify.
- On April 28, 2015, the Presiding Officer issued Procedural Order No. 4 establishing a procedural schedule with regard to Rural's Motion to Strike and Motion to Disqualify.
- On April 30, 2015, Staff filed a Response to Rural's Motion to Strike and Motion to Disqualify.
- On May 1, 2015, Staff and Rural submitted their respective Monthly Status Reports.
- On May 1, 2015, Rural filed Supplemental Information Pursuant to Procedural Order No. 3.
- On May 4, 2015, the Presiding Officer issued Procedural Order No. 5 requesting additional information responsive to Procedural Order No. 3.

- On May 5, 2015, Rural filed Additional Information of Rural Telephone Company Pursuant to Procedural Order No. 5 and Reply to Staff's Response to Motion to Strike and Motion to Disqualify.
- On May 6, 2015, the Presiding Officer held a continued hearing at which Rural and Staff participated.
- On May 13, 2015, the Presiding Officer issued Procedural Order No. 6 requesting that Rural provide the basis for confidential treatment of information Rural submitted in this Docket.
- On May 18, 2015, Rural filed a response to Procedural Order No. 6.
- On May 19, 2015, the Presiding Officer issued Procedural Order No. 7 requesting that Rural provide the basis for confidential treatment of information not addressed in Rural's response to Procedural Order No. 6.
- On May 21, 2015, Rural filed a response to Procedural Order No. 7.

#### IV. APPLICATION

##### A. Background

1. Rural is a "rural telephone company" under federal law, and a small-scale provider of last resort ("SSPLR") and an eligible telecommunications carrier under Nevada law. Rural holds a Certificate of Public Convenience and Necessity ("CPCN") issued by the Commission authorizing Rural to provide local exchange telephone service in Nevada. Rural serves 817 Nevada residential and business customers in Elko and Washoe counties. Rural's current residential basic rate is \$14 and Rural's current single line business rate is \$16. Rural's current basic residential and business rates were last set in Docket No. 03-10004, effective March 18, 2005. (Ex. 1 at 7, 11.)

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## **B. Cost of Capital**

### **Parties' Positions**

#### **Rural**

2. Rural requests that the Commission approve a new cost-of-capital calculation based on the return on equity that the Commission established as reasonable for SSPLRs in Docket No. 12-10012 pursuant to NAC 703.27138. (Ex. 1 at 5-6.) Rural is seeking a rate of return on rate base of 8.4 percent. (Ex. 1 at 13.) Rural calculates this weighted cost of capital using a return on equity of 10.7 percent established by the Commission in Docket No. 12-10012, 5.6 percent cost of long-term debt, and interest-free customer deposits. (Ex. 1 at 13; Ex. 2 at 15.) Rural reports its capital structure as 45.03 percent debt and 54.97 percent equity. (Ex. 2 at 15.) Rural also states that the Commission approved a rate of return of 8.9113 percent for Rural in Docket No. 03-10004 and that, during the test year, Rural's actual adjusted earned rate of return was a negative 16.94 percent and its unadjusted rate of return was a negative 22.28 percent. (Ex. 1 at 13.)

#### **Staff**

3. Staff agrees with Rural's cost of capital calculations and does not propose any adjustments. (Ex. 19 at 2.)

### **Commission Discussion and Findings**

4. The Commission agrees with Rural's rate of return calculations and methodology and finds that a rate of return on rate base of 8.4 percent is appropriate.

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**C. Depreciation****1) Account No. 2110.11 – Buildings****Parties' Positions****Rural**

5. Rural proposes to retain the average service of 36 years for Account No. 2110.11 – Buildings and to decrease the depreciation rate from 2.8 percent to 2.75 percent. Rural contends that the depreciation rate for this account is above the expected remaining service life and should be decreased. (Ex. 11 at 193-196; Ex. 1 at 58-65.)

**Staff**

6. Staff recommends that the average service life of Account No. 2110.11 – Buildings be increased from 36 years to 40 years. Staff contends that 40 years is a reasonable average service life based on an analysis of 12 depreciation studies filed with the Commission between 1991 and 2014. The 12 depreciation studies included eight telecommunication companies and four electric/natural gas studies and the average for the average service life of the Buildings account was 39.15 years. Staff notes that Rural provided no justification in its Application as to why its buildings would have shorter lives than buildings of other utilities. Staff requests that Rural provide as a compliance filing the new remaining life, depreciation rate, and depreciation expense calculation for Staff verification before the retail rates go into effect. (Ex. 12 at 1, 3-5, 14; Attachment POL-2; Attachment POL-3.)

**Rural's Rebuttal**

7. Rural disagrees with certain aspects of Staff's use of a sample of 12 depreciation studies and recommends that dissimilar utilities should be removed. Rural contends that the companies selected within the sample are not similar, and, therefore, the averages derived are not

representative of Rural. Rural asserts that buildings used by gas and electric utilities are different than those used by telecommunications utilities. Rural contends that the two Nevada Bell Telephone Company ("Nevada Bell")<sup>1</sup> studies used by Staff should not be considered because they were filed with the Commission at least 20 years ago and are outdated for purposes of determining depreciation rates for Rural. (Ex. 14 at 42-43.)

8. Rural revised Staff's analysis to remove six of the 12 depreciation studies including the Nevada Bell studies and the dissimilar utilities studies. Rural's revised analysis results in an average service life of 31 years for Account No. 2110.11 – Buildings. Based on its revised analysis, Rural accepts an average service life of 36 years as proposed. (Ex. 14 at 43; Attachment CD-24.)

### **Commission Discussion and Findings**

9. The Commission finds that an average service life of 40 years, as proposed by Staff, for Account No. 2110.11 – Buildings is reasonable and should be adopted. The Commission agrees with Staff's use of the 12 depreciation studies for purposes of analysis of this account. The Commission was not compelled by Rural's rationale for the exclusion depreciation studies of gas and electric utilities and allegedly outdated Nevada Bell depreciation studies. Rural failed to adequately demonstrate that its buildings are unique or different from those buildings used by other utilities.

### **2) Account No. 2110.40 – Other Work Equipment**

#### **Parties' Positions**

##### **Rural**

10. Rural proposes to retain the average service life of seven years for Account No. 2110.40 – Other Work Equipment and to decrease the depreciation rate from 14.3 percent to

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<sup>1</sup> Nevada Bell did not operate as a subsidiary of AT&T Inc. at the time of the studies.



11.21 percent. Rural contends that the depreciation rate for this account is above the expected remaining service life and should be decreased. (Ex. 11 at 193-196; Ex. 1 at 58-65.)

### **Staff**

11. Staff recommends that the average service life for Account No. 2110.40 – Other Work Equipment be increased from seven years to 16 years. Staff contends that 16 years is a reasonable average service life based on an analysis of depreciation studies of other telecommunications providers. The average for the average service life of the Other Work Equipment account was 16 years. Staff requests that Rural provide as a compliance filing the new remaining life, depreciation rate, and depreciation expense calculation for Staff verification before the retail rates go into effect. (Ex. 12 at 2, 5-6, 14; Attachment POL-2; Attachment POL-3.)

### **Rural's Rebuttal**

12. Rural disagrees with certain aspects of Staff's use of a sample of 12 depreciation studies and recommends that dissimilar utilities should be removed. Rural contends that the companies selected within the sample are not similar, and, therefore, the averages derived are not representative of Rural. Rural contends that the two Nevada Bell studies used by Staff should not be considered because they were filed with the Commission at least 20 years ago and are outdated for purposes of determining depreciation rates for Rural. (Ex. 14 at 42-43.)

13. Rural revised Staff's analysis to remove six of the 12 depreciation studies including the Nevada Bell studies and the dissimilar utilities studies. Rural's revised analysis results in an average service life of 14 years for Account No. 2110.40 – Other Work Equipment. Based on its revised analysis, Rural accepts an average service life of 14 years rather than its proposed seven years. (Ex. 14 at 43; Attachment CD-24.)

**Commission Discussion and Findings**

14. The Commission finds that an average service life of 16 years, as proposed by Staff, for Account No. 2110.40 – Other Work Equipment is reasonable and should be adopted. The Commission agrees with Staff's use of the depreciation studies of other telecommunications companies for purposes of analysis of this account. The Commission was not compelled by Rural's rationale for the exclusion of depreciation studies of gas and electric utilities and allegedly outdated Nevada Bell depreciation studies. Rural failed to adequately demonstrate that its other work equipment are unique or different from those used by other utilities

**3) Account No. 2110.50 – Other Communications Equipment****Parties' Positions****Rural**

15. Rural proposes to increase the average service life of Account No. 2110.50 – Other Communications Equipment from five years to 12 years and to reduce the depreciation rate from 20 percent to 8.33 percent. Rural states that this account has been fully depreciated (as of the filing) and an estimated depreciation rate has been proposed based on the average service life and salvage factors. (Ex. 11 at 193-196; Ex. 1 at 58-65.)

**Staff**

16. Staff recommends that the depreciation rate for Account No. 2110.50 – Other Communications Equipment be set at 0.13 percent. Staff explains that because this account is essentially fully depreciated there are almost no dollars left to collect. Accordingly, there should be little or no depreciation rate for this account. Staff surmises that Rural's calculations are based on future investments and ignore the results of the historic depreciation study. Staff expresses concern with deviating from historic data and setting rates based on forecasts or

expected actions. Staff suggests that, if Rural intends to make significant investments in this account in the future, it can file a rate case after those investments have been made. Staff's recommendation corrects the depreciation parameters based on actual data and calculates the appropriate values. Staff requests that Rural provide as a compliance filing the new remaining life, depreciation rate, and depreciation expense calculation for Staff verification before the retail rates go into effect. (Ex. 12 at 2, 9-12, 15; Attachment POL-2; POL-3.)

17. While Staff disagrees with Rural on this approach, it notes that, by ignoring the remaining life portion of the depreciation calculation and simply estimating rates based on an expected average service life of 12 years and a net salvage value of 0.00 percent for this account, Rural's estimates are reasonable. (Ex. 12 at 11.)

#### **Rural's Rebuttal**

18. Rural restates that Account No. 2110.50 – Other Communications Equipment is fully depreciated and contends that setting the depreciation rates at 0.13 percent would not allow it to retire and reinvest in assets as necessary. Further, artificially low depreciation rates would ensure that, once the current assets are retired and new assets are acquired, Rural would have no ability to depreciate these assets over an appropriate service life. Rural acknowledges Staff's concern over deviating from historical numbers, but argues that, under these circumstances, it would result in sound ratemaking judgment. Rural notes that Staff's proposed depreciation rates would produce nominal impacts on the depreciation expense and would lead to another depreciation study and rate case in the near future. (Ex. 14 at 43-45.)

19. Rural explains that under a group plan of depreciation, once an account has been fully depreciated, regardless of the approved depreciation rate, no depreciation expense is incurred until the new investment has been made in the account. Rural states that it would not

receive any additional compensation from ratepayers for the existing assets in a fully depreciated account if the Commission accepted its proposal. Rural suggests that, to address Staff's concern, the Commission could require Rural to carry the salvage value forward and provide the benefit to ratepayers before further depreciating the account. (Ex. 14 at 43-45.)

### **Commission Discussion and Findings**

20. The Commission finds that an average service life of 12 years and the use of an estimated depreciation rate as proposed by Rural for Account No. 2110.50 – Other Communications Equipment are reasonable and should be adopted. The Commission is persuaded by Rural's justification for deviating from the use of historic data based on the fact that this account is fully depreciated.

#### **4) Account No. 2110.60 – General Purpose Computers**

### **Parties' Positions**

#### **Rural**

21. Rural proposes to decrease the average service life of Account No. 2110.60 – General Purpose Computers from five years to three years and to increase the depreciation rate from 20 percent to 33.33 percent. Rural states that this account has been fully depreciated and an estimated depreciation rate has been proposed based on the average service life and salvage factors. (Ex. 11 at 194; Ex. 1 at 58-65.)

#### **Staff**

22. Staff recommends that the depreciation rate for Account No. 2110.60 – General Purpose Computers be set at 0.00 percent. Staff explains that because this account is essentially fully depreciated there are almost no dollars left to collect. Accordingly, there should be little or no depreciation rate for this account. Staff surmises that Rural's calculations are based on future

investments and ignore the results of the historic depreciation study. Staff expresses concern with deviating from historic data and setting rates based on forecasts or expected actions. Staff suggests that, if Rural intends to make significant investments in this account in the future, it can file a rate case after those investments have been made. Staff's recommendation corrects the depreciation parameters based on actual data and calculates the appropriate values. Staff requests that Rural provide as a compliance filing the new remaining life, depreciation rate, and depreciation expense calculation for Staff verification before the retail rates go into effect. (Ex. 12 at 2, 9-12, 15; Attachment POL-2; POL-3.)

23. While Staff disagrees with Rural on this approach, it notes that by ignoring the remaining life portion of the depreciation calculation and simply estimating rates based on an expected average service life of three years and a net salvage value of positive 2.5 percent for this account, Rural's estimates are reasonable. (Ex. 12 at 11.)

#### **Rural's Rebuttal**

24. Rural restates that Account No. 2110.60 – General Purpose Computers is fully depreciated and contends that setting the depreciation rates at 0.00 percent would not allow it to retire and reinvest in assets as necessary. Further, artificially low depreciation rates would ensure that, once the current assets are retired and new assets are acquired, Rural would have no ability to depreciate these assets over an appropriate service life. Rural acknowledges Staff's concern over deviating from historical numbers, but argues that, under these circumstances, it would result in sound ratemaking judgment. Rural notes that Staff's proposed depreciation rates would produce nominal impacts on the depreciation expense and would lead to another depreciation study and rate case in the near future. (Ex. 14 at 43-45.)

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25. Rural explains that, under a group plan of depreciation, once an account has been fully depreciated, regardless of the approved depreciation rate, no depreciation expense is incurred until the new investment has been made in the account. Rural states that it would not receive any additional compensation from ratepayers for the existing assets in a fully depreciated account if the Commission accepted its proposal. Rural suggests that, to address Staff's concern, the Commission could require Rural to carry the salvage value forward and provide the benefit to ratepayers before further depreciating the account. (Ex. 14 at 43-45.)

#### **Commission Discussion and Findings**

26. The Commission finds that an average service life of three years, ~~and~~ the use of an estimated depreciation rate as proposed by Rural, and a net salvage value of 2.50 percent for Account No. 2110.60 – General Purpose Computers are reasonable and should be adopted. The Commission is persuaded by Rural's justification for deviating from the use of historic data based on the fact that this account is fully depreciated. The Commission finds that carrying forward the remaining salvage value to provide benefit to ratepayers before depreciating any new investment is appropriate.

#### **5) Account No. 2110.70 – Vehicles**

##### **Parties' Positions**

##### **Rural**

27. Rural proposes to increase the average service life of Account No. 2110.70 – Vehicles from three years to five years and to decrease the depreciation rate from 33.33 percent to 16.01 percent. Rural contends that the depreciation rate for this account is above the expected remaining service life and should be decreased. (Ex. 11 at 193-196; Ex. 1 at 58-65.)

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**Staff**

28. Staff recommends that the average service life of Account No. 2110.70 – Vehicles be increased from three years to eight years. Staff contends that eight years is a reasonable average service life based on an analysis of 12 depreciation studies filed with the Commission between 1991 and 2014. The 12 depreciation studies included eight telecommunication companies and four electric/natural gas studies. The average for the average service life of the Vehicles account was 8.68 years. Staff notes that Rural provided no justification in its Application as to why its vehicles would have materially shorter lives than vehicles of other utilities. Staff requests that Rural provide as a compliance filing the new remaining life, depreciation rate, and depreciation expense calculation for Staff verification before the retail rates go into effect. (Ex. 12 at 2, 6-8, 14-15; Attachment POL-2; Attachment POL-3.)

**Rural's Rebuttal**

29. Rural disagrees with certain aspects of Staff's use of a sample of 12 depreciation studies and recommends that dissimilar utilities should be removed. Rural contends that the companies selected within the sample are not similar, and, therefore, the averages derived are not representative of Rural. Rural contends that the two Nevada Bell studies used by Staff should not be considered because they were filed with the Commission at least 20 years ago and are outdated for purposes of determining depreciation rates for Rural. (Ex. 14 at 42-43.)

30. Rural revised Staff's analysis to remove six of the 12 depreciation studies including the Nevada Bell studies and the dissimilar utilities studies. Rural's revised analysis results in an average service life of 7.8 years for Account No. 2110.70 – Vehicles. Rural argues that its utilization of vehicles may be greater than other telecommunications companies and may warrant a shorter service because of the mileage between service areas and the rugged terrain

over which the vehicles travel. Rural maintains its proposal of an average service life of five years for this account. (Ex. 14 at 43; Attachment CD-24.)

### **Commission Discussion and Findings**

31. The Commission finds that an average service life of eight years, as proposed by Staff, for Account No. 2110.70 – Vehicles is reasonable and should be adopted. The Commission agrees with the Staff's use of the 12 depreciation studies for purposes of analysis of this account. The Commission was not compelled by Rural's rationale for the exclusion depreciation studies of gas and electric utilities and allegedly outdated Nevada Bell depreciation studies. Rural failed to adequately demonstrate that its use of vehicles is unique or different from those vehicles used by other utilities that serve disconnected service territories with rugged terrain.

### **6) Account No. 2210.20 – Digital Switching Equipment**

#### **Parties' Positions**

##### **Rural**

32. Rural proposes to decrease the average service life of Account No. 2210.20 – Digital Switching Equipment from 19 years to 16 years and to increase the depreciation rate from 5.26 percent to 6.09 percent. Rural states that this account has been fully depreciated (as of the filing) and an estimated depreciation rates has been proposed based on the average service life and salvage factors. (Ex. 11 at 193-196; Ex. 1 at 58-65.)

##### **Staff**

33. Staff recommends that the depreciation rate for Account No. 2210.20 – Digital Switching Equipment be set at 1.10 percent. Staff explains that because this account is essentially fully depreciated there are almost no dollars left to collect. Accordingly, there should



be little or no depreciation rate for this account. Staff surmises that Rural's calculations are based on future investments and ignore the results of the historic depreciation study. Staff expresses concern with deviating from historic data and setting rates based on forecasts or expected actions. Staff suggests that, if Rural intends to make significant investments in this account in the future, it can file a rate case after those investments have been made. Staff's recommendation corrects the depreciation parameters based on actual data and calculates the appropriate values. Staff requests that Rural provide as a compliance filing the new remaining life, depreciation rate, and depreciation expense calculation for Staff verification before the retail rates go into effect. (Ex. 12 at 2, 12-14; Attachment POL-2; Attachment POL-3.)

34. While Staff disagrees with Rural on this approach, it notes that, by ignoring the remaining life portion of the depreciation calculation and simply estimating rates based on an expected average service life of 16 years and a net salvage value of positive 2.5 percent for this account, Rural's estimates are reasonable. (Ex. 12 at 14.)

35. Staff recommends that the Remaining Life for Account No. 2210.20 – Digital Switching Equipment be set to 1.49 years to address a simple summary error in Rural's calculation. (Ex. 12 at 2, 13-15.)

#### **Rural's Rebuttal**

36. Rural states that Account No. 2210.20 – Digital Switching Equipment will be fully depreciated by the time an order is issued in this Docket and contends that setting the depreciation rates at 1.10 percent would not allow it to retire and reinvest in assets as necessary. Further, artificially low depreciation rates would ensure that, once the current assets are retired and new assets are acquired, Rural would have no ability to depreciate these assets over an appropriate service life. Rural acknowledges Staff's concern over deviating from historical

numbers, but argues that, under these circumstances it would result in sound ratemaking judgment. Rural notes that Staff's proposed depreciation rates would produce nominal impacts on the depreciation expense and would lead to another depreciation study and rate case in the near future. Rural also notes that it requested a low depreciation rate for this account compared to the average service lives that have been approved for other similar carriers. Rural states that it did so in a good faith effort to ensure that future depreciation expense would not be of immediate concern to the Commission. (Ex. 14 at 43-45.)

37. Rural explains that, under a group plan of depreciation, once an account has been fully depreciated, regardless of the approved depreciation rate, no depreciation expense is incurred until the new investment has been made in the account. Rural states that it would not receive any additional compensation from ratepayers for the existing assets in a fully depreciated account if the Commission accepted its proposal. Rural suggests that to address Staff's concern, the Commission could require Rural to carry the salvage value forward and provide the benefit to ratepayers before further depreciating the account. (Ex. 14 at 43-45.)

#### **Commission Discussion and Findings**

38. The Commission finds that an average service life of 16 years, ~~and~~ the use of an estimated depreciation rate as proposed by Rural, and a net salvage value of 2.50 percent for Account No. 2210.20 – Digital Switching Equipment are reasonable and should be adopted. The Commission is persuaded by Rural's justification for deviating from the use of historic data based on the fact that this account is fully depreciated. The Commission finds that carrying forward the remaining salvage value to provide benefit to ratepayers before depreciating any new investment is appropriate.

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**7) Account No. 2410.22 – Buried Cable (Fiber Optic)****Parties' Positions****Rural**

39. Rural proposes to retain the average service life of 25 years for Account No. 2410.22 – Buried Cable (Fiber Optic) and to increase the depreciation rate from 4 percent to 4.23 percent. Rural contends that the depreciation rate for this account is below the expected remaining service life and should be increased. (Ex. 11 at 193-196; Ex. 1 at 58-65.)

**Staff**

40. Staff recommends that the average service life of Account No. 2410.22 – Buried Cable (Fiber Optic) be increased from 25 years to 30 years. Staff contends that 30 years is a reasonable average service life based on an analysis of depreciation studies of other telecommunications providers. For seven of the eight depreciation studies for telecommunications companies analyzed, the average service life for the Buried Cable (Fiber Optic) account was 30 years. Only one study had an average service life of 18 years. The average of the eight studies results in an average service life of 28.5 years for this account. Staff requests that Rural provide as a compliance filing the new remaining life, depreciation rate and depreciation expense calculation for Staff verification before the retail rates go into effect. (Ex. 12 at 2, 8-9, 15; Attachment POL-2; POL-3.)

**Rural's Rebuttal**

41. Rural disagrees with certain aspects of Staff's use of a sample of 12 depreciation studies and recommends that dissimilar utilities should be removed. Rural contends that the companies selected within the sample are not similar, and, therefore, the averages derived are not representative of Rural. Rural contends that the two Nevada Bell studies used by Staff should

not be considered because they were filed with the Commission at least 20 years ago and are outdated for purposes of determining depreciation rates for Rural. (Ex. 14 at 42-43.)

42. Rural revised Staff's analysis to remove six of the 12 depreciation studies including the Nevada Bell studies and the dissimilar utilities studies. Rural's revised analysis results in an average service life of 28.5 years for Account No. 2410.22 – Buried Cable (Fiber Optic). Based on its revised analysis, Rural accepts an average service life of 28.5 years as a result of the revised analysis. (Ex. 14 at 43; Attachment CD-24.)

### **Commission Discussion and Findings**

43. The Commission finds that an average service life of 30 years, as proposed by Staff, for Account No. 2410.22 – Buried Cable (Fiber Optic) is reasonable and should be adopted. The Commission agrees with the Staff's use of the 12 depreciation studies for purposes of analysis of this account. The Commission was not compelled by Rural's rationale for the exclusion depreciation studies of gas and electric utilities and allegedly outdated Nevada Bell depreciation studies.

### **D. Revenue Requirement**

#### **1) Plant Non-Specific Expense Adjustments**

##### *a. Compensation Expense*

### **Parties' Positions**

#### **Rural**

44. Rural's total compensation expense, as reported to Staff, is \$542,142. (Ex. 16 at 3, 6.)

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**Staff**

45. After calculating company-wide compensation adjustments of \$65,757, Staff recommends reducing Rural's Nevada intrastate test year compensation expense by \$15,943. Staff contends that the \$15,943 test year wage compensation adjustment reflects annualized payroll values. Staff states that annualizing test year wage expenses produces a more reasonable representation of the expense category for future years and cites NAC 703.27128<sup>2</sup> as authority supporting the annualization approach in rate cases involving SSPLRs. Staff derives the \$15,943 adjustment after accounting for payroll taxes, capitalizing, and allocating \$65,757 in net adjustments. (Ex. 16 at 3.)

46. Staff excludes all wage compensation associated with positions that terminated during the test period because those positions will not necessarily be in future periods. Such positions were as follows: one Construction Labor employee, two Temporary Construction Labor employees, one Marketing Assistant employee, one Customer Service employee, and one Carrier Access Billing Systems ("CABS")/Accounting employee. (Ex. 16 at 3-4.)

47. Staff extrapolates wages of employees hired during the test period. The newly filled positions are one Customer Service employee, one Construction Labor employee, and two Temporary Construction Labor employees. Staff states that, due to Rural's inconsistent responses to Staff, Staff chose to treat the positions labeled temporary as part-time positions and made positive adjustments to annualize the applicable data. (Ex. 16 at 4-5.)

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<sup>2</sup> NAC 703.27128 reads:

Application for change in rates which results in general change in annual revenues.

1. Whenever a small-scale provider of last resort files a request which will result in a general change in its annual revenues as a consequence of adjusting rates for existing service, the small-scale provider of last resort must submit a completed application, setting forth its proposed changes and the reasons for the changes. The application must contain recorded results of revenues, expenses, investments, costs of capital for the test year and *normalization and annualization adjustments* as necessary to reasonably and appropriately reflect the results of its operations. (Emphasis added.)

48. Staff recognizes limitations of its calculations in the absence of Rural providing exact allocation factors for the positions Staff annualized and states that it made the most accurate calculation of the Nevada intrastate portion of the adjustment based upon the allocation information Rural provided. (Ex. 16 at 7.)

#### **Rural's Rebuttal**

49. Rural disagrees with Staff's adjustment to reduce Rural's Nevada intrastate test year compensation expenses. First, Rural argues that annualization of labor expenses associated with seasonal temporary employees is inappropriate because it is not reflective of the actual annual cost associated with these employees. Rural quotes Staff's response to Rural's Data Request 20, in which Staff states that it is reasonable not to annualize compensation in cases where seasonal employees are hired each year to perform recurring duties. Second, Rural notes that, even though a CABS/Accountant position was vacated during the test year with no replacement, the entire cost of that position was not eliminated because Rural transitioned the associated responsibilities to another employee and increased the employee's compensation. Overall, Rural states that its wage expenses during the test year are reflective of the costs it will incur on an annual basis with the exception of the Marketing Assistant position, which will remain vacant. Finally, Rural contends that Staff's adjustment needs to be modified to remove the employee paid portions of the Federal Insurance Contribution Act ("FICA") and Medicare from the calculation of annualized employee compensation because these taxes are paid by the employee. Rural quotes Staff's response to Rural's Data Request agreeing with that approach. (Ex. 14 at 27-28.)

50. In response to Staff's indication that Rural failed to provide information on the jurisdictional allocation of employee wages for each individual employee, Rural contends that it

did not provide the information because the request was complex and would have taken hundreds of man-hours to complete, if it was possible at all. Rural indicates that the complexity lies in the way Rural does accounting of wage expenses. (Ex. 14 at 28-29.)

### **Commission Discussion and Findings**

51. The Commission agrees with Staff that annualization of Rural's test year compensation expense is appropriate. NAC 703.27128 requires such adjustment. Annualization of the wage expense is particularly fitting in this Docket in light of six employees leaving Rural, four new employees joining the company, and two positions apparently eliminated.

52. Rural argues that annualization is inappropriate with regard to seasonal temporary employees because of the recurring year-to-year nature of the employment practice. Even if the Commission were to abandon the annualization approach, Rural fails to demonstrate that it employs temporary construction workers on a recurring basis. In fact, Rural does not appear to have employed any temporary construction workers in 2010. (Ex. C-2, Confidential Attachment NMM-2.)

53. The Commission finds that it is improper to increase the salary of the billing supervisor within the annualization adjustment subsequent to the transfer of the duties from the CABS clerk coordinator position vacated because the salary increase occurred outside the test year. (Tr. at 124-25.)

54. The Commission recognizes that the parties have reached a consensus on the issue of removing the employee paid portions of FICA and Medicare from the calculation of annualized employee compensation and agrees with the modification to Staff's compensation adjustment. (Tr. at 116.)

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*b. Health Care Expense*

**Parties' Positions**

**Rural**

55. Rural's total test year health care expense, as reported to Staff, is \$442,700. (Ex. 16 at 8.)

**Staff**

56. Staff recommends a \$13,197 reduction to Rural's Nevada intrastate health care expense. Staff notes that, while Rural's employees pay only 10.59 percent of the health care premium, with the rest paid for by the company, State of Nevada employees pay 19.81 percent of their premium. To bring Rural employees' contribution level on par with that of State of Nevada employees, Staff applies the difference in contribution rates, which equals 9.21 percent, to Rural's total test year health expenses of \$442,700 and derives \$40,795 as an additional contribution amount. After capitalizing and allocating the \$40,795 amount, Staff arrives at the \$13,197 test year health care expense attributable to Nevada intrastate costs. (Ex. 16 at 8).

57. Staff notes that ratepayers pay 100 percent of Rural employees' dependent health care expense because Rural's employee contribution rate stays flat regardless of the number of dependents. According to Staff, Rural justifies generous health care package as an offset for freezing the wages. Staff disagrees with Rural's justification and provides data showing wage increases for 20 of the 29 employees with available data between 2010 and the test year. Furthermore, Staff demonstrates that out of the seven Board Members, who are also Rural's employees, six received wage increases. (Ex. 16 at 8-9.)

58. Staff states that it chose to benchmark Rural's employee contribution rate to that of participants in the State of Nevada Health Maintenance Organization because State of Nevada



data was publically available while health care data for organizations similarly situated to Rural within the state was unavailable. (Ex. 16 at 10.)

59. Staff recognizes limitations of its calculations in the absence of Rural providing exact health care expense allocation factors for each employee and states that it made the most accurate calculation of the Nevada intrastate portion of the adjustment based upon the allocation information Rural provided. (Ex. 16 at 11.)

### **Rural's Rebuttal**

60. Rural disagrees with Staff's proposal to reduce Rural's health care expense by 9.21 percent. Rural argues that Staff's analysis supporting the adjustment is inadequate for the following reasons:

- Staff compared a single component of employee compensation and benefits, health insurance premiums, to those of a single other employer, the State of Nevada, without taking into account wages or other benefits;
- Staff did not consider applicable employee co-pays or deductibles;
- Staff did not include in its analysis employee compensation and benefits for a representative sampling of employers in the same industry as Rural.

(Ex. 14 at 29-30.)

61. Rural also states that it changed health plans in 2012 by selecting a plan with lower premiums and higher deductibles and co-pays. Rural disagrees with Staff's conclusion that wage compensation increased from 2010 to the test year for certain employees. Rural insinuates that its shareholding employees appear to have received a raise because, with Rural being an S corporation until January 1, 2014, shareholders with more than two percent ownership stake must have company-paid insurance premiums added to their gross compensation totals. Rural further states that the compensation figures it provided for non-shareholder employees include overtime hours, severance packages, and are not annualized. Rural represents that it has done no "across the board" merit or cost of living increases since June of 2007 but granted a

three percent cost of living raise to all employees, with the exception of owners/managers in June of 2013. (Ex. 18 at 5-7.)

### **Commission Discussion and Findings**

62. The Commission finds that Staff's proposed adjustment is not supported by sufficient data. The Commission is cognizant of Staff's difficulties in obtaining comparable health care expense data from relevant private employers. Nevertheless, the Commission cannot accept Staff's adjustment based on State of Nevada personnel health expense data without considering health expenses and employee contribution rates from Rural's proxy group of employers.

#### *c. Office Lease Expense*

### **Parties' Positions**

#### **Rural**

63. Rural's lease expense for Glenss Ferry, Idaho, office complex amounted to \$97,200 during the test year. (Ex. 16 at 12.)

#### **Staff**

64. Staff recommends a reduction to Rural's Glenss Ferry, Idaho, affiliate transaction office expense in an amount of \$4,449. Staff computes this adjustment by disallowing 52 percent of \$8,556 Nevada intrastate lease expense share, which reflects the ratio between the amount the lessors paid towards principal and interest on the property and the amount Rural paid to the lessors during the test period, \$97,200. Staff indicates that the lessors, James and Carmella Martell, and the lessee, Rural, are related parties because James Martell is also Rural's President and a board member and Carmella Martell is also Rural's Secretary, Treasurer, and a board member. Accordingly, Staff applies 47 CFR 32.27(c), a federal rule governing affiliate

transactions, to the lease agreement. (Ex. 16 at 12-14.)

65. Staff represents that, under 47 Code of Federal Regulations (“CFR”) 32.27(c), services transferred from an affiliate to the carrier must be recorded at no more than the lower of fair market value and fully distributed cost. Staff also quotes 47 CFR 32.27(c) for the proposition that carriers are required to make a good faith determination of fair market value for an affiliate’s service when the total aggregate annual value of the service reaches or exceeds \$500,000. Staff interprets the regulation as requiring Rural to record the rent cost at no more than the fully distributed cost, but not requiring it to make the fair market value determination because the annual lease amount is less than \$500,000. Staff indicates that, despite Staff’s numerous requests, Rural did not provide information to substantiate fully distributed cost or fair market value associated with the lease transaction. Staff states that, after initially indicating that the lease rate is based on the fair market value derived as average of rates for similar facilities in the area, Rural admitted that it neither has “in its possession any comparable current fair market value or average lease rates per square feet for similar facilities in the area” nor has it “performed a fully distributed cost calculation.” (Ex. 16 at 14-16).

66. Staff states that, to help determine the distributed cost, it requested loan amortization information for the property, including principal, interest, insurance, and property taxes paid. Staff states that Rural confidentially disclosed what the lessors paid in principal and interest during the test year. Staff notes that Rural also indicated that property taxes were paid by Rural. Staff also states that it has researched the relevant area to derive fair market value for a comparable building; however, Staff was not able to find similar enough facilities. (Ex. 16 at 16-18.)

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67. Due to the lack of information provided by Rural to determine that the lease was recorded at the lower of fair market value and fully distributed cost, Staff recommends an adjustment to match test year expenses for this transaction to the principal and interest paid by the related party – the lessors. Staff believes that, out of all the contradictory data provided by Rural with respect to allocation of the lease expense to Nevada intrastate, an \$8,556 allocation from the \$97,200 total lease expense is the most accurate data available. Accordingly, Staff recommends adjusting the \$8,556 lease expense allocation by \$4,449, or 52 percent. (Ex. 16 at 18-19.)

68. Staff recommends that the Commission issue a directive requiring Rural to submit market information and fully distributed cost for all affiliate transactions in its subsequent NUSF requests to be eligible to include expenses associated with such transactions for purposes of NUSF support. (Ex. 16 at 25.)

#### **Rural's Rebuttal**

69. Rural disagrees with Staff's adjustment to office expense to reflect fully distributed cost. Rural states that, besides the mortgage principle and interest payments paid by the affiliate and property tax, insurance premiums, and maintenance expenses paid by Rural, depreciation expense, return on investment, and a gross up for income taxes should also be considered in a fully distributed cost analysis. Rural provides a data request response where Staff agrees that such costs "could be included in a fully distributed cost calculation." Rural recreated Staff's building lease expense adjustment by adding return on investment and gross up for taxes to the principal and interest expense. Rural's resulting adjustment worked out to \$2,826 lease expense reduction as opposed to Staff's \$4,449 reduction. (Ex. 14 at 30-31, 105.)

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**Commission Discussion and Findings**

70. During the test year, Rural leased Glenns Ferry, Idaho, building complex from two of its Board Members and managers, James and Carmella Martell, at an annual cost of \$97,200. The complex includes a warehouse and an office building purchased from Rural in 1999 and the Central Office Building that was added to the lease in 2008. The lease rate for the Central Office Building is \$3,000 per month. (Ex. 35 at 4-5; Ex. 16 at 12, Attachment NMM-11 at 9.)

71. The Commission finds that the lease expense for the Glenns Ferry building complex was not prudently incurred. In the course of these proceedings, the Commission learned that Rural has repeatedly agreed to unfavorable lease terms that siphoned money away from the company and the ratepayers to related parties. In doing so, Rural failed to act as a prudently or even reasonably-run business.

72. Between 2002 and 2004, Rural's annual lease expense for the Glenns Ferry warehouse and office building increased from \$41,400 to \$61,200 without adequate justification. In Docket No. 03-10004, Rural's witness testified that the lease increase was due to the addition of 3,640 square feet of space. However, during the hearing in this Docket, the same witness testified that the rent increase was meant to accommodate the related party lessors for inflation and expenses rather than being caused by leasing additional 3,600 square feet of space. Rural provided no justification as to how inflation and the lessor's additional expenses caused an average annual lease increase of 24.6 percent. (Ex. 35 at 1-2; Tr. at 384; 396-97.)

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73. In 2008, Rural agreed to lease the Central Office Building for \$3,000 a month via an amendment to the lease agreement. Rural admits that it neither conducted the analysis to determine whether the lease rate was appropriate nor engaged in negotiations with the lessors. (Ex. 35 at 5; Tr. at 238-39, 403-04.)

74. Rural provides no evidence that it has performed any lease versus own analysis with respect to the building complex. Instead, Rural provides a general hypothesis that some SSPLRs may choose to lease rather than own an asset due to the peculiarities with the federal high cost loop support funding. Rural was unable to provide any specific analysis that leasing the building complex was more beneficial than owning them in light of the federal high cost loop support funding. In fact, such rationale appears dubious when applied to Rural because, were Rural not to sell the warehouse and the office building to James Martell in 1999, the buildings, which were on Rural's books since the late 1980's, would have been largely depreciated by 2014; instead, Rural continues and will continue to incur \$61,200 annual lease expense for the two buildings. (Ex. 35 at 1-3; Tr. at 232-33, 265-66, 276-80.)

75. Based on the foregoing, the Commission finds Staff's approach reasonable. The Commission finds that it is reasonable to compensate Rural for the actual cash outflows the related party lessors incurred with respect to the building complex, which includes the payment of principal and interest on the associated loan and does not include expenses covering maintenance, insurance, or property taxes as such expenses are being carried by Rural. The Commission disagrees with Rural that the lessors should be given return on investment. The lessors are already being compensated for their cost of debt and nothing was provided to indicate that the lessors have made an equity investment.

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*d. Equipment Lease Expense*

**Parties' Positions**

**Rural**

76. Rural does not publically disclose its total equipment lease expense. (Ex. 16 at 19-20.)

**Staff**

77. Staff recommends a reduction to Rural's affiliate transaction work equipment lease expense of \$31,826 to reflect the value of the equipment that would have already been fully depreciated had Rural owned the equipment instead of leasing it from Little Valley Elk Ranch LLC ("Elk Ranch"). Staff states that, similarly to the real property lease, James and Carmella Martell are effectively the lessors of the equipment through their 100 percent ownership of Elk Ranch and 47 CFR 32.27(c) governs the equipment lease. Staff states that, as with the real property lease, Rural did not provide information to substantiate the fully distributed cost or fair market value and, therefore, Staff cannot adequately analyze whether the lease transaction comports with the regulation. Staff states that, in response to Staff's requests, Rural stated that it uses Kelly Blue Book to determine an average fair market value for leased vehicles and derives the annual lease payment at 18 percent of such value. Staff notes that Rural provided no evidence to demonstrate that fair market value was in fact established on the leased equipment. Furthermore, Staff notes that no written agreement exists between Rural and Elk Ranch. (Ex. 16 at 19-21.)

78. Staff advocates for the disallowance because Staff believes that all the equipment leased from Elk Ranch functions as Rural's own equipment and should be treated as part of Rural's depreciable rate base during the test period. With Rural's current depreciation study

applying 33.3 percent depreciation rate to vehicles and 14.30 percent depreciation to other work equipment, Staff recommends disallowing the lease expense for would-be fully depreciated equipment: all vehicles with a date of 2010 or earlier and all equipment with a date of 2006 or earlier. (Ex. 16 at 22-23.)

79. Removing lease expense associated with the fully-depreciated equipment, Staff calculates the total amount of disallowance at 63 percent of the total lease expense flowing from Rural to Elk Ranch. (Ex. C-2 at 19-20.) To allocate the appropriate portion of the disallowance to Nevada intrastate, Staff discounts the best available Nevada intrastate equipment lease expense data provided by Rural by the same 63 percent to arrive at the \$31,826 disallowance applicable to Nevada intrastate. (Ex. 16 at 19-20, 24.)

80. Staff recommends that the Commission issue a directive requiring Rural to submit market information and fully distributed cost for all affiliate transactions in its subsequent NUSF requests to be eligible to include expenses associated with such transactions for purposes of NUSF support. (Ex. 16 at 25.)

### **Rural Rebuttal**

81. Rural disagrees with Staff's adjustment to the work equipment lease expense. Rural states that Staff's disallowance of a portion of the lease expense based on individual equipment service lives ignores that the Federal Communications Commission's ("FCC") accounting rules require that depreciation expense be calculated using a group plan of accounting. Rural asserts that, under the FCC rules, no individual asset in the account is considered fully depreciated unless the entire asset account is fully depreciated. Rural states that no equipment lease expenses should be disallowed as long as the Vehicles and Other Work Equipment accounts are not fully depreciated. Rural further states that, since Staff has not taken



an issue with the actual lease rates for the equipment, Staff believes that the rates are based on fully distributed costs. (Ex. 14 at 31-33.)

82. Rural points out that Staff chose to use shorter equipment service lives calculated by Rural rather than longer service lives calculated by Staff for the disallowance. (Ex. 14 at 32.)

### **Commission Discussion and Findings**

83. The Commission agrees with Staff's adjustment. The Commission finds that the disallowed portion of the lease expense was not prudently incurred. As with the buildings lease, Rural fails to provide any evidence that it performed any lease versus own analysis. In fact, Rural admits that it cannot justify leasing equipment versus owning it. Moreover, Rural admits that a decision by Rural to lease the equipment from Elk Ranch is essentially a decision of James and Carmella Martell, who are the sole owners of Elk Ranch. Furthermore, Rural admits that all of the equipment Rural leases from Elk Ranch, with the exception of two out of forty five items, would have been completely depreciated if Rural owned the equipment. Rural also testified that it is responsible for maintenance and insurance on the leased equipment as opposed to the lessor. (Tr. at 245-46, 252-58.)

84. As with the buildings lease, Rural maintains that SSPLRs receive a higher amount of federal high cost loop support funding when they incur lease expenses rather than own the assets and include them in rate base. The Commission finds Rural's rationale unconvincing. Rural provided no evidence that it is more beneficial for Rural specifically to lease rather than own the equipment it leases from Elk Ranch. In fact, Rural acknowledges that its hypothesis as to why Rural is leasing the equipment rather than owning it is not based on Rural's specific circumstances and should have been supported with facts on rebuttal. (Tr. at 265-66, 276-80.)

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## 2) Corporate Operations Expense Adjustments

### *a. Rate Case Expenses*

#### **Parties' Positions**

##### **Rural**

85. Rural filed a statement of expected changes in circumstances in accordance with NRS 704.110(4) to have the revenue generated from the test year modified to account for \$42,333 in rate case expenses that Rural expects to incur through December 31, 2014, within six months after the test year. Rural states that the number represents a portion of the \$127,000 rate case expense to be incurred through December 31, 2014, amortized over a three-year period. (Ex. 1 at 11; Ex. 11 at 9.)

##### **Staff**

86. Staff recommends the Commission approve recovery by Rural of a \$106,378 rate case expense incurred from July 1, 2014, to December 31, 2014, for services provided by Allison MacKenzie, Pavlakis, Wright and Fagan, LTD. ("Allison MacKenzie"), \$43,807, and Moss Adams LLP ("Moss Adams"), \$62,571. Staff finds that recovery of the rate case expenses by Rural is justified under the principles applicable to small water companies as outlined in NAC 703.22065. Staff states that, pursuant to NAC 703.22065, such public utilities may include costs incurred up to six months after the test period in their general rate applications. Staff indicates that, of \$127,000 in rate case expenses requested for recovery by Rural, \$106,378 have been incurred within six months of the test period - July 1, 2014, through December 31, 2014. Staff disagrees with Rural that Rural's request for recovery of \$127,000 in rate case expenses qualifies as an expected change in circumstance pursuant to NRS 704.110(4), which allows consideration of expenses occurring within 210 days of the filing of a rate application if such expenses are

reasonably known and measurable. Staff contends that, while Rural's recovery request was based, in part, on an estimate of probable costs that would be incurred, NRS 704.110(4) states that expected changes in circumstances may rely only secondarily on estimates and must be measurable or verifiable and easily and objectively calculated. Staff also points out that Rural failed to file a statement of updated revenue and expense data within 90 days after filing the Application, as it was required to do under NAC 703.2793. (Ex. 15 at 1-4.)

87. Staff recommends placing the rate case expenditures in rate base to allow Rural to recover the time value of money. Staff states that such treatment of the rate case expenditures is consistent with prior Commission orders. Staff recommends that \$70,210 be included in rate base after offset of the \$106,378 rate case expense by \$36,169 in accumulated deferred income taxes ("ADIT"). (Ex. 15 at 4-5.)

88. Staff recommends amortization of the rate case costs over a five-year period. Staff notes that SSPLRs do not have a rate case filing requirement; however, NRS 704.100 outlines five and seven-year periods for a SSPLR that chooses to change rates through an Advice Letter in certain circumstances. (Ex. 15 at 6.)

89. Staff recommends that the Commission order Rural to place any rate case expenses incurred after December 31, 2014, in a regulatory asset, Account 32.1500 Other Jurisdictional Assets-Net, for possible recovery in a future proceeding. Staff, once again, finds that, as a SSPLR, Rural is similarly situated to the small water companies the Commission regulates. Staff notes that, under NAC 703.22065(1)(b), small water companies must defer to a subsequent general rate application the actual expenses to prepare and present a general rate application that are incurred more than six months after the test period. Staff further recommends the Commission allow Rural to accrue carry charges on the balance of the

regulatory asset at the Commission-approved rate of return, net of ADIT, to compensate Rural for the time value of money. Staff states that the rate of return of 8.40 percent Rural used in the Application is appropriate to accrue such carry charges. (Ex. 15 at 7-8.)

90. Finally, Staff recommends the Commission order Rural to modify NUSF requests for funding for a period after June 1, 2020, and any future funding requests, by eliminating from the revenue requirement calculation the amount of rate case expenses and rate base approved by the Commission in this Docket to avoid over-recovery of rate case costs. Staff explains that, as recommended, the rate case expenses and the amount included in rate base remain in rates until Rural files another rate case with the rates from the current application going into effect on June 1, 2015, and the recommended five-year amortization period running through May 31, 2020. (Ex. 15 at 9.)

#### **Rural's Rebuttal**

91. Rural disagrees with Staff's proposal to amortize the rate case expense as of December 31, 2014, over a five-year period. Rural believes that the full amount of the rate case expense should be included and amortized over a three-year period.<sup>3</sup> Rural argues that such costs will be known and measurable prior to the conclusion of the proceeding. Rural points out that it will be required to make complex annual filings with the Commission to justify ongoing NUSF support. Rural argues that it should not be forced to amortize the cost of the rate case over five years and incur significant annual costs associated with the NUSF support filings. (Ex. 14 at 34-35.)

92. Rural points out that the Commission used a three-year amortization period for audit expenses Rural incurred in connection with Docket No. 03-10004. (Ex. 18 at 14.)

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<sup>3</sup> Rural states that it has incurred \$170,498 in rate case expenses through March 27, 2015. (Ex. 18 at 14.)

93. Rural agrees with Staff's proposal to establish a regulatory asset for the amount of the rate case expense not included in the test year and adding it to the rate base.<sup>4</sup> (Ex. 14 at 35.)

### **Commission Discussion and Findings**

94. The Commission agrees with Staff's recommendation of amortizing the rate case expense incurred through December 31, 2014, over a five-year period and establishing a regulatory asset for rate case expenses incurred after December 31, 2014. The Commission agrees with Staff, that absent SSPLR-specific regulations, standards applicable to small water companies offer appropriate guidance.

95. The Commission recognizes that the five-year amortization period provision of NRS 704.100 was not in effect at the time of Rural's overearnings case in 2005 where Rural was allowed three years to amortize the audit expenses.

96. The Commission finds that Rural's reliance on NRS 704.110(4) is problematic because, in light of the provision that requires that the expected changes in circumstances be measurable or verifiable and easily and objectively calculated, Rural's mere estimates fall short of the standard. In fact, Rural admitted that the full rate case costs cannot be known and measurable at the time of the filing. (Tr. at 272.)

### *b. Reallocation of Expenses from Regulated Services to Non-Regulated Services*

### **Parties' Positions**

#### **Rural**

97. Rural recorded \$614,281 Total Corporate Operations expense for Nevada for the test year. Out of that amount, Rural assigned \$352,473 to Nevada intrastate jurisdiction. (Ex. 14 at 144.)

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<sup>4</sup> Rural appears to have misunderstood Staff's proposal. Staff recommended establishing a regulatory asset for rate case expense costs incurred after December 31, 2014, not "the rate case expense not included in the test year."

**Staff**

98. Staff recommends that the Commission order Rural to remove \$133,000 from its total intrastate operating expenses because Rural incurred these expenses providing Internet service. Staff states that, in addition to voice services, Rural provides the following non-regulated services: Internet service through its own digital subscriber lines (“DSL”), cable television services, and Satellite-Internet service, which is called “Wildblue Internet” service. Staff states that Rural provides these services to end-users utilizing Rural’s facilities and personnel. Staff states that, with respect to the DSL service, Rural is both a regulated interstate service provider of DSL transmission and the consumer of that DSL transmission service as a retail internet service provider (“ISP”) (Ex. 23 at 18-19.)

99. Staff notes that Rural-as-ISP records only two items as its expenses: payments to Rural provider of DSL and payments to Rural’s ISP managing service company. Staff points out that no marketing, customer services, general support services, or corporate overhead, which are necessary to retail the Internet service, are recorded. Staff also observes a similar pattern in expense accounts for cable television service and Wildblue Internet service.<sup>5</sup> Staff acknowledges that Rural allocated some of the operating expenses of the non-regulated services as indirect cost assignments: 5 percent of General Support, Marketing, and Customer Services subaccounts were allocated to non-regulated services through “labor hours allocation factors” as well as 1 percent of Corporate Overhead subaccount. Upon receipt of “labor hours allocation factors” data from Rural, Staff discovered that, while some payroll hours were allocated to cable television service and Wildblue Internet service, no payroll hours were assigned to Nevada Internet service. Staff also contends that the assignment of less than 1 percent of Corporate

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<sup>5</sup> Staff does not seek to reallocate regulated costs improperly assigned to cable television and Wildblue Internet service.

Overhead expenses, \$5,730 out of \$614,281, to all non-regulated services defies common sense, especially, in light of the consumer sessions, where the discussions were mostly focused on broadband service. While Staff recognizes that wholesale DSL transmission service is interstate regulated service with some portion of the expenses recorded to interstate regulated expense accounts, Staff disagrees with Rural's accounting, which shows that only a portion of the \$5,730 allocated expense was needed to support retail Nevada Internet service. Staff notes that Nevada Internet service generated about \$300,000 in revenue for Rural whereas the local exchange and network services generated only about \$160,000. (Ex. 23 at 20-22.)

100. To remove the retail expenses of Internet service from regulated expense accounts, Staff proposes to estimate the costs that Rural would have avoided if the Internet service was provided by an independent ISP with Rural remaining just a wholesale DSL transmission service provider. Staff notes that the Commission visited this issue before in Docket Nos. 97-12046 and 97-12047 where it assigned 21 percent and 18.05 percent of the avoided costs rate to Sprint of Nevada ("Sprint") and Nevada Bell<sup>6</sup>, respectively, for divesting of retail operations and becoming strictly wholesale providers. Staff contends that such approach is reasonable with respect to Rural's Internet service and proposes applying the average of the two rates, 19.53 percent, to allocate Rural's expenses. Staff applies the 19.53 percent discount factor to Rural's total test year intrastate operating expenses of \$1,179,264 after subtracting \$65,415 in Staff's adjustment of Plant Non-Specific expenses and \$60,045 in depreciation expenses. Staff calculates that Rural would save \$205,808 in avoided costs should it become a wholesale provider with no retail operations. However, since Rural is still offering local network services to its retail customers, the avoided expenses of \$205,808 must be apportioned between the Internet retail service and other retail services, such as local exchange and network services.

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<sup>6</sup> Nevada Bell did not operate as a subsidiary of AT&T Inc. during the proceedings.

Staff chooses to apportion the avoided costs based on relative revenue amounts. With the Internet service generating \$297,042 in revenue and local network services bringing in \$161,939 in revenue, Staff calculates \$133,000 of avoided retail costs should be allocated to the Internet service. Staff points out that such share amount is conservative because, if other non-regulated services are included, the revenue share of the non-regulated service will increase from calculated 64.7 percent to 72 percent. (Ex. 23 at 23-25.)

101. Staff states that it has also conducted an additional test to see whether the \$133,000 reallocation is reasonable. Utilizing Rural's Cost Study presented in *Exhibit 4* of the Application, Staff concludes that, as an independent ISP, Rural would have over-earned without the reallocation and would receive a reasonable rate of return with the reallocation. (Ex. 23 at 25-26.)

#### **Rural's Rebuttal**

102. Rural explains that each of its employees allocates labor hours using time cards, which include typical accounts to which they code time. Rural states that the time cards include regulated and non-regulated activities accounts, expense and capital accounts and differentiate between state specific functions and functions that are to be spread. Rural further explains that the small amount of expenses allocated to Nevada Internet service is due to the self-maintaining nature of the Internet service, which requires minimal employee time for turning the service on and off and responding to service calls once the service has been set up. Rural states that, in Docket No. 03-10004, the Commission found that Rural's use of a non-regulated factor to allocate common activity costs to non-regulated operations in accordance with the FCC cost allocation rules and the Uniform System of Accounts was reasonable. (Ex. 18 at 19-20.)

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103. Rural disagrees with Staff's use of avoided cost methodology to allocate costs from the regulated operations, associated with the wholesale provision of DSL transmission service, to non-regulated Internet service. Rural argues that such an approach is inappropriate. Rural points out that the FCC has indicated that avoided costs are utilized to determine the discounted rate for wholesale services when those services are provided on an unbundled network element ("UNE") basis for retail use by a regulated telecommunications service provider. Rural states that DSL transmission service is not provided as an UNE for the retail provider to use as it sees fit but rather as a finished service provided under an interstate tariff. Rural further states that Rural as ISP is a Title I non-regulated information services provider, not a Title II regulated telecommunications provider. (Ex. 14 at 13-14.)

104. Rural also disagrees with Staff's application of the avoided costs methodology. First, Rural argues that Nevada Bell's and Sprint's avoided cost factors, on which Staff's 19.53 percent factor is based, were developed 17 years prior to the test year and should no longer be used by the carriers for whom the factors were developed, let alone representative of a much smaller rural carrier. Second, Rural contends that Staff mistakenly applied the avoided cost factor to all intrastate operating expenses while the Commission's orders in this matter clearly state that the avoided costs are only those costs that are directly or indirectly involved in the provision of the wholesale service. Rural states that, with the wholesale service here being DSL transmission, the costs are wholly regulated by the FCC and assigned to the interstate jurisdiction. Accordingly, Rural asserts that allocating costs from the intrastate operations to the non-regulated operations is inappropriate because any allocation to the non-regulated operations should come from the interstate operations. (Ex. 14 at 14.)

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105. Rural further argues that, even if an allocation of costs from the intrastate operations were appropriate, the avoided cost allocation factor should only be applied to those expenses that can truly be avoided with retail service divestment. Rural notes that the Commission has previously selected the following accounts as containing such expenses: Product Management, Sales, Product Advertising, Customer Services, Operator and Directory Assistance, General Support Expenses, Corporate Operations Expenses, and Uncollectible Revenue. Rural states that Staff applies the avoided costs allocation factor to all intrastate operating expenses, including plant specific (maintenance) and depreciation expenses, which are costs that cannot be avoided regardless of whether the service is provided on a wholesale or retail basis. Rural's application of the avoided cost factor to costs that would truly be avoided in the case of the divestiture yields \$60,892 allocation to the non-regulated Internet operations rather than \$133,000 calculated by Staff. (Ex. 14 at 14-15.)

#### **Commission Discussion and Findings**

106. The Commission agrees with Staff that Rural has failed to directly assign and allocate sufficient avoidable cost expense categories to its non-regulated DSL Internet service. While Rural's ISP servicing company NeoNova handles the network management, all overhead department costs are carried by Rural including initial contact with the customer. (Tr. at 274-75.)

107. In light of Rural's admission that its customer service representatives and technicians are involved in providing the DSL Internet service and that its employees use time cards to allocate labor hours, it is surprising not to find any labor hours allocated to the Internet expense account. (Ex. C-3, Attachments YO-6 at 14 and YO-7 at 12; Tr. at 274-75.)

108. Equally surprising is the absence of any indirect allocation of common activity costs to the Internet retail service. (Ex. 1 at 140-41; Tr. at 203-07.)

109. The Commission finds appropriate Staff's approach of applying the avoided cost allocation factor to all intrastate operating expenses. The Commission supports Staff's approach because the factors derived in the avoided cost studies for Nevada Bell and Sprint, Docket Nos. 97-12047 and 97-12046, already take into account expenses that cannot be avoided because of divesting the retail part of the business: depreciation and plant specific expenses. (Ex. 33 at 15-20; Ex. 34 at 8; *see also* Tr. at 268-71.)

110. Rural's rebuttal, which addresses the assignment of facilities and operating expense to interstate operations through the Part 64 Cost Study separations process and establishment of a rate for providing transmission service to an ISP providing DSL Internet service at retail, does not address the issue raised by Staff or addressed in the Commission's regulations addressing avoided cost studies. Staff is not challenging Rural's assertion that the FCC sets the price for wholesale *transmission* service to an ISP providing DSL Internet service at retail.

### **3) Rate Base Adjustment**

#### **Parties' Positions**

##### **Rural**

111. Rural calculates Nevada intrastate rate base at \$2,749,442, with \$735,780 of the amount as Telecom Plant Under Construction ("TPUC"). (Ex. 14 at 141.)

##### **Staff**

112. Staff recommends a rate base reduction of \$820,857, which will reduce Rural's rate base from \$2,911,961 proposed by Rural to \$2,091,104. (Ex. 19 at 13.)<sup>7</sup> The main

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<sup>7</sup> Staff's analysis is based on the data provided by Rural in Exhibits 1 and 2, Request for Confidential Treatment and Application and Amendment to the Application, respectively. Rural subsequently further changed the corrected data provided in Exhibit 2 by reducing Nevada intrastate plant under construction from \$898,300 to \$735,780, which in turn reduced rate base from \$2,911,962 to \$2,749,442 and AFUDC from \$5,053 to \$4,139. (Ex. 14 at 41, 141-42,

component of Staff's adjustment is the removal of \$898,300 TPUC from rate base. (Ex. 19 at 6.)<sup>8</sup> Staff's rationale for the adjustment is that TPUC is not yet "used and useful" to be included in the rate base. (Ex. 19 at 6.) Staff notes that the FCC recognizes three methods of allowing utilities the opportunity to earn a return on TPUC: Capitalization method, Rate Base method, and Revenue Requirement Offset method. (Ex. 19 at 7.) Staff states that it generally follows the Capitalization method where the TPUC is excluded from rate base with interest costs capitalized as an allowance for funds used during construction ("AFUDC") during the construction period and both accounts ultimately included in future rate base calculations. (Ex. 19 at 7-8.) Staff observes that Rural appears to be using the Revenue Requirement Offset method, which includes TPUC in rate base during the construction period and recognizes AFUDC as part of the construction cost. (Ex. 19 at 8.) Staff points out that Rural had the following ways to request recovery of the TPUC costs in this rate case but chose not to do so: (1) a certification filing within 180 days of the close of the test year and (2) Expected Changes in Circumstances filing under NRS 704.110(4).

### **Rural's Rebuttal**

113. Rural disagrees with Staff that the Commission does not generally allow plant under construction to be included in the rate base. Rural indicates that, in the last three rate cases filed by SSPLRs, plant under construction was allowed in rate base. Rural argues that its TPUC should be allowed in the rate base as well irrespective of the fact that Rural has a higher ratio of TPUC versus total plant than the other SSPLRs that recently filed rate cases. Rural quotes Staff's Data Request response as stating that Staff considered Sierra Pacific Power Company

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149.) The change in TPUC ultimately led Rural to reduce its requested revenue requirement and associated NUSF by \$17,661. (Ex. 14 at 41.)

<sup>8</sup> The \$898,300 TPUC adjustment amount is partially offset by rate case expense adjustments totaling \$77,443. (Ex. 19, Attach. RAP 2 at 2.)

d/b/a NV Energy ("Sierra") Dockets when it made the assertion that TPUC was not allowed in rate base for utilities similar to Rural. (Ex. 14 at 35-37.)

114. Rural asserts that, if the Commission applies the same TPUC standards that it did in Docket No. 03-10004, plant under construction should be included in Rural's rate base in this Docket. Rural quotes Commission's Compliance Order in Docket No. 03-10004 as stating, "[t]he Commission would consider allowing CWIP<sup>9</sup> in rate base if it is to be in service before the new rates are put in effect, however, RTC<sup>10</sup> could not give the Commission a completion date. Therefore, the Commission adopts Staff's adjustment to remove \$105,019 of CWIP from rate base." Rural states that the work orders comprising the plant under construction in the current proceeding are either already in service or nearly fully complete and will be put into service before the new rates are put into effect and Rural draws any funds from NUSF. (Ex. 14 at 37-38; Ex. 18 at 8-9.)

115. Rural draws parallels between the current Docket and Docket No. 01-7002, in which the Commission allowed CWIP in rate base for Humboldt Telephone Company ("Humboldt"). Rural quotes Staff as stating in Docket No. 03-10004 that the reason Humboldt was allowed to include CWIP in rate base was because it was under earning and because the construction project would be in service during the period NUSF would be paid to Humboldt. Rural further quotes Staff as stating that the Commission has generally required the applicant to show a financial need before allowing CWIP in rate base except for one case, where the plant was in-service before the rates were changed. Rural states that it is also under earning and that its CWIP will be in service when NUSF will be paid to Rural. (Ex. 18 at 10-11.)

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<sup>9</sup> Construction Work in Progress.

<sup>10</sup> Rural Telephone Company.

116. Rural speculates that, if the Commission is to consider Rural's CWIP in the context that it reviewed Sierra's CWIP in Docket Nos. 91-7079, 97-7080, and 91-7081, the Commission should approve the inclusion of Rural's CWIP in rate base. Rural quotes the Commission as stating that, with respect to Sierra's CWIP, the project under construction may be included in rate base to gradualize rate shock if visible construction is in progress. Rural draws parallels by pointing out that its TPUC has been seen by ratepayers, who are fully aware that the service from these fiber projects is forthcoming. (Ex. 14 at 38-39.)

117. Rural points out that all of the applicable Commission required forms for a rate change application that include rate base include plant under construction as a component of the rate base and no sections of the NAC or the NRS exclude plant under construction from rate base. Rural further asserts that, out of the three methods for addressing plant under construction identified by Staff, Rural is aware of only the Revenue Requirement Offset method being utilized for interstate ratemaking as Rural has done in this Docket. Rural disagrees with Staff's assertion that the Commission generally follows the Capitalization method because the Commission allowed for the inclusion of TPUC in rate base in the last three SSPLR rate case proceedings. (Ex. 14 at 39-40.)

#### **Commission Discussion and Findings**

118. The Commission finds that the removal of the \$735,780 TPUC account from rate base is appropriate. Rural could have demonstrated that the assets comprising TPUC account have become "used and useful" subsequent to closing of the test year; however, Rural chose to submit neither a certification filing within 180 days of the close of the test year nor an Expected Changes in Circumstances filing under NRS 704.110(4). (Tr. at 171-73.)

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119. The Commission disagrees with Rural's assertion that the Commission generally does not follow the Capitalization method. Rural bases the assertion on the premise that plant under construction was allowed in rate base in the latest three Dockets involving SSPLRs, Docket Nos. 13-04036, 13-06007, and 14-06002. The Commission finds, however, that the stipulations resolving all three dockets made no reference as to whether TPUC was allowed in rate base. Furthermore, with TPUC representing only a small fraction of rate base in all three Dockets, it is impossible to conclusively establish whether TPUC was in fact allowed in rate base. Thus, Rural's assertion hinges on a premise of questionable validity and, accordingly, cannot be relied upon as evidence.

120. On the other hand, Staff testified that, in numerous dockets involving electric and gas utilities, construction work in progress has not been allowed in rate base. Staff's statement supports its assertion that the Commission generally follows the Capitalization method. (Tr. at 174-75.)

121. Rural quotes the Commission's Order in Docket No. 03-10004 for the proposition that the Commission must allow TPUC in rate base because Rural's plant under construction will be in service before the new rates go into effect. However, the Commission merely indicated that the Commission would *consider* allowing TPUC in rate base if such condition were to exist. Under the circumstances in this Docket, the Commission is not inclined to allow the inclusion of CWIP in rate base even if it were to accept such standard. Rural cannot justify the \$1,470,388 amount it calculates as TPUC. First, the amount includes items that cannot possibly be plant under construction investments. Second, the amount of TPUC allocated to Idaho in Rural's testimony, \$266,022, does not match the schedule of investments allocated to Idaho provided in Exhibit C-1. Third, with TPUC being comprised of Broadband Initiative Project ("BIP") assets,

Rural cannot explain how six BIP projects totaling \$1,125,973 can be included in rate base whereas Rural's maximum possible investment under BIP is \$728,000. (Ex. C-1; Tr. at 27-40.)

122. The Commission finds Rural's considerations of rate shock avoidance voiced in Docket Nos. 91-7079, 97-7080, and 91-7081 inapplicable in this Docket because Rural's customers will carry only an incremental portion of the expenses associated with inclusion of the BIP investments in rate base.

#### **E. Rate Design and NUSF Draw**

##### **Parties' Positions**

##### **Rural**

123. Rural proposes to increase the basic residential rate to \$18.00 from \$14.00 to comply with the FCC's residential rate floor and to increase the basic business rate to \$32.00 from \$16.00. Rural contends that, with the proposed rate increases, it will be in compliance with NAC 704.68048 which requires that rates be set at levels "reasonably comparable to rates charged for similar services in urban areas ..." in order to qualify for the use of NUSF funds. (Ex. 1 at 15-16.)

124. Rural requests an annual withdrawal of \$531,873 for the NUSF. Rural states that, if the revenue shortfall reflected in its Application had to be borne entirely by its residential customers, it would result in an unreasonable increase and would put rates at levels that are no longer reasonably comparable to urban rates. (Ex. 1 at 16; Ex. 3 at 3.)

125. Rural contends that it currently meets the requirements for NUSF funding under NAC 704.68046 and NAC 704.68048 for the following reasons: it is a small-scale provider of last resort; its rates are geographically averaged; it participates in the federal Lifeline and Link Up programs and complies with Nevada Lifeline rules; its level of earning is below the rate of



return authorized by the Commission for SSPLRs; it has provided the necessary financial information in its Application; and, it is proposing that its intrastate access rates be increased to be in parity with interstate rates. (Ex. 1 at 15-16.)

126. Rural proposes to increase the rates for many of its custom calling features and to increase Intrastate Originating Switched Access rates to reflect a mirroring of its Interstate Originating Switched access rates and rate structure. (Ex. 2 at 56; Ex. 11 at 190.)

#### **Staff**

127. Staff recommends that the basic residential rate be set at \$22.00 per month. Staff explains that a request from the NUSF assumes that the rates necessary to satisfy the revenue requirement would adversely affect universal service within a service territory. Staff notes that Rural requests NUSF funding because otherwise its rates for local exchange and network services cannot be kept reasonably comparable to the rates charged for similar services in urban areas. Staff contends that a reasonable range of rates is established by considering the current rates of Rural, Nevada urban carriers, and available national averages for similar services. Staff asserts that a reasonable range for basic residential rates is \$20.00 to \$25.00 based on its analysis. (Ex. 21 at 2, 4, 7.)

128. Staff disagrees with Rural's proposed basic residential rate of \$18.00 and surmises that Rural based its proposal on the use of the FCC 2016 rate floor of \$18.00. Staff contends that the basic residential rates should be based on reasons other than just meeting the rate floor set by the FCC. Staff notes that the Commission has the jurisdiction for provisioning and rates for local exchange services, not the FCC. The rate floor established by the FCC is not a mandate nor is it a maximum allotted rate for basic residential service, and carriers will not be penalized for having rates above the current rate floor. (Ex. 21 at 6.)

129. Staff contends that the costs associated with providing service in rural areas are higher than providing service in urban areas. As such, the higher cost to serve in a rural area should result in rural rates being above the average urban rate. (Ex. 21 at 8.)

130. Staff recommends that the basic business charge be set at \$40.00 per month. Based on its analysis, Staff contends that a reasonable and comparable business rate would be in the range of \$35.00 to \$55.00. Staff contends that Rural's proposed rate of \$32.00 is too low to be considered reasonable or comparable to other business rates within the state and across the country. Staff states that rates for Rural's business customers have not changed for 33 years resulting in those customers underpaying for service for several decades. (Ex. 21 at 2, 9-10.)

131. Staff recommends that rates for the Local Network Services be set in accordance with Ex. 21 at CMZ-2. While Staff agrees with most of the modest rate increases proposed by Rural, it notes that most of the proposed rates increases are irrelevant given that they are for outdated services with no subscribers and will not produce any additional revenue. Staff contends that, because Rural is requesting a sizable NUSF withdrawal, it is necessary to further analyze the Local Network Services to ensure that all current rates meet the standard of "reasonably comparable." (Ex. 21 at 11.)

132. To evaluate the rates of Local Network Services, Staff used an analysis similar to what it used for establishing a reasonable range for residential and business basic rates. Based on this analysis, Staff states that Rural's proposed rates increases are still significantly below the average and should be increased to levels consistent with urban providers in Nevada. (Ex. 21 at 12.)

133. Staff recommends that the Commission grant an annual draw from the NUSF of no more than \$97,111, prorated based upon the rate effective date, for calendar year 2015. Staff

asserts that that the amount of NUSF funding needed by Rural is greatly reduced with Staff's rate design and with its adjustments to revenue requirement. Staff contends that the additional revenue generated by its rate design resolves a large portion of Rural's revenue short fall. Staff acknowledges that additional NUSF support may be needed if the Commission does not accept all of its proposed adjustments. (Ex. 22 at 2, 13 and 17.)

134. Staff recommends that Rural's proposal to set intrastate originating access rates to parity with its interstate rates be adopted. Staff notes that parity between Rural's originating access rates and its interstate rates is required by NAC 704.68048 to qualify for NUSF. (Ex. 21 at 13-14.)

135. Staff recommends that its proposed tariff additions for Dial One Metro and Off Premise Extension services be adopted. Staff states that the current tariff does not provide a definition, rate, or any information on Dial One Metro even though the service is included in AT&T's guidebook. To create transparency and consistency as well as the fact that Rural initially collects this charge, Staff recommends that the service be added to the Rural Tariff. Staff states that Off Premise Extension service is a service provided by Rural but is not included within its current tariff. Staff agrees with proposed tariff language provided by Rural and included in Ex. 21 at CMZ-9. (Ex. 21 at 15-17; CMZ-9.)

#### **Rural's Rebuttal**

136. Rural disagrees with Staff's analysis that resulted in a range of \$20.00 to \$25.00 for basic residential rates. Rural contends that an appropriate range of comparable urban rates is \$13.99 to \$20.75, which reflects the residential rates of AT&T and Central Telephone Company d/b/a CenturyLink ("CenturyLink") (Nevada's two urban telecommunications providers). Rural notes that the nationwide average, excluding state fees, is \$19.81. Rural argues that it is not

appropriate to compare it to AT&T because AT&T is not rate of return regulated. Unlike AT&T, Rural must file tariffs and has no flexibility to price below the tariffed rates. (Ex. 14 at 19.)

137. Rural disagrees with Staff's statement that a residential rate within the range of \$20.00 to \$25.00 takes Rural to the FCC's final stated 2017 rate floor. Based on the assumption that the highest possible local rate floor is \$20.00 (inclusive of state fees), Rural asserts that Staff's range will take Rural above the final stated 2017 rate floor through at least June 30, 2018. (Ex. 14 at 20.)

138. Rural disagrees with the principle used by Staff that high cost areas drive higher rates than urban areas. Rural contends that this principle does not reside anywhere in the NAC or in the FCC's rules. Rural alleges that this principle is "simply a belief held by Commission Staff." Rural acknowledges that, while rural areas drive a higher cost of service, rates would be higher but for subsidies such as the NUSF. (Ex. 14 at 21.)

139. Rural disagrees with Staff's assertion that rates that are higher than those charged by urban providers are reasonably comparable. Rural states that it is not aware of any requirement that SSPLRs charge rates that are higher than urban providers in Nevada in order to be deemed reasonably comparable. (Ex. 14 at 21.)

140. Rural disagrees with Staff's analysis that resulted in a range of reasonable rates of \$35.00 to \$55.00 for basic business rates. Rural contends that Staff's use of AT&T's \$80.00 business rate, as published in the online Guidebook, is inappropriate. Based on its own research, Rural asserts that this is not the rate being offered to customers in Nevada and that a reasonable rate for AT&T would be \$25.00. Based on its modification to Staff's analysis, Rural asserts that a reasonable range for a basic business rate would be \$25.37 to \$34.92. Again, Rural argues that

it is not appropriate to compare it to AT&T because AT&T is not rate of return regulated. (Ex. 14 at 23-25.)

141. Rural disagrees with Staff's proposal to increase the rates for Local Network Services and argues that Staff's proposal will likely result in reductions in demand for these services. Rural states that while it bundles some of these rates, it is not nearly as extensive as AT&T and CenturyLink. (Ex. 14 at 25-26.)

142. Rural argues that Staff's rate design proposal does not consider the realities of customers' willingness and ability to pay for these services at the increases proposed. Rural contends that Staff's proposed rates would drive customers to competitor wireless providers resulting in "mass" attrition. (Ex. 14 at 26; Ex. 18 at 18.)

143. Rural agrees with Staff's recommendations regarding additions to its tariff to include Off Premise Extension Service and Dial One Metro Service. (Ex. 18 at 22.)

### **Commission Discussion and Findings**

144. The Commission adopts Staff's rate design and agrees with the methodology employed by Staff to establish rates for Rural that are reasonably comparable to rates charged for similar services in urban areas. It appears to the Commission that Rural's rate design was based on its effort to comply with the FCC's residential rate floor rather than meeting the requirements for eligibility to receive funds from the NUSF. While the Commission agrees that designing rates to receive federal high cost support is important, it is not the primary reason for increasing basic rates in this Application. Rural requests a significant draw from the NUSF, but fails to adequately demonstrate through a meaningful analysis that its proposed rate design comports with the requirement of setting rates at levels "reasonably comparable to those charged in the

urban areas... “ (NAC 704.68048.) In fact, it appears that Rural’s analysis considered other SSPLRs rather than urban carriers. (Tr. at 16-22.)

145. In its rebuttal testimony, Rural attempts to conduct an analysis similar to what Staff provided to justify its rate design. Rural’s analysis is not persuasive because it seemingly relies on the fact that AT&T data should not be utilized in any analysis because it is not rate of return regulated – ignoring the fact that AT&T is an urban carrier. Rural also ignores the fact that Staff’s analysis developed a range of reasonable rates that does not solely rely on the inclusion of AT&T’s rates, but rather considers the CenturyLink rates as well as national averages.

146. Rural seems to ignore the fact that the Commission has the jurisdiction for setting rates for local exchange carriers – not the FCC. The Commission agrees with Staff that the rate floor established by the FCC is not a mandate nor is it a maximum rate. Rural’s criticism of Staff’s contention that high cost areas drive higher rates than urban areas is misplaced. The Commission agrees with Rural that this “principle” does not reside in the NAC or in FCC rules. However, Staff’s “principle” is based on a ratemaking fundamental of setting just and reasonable rates present throughout NRS Chapter 704 and utilized by the Commission in setting rates for all utilities. (*See e.g.*, NRS 704.001, NRS 704.110, and NRS 704.120.) The Commission agrees with Rural that there is not a requirement that SSPLRs charge rates that are higher than urban providers to be deemed reasonably comparable. Following Rural’s logic, there is also no prohibition of setting rates above the urban rate floor – especially in light of the fact that Rural’s customers will be receiving a substantial subsidy.

147. Finally, Rural’s argument that Staff’s rate design will cause “mass” attrition to a wireless competitor is not persuasive. The Commission is not convinced that the rate design

proposed by Staff will result in mass attrition. By its own admission, Rural states that wireless service in the areas it serves is of poor quality (Tr. at 10-11.) Moreover, as stated in NRS 704.6873 and NAC 704.68043, the purpose of the NUSF is to give access to telephone service at affordable rates to all Nevadans, not to give Rural a price advantage over its wireless competitors. The Commission recognizes that captive customers will be paying higher rates, but they will also be receiving the benefit of NUSF funds that are collected from all telecommunications ratepayers in Nevada. The Commission finds that the adopted rate design strikes the appropriate balance between Rural's customers and Nevada's telecommunications ratepayers who are subsidizing them. Ultimately, Rural's customers will continue to pay rates that are "reasonably comparable to those charged in the urban areas."

148. Based on Staff's rate design and by setting Rural's intrastate originating access rates to parity with its interstate rate, as proposed, the Commission finds that Rural meets the requirements of NAC 704.68046 and NAC 704.68048 and is eligible to withdraw funds from the NUSF. Rural's specific withdrawal amount shall be established by utilizing the revenue requirement and rate design adopted in this Order. Rural shall include this calculation in a compliance filing to be verified by Staff.

THEREFORE, it is ORDERED that:

1. The amended Application of Rural Telephone Company for authority to establish its annual revenue requirement for telephone service rates; establish new charges, fees, and rules for telephone customers; establish draw from the Nevada Universal Service Fund; reflect changes in the cost of capital; modify depreciation rates; and for other relief properly related thereto is GRANTED AS MODIFIED by this Order.

///

**Compliances**

2. Within three business days of this Order, Rural Telephone Company SHALL FILE with the Commission a set of revised tariff pages reflecting the new rates.
3. Within three business days of this Order, Rural Telephone Company SHALL FILE with the Commission the new remaining life, depreciation rate, and depreciation expense calculation to reflect the modifications approved in this Order for Staff verification before the retail rates go into effect.
4. Within three business days, Rural Telephone Company SHALL FILE with the Commission the specific withdrawal amount from the Nevada Universal Service Fund, which shall be established by utilizing the revenue requirement and rate design adopted in this Order.

**Directives**

5. The Regulatory Operations Staff is directed to review the above-referenced revised tariff sheets for consistency with this Order. The revised tariff sheets shall become effective upon the completion of the Regulatory Operations Staff's review.
6. Rural Telephone Company SHALL CARRY FORWARD the remaining salvage values for Account No. 2110.60 – General Purpose Computers and Account No. 2210.20 – Digital Switching Equipment.
7. Rural Telephone Company SHALL SUBMIT to the Commission market information and fully distributed cost for all affiliate transactions in its subsequent Nevada Universal Service Fund requests to be eligible to include expenses associated with such transactions for purposes of Nevada Universal Service Fund support.
8. Rural Telephone Company SHALL EXCLUDE expenses disallowed in this Order from its subsequent Nevada Universal Service Fund requests.

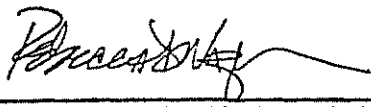


9. Rural SHALL MODIFY its Nevada Universal Service Fund requests for funding for a period after June 1, 2020, and any future funding requests, by eliminating from the revenue requirement calculation the amount of rate case expenses and rate base approved by the Commission in this Docket.


10. The Commission may correct errors that have occurred in the drafting or issuance of this Order without further proceedings.

By the Commission,

  
ALAINA BURTENSHAW, Chairman

  
REBECCA D. WAGNER, Commissioner and  
Presiding Officer

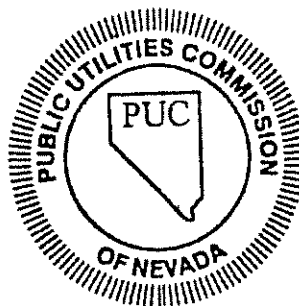
  
DAVID NOBLE, Commissioner

Attest:   
TRISHA OSBORNE,  
Assistant Commission Secretary

Dated: Carson City, Nevada

7-22-15

(SEAL)



Case No. 1509001817

Dept. No. JH

REC'D & FILED

2015 AUG 26 AM 11:39

SUSAN MERRIWETHER  
CLERK

BY C. COOPER

In the First Judicial District Court of the State of Nevada  
in and for Carson City

RURAL TELEPHONE COMPANY,

Petitioner,

SUMMONS

vs.

PUBLIC UTILITIES COMMISSION OF  
NEVADA, an administrative agency of  
the State of Nevada,

Respondent.

THE STATE OF NEVADA SENDS GREETINGS TO THE ABOVE-NAMED DEFENDANT:

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING  
HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT: A civil Complaint has been filed by the plaintiffs against you.

1. If you wish to defend this lawsuit, you must, within 20 days after this Summons is served on you, exclusive of the day of service, file with this Court a written pleading in response to this Complaint.

2. Unless you respond, your default will be entered upon application of the plaintiffs, and this Court may enter a judgment against you for the relief demanded in the Complaint\*, which could result in the taking of money or property or the relief requested in the Complaint.

3. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. You are required to serve your response upon plaintiffs' attorney, whose address is:

KAREN A. PETERSON, Esq.  
ALLISON MacKENZIE, LTD.  
402 North Division Street  
Carson City, NV 89703  
(775) 687-0202

*Susan Meriwether*

Clerk of Court

By [Signature]

Deputy Clerk

Date: August 19, 2015

\*Note - When service by publication, insert a brief statement of the object of the action. See Rule 4.

RETURN OF SERVICE ON REVERSE SIDE

JA0064

STATE OF \_\_\_\_\_ )  
 : ss.  
COUNTY OF \_\_\_\_\_ )

**AFFIDAVIT OF SERVICE**  
**(For General Use)**

\_\_\_\_\_, declares under penalty of perjury:  
That affiant is, and was on the day when he served the within Summons, over 18 years of age, and not a party to, nor interested in, the within action; that the affiant received the Summons on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and personally served the same upon \_\_\_\_\_, the within named defendant, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by delivering to the said defendant, personally, in \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, a copy of the Summons attached to a copy of the Complaint.  
I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. \_\_\_\_\_  
Signature of person making service

STATE OF NEVADA )  
 : ss.  
CARSON CITY )

**NEVADA SHERIFF'S RETURN**  
**(For Use of Sheriff of Carson City)**

I hereby certify and return that I received the within Summons on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and personally served the same upon \_\_\_\_\_, the within named defendant, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by delivering to the said defendant, personally, in Carson City, State of Nevada, a copy of the Summons attached to a copy of the Complaint.

\_\_\_\_\_  
Sheriff of Carson City, Nevada

Date: \_\_\_\_\_, 20\_\_\_\_ By \_\_\_\_\_ Deputy

STATE OF NEVADA )  
 : ss.  
COUNTY OF \_\_\_\_\_ )

**AFFIDAVIT OF MAILING**  
**(For Use When Service is by Publication and Mailing)**

\_\_\_\_\_, declares under penalty of perjury:  
That affiant is, and was when the herein described mailing took place, over 18 years of age, and not a party to, nor interested in, the within action; that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, affiant deposited in the Post Office at \_\_\_\_\_, Nevada, a copy of the within Summons attached to a copy of the Complaint, enclosed in a sealed envelope upon which first class postage was fully prepaid, addressed to \_\_\_\_\_, the within named defendant, at \_\_\_\_\_; that there is a regular communication by mail between the place of mailing and the place so addressed.  
I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**NOTE -** If service is made in any manner permitted by Rule 4 other than personally upon the defendant, or is made outside the United States, a special affidavit or return must be made.4819-9271-6327, v. 1

First Judicial District Court

RURAL TELEPHONE COMPANY

Plaintiff,

Case No:15OC001881B

vs.

PUBLIC UTILITIES COMMISSION OF  
NEVADA

Defendant

**DECLARATION OF SERVICE**

STATE OF NEVADA  
COUNTY OF WASHOE

ss.:



JOHN LEE, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the **SUMMONS; PETITION FOR JUDICIAL REVIEW**, on 08/20/2015 and served the same on 08/20/2015 at 1:30 PM by delivering and leaving a copy with:

**CAROLYN TANNER, GENERAL COUNSEL** who stated he/she is authorized to accept service on behalf of **PUBLIC UTILITIES COMMISSION OF NEVADA**, an administrative agency of the State of Nevada.

Service address: 1150 EAST WILLIAMS ST PUBLIC UTILITIES COMMISSION OF NEVADA  
CARSON CITY, NV 89701

A description of **CAROLYN TANNER** is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	Red	37	5'9	145
Other Features:					

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Sworn to and subscribed before me on

08/21/2015

by JOHN LEE



**JOHNNY LAZETICH**  
Notary Public - State of Nevada  
Appointment Recorded in Washoe County  
No: 04-88542-2 - Expires January 28, 2016

Notary Public

JOHN LEE

Registration#: R-004475

Reno/Carson Messenger Service, Inc. (Lic# 322)

185 Martin Street

Reno, NV 89509

775.322.2424

Atty File#: 08455-13



\*67357\*

First Judicial District Court

RURAL TELEPHONE COMPANY

Plaintiff,

Case No:15OC001881B

vs.

PUBLIC UTILITIES COMMISSION OF  
NEVADA

Defendant

DECLARATION OF SERVICE

STATE OF NEVADA  
COUNTY OF WASHOE

ss.:



JOHN LEE, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the **SUMMONS; PETITION FOR JUDICIAL REVIEW**, on 08/20/2015 and served the same on 08/20/2015 at 1:30 PM by delivering and leaving a copy with:

**CARLYN TANNER, GENERAL COUNSEL ACCEPTED ON BEHALF OF STAFF COUNSEL** who stated he/she is authorized to accept service on behalf of **PUBLIC UTILITIES COMMISSION OF NEVADA**, an administrative agency of the State of Nevada.

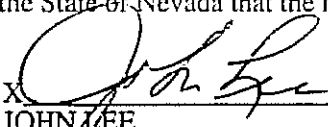
Service address: 1150 EAST WILLIAMS ST PUBLIC UTILITIES COMMISSION OF NEVADA  
CARSON CITY, NV 89701

A description of **CARLYN TANNER** is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	Red	37	5'9	145
Other Features:					

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Sworn to and subscribed before me on  
08/21/2015  
by JOHN LEE

  
JOHN LEE

Notary Public



JOHNN LAZETICH  
Notary Public - State of Nevada  
Appointment Recorded in Washoe County  
NO: 04-89542-2 - Expires January 28, 2018

Registration#: R-004475  
Reno/Carson Messenger Service, Inc. (Lic# 322)  
185 Martin Street  
Reno, NV 89509  
775.322.2424  
Atty File#: 08455-13



\*67356\*

KAREN A. PETERSON, ESQ.  
Nevada State Bar No. 0366  
ALLISON MacKENZIE, LTD.  
402 North Division Street  
Carson City, NV 89703  
Telephone: (775) 687-0202  
Facsimile: (775) 882-7918  
Email: [kpeterson@allisonmackenzie.com](mailto:kpeterson@allisonmackenzie.com)

Attorneys for Petitioner,  
RURAL TELEPHONE COMPANY

REC'D & FILED  
2015 SEP 18 AM 11:53  
SUSAN HERRINWETTER  
CLERK  
BY V. Alegria  
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

RURAL TELEPHONE COMPANY,

Petitioner,

vs.

PUBLIC UTILITIES COMMISSION OF  
NEVADA, an administrative agency of the  
State of Nevada,

Respondent.

Case No. 15 OC 00188 1B

Dept. No. II

MOTION TO SEAL RECORDS

RURAL TELEPHONE COMPANY ("Rural"), by and through its attorneys,  
ALLISON MacKENZIE, LTD., hereby moves the Court pursuant to Rule 3 of the Nevada Rules for  
Sealing and Redacting Court Records ("SRCR") for an order sealing the confidential portions of the  
administrative record to be filed by Respondent, Public Utilities Commission of Nevada  
("Commission") in this case. This motion is based upon the following Memorandum of Points and  
Authorities as well as all and papers and pleadings on file in this matter.<sup>1</sup>

///

///

<sup>1</sup> Commission counsel asked that Rural file this motion and indicated it would not oppose the motion.

## MEMORANDUM OF POINTS AND AUTHORITIES

SRCR 3(1) provides that any person may request that the court seal or redact court records for a case that is subject to the SRCR rules by filing a written motion to seal or redact a court record. SRCR 3(2) provides that when a motion to seal records has been filed, the information to be sealed remains confidential for a reasonable period of time until the court rules on the motion. SRCR 3(4) provides that the court may order the court files or records, or any part thereof, in a civil action to be sealed provided the court makes and enters written findings that the specific sealing is justified by identified compelling privacy or safety interests that outweigh the public interest in access to the court record. Pursuant to SRCR 3(4)(a), (g) and (h), the findings that the public interest in privacy or safety interests that outweigh the public interest in open court records can be based upon findings that the sealing is permitted or required by federal or state law, the sealing is necessary to protect property interests such as trade secrets or the sealing is justified or required by another identified compelling circumstance.

Rural is an Idaho corporation qualified and doing business as a foreign corporation under the laws of the State of Nevada. Rural is a public utility as defined in NRS Chapter 704, subject to the jurisdiction of the Commission. Rural is authorized to provide local exchange telephone service in portions of rural Washoe County and Elko County, Nevada. This case involves Rural's petition for judicial review seeking review of the Commission's Modified Order issued on July 22, 2015 in Docket No. 14-11006. As provided in SRCR Rule 1(4), the SRCR rules apply to all court records in civil actions. There is no other specific statute for the sealing or redacting of records in an administrative review case.

Rural's petition for judicial review was served on the Commission on August 20, 2015. Pursuant to NRS 703.373(5), the Commission is to transmit to the Court a certified copy of the entire record of the proceeding under review, including a transcript of the evidence resulting in the final decision of the Commission, unless the record is shortened by stipulation of the parties to the proceeding.<sup>2</sup>

---

<sup>2</sup> The parties will be submitting a stipulation to limit the record in this proceeding but confidential exhibits and confidential transcripts are relevant to the Court's review and will be included in the administrative record submitted to the Court.

1 The administrative record of the proceedings in Docket No. 14-11006 included  
2 confidential exhibits and confidential transcripts that are not open to public inspection pursuant to  
3 NRS 703.190(2), NRS 703.196 and NAC 703.5274(5). As part of the investigation of Rural's  
4 Application filed with the Commission designated as Docket No. 14-11006, Rural provided  
5 confidential and proprietary information to the Regulatory Operations Staff of the Commission  
6 ("Staff"). That information was provided to Staff pursuant to a protective agreement to maintain its  
7 confidentiality as provided in NAC 703.5274(8). Staff used some of this confidential and  
8 proprietary information in its testimony and exhibits offered into evidence at the hearing in Docket  
9 No. 14-11006, which is part of the administrative record to be submitted to the Court on judicial  
10 review in this case. In addition, the Commission ordered Rural to submit certain information, which  
11 was admitted by the Commission as evidence in Docket No. 14-11006 and is part of the  
12 administrative record in this case. Pursuant to the Commission's procedures, the confidential  
13 exhibits are not available to the public. See NRS 703.196(2) and (3), NAC 703.5274(5). When  
14 witnesses were examined regarding confidential information, the Commission's rules of practice and  
15 procedure provide that portions of the hearing be closed to the public. See NRS 703.196(2) and (3),  
16 NAC 703.5274(7). The confidential transcripts for the closed portions of the hearing are not  
17 available to the public and are part of the administrative record in this case. No party asked that the  
18 Commission order this information be released as public information nor did the Commission order  
19 this information be released as public information. The Commission accorded confidential treatment  
20 to these exhibits and transcripts. In fact, the Commission is required by law and its rules of practice  
21 and procedure to maintain the confidentiality of the information. See NRS 703.190(2), NRS 703.196  
22 and NAC 703.5274(5). The Commission relied upon some of this confidential information in its  
23 Modified Order issued on July 22, 2015. Accordingly, because the administrative record is required  
24 to be submitted to the Court pursuant to NRS 703.373(5) and some of the administrative record is  
25 confidential pursuant to the Commission's rules of practice, NRS 703.190(2) and NRS 703.196 and  
26 not available to the public, the confidential portions of the administrative record should be sealed  
27 pursuant to the procedures provided in SRCR 3. See *Civil Rights for Seniors v. Admin. Office of the*  
28 *Courts*, 129 Nev. Adv. Op. 80, 313 P.3d 216 (2013).



1 In general, the information Rural claimed as confidential included specific employee  
2 wage and benefit information; private bank records afforded confidential treatment under federal  
3 law; information not relevant or subject to the Commission's jurisdiction; personal and private  
4 financial or business records and information of affiliates which are not public utilities and not  
5 subject to the Commission's jurisdiction; and Rural's labor costs, the infrastructure and equipment  
6 Rural chooses to employ in it exchanges, its investment strategy and how and where it interconnects  
7 with other telecommunication carriers. Rural was required to provide justification to the  
8 Commission after the hearing for the confidential treatment of the confidential exhibits admitted into  
9 evidence at the hearing.<sup>3</sup> The Commission did not thereafter order any of the confidential exhibits or  
10 confidential transcripts be made public. Accordingly, that information must be kept under seal. *See*  
11 NRS 703.196.

12 Rural respectfully requests that the Court grant its motion and enter its order for the  
13 sealing of those portions of the administrative record in Docket No. 14-11006 consisting of the  
14 confidential exhibits and confidential transcripts maintained as confidential by the Commission  
15 pursuant to NRS 703.190, NRS 703.196 and NAC 703.5274. Pursuant to SRCR 3(2), upon the  
16 filing of this motion, the confidential exhibits and confidential transcripts remain confidential for a  
17 reasonable period of time until the Court rules on this motion. A proposed Order Sealing Records is  
18 attached hereto as **Exhibit "1"**.

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<sup>3</sup> Rural did agree to the release of certain exhibits claimed as confidential in submitting its post hearing justification to the Commission.

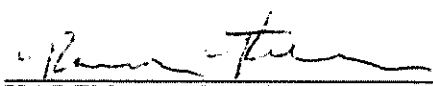
ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

AFFIRMATION

The undersigned does hereby affirm that the preceding document does not contain the Social Security number of any person.

DATED this 18<sup>th</sup> day of September, 2015.

ALLISON MacKENZIE, LTD.  
402 North Division Street  
Carson City, NV 89703-4168

By:   
KAREN A. PETERSON, ESQ.  
Nevada State Bar No. 0366  
Attorneys for Petitioner,  
RURAL TELEPHONE COMPANY

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- \_\_\_\_\_ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- X Hand-delivery
- \_\_\_\_\_ Facsimile
- \_\_\_\_\_ Federal Express, UPS, or other overnight delivery
- \_\_\_\_\_ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

Carolyn Tanner, Esq.  
Roman Borisov, Esq.  
Public Utilities Commission of Nevada  
1150 East William Street  
Carson City, NV 89701

DATED this 18<sup>th</sup> day of September, 2015.

  
NANCY FONTENOT

INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description of Exhibit</u>	<u>No. of Pages (Excluding tab)</u>
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"1"	[Proposed] Order Sealing Records	2
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4833-4939-3448, v. 1

**EXHIBIT “1”**

**EXHIBIT “1”**

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

RURAL TELEPHONE COMPANY,

Petitioner,

vs.

PUBLIC UTILITIES COMMISSION OF  
NEVADA, an administrative agency of the  
State of Nevada,

Respondent.

Case No. 15 OC 00188 1B

Dept. No. II

**ORDER SEALING RECORDS**

The Court having reviewed the Motion to Seal Records filed by RURAL TELEPHONE COMPANY, the response of the PUBLIC UTILITIES COMMISSION OF NEVADA not opposing the motion, and this matter having been fully reviewed by the Court, which finds that the requirements of Rule 3 of the Nevada Rules for Sealing and Redacting Court Records ("SRCR") are satisfied, and good cause appearing,

The Court finds that the public interest in privacy outweighs the public interest in access to open court records based upon NRS 703.190, NRS 703.196 and NAC 703.5274, which require that certain confidential exhibits and confidential transcripts not be made available to the public, that the PUBLIC UTILITIES COMMISSION OF NEVADA has maintained the confidentiality of the confidential exhibits and confidential transcripts in Docket No. 14-11006 and its records and file and that such confidentiality should continue to be maintained in this civil action.

1            THEREFORE IT IS HEREBY ORDERED that the confidential exhibits and  
2 confidential transcripts of the administrative record in Docket No. 14-11006 submitted by the  
3 PUBLIC UTILITIES COMMISSION OF NEVADA be sealed and the Clerk of the Court is hereby  
4 ordered to comply with SRCR 3 for maintaining sealed court records and shall prevent access to the  
5 sealed court records until further order of this Court.

6            DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

7  
8  
9            JAMES E. WILSON, JR.  
DISTRICT COURT JUDGE

10  
11 Submitted by:

12 **ALLISON MacKENZIE, LTD.**  
13 402 North Division Street  
Carson City, NV 89703  
Telephone: (775) 687-0202  
14 Facsimile: (775) 882-7918

15  
16 By: 

17 KAREN A. PETERSON, ESQ.  
Nevada State Bar No. 0366

18 Attorneys for Petitioner,  
19 RURAL TELEPHONE COMPANY

20 4831-8201-4504, v. 1  
21  
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ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

1 Carolyn Tanner, Esq., NV Bar No. 5520  
2 Roman Borisov, Esq., NV Bar No. 12705  
3 1150 E. William Street  
4 Carson City, NV 89701-3109  
5 Tel: (775) 684-6152  
6 Fax (775) 684-6188

REC'D & FILED  
2015 SEP 18 PM 2:50  
SUSAN MERRIWETHER  
CLERK  
BY \_\_\_\_\_ DEPUTY

7 Attorneys for: *Public Utilities Commission of Nevada*

8 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

9 **IN AND FOR CARSON CITY**

10 Rural Telephone Company,

11 Petitioner,

12 vs.

13 Public Utilities Commission of Nevada, an  
14 Administrative agency of the State of Nevada,  
15 Public Utilities Commission of Nevada,

16 Respondent.

CASE NO. 15-OC-001881B

DEPT. II

17 **NOTICE OF NON-OPPOSITION**

18 COMES NOW, Respondent Public Utilities Commission of Nevada ("Commission"), by and  
19 through the undersigned counsel, and hereby files this Notice of Non-Opposition.  
20  
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1 On September 18, 2015, Petitioner Rural Telephone Company ("Rural") filed Motion to Seal  
2 Records with this Court and served such Motion upon the Commission. Pursuant to FJDCR 15.2, the  
3 Commission has 10 days to file an opposition to Rural's Motion. This Notice is to advise the Court  
4 that the Commission does not oppose Rural's Motion to Seal Records and will not be filing an  
5 opposition.

6  
7 DATED this 18 day of September, 2015.

8 Respectfully Submitted,

9  
10 by: 

11 ROMAN BORISOV, ESQ.  
12 Nevada Bar No. 12705  
13 1150 East William Street  
14 Carson City, NV 89701  
15 Tel: 775-684-6152  
16 Fax: 775-684-6186  
17 rborisov@puc.nv.gov  
18 *Attorneys for Respondent, the Public*  
19 *Utilities Commission of Nevada*  
20  
21  
22  
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Public Utilities Commission of Nevada  
1150 E. William Street  
Carson City, NV 89701-3109

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Public Utilities Commission of Nevada, and that on this date I have served copies of the foregoing NOTICE OF NON-OPPOSITION in Case No. 15 OC 001881B by delivering to the Nevada Department of General Services true and correct copies thereof, in properly addressed envelopes, for hand delivery in Carson City, Nevada, to the following:

Karen A. Peterson, Esq.  
Allison MacKenzie, Ltd.  
402 North Division Street  
Carson City, NV 89703

DATED this 18<sup>th</sup> day of September, 2015.

  
ELIZABETH AVRAM