

# A highly consequential decision from the Public Utilities Commission

By Lucas Foletta — McDonald Carano

No legal or policy area in Nevada has seen more consequential change in the last three years than energy. Since 2014, a wave of large customers (1 MW or more) has exited NV Energy's system searching for lower prices and greener energy. Nevada's net metering policy was substantially restricted through legislative and regulatory action, and then opened back up again in the same forums. And we have seen a ballot question providing for competition in Nevada's retail electric markets pass with overwhelming support (approximately 72 percent of the popular vote). It's no surprise that the Legislature has taken action to spur the growth of the electric storage and electric vehicle markets, modernize Nevada's regulatory framework to account for developments in distribution level technology and provide for more renewable energy in Nevada. The vigorous nature of the legal and policy landscape reflects the importance of energy, as energy constitutes a major cost for business and is a product many businesses want to be able to better manage from an economic and resource perspective.

Nothing reflects this more than the impact of NRS 704B on the current climate. Established in 2001 in response to the Western Energy Crisis, the provisions of NRS 704B provide a framework for large commercial customers in Nevada to exit NV Energy's (monopoly) system and procure energy from providers of their choice. Until 2014, few customers availed themselves of the process. However, with competitive electric markets producing lower prices than NV Energy, along with the option to incorporate higher percentages of renewable energy, leaving NV Energy's system has become a more appealing option. Northern Nevada companies like Switch, Caesars and Peppermill have all gone through the process, and more are likely on the horizon. Imperative to each of these entities was to what extent it would be required to pay an impact fee associated with their departure. The law authorizes the commission to impose such a fee to hold remaining ratepayers harmless for the financial effects of a customer departing. These fees can be considerable, however, the attractive economics of market-based purchases of electricity can make the endeavor seem worthwhile.

As Northern Nevada has grown, a key question has arisen with real economic development implications. Specifically, should a company new to Nevada be required to pay an impact fee at all? After all, if a company has never been a customer, why should it have to pay a fee for departing — a fee that has generally been viewed as a departing customer's share of the electric system resources built to serve the departing customer's needs?

Google, as part of its consideration as to whether to build a major data center facility in Northern Nevada, asked the commission to address this very issue, and the commission provided important guidance that, at least in theory, is applicable to other potential customers in our region. Indeed, the commission seems to have established a protocol that new customers can follow to obtain zero impact fees for taking electric services from independent power providers.

In articulating this protocol, the commission reached three consequential conclusions. First, the commission said there is no minimum duration of time required for an end use customer to receive bundled service from NV Energy in order to be eligible to exit the utility's system pursuant to NRS 704B. Prior to this, one reading of NRS 704B included a requirement that to exit NV Energy's system, an entity would have to be a customer for some minimum period of time. In rejecting this notion, the commission went further and said potential customers do not actually have to receive bundled service to be eligible to apply for 704B; instead, a potential customer need only file and execute an application for service with NV Energy. The customer can then cancel the service the next day and maintain its eligibility for 704B.

Second, the commission said that a new customer can satisfy 704B's load requirements (1 MW or more) by providing reliable documentation that it will consume 8,760,000 kWh of energy in the 12 months that follow departure. Acceptable forms of evidence include electric load information for similar facilities, detailed annual load projections, electrical single line drawings showing transmission and feeder sizes and all connected loads, transmission-related studies associated with the planned facility and evidence regarding projected loads at each point of delivery.

Third, the commission said that a 704B application can occur at any time during the development of a construction project—before, during or after construction, assuming the other requirements are met.

On the whole, the commission indicated that if Google followed this protocol, it would qualify for a zero impact fee, because the entity would not be planned for, and because it would only be establishing a paper relationship with the utility. While the commission stressed that its decision did not create a precedent, as no commission decision does, based on the plain terms of the order, it appears a new customer could follow the protocol outlined by the commission and qualify for a zero impact fee.

As our region grows, this may become a highly consequential decision from the commission. Increasingly, commercial and industrial customers look to take advantage of market pricing as well as the flexibility of market resources, including the integration of more renewable energy into their resource mix. Indeed, energy prices and the availability of reasonably priced renewable energy are often cited by major entities considering moving to Northern Nevada as a key decision point. Hopefully, the commission's decision will provide a meaningful path forward for companies seeking to bring new jobs and resources to the state without being subject to unnecessary hurdles to relocation. ●

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