

12-05003

Public Utilities Commission of Nevada

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BCP

OFFICE OF ATTORNEY GENERAL
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CATHERINE CORTEZ MASTO
Attorney General



ERIC WITKOSKI
Consumer Advocate
Chief Deputy Attorney General

December 11, 2012

Donna Skau
Commission Secretary
1150 E. William
Carson City, NV 89701

Re: Docket No. 12-05003

Dear Ms. Skau:

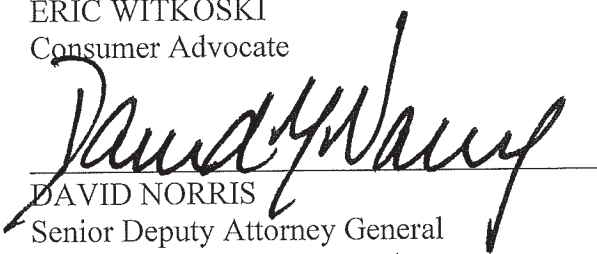
Please accept for filing the Bureau of Consumer Protection's Petition for Reconsideration in the above-referenced docket.

Should you have any questions regarding this filing, please contact me at (775) 684-1198.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

ERIC WITKOSKI
Consumer Advocate


DAVID NORRIS
Senior Deputy Attorney General
Bureau of Consumer Protection
100 N. Carson Street
Carson City, NV 89701

DN:ml
cc: Parties of Record

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

In re Joint Application of Sierra Pacific
Power Company d/b/a NV Energy and
Nevada Power Company d/b/a NV Energy
for authority to establish and implement three
separate trial non-standard metering option
riders pursuant to the Order issued in
Docket No. 11-10007.

Docket No. 12-05003

PETITION FOR RECONSIDERATION OR REHEARING, OR BOTH

COMES NOW, the Office of Attorney General's Bureau of Consumer Protection ("BCP"), and files this Petition for reconsideration or rehearing, or both, of the Order issued by the Public Utilities Commission of Nevada ("Commission") in the above-referenced proceeding on November 27, 2012. This Petition is filed pursuant to the provisions of Nevada Administrative Code ("NAC") 703.801.

INTRODUCTION

The BCP seeks reconsideration or rehearing, or both, of the Commission's November 27, 2012 Order issued in this docket. The BCP is cognizant of the fact that the Commission has wrestled with the smart meter issue and the various options and fees associated with the smart meter program for quite some time. It is the BCP's belief that all parties recognize it would be helpful to have a final decision issued expeditiously so all involved can know the rules and costs, if any, associated with the program as soon as possible, so customers can make informed choices.

Consequently, the BCP files for reconsideration of the Commission's Order because that appears to be the quickest way for the Commission to resolve and clarify the remaining issues surrounding the smart meter opt-out options. However, the BCP also files for rehearing, in case the Commission determines that the alternatives it may ultimately want to choose are best addressed in a rehearing proceeding.

In this petition, the BCP requests that there be no charge for opt-out at this time, recognizing that the Commission has rejected this argument on two occasions on various

1 policy grounds. Thus, if the Commission is going to require a monthly charge, the BCP
2 requests the Commission clarify its order on reconsideration by determining that the monthly
3 charge is not \$10.55 for northern Nevada and \$9.22 for southern Nevada. Rather, the rates
4 are \$8.04 for the north and \$8.14 for the south.

5 Further, the BCP requests that the Commission find on reconsideration that the analog
6 meter will be used as the non-standard meter for the Opt-out Program. The Commission
7 should also clarify that the up-front charge, if there is going to be one, will not be \$107.66 for
8 northern Nevada and will not be \$98.75 for southern Nevada. Instead, upfront charges should
9 be eliminated because almost all of the upfront costs will not occur when existing analog
10 meters are used for opt-out. In support of the foregoing requests, the BCP's arguments are
11 set forth below.

12 I.

13 STANDARD FOR RECONSIDERATION

14 Pursuant to NAC 703.801(1)-(3):

15 1. A petition for reconsideration must specifically:

16 (a) Identify each portion of the challenged order which the
17 petitioner deems to be unlawful, unreasonable or based on
18 erroneous conclusions of law or mistaken facts; and

19 (b) Cite those portions of the record, the law or the rules of the
20 Commission which support the allegations in the petition. The
21 petition may not contain additional evidentiary matter or require the
22 submission or taking of evidence.

23 2. A petition for rehearing must:

24 (a) Allege that an order is in error because of an incomplete or
25 inaccurate record.

26 (b) Specifically set forth the nature and purpose of any
27 additional evidence to be introduced.

28 (c) Show that such evidence is not merely cumulative and could
not have been introduced at the hearing.

II.

ARGUMENT IN SUPPORT OF
PETITION FOR RECONSIDERATION AND CLARIFICATION

A. No charge for opt-out

As the Commission is well aware, the BCP presented testimony in this docket and comments in the prior investigative proceeding, Docket No. 11-10007, and argued that there should be no charge for opting out of the Advanced Service Delivery ("ASD") program, including no charge for meter reading, because the cost of all meter reading is already included in the current general rates. The Commission rejected BCP's position on this issue in both proceedings. Nonetheless, the BCP raises it again to ensure the Commission has fully considered the issues and arguments. In paragraph 39 of its Order, the Commission stated:

The Commission notes that it is fully aware that the costs associated with the ASD Program are not in NV Energy's existing customer rates; rather, current rates reflect the analog system costs. To the extent any savings are realized when the ASD Program is completed, such savings will be evaluated at the same time as the ASD Program costs and both will be reflected in rates. When the Commission authorized the ASD Program, the Commission expressly determined that the operational savings would accrue to NV Energy in the interim. The purpose of that ruling was to provide an incentive to NV Energy to reduce costs. Placing the costs of the Trial Opt-out Program, with relatively few participants, on NV Energy will erode the benefits from the ASD program that are expected to ultimately flow to the general body of ratepayers.

The BCP seeks reconsideration of paragraph 39 and the finding that there should be a charge for the cost of opt-out at this time. We recognize the Commission is concerned that the benefits of the ASD program, including the potential for lower costs, could be reduced if a charge for opting out is not imposed now. However, BCP asks the Commission to consider whether the Order is unreasonable because it imposes a new charge on certain customers for a service for which they are actually already paying.

1 **B. If the Commission is going to require an opt-out fee, it should reconsider and**
2 **clarify the monthly rate is not \$10.66 for Sierra and \$9.22 for Nevada Power.**

3 If the Commission denies the BCP's request to charge no opt-out fee at this time, the
4 BCP nonetheless seeks reconsideration and clarification of the Commission's Order so the
5 Commission can clarify the customer recurring charge for opting out is \$8.14 for Nevada
6 Power Company and \$8.04 for Sierra Pacific Power Company. The BCP seeks this
7 reconsideration and clarification because the Commission's Order with respect to these rates
8 is not consistent with its discussion of the rates at the agenda and some findings in the Order.

9 At the agenda on November 27, 2012, the Order was presented by the Presiding
10 Officer. As shown by a review of the tape of the agenda, the Presiding Officer stated:

11 "... the estimated recurring monthly charges are \$8.14 for Nevada Power
12 Company and \$8.04 for Sierra Pacific Electric customers and no monthly fee for
13 Sierra Pacific Power Company gas customers."

14 Further, following the agenda meeting, the Commission issued a press release that stated opt-
15 out rates would be \$8.14 for Nevada Power and \$8.04 for Sierra Pacific. See *Attachment A,*
16 *November 27, 2012 Press Release.*

17 However, there is a discussion in the Order that appears to conflict with the
18 Commission's discussion at the agenda and a paragraph in the Order. At paragraph 20 of the
19 Order, the Commission discusses Regulatory Operations Staff's ("Staff's") proposal to use a
20 non-communicating meter and NV Energy's comments on that proposal. The Order states:

21 "NV Energy asserts, however, that accepting Staff's non-
22 communicating digital meter recommendation will change the cost
23 of the NSMO. (Exhibit 16 at 45.) The monthly charge for NPC
24 customers will increase by \$1.98 to \$9.22 and the monthly charge
25 for SPPC's electric service will decrease by \$0.14 to \$10.66 and
26 SPPC's gas service will decrease by \$1.20 to \$0.00."

27 However, later in the Order, the Commission modified its earlier finding by accepting one of
28 BCP's adjustments and stating, at paragraph 78:

1 "The Commission finds that NV Energy's methodologies are
2 appropriate and the majority of its inputs are reasonable. The
3 Commission, however, grants BCP's adjustment to exclude the
incremental costs associated with the supervisory labor in the Trial
Opt-out Program rates."

4 The BCP requests that the Commission clarify and find that the opt-out rates that were
5 intended are the lower rates of \$8.14 for Nevada Power and \$8.04 for Sierra Pacific Power
6 and no charge for Sierra Gas customers. This clarification needs to be made to properly set
7 the rates as discussed at the agenda and make them consistent with the Commission's Order
8 and press release issued following the decision.

9 A party may disagree with the amount of BCP's adjustment for the supervisory labor
10 that reduces the rates, but the BCP believes the lower rates are a reasonable way to reflect
11 the reduction for the supervisory costs. Further, the BCP notes, as it stated in testimony:
12

13 "There is uncertainty about many aspects of the opt-out service.
14 Until this service option is provided for a while no party can be
15 certain about customer demand, the mix of metropolitan versus
16 rural customers, duration of service or the amount of Company
resources required to support the service. Consequently, the initial
pricing will be based on estimates." Ex. 10 at. 2.

17 Thus, in this docket, the Commission is making reasonable estimates of the costs and all
18 parties recognized they are dealing with estimates. Moreover, even if parties disagree on
19 whether the lower rates capture the full costs of the opt-out, it is still a reasonable estimate and
20 sends a price signal to those customers who may choose to opt out that is consistent with the
21 Commission's objective. *See Commission Order paragraph 37.*

22 Thus, the lower rates of \$8.14 and \$8.04 offer a better outcome for the consumer who
23 desires to opt out and at the same time provide compensation to the Company. In addition,
24 both utilities are currently compensated in large part for the costs associated with the reading
25 of such meters. Thus, the Commission should clarify that the lower rates are the rates it
26 intended to approve in the Order. The rates which are now set in the Order are possibly based
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1 on an erroneous conclusion of law or mistaken facts, thus rendering this issue ripe for
2 reconsideration.

3 **C. Based on the record, the Commission should reconsider and allow the analog**
4 **meter to be the non-standard metering option ("NSMO") without rehearing.**

5 Allowing opt-out customers to be served by analog meters will address concerns that
6 many commenters expressed to the Commission about health, security and pricing. For many
7 commenters the uncertainty about the health and security effects of drive-by or even non-
8 communicating digital meters is significant. By allowing the continued use of analog meters
9 the Commission can easily resolve these concerns

10 Further, the Presiding Officer in this docket took administrative notice of the prior related
11 investigative case – *Investigation regarding NV Energy's Advanced Service Delivery Meter*
12 *Program a/k/a Smart Meter and its Implementation, Docket No. 11-10007. Tr., pg. 139, ln. 12.*
13 In the investigative docket, the Company presented the analog meter as the first option for a
14 customer choosing to opt-out of the ASD program. See *Docket No. 11-10007, Order, at p. 21.*
15 At that time, the Commission considered the analog meter, but the Commission determined,
16 "... the digital meter that is capable of drive-by reading is the alternative that NV Energy should
17 offer to customers who demand a non-standard meter." *Order at par. 6.* The Commission
18 believed that this was the best and lowest cost option for those opting out customers.
19

20 However, as the Commission is aware in this docket, the Staff expressed concerns
21 about the communicating digital meter as the opt-out meter. Staff expressed concerns about
22 the lack of encryption and the near constant transmission of data associated with the digital
23 meter. Staff noted these weaknesses were essentially the issues the Commission was trying
24 to address for those customers who choose an opt-out meter. Thus, Staff believed the digital
25 meter was not carrying out the Commission's intent in respect to implementation of the Trial
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1 Opt-out Program. *Docket No. 12-05003, at paragraph 13.* Staff recommended, "a non-
2 communicating electric digital meter be used for the Trial Opt-out Program." *Order at. 16.*

3 What is evident from Staff's testimony is that it was recommending the non-
4 communicating meter to carry out the intent of the Commission--to provide a meter for those
5 customers that had concerns about signals being transmitted and data storage – all the
6 attributes of an analog meter. Consequently, the BCP does not believe the Commission
7 needs to hold a full rehearing to just hear the general attributes of an analog meter, i.e., that an
8 analog meter must be read manually, and does not transmit or store data. Nor is a rehearing
9 necessary to determine the analog meter has all the common attributes that Staff was trying to
10 achieve with the non-communicating digital meter. The Commission should not have a
11 rehearing just to hear what are known facts for the Commission and the utility.
12

13 There is ample evidence in the record to support allowing the analog meter to be used
14 for the Opt-out Program. As stated above, the analog meter was proposed in the investigative
15 docket, but was rejected. The Commission has taken notice of previous dockets, including the
16 investigatory docket, and the Commission is aware of the general capabilities of an analog
17 meter, which was the standard technology used for the last 50 years or more. Consequently,
18 based on all the information the Commission has in this docket and the common knowledge
19 that the Commission has acquired through its experience and based on its knowledge of the
20 industry, the Commission should not have to hold a rehearing to take evidence on the basic
21 characteristics of an analog meter. Rehearing is simply not necessary. On reconsideration,
22 the Commission should issue a modified final order which adopts the analog meter as the
23 meter for the Opt-out Program.
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1 **D. The Commission does not need to hold a rehearing to determine the cost**
2 **difference between the analog meter and the digital meter adopted in the first**
3 **decision.**

4 If the Commission is going to authorize NV Energy to charge a monthly rate for the opt-
5 out customers, the Commission does not need to hold a rehearing regarding the cost
6 differential between the analog meter and the digital meter recommended by Staff. As the
7 Commission is aware, Staff testified about the recurring cost differential between a
8 communicating digital meter and a non-communicating digital meter and contended that there
9 is not a significant difference. As the Commission found:

10 Staff believes that the use of a non-communicating digital meter will
11 likely result in little cost difference (or savings) as opposed to
12 performing drive-by meter readings. Staff states that it is likely that
13 participants in this program will be scattered throughout NV
14 Energy's service territory, and the majority of time a meter reader
15 will spend obtaining meter reads from customers choosing the
16 NSMO will be in travel time to and from the office. This will be the
17 same regardless of whether the meter is capable of being read by
18 driving by the meter location slowly and/or if the meter reader has
19 to stop and manually walk-up to the digital meter and record the
20 information. *Docket No. 12-05003 Order at page 9.*

21 The Order goes on to state in paragraph 17:

22 Staff further testifies that the handheld devices used to perform the
23 drive-by readings require some level of operator involvement and
24 stopping of the meter reading vehicle. The current procedure
25 involves stopping the vehicle in front of the customer's house and
26 waving the handheld device outside of the window in order to
27 obtain a signal being transmitted from the NSMO. Once the
28 signal is obtained by the handheld device, the meter reader must
start the process of uploading the meter information by pressing
one of the buttons on the handheld device. *Id.*

Thus, based on the record and testimony by Staff, the price difference between the
communicating meter and the non-communicating meter is "little." The recurring cost
comparison between the non-communicating meter and the analog meter should be
essentially the same since neither meter can be read remotely or store data. The
Commission can adopt the analog meter as part of a modified final order on reconsideration

and need not hold a rehearing on the issue.

E. The Commission should reconsider and eliminate the up-front fee of \$107.66 for northern Nevada and lower the fee of \$98.75 for southern Nevada.

The one-time up-front fees can be eliminated to reflect the cost reductions inherent in the continued use of analog meters. Upfront charges need not include costs for a technician to install a different meter for opt-out service. The Commission may also consider that the future cost of reinstalling a smart meter need not be recovered upfront, because for customers who have retained their analog meter, a smart meter will not have been installed in the first place.

The existing record includes cost information that can be used to identify the up-front costs that would apply to use of analog meters for opt-out service. Here are the upfront cost components from Exhibit Walsh Rebuttal-1 pages 3 and 5 of 8:

| | SPPC | NPC | |
|--|-----------|-----------|--------------------|
| Non-Standard Meter Installation Costs | \$54.68 | \$49.92 | [eliminate] |
| Reinstallation of Standard Smart Meter | \$54.68 | \$49.92 | [eliminate] |
| Credit for standard planned enroute installation | \$(23.40) | \$(19.99) | [eliminate] |
| Customer Support and application processing | \$20.44 | \$17.64 | |
| Customer Communications | \$ 1.26 | \$ 1.26 | |

If existing analog meters are used for opt-out, then the first three cost elements would no longer be applicable. The only upfront cost items that remain are the last two cost elements: Customer Support and Application Processing and the Customer Communications. BCP

1 suggests that these costs should be recovered over time via recurring rates,¹ or by a very
2 small upfront charge, if necessary.

3 **F. If the Commission determines that rehearing is necessary to grant the relief**
4 **requested above, then the BCP requests rehearing.**

5 As stated above, the BCP believes the Commission can grant the relief the BCP seeks
6 by reconsidering its Order and making the respective changes and clarifications as part of a
7 Modified Final Order. The information needed to make these changes and clarifications is
8 already in the record. The Commission can apply its own regulatory knowledge to the case
9 and make the necessary findings on reconsideration that are requested above. With such an
10 approach, the matters in this case, which have been pending for quite some time, can be
11 resolved in fairly short-order, bringing certainty and relief to consumers as well as the
12 Company.

13 However, if the Commission believes rehearing is required for the relief sought, the
14 BCP makes the request that the Commission rehear the issue regarding the choice of the non-
15 standard meter. On rehearing, the Commission should entertain evidence regarding the
16 continued use of analog meters and, if necessary, any rates to be charged with the analog
17 meter option. Presentation of evidence regarding the analog meter meets the criteria of NAC
18 703.801(2)(a), because use of the analog meter as the non-standard meter was not a choice
19 the Commission initially gave as an option for this case, even though the characteristics of
20 analog meters were discussed in the earlier investigative docket.
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27 ¹ Recurring rates would no longer need to recover the cost of an alternative meter such as a new non-
28 communicating digital meter. Consequently, the recurring rate should recover Customer support, application
processing and customer communications costs, in addition to the other recurring costs.

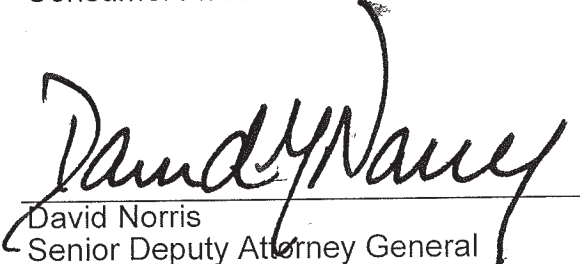
1 Thus, parties did not present the analog meter as an initial option in testimony in this
2 proceeding. As stated above, the BCP believes the matters outstanding and requested in
3 this petition can be granted on reconsideration. If the Commission does not agree, then the
4 BCP requests rehearing.

5 Respectfully submitted this 11th day of December 2012.

6 CATHERINE CORTEZ MASTO
7 Attorney General

8 ERIC WITKOSKI
9 Consumer Advocate

10
11 By:


12 David Norris
13 Senior Deputy Attorney General
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ATTACHMENT A



BRIAN SANDOVAL
Governor

STATE OF NEVADA
PUBLIC UTILITIES COMMISSION

ALAINA BURTENSHAW
Chairman

REBECCA WAGNER
Commissioner

DAVID NOBLE
Commissioner

CRYSTAL JACKSON
Executive Director

FOR IMMEDIATE RELEASE:
Date: Nov. 27, 2012

Contact: Peter Kostas,
Public Information Officer, (775) 684-6118

Public Utilities Commission approves trial smart meter opt-out program

Carson City, Nev. – The Public Utilities Commission of Nevada today approved a trial smart meter opt-out program.

The decision allows consumers to receive a non-communicating digital meter instead of a smart meter. In addition, the commission adjusted NV Energy's original opt-out proposal and approved lower rates for a one-time installation fee and recurring monthly charges for the alternative meter.

A non-communicating digital meter requires a manual reading once a month. Smart meters transmit data wirelessly in intervals throughout the day. The commission said the non-communicating digital meter better addresses customer concerns associated with smart meters, radio transmissions and the collection of interval data.

In Southern Nevada, the upfront installation fee is \$98.75 for electric meters, with a recurring monthly charge of \$8.14. In Northern Nevada, installation cost for electric meters is \$107.66. The extra monthly charge is \$8.04. Northern Nevada natural gas customers opting out of a smart meter will pay a one-time fee of \$6.08. There is no ongoing extra charge for natural gas customers.

For additional information about the trial opt-out program, visit the PUCN's website at puc.nv.gov. A Trial Opt-out Program link will be available later this week.

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<http://puc.nv.gov>

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CERTIFICATE OF SERVICE

Docket No. 12-05003

I certify that I am an employee of the Attorney General's Bureau of Consumer Protection and that on this day I have served the foregoing document upon all parties of record in this proceeding by emailing or mailing a true copy thereof, properly addressed with postage prepaid or forwarded as indicated below to:

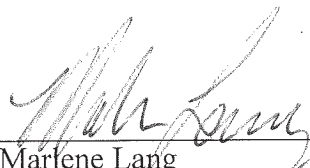
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Dated: December 11, 2012.


Marlene Lang