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April 14, 2014

Mr. George Taylor, Esq.
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Office of the Attorney General
Open Meeting Law Division
100 North Carson Street
Carson City, NV 89701

Via email: gtaylor@ag.nv.gov
ctanner@puc.nv.gov

Re: OML File No.: 14-008

Dear Mr. Taylor,

I am in receipt of Mrs. Tanner's response to my complaint regarding the above referenced filing.

I found quite a few of her 'responses' to be either factually untrue or overtly misleading.

Please consider this letter my official reply to her letter dated March 31, 2014, mailed on April 2, 2014.

I am not going to present any further federal ADA citation references, as I stand by the formerly filed ones, this is exclusively to refute her 'deceptive' responses.

Page 1.

- Yes, there is no culpability or response required by any of the Commissioners, for this particular issue.
- The 'crux' as she stated, is in fact true, as far as my assertions of the commission not reading submissions. The best proof I can provide is that the commissioners apparently don't pay attention to public filings, is that they didn't even read one of the 'filings' in a docket item they were to vote on during an agenda meeting, memorialized thru their attached audio file Exhibit Audio 1. This agenda meeting was held on August 14, 2013, #18-13,whereby Commissioner Burtenshaw stated that these relevant filings for agenda item, 2B, were just recently accepted for filing, as she 'just' checked the 'daily filing report'. I have 'never' encountered while at any presentation to the Commission, what I had to say, was taken at face value and impacted a pending agenda item [minutes 3:58-11:59]. As they clearly admitted that the comments 'that were made' assisted in the pending docket to be converted to a 'contested case' [13:28-15:42]. As I 'only' received these filings literally as I was walking out the door to attend the meeting. If I had not be able to appear and comment these erroneous tariffs would have been accepted. Therefore, if I 'followed' their suggestion to 'file' a comment and have it

entered into the docket, it would have been entered after the voting and not be heard to affect this into converting them into three contested cases. (Right after this meeting I met with Commissioner Burtenshaw, Shelley Cassidy and another member of the public, whereby, the Commissioner actually 'thanked me' for presenting what I did during the meeting, aka catching the discrepancies in the proposed tariffs).

- Ask any commenter if they believe that their comments were in fact read and there would be a unanimous response of 'no'.
- I am thoroughly convinced that my initial 'official' filing as a commenter, during the first smart meter docket was never read, as it consisted of five volumes and was well over 1,200 pages.
- Yes, I represent three, either non-profit or advocacy groups, as such, each of those are entitled to present, and the 'allowance' to comment is not the point of this complaint. It is strictly on whether I was denied my right to appear with an accommodation and comment in person as I have 'established' such presence, as Mrs. Tanner clearly stated.

Page 2 –Factual history-reply

- Mrs. Tanner is wrong predicated on her chronology of this accommodation request. The phone call to Breanne Potter was done at 3:24 pm, on March 12, 2014, the call was a duration of 5.16 minutes, Exhibit A. This is a screen shot of the telephone record that shows I did not call the day prior to the meeting, to be held on March 14, 2014. Apparently, Mrs. Tanner is confused that the date of her email to me, is the date I made this request.
- I clearly told both Breanne (verbally) and in writing told Mrs. Tanner it was a 'fibro flare', as it was very clearly stated in my initial response to Mrs. Tanner's email, *"What makes you determine that this was a request for an 'unspecified illness? When I asked Brianne, I said it was due to a fibro flair. Fibro is FAR from non-chronic, short term, and it is classified as a disability, as it effects life activities, let me also add, that upon chemical exposures that the PUC graciously accommodates is one of the 'triggers' for a fibro flair in my case"*, which she intentionally ignored and also selectively neglected to mention in her response. I could give a 'possible' pass to Breanne about her recollection of the full disclosure regarding 'fibro flare', but, not for Mrs. Tanner. As she was informed in writing and still is in denial, as verified by her response negating the reference.
- NRS Chapter 241 reference is a non-sequitur. As I fully delineated in my complaint that since both the state and PUC receive federal funding, they are required to adhere to federal law not state statutes. The only time an exception to this is made, is if the state law is more 'protective' than federal, which NRS Chapter 241, still would have no merit, nor is it applicable to ADA Title II and Section 504 accommodations. Federal law supersedes state law.
- Mrs. Tanner in her initial email clearly stated "non-chronic", *"I have been informed that you are seeking an ADA accommodation for tomorrow's PUCN Agenda meeting due to an unspecified illness. Please be advised that conditions of short term, nonchronic nature are generally not covered by the ADA."* That was her 'personal/professional" basis to deny my request on her 'diagnosis'.
- Yes, Mrs. Tanner is correct that neither herself or anyone else at the commission is qualified to diagnosis any medical condition. Yet, she freely made the 'non-chronic' diagnosis and ignored the written notification about fibro being protected under the ADA.

- Mrs. Tanner is gravely mistaken about me using the 'agenda' filing alternative, as referenced with her agenda document filing exhibit she annexed to her response. As the way it was 'presented' and entered, I had to physically be there to have it submitted as an exhibit. One would extrapolate and expect a season legal professional to verify their 'allegations' in their response and not leave the preverbal door open to expose their deflection of salient facts and evidence. I never stated that items filed are not entered into any relevant docket or agenda meeting, I stated that they are not 'read'. That was an in person appearance to the commission and that email was entered as an 'exhibit' at that hearing, agenda #17-13. If Mrs. Tanner had in fact put in the time to listen to the audio recording of this agenda, she would have discovered during a very rudimentary and sophomoric due diligence effort, that I was there in person and 'clearly' stated that the email was to be entered into the record. Exhibit Audio 2. This is at 3:51-6:21 of their archived audio. There is absolutely nothing in writing that explains or verifies, that this email as she is presenting it, was 'filed' by me outside of being physically there and addressing the commission. As I 'never' file anything without a caption, comments, exhibits etc., unless it is in conjunction with my physical presence and verbal presentation to the commission, to be incorporated into that particular docket/meeting. This is what Mrs. Tanner is trying to imply, that I just filed it as an 'alternative' way to comment, therefore, I availed myself of their 'option' to 'file a response' and didn't warrant an accommodation as I requested, when in fact I was physically present and presented to the commission. For further verification, there are records of numerous exhibits filed by me right after I appear and requested said exhibits to be incorporated into the record, every time I wanted something entered as an exhibit, it was during my comments to the commission, with video/audio confirming said notification/request. Also, these in person exhibits are memorialized in even consumer sessions or other opportunities that the public is invited to 'appear' before the commission, along with filings submitted as an actual 'commenter', as she alluded to them being a part of the record and micro-filed when necessary. Additionally, the 'time stamp', shows it was most likely filed by a PUC employee, who I handed off the exhibit to, right after the meeting. As the audio is 33:57 minutes in length, and the file stamp shows 10:18 a.m., of the same date, July 25, 2013. The meeting was scheduled for 9:30 a.m. I 'never' 'pop in' to just drop off a non-explained exhibit, nor was this filed via the PUC's electronic filing system, as there is no electronic acceptance cover sheet, just her chronic deflection of the salient facts. There are only three ways, that I am aware of, that the public is able to get something entered into a docket: 1). Filed electronically under the relevant docket, whereby you are automatically given an electronic submission email receipt and there is a PUC coversheet on all electronically filed documents, with date, time and who submitted it; 2). Drop it off at the front desk and have the PUC do the actual filing; 3). Have it entered after presenting to the commission. Items such as a request to be notified of filings are a 'form' that is required and as far as I know they are not entered into any docket. Therefore, these at times, were either electronically submitted or dropped off by me, thusly, that is in no way to be 'perceived' as a 'filing/appearance' alternative, as they are not comments, only the request to be placed on either a service list or mail list for notifications, that are required to be 'renewed' every six months.

- Mrs. Tanner is making a 'medical observation predicated on her statement "*Of note, despite the fact that Ms De Fazio's writing ability does not seem to be diminished by her condition…"* Now, Mrs. Tanner is versed on the capabilities/limitations of my cognitive abilities? That she is qualified to determine, if in fact, these are my original writings or submissions/presentations being reviewed/edited by someone else? Nor the extensive time it takes for these 'writings' to be produced. Mrs. Tanner has never met me in person, only via videoconferencing when we were both in attendance, as she admitted in her response, is she now practicing 'telemedicine'? I do appreciate the left handed complement she made regarding my writings.
- The public has never been notified that their comments can be 'read into the record'. It appears that only when an issue is brought forward are these 'options' made public.
- Mrs. Tanner is over-reaching by trying to equate a 'standard' agenda meeting with the smart meter dockets. Yes, this particular issue did fill the rooms to capacity. Yes, at consumer sessions, they are most of the times 'filled to capacity'. I have yet to see any of these '*lengthy, crowded and contentious'* claims for agenda meetings. Ever since the PUC opened their dockets for the smart meters, Buffet buyout, rate cases, if there are 2-3 members of the public at an agenda meeting it's a lot. As these agenda meetings are held during 'normal' working hours and very few people are able to take time off to attend. The main exemption was the smart meter fiasco, that the public felt taking time off of their jobs was necessary to fight this deployment. Most of the time it is either a representative of the BCP, an attorney representing a utility, a named party to a referenced agenda docket item. There are more people at these agenda meeting associated with the PUC than the public. Again, not relevant and misleading analogy. Not to negate the fact, that Mrs. Tanner has only taken her position in August, no first-hand experience/knowledge on the 'smart meter' public 'attendance capacity' reference.

Argument-reply

- Predicated on her assertion *"discretion to determine whether the use of an electronic device will interfere with the conduct of their meeting, and, presumably, the power to forbid such a device's use in appropriate circumstances'.* How are the hearing impaired segment suppose to participate if there are no electronic devices, unless during a meeting there is a sign language interpreter present? As the 'live audio' is discriminatory to the hearing impaired from 'listening' to the proceedings, especially if they are homebound. They need electronic communicative devices. That would clearly confirm that certain segments of the disabled population are allowed 'exclusions' under this, while others are discriminated against. It is unlawful to pick and chose which disabled citizens are granted accommodations. I wonder if the PUC has the ability to create Braille handouts that are placed in each meeting room during a meeting?
- The fact remains, the accommodation request is already incorporated into their meetings and available at their ' chosen discretion/discrimination?
- Telephonic participation would not be disruptive, as each telephonic device has a 'mute' button, therefore, only when the meeting is open to comments, would the public be allowed to comment and heard by the commission. Additionally, they can 'require' that those who want to use this accommodation be 'pre-approved'.

- The reference to Cold Springs et al, shows that 'technical' compliance is 'fluid' and the 'spirit' was compromised. There is nothing that has 'ever' been presented that the public must physically appear in person to address the commission, when public comments are offered.
- Mrs. Tanner has again referenced the erroneous date to try and justify her actions. Mrs. Tanner's involvement was the day before on March 13th, my request as explained above was two days prior to the meeting being held on March 14th and was with Breanne Potter. Mrs. Tanner was brought in after the call and that does not negate the fact, that I followed the PUC's own 'notification' to contact the PUC two days prior for accommodations, which was complied with, predicated on the time verification of Exhibit A.
- Mrs. Tanner is semi-correct regarding utilizing requests for accommodations. As my 'standard' accommodation request, is an email generated by the PUC to those on the service list on a relevant docket, to avoid wearing fragrances. I 'previously' didn't force this accommodation request for agenda meetings, consumer sessions etc.
- I clearly referenced in my complaint that the commission is 'not required' to have discussions with the public. Nor did I expect to interact with the commission during the agenda in question. It was intended to have it on their 'audio record' or video tape, in case it was necessary down the road to prove that the commission was made aware of x,y,z., or as explained above, comments made that impacted a commission decision.
- The issue at hand is the accessibility to be a participant and not be excluded over disability accessibility issues.

Response-

Mrs. Tanner is trying to portray/convey that the PUC has 'graciously and without reservation' accommodated my environmentally mediated disability. The PUC was trying to be 'benevolent' and that this 'email notification' action was a magnanimous gesture on their part. The PUC is required to provide this type of accommodation 'notification, as it is an 'acceptable' and is a federally followed protocol. To wit: *1). US Access Board "Fragrance-Free Policy-It is recommended that a fragrance-free policy include prohibition of fragrance-emitting devices (FEDS) and sprays; use of fragrance-free maintenance, laundry, paper and other products; restrictions on perfume, cologne, and other scented personal care products used by employees, visitors, and other occupants; and prohibitions on use of potpourri and burning incense and scented candles. An important first step is educating staff and others about the need for and benefits of reducing or eliminating the use of fragranced products, 2). ACCESS BOARD MEETING POLICY, On July 26, 2000, the Access Board adopted the following policy: Federal Register notices announcing Board meetings will include the statement that: "Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants".*

Lawsuits have been filed and damages awarded over this very 'common' failure to accommodate*. 1). City of Detroit was sued and forced to pay and institute a fragrance free policy on certain floors of their buildings (McBride v City of Detroit); 2). In 2005, Detroit was the site for a private lawsuit between a DJ, Erin Weber, and a local radio station involving perfume. As in the McBride case, Weber complained about a coworker's perfume, got no relief, then sued and won—a $10.6 million verdict. The award was later knocked down to $814,000.*

I have been civil and respectful when asking for accommodations that I am entitled to. I have no problem being forced to elevate my discrimination to have it legally mandated. Precedents have been made and I have no problem with turning this into a media nightmare to make sure that no other disabled person is subjected to what I have had to endure.

It's obvious that Mrs. Tanner has expertise in certain areas of law, but, she is now venturing into my 'arena of comfort' and I would enthusiastically look forward to 'educating' her on what she is required to do, sans her 'smoke and mirror' defense, along with the State of Nevada.

Mrs. Tanner is presenting erroneous 'rebuttals', bringing in issues that are not applicable to an agenda meeting. Versus a 'highly contested' issue that has a request for commenters, various opportunities for the 'filed' requests to be a commenter, who are then allowed to address the commission. As the commission has a 'policy', that the public is 'allowed' to comment, written or verbal, on a docket if they have requested to 'appear' as a commenter. Short of filing this request, the 'only' ongoing opportunity the public is afforded is the agenda meetings, where at the end of the meetings, the public is invited to present comments on any issue that is under the governance of the PUC, rather than waiting for their annual consumer sessions.

This was a single, isolated request that was denied for invalid reasons, which if granted would not have escalated to this 'first step', now I want this accommodation afforded to anyone who is entitled under the ADA. Mrs. Tanner's smoke and mirror responses to alleviate the PUC from any culpability to address my request are highly transparent and not acceptable.

Mrs. Tanner was unable to refute my allegations of federal versus state authority, grievance policy as federally mandated for state government agencies, recipient of federal funds to comply with Section 504.

I now have decided, since I am entitled to 'fragrance free policy notification' accommodations, that I want the fragrance notification to be extended, to any and all notifications of any docket or public invited meeting to be enacted. This can be readily and easily achieved by incorporating it right under their 'standard' notification, regarding notification of accommodations, two days prior to an agenda meeting, for example. Since, there is no 'service list' for agenda meetings, this would be sufficient. This would entail a simple typed statement, completely financially neutral and no building modifications are necessary. Since it is being done with 'requested' dockets, it should be no problem to be laterally applicable to agenda notifications, consumer sessions etc.

Also, when there are press releases issued notifying the public of consumer sessions, it should also be incorporated and have a 'notification' on the PUC website. These are 'reasonable' and since it is already being done with certain dockets, it should be promoted to 'avoid' the pick and chose' when or when not to have this accommodation notification to the public. Any attempt to try and restrict the current fragrance free notifications will be met with action that will make the smart meter fiasco be a walk in the park.

Or in the alternative, the PUC can go and purchase commercial high efficiency air filters for each of the meeting rooms, with minimum specs of: Activated carbon filter in powder-coated canister, at least 3" depth, micro-HEPA particle filter, organic cotton pre-filter, 25# or more of carbon, rated at 99% efficient at 0.1 microns, no UV or ozone generating capability, they go for about $1,500/unit. So which is more 'reasonable'?

Mrs. Tanner appears to be confused as to what is an 'accommodation' and what is a 'right to participate in a public meeting'. Allowing me to represent the various groups to the commission is not interchangeable to providing ADA accommodations. The only 'association' would be that the accommodation conveys upon me the ability to participate, not the 'right' to represent the named parties I represent. To further elaborate, even if I was only representing a single entity or even myself as an individual, an accommodation would still be a opportunity I am afforded. Representation and accommodation are two distinct issues and not to be blatantly treated as synonyms. As she stated that they 'allow' me to present for eight minutes. Eight minutes is not an ADA accommodation or any type of 'accommodation', by any stretch of her imagination.

Mrs. Tanner may or may not be aware that this is not the first time I have cited 'open meeting law' violations or participant ability to file as a commenter. One can be heard, after the agenda and public comments were being taken, on the attached audio, Exhibit Audio 1, over the 'commenter form', [33:52], the other was targeting Commissioner Noble. He was the presiding Commissioner, I 'believe' it was regarding the rate increase for Sierra Pacific, during a consumer session, that was videoconference to the Las Vegas Office. He informed one of the Las Vegas front office staff, that he was not going to let me represent my groups. I harshly informed her, that he better not try to control who can appear before the commission. The young lady then informed me that Commissioner Noble would be addressing it when he called the meeting to order. Needless to say, he never tried to suppress me, nor did he even mention this when he called the meeting to order. It was just his attempt to try and intimidate me, which didn't work. Most likely, he knew it was being videotaped and it would used as evidence against him.

Rather than regurgitate citations from the original complaint, I incorporate all the federal citations from the original complaint as if they were incorporated and presented in this reply.

Mrs. Tanner is fully cognizant that I do not acquiesce when I firmly believe in an issue, as she kept referencing the smart meters, which I was the main initiator of and never allowed us to be suppressed or denied our rights for x,y,z reasons, to keep the analog meters. This issue is no different. I have federal law on my side, and I will not cease to get what the federal government has ascribed upon me and others. I am highly resolute, tenacious and if I was able to mobilized the public against NV Energy, the PUC will be the preverbal 'piece of cake' over ADA law.

Thusly, predicated on the 'skewed' responses presented by Mrs. Tanner as 'factual', they need to be thoroughly scrutinized and compared to the exhibits/evidence that I have provided. I keep records and create 'documentations' that most people would not think would be necessary, i.e. copy of the telephone call details. Nothing that Mrs. Tanner has stated negates the fact, they denied me the right to accommodations, failure to even provide irrefutable evidence/defense of their allegations, which were easily discredited and need to be given more than a cursory review.

Summary

- This complaint has to do with only accommodations, not appearance time
- Did claimant provide legal references justifying her request-yes
- Did respondent prove irrefutably that claimant is not covered-no
- Did respondent provide irrefutable evidence that their offered alternatives at times were enacted/utilized by the claimant-no
- Did respondent prove they are not under the auspices of federal regulations regarding the ADA-no
- Is this complaint under the jurisdiction of the AG-yes

I respectfully request that you disavow Mrs. Tanner's request that the PUC be absolved of any liability for violation of the open meeting law and ADA.

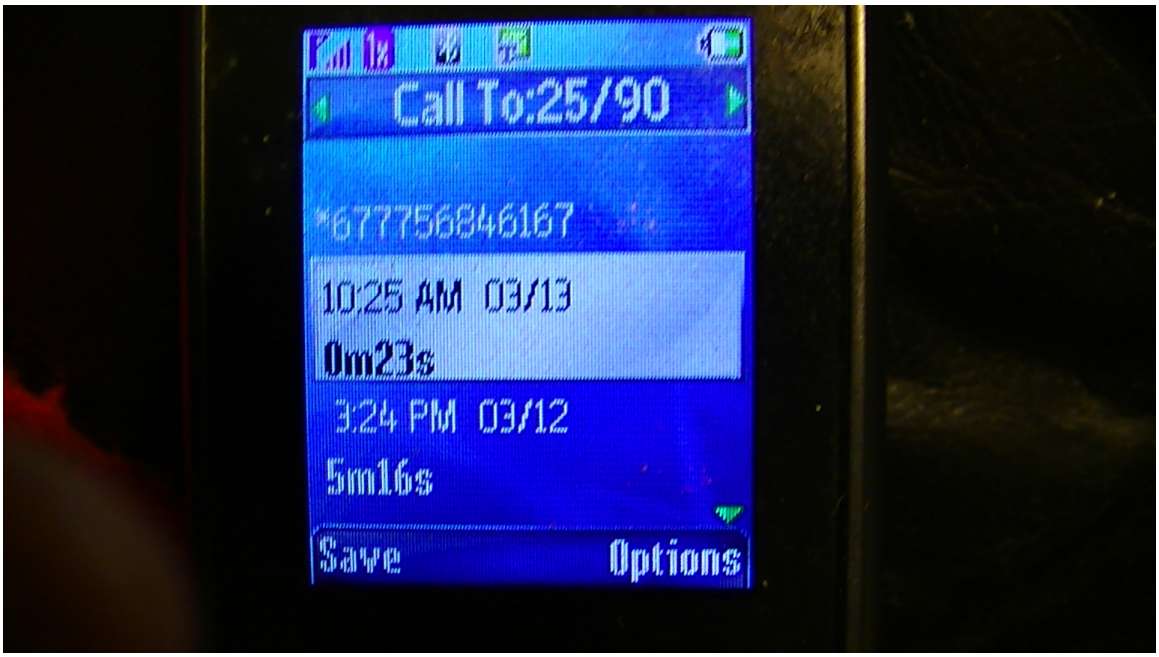
Respectfully submitted and requested,

Angel De Fazio, BSAT Signed electronically

Angel De Fazio, BSAT

Attachments: Audio 1
Audio 2

EXHIBIT A


Call To:25/90
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10:25 AM 03/13
0m23s
3:24 PM 03/12
5m16s
Save
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