



BRIAN SANDOVAL
Governor

STATE OF NEVADA
PUBLIC UTILITIES COMMISSION

ALAINA BURTENSHAW
Chairman

REBECCA WAGNER
Commissioner

DAVID NOBLE
Commissioner

CRYSTAL JACKSON
Executive Director

June 18, 2014

George Taylor, Esq.
Senior Deputy Attorney General
State of Nevada
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

RE: Open Meeting Law Complaint, A.G. File No. 14-017
Public Utilities Commission of Nevada
Response of the Commission

Dear Mr. Taylor:

I received your letter notifying the Public Utilities Commission of Nevada ("Commission") of the Complaint of Ms. De Fazio, et. al., alleging an Open Meeting Law ("OML") violation by the Commission, and specifically by Commissioner David Noble, the Commission's General Counsel, and the Assistant Commission Secretary (the "Complaint"). The thrust of the Complaint is in regard to Commissioner Noble's decision as Presiding Officer in Docket Nos. 14-05004 and 14-05005 to not video conference the scheduled consumer sessions between the Commission offices in Carson City and Las Vegas. This procedural decision did not require full Commission approval, and thus only Commissioner Noble has information pertaining to the Complaint. Pursuant to your request, I include his response here for your consideration. This letter by General Counsel shall constitute the formal response of the Commission.

Introduction

The Complaint appears to allege that the Commission has violated the OML by: (1) failing to provide video conferencing from the Commission's Carson City office to the Las Vegas office for the consumer session scheduled to address issues relating to customers of Sierra Pacific Power Company ("SPPC"); (2) failing to provide video conferencing from the Commission's Las Vegas office to the Carson City office for the consumer session scheduled to address issues relating to customers of Nevada Power Company ("NPC"); and (3) retaliating against Ms. De Fazio because of

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her prior “ADA” claims. The Complaint is electronically signed by 16 additional complainants.¹

Factual History

In a general rate case, consumer sessions are held to allow the Presiding Officer to consider the impacts of a utility’s proposed rate changes on the consumers affected by them. They are often held after business hours and require staffing and security. The Presiding Officer of the rate case docket marshals the meeting. Consumer sessions are not held before the full Commission and, as set forth fully below, are not subject to the OML.

On May 2, 2014, SPPC filed a Petition with the Commission, designated Docket No. 14-05005, seeking cost recovery for the Advanced Service Delivery Project (“ASD”) and the Nevada Dynamic Pricing Trial (“NDPT”). The filing was made pursuant to ordering paragraph 10 of the Commission’s Modified Final Order in Docket Nos. 13-06002, 13-06003, and 13-06004, issued February 3, 2014 (the “SPPC Order”). Also on May 2, 2014, NPC filed an Application with the Commission, designated as Docket No. 14-05004, for authority to increase its annual revenue requirement for general rates charged to all classes of electric customers and for relief properly related thereto (a “general rate case”). Commissioner Noble, as the Presiding Officer of both Dockets, allowed consolidation for hearing purposes only.

The two filings relate to completely separate service territories: SPPC services customers in Northern Nevada, and NPC services customers in Southern Nevada. Although SPPC and NPC were acquired earlier this year by MidAmerican Holding Company, the two utilities have not merged. In SPPC’s last general rate case, the SPPC Order directed SPPC to file cost recovery information for the ASD and NDPT as a companion to NPC’s general rate case. Docket No. 14-05005 is that companion filing. Docket No. 14-05005 relates only to SPPC’s service territory. Docket No. 14-05004 is NPC’s general rate case filing. Docket No. 14-05004 contains information regarding ASD and NDPT for NPC’s service territory. While ASD and NDPT are similar subject matters in Docket Nos. 14-05004 and 14-05005, ASD and NDPT costs are recorded differently and may be recovered differently for the two service territories. SPPC customers are not affected by ASD and NDPT costs and recovery in Southern Nevada, and NPC customers are not affected by ASD and NDPT costs in Northern Nevada. Accordingly, Commissioner Noble scheduled two separate consumer sessions so that customers in Northern Nevada and Southern Nevada could speak to issues confronting them without confusing or conflating the service territories. In addition, as reflected in his attached response, Commissioner Noble finds that conducting consumer sessions in person is much more effective than via video conference.

Docket Nos. 14-05004 and 14-05005 were consolidated for hearing purposes only because SPPC and NPC will have the same or similar witnesses and experts for both service territories. It is significantly more efficient and cost effective to conduct one hearing for both service territories to present expert testimony. The expert witnesses are easily able to delineate in a single hearing whether their testimony refers to the northern or southern service territory. However, as Docket

¹ The Complaint, as well as the unsigned letter of Mr. David L. Hopper, attached as Exhibit L, claim that the foundation known as NTEF is not a party to Ms. De Fazio’s prior OML Complaints. Yet, every correspondence received from Ms. De Fazio by the Commission is signed in her official capacity as President/Executive Director of NTEF, among other organizations, and either comes from an NTEF e-mail address and/or from the NTEF’s official mailing address.

No. 14-05004 is a general rate case, it is a much more comprehensive filing. Docket No. 14-05005 relates only to ASD and NDPT cost recovery issues for SPPC. The issues facing consumers and their rates are different for NPC's and SPPC's service territories. Two consumer sessions allows customers in Southern Nevada to focus on all of the issues pertaining to them without confusing issues relating to Northern Nevada, and vice versa. This issue of confusion is not applicable in the hearing setting.

The Complaint alleges that "there has NEVER been single location consumer sessions, without video-conferencing..." This allegation is false. While it is true that there was video-conferencing for the SPPC rate case in Docket No. 13-06002 *et al.*, that video conferencing occurred in error. *See* Response of Commissioner Noble. The notice of the consumer session in Docket No. 13-06002 *et al.* was posted with the standard video conference language that the PUCN utilizes for agenda meetings. Accordingly, Commissioner Noble allowed the video conference in lieu of reissuing the notice.

Argument

The OML requires that "all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these public bodies." NRS 241.020. A "meeting" of a public body is defined, in relevant part, as "... the gathering of members of a public body at which a quorum is present, whether in person or by means of electronic communication, to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction, or advisory power." NRS 241.015 (3) (a) (1). A PUCN consumer session is not a "meeting" as defined by NRS 241.015, and therefore the requirements of the OML do not apply. Consumer sessions are held to "solicit comments" regarding a public utility's general rate case application. NRS 704.069 (1). The Presiding Officer of a rate case docket presides over the consumer session scheduled therein. A consumer session does not include a quorum of the Commission, nor is there any deliberation toward a decision or action taken by a quorum of the Commission at a consumer session.²

The decision of Commissioner Noble to confine the consumer sessions in these Dockets to members of the public who are consumers of the participating utility is appropriate. It is a decision based upon efficiency and clarity. And, most importantly, it is fully within Commissioner Noble's discretion to make.

As to the additional unsupported allegations of Ms. De Fazio, and now apparently sanctioned by these 16 additional complainants, I say the following: There is no retaliatory intent on my behalf or by anyone on my staff in making decisions that affect my clients. I do my job without inserting my personal emotions. From all I have witnessed, Ms. De Fazio is treated courteously and fairly by the employees of the Commission. Ms. De Fazio's choice to continually attempt to berate, belittle, harass, and intimidate the Commissioners, me, and other Commission employees is disruptive and unproductive to her cause. She is correct that I did not answer her "courtesy gloves off" email, as it is filled with obscenities and completely inappropriate. Moreover, this Complaint appears to be yet one more opportunity for Ms. De Fazio to insert pictures of my deceased son into a public document and to exploit his image on her "website". This utter lack of

² Although other Commissioners may appear at a consumer session to listen to the comments, their presence is not required and deliberation is not conducted.

decorum, coupled with her continued threats of “being my worst nightmare”, I find to be a disturbing product of her obsession with the Commission and an attempt to intimidate a public employee. The Commission has every right to limit such disruptive behavior in its open meetings. NRS 241.020.

Conclusion

I respectfully request that you find that the Commission did not violate the Nevada Open Meeting Law. Should you require any additional information, please do not hesitate to contact me.

Sincerely,



Carolyn E. Tanner
General Counsel

Encl.

c: Hon. Alaina Burtenshaw, Chairman
Hon. Rebecca Wagner, Commissioner
Hon. David Noble, Commissioner
Crystal Jackson, Executive Director

c: (via e-mail)

Ms. Angel De Fazio
Mr. Fred Voltz
Mr. Jonathan Friedrich
Ms. Carole Fineberg
Ms. Jane Lyon
Ms. Joyce Hazard
NTEFDN
Ms. Jaunita Cox
Ms. Sheila Sterling
Mr. Bruce Kittess
Colonel Robert Frank, Ret.
Mr. Richard Schweickert
Ms. Michelle Johnson
Mr. Ken Koepp
Mr. Mike Hazard
Ms. Penny Hess

Attachment 1



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RE: Open Meeting Law Complaint A.G. File No. 14-017
Public Utilities Commission of Nevada
Board Member (Commissioner David Noble) Response to Allegations

Dear Mr. Taylor:

This letter is in response to your letter dated June 12, 2014, in the above referenced matter. In your letter you request that each Board Member respond to the allegations contained in the Open Meeting Law ("OML") Complaint to the extent that each Board Member may have personal knowledge pertaining to the allegation or if the Board Member participated in the decision that allegedly violated a right to public participation in public meetings of the Public Utilities Commission of Nevada ("Commission").

I am the Presiding Officer for Docket Nos. 14-05004 and 14-05005. I scheduled a consumer session for Docket No. 14-05004 to be held at the Commission's office in Las Vegas on July 22, 2014. I scheduled a consumer session for Docket No. 14-05005 to be held at the Commission's office in Carson City on July 23, 2014.

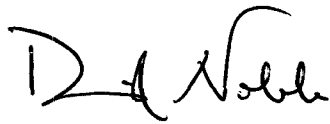
I chose not to conduct one joint consumer session and video conference the proceedings between the two offices because I prefer to conduct consumer sessions in-person. Some consumers who speak at consumer sessions are often agitated and upset, and I have found that I can more effectively manage the crowds when I am physically present in the same room and not just a face on the video screen.¹ This also allows me to speak with some of the consumers individually after the consumer session has ended, if I think it is warranted.

¹ For instance, on March 6, 2012, I conducted a consumer session for a general rate case (similar to Docket No. 14-05004) in Docket No. 11-12032. Over 300 people attended the consumer session, which was held in Spring Creek, Nevada. During the three-hour consumer session, 31 people spoke about the general rate case. On several occasions I had to stop the consumer session and admonish individuals for yelling and/or speaking out of order.

In the OML Complaint at pages 3-4, there is a reference to Docket Nos. 13-06002 et al. and the corresponding consumer session that was video conferenced last summer. That was an error on my part. The consumer session was only supposed to be held at the Commission's office in Carson City because Docket Nos. 13-06002 et al. only pertained to matters related to the general rates of consumers for Sierra Pacific Power Company d/b/a NV Energy (a northern Nevada electric and gas utility) and not to matters related to rates of consumers in the Las Vegas area. I did not realize the scheduling mistake until after the notice had been published in the applicable newspapers and inserted as bill stuffers in the consumers' bills. In order to forego the time and expense of rescheduling and renoticing the consumer session for only Carson City, I made the decision to simply allow consumers who showed up in the Commission's Las Vegas office to speak at the consumer session.²

The decision to not videoconference the consumer sessions was made by me as the Presiding Officer for Docket Nos. 14-05004 and 14-05005. Contrary to the assertions in the OML Complaint, Ms. Tanner had no influence on the decision. There is no correlation between the decision and the matters referenced in the OML Complaint at page 5, paragraph 4.

Sincerely,

A handwritten signature in black ink, appearing to read "David Noble". The signature is written in a cursive, flowing style.

David Noble
Commissioner

² Four people spoke from Las Vegas—Angel De Fazio, Jonathan Friedrich, Mike Hazard, and Joyce Hazard—all of whom are signatories to the OML Complaint.