

**Before the
PUBLIC UTILITIES COMMISSION OF NEVADA**

Investigation and rulemaking to implement
Senate Bill 329 (2019).

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Docket No. 19-06009

COMMENTS OF CTIA

I. Introduction

CTIA respectfully submits comments in response to the Public Utility Commission of Nevada’s (“Commission’s”) Procedural Order No. 4 entered October 15, 2019 in the above-captioned docket.

In comments submitted by Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy (collectively “NV Energy”) on October 10, 2019, NV Energy suggested the Commission adopt the following language: “Telecommunications or cable utilities must, at their own cost, timely remove or transfer any attachments to electric utility poles if required as a part of system hardening or related improvements by electric utilities under this section.” (“Cost Assignment Language”). The Commission welcomed comments addressing whether the Cost Assignment Language is necessary or should be amended. As explained below, the Cost Assignment Language is not necessary and it would be prudent for the Commission to not consider, and certainly to not adopt, NV Energy’s suggested language.

II. Discussion

As the Commission is aware, the rules that Staff presented on September 23, 2019 for the Commission’s consideration were consensus rules developed through a series of collaborative informal and formal workshops (“Consensus Rules”). CTIA and nearly all other parties,

including NV Energy, supported the Commission’s adoption of the Consensus Rules. In contrast to the Consensus Rules, the Cost Assignment Language was not shared with the parties during the workshop process, a fact NV Energy alludes to in its Comments. *See* NV Energy Comments at 3 (Oct. 10, 2019) (“...not addressed in the formal rulemaking process.”). Indeed, NV Energy did not discuss or raise the Cost Assignment Language until it presented such language to the Commission in the then-final scheduled round of comments.

CTIA appreciates NV Energy acknowledging that the “Cost Assignment Language” was not “addressed in the formal rulemaking process,” but NV Energy’s characterization of this point falls well short of the mark. The Cost Assignment Language is not only well outside the scope of issues the parties discussed during informal workshops and formal workshops, but it appears to be outside the scope of the Commission’s duties and authority under Senate Bill 329 (2019) (“SB 329”), and outside the scope of this proceeding as originally defined by the Commission.

Under SB 329, “[t]he Commission shall adopt regulations to provide for the method and schedule for preparing, submitting, reviewing and approving a [natural disaster protection] plan submitted pursuant to subsection 1.”¹ The Commission’s Notice opening this docket reflected the scope of SB 329’s implementation mandate. The Commission indicated that it “has opened an Investigation and Rulemaking to implement Senate Bill 329....”² The Commission went on to invite comments regarding “proposed regulations *necessary* to implement the provision of Senate Bill 329 (2019)....”³

The Cost Assignment Language is not a matter regarding which SB 329 directs the Commission to promulgate rules, not a matter on which the Commission previously invited

¹ SB 329 § 1.3.4.

² Notice of Rulemaking, Notice of Request for Comments, and Notice of Workshop, Docket No. 19-06009 (June 13, 2019).

³ *Id.* (emphasis added).

comment, and not a regulation *necessary* to implement SB 329. SB 329 directs the Commission to adopt regulations that “provide for the method and schedule for preparing, submitting, reviewing and approving a [natural disaster protection] plan submitted pursuant to subsection 1” by the electric utility. The Cost Assignment Language is not necessary to comply with this mandate. SB 329 goes on to require an electric utility to describe its ability to implement the natural disaster protection plan and “identify additional funding needed for the implementation of the plan”⁴ and allows “all prudent and reasonable expenditures made by the *electric utility*” to be recovered as a separate monthly charge to the customers of the electric utility.⁵ SB 329 does not contemplate shifting costs to telecommunications utilities for the hardening of the electric utility system as part of the electric utility’s natural disaster protection plan. Thus, promulgating the Cost Assignment Language is not necessary for the Commission to fulfill its mandate under SB 329, nor is it a matter the Commission even is directed to consider under SB 329. Under these circumstances, parties were not provided notice that assignment of certain costs arising from system hardening would be considered by the Commission in this rulemaking.

It is simply the wrong time and place for consideration of the Cost Assignment Language at the eleventh hour in the instant docket, which has focused exclusively on rules pertaining to NV Energy’s public safety outage management (“PSOM”) program to date. Neither the Cost Assignment Language nor the subject matter to which it pertains were raised by NV Energy prior to submission to the Commission. While CTIA believes that the subject matter of NV Energy’s Cost Assignment Language is best addressed in pole attachment contracts, not in the Commission’s rules, if the subject is to be considered at all, parties should be allowed the

⁴ SB 329 § 1.3.2(j).

⁵ SB 329 § 1.3.6 (emphasis added).

opportunity to reach consensus through the working group process that has been collaborative and productive in this docket so far.

Finally, the Cost Assignment Language raises jurisdictional issues under Nevada law. Under Nevada law, while providers of Commercial Mobile Radio Service (“CMRS”) are considered public utilities, CMRS providers “must not be regulated as telecommunication providers....” NRS § 704.120(c)(2). NV Energy’s proposed language imposes requirements on telecommunications utilities, thus raising the question of whether the Commission has jurisdiction under Nevada law to impose the Cost Assignment Language on CMRS providers. However, so long as the Commission rejects the Cost Assignment Language, this question need not be answered.

III. Conclusion

CTIA and its members do not take issue working with electric utilities implementing their PSOM programs, including PSOM programs that involve hardening aerial plant. Ensuring continuity of electrical service benefits all users, including wireless carriers. CTIA simply suggests the Commission reject NV Energy’s last-minute rule language suggestion. If such should be considered at all, it should be considered via the same collaborative, cooperative process that enabled the parties to reach consensus on *all* other proposed rules before the Commission in this docket.

Respectfully submitted,

By: /s/
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