

Agenda 19-14; Item No. 2-B Draft Order for discussion at utility agenda

THIS ORDER IS NOT A FINAL ORDER AND MAY BE SUBSTANTIALLY REVISED PRIOR TO ENTRY OF A FINAL ORDER BY THE PUBLIC UTILITIES COMMISSION OF NEVADA

**BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

Investigation regarding demand side management in Nevada. )  
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Docket No. 12-12030

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RECEIVED PUBLIC UTILITIES COMMISSION OF NEVADA

At a general session of the Public Utilities Commission of Nevada, held at its offices on October 9, 2014.

PRESENT:

- Chairman Alaina Burtenshaw
- Commissioner Rebecca D. Wagner
- Commissioner David Noble
- Assistant Commission Secretary Breanne Potter

**[PROPOSED] ORDER**

The Public Utilities Commission of Nevada ("Commission") makes the following findings of fact and conclusions of law:

**I. INTRODUCTION**

On December 20, 2012, the Commission voted to open an investigation, designated as Docket No. 12-12030, regarding demand side management ("DSM") in Nevada.

The Commission is conducting this investigation and rulemaking pursuant to the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC"), including, but not limited to, Chapters 703 and 704, and the Order issued by the Commission on December 24, 2012, in consolidated Docket Nos. 12-06052, 12-06053, and 12-08009.

**II. SUMMARY**

The Commission approves the Interim Report ("Report"), attached hereto as Attachment 1, and adopts its recommendations.

**III. PROCEDURAL HISTORY**

- On February 4, 2014, the Commission issued a Notice of Investigation and Notice of Request for Comments.

NAME: Hayley  
EXAM DATE: 10/6/14 AT 11:00 AM  
REVIEWED BY APPROVAL OFFICER: \_\_\_\_\_ DATE: \_\_\_\_\_

- ADV. CLASS (\_\_\_\_\_)
- COUN. COUNSEL HW for GCW 10/6/14
- \_\_\_\_\_

- The Regulatory Operations Staff of the Commission (“Staff”) participates as a matter of right pursuant to NRS 703.301.
- On February 27, 2014, the National Home Performance Council (“NHPC”), Nevadans for Clean Affordable Reliable Energy (“NCARE”), the Regulatory Operations Staff of the Commission (“Staff”), the Office of the Attorney General’s Bureau of Consumer Protection (“BCP”), and Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy (collectively, “NV Energy”) filed Comments in response to the February 4, 2014, Notice.
- On March 4, 2014, Staff filed a letter with the Commission advising that certain executable spreadsheets referenced in its Comments had been provided to the Commission and could be made available to the other participants in this Docket.
- On April 17, 2014, the Commission issued a Notice of Second Request for Comments seeking more information and analysis on alternatives to the lost revenue recovery mechanism for DSM programs.
- On May 15, 2014, NCARE, NV Energy, Staff, BCP, and Sierra Club (“Sierra”) filed Comments in response to the April 17, 2014, Notice.
- On May 29, 2014, NCARE, NV Energy, BCP, and Staff filed Reply Comments to the Comments filed on May 15, 2014.
- On July 11, 2014, the Presiding Officer issued a Procedural Order.
- On August 7, 2014, Staff, BCP, NCARE and NV Energy filed briefs in response to the Procedural Order.

#### **IV. REPORT**

1. The Report provides an overview of regulations authorizing electric utilities to recover an amount based on the effects of implementing energy efficiency and conservation programs. The Report summarizes participants’ comments regarding whether the lost revenue recovery mechanism (“LRAM”) is an effective tool for eliminating NV Energy’s financial disincentive from the implementation of DSM programs. The Report also summarizes participants’ comments regarding alternatives to LRAM. The Report then presents a legal question: Is legislative change necessary to implement full decoupling in Nevada or does NRS 704.785 and the Commission’s general ratemaking authority provide the Commission with the

authority to implement full decoupling? The Report then summarizes participants' legal positions and concludes that either partial or full decoupling is within the Commission's broad ratemaking authority and authorized by the plain language of NRS 704.785. The Report recommends the Commission open a rulemaking to pursue alternatives to LRAM, including the possibility of full decoupling.

2. The Commission finds that it is in the public interest to approve the Report and adopt its recommendations.

THEREFORE, it is ORDERED that:

1. The Interim Report, attached hereto as Attachment 1, is APPROVED and the recommendations therein are ADOPTED.

2. The Commission may correct any errors that have occurred in the drafting or issuance of this Order without further proceedings.

By the Commission,

ALAINA BURTON, Chairman

REBECCA D. WAGNER, Commissioner and Presiding Officer

DAVID NOBLE, Commissioner

Attest: BREANNE POTTER, Assistant Commission Secretary

Dated: Carson City, Nevada

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(SEAL)

DRAFT

# **ATTACHMENT 1**

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Investigation regarding demand side management in )  
Nevada. )  
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Docket No. 12-12030

**INTERIM REPORT**

**I. INTRODUCTION**

On December 20, 2012, the Public Utilities Commission of Nevada (“Commission”) voted to open an investigation, designated as Docket No. 12-12030, regarding demand side management (“DSM”) in Nevada.

After this Docket was opened, pursuant to a Stipulation filed in Docket No. 13-07021, Nevada Power Company d/b/a NV Energy (“Nevada Power”) and Sierra Pacific Power Company d/b/a NV Energy (“Sierra”) (collectively, “NV Energy”) agreed to work cooperatively with the Commission’s Regulatory Operations Staff (“Staff”) and the Attorney General’s Bureau of Consumer Protection (“BCP”) to develop a legislative or administrative alternative to the current lost revenue adjustment mechanism (“LRAM”) that would retain the objective of encouraging investment in energy efficiency.

In a Procedural Order issued July 11, 2014, in this Docket, the Presiding Officer asked participants to file a report detailing the status of efforts of NV Energy to work with BCP and Staff in exploring legislative or administrative alternatives to the current lost revenue mechanism. NV Energy responded that, to date, such discussions had been informal and bounded by the questions raised in this Docket. The Presiding Officer also requested participants to file legal briefs addressing the question of whether the Commission has the authority to enact full decoupling without additional legislative action.

**II. SUMMARY**

The Commission has broad ratemaking authority. Decoupling is within this broad authority. Furthermore, Nevada Revised Statutes (“NRS”) 704.785 is clear and unambiguous on its face that removing the financial disincentives associated with implementing DSM programs can include full or partial decoupling. Legislative change is not necessary for the Commission to implement full decoupling as an alternative to LRAM.

**III. BACKGROUND**

In 2009, the Nevada Legislature passed Senate Bill (“SB”) 359, a law providing for the adoption of regulations authorizing electric utilities to recover an amount based on the effects of implementing energy efficiency and conservation programs. The law has been codified as NRS 704.785 and reads as follows:



1. The Commission shall adopt regulations authorizing an electric utility to recover an amount based on the measurable and verifiable effects of the implementation by the electric utility of energy efficiency and conservation programs approved by the Commission, which:
  - a. Must include:
    - i. The costs reasonably incurred by the electric utility in implementing and administering the energy efficiency and conservation programs; and
    - ii. Any financial disincentives relating to other supply alternatives caused or created by the reasonable implementation of the energy efficiency and conservation programs; and
  - b. May include any financial incentives to support the promotion of the participation of the customers of the electric utility in the energy efficiency and conservation programs.
2. When considering whether to approve an energy efficiency or conservation program proposed by an electric utility as part of a plan filed pursuant to NRS 704.741, the Commission shall consider the effect of any recovery by the electric utility pursuant to this section on the rates of the customers of the electric utility.
3. The regulations adopted pursuant to this section must not:
  - a. Affect the electric utility's incentives and allowed returns in areas not affected by the implementation of energy efficiency and conservation programs; or
  - b. Authorize the electric utility to earn more than the rate of return authorized by the Commission in the most recently completed rate case of the electric utility.
4. As used in this section, "electric utility" has the meaning ascribed to it in NRS 704.187.

Prior to the passage of SB 359, NV Energy used a return on equity adder for its approved DSM investments, which provided a return on equity for DSM investments of five percent higher than the return on equity for other capital investments.

In response to NRS 704.785, the Commission adopted Nevada Administrative Code ("NAC") 704.9524, allowing for recovery of amounts based on measurable and verifiable effects on revenue caused or created by implementation of programs for energy efficiency and conservation. NAC 704.9524 put in place LRAM, which allows an electric utility to recover revenue lost due to implementation of Commission-approved DSM programs. The mechanism requires the utility to support claimed lost revenue by providing specific and detailed measurement and verification reports.

Based on the Commission's review of the DSM component of Nevada Power's Application for approval of its 2013-2032 Triennial Integrated Resource Plan ("IRP") and 2013-

2015 Energy Supply Plan, designated as Docket No. 12-06053, and Sierra's Application for approval of its 2012 Annual Demand Side Management Update Report ("DSM Update"), designated as Docket No. 12-06052, the Commission voted to open an investigatory docket to address the many issues the Commission was alerted to throughout the pendency of Docket Nos. 12-06052 and 12-06053 and previous DSM-related dockets.

The initial notice of this investigatory Docket invited interested and affected persons to file comments regarding any DSM-related issues and/or recommendations that may be addressed in this Docket. A subsequent notice sought comments presenting alternatives to LRAM. Additionally, a procedural order requested legal briefs from the participants responsive to NV Energy's assertion that a legislative change is required to implement full decoupling for electric utilities in Nevada.

The following two issues were addressed by the participants and generally agreed upon, except as noted.

**a. Is LRAM an effective tool for eliminating NV Energy's financial disincentive to implement DSM programs?**

There is a general agreement among the participants that LRAM is not the preferred way to eliminate NV Energy's financial disincentive to implement DSM programs. Staff identifies a number of issues with LRAM, including dependability of Measurement and Verification ("M&V") data presented by NV Energy, costs of collecting the data, and inordinate resources spent relitigating the same M&V issues. (Feb. 27, 2014, Comments at 3-11). Staff concludes that LRAM "has become its own distinct impediment to implementing effective DSM programs" (Feb. 27, 2014, Comments at 12). BCP echoes Staff's concerns, pointing out the subjectivity of lost sales compensation accounting and estimations of supposed energy savings compared to precise M&V of such savings. (Feb. 27, 2014, Comments at 2-3). The Sierra Club also notes that LRAM, while being highly contentious and administratively burdensome, fails to completely remove NV Energy's financial disincentives stemming from implementing DSM programs. (May 15, 2014, Comments at 1-4). Nevadans for Clean Affordable Reliable Energy ("NCARE") urges the Commission to adopt an alternative to LRAM as well. (May 15, 2014, Comments at 2-4). In fact, even NV Energy acknowledges numerous problems with LRAM, including excessive "litigation burdens and disfavor for the process by customers ..." and recommends the Commission consider alternatives to LRAM. (May 15, 2014, Comments at 2).

**b. Alternatives to LRAM**

All of the Commenters, except for NV Energy, that weighed in on the issue of LRAM replacement voiced strong support for adopting some form of decoupling. NCARE advocates a decoupling mechanism that regularly adjusts rates to ensure that a utility's actual revenues per customer match its authorized revenues per customer. (May 15, 2014, Comments at 2). BCP favors a modified revenue cap decoupling, which would provide a periodic true-up of revenue collected against authorized revenue requirement with a focus on the Base Tariff General Rate ("BTGR") revenues. (May 15, 2014, Comments, at 3-4). Staff generally supports a modified revenue cap decoupling as proposed by BCP. (May 29, 2014, Reply Comments at 1-2). Finally,

Sierra Club also recommends the Commission adopt a full decoupling mechanism. (May 15, 2014 Comments at 8).

NV Energy opposes implementation of a decoupling mechanism because decoupling is just as complex, contentious, and burdensome as LRAM. (May 29, 2014 Reply Comments at 2-3). NRS 704.785 does not authorize full decoupling for electric utilities and that a legislative change is necessary to open the door to full decoupling (May 29, 2014 Reply Comments at 3). In place of the LRAM, NV Energy proposes the adoption of an Annual Cost Recovery with a Multiplier (“ACRM”). (May 29, 2014 Reply Comments at 5). NV Energy asserts that the basic mechanics of the ACRM are the same as the process for recovery of program costs through the Energy Efficiency Program Rate (“EEPR”) with the addition of a simple multiplier, which will be calculated in a manner similar to the previous “equity adder.” (May 29, 2014, Reply Comments at 6).

#### IV. LEGAL ISSUES

The following question was posed to participants to answer in legal briefs: Is legislative change necessary to implement full decoupling in Nevada, or does NRS 704.785 and the Commission’s general ratemaking authority provide the Commission with the authority to implement full decoupling?

##### Participants’ Legal Positions

##### BCP

BCP states that given the Commission’s broad ratemaking authority, as well as the plain language of NRS 704.785, the Commission has legal authority to implement full decoupling. Accordingly, no legislative change is required for the Commission to transition NV Energy to full decoupling. (Brief at 1).

BCP states that the key statute to be interpreted is NRS 704.785. BCP describes how courts have provided guidance when interpreting statutes, noting that in Nevada, “[w]hen a statute is ‘clear on its face,’ a court applies its plain language and may not go beyond that language in determining the legislature’s intent.” (Brief at 2, quoting *McKay v. Board of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1981)).

BCP asserts that the plain meaning of NRS 704.785 is to remove the financial disincentives associated with DSM programs. NRS 704.785 is divided into two subsections. The first subsection (NRS 704.785(1)(a)) is mandatory and provides that the Commission must adopt regulations to return lost revenues attributable to the measurable and verifiable effect of implementing DSM programs. The second subsection (NRS 704.785(1)(b)) provides that the Commission may, in its discretion, include financial incentives to support the promotion of customers in DSM programs. (Brief at 2-3).

BCP contends that nowhere in the plain language of NRS 704.785 does it specify whether the means of removing the financial disincentives associated with implementing DSM

programs should be partial or full decoupling or some other method. It is within the Commission's authority to determine how to implement the statute. (Brief at 3).

## **NCARE**

NCARE states that the Commission has broad authority under Chapter 704 of the NRS to set rates and adopt rules and regulations as necessary to ensure the provision of utility service at just and reasonable rates. Under this broad authority, the Commission is allowed to implement a full decoupling mechanism by regulation. There is nothing in the existing provision of NRS 704.110 that explicitly or implicitly precludes decoupling for electric utilities or that is inherently inconsistent with adoption of decoupling through regulation. Finally, full decoupling would not contravene the requirements of NRS 704.785. (Brief at 1-3).

NCARE contends that the language of NRS 704.785 cannot be reasonably interpreted to impose a limitation on the authority of the Commission to only use a partial decoupling mechanism to address financial disincentives caused by DSM programs. When a statute is clear and unambiguous, it should be interpreted to give effect to the plain and ordinary meaning of the words without resorting to the rules of construction. (Brief at 3-4).

NCARE describes the mandatory provisions of NRS 704.785 that require that the regulations adopted by the Commission provide for the recovery of reasonably incurred program costs and to eliminate financial disincentives as well as the permissive authority to provide for financial incentives. Within these general confines, the Commission has broad discretion to adopt regulatory mechanisms that will best achieve the purposes of the statute. (Brief at 4-5).

## **NV Energy**

NV Energy states that full decoupling requires legislative action. In order to determine whether full revenue decoupling is authorized under current Nevada law, one must examine the ratemaking mechanisms that might be used to accomplish full revenue decoupling. Actual ratemaking mechanisms that conflict with or require departure from NRS 704.110(3) and (4) and/or NRS 704.785 would require legislative action. Full revenue decoupling, which like deferred energy accounting relies on a balancing account mechanism into which certain revenues are segregated and accumulated and through which the difference between estimated revenues and actual revenues is ultimately cleared, requires a specific legislative grant of authority. Specific legislative authority is not found within NRS 704.110(3) and (4); in fact, full revenue decoupling is inconsistent with and contrary to NRS 704.110(3) and (4). The question then becomes whether NRS 704.785 provides the legislative grant of authority. (Brief at 1-2, 5).

NV Energy states that NRS 704.785 does not authorize full revenue decoupling. Absent from the statute is any grant of authority to utilities to create a balancing account into which all general rate revenues would be segregated and accumulated (similar to NRS 704.187) or any grant of authority to the Commission to establish regulations authorizing utilities to create a balancing account into which all general rate revenues would be segregated and accumulated. NRS 704.785 does not grant electric utilities authority to violate NRS 704.110(3) and (4) by

periodically clearing any differences between estimated revenues and actual revenues. (Brief at 5-7).

NV Energy states that a plain reading of NRS 704.785 authorizes the collection of revenues lost as a result of utility-sponsored DSM. NRS 704.785 does not contemplate full revenue decoupling. For the sake of argument, if the Commission finds that it is unclear from the face of NRS 704.785 whether full decoupling is permissible, then the next step is to turn to the legislative history of NRS 704.785. The legislative history shows that full revenue decoupling was not contemplated or authorized by the 2009 Legislature. The Legislature discussed full decoupling and distinguished it from what was being contemplated in 2009—a mechanism that addressed only the recovery of revenues lost through utility-sponsored DSM programs. (Brief at 8-10).

### Staff

Staff states that a legislative change is not necessary to implement full decoupling for electric utilities. The Commission's general rate-making authority allows for significant discretion in setting just and reasonable rates. A full decoupling mechanism is consistent with the text and legislative intent of NRS 704.785(1) to eliminate the financial disincentives associated with the implementation of energy efficiency and conservation programs. (Brief at 1).

Staff acknowledges that the 2009 Legislature did not explicitly adopt full decoupling, but the language adopted in NRS 704.785 does not specify what cost recovery mechanism the Commission should implement. Pursuant to NRS 704.785(1), the Commission is required to adopt regulations "authorizing an electric utility to recover an amount based on the measurable and verifiable effects of the implementation by the electric utility of energy efficiency and conservation programs approved by the Commission." The amount recovered must include both the costs reasonably incurred by the electric utility in implementing and administering the energy efficiency and conservation ("EE&C") programs and any "financial disincentives" relating to other supply alternatives caused or created by the reasonable implementation of the EE&C programs. The statute does not explicitly require the Commission to adopt regulations allowing the utilities reimbursement of lost sales due to EE&C programs. (May 29, 2014 Reply Comments at 3).

Staff contends that while full decoupling was not mandated by the passage of NRS 704.785, it does meet the minimum requirements created by the statute because it eliminates any financial disincentive due to the implementation of EE&C programs. (May 29, 2014 Reply Comments at 4).

Staff explains that full decoupling technically complies with NRS 704.785 because the utility operating under full decoupling continues to recover the costs incurred in implementing DSM programs on a timely basis. Further, the "financial disincentives related to other supply alternatives" (NRS 704.785(1)(a)(2)) ceases to exist because the financial disincentives associated with the EE&C programs – lost revenues due to lowered sales – are eliminated by the implementation of a full decoupling mechanism. NRS 704.785 mandates a minimum level of

decoupling with respect to DSM programs, but it does not put a limit on the amount of decoupling the Commission may implement under its general ratemaking authority. In support of its assertion, Staff refers to the legislative history provided by NV Energy in its May 15, 2014, Comments. Staff notes that at no point during the legislative hearings did any party suggest that the language of NRS 704.785 was designed to limit the general ratemaking authority of the Commission by disallowing full decoupling. (May 29, 2014, Reply Comments at 4).

With respect to the Commission's general ratemaking authority, Staff describes the broad legislative powers conferred upon the Commission to set utility rates and prescribe utility services in the State of Nevada pursuant NRS 704.100 through NRS 704.130 and NRS 704.210. NRS 704.110(1) and NRS 704.120(1) grant the Commission broad latitude to determine both rates and the method by which rates are found to be just and reasonable. (May 29, 2014, Reply Comments at 5).

Staff provides a comparison of the Commission's authority to implement a full decoupling mechanism for electric utilities with the statutes implementing decoupling for natural gas. Staff states that NRS 704.992 requires the Commission to adopt regulations applicable to natural gas utilities "that remove financial disincentives which discourage the public utility from supporting energy conservation." Similar language is found in the electric decoupling statute (NRS 704.785(1)(a)(2)), which requires that the Commission adopt regulations to allow an electric utility to recover an amount based on the "financial disincentives relating to other supply alternatives caused or created by the reasonable implementation of the energy efficiency and conservation programs." The natural gas decoupling statute differs from the electric statute in that it requires the decoupling mechanism to ensure that the costs of "providing service are recovered without regard to the difference in the quantity of natural gas actually sold by the utility." (Brief at 2).

Staff provides analysis of the distinction between the relevant decoupling statutes. Staff notes that the natural gas decoupling statute assumes that full revenue decoupling mechanism will remove the financial disincentives related to energy efficiency and conservation programs. Staff contends that it is logical that the adoption of a full revenue decoupling mechanism for an electric utility should have the same effect—removing financial disincentives associated with energy efficiency and conservation programs. Removal of such financial disincentives results in compliance with NRS 704.785. (Brief at 2).

## **V. ANALYSIS OF COMMISSION AUTHORITY**

The Commission has broad ratemaking authority pursuant to NRS 704.100 through NRS 704.130 and NRS 704.210. The Nevada Supreme Court has described the Commission's ratemaking power as "plenary" and "broadly construed." *Nevada Power Co. v. Eighth Judicial District Court*, 120 Nev. 948, 957 (2004). The only limit on the Commission's authority to regulate utility rates is the legislative directive that rates be "just and reasonable." *Id.* NRS 704.110(1) and NRS 704.120(1) provide the Commission with broad latitude to determine both rates and the method by which rates are found to be just and reasonable. The Commission, through its broad ratemaking authority, has broad discretion to interpret and implement a statute

related to its ratemaking authority. Decoupling—partial or full—is within the Commission’s ratemaking authority.

In addition to the Commission’s ratemaking authority, the plain language of NRS 704.785 authorizes the Commission to implement partial or full decoupling without any legislative change needed. In Nevada, “[w]hen a statute is ‘clear on its face,’ a court applies its plain language and may not go beyond that language in determining the legislature’s intent.” *McKay v. Board of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1981). The plain language of NRS 704.785 removes the financial disincentives associated with DSM programs.

NRS 704.785 is divided into two subsections. The first subsection (NRS 704.785(1)(a)) provides that the Commission must adopt regulations to return lost revenues attributable to the measurable and verifiable effect of implementing DSM programs. The second subsection (NRS 704.785(1)(b)) provides that the Commission may, in its discretion, include financial incentives to support the promotion of customer participation in DSM programs. Nowhere does the plain language of NRS 704.785 specify whether the means of removing the financial disincentives associated with implementing DSM programs should be partial or full decoupling or some other method. It is within the Commission’s authority to determine how to implement the statute. A full decoupling mechanism is consistent with the text and legislative intent of NRS 704.785(1) to eliminate the financial disincentives associated with the implementation of energy efficiency and conservation programs.

NRS 704.785 is similar to the gas decoupling statute, NRS 704.992. NRS 704.992 requires the Commission to adopt regulations applicable to natural gas utilities “that remove financial disincentives which discourage the public utility from supporting energy conservation.” Similar language is found in the electric decoupling statute (NRS 704.785(1)(a)(2)), which requires that the Commission adopt regulations to allow an electric utility to recover an amount based on the “financial disincentives relating to other supply alternatives caused or created by the reasonable implementation of the energy efficiency and conservation programs.” The natural gas decoupling statute assumes that full revenue decoupling mechanism will remove the financial disincentives related to energy efficiency and conservation programs. It is logical that the adoption of a full revenue decoupling mechanism for an electric utility should have the same effect of removing financial disincentives associated with energy efficiency and conservation programs.

NV Energy asserts that NRS 704.785 does not authorize full revenue decoupling because absent from the statute is any grant of authority to utilities to create a balancing account into which all general rate revenues would be segregated and accumulated. Aside from NV Energy’s stated concerns regarding lack of authority for implementation, it is unclear whether NV Energy supports full decoupling.

NRS 704.785 does in fact authorize full revenue decoupling and does not require a legislative change. NRS 704.785 mandates a minimum level of decoupling with respect to DSM programs, but it does not put a limit on the amount of decoupling the Commission may implement under its general ratemaking authority. NRS 704.785 was not designed to limit the general ratemaking authority of the Commission by disallowing full decoupling, as evidenced by

the plain language of the statute and the express lack of any limiting language. At no point during the legislative hearings on NRS 704.785 did any party suggest that the language of the statute was designed to limit the general ratemaking authority of the Commission by disallowing full decoupling.

## VI. CONCLUSIONS

The Commission concludes that a rulemaking shall be opened to develop regulations as an alternative to LRAM. There is a timing issue with implementing full decoupling in the short term because, absent a rulemaking, full decoupling requires a general rate case.

There is a general agreement among participants that LRAM is not the preferred way to eliminate NV Energy's financial disincentive from DSM program implementation. Problems with LRAM include dependability issues, costs of collecting the data, and excessive litigation costs. Alternatives to LRAM include different forms of decoupling. There are partial and full decoupling mechanisms, including a decoupling mechanism that regularly adjusts rates to ensure that a utility's actual revenues per customer match its authorized revenues per customer or a modified revenue cap.

The Commission has the authority to implement either partial or full decoupling due to the Commission's broad ratemaking authority and the plain language of NRS 704.785, which is clear and unambiguous on its face. NRS 704.785(1)(a) is mandatory and provides that the Commission must adopt regulations to return lost revenues attributable to the measurable and verifiable effect of implementing DSM programs. NRS 704.785(1)(b) provides that the Commission may, in its discretion, include financial incentives to support the promotion of customer participation in DSM programs. A full decoupling mechanism is consistent with the text of NRS 704.785(1).