Agenda 21-26; Item No. 2B Draft Order for discussion at 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

Application of Nexus Fulcrum LLC, under the provisions of the Utility Environmental Protection Act, for a permit to construct ASR-IX consisting of a nominal 510 MW natural gas-fueled electric generation plant and associated facilities to be located on private land within the Tahoe Reno Industrial Center complex in Storey County, Nevada.	)	Docket No. 26-06016

At a general session of the Public Utilities Commission of Nevada, held at its offices on November 10, 2026

PRESENT: Chair Hayley Williamson
Commissioner Tammy Cordova
Commissioner Randy J. Brown
Business Process Services Supervisor Sabrena Jones

[PROPOSED] ORDER

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

I. INTRODUCTION

On June 17, 2026, Nexus Fulcrum LLC ("Nexus Fulcrum") filed an application with the Public Utilities Commission of Nevada ("Commission"), under the provisions of the Utility Environmental Protection Act, designated as Docket No. 26-06016, for a permit to construct ASR-IX consisting of a nominal 510 MW natural gas-fueled electric generation plant and associated facilities to be located on private land within the Tahoe Reno Industrial Center complex ("TRIC"), in Storey County, Nevada (the "Project").

Nexus Fulcrum filed the application pursuant to the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC") Chapters 703 and 704, including, but not limited to, NRS 704.820 through 704.900 and NAC 703.415 through 703.427.

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II. SUMMARY

The Commission grants the application, subject to the satisfaction of the compliance items delineated below. The Commission finds that the application satisfies each determination required by NRS 704.890(1). The Project is sited on previously disturbed land within an industrial park, and it remains subject to substantial federal, state, and local environmental permitting. On the record developed in this docket, the need for the Project balances its adverse environmental effects, and the Project serves the public interest.

III. PROCEDURAL HISTORY

- The Regulatory Operations Staff of the Commission ("Staff") participates as a matter of right pursuant to NRS 703.301.

- On July 15, 2026, Nevadans for Clean Affordable Reliable Energy ("NCARE") filed a notice of intent to be a party.

- On August 27, 2026, the Commission issued a notice of hearing, setting the hearing in this matter for October 14, 2026.

- On October 1, 2026, Switch, Ltd. ("Switch") late-filed a petition for leave to intervene ("PLTI") and a motion to shorten response time and request for expedited ruling on its late-filed PLTI.

- On October 2, 2026, Nexus Fulcrum filed a response to Switch's PLTI and motion

- On October 5, 2026, NCARE and Staff filed responses to Switch's PLTI and motion, and the Nevada Bureau of Consumer Protection ("BCP") filed a notice of intent to intervene pursuant to NRS Chapter 228.

- On October 9, 2026, Nexus Fulcrum filed a motion to transfer application and request to expedite.

- On October 12, 2026, the presiding officer issued an order granting Switch's PLTI and denying as moot Switch's motion to shorten response time and request for expedited ruling.

- On October 14, 2026, the presiding officer held a hearing. Nexus Fulcrum, NCARE, BCP, and Staff appeared. The presiding officer denied Nexus Fulcrum's motion to transfer application and request to expedite without prejudice. Exhibits were admitted to the record.

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IV. APPLICATION

A. Nature of the Project's Probable Effect on the Environment—NRS 704.890(1)(a)

Nexus Fulcrum's Position

1. Nexus Fulcrum states that its application is supported by an environmental statement that addresses the possible impacts of the Project on the environment. (Ex. 101 at 4, 7-8; Ex. 100 at Ex. F.) Nexus Fulcrum states further that the environmental statement provides ample information to determine the potential and probable environmental effects across several environmental categories. (Ex. 101 at 4.) Nexus Fulcrum states further that the Project will contribute limited impacts, if any, because the Project's site is previously disturbed. (*Id.* at 5.) Nexus Fulcrum states further that the environmental statement concludes that the Project will not have significant, unmitigated environmental impacts. (*Id.*) Nexus Fulcrum states that the Commission could require, and Nexus Fulcrum intends to adopt, every mitigation method that the environmental statement describes. (*Id.* at 7.)

2. Nexus Fulcrum states that it will take steps to ensure that the Project has the minimum adverse effect on the environment. (*Id.* at 10.) Nexus Fulcrum notes that the Project will be located at the TRIC which is designated for heavy industrial use and where the surrounding land use is predominantly existing industrial facilities and large-scale power generation. (*Id.*) Nexus Fulcrum notes further that the Project's site itself is the location of a decommissioned biofuel refinery, and thus it is previously disturbed. (*Id.*) Nexus Fulcrum notes further that TRIC is an ideal site for the Project because it has existing access roads and infrastructure for natural gas, water, wastewater, and electricity. (*Id.*)

3. Nexus Fulcrum argues that the Project's proposed natural-gas combustion turbines are the most economical of any generation technology because solar and battery would

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require substantially more acreage than the Project's site would allow and also because solar and battery do not provide the baseload resource that Switch's operations require.[1]

NCARE's Position

4. NCARE states that Nexus Fulcrum did not provide sufficient information to determine full scope of the environmental impact, including the effects of greenhouse gas ("GRG") emissions, which are not in alignment with standards for the approval of new utility-scale gas plan construction. (Ex. 400 at 47-48.)

5. NCARE states that the proposed Project will have a negative effect on the environment and that the social cost of carbon dioxide ("CO_2") ranges for $1.1-2.3 billion by 2025. (*Id.*)

6. NCARE states that the Project is comparable to a utility-scale natural gas facility and that its nameplate capacity, baseload designation, anticipated energy generation range, and annual natural gas consumption are comparable to a utility-scale natural gas facility. (*Id.* at 8.) NCARE states that the Project's operating characteristics inform the probable effect on the environment for each year of operation. (*Id.*) NCARE states that the estimated annual maximum and actual energy output of the ASR-IX turbines depend on many factors, including the Project's anticipating actual operations, in which Nexus Fulcrum did not provide in its application or in response to NCARE's data request. (*Id.* at 9.) NCARE states with the available information, it estimates that the likely generation based on the Project turbine maximum, the Operating Permit to Construct ("OPTC") cap, and minimum generation level. (*Id.* at 10.) NCARE states that it is possible that the Project may operate close to an 82 percent capacity factor, generating approximately 3,685 GWh per year (gross), as based on the Nevada Division of Environmental

[1] Switch is the sole intended off-taker of the Facility's generated electricity. (Switch's PLTI at 2.)

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Protection ("NDEP") Air Permit OPTC Application. (*Id.* at 11.) NCARE states that assuming the Project's first full year of operations could commence as early as 2030, and a net energy delivery capacity of 400 MW, the estimated maximum annual ASR-IX energy delivery equates to approximately 11 percent of the total thermal generation expected for Sierra Pacific Power Company d/b/a NV Energy ("NV Energy") Obsidian Plan in 2030. (*Id.* at 13.) NCARE states that the estimated annual natural gas combustion at a base load designation of at least 40 percent capacity factor for the Project turbines totals 177 million therms, or 9 percent to total electric power consumption in Nevada in 2024. (*Id.* at 14.)

7. NCARE states that CO_2 from the Project will contribute to a long-term increase in atmospheric CO_2 concentration and climate change and that average annual and summer temperature increases are already detectable in Nevada. (*Id.* at 15.) NCARE also states that reports have identified high likelihood of increasing drought frequency and severity, with loss of snowpack, due to shifts from snow to rain and earlier snow melt, regardless of stable or slight increases in precipitation; increasing flooding as snow shifts to rain and increasing wildfire risk including fire size and severity. (*Id.* at 16.)

8. NCARE estimates that the probable CO_2 emissions range for the ASR-IX facility based on Nexus Fulcrum's OPTC Application is expected to emit up to 1.94 million metric tons ("MMT") of CO_2 annually, corresponding to an adjusted operating duration of 7,226 hours per year, or an 82 percent capacity factor, which equates to an estimated turbine emission rate of 1,160 lbs. of CO_2 per MWh (gross). (*Id.* at 17.) NCARE argues that based on the Project's Application maximum emissions, ASR-IX could have increased 2025 Nevada electric sector CO_2 emissions by up to 15 percent. (*Id.* at 23.)

DRAFT

9. NCARE states that the Project proposes 510 MW nameplate generating facility ("ASR-IX") that would include nine Siemens ST-800 B5 or B4 natural gas combustion turbines, at approximately 57 MW each, all operated in simple cycle mode. (*Id.* at 9.) NCARE states that a facility of this size would exceed the nameplate capacity of three of Nevada's twelve operating electric utility owned natural gas plants. (*Id.*)

Staff's Position

10. Staff recommends that the Commission find that the application identifies the nature and the probable effect of the Project on the environment and the required mitigation measures. (Ex. 300. at 12-13.) Staff states that it reviewed the application and responses to data requests to determine whether Nexus Fulcrum analyzed existing conditions, potential impacts, and mitigation measures for each environmental resource category. (*Id.* at 2 and 7.)

Nexus Fulcrum's Rebuttal Position

11. Nexus Fulcrum states that NCARE inaccurately characterizes ASR-IX and its operations out of context because NCARE's comparisons of this Project to NV Energy generating assets and speculative assertions regarding the effect of the Project on the greenhouse gas ("GHG") emissions landscape in Nevada are misleading. (Ex. 104 at 3.) Nexus Fulcrum states that NCARE requests that the Commission subject the application to a higher level of scrutiny because the Project was not proposed by a utility as part of its integrated resource plan, which is at odds with the Commission's role in this proceeding of determining whether the permitting requirements of UEPA are satisfied. (*Id.*)

12. Nexus Fulcrum states that NCARE's assumptions on the Project potential emissions are not certain. (*Id.* at 4.) Nexus Fulcrum states that NCARE bases its arguments upon the emissions calculation of an 82 percent capacity factor that Nexus Fulcrum gave in its OPTC

DRAFT

application with NDEP. (*Id.*) Nexus Fulcrum states that that calculation is an estimate of maximum operation and a worst-case emission scenario, which is the calculation NDEP requires in determining whether to issue an air permit. (*Id.*) Nexus Fulcrum states that NDEP takes this approach because the true capacity factor is difficult to predict. (*Id.*)

13. Nexus Fulcrum disagrees that the Project could derail the decarbonization of Nevada's electrical sector by 2025. (*Id.* at 4.) Nexus Fulcrum states that NCARE suggests that Nevada has a carbon reduction goal of zero or near-zero GHG emissions by 2050. (*Id.*) Nexus Fulcrum argues that while Senate Bill 254 (2019) requires the Nevada Department of Conservation and Natural Resources to inventory Nevada's GHG gas emissions and quantify reductions needed to achieve zero or near-zero GHG emissions by 2050, the statute contains no emissions cap, no permit standard, and no enforcement mechanism. (*Id.* at 4-5.)

14. Nexus Fulcrum states that NCARE's environmental analysis including emissions and social cost of carbon estimates is not an appropriate consideration in UEPA analysis, (Ex, 104 at 7.) Nexus Fulcrum states that NCARE misunderstands the permitting requirements of UEPA and that the Commission will not undertake a parallel or duplicative environmental review to that of other expert regulatory agencies. (*Id.* at 7.) Nexus Fulcrum argues that the Commission is not required to perform an independent review of GHG emissions. (*Id.*)

Commission Discussion and Findings

15. NRS 704.890(1)(a) provides that the Commission may not grant a UEPA Permit to Construct unless it finds and determines "[t]he nature of the probable effect on the environment." Here, Nexus Fulcrum prepared an environmental statement for the Project that included an analysis of existing conditions, potential impacts, and mitigation measures for each environmental resource category. Nexus Fulcrum and Staff agree that the environmental

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statements satisfy the criteria required under Nevada law and the regulatory framework therein and agree that the environmental statements identify the nature of the probable effect on the environment.

16. NCARE argues that the environmental statements are substantively deficient for understating or otherwise failing to consider certain impacts; in particular, GHG emissions and criteria pollutant emissions. In doing so, NCARE relies on information from the "worst case" operational scenarios of the Project, as required by NDEP for Class 1 OPTC and Operating Air Permit Applications, wherein the Project is generating at their nameplate capacity year-round.

17. The Commission is not persuaded by NCARE's arguments. NRS 704.890(1)(a) requires that the Commission determine the "nature of the *probable effect* on the environment." Here, NCARE asks the Commission to leverage the worst-case scenario–that the Project will be running at peak capacity nonstop for the duration of operation–to impose a heightened environmental standard on the Project beyond what the law requires. The word "probable" is not surplusage. A permitted maximum and a probable effect are different things. The record establishes that NDEP requires a Class 1 OPTC applicant to model a worst-case emissions scenario, so the ceilings on which NCARE relies are an artifact of the permitting process rather than a forecast of how the Project will be operated. To read NRS 704.890(1)(a) as NCARE proposes would convert a conservative regulatory assumption into a substantive standard that the Legislature did not enact.

18. NRS 704.890(1)(a) does not require the Commission to determine that the probable effect on the environment is reasonable. It simply requires the Commission to determine what that probable effect is; the Commission finds that Nexus Fulcrum has satisfied this requirement.

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B. Extent to Which the Project is Needed to Ensure Reliable Service to Customers in the State—NRS 704.890(1)(b)

Nexus Fulcrum's Position

19. Nexus Fulcrum recommends that the Commission find that the Project provides a significant benefit to system reliability in an overburdened electrical Project of the transmission system. (Ex. 102 at 3.) Nexus Fulcrum states that ASR-IX and its associates facilities provide significant reliability benefit of NV Energy's transmission system. (*Id.*)

20. Nexus Fulcrum states that the Project consists of nine Siemens SGT-800 natural gas fired combustion turbines, with a total gross generating capacity of 510-megawatts ("MW") AC with 400 MW deliverable at the point of interconnection. (*Id.*)

21. Nexus Fulcrum states that this facility improves the reliable utility service to electric customers in Nevada. (*Id.* at 4.) Nexus Fulcrum explains that NV Energy's significant growth is creating the need for additional generation and transmission support. (*Id.*) Nexus Fulcrum states that the facility has the potential to bring additional dispatchable generating resources to the region, and it offers additional reliability improvements to the grid that will have significant benefits for northern Nevada electric customers. (*Id.*)

22. Nexus Fulcrum states that NV Energy engages the consulting firm, E3, to perform a loss-of-load-probability ("LOLP") analysis, and the resulting Sierra Subsystem Resource Adequacy Assessment concluded that, without additional resources, Sierra's projected reliability in 2027 and 2028 would be far lower than is considered acceptable. (*Id.* at 4-5.) Nexus Fulcrum states that the study measured this against NV Energy's systemwide planning standard of a loss-of-load-expectation of 1 day in the 10 years (0.1 days per year). (*Id.*)

23. Nexus Fulcrum states that Switch is discussing with NV Energy the possibility of providing grid-support services. (*Id.* at 6.) Nexus Fulcrum states that connecting the Project to

DRAFT

the transmission grid has multiple reliability benefits. (*Id.*) First, Nexus Fulcrum states that because the Project is in close electrical proximity to the load, it will reduce the strain on the transmission system as the generation is moved across the transmission network to reach the load. (*Id.* at 7.) Second, Nexus Fulcrum states that by being near other large loads served by the NV Energy transmission system, the Project's location increases voltage and frequency stability, reduces transmission line losses, and reduces congestion on the existing NV Energy transmission system. (*Id.*) Third, Nexus Fulcrum states that the Project will assist in stabilizing and reinforcing the grid during three specific stress situations: (1) the Project will increase reliability during disturbances like lightning strikes or weather related outages; (2) the Project will support system voltage when it is stressed during peak load periods; and (3) the Project will reduce reliance on neighboring transmission lines such that contingency outages on such lines will have a lesser effect on the customer loads in the TRIC area. (*Id.*)

NCARE's Position

24. NCARE argues that Nexus Fulcrum's claim that the Project will provide reliability benefits is not substantiated. (Ex. 400 at 35.) NCARE states that Nexus Fulcrum did not provide any evidence that could substantiate the Project's benefit for reliability to customers because an agreement had not been established with NV Energy. (*Id.* at 37-38.)

25. NCARE states that the 2026 Integrated Resource Plan's ("IRP") loss of load probability ("LOLP") study referenced by Nexus Fulcrum—in the direct testimony of Ms. Salgo—does not substantiate claims regarding the Project's broad electric service reliability need. (*Id.* at 36.) NCARE states that the LOLP study update performed by E3 for NV Energy's 2026 IRP analyzed SPPC reliability risk for 2027 and 2028. (*Id.*) NCARE argues that ASR-IX will not be operational until 2029, and therefore it cannot support the identified LOLP risks. (*Id.*)

DRAFT

26. NCARE states that the Project is not included in NV Energy's pending 2026 IRP. (*Id.* at 35.) NCARE states further that application is not backed by the rigor of an IRP determination. (*Id.*) NCARE argues that if the IRP does not have the assessments that the Project is needed to provide reliable service, then those assessments should be shown in a UEPA application. (*Id.* at 36.)

27. NCARE argues that NV Energy's LOLP study does not substantiate Nexus Fulcrum's claims that the Project will increase reliability. (*Id.*) First, NCARE notes that the study analyzed Sierra's reliability risk for 2027 and 2028, but the Project will not be operational until 2029. (*Id.*) Second, NCARE notes that the study was an update to NV Energy's 2024 LOLP analysis, intended to assess reliability prior to the completion of the Greenlink Projects, and it does not consider any resources submitted for approval in the 2026 IRP. (*Id.* at 36-37.) Third, NCARE argues that the reliability risk identified in the study should resolve in 2029 with the completion of certain projects. (*Id.* at 37.) Fourth, NCARE states that NV Energy proposes the addition of around 3,700 MW in new renewable, energy storage, and gas resources in Sierra's system through 2032. (*Id.*) NCARE concludes that nothing in the study suggests that the anticipated and proposed resources are insufficient to achieve local resource adequacy beyond 2028. (*Id.*)

28. NCARE discounts the discussions between Switch and NV Energy about using the Project to provide grid support services because there are not yet any agreements with terms and conditions. (*Id.*)

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Staff's Position

29. Staff notes that the Project will emit GHGs. (Ex. 300 at 9.) Staff notes further that Nexus Fulcrum has stated in its application that the Project is anticipated to enhance the reliability of utility service in Nevada. (*Id.*)

30. Staff recommends that the Commission find that the application addresses the extent to which the Project is needed to ensure reliable utility service to customers in Nevada. (*Id.* at 14.)

31. Staff further recommends, based upon that finding and other recommended findings that the Commission approve the application, contingent upon Nexus Fulcrum obtaining and filing the necessary permits, licenses, and approvals. (*Id.* at 14-15.) Staff recommends that the Commission approve the request of Nexus Fulcrum under the provisions of the UEPA, for a permit to construct the ASR-IX consisting of a nominal 510 MW natural gas-fueled electric generation plant and associated facilities to be located on private land within the Tahoe Reno Industrial Center complex in Storey County, Nevada, contingent upon Nexus obtaining and filing with the Commission as compliance items, if not already included in the filing, permits, licenses, and approvals. (*Id.* at 2.)

32. Staff recommends that the Commission's order contain a provision that if Nexus does not file with the Commission all the compliances set forth below within five years of the effective date of the order, then the order will be deemed to be vacated without further action by, or order of, the Commission. (*Id.*)

Nexus Fulcrum's Rebuttal Position

33. Nexus Fulcrum states that NCARE's assertion that the ability of the Project to provide energy assistance to NV Energy should be disregarded in light of the absence of a

DRAFT

binding agreement between the Project and NV Energy is unreasonable. (Exhibit 103 at 5.) Nexus Fulcrum states that Switch and NV Energy are engaged in discussions concerning the use of the generating resources of the Project to provide energy assistance to NV Energy, and by extension, Nevada electric customers, and that both parties have a mutual interest in enhancing electric reliability in the region. (*Id.*)

34. Nexus Fulcrum disagrees with NCARE's assertion that "there is a substantial difference between new, purpose-built resources and PPAs proposed in the IRP to serve bundled customers and system reliability needs versus new generating resources purpose-build for the needs of a single unbundled customer." (*Id.*) Nexus Fulcrum states that the benefits accrue to the system regardless of the existence of a power purchase agreement or whether they are an identified IRP resource, and regardless of whether they are intended as a bundled energy and capacity product or a resource intended to serve a particular off-taker. (*Id.* at 6.)

35. Nexus Fulcrum states that the Project with an in-service date in 2029 provides assistance in reducing LOLP risk. (Ex. 103 at 4.) Nexus Fulcrum states that a number of the planned generation resources are not expected to enter service until the summers of 2030, 2031, and 2032 and as such, the E3 study does not suggest that the problem of resource adequacy will resolve at the end of 2028. (*Id.*) Nexus Fulcrum states that, instead, local resource additions will likely be necessary beyond 2028. (*Id.*)

Commission Discussion and Findings

36. NRS 704.890(1)(b) provides that the Commission may not grant a UEPA Permit to Construct unless it finds and determines, "[i]f the utility facility emits greenhouse gases and does not use renewable energy as its primary source of energy to generate electricity, the extent to which the facility is needed to ensure reliable utility service to customers in this State."

DRAFT

37. Here, Nexus Fulcrum provides, and Staff agrees, that the Project is needed to provide reliable service to Switch. Both Staff and Nexus Fulcrum note that Sierra is unable to serve the anticipated needs of the data center on the site because development in the TRIC is outpacing the utility's ability to serve both new and existing customers. NRS 704.890(1)(b) refers to "customers in this State." Switch, the ultimate off-taker of the Project, is an existing customer of Sierra seeking to expand its demand, located in Nevada. The statute does not confine the inquiry to a certain type of customer.

38. The Commission rejects NCARE's argument that Nexus Fulcrum failed to demonstrate that the Project is needed to ensure reliable utility service to customers in the state. Here, Nexus Fulcrum demonstrated that Switch has a need for reliable electric service to operate its data centers that cannot currently be served by Sierra, as demonstrated by Sierra's most recent resource-plan filings. The Commission further finds that Nexus Fulcrum's election to pursue self-generation through lawful federal, state, and local permitting processes, rather than to await Sierra's ability to provide service, does not diminish the demonstrated need for the Project.

39. The Commission agrees with Staff and Nexus Fulcrum that the application and the evidentiary record satisfy NRS 704.890(1)(b). Accordingly, the Commission finds and determines that Nexus Fulcrum demonstrated and addressed the extent to which the Project is needed to ensure reliable utility service to customers in this State. The record further reflects that the Project will limit the near-term capacity demands that would otherwise be placed on Sierra's existing customers.

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C. Whether the Need for the Project Balances Adverse Effect on the Environment—NRS 704.890(1)(c)

Nexus Fulcrum's Position

40. Nexus Fulcrum states that the Project is located to minimize environmental effects by being located on previously disturbed land already designated and developed for industrial use, where surrounding land use is predominantly existing industrial facilities, including large-scale power generation. (Ex. 101 at 10.) Nexus Fulcrum provides that the Project will include comprehensive environmental controls during both construction and operation and comply with all necessary terms and conditions of all applicable environmental permits. (*Id.*) Accordingly, Nexus Fulcrum state that the identified mitigation measures address how the construction and operation of the Project will not result in adverse impacts on the environment. (*Id.* at 8.)

NCARE's Position

41. NCARE argues that the need for the Project does not balance the adverse effect on the environment. (Ex. 400 at 43.) NCARE states that the Project is in direct conflict with Nevada's statutory framework for statewide GHG emission reductions and renewable energy targets. (*Id.* at 23.) NCARE states that the application does not quantify the direct and indirect economic impacts to Nevadans that may result from the Project. NCARE states that the Project serves a single off-taker, Switch, but that Nexus Fulcrum has not provided information on the amount and timing of the power needs of Switch. (*Id.* at 47.)

42. NCARE states that the application does not provide any showing that alternative non-emitting resources were considered prior to and beyond the limitations of a pre-selected Project site nor does it identify whether the Project and its viability were considered as part of a diverse resource portfolio. (*Id.*)

DRAFT

43. NCARE argues that the information in the application does not offer an adequate assessment of whether the Project and its associated benefits outweigh the increase in statewide GHG emissions, which Nevada's Legislature has found to drive climate change, impact residents' health and safety, harm the environment and wildlife, exacerbate droughts and wildfires, jeopardize tourism, and reduce the number of hours in the day to safely perform work activities such as construction. (*Id.* at 16-17.)

44. NCARE notes that Nevada's statutory GHG emissions goals target 28 percent below 2005 levels by 2025, 45 percent below 2005 levels by 2030, and zero or near-zero by 2050. (*Id.* at 27.) NCARE explains that Nevada is not currently on pace to meet its goals and the Project's emissions will exacerbate Nevada's expected shortfall relative to the 2030 emission reduction milestone and could prevent Nevada from achieving its zero or near-zero emissions milestone in 2050. (*Id.* at 28.) NCARE states that CO^2 emissions have an atmospheric residence time of hundreds to thousands of years, meaning that any departure from Nevada's targeted GHG emissions reductions trajectory will have a long-term impact on Nevada's climate. (*Id.* at 26.)

Staff's Position

45. Staff notes that it does not perform any independent review of GHG. (Ex. 300 at 4.) Staff states that it relies upon NDEP's air permitting process to evaluate the potential effects of GHG emissions. (*Id.*)

46. Staff recommends that the Commission find that the need for the Project balances any adverse effect on the environment. (*Id.* at 10.) Staff states that the application and data request responses demonstrate that the need for the Project balances any adverse effects on the environment. (*Id.* at 8.) Staff states that the Project setting is a previously disturbed site within the TRIC in rural Storey County and that the Project site was previously developed as a biofuel

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refinery and is zoned for heavy industrial use in the Storey County code. (*Id.*) Staff provides that because the Project site is a disturbed industrial site, construction of the Project will not impact previously undisturbed land. (*Id.*)

Nexus Fulcrum's Rebuttal Position

47. Nexus Fulcrum argues that NCARE recasts SB 254's requirements to inventory GHG emissions as a bar to new gas generation. (Ex. 104 at 5.) Nexus Fulcrum argues further that, as shown in its testimony, the Project will ensure reliable service to certain of Switch's operations and also provide system-wide reliability benefits. (*Id.*) Nexus Fulcrum argues that those benefits outweigh the purported negative effects of the Project. (*Id.*) Nexus Fulcrum also argues that NCARE overlooks larger public interest factors such as the economic benefits of the Project. (*Id.*)

Commission Discussion and Findings

48. NRS 704.890(1)(c) provides that the Commission may not grant a UEPA Permit to Construct unless it finds and determines that the need for the facility balances any adverse effect on the environment. Staff and Nexus Fulcrum both provide that the application appropriately determines that the need for the Project balances any adverse effect on the environment given the location of the facility, implementation of best management practices, and permitting requirements. Moreover, Nexus Fulcrum provides that environmental impacts will be mitigated through the best available technology to mitigate air pollution and control emissions and that the economic benefits of the Project balances any adverse effect on the environment.

49. NCARE argues that the Project is in direct conflict with Nevada's statutory framework for statewide GHG emission reductions and renewable energy targets and cites its concerns that the Project is detrimental to Nevada's GHG Emissions reduction goals and not

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consistent with the RPS. The Commission does not dispute that the Project will create GHG emissions and will not use renewable energy; however, NCARE's argument cannot be reconciled with the structure of the statute that the Commission must apply. NRS 704.890(1)(b) directs the Commission to make a particular finding when a utility facility "emits greenhouse gases and does not use renewable energy as its primary source of energy to generate electricity." That paragraph presupposes that such facilities may be permitted. Were conflict with the State's emissions-reduction goals categorically disqualifying, paragraph (b) would have no work to do. What NRS 704.890(1)(c) requires is a balance. On this record, the demonstrated need for the Project, the proposed mitigation measures, the siting decisions, and the permitting obligations Nexus Fulcrum must satisfy balance the adverse effects NCARE identifies.

50. NRS 704.890(1)(c) does not require that Nexus Fulcrum put forth carbon-neutral facilities to serve state needs or eliminate all adverse effects. In adopting the UEPA permitting process, in NRS 704.825(1), the Nevada Legislature declared that:

> (a) There is at present and will continue to be a growing need for electric, gas and water services which will require the construction of new facilities. It is recognized that such facilities cannot be built without in some way affecting the physical environment where such facilities are located.
>
> (b) It is essential in the public interest to minimize any adverse effect upon the environment and upon the quality of life of the people of the State which such new facilities might cause.
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> (c) Present laws and practices relating to the location of such utility facilities should be strengthened to protect environmental values and to take into account the total cost to society of such facilities.
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> (d) Existing provisions of law may not provide adequate opportunity for natural persons, groups interested in conservation and the protection of the environment, state and regional agencies, local governments and other public bodies to participate in proceedings regarding the location and construction of major facilities.

51. The statutory UEPA framework recognizes that there is a growing need for electricity and that the construction and operation of those facilities will likely cause

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adverse environmental effects. Consequently, the UEPA process requires that applicants identify and minimize those negative effects to balance the need for a given facility against the harms it may cause. Here, Nexus Fulcrum identified foreseeable harms and put forth a variety of measures to mitigate those harms to the extent practicable. Further, NDEP, the State agency responsible for environmental protection, is currently evaluating Nexus Fulcrum's Class 1 OPTC and Operating Air Permit application. The Commission relies on NDEP, which possesses expertise in environmental protection, to fully and thoroughly evaluate the permit application. Issuance of the NDEP permit is required prior to the commencing construction of the Project.

52. The Commission notes that NRS 704.877 requires the Commission to accept and incorporate the findings and conclusions made in an environmental review relating to the construction of a utility facility in its entirety, or to the construction of any portion of a utility facility, that has already been conducted by an appropriate federal agency or by a state, regional or local agency. While NDEP's environmental review has not yet been conducted, that review is a condition precedent for any UEPA Permit to Construct that the Commission would issue, and if NDEP, the State agency possessing the relevant environmental expertise, denies the air permit applications, no UEPA permit will issue for the Project. It is beyond the Commission's authority to conduct any duplicative environmental review, and the Commission is bound by NDEP's determinations.

53. The Commission does not minimize the emissions NCARE has quantified. Balancing under NRS 704.890(1)(c) does not require a finding that the adverse effects are trivial; it requires the Commission to weigh them against the need. On one side of that scale are the criteria pollutant and greenhouse gas emissions associated with a defined period of operation,

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mitigated by best available emissions controls, best management practices, and the conditions NDEP will impose. On the other are the reliability need found under NRS 704.890(1)(b), the siting of the Project on previously disturbed land within an existing industrial park, and the construction and operating employment, capital investment, and property tax revenue reflected in the record. The Commission concludes that the balance favors Nexus Fulcrum and, accordingly, finds and determines that the need for the Project balances any adverse effect on the environment.

D. Whether the Project Represents the Minimum Adverse Effect on the Environment—NRS 704.890(1)(d)

Nexus Fulcrum's Position

54. Nexus Fulcrum states that the facility represent the minimum adverse effect on the environment, considering the state of available technology and the nature and economics of the various alternatives. (Ex. 101 at 10.) Nexus Fulcrum provides that the application, including the environmental statement and supporting documents, detail the efforts that will be taken to ensure that the Project has the minimum adverse effect on the environment. (*Id.*)

NCARE's Position

55. NCARE states that the facility does not represent the minimum adverse effect on the environment considering the state of available technology and the nature and economics of the various alternatives. (Ex. 400 at 43-44.) NCARE states that for NV Energy facilities, the tools and processes historically used in Nevada energy sector planning to determine whether a new utility-scale gas plant represents the minimum adverse effect on the environment considering available technology and economics of alternatives is determined by an IRP filing, which did not occur for the facility. (*Id.* at 44.)

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Staff's Position

56. Staff states that the Project will have little impact on the environment of the state and that the construction impacts will be short-lived and minimal given the limited geographic scope of the Project. (Ex. 300 at 10.)

Nexus Fulcrum's Rebuttal Position

57. Nexus Fulcrum states that it evaluated alternative technologies and determined that the Project was best suited for its needs and that this Project is being pursued because it is the only type of generating resource that was available to provide the quantity of generation needed in the required time frame. (Ex. 104 at 8.) Nexus Fulcrum states that the fact that an already-developed industrial site was available close to the Switch campus, minimizing infrastructure buildout and timeline, and other environmental impacts that arise from greater and new surface disturbance is beneficial for all Nevadans. (*Id.*) Nexus Fulcrum disagrees with NCARE's assertion that consideration of alternative technologies was "largely based on the economic benefits of Project proximity for the off-taker and the attributes of the parcel selected." (*Id.* at 7-8.) Nexus Fulcrum states that UEPA appropriately considers utility facilities brought by applicants with access to specific parcels of land, on fixed budgets, and with specific geographic constraints regarding off-take. (*Id.*)

Commission Discussion and Findings

58. NRS 704.890(1)(d) provides that the Commission may not grant a UEPA Permit to Construct unless it finds and determines that the facility represents the minimum adverse effect on the environment, considering the state of available technology and the nature and economics of the various alternatives.

DRAFT

59. NCARE is critical of the application because, inter alia, Nexus Fulcrum did not provide a comparison of alternative renewable technologies and electric service options that would be available to serve their load with an analysis of their infeasibility compared to the proposed Project. The Commission agrees with NCARE that the state of available technology is relevant. NRS 704.890(1)(d) says so expressly. But the statute directs the Commission to consider available technology in determining whether a facility represents the minimum adverse effect on the environment; it does not oblige an applicant to compile an exhaustive catalog of generation technologies and disprove each one in turn. The required contents of a UEPA application are prescribed by NRS 704.870(1), which calls for a description of reasonable alternate locations and a statement of why the proposed location is best suited to the facility. It does not call for a technology-by-technology feasibility study. NCARE's objection is therefore properly understood as a challenge to the sufficiency of the evidence rather than to a filing requirement Nexus Fulcrum has failed to meet. The Commission agrees with Nexus Fulcrum that an exhaustive review of all available technologies is not required in UEPA applications.

60. The environmental statement in the application explains that no feasible alternative locations or configurations were identified that would adequately achieve the Project's goals and objectives for reliable, on-site power generation for data center needs.

61. The Commission agrees with Staff and Nexus Fulcrum that it would not be feasible or economic to select a different site location or configuration for the Project. The Commission finds that the siting of the Project reduces environmental impacts and avoids increased transmission expense by using the site of a former biofuel refinery in an industrial area proximate to the data-center expansion. The record also permits the technology determination NRS 704.890(1)(d) requires. Nexus Fulcrum evaluated combined-cycle gas turbines (Ex. 104 at

DRAFT

8.), fuel cells (*Id.* at 8.), solar (Ex. 101 at 10-11; Ex. 104 at 8.), geothermal (Ex. 101 at 11; Ex. 104 at 8.), and battery storage (Ex. 101 at 10-11.), before selecting the proposed design and explained why each alternative was incompatible with the on-site installation that must be available on Nexus Fulcrum's schedule. The comparison NCARE urges, by contrast, measures the Project against resources that could not be sited and energized in the required time. An alternative that cannot meet the need is not, for purposes of NRS 704.890(1)(d), a viable alternative.

62. The Commission also recognizes Nexus Fulcrum's environmental statement details proposed measures to minimize adverse effects on the environment. Accordingly, the Commission finds and determines that the Project represents the minimum adverse effect on the environment, considering the state of available technology and the nature and economics of the various alternatives.

E. Whether the Project Conforms with State and Local Laws—NRS 704.890(1)(e)

Nexus Fulcrum's Position

63. Nexus Fulcrum states that its application includes a list of each such government approval that has been obtained as well as a date by which government approvals that have not been obtained are anticipated to be issued. (Ex. 101 at 11.) Nexus Fulcrum provides that as additional approvals are obtained, they will be filed in this docket and that it intends to satisfy the requirements of all applicable permitting and approval requirements. *(Id.)*

Staff's Position

64. Staff recommends that the Commission find that the Project, as proposed, conforms to applicable state and local laws and regulations and that Nexus Fulcrum has

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obtained, or is in the process of obtaining, all other permits, licenses, registrations, and approvals required by federal, state, and local statutes, regulations, and ordinances. (Ex, 300 at 13.)

65. Staff states that in addition to obtaining the UEPA Permit to Construct from the Commission, Nexus Fulcrum must obtain additional local permits, state permits, and approvals before commencing construction. (*Id.* at 12, 23.) Accordingly, Staff recommends Nexus Fulcrum file copies of the following permits:

(a) Federal Aviation Administration–No Hazard Determination;

(b) NDEP–Class I Air Quality Operating Permit to Construct;

(c) NDEP–Surface Area Disturbance Permit;

(d) NDEP–Construction Stormwater General Permit;

(e) NDEP–Stormwater General Permit;

(f) NDEP–Individual National Pollutant Discharge Elimination System Permit;

(g) Nevada Department of Wildlife–AB 307 Energy Planning and Conservation Fund Compliance;

(h) Storey County–Special Use Permit;

(i) Storey County–Building Permit;

(j) Storey County–Commercial/Industrial Permit;

(k) Storey County–Excavation Permit;

(l) Storey County–Encroachment Permit;

(m) Storey County–Fire Plan Review/Permit.

(*Id.* at 13.)

Commission Discussion and Findings

66. NRS 704.890(1)(e) has two components. The first is that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder. The Project is sited within the TRIC on land zoned for industrial use consistent with

DRAFT

Storey County's land use planning, and no party contends otherwise. The second is that the applicant has obtained, or is in the process of obtaining, all other required permits, licenses, registrations, and approvals. Nexus Fulcrum has not yet obtained each of them. NRS 704.890(2) addresses that circumstance directly: Where an applicant has not obtained all required approvals as of the date the Commission decides to issue a permit, the Commission "shall condition its permit upon the applicant obtaining those permits and approvals." The compliance items imposed below give effect to that directive, and no permit to construct will issue until they are satisfied. The Commission accordingly finds and determines that the Project, as proposed, conforms to applicable state and local laws and regulations and that Nexus Fulcrum has obtained, or are in the process of obtaining, all other permits, licenses, registrations, and approvals required by federal, state, and local statutes, regulations, and ordinances.

67. The Commission agrees with Staff's assessment that in addition to obtaining the UEPA Permits to Construct, Nexus Fulcrum also must obtain additional local permits, state permits, and other approvals before commencing construction. Accordingly, prior to the issuance of a UEPA Permit to Construct for the Nexus Fulcrum Project, Nexus Fulcrum must file copies of the following permits:

(a) Federal Aviation Administration–No Hazard Determination;

(b) NDEP–Class I Air Quality Operating Permit to Construct;

(c) NDEP–Surface Area Disturbance Permit;

(d) NDEP–Construction Stormwater General Permit;

(e) NDEP–Stormwater General Permit;

(f) NDEP–Individual National Pollutant Discharge Elimination System Permit;

(g) Nevada Department of Wildlife–AB 307 Energy Planning and Conservation Fund Compliance;

DRAFT

(h) Storey County–Special Use Permit;

(i) Storey County–Building Permit;

(j) Storey County–Commercial/Industrial Permit;

(k) Storey County–Excavation Permit;

(l) Storey County–Encroachment Permit;

(m) Storey County–Fire Plan Review/Permit.

F. Public Interest Determination—NRS 704.890(1)(g)

Nexus Fulcrum's Position

68. Nexus Fulcrum states that the facility will be in the public interest because the facility is a significant capital investment by a leading Nevada business. (Ex. 101 at 3.) Nexus Fulcrum provides that the investment will support not only Switch's needs but will also provide grid support for the benefit of northern Nevada's electric system. Nexus Fulcrum provides further that it will further reduce near-term capacity demands that would otherwise be placed on Nevada's ratepayer-funded utility. (Ex. 101 at 11-12.) Nexus Fulcrum states that the facility will not cause unmitigated environmental effects and will be subject to comprehensive environmental regulation. (*Id.* at 12.)

NCARE's Position

69. NCARE states that Nexus Fulcrum has not provided sufficient information the long-term net impacts of the Project on the public. (Ex. 400 at 46.) NCARE states that the Project is not in the public interest given the impacts on the environment and the lack of reported economic benefits to Nevadans. (*Id.* at 47-48.)

70. NCARE states that while the potential adverse environmental impacts from increased greenhouse gas emission are evident, the application does not enumerate the economic benefits to Nevadans that will result from providing reliable electric service to the intended off-

DRAFT

taker, nor does it report the generating unit's direct and indirect economic impact. Even considering the Project's direct and indirect benefits to Nevadans, it is purpose-built to benefit a single off-taker, Switch Ltd. (*Id.* at 47.) NCARE provides that the application failed to report the expected greenhouse gas emissions and its environmental impacts, which include wildfires, flooding, and drought, as well as downstream impacts to public interests such as human and livestock health. (*Id.*)

Staff's Position

71. Staff recommends that the Commission find that the Project will serve the public interest. (Ex. 300 at 13.)

Nexus Fulcrum's Rebuttal Position

72. Nexus Fulcrum states that NCARE fails to reconcile lowering GHG emissions with the need to reliably serve energy customers throughout the state. (Ex. 104 at 5.) Nexus Fulcrum states that with regard to GHG emitting facilities, UEPA requires a more concrete analysis: GHG generating facilities are evaluated to determine "the extent to which the facility is needed to ensure reliable utility service to customers in this State." (*Id.*) NCARE states that the benefits outweigh the purported negative impacts of the Project's emissions. (*Id.*)

73. Nexus Fulcrum states that gross generation overstates the amount of generation available for end use by ignoring the amount of energy required to meet the internal needs of the generating station. (*Id.* at 6.) Nexus Fulcrum states that by comparing maximum gross generation from ASR-IX to actual net generation from other sources, NCARE distorts the picture, making ASR-IX appear to be larger than it actually will be relative to other generation in Nevada. (*Id.*)

DRAFT

Commission Discussion and Findings

74. NRS 704.890(1)(g) provides that the Commission may not grant a UEPA Permit to Construct unless it finds and determines that the facility will serve the public interest.

75. The Commission finds that NCARE's assertion that the Project will only serve the energy needs of Nexus Fulcrum is not relevant to the public interest determination. The Commission approves UEPA applications for end use customers outside of Nevada. Here, Switch is located in Nevada and is customer of Sierra that requires service.

76. NCARE's argument does not account for the economic benefits in the application and corresponding environmental statements which include the short-term and long-term jobs created by the construction and operation of the Project, investment in Storey County, related property tax revenues for Storey County, reuse of a biofuel refinery location, and economic diversification consistent with Storey County's industrial growth strategy within the TRIC. Similarly, the Commission finds that concerns about increased emissions are substantially mitigated by the best management practices, state-of-the-art technologies to control emissions, and compliance with applicable state laws, regulations, local ordinances, and permitting requirements. Because the Project is lawful, because Nexus Fulcrum has committed to measures that mitigate their environmental effects, and because the record reflects economic benefits to Storey County and to the State, the Commission concludes that the Project will serve the public interest.

77. The Commission also declines to adopt NCARE's assertion that Nexus Fulcrum may be acting within the definition of a "public utility" or "provider of electric service" and could therefore be subject to certification and RPS requirements. That assertion asks the Commission to decide, on a speculative basis, questions of regulatory status that are not

DRAFT

presented by the application. The questions of whether the Project will be a public utility and whether Nexus Fulcrum will be subject to and comply with the RPS are not relevant to the UEPA analysis focused on the evidentiary record in this docket.

78. Given the above analysis and findings, the Commission finds that Nexus Fulcrum has satisfied all necessary components of NRS 704.890(1) for UEPA permits to construct the requested Project. Therefore, the Commission grants the application. Accordingly, pursuant to NRS 704.890(1), the Commission finds, incorporates, determines, and concludes the following with respect to Nexus Fulcrum:

(a) The Commission accepts and incorporates the findings and conclusions in Nexus Fulcrum's environmental statement for the Project.

(b) Nexus Fulcrum determined the nature of the probable effect of the project on the environment in the ES. The project emits greenhouse gases and does not use renewable energy as its primary source of energy to generate electricity, and Nexus Fulcrum demonstrated the extent to which the project is needed to ensure reliable utility service to customers in this State.

(c) The need for the project balances any adverse effect on the environment.

(d) The project represents the minimum adverse effect on the environment, considering the state of available technology and the nature and economics of the various alternatives.

(e) Nexus Fulcrum has obtained, or is in the process of obtaining, all other permits, licenses, registrations and approvals required by federal, state and local statutes, regulations and ordinances, and the location of the project as proposed conforms to applicable state and local laws and regulations issued thereunder.

(f) The project will serve the public interest.

79. The Commission finds that Nexus Fulcrum must file with the Commission, as compliance items, the following required outstanding permits, licenses, and approvals:

(a) Federal Aviation Administration–No Hazard Determination;

(b) NDEP–Class I Air Quality Operating Permit to Construct;

(c) NDEP–Surface Area Disturbance Permit;

DRAFT

(d) NDEP–Construction Stormwater General Permit;

(e) NDEP–Stormwater General Permit;

(f) NDEP–Individual National Pollutant Discharge Elimination System Permit;

(g) Nevada Department of Wildlife–AB 307 Energy Planning and Conservation Fund Compliance;

(h) Storey County–Special Use Permit;

(i) Storey County–Building Permit;

(j) Storey County–Commercial/Industrial Permit;

(k) Storey County–Excavation Permit;

(l) Storey County–Encroachment Permit;

(m) Storey County–Fire Plan Review/Permit.

80. The Commission finds that if Nexus Fulcrum does not file with the Commission all of the requisite compliances set forth above within five years of the effective date of this order, this order will be deemed to be vacated without further action by or order of the Commission.

Therefore, it is ordered:

1. The application of Nexus Fulcrum LLC, designated as Docket No. 26-06016, is granted as provided by and consistent with this order.

2. No construction may commence on a utility facility that is the subject of this application for Utility Environmental Protection Act permits to construct until after the Public Utilities Commission of Nevada issues a permit to construct for the utility facility.

Compliances

3. Prior to being issued the requested Utility Environmental Protection Act permit to construct the project, Nexus Fulcrum LLC must file copies of the following federal, state and local permits with the Public Utilities Commission of Nevada:

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(a) Federal Aviation Administration–No Hazard Determination;

(b) Nevada Division of Environmental Protection–Class I Air Quality Operating Permit to Construct;

(c) Nevada Division of Environmental Protection–Surface Area Disturbance Permit;

(d) Nevada Division of Environmental Protection–Construction Stormwater General Permit;

(e) Nevada Division of Environmental Protection–Stormwater General Permit;

(f) Nevada Division of Environmental Protection–Individual National Pollutant Discharge Elimination System Permit;

(g) Nevada Department of Wildlife–AB 307 Energy Planning and Conservation Fund Compliance;

(h) Storey County–Special Use Permit;

(i) Storey County–Building Permit;

(j) Storey County–Commercial/Industrial Permit;

(k) Storey County–Excavation Permit;

(l) Storey County–Encroachment Permit;

(m) Storey County–Fire Plan Review/Permit.

4. Upon the Regulatory Operations Staff of the Public Utilities Commission of Nevada's verification of the completion of the compliance items set forth above, the Assistant Commission Secretary of the Public Utilities Commission of Nevada must issue to Nexus Fulcrum LLC a Utility Environmental Protection Act permit to construct.

5. If Nexus Fulcrum LLC does not file with the Public Utilities Commission of Nevada all of the requisite compliances set forth above within five years of the effective date of this order, this order will be deemed to be vacated without further action by or order of the Public Utilities Commission of Nevada.

By the Commission,

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HAYLEY WILLIAMSON, Chair

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TAMMY CORDOVA, Commissioner and Presiding Officer

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RANDY J. BROWN, Commissioner

Attest: _____
TRISHA OSBORNE,
Assistant Commission Secretary

Dated: Carson City, Nevada

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