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25-09008

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FILED WITH THE PUBLIC UTILITIES COMMISSION OF NEVADA - 4/24/2026

Holland & Hart

Laura K. Granier
Partner
Phone 775.327.3089
LKGranier@hollandhart.com

April 24, 2026

Trisha Osborne
Assistant Commission Secretary
Public Utilities Commission of Nevada
1150 E. William Street
Carson City, NV 89701

Re: 25-09008 - Petition of Reno Power NR I LLC for an Advisory Opinion or Declaratory Order Confirming the Applicability of Sierra Pacific Power Company, d/b/a NV Energy's Rule 9.A.16 to Proportionate Share Allocations for Subsequent Interconnections to a Master Planned Community Line Extension

Dear Ms. Osborne:

Please see enclosed for filing, Switch, Ltd.'s Post Hearing Brief in the above referenced docket.

Please feel free to reach out to me should you have any questions or concerns.

Very truly yours,

/s/Laura K. Granier

Laura K. Granier
Partner
of Holland & Hart LLP

LKG:ald

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HOLLAND & HART LLP
5470 KIETZKE LANE, SUITE 100
RENO, NV 89511-2094

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Petition of Reno Power NR I LLC for an Advisory Opinion or Declaratory Order as to Confirming the Applicability of Sierra Pacific Power Company d/b/a NV Energy's Rule 9.A.16 to Proportionate Share Allocations for Subsequent Interconnections to a Master Planned Community Line Extension.	Docket No. 25-09008

POST HEARING BRIEF

Switch, Ltd., a Nevada Limited Liability company ("Switch"), by and through its counsel, the law firm of Holland & Hart, LLP, pursuant to the Hearing Officer's direction following the March 27, 2026, hearing, hereby files this Post Hearing Brief. Reno Power NR I LLC's ("Reno Power") Petition for an Advisory Opinion or Declaratory Order ("Petition"). Because the relief sought in the Petition is foreclosed by the plain language of Rule 9 and beyond that which is permitted by law, Switch requests that the Commission deny the Petition.

I. Introduction

Reno Power filed its Petition seeking what it described as a narrow, contract-specific interpretation of Rule 9.[1] However, since that time, in testimony and in its Post Hearing Brief, Reno Power has improperly expanded its request which, if granted, would have the effect of (i) rewriting Rule 9 to grant Reno Power more favorable economic terms than it originally bargained for and (ii) changing the Subsequent Gosling Applicant's obligations under Rule 9.

[1] Reno Power also objected to Switch's intervention on the basis that it had no interest in and would not be affected by the outcome in this docket. *See* Docket No. 25-09008, Response in Partial Opposition to Petition for Leave to Intervene, pp. 1, 3.

Reno Power's expanded request asks the Commission to (i) ignore that it was the cost-causer of Gosling as the first entity to request service and necessitate its construction and (ii) adopt a skewed interpretation of Rule 9, under which the reimbursement for its costs for the Gosling facility shift from being subject to refund over time pursuant to Rule 9.C.6 to being paid within 60 days of interconnection under Rule 9.A.16 whenever a new non-Master Planned Community ("MPC") applicant interconnects to Reno Power's MPC substation. Reno Power's actual goal is to shift its cost and development risk, that it knowingly accepted, to any subsequent non-MPC applicant interconnecting to the Gosling substation.

While Reno Power has said that it is <u>not</u> seeking a declaration of the Subsequent Gosling Applicant's legal rights under its Rule 9 contracts, Reno Power's testimony and briefing contradicts this.[2] By way of example, Reno Power's witness Dennis Bartlett illustrated the breadth of Reno Power's true request of the Commission, asking that "the Commission confirm that Rule 9.A.16 *governs the cost allocation for the Subsequent Gosling Applicant's interconnection.*"[3] Mr. Bartlett similarly argues Rule 9.A.16 "requires the Subsequent Gosling Applicant to *reimburse pioneer applicant (Reno Power) for a specific share of the infrastructure costs*" within 60 days of interconnection rather than the reimbursement mechanism expressly stated in Rule 9.C.6.[4] The Commission cannot declare the Subsequent Gosling Applicant's rights under Rule 9 or, for that matter, its Rule 9 agreement in this proceeding. Those facts are not – and Reno Power cannot put them – before the Commission because it was not a part of the Petition. Furthermore, Reno Power should be estopped from advancing the Petition on the basis of a mischaracterization that it does not impact the interests of any party other than itself and NV Energy.

Reno Power is a sophisticated party, represented by energy regulatory counsel familiar with Rule 9, that negotiated, signed, and entered into its Rule 9 Agreement voluntarily and with full knowledge of the plain language of Rule 9. The plain language is clear that Reno Power does

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[2] *See, e.g.*, Tr. 11:24-5; 12:1-2.

[3] Docket No. 25-09008, Prepared Direct Testimony of Dennis Bartlett, Q&A 47 (emphasis added).

[4] *Id.* at Q&A 43 (emphasis added).

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not receive a proportionate cost share allocation under 9.A.16 because it is facially inapplicable. The result of Reno Power's Rule 9 Agreement is that it will be reimbursed for cost pursuant to Rule 9.C.6 when a **non-MPC** applicant connects to Gosling – reimbursement that will occur an annual basis based upon the computation set forth in the Rule. Now, realizing it will have to wait to recoup its expenses, Reno Power asks the Commission to reinterpret Rule 9 to compensate Reno Power under the proportionate share allocation mechanism set forth in Rule 9.A.16 within 60 days of a non-MPC applicant interconnecting to Gosling. If the Commission were to grant Reno Power's expanded relief, it would result in a de facto and retroactive revision to Rule 9 Agreements which Reno Power is not a party to. This would upset fundamental principles of contract law, frustrate public trust in contracts, and constitute ad hoc rulemaking.

Reno Power's last-ditch effort to cure the obvious deficiencies in its Petition by asking the Commission to exercise "discretion" to interpret Rule 9 against its plain language is unavailing. The Petition is neither limited to the presentation of a "dispute" under Rule 9 between Reno Power and NV Energy, nor were the appropriate conditions satisfied to raise it as such. If Reno Power wanted to deviate from the plain language of Rule 9, it could have presented the Commission with such a request before or at the time it executed its Rule 9 agreement. It chose not to.

For all these reasons, and as more specifically discussed below, the Petition should be denied and the Commission should issue an order affirming NV Energy and Staff's interpretation of Rule 9. Reno Power's dissatisfaction with the consequences of its own business decisions and contracting strategy are not the responsibility of any subsequent applicant, NV Energy, ratepayers, or this Commission.

II. Factual Background

Reno Power is a sophisticated party who markets its skill at power development.[5] It entered into a master planned community ("MPC") agreement with NV Energy for the provision of energy to its Peru Shelf Master Planned Community Project.[6] At the time that Reno Power entered into

[5] Tract, What We Do, available at: https://www.tract.com/what-we-do/; *see, also*, Docket No. 25-09008, Prepared Rebuttal Testimony of Dennis Bartlett at Q&A 1 (stating that Tract (LandCo) I, LP ("Tract") is the parent company of Reno Power).

[6] Docket No. 25-09008, Reno Power's Brief, p. 3 (April 10, 2026).

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this agreement, it was on notice of the Rule 9 tariff provision applicable to an MPC.[7] Reno Power concedes that the agreement that it entered into for Gosling specifically reserved two terminals that were not dedicated for the purposes of serving the MPC as available for use at NV Energy's discretion.[8] It also acknowledges that there was no amount identified as a proportionate share allocation to reduce the total costs in the payment schedule attached to its Rule 9 agreement.[9] Reno Power entered this agreement understanding that it had contractually committed to pay the total costs due under its Rule 9 agreement.[10] Reno Power acknowledges that it negotiated the terms of this agreement with NV Energy and, as Staff pointed out, it could have advocated for a proportionate share prior to entering the agreement by asking the Commission to deviate from Rule 9 at the time.[11] Instead, Reno Power elected to move ahead and reap the business benefits it sought at the time only now to seek to rely on post-contract misstatements by an NV Energy employee to assert some binding intention regarding proportionate share payments that is contrary to the plain language of Rule 9.[12]

III. Legal Standard

Pursuant to NAC 703.825, "[a]ny interested person may petition the Commission for a declaratory order or an advisory opinion as to the applicability of any statutory provision or any regulation or decision of the Commission."[13] When making a ruling interpreting the applicability of Rule 9 to a specific set of facts, the Commission is limited to (1) interpreting the plain meaning of Rule 9 and (2) applying that to the facts before it.[14] Thus, the scope of a declaratory order is

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[7] See Docket No. 25-09008, Corrected Petition, Ex. 2 (Feb. 10, 2026) (setting forth provisions of Rule 9); *see, also*, Tr. 117:1-4 (Mr. Bartlett's testimony that he reviewed the agreement).

[8] Tr. 123: 18-25.

[9] Tr. 121: 20-24, 122: 1-9.

[10] Tr: 121: 15-19.

[11] Tr: 91: 15-21.

[12] *See* Tr. 110: 22-25; 111:1-5 (Mr. Bartlett's testimony that he participated in negotiating the agreement).

[13] NAC 703.825.

[14] *See State Fam Mut. Auto Ins. Co. v. Comm'r*, 114 Nev. 535, 543 (Nev. 1998).

narrow and confined to the facts in the petition.[15] When administrative agency action exceeds this scope and instead articulates a rule of policy or general application, courts have not hesitated to intervene and invalidate those actions.[16]

IV. Argument

A. The plain language of Rule 9 requires the Commission to deny the Petition.

Revision or amendment of Rule 9 is clearly beyond the scope of the Petition and, therefore, Reno Power styles its request as requesting an "interpretation" of the rule.[17] The fundamental problem with Reno Power's argument is that it is flatly inconsistent with the plain language of Rule 9. The question of how to interpret a legal text begins with the plain language.[18] The Commission should not look beyond the plain language where there is no ambiguity.[19] As to cost reimbursement for MPCs, the language of Rule 9 is unambiguous.

> Rule 9.A.16(d) states:
> MPC. Where such portions of a Line Extension directly connects to the electric facilities installed pursuant to a Rule 9 Agreement between a MPC and Utility, then
> 1. where a Line Extension is located partially in a MPC and the remainder of the Line Extension is located outside the MPC, a subsequent Applicant shall pay Proportionate Share Allocations only for the portions of the Line Extension located outside the MPC; and
> **2. Proportionate Share Allocations for Applicants shall not include MPC substation or MPC High Voltage Distribution ("HVD") Total Costs**.[20]

(Emphasis added).

It is undisputed that Gosling is an MPC HVD substation and, that as a sophisticated party, Reno Power chose this Rule 9 mechanism — fully knowing the clear and plain language in 9.A.16(d).[21]

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[15] *See* Docket No. 24-06027, Staff's Briefing Memo, p. 2 (July 17, 2024); see, also, *State Fam Mut. Auto Ins. Co.*, 114 Nev. 535 at 543.

[16] *State Fam Mut. Auto Ins. Co.*, 114 Nev. 535 at 544; *Pub. Serv. Comm'n v. Southwest Gas Corp.*, 99 Nev. 268, 273 (Nev. 1983).

[17] Petition at 4 (criticizing NV Energy's "interpretation" of Rule 9).

[18] *State Local Gov't Employee-Management Rels. Bd. v. Educ. Support Emples. Ass'n*, 134 Nev. 716, 718 (Nev. 2018).

[19] *Id.*

[20] Rule 9.A.16(d).

[21] *See* Docket No. 25-09008, Corrected Petition, p. 2; Prepared Direct Testimony of Gary Cameron, at Q&A 8; Prepared Direct Testimony of Lila Yocom, at Q&A 8; *see, also*, Tr. 110: 8-11 ("We volunteer our customer characteristics to the Utility. And I think the facts are pretty

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Reno Power's effort to modify the rule under the construct it chose after it knowingly entered into an agreement governed by the unambiguous language of the rule should be rejected. Rule 9.A.16 is facially inapplicable under these facts for two reasons. *First*, Rule 9.A.16(d)(1) is applicable only where a portion of the MPC applicant's line extension is located outside of the MPC.[22] No portion of Reno Power's line extension is located outside of the MPC, hence Reno Power has no eligibility or entitlement to a proportionate share allocation under Rule 9.A.16(d)(1).[23] *Second*, Rule 9.A.16(d)(2) explicitly states that proportionate share allocations are not available for MPC HVD facility costs.[24] Therefore, under the plain language of either provision of Rule 9.A.16(d) – which Reno Power knowingly agreed to – the outcome is the same: Reno Power is not eligible for a proportionate share allocation.

Rule 9.C confirms this. Rule 9.C.6 (a) states:

> Refunds for MPC Substations and MPC HVD. Refunds for substations and HVD **shall be** computed based on the load experienced by the substation or HVD.[25]

(Emphasis added). By its plain language, Rule 9.C.6(a) is the applicable refund mechanism to calculate how much and when Reno Power is reimbursed for its advance for the Gosling HVD facility costs.[26]

Reno Power points to a strained interpretation of Rule 9.A.16 and 9.C. and then points to Rule 9.C.4(b)(3) to justify its forced interpretation.[27] However, the Commission need not look further than the plain language of Rule 9.C.4(b)(3) to see the speciousness of Reno Power's interpretation. Rule 9.C.4(b)(3) says:

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clear that as a result of that, we are a master plan community and took service under a Rule 9 Part C agreement.").

[22] Docket No. 25-09008, Prepared Direct Testimony of Gary Cameron, at Q&A 14.

[23] *Id.*

[24] Docket No. 25-09008, Prepared Direct Testimony of Lila Yocom, at Q&A 12.

[25] Rule 9.C.6(a).

[26] Docket No. 25-09008, Prepared Direct Testimony of Lila Yocom, at Q&A 13.

[27] *Id.* at p. 6.

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> Where the substation and/or HVD shall also serve Customers located outside the MPC boundary, the Total Costs shall be <u>prorated</u> by capacity allocated to Applicant and Applicant shall then only be required to advance the prorated portion allocated to Applicant.[28]

Reno Power argues that the proration mechanism is the proportionate share allocation; however, Rule 9.C.4(b)(3) determines what costs are *advanced*, not how those advances are refunded.[29] This is facially inapplicable to Reno Power's Rule 9 Agreement because there was no other subsequent applicant at the time that Reno Power signed its Rule 9 Agreement.[30] Thus, Reno Power advanced 100% of the Total Costs, just as the rule contemplates. Reno Power wanted to ensure it had the commitment it needed from NV Energy to timely serve its own business needs and executed a Rule 9 agreement to make that happen. It cannot game the system by now having this Commission change this Rule after the fact.

Here, Reno Power chose its Rule 9 construct – that of a Master Planned Community – knowing that the refund mechanism for line extensions connecting to Gosling would occr as the load materializes per Rule 9.C.6. Thus, Reno Power's concerns regarding the time value of money are a consequence of its own choice as the cost causing master planned community developer. The Commission should decline to rewrite the deal in a way that disrupts the settled regulatory and contractual expectations of subsequent applicants to address Reno Power's cash flow concerns. The Commission should also reject Reno Power's accusation that NV Energy's interpretation of Rule 9 results in "freeloaders" benefiting from its investment. The Subsequent Gosling Applicant *will* contribute to Reno Power's refund under the Rule 9.C.6 reimbursement mechanism as is required by Rule 9.

Reno Power concedes that its Rule 9 Agreement for Gosling specifically reserved two terminals for future use "**at NV Energy's discretion**."[31] Reno Power agreed to this, by the plain

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[28] Rule 9.C.4(b)(3).

[29] *Compare* Docket No. 25-09008, Reno Power's Brief, p. 6 *with* Rule 9.C.4(b)(3).

[30] *See* Docket No. 25-09008, Reno Power's Brief, p. 1 (providing that Reno Power constructed Gosling).

[31] Docket No. 25-09008, Reno Power's Brief, p. 3; see, also, Tr. 122: 15-19.

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language of the Rule 9 for MPCs which does not permit it to receive a proportionate share refund based on the future use of those two terminals. But, rather, that it would be repaid based upon the subsequent applicant's future load as it materializes pursuant to Rule 9.C.6's refund mechanism. It also acknowledges that in the payment schedule attached to its Rule 9 Agreement, there was no amount specified as a proportionate share allocation to reduce the total costs.[32] Reno Power understood it had the contractual obligation to pay the total costs due to NV Energy under its Rule 9 Agreement.[33] Reno Power cannot now claim ignorance of the Rule that has long existed in order to circumvent the refund mechanism applicable to MPCs.

Reno Power's argument also fails to acknowledge the unintended and burdensome outcome of its interpretation. Its formulation would result in immediately rewriting Rule 9 agreements not currently before this Commission, thus depriving such applicants of critical due process rights. It would also render the refund mechanism of Rule 9.C.6 irrelevant, contrary to the plain language of the rule.

Reno Power's reliance on extrinsic evidence to persuade the Commission to reinterpret Rule 9 is also unpersuasive. It is black letter contract law that extrinsic evidence is not admissible to contradict the terms of an unambiguous written instrument.[34] The parties to a written agreement are bound to the express terms of that agreement regardless of their *subjective beliefs* at the time the contract was entered.[35] Thus, reliance on representations Reno Power says were made by NV Energy are irrelevant. Furthermore, the representations Reno Power alleges it relies on were made after it executed its Rule 9 agreement.[36] The representations thus cannot have informed Reno Power's view at the time of execution and has no relevance to the interpretation now.

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[32] Tr. 121: 20-24, 122: 1-9.

[33] Tr: 121: 15-19.

[34] *See, e.g.*, *Klabacka v. Nelson*, 133 Nev. 164, 174 (Nev. 2017).

[35] *Campanelli v. Conservas Altamira, S.A.*, 86 Nev. 838, 841 (Nev. 1970) ("He who signs or accepts a written contract, in the absence of fraud or other wrongful act on the part of another contracting party, is conclusively presumed to know its contents and to assent to them, and there can be no evidence. . . as to his understanding of its terms.").

[36] Prepared Direct Testimony of Lila Yocom at QA 15.

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Because the Petition requests that the Commission adopt an interpretation of Rule 9 that is foreclosed by its plain language (and for that matter the structure and policy) of Rule 9 and because it relies on inadmissible extrinsic evidence to make its argument, the Petition should be denied.

B. The Due Process Clause does not permit the Commission to grant any relief that impacts Subsequent Gosling Applicant's, or any subsequent applicant's, legal rights and obligations.

The Fourteenth Amendment of the United States Constitution provides that States shall not "deprive any person of life, liberty, or property, without due process of law."[37] This has been interpreted by courts to provide, at a bare minimum, a fundamental right to notice and an opportunity to be heard before a state deprives a person of property.[38] Notice is the most important piece of due process's guarantees because without adequate notice, the party is deprived of a meaningful opportunity to be heard.[39] In the context of an agency decision, notice requires that a party "know the issues on which decision will turn and to be apprised of the factual material on which the agency relies for decision so that he may rebut it."[40] "The Due Process Clause forbids an agency to use evidence in a way that forecloses an opportunity to offer a contrary presentation."[41]

The Subsequent Gosling Applicant has a property right in its executed Rule 9 agreement with NV Energy (based on the plain language of Rule 9 as it existed at the time).[42] The Commission cannot assign cost responsibility to the Subsequent Gosling Applicant or reshape the application of Rule 9 to existing agreements, including Subsequent Gosling Applicant's, in ways that may require those applicants to pay additional fees upfront or have additional obligations for which

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[37] U.S. Const. amend. XIV, § 1.

[38] *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 48 (1993).

[39] *Wright v. Beck*, 981 F.3d 719, 727-8 (9th Cir. 2020).

[40] *See Bowman Transp., Inc.*, 419 U.S. at 288, n.4; *accord*, *Dutchess Bus. Servs.*, 124 Nev. at 711.

[41] *See Bowman Transp., Inc.*, 419 U.S. at 288, n.4.

[42] *See Pressler v. City of Reno*, 118 Nev. 506 at 510 ("A contract also can be the basis of a property right, and the state may not pass a law impairing the obligation of contracts.") (citing Nev. Const. Art. 1, § 15).

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they did not contract. Doing so would plainly violate those applicants' due process rights.[43] In addition, Reno Power asks the Commission to rely on information redacted (in its brief and throughout this docket) that has not been provided to the Subsequent Gosling Applicant.[44] Thus, Subsequent Gosling Applicant has been deprived of the opportunity to present a contrary presentation on that redacted information. Without this opportunity, the Petition cannot be used to change the Subsequent Gosling Applicant's rights or reshape the application of the existing Rule 9 in ways that may require it to pay additional fees or bear additional obligations for which they did not contract.[45] For these reasons, the Petition must be denied.

C. The permissible scope of NAC 703.825 prohibits the Commission from providing any declaration of the Subsequent Gosling Applicant's legal rights and obligations which are not properly before the Commission.

Nothing in NAC 703.825 permits the Commission to declare the Subsequent Gosling Applicant's rights and responsibilities under Rule 9 or its Rule 9 agreements. Yet this is exactly what Reno Power asks the Commission to do. Several times in this Docket, Reno Power characterizes its Petition as "a *narrow, contract-specific issue, directly relevant only to Reno Power and its Rule 9 Agreements*."[46] And at the hearing, Reno Power said that this Petition is about "a legal interpretation issue related to Gosling and NV Energy and . . . **not related to [S]ubsequent Gosling [A]pplicant['s] contracts**."[47] Reno Power Witness Dennis Bartlett even claimed that the Petition "is seeking clarity on interpretation of a contract between Reno Power and NV Energy under Rule 9."[48]

However, these statements constitute misdirection and distraction by Reno Power. In truth, Reno Power has repeatedly asked the Commission to directly determine Subsequent Gosling

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[43] *See id.; Bowman Transp., Inc.*, 419 U.S. at 288, n.4; *accord*, *Dutchess Bus. Servs.*, 124 Nev. at 711.

[44] *Id.*

[45] *Id.*

[46] Docket No. 25-09008, Reno Power's Response in Partial Opposition to Petition for Leave to Intervene, p. 1 (Dec. 5, 2025) (emphasis added).

[47] Tr. 11:24-5; 12:1-2.

[48] Tr. 15: 9-10.

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Applicant's rights and obligations under Rule 9 in its testimony and briefing before the Commission. In the Prepared Direct Testimony of Dennis Bartlett, Reno Power spends substantial time arguing about the application of Rule 9 to Subsequent Gosling Applicant and its Rule 9 agreement relating to Gosling.[49] Reno Power's rebuttal testimony and Post Hearing Brief continues this theme – asking the Commission to recognize its entitlement to a proportionate share at the cost of Subsequent Gosling Applicant.[50]

The Commission cannot provide a declaration regarding the Subsequent Gosling Applicant's rights or obligations because doing so would exceed the permissible scope of an advisory opinion or declaratory order under NAC 703.825. Nevada Supreme Court precedent is clear that an advisory opinion or declaratory order must be narrow and limited to the facts in the petition before it.[51] A declaration of the Subsequent Gosling Applicant's rights and obligations under Rule 9 and its *own* Rule 9 agreement necessarily requires facts that Reno Power has not provided – nor can it. Thus, its request for such a declaration goes far beyond the scope of NAC 703.825.[52]

Even if the Commission had the power *and* the facts to declare the Subsequent Gosling Applicant's rights and obligations under Rule 9 and its Rule 9 agreements, it cannot do so here. Judicial estoppel exists to prohibit a party from advancing inconsistent positions in "an attempt to obtain an unfair advantage" and is applicable in administrative proceedings.[53] Reno Power has

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[49] *See* Docket No. 25-09008, Prepared Direct Testimony of Dennis Bartlett, Q&A 45, 47 (requesting the Commission "confirm that Rule 9.A.16 governs the cost allocation for the Subsequent Gosling Applicant's interconnection" and find the Subsequent Gosling Applicant "bears the direct financial responsibility of utilizing Gosling to serve its outside-MPC load.").

[50] Docket No. 2509008, Prepared Rebuttal Testimony of Dennis Bartlett, Q&A 11 (describing a "core issue of this Petition" as being that "the costs of Gosling should be allocated between Petitioner and Subsequent Gosling Applicant based on cost responsibility principles and Rule 9's Proportionate Share Allocation."); Docket No. 25-09008, Reno Power's Brief, p. 13 (asserting that requirement a proportionate share would not burden ratepayers because "the full costs of Gosling would be borne solely by [Reno Power] and the Subsequent Gosling Applicant.").

[51] *See State Fam Mut. Auto Ins. Co.*, 114 Nev. 535 at 544.

[52] Reno Power conceded these limitations at the hearing. Tr. 11:21-25, 12:1-2.

[53] *S. Cal. Edison v. First Judicial Court*, 125 Nev. 276, 285-86 (2011) (describing the factors of judicial estoppel and noting its application in administrative proceedings) (internal citation and quotations omitted).

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repeatedly claimed that the Petition presents implications only for itself and NV Energy.[54] In doing so, Reno Power has actively potentially impacted parties from participating in this docket.[55] To allow Reno Power to advance an explicitly contrary position – that the Commission should declare that the Subsequent Gosling Applicant is responsible for a proportionate share payment for the Gosling substation – reflects nothing more than an attempt to gain an unfair advantage. The Commission should estop Reno Power from advancing this approach to maintain the integrity of these proceedings.

D. General administrative law principles require the Commission to deny the Petition because it seeks relief that would constitute invalid *ad hoc* rulemaking.

Even if the Commission construes this Petition as something other than a declaration of the Subsequent Gosling Applicant's rights, the relief sought still exceeds the bounds of NAC 703.825. The Nevada Supreme Court has clarified that agencies should not make broad, generally applicable rule pronouncements in declaratory orders or advisory opinions.[56] This is exactly what Reno Power invites the Commission to do here. Any determination to modify the applicability of Rule 9 and proportionate share payments from what is the plain language of the existing rule has the potential to impact not just this agreement but other Rule 9 agreements involving MPC line extensions outside of the MPC. This would establish a precedent that surely the Commission would not want to set.

Mr. Bartlett testified that the Commission's decision here "will set the precedent for multiple upcoming infrastructure projects Reno Power is developing, including the 50-acre Mackay switchyard (South Valley MPC), the 30-acre Goose substation (Peru Shelf MPC), and the 525 kV Walker River transmission line (South Valley and Peru Shelf MPCs)."[57] Thus, any rule that the Commission articulates in this matter will be one of broad applicability with the potential

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[54] *E.g.*, Tr. 11:24-5; 12:1-2.

[55] Response to Petition for Leave to Intervene at 3 (characterizing Switch as nothing more than a "bystander" to these proceedings).

[56] *See State Fam Mut. Auto Ins. Co.*, 114 Nev. 535 at 544; *Pub. Serv. Comm'n*, 99 Nev. at 273.

[57] Docket No. 25-09008, Prepared Direct Testimony of Dennis Bartlett, at Q&A 17.

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to bind parties who are not present in this case. What's more, it will impact Rule 9 agreements that have already been executed, upsetting the parties' regulatory and contractual expectations. Any interpretation doing so must be issued in accordance with rulemaking regulations, or constitutes invalid *ad hoc* rulemaking.[58] Therefore, the Petition should be denied.

E. It would be inappropriate for the Commission to exercise its use of discretion to determine Reno Power is entitled to a proportionate share allocation.

Reno Power acknowledges the fatal flaw it faces under the plain language of Rule 9 and its own decision to execute related agreements and asks the Commission to "deviate" from plain language of the rule. There is no legal authority to grant the Petition on that basis. Nothing in Rule 9.A.28 authorizes the Commission to offer an interpretation of Rule 9 that would amount to a substantive revision of the plain language where that interpretation implicates the rights and responsibilities of someone other than the party making the request (here, Reno Power) or NV Energy.

Rule 9.A.28(a)(3) states: "Where the application or interpretation of the provisions of this Rule 9 are disputed or may be impractical, inequitable or otherwise inappropriate, Utility or Applicant may submit a request to the Commission, requesting appropriate relief or interpretation of the Rule."[59] This provision lies in a section titled "Disputes."[60] Reno Power did not elect to dispute its Rule 9 Agreement under this section. Further, Reno Power did not notice the Subsequent Gosling Applicant of a dispute implicating its purported responsibility, under its own Rule 9 Agreement, to pay a proportionate share payment within 60 days of interconnecting into Gosling. Reno Power initially fought to prevent Switch from participating in this docket and continued, at the time of the hearing, to assert that Switch's substantive legal rights would not be adversely affected.

These facts underscore the obvious: Rule 9's dispute provisions are available to parties disputing the meaning of the rule and related Rule 9 agreements between them (NV Energy and

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[58] *See State Fam Mut. Auto Ins. Co.*, 114 Nev. 535 at 544; *Pub. Serv. Comm'n*, 99 Nev. at 273.

[59] Rule 9.A.28(a)(3).

[60] *Id.* at 9.A.28

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5470 KIETZKE LANE, SUITE 100
RENO, NV 89511-2094

the contracting customer); they are not available where the request focuses on the purported responsibilities of other parties.

That aside, there is no justification for deviation here. It is not a novel application of Rule 9 to apply the rule consistent with its plain terms. Indeed, it would be improper to set such a precedent given that Reno Power only seeks this deviation *after* other third parties have relied upon the clear language of Rule 9. As such, to retroactively apply a deviation to those agreements would deprive those parties of their bargained for agreements. It would therefore upset well settled expectations of NV Energy, the Subsequent Gosling Applicant, and parties not participating in this proceeding.

In furthering its equity arguments, Reno Power relies on a communication from NV Energy it characterizes as supportive of its interpretation of Rule 9.[61] The facts, however, do not support Reno Power's claim. Reno Power signed its Rule 9 Agreement months prior to the cited statement from the NV Energy personnel.[62] Thus, Reno Power could not have relied upon those statements when signing the agreement.[63] Further, to the extent that Reno Power believed that Rule 9 should function differently than the plain language dictated therein, it could have come to the Commission and sought a deviation from Rule 9 *prior to or at the time* it executed the agreement.[64] Rule 9(A)(28)(b)(1) could not be clearer: "Utility and/or Applicant may submit a request to the Commission to review and approve a special Rule 9 Agreement that includes deviations from the provisions of this Rule."[65] Staff Agrees.[66] Reno Power chose not to.[67]

Similarly, Reno Power's "particularly compelling" suggestion that its Rule 9 Agreement should be construed in its favor because the form of the agreement was chosen by NV Energy is

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[61] Docket No. 25-09008, Corrected Petition, p. 3.

[62] Prepared Direct Testimony of Lila Yocom at QA 15.

[63] Docket No. 25-09008, NV Energy's Comments, p. 6 (Oct. 15, 2025). Further as discussed above this after the fact communication is inadmissible extrinsic evidence that may not be relied upon to contradict the parties' written agreement. *Klabacka*, 133 Nev. at 174.

[64] *See* Tr. 91:15-23.

[65] Rule 9.A..28(b)(1).

[66] Tr. 91:15-23.

[67] Tr. 105:24-25; 106:1-4.

unpersuasive. Even Reno Power's witness Mr. Bartlett conceded that the MPC agreement was the appropriate form of the agreement.[68] Again, Reno Power chose this MPC construct. The fact that NV Energy and Reno Power used a form agreement consistent with Reno Power's business model does not negate the fact that Reno Power negotiated terms of the agreement prior to its execution.

Reno Power is asking the Commission to modify Rule 9 to fit its business model and to allow it to shift a portion of its development risk and costs to the Subsequent Gosling Applicant. However, as described above, the result of this would be that the financing scheme under Rule 9 for MPC substation and HVD facilities would have to be divided among multiple parties and constantly reworked over time as subsequent applicants interconnect. This would serve to upset the well-settled expectations of traditional residential master plan developers, including those that have already executed Rule 9 agreements, subsequent connecting customers, and NV Energy, as well as impact parties who are not before the Commission. This is not permitted by Rule 9, NAC 703.825, or general legal principles. Accordingly, this Petition should be denied.

V. Conclusion

Reno Power's Petition requests relief that is foreclosed by the plain language of Rule 9. The Commission should deny the Petition and issue an order confirming NV Energy and Staff's interpretation of Rule 9. In addition to violating the plain meaning of the rule, the Petition exceeds the permissible bounds of NAC 703.825 and the proper scope of a declaratory order and granting the relief requested would deny the Subsequent Gosling Applicant due process and constitute ad hoc rulemaking. The Commission should also reject Reno Power's request to exercise discretion to interpret Rule 9 in its favor as not satisfying the requirements of the rule both in substance (*e.g.*, demonstration of inequity) and process (in the context of a perfected dispute).

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[68] Tr. 110: 8-11 ("We volunteer our customer characteristics to the Utility. And I think the facts are pretty clear that as a result of that, we are a master plan community and took service under a Rule 9 Part C agreement.").

HOLLAND & HART LLP
5470 KIETZKE LANE, SUITE 100
RENO, NV 89511-2094

DATED this 24 April 2026.

Respectfully submitted,

HOLLAND & HART LLP

/s/ Laura K. Granier

Laura K. Granier
Lucas M. Foletta
5470 KIETZKE LANE, SUITE 100
RENO, NV 89511-2094

Attorneys for Switch, Ltd.

HOLLAND & HART LLP
5470 KIETZKE LANE, SUITE 100
RENO, NV 89511-2094

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Nevada that, on the date given below, she caused to be served a copy of the foregoing document upon the following person(s) via electronic mail.

Staff Counsel Support PUCN 1150 E. William Street Carson City, NV 89701-3109 Pucn.sc@puc.nv.gov	Michael Saunders Bureau of Consumer Protection 8945 West Russell Road Ste 204 Las Vegas, NV 89148 msaunders@ag.nv.gov
Donald Lomoljo PUCN 1150 E. William Street Carson City, NV 89701-3109 dlomoljo@puc.nv.gov	Michelle Badorine Anthony J. Walsh Bureau of Consumer Protection 100 N. Carson Street Carson City, NV 89701 mbadorine@ag.nv.gov ajwalsh@ag.nv.gov bcpserv@ag.nv.gov
Reno Power NR I LLC 3300 E 1st Ave Denver, CO 80206 (by mail)	Robert D. Sweetin Stacy Warner Davison Van Cleve, PC 4675 W. Teco Ave, Ste 230 Las Vegas, NV 89101 rds@dvclaw.com saw@dvclaw.com
Trevor Dillard Roman Borisov NV Energy 6100 Neil Road Reno, NV 89511 trevor.dillard@hnvenergy.com Roman.borisov@nvenergy.com reguatory@nvenergy.com	Fred Voltz 1600 Broadmoor Circle Boulder City, NV 89005 Zebedee_177@yahoo.com
Switch, Ltd. 7135 S. Decatur Blvd Las Vegas, NV 89118 (by mail)	

DATED this 24 April 2026, in Reno, Nevada.

/s/Amanda Sanchez

Amanda Sanchez

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