

**BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

Petition of Soft Lights Foundation to prohibit Nevada utility companies from installing Light Emitting Diodes (“LED”) streetlights until the U.S. Food and Drug Administration approves and develops safety standards for LED products. )  
)  
) Docket No. 22-07007  
)  
)  
)  
\_\_\_\_\_ )

At a general session of the Public Utilities Commission of Nevada, held at its offices on September 13, 2022.

PRESENT: Chair Hayley Williamson  
Commissioner C.J. Manthe  
Commissioner Tammy Cordova  
Assistant Commission Secretary Trisha Osborne

**ORDER**

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

**I. INTRODUCTION**

On July 7, 2022, Soft Lights Foundation (“SLF”) filed with the Public Utilities Commission of Nevada (“Commission”) a petition, designated as Docket No. 22-07007, requesting that the Commission issue an order requiring Nevada utilities to wait for United States Food and Drug Administration (“FDA”) approval and regulation of LED products prior to the sale or installation of any LED streetlight and to inform consumers via the utilities’ website of various concerns raised by SLF.

**II. SUMMARY**

The Commission denies the Petition.

**III. PROCEDURAL HISTORY**

- On July 7, 2022, SLF filed the Petition. The Petition was filed pursuant to Nevada Revised Statutes (“NRS”) and the Nevada Administrative Code (“NAC”), including, but not limited to, NAC 703.540.
- On July 8 and July 19, 2022, SLF filed Amendments to the Petition.
- On July 22, 2022, the Commission issued a Notice of Petition.

- On August 5, 2022, the National Toxic Encephalopathy Foundation (“NTEF”) filed comments.
- On August 11, 2022, Tim Riley and Anne Uyeda filed comments.
- On August 15, 2022, Kenneth Lewis, Richard and MarieAnn Cherry, and Peter Veto filed comments.
- On August 17, 2022, the Regulatory Operations Staff (“Staff”) of the Commission, and Nevada Power Company d/b/a NV Energy (“Nevada Power”) and Sierra Pacific Power Company d/b/a NV Energy (“Sierra”, and together with Nevada Power, “NV Energy”) filed comments.
- On September 7, 2022, the Commission’s Office of General Counsel filed a briefing memorandum.
- On September 7, 2022, John Moody filed late-filed comments.<sup>1</sup>

#### IV. PETITION AND COMMENTS

1. SLF states that the FDA has not developed regulations for LEDs. (Pet. at 1.) SLF alleges various harms and shortcomings of LED, such as being toxic, dangerous, discriminatory, non-uniform, low quality, and not energy efficient lighting when compared to the same quality of light produced by previous technologies. (*Id.*) SLF claims that the FDA was tasked with regulating “electronic products and the electromagnetic radiation emitted by those products,” and that the FDA has declined to regulate LEDs. (*Id.* at 1-2.) SLF states that “FDA regulation of LED light is a necessity.” (*Id.* at 9.)

2. SLF states that LEDs operate differently than other common light sources. (*Id.* at 4-6.) SLF claims that, as a result of its different operational characteristics, LEDs “have significant negative impacts on human health, safety, and comfort” for a litany of reasons. (*Id.* at 6.) SLF also suggests that LEDs have a lower quality of light than other lights and are therefore not more energy efficient across a broad spectrum of light. (*Id.* at 12.)

---

<sup>1</sup> Mr. Moody’s comments were submitted over two weeks after the deadline in the Notice issued in this Docket on July 22, 2022.

3. SLF requests the Commission prevent utilities from selling or installing LED streetlights and to inform customers that there is a lack of regulation on LEDs by the FDA, that LEDs are low-quality lights that are not energy efficient, and that LEDs have been shown to cause “significant negative health effects.” (*Id.* at 20.)

#### **NTEF’s Comments**

4. NTEF filed comments stating that the issue raised by SLF was addressed in Docket 17-02011.<sup>2</sup> (NTEF Comments at 1.)

#### **Tim Riley’s Comments**

5. Tim Riley, a resident of the United Kingdom, states that LED lights cause him “pain and neurological disturbance including chronic migraine and being unable to sleep after exposure.” (Tim Riley Comments at 1.) Tim Riley claims that this is due to LEDs being “fundamentally different” and that they cause “health issues” that affect “us all in a way that previous artificial light sources did not.” (*Id.*) Tim Riley further alleges that LEDs act as drug-like stimulants that are incompatible with human biology and that they result in more energy use and light pollution. (*Id.* at 2.)

#### **Anne Uyeda’s Comments**

6. Anne Uyeda, a resident of Virginia, states that LEDs are associated with elevated risks of seizures, prostate cancer, and breast cancer. (Anne Uyeda Comments at 1.)

#### **Kenneth Lewis’s Comments**

7. Kenneth Lewis, a resident of Missouri, states that LED lights cause eye pain and headaches, and that they impair nighttime vision while driving. (Kenneth Lewis

---

<sup>2</sup> Docket No. 17-02011, *Investigation to examine the benefits of re-starting the residential lighting program to promote the installation of high-efficiency lighting (LED) in Nevada*, was opened in February 2017, collected a great deal of information, and was administratively closed in 2019. Numerous comments were submitted by a variety of parties and included several informational handouts.

Comments at 1.)

### **Richard and MarieAnn Cherry's Comments**

8. Richard and MarieAnn Cherry, residents of New York, state that LEDs cause harm to “Americans with LED-reactive conditions,” fetuses, infants, pollinators, periphyton<sup>3</sup>, and ecological systems in general. (Richard and MarieAnn Cherry Comments at 2.) Richard and MarieAnn Cherry further allege that LEDs are “inadequately tested, unsafe” products. (*Id.*)

### **Peter Veto's Comments**

9. Peter Veto, a resident of Hungary, states that the “vast majority of LED streetlights are not properly diffused,” have “high luminance and glare,” disrupt circadian rhythms, and increase “light pollution for all flora and fauna.” (Peter Veto Comments at 1.)

### **Staff's Comments**

10. Staff states that the petition “demands sweeping relief against every public utility in Nevada ... effectuating policy or law concerning LED streetlights” throughout the State. (Staff Comments at 1.) Staff argues that such a request is *ad hoc* rulemaking or the act of “issuing directives, standards, rules, or statements of general applicability, which effectuate or interpret policy or law”<sup>4</sup> without following NRS Chapter 233B. (*Id.* at 2-3.) Staff argues that SLF requests that the Commission issue a “directive” that requires “every utility in Nevada to wait for the FDA’s approval and regulation of LED products before selling or installing LED streetlights” and “to tell customers various allegations about LEDs” in contravention of NRS 233B. (*Id.* at 3.) Staff states that neither of SLF’s requests are currently required in Nevada. (*Id.*, fn 13.) Staff therefore recommends the Commission

---

<sup>3</sup> Periphyton are organisms, such as some algae, that live attached to underwater surfaces.

<sup>4</sup> A regulation is defined under NRS 233B.038(1)(a) as “[a]n agency rule, standard, directive or statement of general applicability which effectuates or interprets law or policy, or describes the organization, procedure or practice requirements of any agency...”

deny the Petition. (*Id.*)

11. Staff argues that the petition is premised on a pure question of law—specifically, whether the Commission can even grant the petition and engage in the *ad hoc* rulemaking requested based on the legal interpretation of NRS 233B.038(1)(a). (*Id.* at 4.) As a result, Staff states that, because the request is one that is purely legal, no additional information will change the requested relief, and therefore, there is no reason to set the petition for further proceedings. (*Id.*)

12. Staff notes that Mr. Baker submitted the petition to the Commission without disclosing whether he is a Nevada-barred attorney as required under NAC 703.510.<sup>5</sup> Staff also notes that the Consumer Complaint Resolution Division has not received a “single complaint alleging physical injury caused by LED streetlights.” (*Id.* at 3, fn. 3.) Staff also points to a U.S. Department of Energy’s Office of Energy Efficiency and Renewable Energy article stating: “LED streetlights are no more harmful to humans and animals than other kinds of streetlights.” (*Id.*, also fn. 3.) Finally, Staff raises the concern that the Nevada Governor’s Office of Energy (“NGOE”) has already been tasked with regulating general service lamps pursuant to NRS 701.260. (*Id.*, fn. 4.)

### **NV Energy’s Comments**

13. NV Energy states that it owns and operates a total of 43,082 streetlights, 32,450 of which are in Sierra’s territory. (NV Energy Comments at 2.) Of those, 7,066 are LED and exclusively owned and operated by and in Sierra’s territory. (*Id.*) Nevada Power Company owns roughly 30 percent of the streetlights in its jurisdiction, none of which are

---

<sup>5</sup> NAC 703.510(1) states that “a person may represent himself or herself or may be represented by an attorney or any other person who satisfies the Commission or the presiding officer that the person possesses the expertise and is otherwise competent to advise and assist in the presentation of matters before the Commission.” The provisions of NAC 704.510 control appearance before the Commission and the association requirements for that appearance.

LEDs. (*Id.*) Sierra has been replacing streetlights with LEDs since 2018 because LEDs are more efficient, cheaper to maintain, more reliable than previous technologies, the industry standard, and more readily available. (*Id.*)

14. NV Energy argues that the petition is requesting relief that is outside the Commission's jurisdiction. (*Id.* at 3.) Specifically, NV Energy notes that the Commission is a "creature of statute" and cannot regulate the quality of light emitted by streetlights without a specific grant of authority to do so. (*Id.*) NV Energy notes that the only existing relevant statutes give that authority to municipalities in limited situations or the NGOE for establishing energy efficiency for general service lamps. (*Id.*) Given the specific action by the Legislature on regulating such lamps in the state and lack of a "fair reading" of NRS 703.150 that would allow the Commission to regulate the quality of light from streetlights, NV Energy concludes that the Commission does not have jurisdiction over the requested relief. (*Id.* at 3-4.)

15. NV Energy posits that if the Commission accepts SLF's proposal that regulation of LED bulbs falls within the FDA's jurisdiction, then the Commission must defer to the FDA's jurisdiction. (*Id.* at 4.) NV Energy further states that it is entirely unclear if or when the FDA will act in this area. (*Id.*) NV Energy also concludes that the Commission has not been tasked with making "health and safety findings related to emitting light sources," based on the lack of Legislative action. (*Id.*)

16. NV Energy also notes that, should the Commission order NV Energy to stop installing LEDs, it is unsure where the replacement lights would come from, given that General Electric ceased manufacturing non-LED light bulbs as of 2016. (*Id.* at 5.) As a result, NV Energy claims that shifting from LEDs would increase costs to customers to

source diminishing amounts of non-LEDs and create safety issues (due to insufficient streetlight bulbs). (*Id.* at 2.)

### **John Moody's Late-Filed Comments**

17. John Moody, a resident of California, states that he is very sensitive to LEDs and that he believes that LEDs have harmful effects on the environment and "health and safety" because they are "intense" and "harsh". (Moody comments at 1.) Mr. Moody suggests that the "intense" and "harsh" light from LEDs is due to the light source being generated by a "flat chip." (*Id.*)

### **Applicable Law**

18. NRS 233B.020(1) establishes the policy and intent around making regulation by government agencies in Nevada as follows:

By this chapter, the Legislature intends to establish minimum procedural requirements for the regulation-making and adjudication procedure of all agencies of the Executive Department of the State Government...

19. NRS 233B.038(1)(a) defines a regulation as:

An agency rule, standard, directive or statement of general applicability which effectuates or interprets law or policy, or describes the organization, procedure or practice requirements of any agency;

20. NRS 233B.039 provides for exemptions from the requirements of the Chapter; the Commission is not exempted from the rulemaking requirements of NRS 233B.

21. The Nevada Supreme Court has held on numerous occasions that, where an order constitutes a regulation, it is invalid without the procedural safeguards of the Administrative Procedures Act (*i.e.*, NRS 233B).<sup>6</sup> General applicability is defined as an interpretive ruling that

---

<sup>6</sup> See *Pub. Serv. Comm'n of Nevada v. Sw. Gas Corp.*, 99 Nev. 268, 274, 662 P.2d 624, 628 (1983); also see *State Farm Mut. Auto. Ins. Co. v. Comm'r of Ins.*, 114 Nev. 535, 544, 958 P.2d 733, 738-39. (1998); also *Las Vegas Transit Sys., Inc. v. Las Vegas Strip Trolley*, 105 Nev. 575, 578, 780 P.2d 1145, 1147 (1989) ("the Commission

affects other market participants, appears to be part of a general policy, and is of major policy concern and significance.<sup>7</sup>

**Commission Discussion and Findings**

22. For the reasons identified by Staff, the Commission finds that it must deny SLF’s Petition. The Commission is bound by the requirements of NRS 233B, specifically that it may not engage in *ad hoc* rulemaking, as defined by statute and legally binding precedent. Here, SLF requests the Commission direct Nevada utilities to not install LEDs and to publicize certain information about the use and reliance on LEDs that would require the Commission engage in issuing a statement of general applicability without following the procedural requirements of NRS 233B. The requested actions by SLF are *ad hoc* rulemaking and would therefore violate NRS 233B.

///  
///  
///  
///  
///  
///  
///  
///  
///  
///  
///

---

engaged in ad hoc rule making by promulgating a standard of general applicability which effected policy without complying with the Nevada Administrative Procedure Act.”)  
<sup>7</sup> *Dunning v. Nevada State Bd. of Physical Therapy Examiners*, 132 Nev. 963 (2016).



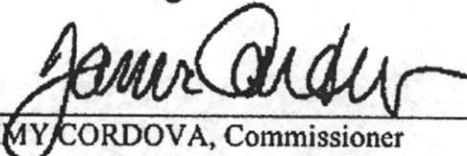
THEREFORE, it is ORDERED:

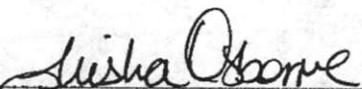
1. The Petition filed by the Soft Lights Foundation, designated as Docket No. 22-07007, is DENIED.
2. The Commission may correct any errors that have occurred in the drafting or issuance of this Order without further proceedings.

By the Commission,

  
\_\_\_\_\_  
HAYLEY WILLIAMSON, Chair

  
\_\_\_\_\_  
C.J. MANTHE, Commissioner

  
\_\_\_\_\_  
TAMMY CORDOVA, Commissioner

Attest:   
\_\_\_\_\_  
TRISHA OSBORNE,  
Assistant Commission Secretary

Dated: Carson City, Nevada

9/28/22

(SEAL)

