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Governor

STATE OF NEVADA
PUBLIC UTILITIES COMMISSION

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Commissioner
DAVID NOBLE
Commissioner
STEPHANIE MULLEN
Executive Director

MEMORANDUM

TO: Melanie Young, Budget Analyst IV
FROM: Stephanie Mullen, Executive Director
DATE: September 1, 2016
RE: Robison, Belaustegui, Sharp & Low – New Contract

On July 27, 2016, Switch, Ltd. (“Switch”), filed a lawsuit in the United States District Court, District Court of Nevada, against the Public Utilities Commission of Nevada (“PUCN”), NV Energy, and various individuals, including Carolyn “Lina” Tanner, the former General Counsel for the PUCN (the “Lawsuit”).¹

The lawsuit contains the following allegations: (1) failure to comply with Nevada Revised Statutes (“NRS”) 239.0107 and request for injunctive relief; (2) violation of Switch’s right to equal protection under the Fourteenth Amendment; (3) violation of Switch’s rights to due process under the Fourteenth Amendment; (4) unlawful state government action in violation of the Commerce Clause; (5) tortious interference with prospective economic advantage; (6) intentional interference with contractual relations; (7) deceptive trade practices under NRS 598.0903, et seq.; (8) fraud; (9) civil conspiracy; (10) conspiracy to commit fraud; (11) negligence; (12) gross negligence; and (13) personal liability pursuant to 42 United States Code section 1983.

Ms. Tanner was served on July 21, 2016. As of the date of this justification memo, the PUCN has not been served. On July 20, 2016, Ms. Tanner requested that PUCN counsel represent her in this matter (letter attached hereto as “Attachment 1”).

In response to Ms. Tanner’s letter, the PUCN requested direction from the Office of the Nevada Attorney General (“AG”). In a letter dated July 21, 2016 (attached hereto as “Attachment 2”), the AG responded that “the PUCN’s in-house counsel must offer to represent Carolyn Tanner in connection with the Lawsuit...,” citing NRS 703.164, which “allows the PUCN to employ legal counsel to, among other things, represent the Commission and its employees in legal proceedings.

¹ Case No.: 2:16-cv-01629-JCM-CWH, Switch, LTD., v. the PUCN; the Regulatory Operations Staff of the PUCN; Nevada Power d/b/a NV Energy; Anthony Sanchez, Esq., an individual; Elizabeth Elliot, Esq., an individual; and Carolyn “Lina” Tanner, Esq., an individual.

Pursuant to that statute, the PUCN has, in fact, employed full-time, in-house counsel to represent the PUCN and its employees in litigation.”

On July 27, 2016, Ms. Tanner retained Mr. Kent Robison, Esq., with Robison, Belaustegui, Sharp & Low, to represent her in the Lawsuit. Ms. Tanner had to retain outside counsel due to potential conflicts with PUCN’s in-house counsel representing Ms. Tanner as well as the PUCN, and due to statutory deadlines and court requirements that place limitations on PUCN in-house counsel’s resources.

Due to the short timeframes for responding to the Lawsuit, and pursuant to the AG’s recommendation that the PUCN provide counsel for Ms. Tanner, the PUCN contracted with Mr. Robison prior to receiving approval from the Board of Examiners. Therefore, the PUCN is requesting a retroactive effective date of July 27, 2016, for this contract.

Should you have any questions, please contact me at 684-6177.

ATTACHMENT 1

Hayley Williamson

From: Ketan D. Bhirud <KBhirud@ag.nv.gov>
Sent: Thursday, July 21, 2016 2:43 PM
To: Hayley Williamson
Cc: Nicholas A. Trutanich; Wesley K. Duncan
Subject: Switch, Ltd. v. the Public Utilities Commission of Nevada, et al., case no. 2:16-cv-01629

Dear Ms. Williamson,

It was nice speaking to you yesterday. As we discussed, I believe that the PUCN's in-house counsel must offer to represent Carolyn Tanner in connection with the lawsuit titled *Switch, Ltd. v. the Public Utilities Commission of Nevada, et al.*, case no. 2:16-cv-01629 (the Lawsuit). The claims alleged against Ms. Tanner in the Lawsuit all arise from actions she took while general counsel for the PUCN. As you are aware, NRS 703.164 allows the PUCN to employ legal counsel to, among other things, represent the Commission and its employees in legal proceedings. Pursuant to that statute, the PUCN has, in fact, employed full-time, in-house counsel to represent the PUCN and its employees in litigation. Given this, the Office of the Attorney General believes that PUCN's in-house counsel must offer to represent Ms. Tanner in the Lawsuit.

Ketan D. Bhirud
General Counsel
Office of the Attorney General
555 East Washington Avenue, Suite 3900 | Las Vegas, NV 89101
T: (702) 486-3795 | E: kbhirud@ag.nv.gov

ATTACHMENT 2

Hayley Williamson

From: Hayley Williamson
Sent: Wednesday, July 20, 2016 2:58 PM
To: Matthew Fox
Subject: FW: Tender of Defense, Switch v. PUCN et al.
Attachments: Defense Request 7-20-16.docx

From: Carolyn Tanner [<mailto:linatanner@sbcglobal.net>]
Sent: Wednesday, July 20, 2016 11:36 AM
To: Hayley Williamson <hwilliamson@puc.nv.gov>; Garrett Weir <gweir@puc.nv.gov>
Subject: Tender of Defense, Switch v. PUCN et al.

Hi Hayley and Garrett. Attached please find my official request for the PUCN's General Counsel to represent me.

Carolyn E. Tanner

480 Sierra Manor Drive, Reno, NV 89511
775.315.0520
linatanner@sbcglobal.net

7/20/2016

Chairman Thomsen
Commissioner Burtenshaw
Commissioner Noble
Public Utilities Commission of Nevada
1150 East William Street
Carson City, Nevada

Re: Switch v. PUCN, et. al.

Dear Commissioners,

As I have discussed with Hayley Williamson, Assistant General Counsel, I have been in contact with Ketan Bhirud, General Counsel for the Attorney General in regards to the State of Nevada tendering my defense in Case No. 2:16-cv-01629 before the United States District Court. Mr. Bhirud believes that it would be appropriate for the State to tender by defense through General Counsel of the Public Utilities Commission of Nevada. This appears consistent with NRS 41.03375 et. seq. and with previous litigation handled by General Counsel.

Accordingly, I ask that you tender my defense in this matter, and I look forward to working with General Counsel to get this resolved swiftly.

Warm regards,
Carolyn E. Tanner

