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16 **UNITED STATES DISTRICT COURT**

17 **DISTRICT OF NEVADA**

18 SWITCH, LTD., a Nevada limited liability
19 company,

20 Plaintiff,

21 vs.

22 NEVADA POWER d/b/a NV ENERGY;
23 CAROLYN “LINA” TANNER, in her
24 individual capacity; ALAINA
25 BURTENSHAW, in her official capacity;
26 DAVID NOBLE, in his official capacity;
27 PAUL THOMSEN, in his official capacity;
28 and DOES 1 THROUGH 10; ROE
ENTITIES 11 THROUGH 20, inclusive,

Defendants.

CASE NO.: 2:16-cv-01629-JCM-CWH

**FIRST AMENDED COMPLAINT AND
JURY DEMAND**

Plaintiff Switch, Ltd. (“Switch”), by and through its undersigned counsel, hereby alleges as follows:

NATURE OF THE ACTION

Switch brings this action to expose and untangle the unlawful scheme between NV Energy and certain actors within the governmental agency charged with regulating NV Energy’s activities and protecting consumers, the Public Utilities Commission of Nevada (“PUCN”). NV Energy has schemed to unlawfully deprive consumers, including Plaintiff Switch, Ltd. (“Switch”), of access

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1 to renewable and innovative electrical power in Nevada. NV Energy has also deprived Switch of
2 the right to unbundle from electric service in pursuit of renewable and alternative energy sources.
3 NV Energy’s anti-competitive activities and attempts to undermine renewable energy innovation,
4 resources and access are well documented in Nevada. NV Energy colluded with regulators,
5 including PUCN Commissioners – and the PUCN’s now-dismissed general counsel – to prevent
6 Switch from pursuing its right of petition and procure a temporary resolution with Switch that is
7 the product of that unlawful scheme. Switch seeks declaratory relief, injunctive relief, damages,
8 attorneys’ fees, costs, and a judicial decree emancipating Switch from the unlawful hold the
9 defendants have obtained over Switch to block Switch’s attempts to develop and encourage
10 innovative and affordable renewable energy.

11 **JURISDICTION**

12 1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337,
13 as Switch asserts federal claims.

14 2. This Court has supplemental jurisdiction for Switch’s state law claims under 28
15 U.S.C. § 1367(a).

16 3. This Court has personal jurisdiction over the defendants as: (a) the defendants are
17 residents of or carry on their activities in Nevada; and (b) the defendants committed the activities
18 giving rise to Switch’s claims in the State of Nevada.

19 4. Venue is proper under 28 U.S.C. § 1391 because a substantial part of the events
20 giving rise to Switch’s claims occurred in this District. This suit also concerns NV Energy’s
21 anticompetitive efforts to retain Switch as a client and preserve and strengthen NV Energy’s
22 monopoly over the market for retail electricity in the State of Nevada and the PUCN’s
23 conspiratorial efforts to thwart competition in the retail market.

24 **PARTIES**

25 5. Plaintiff Switch is a Nevada limited liability company organized and existing
26 under the laws of the State of Nevada and doing business worldwide.

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1 6. Switch is widely known as the world’s leading designer, builder and operator of
2 the award winning SUPERNAP data center facilities, designed to sustainably power, cool and
3 protect the physical infrastructure and networks necessary to run the Internet.

4 7. Switch is informed and believes that Defendant Nevada Power Company (d/b/a
5 NV Energy) (“NV Energy”) was and is a Nevada corporation doing business in Clark County,
6 Nevada. NV Energy is a public utility that is allegedly regulated by the Public Utilities
7 Commission of Nevada.

8 8. Switch is informed and believes that Defendant Alaina Burtenshaw
9 (“Burtenshaw”) was, and is, a Nevada resident, and at all times relevant to this action was a
10 commissioner with the PUCN. Burtenshaw was the PUCN Chairman overseeing the Switch
11 704B Docket and is named herein in her official capacity.

12 9. Switch is informed and beliefs that Defendant David Noble (“Noble”) was, and is,
13 a Nevada resident, and at all times relevant to this action was a commissioner with the PUCN and
14 is named herein in his official capacity.

15 10. Switch is informed and believes that Defendant Paul Thomsen (“Thomsen”) was,
16 and is, a Nevada resident, and on October 1, 2015 replaced Burtenshaw as Chairman of the PUCN
17 and is named herein in his official capacity.

18 11. Thomsen presided as Chairman over PUCN Dockets (15-11025, 15-11027, 15-
19 11028, and 15-11029) wherein NV Energy furthered the deception and fraud perpetuated in the
20 initial Switch 704B Docket.

21 12. Switch is informed and believes that Defendant Carolyn Tanner (“Tanner”) was,
22 and is, a Nevada resident, and served as general counsel for the PUCN for over three years, until
23 her June 16, 2016 prompt resignation when her misconduct came to light. In that role, Tanner’s
24 duties obligated her to oversee the propriety and legality of PUCN activities and proceedings.

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1 **ALLEGATIONS COMMON TO ALL COUNTS**

2 ***I. Switch Submits its Application to Unbundle From the Electric Monopoly***

3 13. The PUCN is the administrative agency of the State of Nevada governed by NRS
4 Chapter 703, among other statutes, rules, and regulations, tasked with, *inter alia*, regulating
5 electric utilities in the State of Nevada.

6 14. The Regulatory Operations Staff of the PUCN (“PUCN Staff”) is a department
7 within the PUCN tasked with, among other things, participating before the PUCN as a separate
8 party in cases before the Commission.

9 15. NV Energy is the principal supplier of electric power in the State of Nevada.
10 NV Energy operates as a monopoly in those locations where it provides power because state law
11 had effectively precluded competitors from servicing customers in NV Energy’s territory, unless
12 an exemption exists.

13 16. Pursuant to federal law and FERC regulation, NV Energy is required to maintain
14 independent groups or teams that are supposed to function independent from each other, including
15 the marketing, retail and transmission teams. These independence rules including those embodied
16 in 18 CFR 35.39 were implemented to ensure monopolies like NV Energy did not abuse their
17 market power or violate federal law.

18 17. In 2001, the Nevada Legislature sought to expand competition and loosen
19 NV Energy’s monopoly position by enacting NRS Chapter 704B which allows those customers
20 annually consuming over one (1) megawatt of power to unbundle from the electric monopoly in
21 the State of Nevada. In other words, the Nevada Legislature enacted laws to increase competition
22 and thereby increase available electrical resources. By enacting NRS Chapter 704B, the Nevada
23 Legislature expressly eliminated NV Energy’s authority to preclude competition for consumers of
24 more than one (1) megawatt of power.

25 18. One of the first consumers to take advantage of this unbundling was Barrick Gold
26 U.S. Inc., which filed its Chapter 704B application in 2003. Barrick’s unbundling was approved
27 by the PUCN.

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1 19. Beginning in 2011, Switch sought on several occasions to initiate discussions with
2 NV Energy concerning renewable energy options. Switch’s directly reached out to NV Energy on
3 several occasions. Despite Switch’s attempts, NV Energy ignored and brushed aside Switch’s
4 requests, apparently convinced that its monopoly position somehow entitled it to ignore the
5 interests of its consumers; consistent with the principal flaws of monopoly operations which lead
6 to higher prices, inferior customer service and lack of innovation.

7 20. Due to Barrick’s successful unbundling under Chapter 704B, Switch began
8 exploring alternative and innovative 100% renewable energy options, including access to
9 interstate commerce, under NRS Chapter 704B.

10 21. On November 7, 2014, Switch filed its NRS 704B application with the PUCN
11 (the “Switch 704B Docket”).¹ Switch sought to unbundle in order to obtain 100% renewable
12 power for its data center facilities.

13 22. Rebecca Wagner (“Wagner”), together with Burtenshaw, and Noble, oversaw the
14 Switch 704B Docket, with Burtenshaw serving as the Chairman and presiding Commissioner.²

15 23. While the Switch 704B Docket was pending, Switch made multiple public
16 statements - including within the Switch 704B Docket - that it intended to unbundle from the
17 electric utility NV Energy because of NV Energy’s lack of interest in providing Switch with
18 100% renewable power.

19 24. At that time, Switch also began negotiating with several renewable energy
20 providers – including nationally recognized photovoltaic solar provider First Solar Electric, LLC,
21 (aka First Solar, Inc.) – to build a new solar facility in Nevada. Switch planned to secure the
22 energy assets necessary to ensure that when its application to unbundle from NV Energy was
23 granted, it could be 100% green via renewable power contracts with First Solar (the “First Solar
24 Contracts”) and other providers. Because of this process, NV Energy knew of Switch’s
25 relationship with First Solar.

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27 ¹ PUCN Docket No. 14-11007.

28 ² Wagner was replaced by Thomsen, effective October 1, 2015. Wagner is no longer a
ccommissioner with the PUCN.

1 25. Given the mission critical nature of Switch’s services, and the need to ensure
2 utmost security of Switch’s physical infrastructure, Switch, NV Energy, and the PUCN Staff
3 entered various protective agreements.

4 ***II. NV Energy’s and Elizabeth Elliot’s Early Alarming Acts***

5 26. On or around October 6, 2014, Switch met with PUCN Staff and representatives
6 from NV Energy, including Elizabeth Elliot, associate general counsel for NV Energy (“Elliot”).
7 The purpose of the meeting was to discuss Switch’s 704B Application.

8 27. The specific energy needs (aka load) of a NRS 704B applicant are disclosed during
9 the NRS Chapter 704B application and hearing process. This load information is highly
10 confidential. Accordingly, Switch demanded protection of this and other confidential information
11 including with whom Switch was negotiating. This data, if disclosed, could compromise the
12 integrity of Switch’s physical security and operations, and impair the procedural due process of
13 the 704B Application. As a mission critical service provider, such details were acknowledged as
14 confidential.

15 28. In violation of the protective agreements, non-disclosure agreements, a protective
16 order and written and oral instructions from Switch, Elliot obtained access to the Network
17 Interconnect Transmission Service (“NITS”) application Switch submitted to the PUCN. Elliot
18 admitted to reviewing Switch’s NITS application, against Switch’s express instructions and
19 FERC rules. The NITS application contained Switch’s electrical load and other confidential
20 information that only the transmission side of NV Energy was authorized to access, review or use.
21 Switch believes and alleges that Elliot and NV Energy misused this information in furtherance of
22 the scheme to keep Switch from unbundling from NV Energy’s service. In doing so, Switch
23 believes that Elliot violated FERC rules including 18 CFR 35.39.³

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26 ³ Switch has removed Elliot as a named Defendant – without prejudice – to allow NV
27 Energy to conduct the investigation it represented it would conduct at the outset of the Switch
28 704B Docket following Elliot’s improper conduct. Switch reserves the right to bring suit against
Elliot and any other NV Energy personnel.

1 29. NV Energy indicated it would conduct an investigation and then subsequently
2 agreed to replace Elliot with a new attorney to sit as first chair in the Switch 704B Docket. *Id.*

3 30. Despite insisting it would conduct an investigation, NV Energy has yet to share the
4 results of any such investigation. Moreover, Elliot was present at the Switch 704B hearings and
5 engaged in strategy and dialogue with NV Energy counsel, experts and witnesses throughout the
6 hearings, passing notes, engaging in intense conversation and leading strategy dialogue in the
7 background. As such, despite Switch’s concerns, and the alleged investigation and solution,
8 Elliot remained integrally involved in the Switch Dockets and Switch never learned of the results
9 of the NV Energy investigation.

10 31. Moreover, given Elliot’s veiled involvement in the Switch Dockets, it became
11 clear to Switch that Elliot was not prevented from sharing the information she obtained from
12 Switch’s NITS application with the attorneys leading NV Energy’s efforts to prevent Switch from
13 unbundling.

14 32. Switch believes and alleges that the data gleaned from Switch’s NITS application
15 contributed to NV Energy to insist upon an “exit fee” several million dollars higher than even that
16 suggested by the PUCN Staff, and is one of the many variables that led the PUCN to outright
17 deny Switch’s 704B Application.

18 ***III. The PUCN Denies Switch’s Application***

19 33. Switch was not the only large electric consumer seeking to participate
20 competitively in the marketplace as authorized by the Nevada Legislature. On or around May 8,
21 2015, well after the Switch 704B Docket was already underway, Las Vegas Sands Corp. and
22 Wynn Las Vegas, LLC filed their own Chapter 704B applications to unbundle from NV Energy.⁴

23 34. Days later, on May 12, 2015, MGM Resorts International filed its own
24 Chapter 704B application to unbundle from NV Energy.

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27 ⁴ The press also took note of these 704B applications. For example, in June of 2015, the
28 Las Vegas Sun published a cartoon depicting Switch and others hanging from a wall in chains,
unable to escape; “NV Energy” is scrawled on an open prison cell door.

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1 35. With some of the State’s largest electric customers seeking to interject
2 competition, NV Energy faced significant economic consequences should such competition be
3 allowed. Seeking to suppress this competition, NV Energy then turned to the PUCN, which had
4 become largely a captive of the very utility that it was supposed to be regulating. Indeed,
5 significant controversy has surrounded the PUCN’s activities such that all three of the
6 Commissioners that sat over Switch’s 704B Application have been or are being replaced.

7 36. Pursuant to Nevada law, the PUCN noted it had only until June 12, 2015 (150 days
8 from the Supplemented Application) in which to resolve Switch’s Chapter 704B application. If it
9 did not do so, then the application was to be deemed approved as a matter of law.

10 37. In the face of growing fears of competition, NV Energy, the PUCN, and PUCN
11 Staff colluded and agreed to contrive an “exit fee” so as to discourage or preclude large customers
12 from unbundling and interjecting competition against NV Energy. Reinforcing the collusion,
13 PUCN and PUCN Staff delegated the duty of calculating the invented “exit fee” to NV Energy.

14 38. When Switch sought the right to evaluate the “exit fee” calculation and perform its
15 own calculations, the PUCN refused.

16 39. On or about June 11, 2015, (**one (1) day** before the 150 day procedural deadline)
17 the PUCN issued an order (the “Denial Order”) declaring that Switch was not permitted to
18 unbundle because, *inter alia*, “[a]t a minimum, Switch’s departure must be followed by a Switch-
19 like customer” to hold other NV Energy customers harmless.⁵ This too is a concept manufactured
20 for the first time relative to Switch.

21 40. On information and belief, NV Energy’s inappropriate “exit fee” was in
22 furtherance of the Denial Order issued by the PUCN.

23 41. In fact, the PUCN, with NV Energy’s involvement, claimed that it was incapable
24 of sufficiently calculating any such fee and thus it denied Switch’s right to unbundle. The PUCN
25 and NV Energy first colluded to extend the deadline and then colluded to deny Switch’s
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28 ⁵ PUCN Order Docket No. 14-11007 ¶ 105.

1 application by June 11, 2015, because the next day, the application could not be extended further
2 and would be deemed granted as a matter of law.

3 42. Wagner, one of the three PUCN Commissioners, dissented from the Denial Order,
4 recognizing that Switch should have the right to unbundle like other customers. Specifically,
5 Wagner stated that the Denial Order was “*inherently unfair*” and “*fundamentally unfair* for all
6 ... [but especially for Switch to] *not have some kind of outcome*”; and further that the PUCN’s
7 Denial Order was “*changing the rules midstream . . .*”⁶

8 43. In light of the unprecedented denial and the lack of plausible explanation, Switch
9 sent the PUCN, the PUCN Staff, and NV Energy, among other entities, litigation hold letters on
10 June 12, 2015.

11 44. Tanner responded to Switch’s letter on behalf of the PUCN on June 22, 2015,
12 denying any additional obligation to preserve evidence.

13 45. Switch did not recognize the significance of this until after the clandestine
14 activities of DixieRaeSparx were revealed.

15 46. Switch thereafter filed a Petition for Reconsideration on June 25, 2015, seeking
16 review of the Denial Order and outlining the unlawful and inappropriate substantive and
17 procedural steps taken and conclusions reached by the PUCN in the Switch 704B Docket and
18 Denial Order. Such a petition is a necessary prerequisite to a legal challenge to the Denial Order.

19 47. Switch had no way of knowing at that time the true impetus for what
20 Commissioner Wagner noted as unprecedented action. But the PUCN, its staff, and NV Energy
21 would not want the process to become the subject of judicial action which would now be Switch’s
22 right. Thus, NV Energy, just as the PUCN encouraged, stepped in and capitalized on the Denial
23 Order and thereby evaded future scrutiny and competition.

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27 ⁶ This audio recording is publicly available on the PUCN website. Switch can provide the
28 parties with an audio recording of the Switch 704B Docket Hearing during which the PUCN
issued the Denial Order.

1 **IV. NV Energy Attempts to Allegedly “Help” Switch**

2 48. Almost on cue, the day after Switch sought reconsideration, NV Energy
3 approached Switch. NV Energy pretended that it was “amazed” by the PUCN’s Denial Order.

4 49. To convince Switch to forego its rights to pursue unbundling and further judicial
5 relief, NV Energy would have to deceive Switch and conceal the true nature of its activities in
6 securing the Denial Order. It did disclose material information to Switch that it knew was
7 necessary to make its representations truthful – NV Energy was not amazed by the Denial Order,
8 it knew about Tanner and her clandestine activities to protect NV Energy from competition and
9 defeat Switch’s application. The scheme all along was to procure a denial of Switch’s application
10 and then use that to leverage a resolution by telling Switch that the only way it could obtain
11 renewable energy would be to stay with NV Energy and provide it a piece of the First Solar
12 Contracts. This would have the added benefit of enriching NV Energy and further discouraging
13 other competition from entering the marketplace.

14 50. Based upon the representations of NV Energy and the PUCN – neither of which
15 disclosed the true activities of the PUCN Staff and those of Tanner to subvert Switch’s 704B
16 application – and under continued pressure from NV Energy that Switch would miss the rapidly
17 closing federal investment tax credit window necessary for the First Solar Contracts – Switch was
18 given no choice but to sign a stipulation with NV Energy and the PUCN on July 30, 2015
19 (the “First Stipulation”) whereby NV Energy, without incurring any direct costs or sacrificing any
20 consideration, reaped premiums from Switch for the First Solar Contracts – the very contracts
21 Switch pursued and negotiated.

22 51. The First Stipulation incorporated four agreements: (1) a stipulation signed by
23 Switch, NV Energy, and the PUCN Staff; (2) an Agreement for Electric Service under Rate
24 Schedule OLGS-3P-HLF between NV Energy and Switch; (3) a Renewable Energy Agreement
25 between NV Energy and Switch; and (4) a Power Purchase Agreement between NV Energy and
26 Playa Solar 2, LLC.⁷

27 _____
28 ⁷ The First Stipulation also includes an advice letter from NV Energy modifying the
commitment period in the HLF tariff from five years to three years.

1 52. The unlawfully-induced First Stipulation provided Switch with the renewable
2 energy credits from the First Solar Contracts, but at a higher cost and with NV Energy as an
3 injected middle party. The PUCN and NV Energy required Switch to pay a Nevada Green Rider
4 “premium” above its then current electric rates to obtain the renewable benefit of the First Solar
5 Contracts. The First Solar Contracts procured by Switch and then hijacked by NV Energy – with
6 the PUCN’s assistance – were praised as the would-be lowest priced photo-voltaic solar solution
7 in the United States, if not the world for the year 2015; and offered renewable energy well below
8 Switch’s then current costs with NV Energy.

9 53. However, it was NV Energy, not Switch that reaped the benefits of the First Solar
10 Contracts, just as NV Energy and the PUCN planned. Switch was required to pay the ransom
11 premium *above* their normal retail rate to NV Energy to claim association with the First Solar
12 Contracts. Accordingly, while NV Energy only paid First Solar ~3.8 cents per kilowatt-hour,
13 NV Energy charged Switch more than double that price, at ~9 cents per kilowatt-hour.

14 54. In reasonable reliance on NV Energy’s fraudulent representations about the PUCN,
15 the 704B process, material omissions regarding NV Energy’s involvement with Tanner and
16 leverage over the PUCN staff and Commissioners, Switch signed the First Stipulation with NV
17 Energy and the PUCN on July 10, 2015. Switch had no other way to obtain 100% renewable
18 power, or execute on the First Solar Contracts. Switch also agreed to stay its Petition for
19 Reconsideration. The First Stipulation was intended to resolve all issues in Docket No. 14-11007.

20 55. Pursuant thereto, Switch executed a Second Stipulation with NV Energy on
21 November 30, 2015, under the Nevada Green Rider, to finalize the full development of the Switch
22 Station solar facilities with First Solar by adding another 79 megawatts of nameplate power (the
23 “Second Stipulation”) (together with the First Stipulation, the “Switch Agreements”). This
24 Second Stipulation is likewise the product of a lack of disclosure by NV Energy and the PUCN.

25 56. It is based upon the improperly-procured Denial Order and the lack of disclosed
26 facts – facts which were required to be disclosed to Switch, including the clandestine involvement
27 of PUCN’s own general counsel to advance the interest of NV Energy against that of Switch –
28 that resulted in the Switch Agreements between Switch, NV Energy and the PUCN. That First

1 Stipulation was procured by the concealment of material facts so as to deprive Switch of any
 2 ability to further challenge the Denial Order, as well as to enrich NV Energy. **In short, Switch**
 3 **would not have signed the First Stipulation if anyone had revealed the activities of the**
 4 **Defendants, most notably of Tanner.**

5 57. Unlike it had done with Switch’s application, the PUCN apparently recognized
 6 that it could not just “deny” the applications of leading gaming companies – Sands, Wynn, and
 7 MGM – of the right to unbundle and utilize interstate direct access for their energy needs.
 8 Instead, the PUCN – again in conjunction with NV Energy – invented new costs and on or about
 9 January 13, 2016, the PUCN granted those applications for unbundling, including without being
 10 replaced by like customers, but sought to discourage such unbundling by the imposition of
 11 manufactured and unlawful exit fees and new non-bypassable tariffs.

12 58. On information and belief, since January 2016, the hotel properties known as the
 13 Peppermill, El Dorado, and the Grand Sierra operating in Northern Nevada have all expressed
 14 intent to unbundle from NV Energy under NRS Chapter 704B.

15 59. To date, Switch is the *only* entity the PUCN has expressly denied the ability to
 16 unbundle under NRS Chapter 704B.

17 *V. Tanner’s Campaign for NV Energy Comes to Light*

18 60. On or around June 15, 2016, Switch learned of Tanner’s clandestine campaign
 19 against its 704B application through deceptive and unethical activities/communications using the
 20 pseudonym “DixieRaeSparx”, “#DixieRaeSparx” or “@DixieRaeSparx” (each referred to herein
 21 as the “Handle”) to discuss the Switch 704B Docket and other pending PUCN proceedings.

22 61. Tanner has since admitted to intentionally deleting the contents of these social
 23 media accounts thereby creating a presumption that this evidence was adverse and in support of
 24 Switch’s claims.

25 62. On information and belief, Tanner also maintained a blog
 26 (www.dixiereasparx.com) on WordPress. Tanner also maintained accounts using variations of
 27 the Handle on Twitter, Pinterest, Etsy, SoundCloud, Instagram, and other platforms.

28 63. Again, Tanner has deleted or hidden the contents of these accounts.

1 64. On information and belief, Tanner made public comments about pending PUCN
2 matters, including the Switch 704B Docket, utilizing the Handle as commentary to online
3 publications such as VegasInc.

4 65. Tanner deleted the comments, tweets, postings and the contents of Tanner’s blog
5 after Tanner resigned from her position as general counsel to the PUCN. Upon information and
6 belief, Tanner’s resignation was due to her handle being exposed on June 15, 2016 and her
7 resignation the next day.

8 66. On information and belief, Tanner also maintains a public Facebook account under
9 her proper name, “Carolyn ‘Lina’ Tanner.”

10 67. Anthony Sanchez (“Sanchez”), current senior vice president of government and
11 community strategy for NV Energy, **and former assistant general counsel for the PUCN**, is
12 “friends” with Tanner on Facebook.

13 68. Sanchez is the second highest paid employee at NV Energy behind NV Energy’s
14 CEO.

15 69. On information and belief Sanchez is personal friends with Tanner.

16 70. On information and belief Sanchez is social media friends with Tanner.

17 71. On information and belief Sanchez communicated with Tanner via social media.

18 72. On information and belief, Sanchez actively used his legislative contacts to oppose
19 Switch’s 704B Docket and prevent Switch from obtaining access to innovative and affordable
20 renewable energy via NRS 704B.

21 73. Judy Stokey (“Stokey”) is the current vice president of government and
22 community relations for NV Energy. On information and belief, and according to Tanner’s cell
23 phone records, Stokey communicated with Tanner only one time in 2014 and 2015. That
24 communication was just **days before** Switch’s 704B Docket hearing.

25 74. On information and belief, NV Energy has secured and maintained office space in
26 the same office buildings as the PUCN’s southern and northern offices, for at least the past
27 five (5) years.

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1 75. This proximity facilitates ex parte communications to advance the interests of NV
2 Energy over its captive regulators, the PUCN – and flies in the face of ethical separations.

3 76. Tanner has associated herself with the Handle via social media. However, the full
4 depth and breadth of Tanner’s social media activity is unknown because she intentionally deleted
5 or made private her entries, once she was exposed which prompted her dismissal as general
6 counsel.

7 77. Despite Tanner’s attempts to conceal her improper campaign, Switch has thus far
8 uncovered evidence in the “snippets” captured or cached by Google’s search engine, available
9 when searching “DixieRaeSparx Switch” that Tanner discussed Switch and the Switch 704B
10 Docket under her Handle.

11 78. Tanner publicly evidenced a bias against solar energy by defending the PUCN and
12 NV Energy through social media and the “comments” section of online news websites using the
13 Handle. Tanner did so even while Switch’s application was still pending.

14 79. On information and belief, Tanner knowingly and wrongfully attempted to
15 influence, and did influence, the regulatory system through her improper, unethical and illegal
16 activities in support of NV Energy.

17 80. As a representative of the Commission during the Switch 704B Docket, PUCN
18 policy and Nevada open meeting laws otherwise prohibited Tanner from commenting directly
19 with the PUCN Regulatory Operations Staff about Switch’s 704B Docket, which functions as an
20 independent party in cases before the Commission.

21 81. Tanner knowingly circumvented those restrictions.

22 82. Following her resignation, Tanner not only admitted to using the Handle, she also
23 admitted that the PUCN knew of her actions and that at least one PUCN chairman followed her
24 on Twitter.

25 83. On discovering Tanner’s improper activities, Switch served another round of
26 litigation hold letters on June 24, 2016.

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1 84. And, Switch submitted Nevada Open Records Act requests pursuant to NRS
2 239.010 to the PUCN on June 28, 2016 and July 1, 2016; demanding information related to this
3 activity. The PUCN has failed to fully comply with Switch’s requests.

4 85. As outlined herein, the activities of Tanner, the PUCN Commissioners, the PUCN
5 Staff, and NV Energy constitute improper collusion and a conspiracy to (1) deny Switch’s request
6 to unbundle and interject competition and additional electrical resources into the marketplace of
7 large consumers, (2) coerce and deceive Switch to enter into the First Stipulation and Second
8 Stipulation and forego its right to petition for redress and (3) allow NV Energy to enter extremely
9 beneficial renewable energy contracts with third parties and then charge Switch a premium for
10 access to this renewable energy.

11 86. The First Stipulation and Second Stipulations are the product of this unlawful
12 scheme, fraud, and collusion and are *void ab initio*.

13 **FIRST CAUSE OF ACTION**
14 **Antitrust Violations**
(Against Defendant NV Energy)

15 87. Switch repeats and realleges the allegations set forth in the preceding paragraphs
16 as though fully set forth herein.

17 88. 15 U.S.C. § 1 makes illegal every “contract, combination in the form of trust or
18 otherwise, or conspiracy, in restraint of trade or commerce among several states, or with foreign
19 nations”.

20 89. 15 U.S.C. § 2 specifies that it is illegal and a violation of the antitrust laws of the
21 United States to “monopolize, or attempt to monopolize, or combine or conspire with any other
22 person or persons, to monopolize any part of the trade or commerce among the several states.”

23 90. NRS 598A.060(1)(e) further provides that it is unlawful in the State of Nevada to
24 engage in any activity attempting “to monopolize or otherwise combining or conspiring to
25 monopolize trade or commerce in the State.”

26 91. As set forth in the allegations of this Complaint, NV Energy employed deception,
27 trickery and deceit to restrict competition for large energy consumers and attempted to
28 illegitimately extend its monopoly over Switch through such means.

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- 1 112. Tanner was a public officer of the PUCN and an officer of the Court because:
- 2 a. Tanner sought and obtained the permission of the PUCN to assume the
- 3 alter ego of DixieRaeSparx;
- 4 b. Tanner commented about official PUCN matters as DixieRaeSparx;
- 5 c. The PUCN, via at least one of its commissioners, knew of Tanner’s
- 6 activity; and
- 7 d. The Chairman of the PUCN followed DixieRaeSparx on social media.

8 113. As a result, all communications generated by DixieRaeSparx are public documents

9 subject to the protection of NRS Chapter 239. Tanner’s and/or other defendants’ destruction of

10 these records constitute an unlawful attempt to destroy and actual destruction of evidence.

11 114. Switch seeks the Court’s assistance to ensure that Switch obtains all relevant

12 records, particularly communications between the Commission and parties, and any documents or

13 postings created by Tanner.

14 115. Tanner – at least twice – successfully deactivated her Twitter account to destroy

15 evidence after her unlawful acts were exposed on June 15, 2016.

16 116. Twitter’s deactivation policy is such that unless a request for Twitter records was

17 made by law enforcement or a court, all records of a deactivated account will be permanently

18 deleted at least thirty (30) days from deactivation (here around June 15, 2016). Twitter’s policy

19 also states that a user who has attempted to deactivate an account, can reactivate an account

20 simply by logging into the account within the thirty (30) day post-deactivation window.

21 117. Therefore, as requested below, Switch sought and obtained preliminary injunctive

22 relief in the form of an order requiring Tanner to immediately log into and reactivate her account

23 to preserve evidence and so that Tanner can provide Switch with a complete copy of these

24 materials.

25 118. Tanner has already attempted to and has successfully destroyed evidence.

26 119. Despite having notice of this Court granting a Temporary Restraining Order days

27 before the Twitter account would be permanently destroyed, Tanner refused to act thereby

28 knowingly destroying the evidence.

1 120. Switch has already been harmed, and the likelihood of immediate harm is
2 demonstrably high. Absent injunctive relief, additional material evidence *will* be destroyed,
3 further complicating this matter allowing Tanner to further destroy evidence of unlawful conduct.

4 121. It has been necessary to retain the services of counsel to prosecute this action and
5 Switch is therefore entitled to damages, attorneys’ fees, including in-house attorneys’ fees, and
6 costs related to the same.

7 **FOURTH CAUSE OF ACTION**
8 **Violation of Switch’s Right to Equal Protection**
9 **under the Fourteenth Amendment – 42 U.S.C. § 1983**
10 *(Against Defendants Burtenshaw, Noble, Thomsen, and Tanner)*

11 122. Switch repeats and realleges the allegations set forth in the preceding paragraphs
12 as though fully set forth herein.

13 123. The Fourteenth Amendment of the United States Constitution ensures equal
14 protection to all United States citizens.

15 124. Switch has a constitutional right to equal protection when appearing before a
16 Nevada Administrative Agency such as the PUCN.

17 125. NRS Chapter 704B is a statute in full force and effect in Nevada.

18 126. NRS Chapter 704B provides electric utility customers who meet certain
19 requirements the ability to unbundle from the public electric utility and access the national
20 market. These customers must submit an application for approval with the PUCN.

21 **127. To date, four (4) other entities have been authorized by the PUCN to**
22 **unbundle from NV Energy; three (3) in the last five (5) months. Switch is the only entity to**
23 **be denied the right to unbundle after completing a contested case before the PUCN.**

24 128. The PUCN, through commissioners Burtenshaw, Noble, and Thomsen⁸, and other
25 government actors yet to be named, violated Switch’s constitutional and statutory right to equal
26 protection as guaranteed by the Fourteenth Amendment by intentionally singling out Switch as
27 the only NRS Chapter 704B applicant to be denied the ability to unbundle, while permitting other

28 ⁸ Although Thomsen was not a commissioner at the time, he is named herein in his official capacity because he filled the vacancy left by Wagner.

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1 NRS Chapter 704B applicants to unbundle; (*i.e.* Barrick Gold U.S. Inc., Las Vegas Sands Corp.,
2 Wynn Las Vegas, LLC, and MGM Resorts International (collectively the “704B Entities”)).

3 129. Switch was in all material qualification respects similarly situated to these other
4 applicants.

5 130. The PUCN, via its commissioners, under the color of state law, intentionally
6 treated Switch differently than the 704B Entities without a legal basis to do so; as highlighted by
7 Commissioner Wagner during the Switch 704B Docket hearing.

8 131. As a result of the defendants’ unlawful actions, Switch expended over
9 \$1,000,000.00 to pursue it’s the Switch 704B Docket to obtain 100% renewable energy in a
10 biased and partial process, suffered monetary damages in an amount to be determined at trial but
11 in excess of \$50,000,000.00, and has been required to pay NV Energy increased costs for
12 renewable energy.

13 132. It has been necessary to retain the services of counsel to prosecute this action and
14 Switch is therefore entitled to damages, attorneys’ fees, including in-house attorneys’ fees, and
15 costs related to the same.

16
17 **FIFTH CAUSE OF ACTION**
18 **Violation of Switch’s Fourteenth Amendment Due Process Rights - 42 U.S.C. § 1983**
(Against Defendants Tanner, Burtenshaw, Noble, and Thomsen)

19 133. Switch repeats and realleges the allegations set forth in the preceding paragraphs
20 as though fully set forth herein.

21 134. NRS Chapter 704B provides utility customers who meet certain requirements the
22 ability to unbundle from the public utility and access the national market.

23 135. Switch has a property interest in unbundling from the public utility and accessing
24 the national market.

25 136. Defendants improperly engaged in *ex parte* communications prohibited by NRS §
26 703.301(2) during the pendency of the Switch 704B Docket, including via Tanner’s Handle.

27 137. The PUCN, via its commissioners, violated Switch’s constitutional and statutory
28 right to due process in the Switch 704B Docket by permitting Tanner to use the Handle to

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1 publicly discuss the Switch 704B Docket during the pendency of the same. Tanner publicly
2 admitted that a PUCN Chairman knew of her activities, endorsed them and followed her social
3 media activity.

4 138. Tanner, the PUCN, via its commissioners, and other government actors, knew or
5 should have known that their failure to implement certain policies and procedures would result in
6 a miscarriage of justice and deprive Switch of its constitutional and statutory rights and
7 protections.

8 139. Yet, Tanner, the PUCN, via its commissioners, acting under color of state law,
9 denied Switch adequate protections and violated Switch's right to due process.

10 140. As a result of the defendants' unlawful actions, Switch expended over
11 \$1,000,000.00 to pursue its 704B application to obtain 100% renewable energy in a biased and
12 partial process, suffered monetary damages in excess of \$50,000,000.00, and has been required to
13 pay NV Energy increased costs for renewable energy.

14 141. Switch requests that the Court order the PUCN, via its commissioners, to consider
15 Switch's application to unbundle, within the factual scenario existing on November 7, 2014,
16 anew, affording Switch the process it was previously improperly denied and avoiding the damage
17 inherit in the delay caused by the PUCN commissioner's unlawful actions.

18 142. It has been necessary to retain the services of counsel to prosecute this action and
19 Switch is therefore entitled to damages, attorneys' fees, including in-house attorneys' fees, and
20 costs related to the same.

21 **SIXTH CAUSE OF ACTION**
22 **Intentional Interference with Prospective Economic Advantage**
23 *(Against NV Energy)*

24 143. Switch repeats and realleges the allegations set forth in the preceding paragraphs
25 as though fully set forth herein.

26 144. While the Switch 704B Docket was pending, Switch engaged in negotiations with
27 First Solar for the First Solar Contracts.

28 145. In conjunction with Switch's application to unbundle and the associated Switch
704B Docket, Switch disclosed its prospective relationship with First Solar to NV Energy.

1 146. Armed with this information, on information and belief, NV Energy began
2 negotiating with First Solar.

3 147. NV Energy intended to harm Switch by preventing the direct contractual
4 relationship between Switch and First Solar. NV Energy proceeded to negotiate directly with
5 First Solar for the renewable energy Switch desired, and then, once the PUCN issued the Denial
6 Order, presented Switch with an offer for the desired renewable energy at a hefty premium and
7 represented that PUCN would neither grant Switch's Petition for Reconsideration nor subsequent
8 NRS Chapter 704B applications.

9 148. Additionally, NV Energy's interference with Switch's prospective economic
10 advantage includes the interference with cloud scale potential customer opportunities due to the
11 overpriced cost of energy.

12 149. As a direct and proximate result of NV Energy's conduct, Switch has expended
13 over \$1,000,000.00 to obtain renewable energy in a biased and partial process (the Switch 704B
14 Docket), suffered, and will continue to suffer, irreparable injury and monetary damages in excess
15 of \$50,000,000.00, been required to pay NV Energy increased costs for renewable energy, lost
16 profits and material economic advantage, and has been deprived of its statutory and constitutional
17 rights.

18 150. It has been necessary to retain the services of counsel to prosecute this action and
19 Switch is therefore entitled to damages, attorneys' fees, including in-house attorneys' fees, and
20 costs related to the same.

21 **SEVENTH CAUSE OF ACTION**
22 **Deceptive Trade Practices Under NRS § 598.0915**
23 *(Against Defendant NV Energy)*

24 151. Switch repeats and realleges the allegations set forth in the preceding paragraphs
25 as though fully set forth herein.

26 152. NV Energy identified costs, taxes, and statutory and regulatory requirements
27 necessary for Switch to purchase energy from NV Energy.
28

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1 153. NV Energy threatened that unless it acted as a middle man and Switch paid it a
2 premium for the renewable energy facilities, Switch would be unable to timely obtain 100%
3 renewable energy.

4 154. However, shortly after NV Energy made these representations, the PUCN granted
5 *multiple* NRS Chapter 704B applications.

6 155. NV Energy's conduct as outlined in this Complaint constitutes a deceptive trade
7 practice under Nevada law.

8 156. NV Energy knew its representations were false, and that it concealed material
9 information in its negotiations to exact a series of agreements with Switch and First Solar,
10 endorsed by the PUCN, that are very profitable for NV Energy.

11 157. Switch justifiably relied on NV Energy's conduct and representation and entered
12 into the First Stipulation, which incorporates (1) a stipulation signed by Switch, NV Energy, and
13 the PUCN Staff; (2) an Agreement for Electric Service under Rate Schedule OLGS-3P-HLF
14 between NV Energy and Switch; (3) a Renewable Energy Agreement between NV Energy and
15 Switch; and (4) a Power Purchase Agreement between NV Energy and Playa Solar 2, LLC; and
16 shortly thereafter, entered into the Second Stipulation.

17 158. As the direct and proximate result of NV Energy's deceptive conduct, Switch
18 suffered, and will continue to suffer, monetary damages and irreparable injury to its business,
19 reputation, and goodwill. Switch expended over \$1,000,000.00 to pursue its 704B application to
20 obtain 100% renewable energy in a biased and partial process (the Switch 704B Docket), suffered
21 monetary damages in excess of \$50,000,000.00, and has been required to pay NV Energy
22 increased costs for renewable energy.

23 159. Due to the rapidly expiring investment tax credit window, Switch had no choice
24 but withdraw its Petition for Reconsideration in the Switch 704B Docket.

25 160. The intentional misrepresentations by NV Energy were committed under
26 circumstances constituting oppression, malice, and/or fraud. Switch is therefore entitled to
27 punitive damages in an amount to be decided by the Court.

28

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1 169. Due to NV Energy’s misconduct and misrepresentations used to induce Switch to
2 enter into the Switch Agreements, the Court should declare the Switch Agreements unenforceable
3 and *void ab initio*.

4 170. It has been necessary to retain the services of counsel to prosecute this action and
5 Switch is therefore entitled to damages, attorneys’ fees, including in-house attorneys’ fees, and
6 costs related to the same.

7 **NINTH CAUSE OF ACTION**
8 **(Civil Conspiracy to Improperly Influence the Switch 704B Docket and Commit Fraud)**
9 *(Against all Defendants)*

10 171. Switch repeats and realleges the allegations set forth in the preceding paragraphs
11 as though fully set forth herein.

12 172. Tanner, the PUCN, via its commissioners, and NV Energy agreed either explicitly
13 or tacitly to act in concert to unlawfully influence the Switch 704B Docket for the purpose of
14 harming Switch and benefiting NV Energy.

15 173. Defendants did so by using Tanner’s Handle to: (1) influence the Switch 704B
16 Docket; (2) engage in *ex parte* communications concerning the Switch 704B Docket; and (3)
17 negatively affect public opinion for their personal benefit. Defendants’ common goal was to keep
18 Switch as a bundled customer of NV Energy and to prevent Switch from accessing the interstate
19 market and the extremely beneficial First Solar Contracts. Tanner along with the PUCN’s
20 commissioners further engaged in this conduct in order to curry favor with NV Energy and
21 preserve their positions (and pensions) at the PUCN.

22 174. Defendants further agreed, either explicitly or tacitly, to act in concert to
23 improperly induce Switch to execute the documents comprising the First Stipulation and Second
24 Stipulation, including: (1) a stipulation to resolve all issues in the Switch 704B Docket; (2) an
25 agreement for electric service under rate schedule OLGS-3P-HLF; (3) a renewable energy
26 agreement; and (4) a power purchase agreement, thereby foregoing its procedural rights and
27 remedies in conjunction with the Switch 704B Docket.
28

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1 175. Since Switch was committed to 100% renewable energy but its application to
2 unbundle was denied, NV Energy executed the First Solar Contracts, thereby taking advantage of
3 some of the most economical renewable energy in the United States, if not the world. NV Energy
4 now charges Switch a premium for the same power Switch would have otherwise obtained if it
5 had been permitted to unbundle and contract directly with First Solar.

6 176. Defendants knew that injury to Switch was likely because their actions would,
7 among other things, (1) force Switch into withdrawing its Petition for Reconsideration, and (2)
8 deprive Switch of its rights, remedies and economic advantages associated with unbundling, *i.e.*,
9 direct access to the interstate energy market and direct access to the favorable First Solar
10 Contracts.

11 177. As a result of Defendants' unlawful actions, Switch expended over \$1,000,000.00
12 to pursue its 704B application to obtain 100% renewable energy in a biased and partial process,
13 suffered monetary damages in excess of \$50,000,000.00, has been required to pay NV Energy
14 increased costs for renewable energy and has been deprived of its statutory and constitutional
15 rights, including Switch's rights to access interstate commerce.

16 178. Due to Defendants' misconduct and misrepresentations used to induce Switch to
17 enter into the First Stipulation and the Second Stipulation, the Court should declare the Switch
18 Agreements unenforceable and *void ab initio*.

19 179. Defendants' actions were committed under circumstances constituting oppression,
20 malice, and/or fraud. Switch is therefore entitled to punitive and/or exemplary damages in an
21 amount to be decided by the Court.

22 180. It has been necessary to retain the services of counsel to prosecute this action and
23 Switch is therefore entitled to damages, attorneys' fees, including in-house attorneys' fees, and
24 costs related to the same.

25 **WHEREFORE**, Switch prays for judgment as follows:

26 1. A preliminary injunction ordering preservation of all evidence including all data
27 created on social media platforms used by the Defendants or their employees so that Switch might
28

1 use the Order to preserve all evidence related to this action, including all documents, comments,
2 messages, posts, images, recordings, videos and related materials associated with such use.

3 2. A continued preliminary and temporary injunction directing Tanner to immediately
4 sign into Twitter, reactive her Twitter account, and also to preserve all evidence on Facebook,
5 Pinterest, Instagram, and SoundCloud, as well as any other social media outlets which are or have
6 been utilized by Tanner, including but not limited to all posts by Tanner and/or under the Handle
7 (@DixieRaeSparx, #DixieRaeSparx or DixieRaeSparx);

8 3. A preliminary and temporary injunction directing Twitter, Facebook, Pinterest,
9 Instagram, and SoundCloud, as well as any other social media outlets which are or have been
10 utilized by Tanner, to preserve all posts by Tanner and/or under the Handle (@DixieRaeSparx,
11 #DixieRaeSparx or DixieRaeSparx);

12 4. A preliminary injunction prohibiting the defendants, and their respective officers,
13 agents, servants, lobbyists, employees and/or all persons acting in concert or participation with
14 them, or any of them, from: (1) destroying any evidenced related to Switch, the Switch 704B
15 Docket, the First Solar Contracts, the Denial Order or the other 704B Entities (including, but not
16 limited to, information on websites, such as social media websites, cell phones, devices, emails,
17 text messages, instant messages, or communications on any electronic device or platform,
18 regardless of their personal or public nature);

19 5. For compensatory and special damages, including attorneys' fees (in conjunction
20 with this litigation and those incurred in furtherance of the Switch 704B Docket), against the
21 defendants in an amount to be determined at trial;

22 6. For an Order finding the Denial Order and the First Stipulation and Second
23 Stipulation and related agreements *void ab initio*;

24 7. For an Order permitting Switch to unbundle from NV Energy;

25 8. For damages reimbursing and compensating Switch for overpaying NV Energy as
26 the injected middleman for the First Solar Contracts;

27 9. For treble damages for NV Energy's violation of the Sherman Act and its Nevada
28 counterpart;

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1 10. For an Order permitting assignment of the First Solar Contracts to Switch and all
2 other 704B Entities who have unbundled from the electric utility;

3 11. Alternatively, for an Order from this Court setting aside the Denial Order and the
4 First Stipulation under NRS 703.374 and permitting Switch to unbundle from NV Energy without
5 further administrative review;

6 12. Alternatively, for an Order from this Court finding Switch was induced into
7 waiving its otherwise available administrative remedies, denied due process and permitted to
8 pursue its procedural rights; finding the First Stipulation *void ab initio*; and ordering the PUCN,
9 via its commissioners, to consider Switch’s application to unbundle, as submitted on November 7,
10 2014, anew, under the facts of the time, affording Switch the process it was improperly denied;

11 13. Alternatively, for rescission of the First Stipulation and Second Stipulation;

12 14. For punitive damages in an amount to be determined at trial;

13 15. Award of reasonable costs and attorneys’ fees;

14 16. Prejudgment and post-judgment interest on the foregoing sums at the highest rate
15 permitted by law; and

16 17. For such other and further relief as the Court deems just and proper.

17 **JURY DEMAND**

18 Plaintiff hereby demands a trial by jury on all matters so triable.

19 DATED this 30th day of September, 2016.

20 PISANELLI BICE PLLC

21 By: /s/ Todd L. Bice
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 30th day of September 2016, I caused to be **electronically served through the Court’s filing system** true and correct copies of the foregoing **FIRST AMENDED COMPLAINT AND JURY DEMAND** to the following:

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