

**BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

Application of Nevada Power Company d/b/a NV )  
Energy for approval of a cost-of-service study and net ) Docket No. 15-07041  
metering tariffs. )  
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Application of Sierra Pacific Power Company d/b/a NV )  
Energy for approval of a cost-of-service study and net ) Docket No. 15-07042  
metering tariffs. )  
\_\_\_\_\_ )

At a general session of the Public Utilities  
Commission of Nevada, held at its offices  
on January 13, 2016.

PRESENT: Chairman Paul A. Thomsen  
Commissioner Alaina Burtenshaw  
Commissioner David Noble  
Assistant Commission Secretary Trisha Osborne

**ORDER**

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

**I. INTRODUCTION**

Nevada Power Company d/b/a NV Energy (“NPC”) filed an Application for approval of a cost-of-service study and net energy metering (“NEM”) tariffs. Sierra Pacific Power Company d/b/a NV Energy (“SPPC,” and together with NPC, “NV Energy”) filed an Application for approval of a cost-of-service study and NEM tariffs.

On December 23, 2015, the Commission issued an Order approving the Applications of NPC and SPPC as modified by the Order. The Attorney General’s Bureau of Consumer Protection (“BCP”) filed a Motion for Stay and Request for Order Shortening Time for Responses. The Alliance for Solar Choice (“TASC”) filed a Motion for Stay of Final Order and Tariffs and Request for Order Shortening Time.

**II. SUMMARY**

The Motions to Stay are denied.

**III. PROCEDURAL HISTORY**

- On July 31, 2015, NPC filed an Application for approval of a cost-of-service study and NEM

DOCUMENT REVIEW AND APPROVAL SHEET

DRAFTED BY: DN

FINAL DRAFT ON 1/14/16 AT 1:34 P.M

REVIEWED & APPROVED BY: \_\_\_\_\_ DATE \_\_\_\_\_

ADMIN/ASST. ( \_\_\_\_\_ ) \_\_\_\_\_ / /

COMM. COUNSEL 380 for HW 1/14/16

SECRETARY/ASST. SEC. \_\_\_\_\_ / /

OTHER ( \_\_\_\_\_ ) \_\_\_\_\_ / /

tariffs.

- On July 31, 2015, SPPC filed an Application for approval of a cost-of-service study and NEM tariffs.
- The Applications were filed pursuant to the Nevada Revised Statutes (“NRS”) and Nevada Administrative Code (“NAC”) Chapter 703 and 704, including but not limited to Section 4.5 of Senate Bill (“SB”) 374 of the 78<sup>th</sup> Session of the Nevada Legislature (2015) and NAC 703.535.
- On August 3, 2015, the Commission issued Notices of Application in Docket Nos. 15-07041 and 15-07042.
- The Regulatory Operations Staff (“Staff”) of the Commission participates as a matter of right pursuant to NRS 703.301.
- On August 4, 2015, BCP filed a Notice of Intent to Intervene pursuant to NRS 228.360 in Docket Nos. 15-07041 and 15-07042.
- On August 14, 2015, the Sierra Club filed a Petition for Leave to Intervene (“PLTI”) in Docket Nos. 15-07041 and 15-07042.
- On August 17, 2015, TASC filed a PLTI in Docket Nos. 15-07041 and 15-07042.
- On August 17, 2015, Bombard Renewable Energy (“Bombard”) filed a PLTI in Docket No. 15-07041.
- On August 17, 2015, Travis G. Miller filed a PLTI in Docket No. 15-07042.
- On August 17, 2015, Nevadans for Clean Affordable Reliable Energy (“NCARE”) filed a PLTI in Docket Nos. 15-07041 and 15-07042.
- On August 17, 2015, the Southern Nevada Homebuilders Association (“SNHBA”) filed a PLTI in Docket Nos. 15-07041 and 15-07042.
- On August 17, 2015, the United States Green Building Council, Nevada Chapter (“USGBC”) filed a PLTI in Docket No. 15-07041.
- On August 17, 2015, Vote Solar filed a PLTI in Docket Nos. 15-07041 and 15-07042.
- On August 18, 2015, Shawn O’Meara (on behalf of SUNworks, Black Rock Solar, Inc., The Power Company, and Alternative Energy Solutions) filed a late-filed PLTI in Docket No. 15-07042.
- On August 18, 2015, the Solar Energy Industries Association (“SEIA”) filed a late-filed PLTI in Docket No. 15-07042.

- On August 18, 2015, the Washoe County School District (“WCSD”) filed a PLTI in Docket No. 15-07042.
- On August 19, 2015, the Commission held a prehearing conference. BCP, Bombard, Mr. Miller, NCARE, NV Energy, SEIA, SNHBA, Staff, TASC, USGBC, Vote Solar, and WCSD made appearances. The Presiding Officer excused the Sierra Club and Mr. O’Meara from appearing. The Presiding Officer consolidated Docket Nos. 15-07041 and 15-07042 for hearing purposes. The Presiding Officer granted the PLTIs filed by Bombard, NCARE, TASC, Vote Solar, and WCSD. The Presiding Officer conditionally granted the PLTIs filed by Mr. O’Meara, SEIA, Sierra Club, SNHBA, and USGBC, subject to those parties filing supplemental information. The Presiding Officer denied the PLTI filed by Mr. Miller.
- On August 19, 2015, the Sierra Club filed a Reply to Staff Response to Petition to Intervene in Docket Nos. 15-07041 and 15-07042.
- On August 20, 2015, the Great Basin Solar Coalition (“GBSC”), formerly Mr. O’Meara, filed supplemental information in Docket No. 15-07042.
- On August 20, 2015, SEIA filed a Supplement to Late-Filed Petition for Leave to Intervene in Docket Nos. 15-07041 and 15-07042.
- On August 20, 2015, SNHBA filed a Supplement to the Petition for Leave to Intervene in Docket Nos. 15-07041 and 15-07042.
- On August 20, 2015, USGBC filed a letter rescinding its PLTI in Docket No. 15-07041.
- On August 20, 2015, Vote Solar filed a Supplemental and Errata Filing in Support of Vote Solar’s Petition for Leave to Intervene in Docket Nos. 15-07041 and 15-07042.
- On August 21, 2015, the Commission held a hearing in Docket Nos. 15-07041 and 15-07042. BCP, Bombard, GBSC, NCARE, NV Energy, SEIA, Sierra Club, SNHBA, Staff, TASC, and Vote Solar made appearances.
- On September 1, 2015, the Commission issued an Interim Order.
- On September 4, 2015, the Presiding Officer issued a Procedural Order establishing a procedural schedule in Docket Nos. 15-07041 and 15-07042.
- On October 26, 2015, the Presiding Officer held a discovery conference with NV Energy and TASC.
- On October 28, 2015, the Presiding Officer issued Procedural Order No. 2.
- On November 2, 2015, NV Energy and Vote Solar notified the Presiding Officer, via electronic mail to the Administrative Attorney, of an agreement to revise the procedural schedule as it pertains to work papers.

- On November 6, 2015, Sierra Club submitted a letter requesting to withdraw as a party and participate as a commenter.
- On November 12, 2015, the Presiding Officer issued Procedural Order No. 3.
- On November 18-20, 2015 the Commission held a continued hearing in Docket Nos. 15-07041 and 15-07042. BCP, Bombard, GBSC, NCARE, NV Energy, SEIA, SNHBA, Staff, TASC, Vote Solar, and WCSD made appearances. Exhibits 1A-102A were admitted to the record pursuant to NAC 703.730.
- On December 1, 2015, the Presiding Officer issued Procedural Order No. 4.
- On December 2, 2015, BCP, NCARE, NV Energy, SEIA, Staff, TASC, and Vote Solar filed legal briefs. On December 9, 2015, BCP, NCARE, NV Energy, Staff, TASC, and Vote Solar filed reply briefs.<sup>1</sup>
- On December 24, 2015, BCP filed a Motion for Stay and Request for Order Shortening Time for Responses. On December 29, 2015, BCP filed an Amendment to Motion for Stay and Request for Order Shortening Time for Responses and Request for Modification of Procedural Order No. 5. On December 29, 2015, BCP filed a Corrected Amendment.
- On December 24, 2015, TASC filed a Motion for Stay of Final Order and Tariffs and Request for Order Shortening Time. On December 30, 2015, TASC filed an Amendment to Motion for Stay of Final Order and Tariffs and Request for Order Shortening Time and Request for Modification of Procedural Order No. 5.
- On December 28, 2015, the Presiding Officer issued Procedural Order No. 5, establishing an expedited timeframe for filing responses and replies to the Motions for Stay and a hearing date.
- On December 29, 2015, SNHBA filed a Response to BCP's Motion to Stay. On December 30, 2015, Vote Solar and SEIA filed Responses to the Motions for Stay. On January 4, 2016, NCARE, NV Energy, and Staff filed Responses to the Motions for Stay. On January 6, 2016, BCP and TASC filed Replies.
- On December 31, 2015, the Presiding Officer issued Procedural Order No. 6, suspending GBSC's representative, Shawn O'Meara, from further participation in these proceedings.
- On January 7, 2016, the Commission held a hearing on the Motions for Stay. BCP, Bombard, GBSC, NV Energy, SEIA, SNHBA, Staff, TASC, and Vote Solar made

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<sup>1</sup> Several parties also included analyses of SB 374 and the relevant statutes and regulations in witness testimony. (See Ex. 29A (NV Energy) at 15-17; Ex. 30A (NV Energy) at 15-17; Ex. 40A (WCSO) at 3; Ex. 41A (SNHBA) at 3-4; Ex. 44A (Vote Solar) at 7-9, 11, 13, 46-47, 50-51, 60, 62; Ex. 49A (TASC) at 6-7, 9-10; Ex. 62A (BCP) at 2; Ex. 64A (Staff) at 3, 11-12, 23-24; Ex. 76A (TASC) at 34, 48; Ex. 99A (NV Energy) at 5, 7-15, 79; Ex. 101A (NV Energy) at 6-7, 21-23, 26-31, 35-37, 39, 41-42; Tr. at 89-90 (NV Energy), 99-100 (NV Energy), 357-359 (TASC), 406 (Bombard), 442-443 (BCP), 474-477 (Staff), 503-505 (Staff), 552-554 (Staff), 580-583 (Staff), 595-596 (Staff), 1103-1104 (NV Energy), 1132-1133 (NV Energy), 1140-1144 (NV Energy).)

appearances. NCARE and WCSO were excused.

- On January 8, 2016, the Presiding Officer issued Procedural Order No. 7, requiring NV Energy to file notification that it has updated its website with information, including but not limited to bill comparisons for the average customer in each affected rate class, explaining the Final Order for NEM ratepayers and prospective NEM ratepayers as soon as possible.
- On January 8, 2016, BCP filed a Petition for Reconsideration and/or Rehearing.
- On January 8, 2016, SNHBA filed a Petition for Rehearing and Reconsideration.
- On January 8, 2016, SEIA filed a Petition for Reconsideration.
- On January 8, 2016, TASC filed a Petition for Reconsideration.
- On January 8, 2016, Vote Solar filed a Petition for Reconsideration.

#### **IV. MOTIONS TO STAY<sup>2</sup>**

##### **BCP's Position<sup>3</sup>**

1. BCP recommends that approval of the revised tariffs should be stayed pending the outcome of any petitions for reconsideration, clarification, and/or rehearing. BCP states that there are considerable questions regarding what the parameters of the revised tariffs should be in order to be consistent with the mandates of the Order. The Order is unclear on the intricacies of implementation. It is unclear what exact costs are to be included in the laddering approach and how much the charge will be. There were some unexpected items in the Order, and a short "time out" during reconsideration would allow all parties involved an opportunity to better understand the Order, along with the corresponding rates and timing of implementation of those rates, thereby reducing customer confusion. (BCP Motion at 4.)

2. BCP states that staying approval of the revised tariffs would allow more time to

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<sup>2</sup> Both Motions for Stay request that the Presiding Officer stay the Order and related tariffs pending reconsideration. However, the Presiding Officer has not issued a stay, so the full Commission addresses the requests herein.

<sup>3</sup> BCP's Amendment to its Motion for Stay requested an amendment to Procedural Order No. 5 to allow the Presiding Officer to rule on the Motion for Stay on December 31, 2015. The Presiding Officer did not revise Procedural Order No. 5. The arguments raised by BCP in the Amendment to its Motion for Stay are moot.

fully review the tariffs. The Order leaves it up to NV Energy to interpret the Order, draft the tariffs, and submit those to Staff for review and approval which will have to take place between end-of-year holidays. Staff will be pressed for time to fully evaluate the tariffs in the full context of the Order, unless the Commission were to stay approval of the revised tariffs. No party to these Dockets will likely see the tariffs prior to their approval or be able to inquire about different interpretations of the Order. (BCP Motion at 5.)

3. BCP states that staying approval of the revised tariffs would allow for consumers and stakeholders to better understand the Order prior to making financial decisions. It has been reported in the media that some rooftop solar installation businesses are shutting down and laying off workers in Nevada. These decisions may be based on an incomplete understanding of the Order and resultant rate impacts. (BCP Motion at 5.)

4. BCP states that staying approval of the revised tariffs would delay changes for NEM1 ratepayers until the notice issue can be considered. NV Energy's Applications specifically stated the Applications did not propose any changes to the NEM1 ratepayers. Further, the Notices issued by the Commission did not specifically mention rate changes to NEM1 ratepayers. BCP believes that the Notices in these Dockets regarding NV Energy's Applications failed to lawfully apprise NEM1 ratepayers of the possibility of changes to their rates. It is inherent in any notice and hearing requirement the proposition that the notice will accurately reflect the subject matter to be addressed and that the hearing will allow full consideration of it. There would be a denial of fairness and due process through adequate notice, if the Commission were to hear and issue orders on matters not submitted by NV Energy in its Application. (BCP Motion at 5-6.)

5. BCP states that staying approval of the revised tariffs would delay changes for

NEM1 customers until the contract impairment issue can be considered. The BCP is concerned that the Order and resulting tariffs may impair existing private contractual obligations<sup>4</sup> in violation of the Contract Clause of the U.S. and Nevada Constitutions. Courts tend to give a great deal of discretion to governmental bodies enacting legislation or regulation which affects contracts between private parties, if there is a compelling public purpose for so doing. However, that discretion is not unlimited, and the courts tend to look to the facts of each case to decide if a substantial impairment has been created, and whether the impairment is reasonable under the circumstances, and whether there were any less onerous means available to achieve the public purpose. BCP is not prepared to opine as to whether the Order would actually violate the Contract Clause, but BCP is concerned that the Order may attract increased scrutiny, particularly as it regards grandfathering. (BCP Motion at 6-7).

6. BCP states that for the reasons above it would be administratively efficient for the Commission to stay approval of the revised tariffs pending the outcome of any petitions for reconsideration, clarification, and/or rehearing. (BCP Motion at 7.)

#### **TASC's Position<sup>5</sup>**

7. TASC recommends a stay of the Order and related tariffs pending reconsideration. TASC states that the standard of review for a request to stay the effectiveness of an order or tariff is whether good cause exists, and it is in the public interest (see Docket No. 12-05003, Procedural Order No. 3, issued December 4, 2012.) (TASC Motion at 3-4.)

8. TASC states that there is good cause, and it is in the public interest to grant TASC's Motion for Stay because implementing new tariffs before all factual and legal issues

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<sup>4</sup> BCP was unable to identify the contracting parties when questioned during the hearing on the Motions for Stay. (Tr. at 17-22.)

<sup>5</sup> TASC's Amendment to its Motion for Stay requested an amendment to Procedural Order No. 5 to allow the Presiding Officer to rule on the Motion for Stay on December 31, 2015. The Presiding Officer did not revise Procedural Order No. 5. The arguments raised by TASC in the Amendment to its Motion for Stay are moot.

have been resolved will result in an unnecessarily disruptive transition. TASC intends to file a petition for reconsideration addressing all legal and factual arguments, some of which have been previously asserted by TASC in these Dockets. Given the complexity and ambiguity of the Order, as well as the drastic impact its implementation will have on customers, solar installation companies, and the solar industry generally, there is good cause for the Commission to stay the effectiveness of the Order and related tariffs through the reconsideration phase of this proceeding. (TASC Motion at 5.)

9. TASC states that a stay is necessary to allow the parties a meaningful opportunity to seek reconsideration of the tariffs submitted by NV Energy. The Order imposes unprecedented, dramatic, and untested changes. Customers have never before taken service under this type of structure and rooftop solar providers and contractors have never sold or delivered service under it. An evaluation of the tariffs is vital to understanding the implications of the Commission's decision because the Order leaves open significant questions about the implementation of the Order. The Order does not indicate exactly what is to occur in each successive year of the phased-in implementation of the new rate structure. It is up to NV Energy and Staff to interpret the Order and ascertain, without the benefit of additional clarity or comment, what exactly the "ladder" is supposed to look like and how it will be applied. TASC's reconsideration will relate generally to the implementation of the new structure as reflected in the tariff filing, but reconsideration will only be meaningful if those tariffs are not effective before TASC makes its filing. The tariffs may not only reflect an erroneous interpretation of the Order according to TASC, but the Commission itself may find those tariffs to be inconsistent with its terms. (TASC Motion at 5-6.)

10. TASC states that a stay is necessary to ensure Nevada's customers and providers

are not unnecessarily harmed by the implementation of the Order. Rooftop solar providers have fashioned and honed a Nevada business model on an entirely different set of rules with dramatically different underpinnings—a set of rules that has largely gone unchanged since the inception of net metering in 1997. In mandating substantial changes to those rules, providers are now forced to reevaluate their business models and customers with rooftop solar must reconsider the economics of their investment which may be completely upended. Because of the consequential and far-reaching implications of the Order, the Commission should stay the effectiveness of the Order through reconsideration. Rooftop solar providers should not be forced to entirely retool their approach, potentially chilling all future opportunities in Nevada, until the factual and legal issues presented in this matter have been resolved with finality at least at the Commission level. Nevada’s customers and providers should at least be afforded the benefit of being sure that the tariffs submitted and approved by Staff are consistent with the requirements of the Order before they becomes effective. Any other approach is unnecessarily disruptive and is also inconsistent with the general principles of rate design, as described in the Order. (TASC Motion at 6-8.)

11. TASC states that staying the Order and related tariffs is consistent with the principles of rate design. Making the Order and related tariffs effective pending reconsideration is contrary to the promotion of economic efficiency, equity, bill stability, revenue stability, and customer satisfaction. The possibility of a modification (or reversal) of the Order and related tariffs upon reconsideration presents significant risks with regard to imposing the new rate structure now. In the event of a change upon reconsideration, customers and providers would see the regulatory structure under which they operate and seek service changed in a short timeframe, forcing those customers and providers to recalibrate their approach to sales and

service. The complexity and uncertainty of the Order will be far better understood after the tariffs are submitted and the parties have a chance to vet those tariffs and seek reconsideration. (TASC Motion at 8-9.)

12. TASC states that during the multi-year implementation schedule, NPC and SPPC are required to file general rate cases that could further change the fees and rates customers are subject to. These changes could alter the overall costs for Nevada's customers significantly through the implementation period, making assessing the bill impact on a year to year basis a moving target. Forcing customers and providers to make that assessment now, without the benefit of at least knowing if the initial tariff structure is appropriate and that the balance of the order is not subject to change, would result in unnecessarily speculative assessment. (TASC Motion at 9.)

13. TASC states that nothing in SB 374 prohibits issuing a stay here and granting a stay is consistent with the Commission's prior rulings. There is nothing in the law that requires that the Commission make effective the new tariffs before the end of the period during which reconsideration will occur. Section 4.5 of SB 374 requires that the Commission issue a written order by December 31, 2015, but nothing requires the tariffs to become effective at that time. The interim tariffs approved by the Commission would present a far less disruptive approach in Nevada pending reconsideration. (TASC Motion at 9-10.)

14. TASC states that granting the stay is consistent with the Commission's prior approach to staying orders. In Docket No. 12-05003 (charges for opting out of the "smart meter" program), the Presiding Officer found that there was good cause and it was in the public interest to stay the Order to avoid additional confusion on the part of ratepayers, particularly given the high level of customer interest in the case as noted by Staff. It is easy to draw a parallel from

Docket No. 12-05003 to the instant Dockets where customers would be subject to new rates and charges for rooftop solar systems prior to the final determination on the forthcoming petition for reconsideration if a stay is not granted. In Docket No. 12-01005 (investigation of customer service practices), the Presiding Officer granted a motion to stay the utility from closing the last remaining customer service center pending the outcome of the proceeding. Certainly, the impacts to over 15,000 customers in Nevada that would result from the Commission's Order in this Docket are similarly unprecedented and would touch nearly as many utility customers as the closing of the service center would have. Finally, in Docket No. 14-05003 (NPC's emissions reduction and capacity replacement plan), the Presiding Officer granted a stay where the Order would have imposed action upon the utility prior to the completion of the reconsideration process. Similarly, the Order in these Dockets will impose new charges and fees upon customers who have already installed rooftop solar prior to the time that reconsideration would have been completed. Together, the Commission's treatment of requests for stays make it immediately evident that the good cause necessary to approve the Motion for Stay exists in this proceeding, the procedural requirements for doing so are satisfied, and the impact of a failure to grant the stay is immediate, irreversible, and would create an unprecedented impact upon thousands of utility customers without the final approval from the Commission. Any other decision would be inconsistent with the Commission's previous actions. (TASC Motion at 10-12, Tr. at 32-37.)

#### **Bombard's Response Position**

15. Bombard provided no substantive response. (Tr. at 54.)

#### **GBSC's Response Position**

16. GBSC provided no substantive response. (Tr. at 54.)

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**NCARE's Response Position**

17. NCARE recommends that the Commission grant the Motions to Stay. The Order dramatically changes the rate structure for NV Energy's customer-generators, including over 15,000 existing NEM1 customer-generators who have previously been billed under the NEM framework of NRS 704.773 and 704.775. Staying the Order and tariffs would promote administrative efficiency and avoid customer confusion and business disruption in the event the Commission grants reconsideration and modifies its Order and the accepted tariffs. Granting a stay for the short amount of time necessary for the Commission to consider petitions for reconsideration, rehearing, and clarification would not result in any significant prejudice to any party to these proceedings. (NCARE Response at 2-3.)

18. NCARE states that it agrees with TASC that granting the Motions to Stay would be consistent with the Commission's prior approach to staying its orders pending reconsideration where there is a strong public interest in doing so. In Docket No. 12-05003, the Presiding Officer granted a stay pending reconsideration, agreeing that it was in the public interest to stay the order to avoid additional confusion on the part of ratepayers, particularly given the high level of customer interest in the case, and that staying the order would reduce unnecessary administrative expense and labor involved in reviewing the tariffs that may change in the future, and that involve unnecessarily installing and uninstalling meters and collecting charges that could later change. (See Procedural Order No. 3, issued December 4, 2012, at ¶ 42.) In Docket No. 14-05003, the Presiding Officer granted a stay pending reconsideration, finding that the applicant's right to seek reconsideration warranted granting the stay, which should remain in effect until the Commission entered a final order fully dispositive as to the relief sought by the applicant. (See Order on Motion, issued November 13, 2014, at ¶ 6.) Similarly, BCP believes

that BCP and TASC have demonstrated good cause to stay the Order and the tariffs until the Commission has considered the petitions for reconsideration, clarification and/or rehearing that may be filed, and entered a final order fully dispositive of all the issues raised in those petitions. (NCARE Response at 3-4.)

### **NV Energy's Response Position**

19. NV Energy recommends that the Commission deny the Motions to Stay. NV Energy states that the filings are now moot. NV Energy filed its proposed tariff sheets on December 30, 2015. On December 31, 2015, the Commission approved the tariff effective December 31, 2015. Thus, as of January 1, 2016, the tariff is currently in place. Because the tariff challenged by BCP and TASC are currently in effect, there is no practical legal or administrative benefit in staying the final Order. The controversy that existed on December 23, 2015, concerning the effective date of the Order or tariffs is no longer at issue because the tariff has been approved and is in effect. (NV Energy Response at 3.)

20. NV Energy states that in the unlikely event that the Commission modifies the final Order at any time, there is a process in place to account for and reimburse any over-collection of tariffs. Thus, because all NEM customers can be compensated for any overpayments through a refund, there is no administrative value or benefit at all in reversing the newly-implemented tariffs for a period of roughly 60 days when it is highly unlikely that the Commission will make any modifications at all to its own final Order. (NV Energy Response at 3-4.)

21. NV Energy states that if the Motions for Stay are not denied as moot, the Motions should be denied because they are barred by SB 374 and violate the intent and spirit of that bill. The Legislature expected and commanded these matters be dealt with swiftly and without delay.

SB 374 imposes a date-certain statutory deadline for Commission action, and a Commission stay would be contrary to the dictates of the statute. BCP's and TASC's arguments for stay should be seen for what they are—an attempt to inject delay with the Legislature's clear deadline for action on this matter. As part of the statutory scheme, the Legislature mandated that only a court of competent jurisdiction could authorize a stay of the effective date of the Commission's final Order, not the Commission. (*See* SB 374, section 4.5(6)). Since the Legislature considered the possibility of a stay and provided only one mechanism for that relief, any such stay must originate from a judicial proceeding. Further, if a court issues a stay, NV Energy is not obligated to offer NEM above the 235 MW cap that was established in SB 374. These mechanisms were all put in place in a carefully drafted piece of compromise legislation that was intended to ensure there could not be an end around the new NEM rules adopted by the Commission that resulted in the continuation of inappropriate cost shifting. (NV Energy Response at 4-7.)

22. NV Energy states that the more appropriate approach would have been to expedite reconsideration. Between December 23, 2015, and December 30, 2015, BCP and TASC filed five separate documents with the Commission. During this period of time, and considering the several filings, BCP and TASC could have, and should have, simply filed their reconsideration pleadings so the parties can move forward and have a meaningful opportunity to respond during this process. If unsuccessful, the parties have a further opportunity to judicially appeal the Commission's decision pursuant to NRS 703.373. All told, the Legislature has already contemplated the Commission's administrative process and has provided mechanisms to request petitions for rehearing or reconsideration, and then provided an appeal process. Thus, the motion for stay presented to the Commission is an unnecessary interruption that the Legislature neither contemplated nor intended with SB 374. (NV Energy Response at 8.)

23. NV Energy states that if the Motions for Stay are permitted under SB 374, they should be denied because they are procedurally improper. BCP and TASC have not filed petitions for reconsideration. There is no statute or rule that allows a party to seek modification of a final order pending the resolution of a hypothetical petition for reconsideration. A petition for reconsideration is the only proper procedural mechanism by which BCP and TASC may modify the final Order's effective date. The regulation governing reconsideration expressly states with no uncertainty that "[u]nless otherwise ordered by the Commission, the filing of a petition for reconsideration or rehearing or the granting of such a petition does not excuse compliance with, or suspend the effectiveness of, the challenged order." (*See* NAC 703.801(6).) The requirement that a party must first file a petition for reconsideration before seeking modification of a final order is well-reasoned. Otherwise, upon the filing of a fugitive motion to stay, as is the case here, the Commission is required to speculate as to whether BCP and TASC will actually file petitions for reconsideration, what arguments might be presented, and/or whether the presumed arguments might have merit. Consequently, without first filing petitions for reconsideration, this Commission cannot evaluate whether and why a stay would be appropriate in the first place. (NV Energy Response at 9-10.)

24. NV Energy states that neither NAC 703.550 nor 703.690 authorizes or contemplates a stay when the Commission has already issued its final Order, and no further action will be taken unless and until BCP and TASC file petitions for reconsideration. While BCP and TASC argue that a stay can be granted, such arguments fail because they are premised upon the fallacy that the final Order is not a final determination in this proceeding. BCP's argument that a Commission order can never be considered a "final determination of the proceeding" unless a petition for reconsideration or rehearing was filed and ruled upon fails

under NAC 703.790 and leads to an absurd result, which is contrary to basic canons of statutory interpretation. The fact that BCP and TASC have yet to file petitions for reconsideration does not render the final Order any less “final” for purposes of the Presiding Officer’s authority to act in a hearing. As the Dockets stand today, the evidentiary record is closed and the Commission has issued its final Order. (NV Energy Response at 11-13.)

25. NV Energy states that a stay is not appropriate because BCP and TASC have not demonstrated irreparable harm. It should not be the policy or practice of the Commission to stay or suspend its orders to allow parties to file documents challenging them. Instead, like the Federal Energy Regulatory Commission (“FERC”), this Commission should maintain and reaffirm a “general policy [] to refrain from granting a stay of its orders, in order to assure definiteness and finality in Commission proceedings.” (*Nev. Power Co. Sierra P. Power Co.*, 98 FERC ¶ 61183, 61675 (Feb. 21, 2002). Recognizing that policy, FERC has adopted and applied a consistent standard for granting a stay based on whether “justice so requires” as follows: “In addressing motions for stay, the Commission considers: (1) whether the moving party will suffer irreparable injury without a stay; (2) whether issuing the stay will substantially harm other parties; and (3) whether a stay is in the public interest.” (*Id.*) Applying the same factors here is appropriate and conforms with Nevada law. Under NRS 703.374, a Commission order cannot be suspended or stayed unless the moving party demonstrates a reasonable likelihood that the applicant will prevail on the merits of the matter and will suffer irreparable injury if injunctive relief is not granted. On the other hand, applying a lower burden of proof (i.e., good cause) would be contrary to legislative intent and would allow BCP and TASC to effectively secure relief they would not otherwise be entitled to receive. Pursuant to SB 374 Section 4.5(6), if a court issues a stay, NV Energy is not obligated to offer NEM above the 235 MW cap; however,

this statutory relief explicitly afforded to NV Energy under the exact circumstances presented here would be rendered nugatory by a stay issue by the Commission. (NV Energy Response at 14-16).

26. NV Energy states that BCP and TASC will not suffer irreparable harm without a stay. If the Commission made any error at all in entering its Order as it relates to any NEM customers, the issuance of a stay is unnecessary because any amounts that will be paid by NEM customers that should not have been paid can be refunded and otherwise corrected through billing mechanisms. This refund mechanism belies any argument of irreparable harm because it proves that any harm may be adequately compensated through the refund procedure, which has been applied by the Commission in the past. Importantly, under Nevada law, if money damages are adequate compensation, then injunctive relief is not appropriate. (*See Dixon v. Thatcher*, 103 Nev. 414, 416 (1987)). Moreover, the tariff is now in place, and temporarily reversing it after it has already been implemented will result in more confusion for NEM customers, not less. (NV Energy Response at 16-17; Tr. at 60-62, 65.)

27. NV Energy states that a stay will substantially harm other parties. Issuing the stay will be harmful to NV Energy and non-NEM ratepayers. For each day and month that goes by without the new tariff in place, non-NEM ratepayers are forced to subsidize NEM ratepayers. The Legislature recognized this harm when it drafted SB 374 and, in no uncertain terms, mandated that NV Energy is not obligated to provide NEM at all after it reached the 235 MW threshold if a stay is granted. (NV Energy Response at 18.)

28. NV Energy states that a stay is not in the public's interest as a whole. While BCP and TASC focus almost exclusively on NEM customers (the minority of ratepayers), the Commission is obligated to consider the rights and requests of all ratepayers. As the

Commission has already recognized, it is within the public interest to develop a new tariff that establishes separate rate classes for NEM customers and non-NEM customers, in large part because non-NEM customers should not be required to subsidize NEM customers. The new tariff is now in place precisely because the Commission determined that it was in the public interest to establish a time frame in which to gradually move to the revised rate structure providing fairness to both NEM customers and non-NEM customers. This unfair cost-shifting borne by the majority of ratepayers is not in the public interest and the Motions for Stay should be denied on these grounds. (NV Energy Response at 18.)

29. NV Energy states even if the Commission declines to adopt the FERC factors, the Commission should not now rely on prior orders in other dockets. The Commission's previous stay orders are not precedential and are entirely distinguishable. None of the dockets cited by BCP and TASC request the reversal of a tariff now in place. The other dockets are factually and legally distinguishable because each of those extraordinary cases involves circumstances uniquely different from this case. In Docket No. 12-05003, the Commission expressed interest in entertaining further consideration of continued use of analog meters for those customers who will not have smart meters. No party, including NV Energy, opposed the waiver request. In this proceeding, the Commission has entirely completed its review of testimony and evidence and has approved the tariff. In Docket No. 12-01005, the Presiding Officer granted a motion for stay finding that NPC's closure of a customer service center prior to obtaining permission from the Commission was procedurally improper and contrary to law. As the stay did not stay the effectiveness of a final order, there is clearly no relevance of this circumstance to this case. In Docket Nos. 14-05003 and 14-06022, the Presiding Officer granted a motion for stay where NPC faced a procedural "catch-22" because it was faced with conflicting deadlines. The requested

stay essentially requested a modification of the order that harmonize the deadlines. None of the parties are faced with any conflicting deadlines created by the Order in this case. Thus, because this case has none of the procedural imperfections that the cited dockets did, the Motions for Stay should be denied. (NV Energy Response at 19-21; Tr. at 66-67.)

30. NV Energy states that BCP and TASC cannot show they are likely to succeed on the merits of their hypothetical petitions for reconsideration. Without a briefed petition for reconsideration, the Commission cannot correctly weigh whether BCP or TASC's arguments are meritorious. Both BCP and TASC state petitions for reconsideration are forthcoming, but neither BCP nor TASC explain in sufficient detail what arguments it might advance. (NV Energy Response at 21.)

31. NV Energy states that an important general policy is that the Commission should refrain from granting a stay of its orders to ensure the clarity and finality in its proceedings. (Tr. at 64-65.)

32. NV Energy states that besides BCP's arguments regarding notice and the Contracts Clause, the remaining arguments asserted by both parties pertain to administrative efficiency and timing only of when the tariff should become effective. Because the timing arguments do not pertain to the merits of the final Order and because the tariff is already in place, they should be rejected as a basis for staying the effective date of the final Order. (NV Energy Response at 22-23.)

33. NV Energy states that BCP's due process argument is without merit. All parties were asked to provide their positions on the "grandfathering" issue related to NEM1 customers. BCP took the position that NEM1 customers should be grandfathered for a period of time. BCP's argument now that NEM1 customers were not provided an opportunity to be heard at the

