

**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 25, 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 Petition for Reconsideration and/or Rehearing. The Southern Nevada Home Builders Association (“SNHBA”) filed a Petition for Rehearing and Reconsideration.

**II. SUMMARY**

The Commission reopens the proceedings for the taking of additional evidence.

**III. PROCEDURAL HISTORY**

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

DAVE NOBLE

01/25/16 AT 2:30 P.M.

	BY:	DATE
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<input checked="" type="checkbox"/>	COMM. COUNSEL <u>DSN for HW</u>	<u>01/25/16</u>
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- 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, The Alliance for Solar Choice (“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 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 23, 2015, the Commission issued an Order approving the Applications of NPC and SPPC as modified in the Order (“December 23<sup>rd</sup> Order”).
- On December 24, 2015, BCP filed a Motion to Stay and Request for Order Shortening Time for Responses.
- On December 24, 2015, TASC filed a Motion to Stay of Final Order and Tariffs and Request for Order Shortening Time.
- 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, BCP filed an Amendment to Motion to 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 29, 2015, SNHBA filed a Response to BCP’s Motion to Stay.
- On December 30, 2015, TASC filed an Amendment to Motion to Stay Final Order and Tariffs and Request for Order Shortening Time and Request for Modification of Procedural Order No. 5.
- On December 30, 2015, Vote Solar and SEIA filed Responses to the Motions to Stay.
- On December 31, 2015, the Presiding Officer issued Procedural Order No. 6, suspending

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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 (WCSD) 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).)

GBSC's representative, Shawn O'Meara, from further participation in these proceedings.

- On January 4, 2016, NCARE, NV Energy, and Staff filed Responses to the Motions to Stay.
- On January 6, 2016, BCP and TASC filed Replies to the Responses to the Motions to Stay.
- On January 7, 2016, the Commission held a hearing on the Motions to Stay. BCP, Bombard, GBSC, NV Energy, SEIA, SNHBA, Staff, TASC, and Vote Solar made 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.
- On January 19, 2016, the Commission issued an Order, denying the Motions to Stay.
- On January 21, 2016, BCP withdrew its request for rehearing.
- On January 22, 2016, BCP filed a supplement to the withdrawal of its request for rehearing.
- On January 22, 2016, SNHBA filed an errata removing the request for rehearing from its Petition for Reconsideration.<sup>2</sup>
- On January 22, 2016, SNHBA filed a letter in support of BCP's withdrawal of the request for rehearing.
- On January 25, 2016, TASC filed a letter requesting 45 days to file direct testimony and 28 days to file rebuttal testimony if rehearing is granted.

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<sup>2</sup> While the Commission voted to deny SNHBA's request for rehearing at the utility agenda meeting on January 25, 2016, that vote was rendered moot by SNHBA's errata.

- On January 25, 2016, NV Energy filed an Answer to the Petitions for Rehearing.

#### **IV. REOPEN PROCEEDINGS**

##### **BCP's Position**

1. BCP states that the Commission should grandfather NEM1 ratepayers<sup>3</sup> into the rates that were in effect prior to January 1, 2016. The Commission addresses the grandfathering issue in Paragraphs 107 through 111 of the December 23<sup>rd</sup> Order. In Paragraph 108, the Commission expresses concern about discrimination between similarly situated ratepayers. The Commission's concern is rooted in NRS 704.120, which addresses rates (subsection 1) and practices (subsection 2). However, what is prohibited is not discrimination, but rather "unjust, unreasonable, or unjustly discriminatory" rates or practice. Thus, rates can be discriminatory if there are just and reasonable grounds for such discrimination. In other words, the Commission has some latitude to adopt rates that may discriminate. (Pet. at 15-16.)

2. BCP states that the Commission has latitude to find justification to allow for the grandfathering. The Commission must keep in mind that the residential NEM ratepayers who are otherwise being harmed here were the class that received the lowest amount of incentives through the State's Solar Energy Systems Incentive Program. The largest amounts went to other ratepayer classes. Many of the residential NEM ratepayers made sizeable investments and were instrumental in moving the industry forward, which was a goal of the Legislature under NRS 701B.190. In other words, the residential NEM ratepayers now feel there is unfair treatment that simply is not justified. Further, it is not uncommon to grandfather NEM ratepayers—the Public Utilities Commission of Hawaii grandfathered NEM ratepayers as recently as October of 2015.

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<sup>3</sup> NEM ratepayers whose NEM applications were accepted or approved by NV Energy prior to the cumulative capacity of all NEM systems in Nevada reaching 235 megawatts ("MW") are referred to as NEM1 ratepayers. NEM ratepayers who have completed applications that were accepted or approved by NV Energy after the cumulative capacity of all NEM systems reaching the 235 MW are referred to as NEM2 ratepayers.

(Pet. at 17.)

3. BCP states that the grandfathering issue has caused the most objection and uproar over the Commission's decision. If the Commission allows grandfathering, the Commission's December 23<sup>rd</sup> Order will be far less problematic. "Without the change, it brings a whole cascade of issues and complaints that in large part may be arguably justified." (Pet. at 17.)

4. BCP states that, pursuant to Section 2.3(3) of SB 374, the Commission was specifically granted the authority to grandfather NEM ratepayers who are under the 235 megawatt ("MW") threshold. The Commission has the legislative authority to determine what the rate for NEM1 ratepayers should be. However, the finding should be consistent with the expectations of NEM1 ratepayers, the solar companies, and even NV Energy on this issue. (Pet. at 18.)

#### **Commission Discussion and Findings**

5. Pursuant to NAC 703.775, the Commission may, on its own motion, reopen the proceedings for the taking of additional evidence. The Commission finds that it is in the public interest to reopen the proceedings for the taking of additional evidence.

6. While BCP ignored the Notice issued on August 3, 2015, indicating a review of the NEM tariffs, Section 2.3(3) of SB 374 mandating consideration of the appropriateness of grandfathering, as well as the Presiding Officer's reminder to all Parties during the prehearing conference on August 19, 2015, to address the grandfathering issue in direct testimony (*see* Tr. at 60:18-61:18), BCP did provide a one-sentence response on grandfathering during the hearing on November 19, 2015, through cross-examination:

. . . NEM1 customers probably ought to be grandfathered for a period of say **eight or ten years at least**, to assure that investments are recovered over the time period expected before the rates change, before the whole rate design changes. [Emphasis added.]



(Tr. at 444:16-21.) Based on the findings in the December 23<sup>rd</sup> Order, grandfathering NEM1 customers for “eight or ten years at least” equates to a total subsidy of at least \$128-160 million paid by non-NEM ratepayers, if all small commercial and residential NEM1 ratepayers under the 235 MW threshold are included. Given that this one-sentence record on the issue of grandfathering is clearly insufficient evidence to overcome the magnitude of the impact on non-NEM ratepayers, the December 23<sup>rd</sup> Order found grandfathering NEM1 customers to be inappropriate. It is in the public interest to fully develop the record on the limited issue of grandfathering. Therefore, BCP shall file supplemental direct testimony in support of its position for a grandfathering period of “eight to ten years at least.”<sup>4</sup> All Parties will be given an opportunity to respond to BCP’s supplemental direct testimony through supplemental rebuttal testimony.

7. During the hearing on the Motion to Stay on January 7, 2016, TASC attempted to clarify its position on grandfathering. (Tr. at 39:14-41:3.) However, TASC’s position is still unclear to the Commission. Therefore, TASC shall file supplemental direct testimony in support of its position on whether or not the Commission has the authority to apply different rates to NEM ratepayers based on when the NEM systems were installed. All Parties will be given an opportunity to respond to TASC’s supplemental direct testimony through supplemental rebuttal testimony.

8. The Commission believes there is inadequate evidence upon which to base a decision to implement a grandfathering program, especially in light of the substantial subsidy that such a program would preserve. To consider grandfathering NEM1 customers, the Commission must be provided with the additional information that was conspicuously absent

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<sup>4</sup> **BCP shall only provide additional support for its position as stated during the hearing. This is not an opportunity for BCP to change its position as to the length of the grandfathering term.**

from the testimony of the Parties who supported the concept of grandfathering in this case. The Parties should address whether grandfathering should apply to systems installed as of the date of enactment of SB 374 (June 5, 2015), the date of the Commission's final Order (December 23, 2015), the deadline for Commission action provided in SB 374 (December 31, 2015), or to all NEM ratepayers who submitted completed applications under the 235 MW threshold. Parties should also include in their testimony the representations (by NV Energy and rooftop solar developers), if any, that were made to ratepayers who entered into agreements with rooftop solar developers to install NEM systems after SB 374 was enacted on June 5, 2015. Specifically, the Parties should address whether ratepayers were informed that rates may change as a result of the legislative mandate that the Commission establish new rates to eliminate any unreasonable cost shift and determine whether and the extent to which to apply the new rates to NEM1 ratepayers pursuant to Section 2.3(3) of SB 374.

9. Further, the Parties should address the questions asked by the Presiding Officer during the August 19, 2015, prehearing conference (*see* Tr. at 60:18-61:18): Essentially, what happens if circumstances change? Does the rate design stay with the account, stay with the premise, or stay with the ratepayer? What if the NEM system fails? What if more panels are added to a grandfathered NEM system?<sup>5</sup>

10. All Parties will be given an opportunity to provide supplemental direct testimony addressing these matters and may respond to other Parties' supplemental direct testimony through supplemental rebuttal testimony.

11. Underlying the grandfathering issue are NRS 701B.190 and 704.766, which state

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<sup>5</sup> All Parties except for Staff (*see* Ex. 64A at 24, 26) either entirely ignored the directive to answer these questions in testimony or dismissed it as unimportant ("... all of those [issues] can be worked out . . . fairly easily . . ." *See* Tr. at 310:13-17.) The Commission repeats these important questions here to allow Parties one more opportunity to address them in full.

that it is the Legislature's purpose and policy to:

1. Expand and accelerate the development of solar distributed generation systems in this State; and
2. Establish a sustainable and self-sufficient solar renewable energy industry in this State in which solar energy systems are a viable mainstream alternative for homes, businesses and other public entities.

(NRS 701B.190.) and to:

1. Encourage private investment in renewable energy resources;
2. Stimulate the economic growth of this State;
3. Enhance the continued diversification of the energy resources used in this State; and
4. Streamline the process for customers of a utility to apply for and install net metering systems.

(NRS 704.766.)

While Parties provided some acknowledgement of NRS 704.766 (*see* Pet. at 17; Ex. 44A at 8; Ex. 49A at 6; Ex. 76A at 3-4), the Commission believes there is inadequate information as to how the policy goals set forth in NRS 701B.190 and NRS 704.766 are impacted by grandfathering NEM1 customers (or not). Therefore, all Parties shall provide supplemental testimony on the relevant elements of NRS 701B.190 and 704.766 as they pertain to grandfathering, including but not limited to the following:

In general—

- Whether grandfathering encourages the development of solar distributed generation systems in this State?
- Whether grandfathering aids in establishing a sustainable and self-sufficient solar renewable energy industry in this State?
- Whether grandfathering encourages private investment in renewable energy resources? Is the term “renewable energy resources” limited to NEM systems?
- Whether grandfathering stimulates the economic growth of this State?
- Whether grandfathering enhances the continued diversification of the energy resources used in this State?

In particular—

- Should grandfathering be based on the payback for the cost of a NEM

system? Why? If so, what is the average payback under the old NEM rates versus the new NEM rates?

- Who benefits from grandfathering, and who is harmed from grandfathering?
- Does the money paid by NEM ratepayers to third-party vendors for solar lease agreements, power-purchase agreements, and/or turnkey systems stay in the State (where and to whom), or does it go out-of-State (where and to whom)?
- Do the rooftop solar developers retain all solar lease agreements and power purchase agreements? If not, who controls such agreements now?
- Are there any drawbacks to the installation of rooftop solar systems (ie. impacts to homeowners who attempt to sell the homes, to refinance the home mortgages, etc.) based on whether the systems are subject to a solar lease agreement, power-purchase agreement, or nothing at all?
- How do the costs for rooftop solar photovoltaic (“PV”) compare to the costs for large-scale solar PV as well as other renewable energy resources? Are they equal in cost to ratepayers, and, if not, how so? Have they trended downward equally over time, or are there differences?

All Parties will be given an opportunity to provide supplemental direct testimony addressing these matters and respond to other Parties’ supplemental direct testimony through supplemental rebuttal testimony.

12. The deadline for filing with the Commission and serving on all Parties of record supplemental direct testimony as discussed above is MONDAY, FEBRUARY 1, 2016, at 12:00 P.M.

13. The deadline for filing with the Commission and serving on all Parties of record supplemental rebuttal testimony as discussed above is FRIDAY, FEBRUARY 5, 2016, at 12:00 P.M.

14. A hearing will be held on MONDAY, FEBRUARY 8, 2016, at 9:00 A.M.

15. The Commission will issue an order on reconsideration and rehearing after the scheduled hearing.

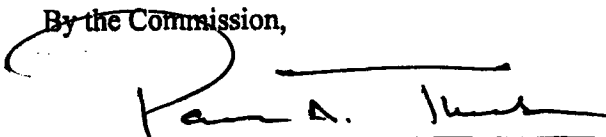
THEREFORE, it is ORDERED that:

1. The proceedings in Docket Nos. 15-07041 and 15-07042 are REOPENED for the

taking of additional evidence.

2. The Commission may correct any errors that have occurred in the drafting or issuance of this Order without further proceedings.

By the Commission,




PAUL A. THOMSEN, Chairman



ALAINA BURTENSHAW, Commissioner



DAVID NOBLE, Commissioner and  
Presiding Officer

Attest:   
TRISHA OSBORNE,  
Assistant Commission Secretary

Dated: Carson City, Nevada

1.25.16

(SEAL)

