

**BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

Application of Nevada Power Company d/b/a NV )  
Energy for authority to adjust its annual revenue )  
requirement for general rates charged to all classes of ) Docket No. 20-06003  
electric customers and for relief properly related )  
thereto. )

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At a general session of the Public Utilities  
Commission of Nevada, held at its offices  
on September 9, 2020.

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

**INTERIM ORDER**

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

**I. INTRODUCTION**

On June 1, 2020, Nevada Power Company d/b/a NV Energy (“NPC”) filed with the Commission an application, designated as Docket No. 20-06003, for authority to adjust its annual revenue requirement for general rates charged to all classes of electric customers and for relief properly related thereto (“Application”).

On July 21, 2020, the Regulatory Operations Staff of the Commission (“Staff”) and the Nevada Bureau of Consumer Protection (“BCP”, together with Staff, the “Movants”) filed a Joint Motion for Immediate Return of Earnings Sharing Funds to Rate Payers (the “Joint Motion”).

On August 7, 2020, the Commission issued an Order denying the Joint Motion and a Procedural Order scheduling a hearing on the earning sharing regulatory liability issue.

**II. SUMMARY**

The Commission orders an immediate return of the earnings sharing regulatory liability of \$59,675,474.00 (herein after “\$59.7 million”) to ratepayers in the form of a one-time bill credit.

### III. EXECUTIVE SUMMARY

This Interim Order in NPC's pending rate case directs that \$59.7 million be returned to ratepayers as soon as practicable in the form of a one-time bill credit. The \$59.7 million source is monies collected by NPC, through an earnings sharing mechanism ordered by the Commission in 2017, to capture any potential overearnings by NPC. In its Application, NPC proposed to amortize and return the overearnings to ratepayers over the course of three years. However, in response to the Coronavirus ("COVID-19") pandemic, the BCP and Staff filed a Joint Motion on July 21, 2020, seeking an order from the Commission directing NPC to immediately return the overearnings regulatory liability to ratepayers. The Commission ordered an evidentiary hearing on this issue. Additionally, a number of interveners argued in favor of an immediate return of the liability, in the form of a one-time bill credit to help alleviate some of the financial pressures caused by the COVID-19 global pandemic.

After holding an evidentiary hearing on the issue, the Commission finds that the \$59.7 million in the overearnings regulatory liability should be returned as soon as practicable, in the form of a one-time bill credit, beginning preferably with the October 1, 2020, billing cycle. While the Commission typically does not issue such interim orders, the Commission finds that the global recession and financial pressures caused by the ongoing global pandemic necessitates the timing of such action. In ordering the refund, the Commission is adopting an allocation methodology agreed to by the intervenors.<sup>1</sup> That allocation methodology uses each rate classes' contribution to 2019 base tariff general rate ("BTGR") revenues to determine what percentage of the overearnings should be allocated to each rate class. The BTGR is set by examining all the utility's revenues, expenses, investments, and costs of capital to determine the rate needed to allow the utility to meet its operating costs. Under the terms of the order, customers in most rate classes, including residential classes, will receive the same flat bill credit. Customers in the single-family residential class will each receive a bill credit of approximately \$53.04. For rate classes with fewer customers, i.e., larger commercial classes, customers will receive a customer specific credit. If a customer has an outstanding balance, the credit will first be applied to any outstanding amount owed and any remaining portion of the credit will be applied to the customer's current bill. Any residential, small, or medium commercial NPC customer as of October 1, 2020, will be eligible for the flat bill credit. All other issues in this rate case will be resolved after hearings and in an order issued by the Commission at the conclusion of this Docket.

### IV. BACKGROUND

Pursuant to NRS 704.110(3)(b), NPC must file a general rate case ("GRC") with the Commission every three years. The purpose of a GRC is to determine the amount of money that NPC needs to collect from customers through rates, otherwise known as a utility's revenue requirement, and establish rates that customers must pay to allow NPC to meet its revenue requirement. Generally, a GRC is split into three phases: (1) Cost of Capital; (2) Revenue Requirement; and (3) Rate Design. The Cost of Capital phase determines a utility's return on equity ("ROE"); the Revenue Requirement phase addresses the amount of revenue the utility

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<sup>1</sup> Nevada Cogeneration Associates and Sunrun, Inc. were the only intervenors who did not sign the agreement. Nevada Cogeneration Associates and Sunrun Inc. filed no testimony, and took no position on the issue.

must receive from the customers to cover its operating costs, provide service to customers, and provide an opportunity to earn a fair return for shareholders on investments; and the Rate Design phase determines the rates that each class of customers must pay to provide the utility with its revenue requirement.

In NPC's 2017 GRC, the Commission adopted an earnings sharing mechanism to capture any potential overearnings by NPC. Under the terms of the mechanism, NPC was allowed to keep 100 percent of overearnings above its authorized 9.4 percent ROE up to 9.7 percent and 50 percent of overearnings above 9.7 percent. The other 50 percent was to be returned to ratepayers in the instant proceeding. NPC recorded the ratepayers' share of overearnings for the calendar years 2018 and 2019 in a regulatory liability for presentation in this docket.

On June 1, 2020, NPC filed its GRC Application in the instant docket. NPC's Application included a proposal to amortize the recorded overearnings over a period of three years. On July 21, 2020, the Movants filed the Joint Motion. The Joint Motion sought an order from the Commission directing NPC to immediately return the overearnings funds to ratepayers in the form of a one-time bill credit. On August 7, 2020, the Commission issued an Order denying the Joint Motion on procedural grounds. The Commission's Order also determined that an evidentiary hearing was needed to address the issue of the earnings sharing regulatory liability. The Commission issued a Notice of Hearing and Procedural Order scheduling the evidentiary hearing for September 1, 2020.

Pursuant to the Commission's Procedural Order, prepared direct and rebuttal testimony was filed in advance of the hearing. Additionally, NPC provided supplemental direct testimony at the request of the Commission. While the non-NPC entities who filed testimony all agreed that the earnings sharing regulatory liability should be returned to ratepayers immediately in the form of a one-time bill credit, there was no consensus on how the liability should be allocated to the various rate classes and among customers in each rate class. On September 1, 2020, prior to the start of the scheduled hearing, Staff, BCP, MGM Resorts International ("MGM"), Caesars Enterprise Services LLC ("Caesars"), the Southern Nevada Gaming Group<sup>2</sup> ("SNGG"), Wynn, Las Vegas, LLC ("Wynn"), Circus Circus Las Vegas, LLC ("CCLV"), and the Smart Energy Alliance ("SEA"), the Kroger Co. ("Kroger"), Walmart, Inc. ("Walmart"), and the Colorado River Commission of Nevada ("CRCNV") (collectively, the "Signatories") filed an agreement with the Commission recommending that the Commission adopt an agreed upon allocation (the "Agreement"). The Commission proceeded to hold the evidentiary hearing as scheduled, with the Signatories substituting their allocation recommendations for the allocation recommendation contained in the Agreement.

## **V. PROCEDURAL HISTORY**

- On June 1, 2020, NPC filed the Application.
- NPC filed the Application pursuant to the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC") Chapters 703 and 704, including but not limited to NRS

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<sup>2</sup> Southern Nevada Gaming Group consists of the Boyd Gaming Corporation, Las Vegas Sands Corp., Stations Casinos LLC, Plaza Hotel and Casino, LLC, Tropicana Las Vegas Inc., and LVGV, LLC.

704.100, NRS 704.110, NAC 703.2201 through 703.2481, NAC 703.535, and NAC 704.6502 through 704.6546.

- On June 8, 2020, the Commission issued a Notice of Application for Authority to Adjust Annual Revenue Requirement for General Rates Charged to all Classes of Electric Customers.
- On June 9, 2020, the Commission issued a Notice of Prehearing Conference and the BCP filed a Notice of Intent to Intervene pursuant to NRS Chapter 228.
- Staff participates as a matter of right pursuant to NRS 703.301.
- On June 12, 2020, Walmart filed a Petition for Leave to Intervene (“PLTI”).
- On June 17, 2020, Kroger filed a PLTI, Motion for Admission Pro Hac Vice, and Notice of Association of Counsel.
- On June 29, 2020, CRCNV filed a PLTI.
- On June 30, 2020, Nevada Cogeneration Associates #1 (“NCA”), Sunrun, Inc. (“Sunrun”), MGM, and Caesars each filed PLTIs.
- On July 1, 2020, Wynn, CCLV, and SEA (collectively, “WCS”) filed a joint PLTI and the SNGG filed a PLTI.
- On July 9, 2020, the Commission held a prehearing conference. NPC, Staff, BCP, Caesars, CRCNV, Kroger, MGM, NCA, SNGG, Sunrun, Walmart, and WCS appeared and discussed a procedural schedule and the PLTIs.
- On July 15, 2020, the Commission issued a Procedural Order.
- On July 16, 2020, the Commission issued a Notice of Consumer Session and Notice of Hearing and an Order granting the PLTIs of Caesars, CRCNV, Kroger, MGM, NCA, SNGG, Sunrun, Walmart, and WCS.
- On July 21, 2020, the Movants filed the Joint Motion and Order Shortening Time.
- On July 22, 2020, NPC filed a Response to the Joint Motion’s request for an Order Shortening Time and the Commission issued an Order denying the Movant’s request for an Order Shortening Time.
- On July 28, 2020, Caesars and MGM, NPC, and WCS filed Responses.
- On August 3, 2020, the Movants filed a Reply and NPC filed its Cost of Capital certification filing.

- On August 7, 2020, the Commission issued an Order denying the Joint Motion, Procedural Order No. 3, and a Notice of Hearing.
- On August 13, 2020, the Commission issued a Notice of Prehearing Conference and Procedural Order No. 4.
- On August 17, 2020, BCP, SNGG, Staff, and WCS each filed Prepared Direct Testimony, Caesars and MGM filed Joint Prepared Direct Testimony, and NPC filed its Revenue Requirement Certification filing.
- On August 18, 2020, Kroger filed Prepared Direct Testimony.
- On August 26, 2020, NPC filed Prepared Rebuttal Testimony.
- On August 27, 2020, the Commission issued Procedural Order No. 5.
- On August 28, 2020, NPC, WCS, SNGG, MGM and Caesars, BCP, and Staff each filed an exhibit list and cross-examination statement, and NPC filed its Rate Design Certification filing.
- On August 31, 2020, Kroger filed an exhibit list and NPC filed the information requested by the Commission in Procedural Order No. 5.
- On September 1, 2020, NPC filed a whitepaper providing Supplemental Direct Testimony and the Signatories filed the Agreement.
- On September 1, 2020, the Presiding Officer held a hearing. NPC and the Signatories, with the exception of CRCNV, made appearances, presented their witnesses and exhibits, and conducted cross-examination. During the course of the hearing, the Presiding Officer granted oral motions to accept exhibits into the record pursuant to NAC 703.730.

## **VI. EARNINGS SHARING REGULATORY LIABILITY**

### **NPC'S Position**

1. NPC recommends that the Commission amortize the earnings sharing regulatory liability over three-years. (Ex. 104 at 20-22.)

2. NPC states that it created the earnings sharing regulatory liability in compliance with the Commission's Order in Docket Nos. 17-06003 and 17-06004. (*Id.* at 29.) NPC states that it presented the amount in the regulatory liability to the Commission in Docket Nos. 19-03001 and 20-02006. (*Id.*) NPC states that the \$59.7 million regulatory liability balance

represents an over earnings balance of \$43.3 million in 2018 and \$16.4 million in 2019. (*Id.*)

NPC states that the potential 2020 earnings sharing is not known or measurable due to uncertainty over financial results. (*Id.*) NPC states that it will include any potential 2020 overearnings in its next GRC. (*Id.*)

3. NPC states that, if the Commission orders a one-time bill credit, then the class allocation should be based on the proposed class revenue reductions from NPC's proposed rate design. (Ex. 149 at 1.) NPC states that this would provide: (1) consistency with how the revenue would be allocated absent the one-time credit; (2) equity among the classes as the credit will be based on the cost to serve them; and (3) transparency as the credit will go through the same scrutiny as other portions of the proceeding. (*Id.*) NPC states that its proposal provides a consistent signal to customers reflecting their level of cost of service, especially in light of the residential subsidy that exists in present rates, and provides relief to a more diverse group of customer types. (*Id.* at 2.) NPC states that distribution-only service ("DOS") 704B impact fee revenue should not be included in the allocation because the impact fees were intended to hold other customers harmless without considering potential overearnings. (*Id.*)

4. NPC states that the allocation methodology in the Agreement benefits the single-family residential class and DOS customers and does not provide as large of a credit for multi-family residential customers or the small commercial class. (Tr. at 76-77.) NPC states that DOS customers are represented by counsel in this proceeding but medium commercial customers are not. (*Id.* at 77.)

5. NPC states that, as of August 20, 2020, it has approximately \$29.5 million in arrears in the regulatory asset account established by the Commission's Order in Docket No. 20-03012 (the "Emergency Order"). (Ex. 147 at 1; Tr. at 49.) NPC states that the \$29.5 million

includes both the impacts of the pandemic and normal expected arrears. (Tr. at 50.) NPC states that at the same time last year it had \$6.8 million in arrears. (*Id.* at 52.) NPC states that it has tracked approximately \$1.5 million in late fees for its customers since the Emergency Order, with approximately \$1 million being attributable to residential customers. (Ex. 147 at 2.) NPC states that there are 68,282 residential and small commercial customers with arrears, with the median per customer arrears being \$222.81 and the average being \$346.22. (Ex. 148 at 1.)

Specifically, NPC states that the breakdown of arrears is as follows:

<b>Customer Group</b>	<b>Customers</b>	<b>Arrears</b>	<b>Average</b>	<b>Median</b>
Single-Family Residential	27,903	\$12,290,423	\$440.47	\$284.54
Multi-Family Residential	35,629	10,075,698	\$282.79	\$195.40
Large Residential	36	56,117	\$1,558.80	\$419.89
Small Commercial	2,903	810,392	\$279.16	\$174.21
NEM-Single-Family-Residential	1,785	419,072	\$234.77	\$109.06
NEM-Multi-Family Residential	24	7,418	\$309.08	\$166.52
NEM-Small Commercial	2	651	\$325.31	\$325.31
<b>Total</b>	<b>68,282</b>	<b>\$23,659,771</b>	<b>\$346.22</b>	<b>\$222.81</b>

(*Id.*) NPC states that the length of the arrears for those customers breaks down as follows:

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<b>Age of Arrears</b>	<b>Customers</b>	<b>Average</b>
31-60 days	24,856	\$107.80
61-90 days	12,077	\$243.23
90+ days	31,349	\$575.55

(*Id.* a 2.)

6. NPC states that for customers with a past due balance that have not indicated they are financially impacted by COVID-19 disconnects will resume on October 22, 2020. (*Id.* at 3.) NPC states that collection activities for all other customers are scheduled to resume in November. (*Id.*) NPC states that it will continue to assess the impact of COVID-19 and will adjust the timing as needed. (*Id.*)

7. NPC states that a bill credit could reduce the amount of arrears, depending on the conditions that the Commission places on the credit. (Tr. at 83.)

#### **Caesars and MGM's Position**

8. Caesars and MGM state that it is reasonable and in the public interest for the earnings sharing regulatory liability fund to be returned to customers in full as a one-time credit as soon as practicable. (Ex. 500 at 3.)

9. Caesars and MGM state that, due to the economic hardships inflicted because of the COVID-19 pandemic, a one-time bill credit is an appropriate means of providing justifiably immediate rate relief. (*Id.* at 5.)

10. Caesars and MGM state that the bill-credit should be allocated in accordance with Exhibit 1 to the Agreement. (Ex. 508 at 3; Tr. at 125.) Caesars and MGM state that for LGS-2, LGS-3, LGS-X, LGS-2-DOS, LGS-3-DOS, and LGS-X-DOS classes, any allocation should be



based on the total recorded BTGR revenue contributed by each large customer by meter during the calendar year 2019. (Ex. 508 at 3.) Caesars and MGM state that, for customers in those classes, their credit would be 5.34 percent of their 2019 BTGR revenues. (Tr. at 119.)

11. Caesars and MGM state that, for each DOS customer, the total recorded BTGR revenues should include any impact fees attributable to that customer as included in Present Revenues reported by NPC in Statement O, page 10. (Ex. 508 at 3.) Caesars and MGM state that, for all other rate classes, the allocation should be based on a flat rate. (*Id.*)

12. Caesars and MGM state that the DOS adjustment is necessary because the impact fees contributed to the overearnings but NPC's recorded BTGR revenues do not include impact fees attributed to the DOS classes. (Tr. at 115.) Caesars and MGM state that NPC's present revenues in Statement O do include the impact fee attributed to each DOS class. (*Id.*) Caesars and MGM state that the use of a scaler was intended to treat the DOS customers and fully bundled customers equally with respect to kilowatt hours, while retaining the impact of the revenues from Statement O. (*Id.* at 116-17.)

13. Caesars and MGM state that the Signatories should be allowed to review and determine if amounts should be added to the earnings sharing liability in other phases of this proceeding and that, if the interveners determine that the amount of overearnings should be increased, then the allocation should be made in accordance with Exhibit 1 to the Agreement. (Ex. 508 at 3.)

### **Kroger's Position**

14. Kroger states that it supports the immediate return of ratepayer funds. (Ex. 700 at 4.) Kroger adopts the recommendations contained in the Agreement. (Ex. 508; Tr. at 170-72.)

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**SNGG's Position**

15. SNGG recommends a full refund of the earnings sharing regulatory liability. (Ex. 1000 at 3.)

16. SNGG states that, under NPC's three-year amortization proposal, the amount of benefit to customers would be less than \$6 million in reduced annual revenue requirement. (*Id.* at 4.)

17. SNGG states that an immediate return of the funds provides NPC: (1) an increase in the annual return on rate base included in revenue requirement; (2) an increase to its revenue requirement relative to the filed case; and (3) an immediate return clears the liability from NPC's books, which is viewed positively by investors and credit rating agencies. (*Id.*) SNGG states that there is no reason to delay the return of the funds and that NPC should have been managing their cashflow with the expectation that the liability would come due. (*Id.* at 5.)

18. SNGG states that a \$60 million refund would act like additional income and would help stimulate the economy. (*Id.* at 5-6.) SNGG states that Southern Nevada and the country are in a recession and that an opportunity to generate economic stimulus through the refund is significant. (*Id.* at 6.)

19. SNGG adopts the recommendations contained in the Agreement. (Ex. 508; Tr. at 151, 156-57.)

**WCS'S Position**

20. WCS recommends that the Commission immediately return the earnings sharing regulatory liability as a one-time bill credit. (Ex. 1300 at 5.) WCS adopts the recommendations contained in the Agreement. (Ex. 508.)

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**CRCNV's Position**

21. CRCNV supports the recommendations contained in the Agreement. (Ex. 508.)

**Walmart's Position**

22. Walmart supports the recommendations contained in the Agreement. (Ex. 508.)

**BCP's Position**

23. BCP recommends that the Commission: (1) order NPC to immediately refund the earnings sharing funds; and (2) order NPC to limit the refund from the earnings sharing regulatory liability to NPC's customers as of December 31, 2019. (Ex. 400 at 2.)

24. BCP states that the Commission should order an immediate refund of the earnings sharing fund in the form of a one-time bill credit because: (1) it is ratepayer money and ratepayers should not have to wait until December 31, 2023, to receive the funds; (2) Nevada is experiencing an historic economic shock; and (3) electric bills in the Las Vegas Valley are highest in the summer months due to air conditioning demand and a credit will help offset some of the costs. (Ex. 400 at 4.)

25. BCP adopts the recommendations contained in the Agreement. (Ex. 508; Tr. at 181-2.)

**Staff's Position**

26. Staff states that the Commission should order an immediate return of earnings sharing funds in the form of a one-time bill credit to: (1) mitigate the financial hardship caused by the current global pandemic and subsequent financial crisis; and (2) eliminate a potential 5-year lag between the collection of funds and return of funds that would occur with a three-year amortization period. (Ex. 300 at 1-2.)

27. Staff states that there is no dispute that the funds belong to ratepayers or that the amount of funds is at least \$59.675 million. (*Id.* at 2.) Staff states that an immediate bill credit ensures that it can be applied to electric bills with the highest amount of electricity usage and costs and helps struggling ratepayers avoid high-interest rate options. (*Id.* at 2-3.)

28. Staff adopts the recommendations contained in the Agreement. (Ex. 508; Tr. at 200-01, 203.) Staff states that the funds should be distributed based on the BTGR revenues because funds were developed with ratepayer's contribution through BTGR payments. (Ex. 301 at 1.)

29. Staff states that it disagrees with NPC's refund methodology because the funds at issue have nothing to do with the marginal cost of service. (Ex. 301 at 3.)

30. Staff states that based on its investigation, the impact fees should be included in the calculation of the allocation of any one-time bill credit. (Tr. at 201-02.) Staff states that the overearnings were built by BTGR payment contributions, so the fund should be returned in a similar manner. (*Id.* at 203.) Staff states that NPC's proposed allocation method in the event of a one-time bill credit is misplaced. (*Id.*) Staff states that the existence of a residential subsidy has not been validated. (*Id.* at 204.)

#### **NPC's Rebuttal**

31. NPC states that it supports the proposal for a one-time bill credit provided that it is done in a balanced manner and fairly addresses potential impacts of the largest-ever one-time bill credit to be distributed to NPC's customers. (Ex. 140 at 2.)

32. NPC states that the formula calculates a return on equity using current income statement and balance sheet accounts and, as such, do not measure cash flow. (*Id.* at 3.) NPC states that the regulatory liability is not cash but that it is an accumulation of non-cash earnings

over a 24-month period. (*Id.*) NPC states that this is an important distinction because the other parties in this proceeding speak of the regulatory liability as if it represents cash. (*Id.* at 3-4.) NPC states that the earnings sharing regulatory liability is similar to other regulatory liabilities and assets and that it would be difficult to apply a concept of funds to all of the other regulatory liabilities and assets in this proceeding. (*Id.* at 4.)

33. NPC states that the proposal of a one-time bill credit is not based on sound rationale and that it would have an immediate negative cash flow impact to NPC. (*Id.* at 5.) NPC states that its proposed 3-year amortization period of the liability is consistent with the recommendations for its other regulatory assets and liabilities. (*Id.*)

34. NPC states that it is not reasonable to isolate this singular regulatory liability and treat it differently than the rest of the regulatory assets and liabilities in this proceeding. (*Id.* at 5-6.) NPC states that the Commission can weigh all of the factors in the final order, rather than making a single-issue decision as proposed by the other parties. (*Id.* at 6.)

35. NPC states that the amortization of the earnings sharing regulatory liability was a key component of its proposed revenue requirement reduction and that advanced distribution of the funds would reduce the proposed reduction. (*Id.* at 6-7.) NPC states that, under its current proposal, the amortization of the regulatory liability represents a \$24.3 million annual revenue requirement reduction as the overearnings would capture a return component utilizing the rate of return in Statement F. (*Id.* at 6-7.) NPC states that it is unclear what impact the bill credit will have on the other phases of the proceeding and that NPC's proposed rate design would have to be further altered to account for the bill credit. (Ex. 141 at 12-13.)

36. NPC states that their June 2020 and July 2020 cash balances were \$13.6 million and \$52.3 million, respectively, compared to a \$169.1 million and \$234.4 million average in

June and July over the prior three years. (Ex. 140 at 8.) NPC states that these months represent a large percentage of its cash flows and that cash from operations typically declines in November. (*Id.*) NPC states that it is projecting to be in a net borrowing position by the end of 2020 and relying on unused capacity under its \$400.0 million revolving credit facility for liquidity. (*Id.*) NPC states that, while it can afford the \$59.7 million cash outflow from the bill credit, the unplanned credit would negatively impact its liquidity and should be considered in the larger context of the GRC. (*Id.* at 8-9.)

37. NPC states that SNGG overstates the positive impact of clearing the liability to NPC's credit rating because: (1) it reduces NPC's cash flow position when liquidity needs to be preserved; (2) it may send signals to the rating agencies of a dire economic situation in Nevada; and (3) it creates the impression of a regulatory environment that is more focused on responding to immediate external pressures on an ad hoc basis. (*Id.* at 9-10.)

38. NPC states that a flat per customer distribution would create intra-class inequities due to disparate uses in rate classes, including the residential classes. (Ex. 141 at 5.) NPC states that a tailored, per consumption, distribution limited to the LGS-2 class and above would be time-consuming, with internal estimates indicating it would take up to eight weeks to implement the distribution. (*Id.* at 6.)

39. NPC states that using the 2019 BTGR revenues to allocate the bill credit is misplaced because the bulk of the earnings sharing accrued in 2018. (*Id.* at 7.) NPC states that the current customer base is different from 2018 and 2019, thus creating potential intergenerational inequities. (*Id.*)

40. NPC states that the proposed refund approach favors DOS customers due to modifying the DOS revenue to include the impact fee revenue, thus inflating the credit due to

DOS customers by \$725,000. (*Id.* at 8.) NPC further states that, in prior 704B orders, the Commission found that DOS customers do not have access to earnings sharing as a matter of right. (*Id.* at 8-9.)

41. NPC states that the Agreement does not identify how the number of customers would be used to identify the credit, if it would be based on recorded count as of some date, or another number. (Tr. at 215.)

### **Commission Discussion and Findings**

42. Pursuant to NAC 703.752, the Commission may, in the course of a proceeding and before entering a recommended decision, issue an appropriate written interim order.

43. Pursuant to NRS 704.001(4), the Commission must “balance the interests of customers and shareholders of public utilities by providing public utilities with the opportunity to earn a fair return on their investments while providing customers with just and reasonable rates”.

44. Here, the Commission finds that it is appropriate to order an immediate return of the earning sharing regulatory liability in the form of a one-time bill credit due to the unique circumstances caused by the COVID-19 global pandemic. The Commission further finds that the ordered one-time bill credit successfully balances the interests of ratepayers and shareholders by returning the balance of the earnings sharing regulatory liability to ratepayers in a time of need, without unduly harming NPC.

45. Generally, an electric utility’s GRC is split into three phases: (1) Cost of Capital; (2) Revenue Requirement; and (3) Rate Design. The Commission would usually then issue an order in December on all three phases of the GRC after holding hearings and allowing all parties to present relevant evidence in each phase. Here, the Commission deviated from its standard

practice and held an evidentiary hearing on the issue of the earnings sharing regulatory liability due to the sensitive and important nature of the liability.

46. The Commission finds that the economic recession and financial crisis caused by the ongoing COVID-19 global pandemic presents a unique set of circumstances that require that the Commission take unique action. The data filed by NPC demonstrates that the global pandemic has impacted its ratepayers, with NPC showing a total arrears in the regulatory asset created pursuant to the Commission's Emergency Order of approximately \$29.5 million, with approximately \$24 million being attributable to the residential and small commercial classes. (Ex. 147 at 1; Ex. 148 at 1.) This is significantly higher than the normal total arrears amount of \$6.8 million at this time of year. (Tr. at 52.) Moreover, the Commission finds that the dollar amounts associated with each classes' arrears is significant. For example, single-family residential customers have a median arrears of \$284.54 and an average of \$440.47, multi-family customers have a median arrears of \$195.40 and an average of \$282.79, and small commercial customers have a median arrears of \$174.21 and an average of \$279.16. (Ex. 148 at 1.) The Commission finds that the magnitude of the amounts owed further underscores the financial impact COVID-19 has had on customers. Further, the data demonstrates that NPC has recorded approximately \$1.5 million in late fees in the regulatory asset created by the Emergency Order, which is approximately 50 percent higher than it was last year. (Ex. 147 at 2; Tr. at 52.) Moreover, the Commission finds that, while NPC has delayed disconnects and is continuously evaluating the financial impact of COVID-19, the sheer number of customers in arrears combined with the length and amount of those arrears places a number of customers at risk of disconnect when these resume.



47. Thus, it is apparent that the COVID-19 global pandemic has had a major financial impact on NPC's ratepayers. Accordingly, the Commission finds that a refund of the earnings sharing regulatory liability in the form of a one-time bill credit is appropriate under these unique circumstances. The Commission finds that the approximately \$59.7 million in the regulatory liability are indisputably directly attributable to ratepayers. No party has argued that the amount should be less, and no party disagreed that the balance belongs to ratepayers.

48. Further, the Commission finds that NPC's arguments related to cash flow are not compelling. The Commission finds that, due to the outstanding arrearages, a substantial portion of the approximately \$59.7 million will likely end up being applied to customers outstanding past-due arrears balances, for which ultimate collection is uncertain. Further, the Commission finds that, due to the ongoing global pandemic and economic recession, it is unlikely that every account in arrears will begin paying immediately, if at all. Indeed, 68,282 residential and small commercial customer accounts have been in arrears more than 30 days and 31,349 have been in arrears for more than 90 days. (Ex. 148 at 2.) For customers that have been in arrears for more than 90 days, the average amount of arrears is \$575.55, while customers in arrears 61-90 days owe \$243.23. (*Id.*) Moreover, while it is not clear how many customers have availed themselves of the COVID-19 repayment programs, it is apparent that it is significantly less than the amount of customers in arrears. (Ex. 147 at 3, Ex. 148 at 1.) Thus, the Commission finds that this is a longer-term problem with no guarantees that some of the accounts in arrears will be able to begin paying their outstanding balances any time soon. Therefore, the Commission finds that it is unlikely that the one-time bill credit of approximately \$59.7 million will reduce NPC's cash flow by the same amount.

49. Moreover, the Commission notes that NPC already received a benefit from the earnings sharing mechanism in the form of increased cash flow when the overearnings were collected from ratepayers in 2018 and 2019. Under the terms of the earnings sharing mechanism, as laid out in the Commission's Modified Final Order in Docket No. 17-06003, NPC was allowed to keep 100 percent of excess earnings above its 9.4 percent ROE up to 9.7 percent and 50 percent of the overearnings above 9.7 percent, while recording the other 50 percent in a regulatory liability to return to ratepayers in the instant GRC. (Docket Nos. 17-06003 & 17-06004 Commission's Modified Final Order, at ¶ 466-468.) Thus, the Commission finds that NPC's shareholders have already enjoyed the benefits of the overearning's mechanism, while NPC's ratepayers have been waiting for two years to see their share of the benefits. The Commission finds that ordering an immediate return of the overearnings in the form of a one-time bill credit at a time when the ratepayers need is greatest is a reasonable method of maintaining its statutory obligation to balance the interests of ratepayers and shareholders.

50. Accordingly, the Commission finds that in this instance that, due to the ongoing financial crisis and global pandemic, it is in the public interest to return the earnings sharing regulatory liability in the form of a one-time bill credit.

51. The next issue the Commission must consider is how to allocate the regulatory liability. Following the Signatories adoption of the recommendations in the Agreement, the Commission is left with two alternative methods: NPC's and the Signatories'. The Commission finds that the allocation methodology contained in the Agreement represents the most balanced method of issuing the bill credit because the amounts in the earnings sharing regulatory liability were derived from the BTGR revenues that NPC collected from customers in 2018 and 2019. (Ex. 301 at 1; Tr. at 203.) Thus, the Commission finds that the Agreement's methodology of

using 2019 BTGR revenues to determine the percentage of the liability that should be credited to the various rate classes is the most appropriate methodology as it is directly linked to the methodology by which NPC collected the overearnings. The Commission finds that NPC's use of its rate design allocations is an inappropriate methodology to assign the liability because: (1) it has no nexus to how the revenues were collected; (2) it is inappropriate to set aside ratepayer benefits accumulated from past activity to achieve policy goals in future periods; and (3) the existence of a residential subsidy has not been settled or addressed yet in this proceeding.

52. Therefore, for the reasons listed above, the Commission finds that NPC shall allocate the one-time bill credit based on the recommended allocation methodology contained in the Agreement. The Commission notes that using the Agreement's methodology will result in a one-time bill credit of approximately \$53.04 for the residential single-family class.

53. The Commission finds that in order to maximize the benefits of the one-time bill credit, NPC should effectuate the credit as soon as practicable, with a preference for the credit being applied for billing cycles beginning October 1, 2020.

54. The Commission finds that in order to promote administrative efficiency and to avoid overburdening NPC's resources, active customers on October 1, 2020, shall be eligible for the bill credit. This is similar to other bill credits such as the Deferred Energy Adjustment Accounting Rate, where surpluses, or deficits in balancing accounts are either credited or debited at dates that are later than when the surpluses or deficits were incurred. The Commission finds that it is impractical to attempt to seek out the former customers or identify customers who took service only during a portion of 2018 or 2019. This approach is consistent with prior Commission practices and was also suggested by NPC at hearing. (Tr. at 94-96.) The

Commission finds that this method balances fairness and equity while also ensuring that the bill credits are issued in a timely manner.

55. The Commission finds that when applying the credits to the individual customer accounts, NPC should first apply the credit to any outstanding arrearages that the customer may have. Any amount left over should then be applied to bills due as of the date the credit is applied, consistent with NPC's current policy.

56. The Commission finds that the credit shall be applied to NPC's active customer accounts as of October 1, 2020. Further, the Commission finds that in calculating the credit, NPC shall use a count of customer accounts as of December 31, 2019, in determining the bill credit for the customer classes. For the LGS-2, LGS-3, LGS-X, LGS-2-DOS, LGS-3-DOS, and LGS-X-DOS rate classes, the allocation shall be customer specific and be based on the total recorded BTGR revenue contributed by each such large customer by meter during calendar year 2019. For each DOS customer, the total recorded BTGR revenues shall include any impact fees attributable to that customer as included in Present Revenues reported by NPC in Statement O. Consistent with the recommendations made by the signatories, the credit for customers in the LGS-2, LGS-3, LGS-X, LGS-2-DOS, LGS-3-DOS, and LGS-X-DOS rate classes shall be 5.34 percent of their 2019 BTGR revenues. For all other rate classes not described specifically in this paragraph, the allocation of the overearnings regulatory liability shall be based on a flat rate per customer.

57. The Commission finds that this is not the appropriate time to address arguments related to carry charges or the amount in the regulatory liability. The Commission finds that those arguments, including arguments on how to allocate any additional amounts, are best addressed in the Revenue Requirement phase of this proceeding.

58. Accordingly, for the reasons above, the Commission orders NPC to refund the earnings sharing regulatory liability in the form of a one-time bill credit to customers as soon as practicable utilizing the allocation methodology contained in the Agreement.

THEREFORE, it is ORDERED:

1. Nevada Power Company d/b/a NV Energy shall return \$59,675,474.00 of the Earnings Sharing Regulatory Liability in the form of a one-time bill credit in accordance with this Order.

**Directives**

2. Within seven (7) days of the issuance of this Order, Nevada Power Company d/b/a NV Energy shall file in this docket its plans for issuing the \$59,675,474.00 to customers, including the timing for these refunds as well as the eligibility for bill credits. This will also include Nevada Power Company d/b/a NV Energy’s plans to inform and educate its customers about the nature of the bill credits as well as other assistance that Nevada Power Company d/b/a NV Energy offers to customers affected by the pandemic. Nevada Power Company d/b/a NV Energy is encouraged to consult and coordinate with the Regulatory Operations Staff of the Commission, including the Consumer Complaint Resolution Division and other parties regarding these plans.

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3. If, as a result of the difference between the calculation methodology in the Agreement and the customers of record at December 31, 2019, more than \$59,675,474.00 from the Earnings Sharing Regulatory Liability is credited to active customers through the one-time bill credit, Nevada Power Company d/b/a NV Energy shall record this difference as an to offset the 2020 accrual for earnings sharing. If, as a result of the difference between the calculation methodology in the Agreement and the customers of record as of December 31, 2019, less than \$59,675,474.00 is credited to active customers in total, then Nevada Power Company d/b/a NV Energy shall maintain the difference in the earnings sharing regulatory liability to be considered in the current GRC.

4. Within seven (7) days of the completion of the issuance of the bill credits, Nevada Power Company d/b/a NV Energy shall report to the Commission regarding the number of credits issued for each customer class and the total dollar value of these credits for each customer class. Additionally, Nevada Power Company d/b/a NV Energy shall provide information regarding the impact of the bill credit on the balance of the regulatory asset established by the Emergency Order.

5. Within seven (7) days of the issuance of this order, Nevada Power Company d/b/a NV Energy shall file with the Commission updated I-CERT-09, Income Tax M-1 Items; I-CERT-10, Deferred Income Tax Expense; I-CERT-11, Income Tax Rate Base Items; Statement I, Summary of the Results of Operations; Schedule I-1, Detail of Adjustments; Schedule I-2, Unbundling Revenue Requirement; Schedule I-CERT-01, Summary of Adjustments; Schedule I-CERT-05, Mill Tax; Statement G, Summary of Rate Base; Schedule I-CERT-06, Interest Synchronization; Schedule I-CERT-07, Uncollectible Accounts Expense; Certification Statement J ECIC Per NRS, Summary of Recorded, Present Rate, and Proposed Rate Revenues and related

