

*Agenda 15-23; Item No. 2D Draft Order for discussion at agenda*

***THIS ORDER IS NOT A FINAL ORDER AND MAY BE SUBSTANTIALLY REVISED  
PRIOR TO ENTRY OF A FINAL ORDER BY THE PUBLIC UTILITIES COMMISSION  
OF NEVADA***

**BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

Joint Application of Nevada Power Company d/b/a )  
NV Energy and Sierra Pacific Power Company d/b/a )  
NV Energy for approval of the cost recovery of the ) Docket No. 23-03004  
regulatory assets relating to the development and )  
implementation of their Joint Natural Disaster )  
Protection Plan. )

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At a general session of the Public Utilities  
Commission of Nevada, held at its offices  
on August 28, 2023.

PRESENT: Chair Hayley Williamson  
Commissioner Tammy Cordova  
Assistant Commission Secretary Trisha Osborne

**[PROPOSED] ORDER**

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

## **I. INTRODUCTION**

On March 1, 2023, Nevada Power Company d/b/a NV Energy (“NPC”) and Sierra Pacific Power Company d/b/a NV Energy (“SPPC”) and together with NPC, “NV Energy”) filed with the Commission a joint application, designated as Docket No. 23-03004 (the “Joint Application”), for approval of the cost recovery of the regulatory assets relating to the development and implementation of their 2022 joint Natural Disaster Protection Plan (“NDPP”).

On July 11, 2023, Northern Nevada Industrial Energy Users (“NNIEU”) filed a Motion to Strike Testimony (“NNIEU’s Motion”) and NV Energy filed a Motion to Strike Portions of the Testimony of Nichole Loar and Adam E. Danise (“NV Energy’s Motion”).

On July 17, 2023, and July 18, 2023, the Commission held a hearing for this Docket.

## **II. SUMMARY**

The Commission grants in part and denies in part the Joint Application, as delineated in this Order. The Commission denies NNIEU’s Motion. The Commission denies NV Energy’s Motion.

## **III. PROCEDURAL HISTORY**

- On March 1, 2023, NV Energy filed the Joint Application. NV Energy filed the Joint Application pursuant to the Nevada Revised Statutes (“NRS”) and the Nevada Administrative Code (“NAC”) Chapters 703 and 704, including, but not limited to, NRS 704.061 to 704.068, 704.100, and 704.7983, NAC 703.115, 703.375 to 703.410, 703.530 to 703.577, 703.710, and 703.715, and the regulations approved by the Commission in Docket No. 19-06009 and filed with the Secretary of State by the Legislative Counsel Bureau (“LCB”) on February 27, 2020, in LCB File No. R085-19. Pursuant to NRS 703.196 and NAC 703.5274(2), NV Energy requests confidential treatment of information submitted under seal with the Joint Application.
- The Regulatory Operations Staff of the Commission (“Staff”) participates as a matter of right pursuant to NRS 703.301.
- On March 7, 2023, the Commission issued a Notice of Joint Application and Prehearing Conference.
- On March 8, 2023, the Nevada Bureau of Consumer Protection (“BCP”) filed a Notice of Intent to Intervene pursuant to Chapter 228 of the NRS.

- On March 28, 2023, Nevada Workers for Clean and Affordable Energy (“NWCAE”) filed a Petition for Leave to Intervene (“PLTI”).
- On March 29, 2023, each of the following filed a PLTI: NNIEU; Wynn Las Vegas, LLC and Smart Energy Alliance (“Wynn and SEA”); Caesars Enterprise Services, LLC (“Caesars”); MGM Resorts International (“MGM”); Nevada Resort Association (“NRA”); and Boyd Gaming Corporation, Station Casinos LLC, and Venetian Las Vegas Gaming, LLC (collectively, “SNGG”).
- On March 30, 2023, the Presiding Officer held a prehearing conference. NV Energy, Staff, BCP, NWCAE, NNIEU, Wynn and SEA, Caesars, MGM, NRA, and SNGG (collectively, the “Parties”) made appearances and discussed a procedural schedule, consolidating Docket Nos. 23-03003 and 23-03004, and discovery procedures.
- On April 3, 2023, the Commission issued a Notice of Consumer Session and Notice of Hearing, a Procedural Order, Procedural Order No. 2, and an order granting the interventions of NNIEU, Wynn and SEA, Caesars, MGM, NRA, and SNGG.
- On April 5, 2023, the Commission issued a Corrected Notice of Consumer Session and Notice of Hearing.
- On June 26, 2023, Staff, BCP, Wynn and SEA, and NNIEU each filed testimony. SNGG, NRA, MGM, and Caesars (collectively, “SNMC”) filed a joint testimony.
- On July 5, 2023, H. William Brooks filed a comment.
- On July 10, 2023, NV Energy filed rebuttal testimony.
- On July 11, 2023, the Presiding Officer held a Consumer Session. That same day, NNIEU its Motion and NV Energy filed its Motion.
- On July 13, 2023, JoAnn Moore filed a comment.
- On July 14, 2023, Staff and Wynn and SEA each filed a response to NNIEU’s Motion and NV Energy’s Motion (“Staff’s Response” and “Wynn and SEA’s Response”, respectively) and BCP filed a Joinder and Response to Staff’s response (“BCP’s Response”). That same day, NV Energy filed an errata to the direct and rebuttal testimonies of Jesse Murray, which was rejected at the hearing.
- On July 17, 2023, NV Energy filed a reply to Staff’s Response, Wynn and SEA’s Response, and BCP’s Response.
- On July 17, 2023 and July 18, 2023, the Presiding Officer held a hearing. NV Energy, Staff, BCP, NWCAE, NNIEU, Wynn and SEA, Caesars, MGM, NRA, and SNGG made appearances.

- On July 18, 2023, NNIEU filed a reply to Staff’s Response, Wynn and SEA’s Response, and BCP’s Response.

#### IV. JOINT APPLICATION REQUESTS

1. In its Joint Application, NV Energy states that it created regulatory asset accounts for the 2022 NDPP expenditures, and as of December 31, 2022, the collective balance it seeks recovery of is \$37,218,914<sup>1</sup>, which includes amounts in the regulatory asset, return on capital investments, and applicable carrying charges. (Ex. 100 at 2.) NV Energy also proposes to establish the following NDPP charge for all NV Energy customers:

##### Present and Proposed NDPP Rates per kilowatt-hour (“kWh”)

	Current – per kWh	Proposed – per kWh	Increase <Decrease>
NDPP – NPC	\$0.00142	\$0.00101	<\$0.00041>
NDPP – SPPC	\$0.00149	\$0.00114	<\$0.00035>

(*Id.* at 4.)

2. NV Energy requests that the Commission issue an order granting the following relief:
- A finding that the costs recorded in NV Energy’s regulatory asset accounts and calculation of return on capital investments were prudently incurred and are reasonable;
  - A finding that the costs recorded in NV Energy’s regulatory asset accounts are incremental to the revenues it collects through base rates;
  - A finding that the Joint Application fully satisfies the reporting requirements of NRS 704.7983 and related regulations;
  - Permission to reset the NDPP charge in the amount of \$0.00101 per kilowatt hour (“kWh”) for NPC customers;
  - Permission to reset the NDPP charge in the amount of \$0.00114 per kWh for SPPC customers;
  - Approval of NV Energy’s proposed allocation of costs, whereby capital investments are recovered from the service territory in which the capital

<sup>1</sup> Most of the monetary amounts are rounded to exclude the cents.

investment is made, and operations and maintenance, administrative and general (“OMAG”) costs are recovered from all NV Energy ratepayers;

- g. Accept the NDPP rate as it is set forth in Exhibit C to the Joint Application;
- h. A finding that NV Energy has complied with the compliances and directives in Docket Nos. 21-02031, 21-02032, 21-03004, 21-03040, 22-03006, and 22-08001;
- i. Treatment of certain information as confidential for a period of no less than five years; and
- j. Additional relief that the Commission deems just and proper.

(Ex. 100 at 9-11.)

## **V. MOTIONS TO STRIKE**

### **NV Energy’s Motion**

#### **NV Energy’s Position**

3. NV Energy requests that portions of Staff witnesses Nichole Loar’s and Adam K. Danise’s testimonies be struck from the record because the testimony contains inadmissible evidence, inadmissible hearsay, or information that is outside the scope of the proceeding. (NV Energy’s Motion at 1.) NV Energy states that Ms. Loar relies on statements from members of the general public and others at the Lincoln County Fire Protection District and the Elko County Board of Fire Commissioners. (*Id.* at 2.) NV Energy states that Mr. Danise’s testimony contains “observations and recommendations” pertaining to NV Energy’s 2024-2026 NDPP<sup>2</sup> that are irrelevant to and outside the scope of the instant Docket. (*Id.* at 4.)

4. NV Energy states that questions and answers (“Q&As”) 44 and 45 and attachments NL-45 and 46 of Ms. Loar’s Prepared Direct Testimony contain inadmissible evidence because statements from lay members of the general public are not reasonable to rely on under NRS 233B.123(1). (*Id.* at 2.) NV Energy argues that Ms. Loar’s testimony puts the

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<sup>2</sup> Commission Docket 23-03003, *Joint Application of Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy for Approval of their Joint Natural Disaster Protection Plan.*

statements from the general public on par with subject matter experts; however, NV Energy notes that the subject matter experts will be available for cross-examination and questioning, whereas the members of the public will not. (*Id.* at 2.) NV Energy further asserts that Ms. Loar cannot prove the statements she provides were made by experts on fire agency contracts and their associated costs, or the NDPP. (*Id.*) Thus, NV Energy requests the Commission strike Q&As 44 and 45 and attachments NL-45 and 46 of Ms. Loar's testimony as inadmissible under NRS 233B.123.

5. NV Energy also argues that the statements in Ms. Loar's testimony are hearsay that do not fall within any of the defined exceptions under NRS 51.075 through 51.305. (*Id.* at 2.) NV Energy posits that the public records hearsay exception allows statements in civil matters unless the source of the statement "indicates a lack of trustworthiness." (*Id.* at 3.) NV Energy claims that the statements provided by Ms. Loar came from lay members of the public with no evidence that the people making those statements are experts on or knowledgeable about NDPP rates. (*Id.*) NV Energy explains that hearsay may be admissible in administrative proceedings under NRS 233B.123(1) if the evidence in the hearsay statement is the type "commonly relied upon by reasonable and prudent persons in the conduct of their affairs." (*Id.* at 3; referring to *Department of Motor Vehicles & Pub. Safety v. Evans*, 114 Nev. 41, 44 (1998).) NV Energy concludes that the evidence provided by Ms. Loar meets neither hearsay exception under NRS 51.155 for public records as it lacks trustworthiness, nor NRS 233B.123(1) for admissibility, and must be stricken from the record. (*Id.* at 3-4.)

6. NV Energy states that the Commission must strike Q&As 5, 8, 10, 11, 12, 13, 14, and 15 of Mr. Danise's Prepared Direct Testimony from the record, as they are irrelevant and outside of the scope of the proceeding. (*Id.* at 4.) NV Energy states that these questions discuss

the cost-effectiveness of the NDPP, the NDPP's compliance with Senate Bill 329 (2017), and Staff's recommendation in the 2024-2026 NDPP<sup>3</sup>, which is not the focus of this docket and should be addressed in the NDPP Docket. (*Id.*) Thus, NV Energy concludes that Mr. Danise's testimony is beyond the scope of, irrelevant to, and should not remain in this Docket. (*Id.* at 5.)

### **Wynn and SEA's Response**

7. Wynn and SEA state that NV Energy's motion to strike sections of Ms. Loar's and Mr. Danise's Prepared Direct Testimonies should be denied. (Wynn and SEA Response at 1-2.) Wynn and SEA argue that the Commission is allowed to admit evidence, such as that presented by Ms. Loar, under NRS 233B.123(1), contrary to NV Energy's interpretation of that statute. (*Id.* at 9.) Wynn and SEA support this argument by explaining that Ms. Loar did not use the statements as evidence to prove that NV Energy is receiving double-cost recovery for certain expenses nor does Ms. Loar propose any rate adjustments pursuant to the statements she identifies. (*Id.*) Wynn and SEA posit that Ms. Loar uses the statements to raise unanswered questions and signal the need for an investigation. (*Id.*) Wynn and SEA conclude that the Commission should not exclude the evidence and can afford the appropriate weight to the statements in Ms. Loar's testimony. (*Id.* at 10.) Wynn and SEA note that Ms. Loar instead explicitly uses the statements to flag an issue for further investigation. (*Id.*) Thus, Wynn and SEA conclude that Ms. Loar is not attempting to use the statements to prove the "truth of the matter asserted," and thus are not hearsay. (*Id.*)

8. Wynn and SEA state that Mr. Danise's testimony regarding his observations about the cost-effectiveness of the NDPP plan is relevant to the current proceeding because it provides context for Commission decisions, the statements are not tied to recommendations in this Docket, and the Commission may give the testimony appropriate weight on review. (*Id.* at

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<sup>3</sup> See *supra*, fn. 2.



10-11.) Thus, Wynn and SEA conclude that Mr. Danise's testimony should not be stricken, either. (*Id.* at 11.)

### **Staff's Response**

9. Staff asserts that Ms. Loar's Prepared Direct Testimony must not be stricken as it provides important context regarding Staff's review of NV Energy's contracts with fire districts and to evaluate the reasonableness and prudence of the requested expenditures for the NDPP. (Staff Response at 2-3.) Staff explains that the review of the Lincoln County Fire Protection District and Elko County Board of Fire Commissioners minutes regarding NV Energy's contracts are critical to evaluating the resulting costs feeding into the NDPP rate, as the counties are responsible for utilizing ratepayers' funds. (*Id.*) Staff states that examples like the Central Lyon Fire District job posting that would purportedly be "funded by NV Energy," provide relevant details about the contracts and contradict NV Energy's testimony, making it important for understanding and evaluating the reasonableness of the contracts. (*Id.* at 3.)

10. Staff notes that NV Energy has reviewed and approved contracts with fire districts and other local authorities, and its leadership team has had public deliberations and meetings regarding their scope and purpose. (*Id.* at 4.) Staff further notes that NV Energy has provided testimony regarding these contracts but seeks to remove any references to approval of the contracts by other signatories. (*Id.*) Staff explains that the meeting minutes cited by Ms. Loar do not generally contain comments from the public but contain a discussion between local jurisdiction officials and Lincoln County Fire Protection District and Elko County Board of Fire Commissioners members concerning contract approval and administration. (*Id.*)

11. Staff states that meeting minutes issued by local government in Nevada are expressly admissible under the Nevada Rules of Evidence and NRS 233B.123. (*Id.* at 4-5.) State

also explains that NRS 51.155(1) and (2) provides exceptions to the hearsay rule for public documents, such as records, reports, statements, or data compilations of public officials or agencies, relating to their activities, duties imposed by law, or in civil cases and against the State in criminal cases, factual findings resulting from an investigation. (*Id.* at 5.) Staff explains that these minutes are records of an agency in conformance with NRS 51.155(1) and relate to duties imposed by law under NRS 51.155(2). (*Id.* at 5-6.) Staff notes that both Lincoln County Fire Protection District and Elko County Board of Fire Commissioners are public agencies, must make minutes from their meeting publicly available, and that the minutes are prepared in the normal course of their business. (*Id.* at 6.)

12. Staff further explains that expert witnesses can rely on hearsay when providing their opinion pursuant to NRS 50.275, which states that a witness with special knowledge, skill, experience, training, or education can testify to matters within their scope of knowledge. (*Id.* at 6-7.) Staff states that it was appropriate for Ms. Loar to look to local jurisdiction meeting minutes for information related to the expenditures and to consider this information when evaluating expenditures under the contracts. (*Id.* at 7.)

13. Staff sets forth that the Commission and the parties regularly rely on statements from signatories to contracts and various government proceedings. (*Id.* at 7.) Staff provides that this includes written and oral party statements, Commission deliberations, Legislative documents, and meeting minutes posted by the Commission or the Legislature. (*Id.* at 8.) Staff notes that these provide insight into and confirmation of the subject transaction and should not be ignored due to the public nature of the contracts. (*Id.*)

14. Staff states that the parties should not be prevented from discussing relevant issues related to both Docket Nos. 23-03003 and 23-03004, even though they were not

consolidated. (*Id.* at 8-9.) Staff notes that NV Energy supported consolidation, indicating during the related prehearing conference that it “makes sense” and that “there are similar type issues” in the two dockets. (*Id.* at 9) In addition, no party raised the issue of cross-referencing relevant information between the dockets nor did the Commission issue an order limiting such discussion. (*Id.*) Staff opines that NNIEU and NV Energy’s argument would exclude the necessary discussion of data needs and impacts of the proposed cost recovery on rates. (*Id.*) Staff asserts that discussions of future impacts and actions related to the proposed cost recovery are relevant to the evaluation of the cost recovery application. (*Id.*)

15. Staff states that the Nevada Supreme Court case *Nevada Power Co. v. Public Serv. Comm’n*, 91 Nev. 816 (1975), discussed the limitations on an applicant’s changes to an application during a hearing. (*Id.* at 9.) Staff states that the case allows Staff and intervenors to raise issues relevant to the application and to address information gaps to help the Commission make informed decisions. (*Id.*) Additionally, Staff asserts that it must not be barred from bringing forward-looking issues that arise from the application. (*Id.* at 10.)

16. Staff states that Adam Danise’s testimony is relevant to the forward-looking testimony provided by NV Energy witnesses Jesse Murray and Jeremy Aguero and should not be stricken. (*Id.* at 10.) Staff explains that Mr. Danise’s testimony explores the “overall direction and approach” of the NDPP Program as discussed by NV Energy and addresses how the NDPP Program should be viewed and analyzed in accordance with the NDPP statute. (*Id.* at 10-11.)

17. Staff notes that Mr. Danise proposed data requests to ascertain the cost-effectiveness of NV Energy’s approach to natural disasters and the NDPP Program. (*Id.* at 10-11.) Staff claims that Mr. Danise concluded that more information from NV Energy would be helpful in determining cost-effectiveness and recommended opening an investigation and

rulemaking docket to gain more information. (*Id.* at 11.) Staff also notes that Mr. Danise also discussed the statutory standard for NDPP cost recovery and how it has evolved through Commission orders and NV Energy NDPP filings. (*Id.*) Staff opines that the inquiry into the general direction of the NDPP Program is relevant to this matter to gain a holistic view of NV Energy's approach and set just and reasonable rates. (*Id.*)

### **BCP's Response**

18. BCP joins Staff's opposition to NV Energy's Motion. (BCP Response at 1.) BCP notes that the 2024-2026 Joint NDPP Application, Docket 23-03003, and this cost recovery Docket are inextricably intertwined because they concern cost allocation, incrementality, and NDPP expenditures, with the only difference being the NDPP Docket is forward looking. (*Id.* at 2.) BCP states that experts in the NDPP case must take into account NV Energy's past actions and future plans, then determine the NDPP rate setting. (*Id.*) BCP explains that the expert testimony referencing the 2024-2026 Joint NDPP Application will inform the Commission's decisions and prevent a disservice to Nevada ratepayers. (*Id.* at 2.) BCP further notes that experts may rely on a variety of sources, including other PUCN dockets and public records, and that the Commission has full discretion to assess the relevancy and weight of any evidence. (*Id.* at 3.)

### **NV Energy's Reply**

19. NV Energy maintains that the statement in Ms. Loar's testimony must be stricken because many of the quotes included in her testimony were not made by board members nor were they directly related to the NDPP. (NV Energy Reply at 1-2.) For example, NV Energy states that Ms. Loar included the statement of an individual who is not an LCFD trustee or employee about NV Energy building an empire. (*Id.* at 3.) NV Energy further states that Ms.

Loar reiterates a statement from a fire agency meeting from a different individual who is not a trustee or has first-hand knowledge about the Lincoln County Fire Protection District contract suggesting NV Energy was “funding the [fire] department,” without context or support. (*Id.*) NV Energy states that the statements Ms. Loar included in her testimony do not make any “fact that is of consequence... more or less probable.” (*Id.* at 4.) NV Energy concludes that the meeting minutes relied upon by Ms. Loar are “hearsay within hearsay”, are confusing, and undermine due process and fundamental fairness. (*Id.*)

20. In response to Wynn and SEA’s arguments that the excerpts from the fire agency meeting minutes are not hearsay because they were not offered as evidence, NV Energy states that the excerpts were provided to prove the truth of a fact that Ms. Loar asserts regarding recovery of fire contracts costs in the NDPP rate. (*Id.* at 5.) Thus, NV Energy maintains that the statements are hearsay. (*Id.*)

21. NV Energy notes that Wynn and SEA analogize the statements from Ms. Loar’s testimony with consumer session public comments, which are not treated as evidence because individuals making public comments are not under oath and parties have no opportunity to cross-examine the speaker. (*Id.*) NV Energy asserts that the excerpts from the fire agency meeting minutes are properly analogized with consumer session statements, and, as a result, should not be admitted into evidence. (*Id.*)

22. NV Energy explains that the Commission deliberately chose not to consolidate Docket Nos. 23-03003 and 23-03004, even though NV Energy had argued for consolidation of the two proceedings due to similar issues. (*Id.* at 6.) NV Energy notes that the parties now argue that this regulatory asset proceeding is an appropriate venue to provide sur-rebuttal on 2024-2026 NDPP issues, which is fundamentally unfair to NV Energy. (*Id.* at 6.) NV Energy asserts

that the identified Q&As from Mr. Danise's testimony are thus irrelevant to this proceeding. (*Id.* at 6-7.) NV Energy states that Mr. Danise focuses on the triennial NDPP requirements, which include the cost-effectiveness requirement outlined in NRS 704.7983(2)(b) and has no impact on the cost recovery portion of the statute, which states that all reasonable and prudent expenditures must be recovered as a separate rate charged to customers, of the electric utility. (*Id.* at 7.)

23. NV Energy notes that Staff argues that the decision not to consolidate was due to procedural efficiency, thus, the 2024-2026 NDPP issues are within the scope of this proceeding. (*Id.* at 7-8.) NV Energy further notes that BCP argues that the regulatory asset docket and the NDPP Docket are related topics such as cost allocation, incrementality, and the reasonableness and prudence of NDPP expenditures. (*Id.* at 8.) However, NV Energy asserts that both dockets deal with the same program; however, there are distinct and different aspects of the program and thus only relevant information in the other docket may be cross-referenced. (*Id.*) NV Energy states that the portion it seeks to strike fails to provide any relevant information regarding the prudence or reasonableness of the previously incurred regulatory asset costs. (*Id.*)

### **NNIEU's Motion**

#### **NNIEU's Position**

24. NNIEU seeks to strike portions of Bradley Mullins Prepared Direct Testimony discussing long-term future cost allocation policy and issues in Docket No. 23-03003 because those issues are not relevant to this Docket. (NNIEU Motion at 1.) Specifically, NNIEU seeks to strike the portion of Q&A 5 regarding long term OMAG be situs-allocation on, page 3, lines 7-12 and the entirety of Q&As 13, 16, 21, and 22, including footnotes. (*Id.* at 1-3.)

25. NNIEU seeks to strike portions of the Adam Danise's and Miguel Perez's Prepared Direct Testimonies discussing long-term future cost allocation policy and issues in

Docket No. 23-03003 because those issues are not relevant to this docket. (*Id.* at 4-8.)

Specifically, NNIEU requests the Commission strike Mr. Danise's Q&As 5, 6, 7, 13, and 15, as well as Mr. Perez's Q&As 5, 6, 7, and 8, the associated Figures 1 through 7, and all related footnotes. (*Id.*)

26. NNIEU asserts that portions of Mr. Danise and Mr. Perez testimonies should be stricken because they are outside the scope of this proceeding, involve matters not submitted by NV Energy in its Joint Application in this Docket, and the subject matter in their testimony was not noticed by the Commission. (*Id.* at 8-10.) NNIEU explains that the Nevada Supreme Court in *Nevada Power Co. v. Public Serv. Comm'n*, 91 Nev. 816 (1975), determined that the public has the right to notice of a utility's rate increase application, the contents of the application, and a Commission hearing on any such rate application. (*Id.*) NNIEU points out that the Court also noted that due process rights will be violated if the Commission considers matters not related to the application and that notice must be sufficient for parties to have an adequate opportunity to prepare. (*Id.*) NNIEU asserts that the long-term future cost allocation policy and issues raised by Mr. Danise and Mr. Perez that are germane to Docket No. 23-03003 were not noticed in this Docket; thus, if the Commission addresses those topics in this Docket, it would violate parties' right to fairness and due process. (*Id.* at 11.)

27. NNIEU also argues that the long-term future cost allocation policy and issues in Docket No. 23-03003 are not relevant to this docket and should be stricken as a result. (*Id.* at 11.) To support its claim, NNIEU refers to NAC 703.702(1) for the proposition that all evidence, including testimony, must be relevant, i.e. make the existence of a fact more or less probable than it would be without the evidence and be directly related to the matter of the proceeding. (*Id.*) NNIEU sets forth that the Presiding Officer declined to consolidate the two NDPP dockets.

(*Id.*) Thus, NNIEU asserts that the identified testimony of Mr. Danise and Mr. Perez should be stricken because it is not relevant to the subject matter of this proceeding and not of any consequence to any factual determination to be made in this docket, especially because the two dockets were not consolidated. (*Id.*)

### **Wynn and SEA's Response**

28. Wynn and SEA state that NNIEU's motion to strike sections of Mr. Mullins', Mr. Danise's, and Mr. Perez's Prepared Direct Testimonies should be denied. (Wynn and SEA Response at 1-2.) Wynn and SEA state that NNIEU's argument is misplaced as they had notice based on prior NDPP docket orders regarding proposed consideration of a cost-allocation methodology that could potentially impact future NDPP dockets along with NV Energy's Joint Application and its direct testimony indicated that NDPP cost allocation policy would be discussed in the proceeding. (*Id.* at 4-5.) Wynn and SEA further state that the Commission's Notice also made it clear that interested persons should review the filing and monitor the proceedings to determine their desired levels of involvement; thus, NNIEU was on notice that the NDPP cost allocation policy would be discussed without any limitation to 2022 costs. (*Id.* at 5-6.) Moreover, Wynn and SEA assert that NNIEU was on notice that the Commission may consider alternative proposals, and their positions on the statewide rate should not come as a surprise. (*Id.* at 6-7.) Wynn and SEA state that the remedy for inadequate notice is not a motion to strike but a request for re-noticing and additional process. (*Id.* at 7.)

29. Wynn and SEA assert that NNIEU wrongfully argues that NAC 703.702(1) supports the exclusion of testimony from witnesses Mr. Mullins, Mr. Danise, and Mr. Perez, because those testimonies analyze, provide context, and make recommendations related to NDPP



cost recovery. (Wynn and SEA Response at 8.) Wynn and SEA state that the evidence is relevant to the docket and should be evaluated by the Commission. (*Id.*)

### **Staff's Response**

30. Staff states that NNIEU's motion to strike Mr. Danise and Mr. Perez's Prepared Direct Testimonies should be denied because the testimonies are relevant to the NDPP regulatory asset case as they suggest an investigation and rulemaking should be carried out in order to identify data needs and create a methodology to design an appropriate rate. (Staff Response at 10-11.) Staff's acknowledges that the investigation and rulemaking would address issues in Docket No. 23-03003; however, such information is important to rate design in this Docket because such a venue would identify data needs and create a methodology for rate design. (*Id.* at 11.) Staff also requests that rather than striking testimony, the Commission use its discretion to give evidence the weight it is due. (*Id.*)

### **BCP's Response**

31. BCP joins Staff's opposition to NNIEU's Motion for the same reasons it joins Staff's Opposition to NV Energy's Motion to Strike. (BCP Response at 1; see BCP's Response above.)

### **NNIEU's Reply**

32. NNIEU states that the Nevada Supreme Court in *Public Service Com'n Nevada v. Southwest Gas Corp*, 99 Nev. 268, 662 P.2d 624 (1983), held that a Commission order in a rate case proceeding, which was prospective in nature and intended to implement a general policy, was unlawful as the subject matter of the Commission's action did not appear in the notice given in the case. (NNIEU Reply at 1-2.) NNIEU notes that this Docket involves the recovery of 2022 NDPP costs and resetting the NDPP rate accordingly. (*Id.* at 3-4.) NNIEU asserts that the

Commission's Notice does not make any statements related to the 2024-2026 NDPP, which is the subject of a separate docket. (*Id.* at 4.) Thus, NNIEU was not put on notice of any long-term cost allocation policy being considered in this docket, and the Nevada Supreme Court has held that any Commission order on that issue would be void. (*Id.* at 4-5.)

33. NNIEU states that its Motion to Strike is not inconsistent, as it only seeks to strike testimony regarding long-term future cost allocations that are not relevant to the determinations the Commission must make in this docket. (*Id.* at 5-6.) NNIEU also states that it did not take a position on the consolidation of Docket Nos. 23-03003 and 23-03004. (*Id.*) NNIEU further states that the Commission did not explain why it did not consolidate the dockets and asserts that any argument as to why it did not is speculative. (*Id.* at 6.)

#### **Commission Discussion and Findings on NV Energy's and NNIEU's Motions**

34. The Commission denies NV Energy and NNIEU's Motions to Strike.

35. Turning first to NV Energy's Motion to Strike, the Commission disagrees with NV Energy that Ms. Loar's testimony contains inadmissible hearsay statements from members of the general public and others at the Lincoln County Fire Protection District and the Elko County Board of Fire Commissioners that do not fall within any of the defined hearsay exceptions. NRS 233B.123(1) states that evidence commonly relied upon by reasonable and prudent persons may be admitted in administrative proceedings. The Nevada Supreme Court determined that hearsay may be admissible in administrative proceedings under NRS 233B.123(1) if the evidence presented in the hearsay statement is the type "commonly relied upon by reasonable and prudent persons in the conduct of their affairs."<sup>4</sup> Here, the Commission finds that Ms. Loar's testimony, which contains statements from members of the general public and others at the Lincoln County Fire Protection District and the Elko County Board of Fire

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<sup>4</sup> See the discussion on *Department of Motor Vehicles & Pub. Safety v. Evans*, 114 Nev. 41, 44 (1998), *supra*.

Commissioners, is precisely the kind of evidence the Supreme Court had in mind as “commonly relied upon by reasonable and prudent persons in the conduct of their affairs.”<sup>5</sup> Ms. Loar’s testimony contains minutes from an open meeting, subject to Nevada’s open meeting laws, which include fire contract information directly related to the NDPP. The Commission finds that Ms. Loar’s testimony is neither inadmissible hearsay nor irrelevant or unfair as the testimony directly relates to fire contracts that NV Energy is seeking to have the Commission approve, and provides scope and context to those contracts.

36. The Commission disagrees with NV Energy that the identified Q&As from Mr. Danise’s Prepared Direct Testimony are irrelevant and outside of the scope of the proceeding. The Commission finds that while these questions discuss the 2024-2026 NDPP, those issues are relevant to the present docket. NAC 703.702 states that evidence is relevant if it “(a) [h]as any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence; and (b) [i]s directly related to the subject matter of the proceeding.” The Commission finds that Mr. Danise’s testimony is relevant in that it is directly related to the subject matter of the proceeding—the NDPP cost recovery for program year 2022—and explores the overall direction and approach of the NDPP and how the cost recovery should be viewed and analyzed in accordance with the NDPP statute. The Commission’s decision to not consolidate the current docket with Docket No. 23-03003 is not determinative of the relevance of Mr. Danise’s testimony in this Docket. Pursuant to NAC 703.740, the Commission may consolidate two or more dockets in any one hearing when it appears that the issues are substantially the same *and* that the rights of the parties will not be prejudiced by a consolidated hearing. Since parties objected to consolidating the dockets, the Commission did not consolidate them so as to not prejudice those parties; however, the

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<sup>5</sup> *Id.*

Commission did not find the dockets substantially unrelated. To the contrary, the Commission finds the dockets substantially related in subject matter; however, given the objections by parties and the permissive nature of the consolidation regulation, the Commission chose not to consolidate the dockets.

37. Turning to NNIEU's Motion to Strike, the Commission disagrees that the portion of Mr. Mullins' Prepared Direct Testimony discussing long-term future cost allocation policy and issues in Docket No. 23-03003 are irrelevant to this Docket. The Commission finds that Mr. Mullins' testimony is relevant in that it is directly related to the subject matter of the proceeding—the NDPP cost recovery for program year 2022—and explores the cost recovery for program year 2022 in context to the NDPP and cost recovery of the NDPP, pursuant to the standard articulated in NAC 703.702, above. However, while the Commission finds the challenged portions of Mr. Mullins' testimony relevant, the Commission acknowledges that it is not lawful for the Commission to engage in *ad hoc* rulemaking, nor is it lawful for the Commission to make decisions it is not noticed for, and thus the Commission will only decide the 2022 program year cost recovery in this Docket, as this is the only year that is properly before the Commission for consideration.

38. The Commission disagrees that portions of Mr. Danise's and Mr. Perez's Prepared Direct Testimonies discussing long-term future cost allocation policy and issues in Docket No. 23-03003 are not relevant to this Docket. The Commission finds that Mr. Danise's and Mr. Perez's testimonies are relevant in that they are directly related to the subject matter of the proceeding—the NDPP cost recovery for program year 2022—and discuss electric rates and the greater context of rates and the NDPP cost recovery for program year 2022, pursuant to the standard articulated in NAC 703.702, above. However, while the Commission finds the

challenged portions of Mr. Danise's and Mr. Perez's testimony relevant, the Commission acknowledges that it is not lawful for the Commission to engage in *ad hoc* rulemaking, nor is it lawful for the Commission to make decisions it is not noticed for, and thus the Commission will only decide the 2022 program year cost recovery in this Docket, as this is the only year that is properly before the Commission for consideration.

## **VI. PRUDENCE OF EXPENSES**

### **A. Concerns Identified by Staff<sup>6</sup>**

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

39. NV Energy requests that the Commission find that the costs recorded in NV Energy's regulatory asset accounts and calculation of return on capital investments were prudently incurred and are reasonable. (Ex. 100 at 9.)

#### ***i. Hard Rock Hotel PSOM Event Costs***

##### **Staff's Position**

40. Staff recommends that the Commission disallow banquet food of \$2,273.78 for the public safety outage management ("PSOM") customer outreach event hosted at Stateline, NV, at the Hard Rock Hotel and Casino and any accumulated carry. (Ex. 302 at 6.) Staff contends that a total of \$5,221.90 for a PSOM Open House (with \$2,273.78 attributable to banquet food) at the Hard Rock Hotel and Casino (that only 10 people from the public attended) is an imprudent amount when other PSOM events were hosted in Lake Tahoe at a much lesser cost. (*Id.* at 7.) Staff states that the price paid for the Hard Rock Hotel and Casino is excessive when compared to the other four Open Houses (some at community centers with room fees

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<sup>6</sup> Staff identified items of concern through information provided by NV Energy in master data requests ("MDR"), expense reports, receipts, and data requests; therefore, NV Energy has limited direct positions on these items.

and audio fees waived) and when compared to past community outreach which was conducted electronically (no room fees, audio fees, or food and service fees incurred). (*Id.*)

41. Staff notes that, although the Commission has previously approved PSOM customer outreach, it does not believe the Commission has approved banquet food for these events, which is why Staff recommends a disallowance. (Ex. 302 at 7.)

### **NV Energy's Rebuttal**

42. NV Energy disagrees with Staff's recommended disallowance of \$2,273.78 for banquet food as part of a PSOM outreach event where NV Energy planned for an estimated attendance of 125-200 people. (Ex. 111 at 11.) NV Energy contends that this expense was reasonable because they prepared for what NV Energy's estimated attendance would be, despite the fact that actual attendance turned out lower than expected. (*Id.*) NV Energy notes that this was the first event of this type after the COVID-19 pandemic and NV Energy adjusted attendance expectations for these outreach events going forward. (*Id.*)

### **Commission Discussion and Findings**

43. The Commission approves of the of \$2,273.78 for banquet food as part of a PSOM outreach event. The Commission finds the expense reasonable because NV Energy planned for an estimated attendance of 125-200 people, this event was the first event of this type after the COVID-19 pandemic, and NV Energy has since adjusted attendance expectations for these outreach events going forward.

#### ***ii. Meals and Lodging Expenses for Non-NDPP Dedicated Employees***

### **Staff's Position**

44. Staff recommends that the Commission disallow meal and lodging expenses for non-NDPP dedicated employees of \$2,291.24 and any accumulated carry and order NV Energy

to cease including these types of expense in future NDPP Regulatory Asset Dockets. (Ex. 302 at 8.) Staff states that it identified two trips attributable to non-dedicated NDPP employees whose expenses (including transportation, meals, and lodging) totaled \$2,097.78. (*Id.* at 8-9.) Staff states that, although it questions the need for travel given an electronic post-covid era, it does not make an adjustment for that reason, instead the reason for Staff's adjustment is because it does not believe non-NDPP dedicated employees should charge travel to the NDPP; instead these expenses should be sought in a general rate case ("GRC"). (*Id.* at 9.) Staff further contends that an employee whose compensation is vetted through a GRC should not have expense reimbursement sought in the NDPP. (*Id.*)

45. Staff notes that it does not know the total amount NV Energy is requesting for meals, travel, and lodging for non-NDPP dedicated employees in this Docket. (Ex. 302 at 9.) Staff states, however, that if the Commission would like to disallow all meals paid for and provided to non-NDPP dedicated employees in this Docket, the Commission could request that information from the utility and disallow that amount. (*Id.*)

#### **NV Energy's Rebuttal**

46. NV Energy disagrees with Staff's recommendation to disallow meal and lodging expenses for non-NDPP dedicated employees. (Ex. 111 at 10.) NV Energy states that, although labor costs for non-NDPP dedicated employees are generally recovered through the GRC, costs incurred in support of a NDPP program such as meals, lodging and snacks, may be incurred and submitted by non-NDPP dedicated employees. (*Id.*) NV Energy explains that these costs are incremental to meals, lodging, and snacks requested for recovery through the GRC because, if not for the NDPP program, the meals, lodging, and snack expenses would not have been incurred. (*Id.*)

47. NV Energy explains that these employees were providing support for NDPP and would not have otherwise incurred these expenses if it was not for NDPP. (Ex. 111 at 11.)

### **Commission Discussion and Findings**

48. The Commission disallows meals, travel, and lodging expenses for non-NDPP dedicated employees and any accumulated carry for recovery in the NDPP. The Commission disallows all meals, travel, and lodging paid for and provided to non-NDPP dedicated employees in this Docket because the Commission finds that non-NDPP dedicated employees should not charge meals, lodging, or travel to the NDPP; instead, these expenses should be sought in a GRC. The Commission agrees with Staff that an employee whose compensation is vetted through a GRC should not have expense reimbursement sought in the NDPP. NV Energy shall file as a compliance item a schedule of all such expenses removed from the NPC and SPPC NDPP regulatory assets with respect to this adjustment to include the date, type of expense (meals, travel or lodging) and amount.

#### ***iii. Meals and Snack Expenses for Non-NDPP Dedicated Employees***

##### **Staff's Position**

49. Staff recommends that the Commission disallow meals and snacks for non-NDPP dedicated employees of \$266.97 for heatwave events and any accumulated carry and order NV Energy to cease including snacks in future NDPP Regulatory Asset Dockets. (Ex. 302 at 9.) Staff states that, if needed, employees are able to purchase and bring their own snacks to work, using their own compensation and not NDPP ratepayer monies (with carry). (*Id.*)

50. Staff notes that it does not know the total amount NV Energy is requesting for meals and snacks for non-NDPP dedicated employees in this Docket, but states that if the Commission would like to disallow all meals for non-NDPP dedicated employees in this



Docket, the Commission could request that information from the utility and disallow the total dollar value. (Ex. 302 at 10.) Staff further notes that if the Commission would like to disallow all snacks (both for non-dedicated NDPP employees and dedicated NDPP employees) the Commission could also request this information and do so. (*Id.*)

### **NV Energy's Rebuttal**

51. NV Energy states these employees were providing support for NDPP and would not have otherwise incurred these expenses if it was not for NDPP. (Ex. 111 at 11.) NV Energy therefore believes these costs are prudent for recovery under the NDPP. (*Id.*)

### **Commission Discussion and Findings**

52. The Commission disallows meals and snacks for non-NDPP dedicated employees and any accumulated carry for recovery in the NDPP. The Commission disallows non-NDPP dedicated employee meals and snacks in this Docket because the Commission finds that non-NDPP dedicated employees should not charge meals and snacks to the NDPP; instead, these expenses should be sought in a GRC. NV Energy shall file as a compliance item a schedule of all such expenses removed from the NPC and SPPC NDPP regulatory assets with respect to this adjustment to include the date, type of expense (meals or snacks) and amount.

#### ***iv. IMT Snack Expenses***

### **Staff's Position**

53. Staff recommends that the Commission disallow snacks of \$431.22 for the Incident Management Team ("IMT") and deny accumulated carry. (Ex. 302 at 11.) Staff states that it identified \$431.22 in expenses for miscellaneous snacks that NV Energy deemed necessary to "support the IMTs." (*Id.*) Staff contends that snacks are not a prudent use of ratepayer money and should not be requested in the NDPP (with carry). (*Id.* at 12.)

54. Staff notes that it does not know the total amount that NV Energy is requesting for snacks in this Docket, but states that if the Commission would like to disallow all snacks, the Commission could also request this information and do so. (Ex. 302 at 11.)

### **NV Energy's Rebuttal**

55. As noted in its rebuttal above, NV Energy contends that these costs are prudent for recovery under the NDPP. (Ex. 111 at 11.)

### **Commission Discussion and Findings**

56. The Commission approves the \$431.22 for the IMT's snacks, as the Commission finds these expenses to be reasonable and prudent to support the IMTs, as well as appropriately charged to the NDPP. The Commission does not extend such approval to snack expenses incurred as part of IMT's non-NDPP events.

v. ***NDPP Expenses for Meals with Government Employees, Government Officials, and Utility Contractors***

### **Staff's Position**

57. Staff recommends that the Commission disallow meal expenses paid by NDPP employees for meals with Government Employees, Government Officials, and Utility Contractors of \$904.51 and any accumulated carry and order NV Energy to cease including meal expenses for non-NV Energy entities in future NDPP Regulatory Asset Dockets. (Ex. 302 at 12.) Staff states that some of the reasons given for the Fire Mitigation Specialist's ("FMS") extensive travel are somewhat concerning to Staff as the type of travel may be viewed as lobbying efforts (seeking to influence politicians or other officials). (*Id.* at 12-13.) Staff states that the expense of meals purchased by the FMS for non-NV Energy employees are imprudent and unreasonable for Nevada ratepayers to pay (with carry). (*Id.* at 13.)

58. Staff notes that it does not know the total amount NV Energy is requesting for meals paid to non-NV Energy employees in this Docket, however, Staff states that if the Commission would like to disallow all meals paid for and provided to non-NV Energy individuals in the NDPP Docket, the Commission could request that information from the utility and disallow the total dollar value. (Ex. 302 at 14.)

### **NV Energy's Rebuttal**

59. At hearing, NV Energy stated that these were business dinners. (Tr. At 47.) NV Energy states that it followed the employee expense reimbursement policy that NV Energy has in place. (*Id.*) NV Energy states that the people that were present at that dinner were discussing important matters related to the contractual relationship that NV Energy has with those agencies. (*Id.*) NV Energy states that business meals are a legitimate expenditure and business meals happen all the time. (*Id.* at 48.)

### **Commission Discussion and Findings**

60. The Commission disallows meal expenses for meals purchased for Government Employees, Government Officials, and Utility Contractors and any accumulated carry. The Commission finds that the expense of meals purchased by the FMS for non-NV Energy employees are not adequately delineated from lobbying activities in this Docket, and the Commission does not find lobbying activities reasonable expenses for inclusion in the NDPP. NV Energy shall file as a compliance item a schedule of all such expenses removed from the NPC and SPPC NDPP regulatory assets with respect to this adjustment to include the date and amount.

#### ***vi. Over-payment of Airfare***

### **Staff's Position**

61. Staff recommends that the Commission disallow over-payment of airfare to a NDPP employee of \$142.83 and any accumulated carry. (Ex. 302 at 15.) Staff states that, according to one of NV Energy's responses pertaining to the FMS's travel, the FMS was over-reimbursed by NV Energy for a canceled flight in the amount of \$142.83. (*Id.*) Staff notes that NV Energy stated that once the mistake was discovered, the FMS made arrangements to reimburse NV Energy the \$142.83. (*Id.*)

62. Staff states that it recommends this adjustment because there currently is not a mechanism within a NDPP Regulatory Asset Docket to adjust the amount of funding requested without a disallowance Ordered by the Commission — there are no certification or expected change in circumstances provisions like there are in a GRC. (302 at 15.)

#### **NV Energy's Rebuttal**

63. NV Energy agrees that, due to the timing of the FMS' reimbursement to NV Energy, \$142.83 and any accumulated carry should be disallowed. (Ex. 111 at 12.)

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

64. The Commission disallows the \$142.83 for the overpayment of airfare and any accumulated carry, as agreed to by Staff and NV Energy. An FMS was over-reimbursed by NV Energy for a canceled flight in the amount of \$142.83 and once the mistake was discovered, the FMS made arrangements to reimburse NV Energy the \$142.83.

#### ***vii. NDPP Noticing and Court Reporter Expenses***

##### **Staff's Position**

65. Staff recommends that the Commission disallow noticing and court reporter expenses of \$37,065.64 and any accumulated carry and order NV Energy to cease including noticing and court reporting expenses for recovery in future NDPP Regulatory Asset Dockets.

(Ex. 302 at 15.) Staff states that it makes this recommendation because expenses pertaining to noticing and court reporter fees are typically recovered through a GRC, regardless of the rate being sought. (*Id.* at 16.) Staff states that NV Energy responded to a data request noting that court reporting and publication fees for the Deferred Energy Accounting Adjustment (“DEAA”), Expanded Solar Access Program (“ESAP”), Temporary Renewable Energy Development (“TRED”), Renewable Energy Program Rate (“RER”), and the Energy Efficiency Program (“EEP”) (to name a few) are all charged to account 92800 and recovered through general rates (in a GRC). (*Id.*) Staff contends that there is no reason that NDPP noticing and court reporter fees be treated differently; these fees need to be sought in a GRC and not a NDPP (with carry). (*Id.*)

### **NV Energy’s Rebuttal**

66. NV Energy disagrees with Staff’s recommendation to disallow noticing and court reporter expenses from recovery in this Docket. (Ex. 111 at 12.) NV Energy explains that the noticing and court reporter expenses are incremental because the expenses are a result of NDPP proceedings and NV Energy would not have otherwise incurred these costs. (*Id.*) NV Energy states that these costs were incurred as part of the development and implementation of the NDPP, and are therefore properly recovered in the NDPP regulatory asset. (*Id.*)

### **Commission Discussion and Findings**

67. The Commission disallows noticing and court reporter expenses of \$37,065.64 and any accumulated carry because expenses pertaining to noticing and court reporter fees are typically recovered through a GRC, regardless of the rate being sought. Court reporting and publication fees for the DEAA, ESAP, TRED, RER, and the EEP (to name a few) are all charged to account 92800 and recovered through general rates. The Commission agrees with Staff that

noticing and court reporter fees should not be treated differently for different legislatively mandated programs and these fees need to be sought in a GRC and not the DPP.

*viii. Capital Expenses Relating to the Contracts Between NV Energy and Fire Agencies*

**Staff's Position**

68. Staff recommends that the Commission disallow capital expenses relating to the contracts between NV Energy and the fire agencies. (Ex. 302 at 36.) Staff states that it became concerned when it evaluated contracts between NV Energy and various state, county, and contracting entities, and found items that do not appear to be standard and that are concerning to Staff. (Ex. 302 at 20.) Specifically, Staff notes that some contracts have provisions for hourly rates for personnel, equipment, and apparatus, whereas other contain provisions for physical capital assets like fire trucks, dozers, chainsaws, dump containers, cell phones, iPads, medical supplies, uniforms (to name a few), and even full-time fire crew personnel expenses. (*Id.* at 20-25.) Staff states that it is not clear why some contracts contain only hourly rates for personnel and equipment whereas other contracts contain provisions for fully funding physical assets (fire trucks, dozers, etc.) and full-time personnel. (*Id.* at 25.)

69. Staff states that it believes believes that NV Energy is currently seeking recovery of these expenses in this Docket, but it is unclear if any grant monies are applied to these expenses and how that affects NV Energy's recovery in this Docket. (Ex. 302 at 26-27.) Staff states that it did receive evidence indicating that NV Energy expensed four fire engines in the 2021 NDPP cost recovery docket (22-03006) at a total of \$783,020, to which no grant funding was applied. (*Id.* at 27.) Staff states that it did not receive conclusive answers from NV Energy regarding the costs it identified for capital expenditures and whether those costs were included for recovery in this Docket. (*Id.* at 27-28.) Staff points, however, to meeting

minutes from the Lincoln County Fire District and the Elko County Board of Fire Commissioners that indicate that the fire agencies are recovering costs (including salaries and capital assets like fire engines and trucks) from NV Energy. (*Id.* at 29-32.)

70. Staff states that it sought to determine whether NV Energy is being charged back hourly rates for equipment (fire trucks, dozers, etc.) that it in essence purchased for the fire agencies through the NDPP (with carry), but, through its discovery process, has not been able to determine whether that is the case. (Ex. 302 at 32.) Similarly, Staff states that it sought to determine if NV Energy is seeking hourly personnel rates for fully-compensated positions that the NDPP already paid for but has not been able to determine whether that is the case. (*Id.* at 33.) Staff notes, for instance, that the LCFD contract states and hourly rate for Fire Fighter Fuels Crew of \$24.65 but then in Exhibit D of that same contract states approximately \$317,000 per year for three separate years for Fuels Management Crew Members (4) and their corresponding Hiring/Recruiting, Training, Physicals, and Backgrounds costs (including an annual 3.5 percent cost of living adjustment). (*Id.*) Staff additionally states that it is not sure whether the Commission explicitly approved fire crew personnel costs for fire agencies, which include salaries, workers compensation, unemployment insurance, health insurance, retirement, and other overhead costs. (*Id.*)

71. Staff states that from its review of grant funding to date, dollar amounts and items that grant funding has been applied to have not been transparent or easily identifiable in this Docket and treatment of grant funding, through the various contracted agencies, is not clearly delineated in the contractual agreements between NV Energy and the fire agencies. (Ex. 302 at 34.)

72. Staff states that these large capital expenditures and contracts with the fire agencies highlight the need for increased transparency in the NDPP filings. (Ex. 302 at 34-35.)

73. Staff notes that it does not know the total amount in capital expenses relating to the contracts between NV Energy and the fire agencies in this instant Docket, but states that the Commission can request that NV Energy provide that information for a disallowance. (Ex. 302 at 36-37.) Staff additionally notes that it does not know whether capital expenses provided to fire agencies is part of the scope of the NDPP, but it makes this recommendation so that the Commission can more clearly define the expenses that lie within the scope of the NDPP. (*Id.* at 37.)

74. Alternatively, should the Commission not accept this recommendation, Staff recommends that the Commission order NV Energy to cease including provisions for capital expenses in future contracts between NV Energy and fire agencies and order NV Energy to cease including these expenses for recovery in future NDPP rates once the contracts have expired. (Ex. 302 at 37.)

#### **NV Energy's Rebuttal**

75. NV Energy notes that, while unique to the needs of the NDPP as it relates to the specific fire agency at issue, the contracts have all of the elements of standard contracts. (Ex. 109 at 14.) NV Energy explains that the fire agencies submit invoices as required by the contract and only include costs that apply to the NDPP program. (*Id.*)

76. NV Energy states that, regarding capital expenses for fire equipment, upon approval from NV Energy, the fire agencies are able to purchase equipment necessary to execute the fuels management program. (Ex. 109 at 15.) NV Energy states that the purchase works similar to a "lease to own" for the fire agencies. (*Id.*) NV Energy explains that it funds the initial



purchase and when the equipment is used on NDPP projects, the equipment cost is deducted until it is paid in full. (*Id.*) NV Energy states that once the equipment is paid in full, the equipment then becomes the property of the fire agency. (*Id.*) NV Energy states that the equipment that is paid in full is then expensed for a reduced rate based on its use in the program. (*Id.*) NV Energy notes that this type of arrangement allows fire agencies to obtain equipment necessary to perform NDPP programs and ultimately results in a reduced cost for the NDPP program compared to private contractor pricing for similar services. (*Id.*)

77. NV Energy states that elimination of the fire agency contracts, as Staff recommends, will result in loss of grant funding, loss of locally based fire resources, and the loss of valuable partnerships that help protect our communities. (Ex. 109 at 16.) NV Energy states that the alternative to these contracts is to rely on private contractors and dramatically increase program costs. (*Id.* at 17.)

78. NV Energy contends that Staff does not identify specific costs that are unreasonable and, without knowing the costs that are at issue, it is hard to understand how Staff has determined that these fire contracts are unreasonable or imprudent. (Ex. 109 at 17.) NV Energy further notes that, without Staff identifying the costs at issue, it is unclear how Staff reached its determination that costs should be disallowed from cost recovery. (*Id.* at 19.)

79. NV Energy asserts that the excerpted meeting minutes presented in Staff testimony do not provide meaningful insight into how the NDPP program is operated or funded as the excerpts are presented without context or a clear purpose. (Ex. 109 at 20.) NV Energy explains the mechanics of how the fire agency contracts are administered, and states that the excerpts provided by Staff only create confusion by providing incomplete, inaccurate, and irrelevant data points. (*Id.*)

80. NV Energy states that it primarily relies on the fire agencies for details associated with the grant funding used as part of the NDPP program. (Ex. 109 at 18.) NV Energy notes that the fire agencies are the primary recipients of the grant funding and are therefore responsible for the tracking and implementation. (*Id.*)

### **Commission Discussion and Findings**

81. The Commission orders the creation of separate OMAG and capital regulatory asset accounts for NPC and SPPC to further examine the approximately \$11.8 million fire agency contract costs in next year's NDPP cost recovery docket. The Commission ordered a similar regulatory asset account treatment in Docket No. 21-03004. The Commission directs NV Energy to hold all of the 2022 NDPP costs related to the fire agency contracts until NV Energy can provide additional support next year.

82. The Commission finds that the creation of regulatory asset accounts to hold the fire agency contract costs is reasonable, prudent, and in the public interest because it balances the importance of the NDPP and the initial finding of importance of the fire agency contracts with the Commission's need for more detailed information and accounting to determine the prudence and reasonableness of specific fire agency contract costs. The Commission cannot follow the accounting or details of many of the fire agency costs in this filing. For example, the Elko County Fire Protection District contract provided in NV Energy's rebuttal testimony in Exhibit 304 totals \$3,468,660.85. However, that contract was based on the purchase of two Type 5/6 fire engines. NV Energy eventually paid for four of these units, plus ten other pieces of equipment (see Ex. 130) for Elko. The Commission cannot determine whether the contract or the purchase order were amended or what that amendment might have been as it was not provided in the record of this proceeding. Similarly, the amounts in Exhibit 130 do not add up across the rows

for some equipment, so it is unclear what the true costs were or what amount remains outstanding for the fire equipment. The Commission directs NV Energy to include more details and accounting for the fire agency contract costs as a part of next year's NDPP cost recovery docket filing.

83. Furthermore, the Commission denies carrying charges on any amounts expended on behalf of the fire agencies for items that would otherwise be capitalized, such as fire trucks and radios. No carry was offset in the fire agency payments; the Commission does not find it reasonable that ratepayers should pay the financing charges for long-lived equipment that will benefit those agencies and communities after the contracts expire. The costs themselves are recovered on a different timeline than the "repayment" by the fire agencies, resulting in increased carrying charges to ratepayers. The Commission does not find it reasonable for ratepayers to pay these increased carrying charges.

84. The Commission finds that any vehicle or equipment costs that would otherwise be capitalized that remained outstanding at January 1, 2022, whether for prior years or not, should be reclassified from OMAG to jurisdictionalized capital costs in separate regulatory asset accounts from "normal" NDPP capital costs. This way, the Commission can determine how these new regulatory assets will be recovered in next year's NDPP filing.

85. The Commission finds that no direct NDPP costs nor benefits were identified for the administrative upcharges made by the fire agencies, with percentages ranging from 12.5 percent to 15 percent. At hearing, NV Energy could not explain the amount of costs charged to administrative fees to a needed degree of certainty, nor could NV Energy satisfactorily explain the benefits of the administrative costs to ratepayers. The Commission disallows the administrative upcharges for program year 2022.

86. While the Commission is appreciative of the fire agencies' implementation of certain aspects of the NDPP, the Commission is concerned that there seems to be a general lack of internal controls and review over this work and the scope of the fire agencies' involvement in the NDPP. One individual is responsible for initiating and recommending approval of the contracts, as well as conducting the initial review of all related invoices and related grant funding tracking. The Commission directs NV Energy to conduct an internal audit performed on all fire agency transactions since inception. The audit should include, but not be limited to, the following:

- Controls over contract initiation, review, approval, and modifications to or deviations from contract totals;
- The appropriate accounting and transaction structure to reflect the reimbursement, or cost of service invoice offset, to NV Energy for capital investments made by NV Energy for equipment owned and operated by fire agencies;
- Controls and procedures for tracking fire agency use of NDPP-funded equipment and personnel for non-NDPP activities and returning that value to NV Energy customers;
- Controls and procedures over the incurrence and accumulation of hourly equipment charges, including standby charges to NV Energy for capital investments made by NV Energy for equipment owned and operated by fire agencies for purposes of decrementing or repaying the obligation to NV Energy for such investments.

The results of such review must be provided to the Commission upon completion.

*ix. Full-Time Personnel Expenses Relating to the Contracts Between NV Energy and Fire Agencies*

**Staff's Position**

87. Staff recommends that if the Commission believes full-time personnel expenses paid to the various fire agencies are not reasonable or prudent expenditures for the NDPP, or should the Commission believe these expenses lie outside the scope of the NDPP, the Commission disallow those expenses. (Ex. 302 at 37.)

88. Staff notes that it does not know the total amount of full-time personnel expenses relating to the contracts between NV Energy and the fire agencies in this instant Docket, but it states that the Commission can request that NV Energy provide that information. (Ex. 302 at 38.) Staff additionally notes that it does not know whether full-time personnel expenses provided to fire agencies is part of the scope of the NDPP, but it makes this recommendation so that the Commission can more clearly define the expenses that lie within the scope of the NDPP. (*Id.*)

89. Alternatively, Staff recommends that the Commission order NV Energy to cease including provisions for full-time personnel expenses in future contracts between NV Energy and fire agencies and order NV Energy to cease including these expenses for recovery in future NDPP rates once the contracts have expired. (Ex. 302 at 38.)

#### **NV Energy's Rebuttal**

90. NV Energy states that it does not fund full-time positions for fire station-based personnel as implied by Staff. (Ex. 109 at 14.) NV Energy states that the fire agency hires and provides personnel dedicated to the NDPP fuels management program. (*Id.* at 14-15.) NV Energy explains that these fire personnel are strictly field personnel that perform fuels mitigation and fire standby for the NDPP program. (*Id.* at 15.) NV Energy states that if any of the fire personnel perform activities outside of the contract and NDPP program, the fire agency directing those resources is responsible for those costs and cannot bill NV Energy for those costs. (*Id.*)

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

91. The Commission orders that the costs associated with fire agency personnel hired and dedicated to the NDPP fuels management program be recorded in the new regulatory asset accounts discussed above to further examine the costs in next year's NDPP cost recovery docket. The Commission finds that the creation of a regulatory asset account to hold the fire personnel costs is reasonable, prudent, and in the public interest because it balances the importance of the NDPP and the initial finding of importance of the fire agency contracts with the Commission's need for more detailed information and accounting to determine the prudence and reasonableness of specific fire agency personnel costs. At this time, the Commission cannot ascertain the total amount of full-time personnel expenses relating to the contracts between NV Energy and the fire agencies, nor can the Commission comprehend the scope of the fire agencies' personnel duties. The Commission directs NV Energy to provide these details as a part of next year's NDPP regulatory asset recovery docket.

*x. Vegetation Management in NPC Territory WUI Areas*

**Staff's Position**

92. Staff recommends that the Commission disallow all costs associated with NV Energy's vegetation management activities within the wildland urban interface ("WUI") areas of NPC's service territory. (Ex. 303 at 6.) Staff states that NV Energy is seeking to recover approximately \$417,000 of OMAG costs associated with its WUI vegetation management activities within the areas of NPC's service territory.

93. Staff notes that NV Energy did not request Commission approval to perform vegetation management activities within the WUI areas of NPC's service territory in its 2020 NDPP Plan. (Ex. 303 at 8.) Staff additionally notes that, in NV Energy's Second Amendment to its 2020 NDPP Plan in Docket No. 22-08001, the Commission declined to extend any NDPP

funding to non-previously authorized projects in Non-Tier and Non-Tier WUI areas. (*Id.* at 8-9.) Staff believes that only the expenditures that are implemented in a plan that is submitted to the Commission by NV Energy are to be recovered through the NDPP separate rate charge pursuant to Section 1.3(5) of SB 329 and codified in NRS 704.7983(6). (*Id.* at 9.)

94. Staff also states that NV Energy incurred \$463,840 to perform vegetation management activities in the WUI areas within NPC's service territory, which is included in the 2022 NDPP rates in effect from October 2022 through September 2023 that were approved by the Commission in Docket No. 22-03006. (Ex. 303 at 9.) Staff contends that it is not reasonable for NV Energy to continue to recover the \$463,840; however, Staff notes that NV Energy is not seeking to recover the 2021 costs in the instant Docket and Staff is unsure of the Commission's ability to disallow those costs in this Docket. (*Id.*)

95. Staff therefore recommends that the Commission disallow all costs associated with NV Energy's vegetation management activities within the WUI areas of NPC's service territory. (Ex. 303 at 10.)

#### **NV Energy's Rebuttal**

96. NV Energy disagrees with Staff's recommendation to disallow the costs associated with NV Energy's vegetation management activities within the WUI areas of NPC's service territory. (Ex. 109 at 3.)

97. NV Energy states that the vegetation management activities and treatments in the WUI areas of NPC's service territory are required by the WUI code, and the activity is critical to protecting communities regardless of which service territory they exist in. (Ex. 109 at 3.) NV Energy states that it would be unfair and inappropriate for a statewide NDPP not to perform similar activities to reduce risk in both service territories. (*Id.*) NV Energy also states that Staff makes no argument as to why the cost of conducting vegetation management in NPC's service

territory is unreasonable or imprudent, beyond noting that NV Energy did not include it in a NDPP. (*Id.*) NV Energy additionally states that the Commission's Second Modified Final Order in Docket No. 20-02031 did not preclude NV Energy from performing work that is both mandated by the statewide WUI code and necessary to protect communities in southern Nevada. (*Id.* at 4.)

98. With regards to NV Energy's Second Amendment to its inaugural NDPP plan, NV Energy notes that the Commission deferred NV Energy's requested budget increase for tree trimming activities but did not prohibit any other vegetation management activity within the WUI areas. (Ex. 109 at 4-5.) NV Energy states that, consistent with the Commission's Order in Docket No. 22-08001, NV Energy is not seeking any cost recovery for tree trimming in WUI areas in this docket. (*Id.* at 7.)

99. NV Energy contends that allowing the NPC WUI area vegetation management costs to be recovered in this Docket is consistent with past Commission direction because this work was necessary, prudent, and within the overall vegetation management budgets proposed in the inaugural plan. (Ex. 109 at 5.) NV Energy states that it would be inappropriate for NV Energy to continuously amend the NDPP to address minor funding changes, especially in the context of the entire vegetation management program budgets. (*Id.*) NV Energy additionally points to the Commission's Order in Docket No. 22-08001 which grants NV Energy a certain degree of flexibility to reallocate budgeted amounts between NDPP programs. (*Id.*) NV Energy states, in this case, NV Energy shifted a minor amount (approximately 1.7 percent of the total vegetation management budget) of the overall vegetation management budget to address pole grubbing and ROW clearing in the NPC WUI areas. (*Id.*)



100. NV Energy also disagrees with Staff's recommendation to discontinue recovery of \$463,840 in vegetation management activity costs in NPC's WUI areas that occurred in 2021 for the same substantive reasons listed above, but also because these costs were presented and approved in Docket No. 22-03006. (Ex. 109 at 6.)

### **Commission Discussion and Findings**

101. The Commission disallows the costs associated with NV Energy's vegetation management activities within the WUI areas of NPC's service territory, which is approximately \$417,000 of OMAG costs. NV Energy did not request Commission approval to perform vegetation management activities within the WUI areas of NPC's service territory in its 2020 NDPP Plan. Additionally, in NV Energy's Second Amendment to its 2020 NDPP Plan in Docket No. 22-08001, the Commission declined to extend any NDPP funding to projects not previously authorized in Non-Tier and Non-Tier WUI areas. The Commission finds that the approximately \$417,000 of OMAG costs should be reclassified to normal course of business OMAG vegetation management.

102. The Commission finds that no adjustment should be made to the prior year amount because that was accepted by the Commission without adjustment in Docket No. 22-03006 and is currently being recovered in rates.

#### ***xi. Mt. Charleston Microgrid Project***

### **Staff's Position**

103. Staff recommends that the Commission order NV Energy to reallocate the costs associated with the Mt. Charleston microgrid project from the 2022 NDPP OMAG regulatory asset to normal non-NDPP OMAG expense to be recovered in NPC's 2023 GRC in Docket No. 23-06007. (Ex. 303 at 10.) Staff notes that NV Energy is requesting to recover \$68,342.50 of

NDPP OMAG costs associated with the Mt. Charleston microgrid project, and further notes that there are ongoing operating costs for the rental of the diesel generator at approximately \$20,000 per month and \$7,000 per PSOM event. (*Id.*)

104. Staff states that NV Energy did not request Commission approval for the Mt. Charleston microgrid project in any NDPP filing. (*Id.* at 10-11.) Staff states that NV Energy's Second NDPP Progress Report, filed on August 31, 2022 in Docket No. 22-08004, was the first mention of the Mt. Charleston microgrid project. (*Id.* at 11.)

105. Staff states that it is inappropriate for NV Energy to request recovery of the Mt. Charleston microgrid project in a NDPP regulatory asset recovery filing because NV Energy did not specifically request Commission approval of the microgrid project in an NDPP Plan or Plan Amendment. (Ex. 303 at 11.) Staff continues that only the expenditures that are implemented in a plan that was submitted to the Commission by NV Energy are to be recovered through the NDPP separate rate charge pursuant to Section 1.3(5) of SB 329 and codified in NRS 704.7983(6). (*Id.*) Staff states, additionally, that in NV Energy's concurrent 2024-2026 NDPP Plan filing, NV Energy states that they are exploring purchasing a diesel generator for the Mt. Charleston Microgrid project that would be funded through GRC capital funds. (*Id.*)

### **NV Energy's Rebuttal**

106. NV Energy disagrees with Staff's recommendation regarding the Mt. Charleston Microgrid project. (Ex. 109 at 8.) NV Energy states that the Mt. Charleston Microgrid project significantly reduces the impact of PSOM on customers while still protecting communities from wildfire risk. (*Id.*) NV Energy additionally states that this project is consistent with the currently approved NDPP, which contains provisions related to providing generators to green cross customers in Tier 3 areas and minimizing the impacts of service interruptions. (*Id.* at 8-9.) NV

Energy therefore states that the Mt. Charleston Microgrid is fully consistent with Commission direction in the inaugural NDPP. (*Id.* at 9.)

107. NV Energy states that it did not specifically request Commission approval for the microgrid project due to its low costs relative to total PSOM costs, time constraints in obtaining approvals through the amendment process, and because NV Energy believed that installation of the microgrid was consistent with development and implementation of the inaugural plan. (Ex. 109 at 9.) NV Energy notes that in 2022, NV Energy spent approximately \$516,931 for PSOM events in the Angel Peak and Mt. Charleston areas. (*Id.*) NV Energy therefore contends that the microgrid improvements provide an extremely cost-effective, reliable alternative that also reduces natural disaster risk consistent with NV Energy's inaugural plan. (*Id.*)

108. NV Energy also disagrees with Staff's contention that every expenditure must be identified in a plan or plan amendment to get approval for cost recovery. (Ex. 109 at 9.) NV Energy contends that NRS 704.7983 does not prohibit cost recovery so long as the project is used to develop or implement the plan approved by the Commission. (*Id.* at 10.) NV Energy states that the Mt. Charleston microgrid project is a prudent and reasonable expenditure in implementation of the inaugural plan. (*Id.*)

109. NV Energy also states that it would not be able to operate efficiently and effectively if preapproval was necessary for every dollar spent. (Ex. 109 at 10.) NV Energy states that when it finds a cost-effective solution to address plan requirements and that cost-effective solution is limited in terms of its dollar impact, the Commission should not punish NV Energy for undertaking innovative and cost-effective efforts to mitigate wildfire risk by denying cost recovery. (*Id.*)

### **Commission Discussion and Findings**

110. The Commission finds that the Mt. Charleston Microgrid project significantly reduces the impact of PSOM on customers while still protecting communities from wildfire risk, the project is consistent with the currently approved NDPP, which contains provisions related to providing generators to green cross customers in Tier 3 areas, and minimizes the impacts of service interruptions. Additionally, in 2022, NV Energy spent approximately \$516,931 for PSOM events in the Angel Peak and Mt. Charleston areas. Therefore, the Commission finds that the Mt. Charleston Microgrid is fully consistent with Commission direction in the inaugural NDPP and provides a cost-effective, reliable alternative that also reduces natural disaster risk.

*xii. “On-Call” Compensation Paid to the IMT*

**NV Energy’s Position**

111. NV Energy explains that the Risk-Based Approach program received approval for increased funding to deploy Emergency Response-Incident Command efforts in Docket No. 22-08001 as NV Energy demonstrated that robust response to emergencies can mitigate damages to infrastructure and communities (Ex. 107 at 6.) NV Energy further explains that the Emergency Response-Incident Command category includes internal labor costs for non-represented, NDPP-dedicated and non-NDPP employees. (*Id.*) NV Energy states that the non-NDPP employee labor included in this category relates to existing employees who have been given additional roles related incident management which is incremental to their primary roles, for which they receive additional compensation. (*Id.*) NV Energy states that the incident management work and related compensation is incremental to their normal duties and base pay which has been included in base rates. (*Id.*) NV Energy further states that these employees’ base pay is recorded to OMAG and included in base rates; however, the incremental

compensation related to incident management is being charged directly to the NDPP regulatory asset and is therefore included for recovery in the NDPP rate. (*Id.* at 6-7.)

### **Staff's Position**

112. Staff recommends that the Commission remove \$162,028 in compensation paid to the IMT from the NDPP regulatory asset account to instead be recovered through base tariff general rates ("BTGR") in a GRC. (Ex. 300 at 5.)

113. Staff states that, in assessing these internal labor costs, it believes these costs to be compensation incurred in the ordinary course of NV Energy's business, even prior to the enactment of SB 329. (Ex. 300 at 6.) Staff states that this compensation should not be deemed incremental for the simple fact that the intent of the pay is not for actual work (during an event) but for the employee to be available (just in case an event occurs). (*Id.*) Staff notes, additionally, that NV Energy had personnel on-call (prior to 2022) within the Emergency Management Department and the Safety Department who already received on-call compensation. (*Id.*) Staff states that their compensation has not been included in this instant docket (for recovery) because it is already being recovered via base rates, which are determined in a GRC. (*Id.*)

114. Staff further states that, in assessing these costs, it determined that for this role the lines between GRC and NDPP are being blurred, as many of the functions of the on-call positions overlap and get involved in natural disaster and non-natural disaster events. (Ex. 300 at 6-7.) Staff additionally points to a contract between NV Energy and the Elko County Fire District that shows that the IMT has expanded to include "All Hazards", not just NDPP related events. (*Id.* at 7.) Staff concludes that, as NV Energy consistently expands the scope/cost of the NDPP to include work that was previously deemed to be the ordinary course of business (prior to

the passage of SB329), it should be treated as such (in this instant docket) and recovered as ordinary OMAG and recovered through the GRC process. (*Id.*)

115. Staff therefore recommends that \$162,028 of internal labor costs (as presented in Table 2 of Exhibit 107) be removed from the NDPP regulatory asset account and be recorded in general OMAG to be recovered through the GRC process. (Ex. 300 at 7.)

### **NV Energy's Rebuttal**

116. NV Energy disagrees with Staff's recommendation to remove \$162,028 in compensation paid to the IMT from the NDPP regulatory asset account because the costs requested for recovery are prudent and such costs dramatically improve NV Energy's ability to respond quickly to wildfires, potential PSOM events, and other complex emergency events throughout the state. (Ex. 114 at 19.) NV Energy additionally contends that the costs are consistent with the statutory requirements, the relevant regulations, and are not costs previously incurred by NV Energy prior to the NDPP. (*Id.*)

117. NV Energy states that the IMT and improved emergency response capabilities were stood up in 2021 specifically to manage PSOM events in the wildfire tiers. (Ex. 114 at 20.) NV Energy additionally notes that PSOMs introduced the need to have consistent processes and procedures, a rapid response, and a response that would be required much more frequently than what NV Energy had experienced in the past. (*Id.*) NV Energy states that the improvements were quickly deployed in the summer and fall of 2021 in the wake of the Tamarack Fire, including a first test during the Caldor fire and through several potential PSOM activations that fall. (*Id.*) NV Energy notes, during that time, participation in the IMT was voluntary and uncompensated. (*Id.*)

118. NV Energy states that the compensation and expansion program undertaken in 2022 was an important improvement that expanded the pool of participants and appropriately compensated participants who now had to be prepared to respond on short notice, remaining fit for duty around the clock, arranging short notice child care for their families, travelling to remote locations from their homes, and potentially having to work long shifts for many days without a break. (Ex. 114 at 20-21.) NV Energy also states that the participants within the IMT come from all departments throughout NV Energy, including many from the non-operating areas of the business, and all participants must undergo extensive training as part of their participation on the IMT. (*Id.* at 21.)

119. NV Energy states that, it is true that the IMT can respond to non-natural disasters while on call, but they receive no additional NDPP compensation for that response and are still capable of also responding to a PSOM or natural disaster event while working the other event. (Ex. 114 at 21.)

120. NV Energy lastly states that it is only requesting recovery for on-call costs for new positions required to staff out the IMT. (Ex. 114 at 22.) NV Energy states that pre-existing on-call personnel, including emergency management, safety, and operations duty supervisors, are not requested through this regulatory asset recovery. (*Id.*)

### **Commission Discussion and Findings**

121. The Commission rejects Staff's recommendation to remove \$162,028 in compensation paid to the IMT from the NDPP regulatory asset account because the costs requested for recovery are prudent and improve NV Energy's ability to respond quickly to wildfires, and potential PSOM events. Additionally, the Commission finds the costs are consistent with statutory requirements, and the relevant regulations, and are not costs previously

incurred by NV Energy prior to the NDPP. However, the Commission directs NV Energy to account for any non-NDPP event IMT costs and remove those costs from the NDPP recovery amount, as recovery of those costs should be sought in a GRC, not the NDPP. The Commission directs NV Energy to file a schedule of IMT NDPP event costs that shall be recovered and non-NDPP event costs that shall be removed from NDPP recovery.

122. The Commission finds that IMT and improved emergency response capabilities were implemented in 2021 specifically to manage PSOM events in the wildfire tiers. The Commission agrees with NV Energy that PSOMs introduced the need to have consistent processes and procedures, a rapid response, and a response that would be required much more frequently than what NV Energy experienced in the past. The Commission therefore finds that the IMT compensation for NDPP events is prudent and reasonable. However, IMT compensation for non-NDPP events or emergencies is properly sought in a GRC and not the NDPP, as NDPP recovery is specific to NDPP events.

## **VII. INCREMENTALITY**

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

123. NV Energy requests that the Commission find that the costs recorded in NV Energy's regulatory asset accounts are incremental to the revenues NV Energy collects through base rates. (Ex. 100 at 10.)

124. NV Energy explains that it adopted the three-year historical average methodology utilized by the Commission in the previous two NDPP regulatory asset filings to establish a baseline for incrementality of NDPP OMAG costs in this docket. (Ex. 107 at 9-10.) NV Energy asserts that using a historical average from the period 2016 to 2018 is appropriate based on the Commission's Order in Docket No. 22-03006 finding that the three-year average is best. (*Id.* at



11.) NV Energy notes that once both NPC and SPPC have completed general rate review proceedings and new base rates are in effect for both SPPC and NPC, which is anticipated to be January 1, 2024, it will likely be appropriate to re-assess the historical period for determining incrementality of NDPP costs. (*Id.*)

### **Staff's Position**

125. Staff recommends that the Commission accept Staff's proposed incrementality adjustment to decrease OMAG expenses by \$1.160 million. (Ex. 300 at 3.)

126. Staff states that it disagrees with using the years 2016-2018 as a benchmark to demonstrate incrementality. (Ex. 300 at 3.) Staff states that the years 2016-2018 predate the NDPP and are no longer appropriate for measuring incrementality. (*Id.*) Staff contends that, at some point, NDPP work must cease being deemed in excess of the ordinary course of business. (*Id.*)

127. Staff additionally notes that 2016-2018 represents the pre-pandemic era where inflation and supply-chain issues were not as prevalent as they are currently and for the foreseeable future. (Ex. 300 at 4.) Staff states that in several dockets that have been filed with the Commission, NV Energy has referenced supply constraints and inflation as the reasons for cost overruns and variances between estimated and actual project costs. (*Id.*) Staff states, however, the current inflationary environment and the use of a cost basis from 5 years ago makes the incrementality hurdle easier to clear. (*Id.*) Staff contends that this approach seems to increase the likelihood and magnitude of expenses recovered through the NDPP which in turn increases carry to the benefit of shareholders. (*Id.*)

128. Therefore, Staff states that if the Commission determines that the 2016-2018 period cost is still the appropriate benchmark to measure the incrementality of 2022 costs, Staff

recommends applying an appropriate rate of inflation to the 2016-2018 non-NDPP cost for a reasonable comparison. (Ex. 300 at 4.)

129. Staff states that, in Attachment ASG 2 to Ex. 300, Staff applied an 18 percent inflation rate to NV Energy's 2016-2018 three-year averages for Inspections, Patrols, Corrections and Vegetation Management to determine whether these cost categories, adjusted for inflation, exceeded the corresponding 2022 non-NDPP cost categories (i.e. the incrementality hurdles). (Ex. 300 at 4.) Staff states that its analysis determined that Vegetation Management costs did not exceed the 2022 non-NDPP Vegetation Management costs and should be adjusted for falling below the incremental hurdles. (*Id.* at 4-5.) Staff explains that SPPC's 2022 non-NDPP Vegetation Management OMAG fell below the three-year average (adjusted for inflation) by \$792,258; and NPC's 2022 Vegetation Management OMAG fell below the three-year average (adjusted for inflation) by \$368,142. (*Id.* at 5.) Staff therefore contends that the 2022 NDPP Vegetation Management OMAG cost should be reduced by a total of \$1.160 million (statewide) from the NDPP regulatory asset account. (*Id.*) Staff states that the \$1.160 millions should be reclassified as ordinary OMAG (to be recovered through a GRC) or ineligible to earn carry. (*Id.*)

### **NV Energy's Rebuttal**

130. NV Energy disagrees with Staff's recommendation to decrease NDPP OMAG expenses by \$1.160 million. (Ex. 112 at 2.) NV Energy states that it has experienced inflation, cost escalation, and supply chain issues since 2018; however, NV Energy has not indexed or adjusted customer rates as a result. (*Id.*) NV Energy contends that if the Commission agrees with Staff that the baseline for incrementality of NDPP costs should be indexed for inflation, NV Energy would argue that all costs recovered through GRC filings should be indexed for inflation. (*Id.*)

131. NV Energy additionally notes that the Commission approved the 2016-2018 average, without inflation indexing, as an appropriate baseline for determining incrementality in the 2021 NDPP regulatory asset cost recovery filing in Docket No. 22-03006. (Ex. 112 at 2.) NV Energy states that the 2021 NDPP regulatory asset cost recovery docket was filed when inflation and cost escalation were already being experienced; however, Staff made no such recommendation in the 2022 docket, nor did the Commission deem it appropriate to apply an inflation adjustment to the incrementality baseline established in that docket. (*Id.* at 2-3.)

132. NV Energy contends that increased inflationary pressures, which are not within NV Energy's control to change, are a reason to permit increased cost recovery—not to decrease the amount that NV Energy should recover. (Ex. 112 at 3.) NV Energy states that utilities around the country are addressing inflationary pressures through various means that would permit recovery of increased costs. (*Id.* at 3-4.) NV Energy states that, although it is not proposing a similar mechanism and seeks only to recover its incurred costs, NV Energy notes that the trend during periods of inflation is not to decrease utility cost recovery. (*Id.* at 4-5.)

133. NV Energy disagrees with Staff's statement that it is reasonable and necessary to establish new criteria for determining incrementality, but acknowledges that it will be appropriate to re-assess the historical period for determining incrementality once both SPPC and NPC have both completed general rate review cycles with test periods within the NDPP program. (Ex. 112 at 5.) NV Energy states that the NPC GRC filed in 2020, using 2019 as a test year, was not an appropriate representation of non-NDPP OMAG and capital expenditures to determine incremental costs as compared to an NDPP year with Commission approved NDPP costs defined. (*Id.* at 5-6.) NV Energy states that it intends to re-assess the incrementality baseline after the 2022 SPPC and 2023 NPC GRC are complete. (*Id.* at 6.)

134. NV Energy states that if the Commission finds it appropriate to establish a new baseline for incrementality in this Docket, NV Energy has provided an incrementality analysis using multiple three-year period averages in Table 1 of Exhibit 112. (Ex. 112 at 6.) NV Energy explains that, in each of the scenarios presented, the SPPC and NPC combined non-NDPP costs incurred in the inspections, patrols and corrections category were less than the three-year average presented. (*Id.*) NV Energy states, therefore, that if the Commission were to deem one of the alternate three-year periods to be a more appropriate baseline than 2016-2018, NV Energy would adjust the amount that was underspent. (*Id.*)

### **Commission Discussion and Findings**

135. The Commission rejects Staff's recommendation to decrease NDPP OMAG expenses by \$1.160 million. The Commission finds that NV Energy has experienced inflation, cost escalation, and supply chain issues since 2018; however, NV Energy has not indexed or adjusted customer rates as a result. The Commission notes that it does not typically adjust any other costs or rates for inflation, except for smaller water companies.

136. The Commission approved the 2016-2018 average, without inflation indexing, as an appropriate baseline for determining incrementality in the 2021 NDPP regulatory asset cost recovery filing in Docket No. 22-03006. The Commission did not deem it appropriate to apply an inflation adjustment to the incrementality baseline established in that docket.

137. The Commission notes that Staff contends that it is reasonable and necessary to establish new criteria for determining incrementality, and NV Energy acknowledges that it will be appropriate to reassess the historical period for determining incrementality once both SPPC and NPC have both completed general rate review cycles with test periods within the NDPP program. The Commission approves NV Energy's use of a 3-year average as a reasonable

baseline from which to measure incrementality at this time. However, the Commission also finds that as some NDPP activities have become more routine and are expected to continue in the foreseeable future, establishing a new baseline and/or definition for incrementality may be appropriate. As such, the Commission invites interested parties to further explore this topic by participating in Docket No. 19-06009.

## **VIII. RATE DESIGN / COST ALLOCATION**

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

138. NV Energy requests that the Commission approve NV Energy's proposed allocation of costs, whereby capital investments are recovered from the service territory in which the capital investment is made, and OMAG costs are recovered from all NV Energy ratepayers. (Ex. 100 at 10.)

139. NV Energy states that the Commission has determined that the public policy behind the NDPP has statewide implications that necessitate partial socialization of the NDPP program. (Ex. 102 at 8.) NV Energy states that the NDPP is managed as a statewide program for PSOM, IMT, along with cameras, weather stations, risk assessment software and personnel. (*Id.*) NV Energy notes that NV Energy has a statewide footprint with shared facilities and joint dispatch; therefore, cost-causation for natural disasters is not a simple equation. (*Id.* at 9.) NV Energy notes that Natural disasters have wide reaching effects, and points out the impacts Winter Storm Uri had on Texas and Colorado. (*Id.* at 9-10.) Additionally, NV Energy notes that if there would be a statewide cost associated with recovery from a natural disaster, then costs associated with mitigating the risk of natural disasters would appropriately be recovered statewide. (*Id.* at 10-11.)

140. NV Energy supports the Commission's approach to allow for partial socialization of the NDPP program via a single statewide rate for all OMAG costs and a jurisdictional rate for capital costs. (Ex. 102 at 12.) NV Energy states that as Nevadans, we all share a common interest in protecting the health and welfare of our fellow citizens and the natural resources of the state. (*Id.* at 14.)

141. NV Energy states that the NDPP rate components include the NDPP Statewide Component and the NDPP Capital Component. (Ex. 108 at 2.) NV Energy states that the NDPP Statewide Component consists of the total NDPP OMAG. (*Id.* at 2-3.) NV Energy explains that distribution costs and the NDPP allocated OMAG Transmission costs are divided by total NPC and SPPC kWh sales to calculate the statewide rate. (*Id.* at 3.) NV Energy further explains that the NDPP Capital Component is calculated for each company and is the total NDPP Capital Distribution costs recorded and the NDPP allocated Capital Transmission costs. (*Id.*) NV Energy concludes that the total NPC NDPP capital costs are divided by the 2022 NPC sales and the total SPPC NDPP capital costs are divided by the 2022 SPPC sales to calculate separate rates for each company. (*Id.*)

142. NV Energy summarizes the current and proposed NDPP rates in the following table:

	<b>Current — per kWh</b>	<b>Proposed — per kWh</b>	<b>Increase &lt;Decrease&gt;</b>
NDPP NPC	\$0.00142	\$0.00101	<\$0.00041>
NDPP SPPC	\$0.00149	\$0.00114	<\$0.00035>

(Ex. 108 at 7.)

### **NNIEU's Position**

143. NNIEU recommends that the Commission approve NV Energy's proposed NDPP cost allocation and rate design methodology. (Ex. 700 at 3.) NNIEU states that the methodology

assigns capital costs to the utility whose service territory the costs were incurred in and allocates OMAG costs to NPC and SPPC based on each utility's annual sales volume. (*Id.*) NNIEU states that the calculation is shown in NV Energy's Application Exhibit C and is consistent with the legislative intent of SB 329. (*Id.*)

144. NNIEU recommends that the Commission continue to use its previously approved NDPP allocation/rate design for three reasons: no significant difference in 2022 NDPP spending versus 2020 and 2021 spending, using the same allocation/rate design for all three recovery proceedings, and a 91 percent increase in SPPC rate payers' NDPP rate if OMAG costs are assigned based on jurisdiction. (Ex. 700 at 3-4.)

145. NNIEU has outlined the rationale behind Staff's hybrid NDPP cost allocation/rate design method, which includes avoiding rate shock, assigning depreciated plant capital replacement cost to the correct utility, ensuring an appropriate rate of return, and incentivizing keeping capital costs low. (Ex. 700 at 5-6.)

146. NNIEU compares 2020, 2021, and 2022 NDP revenue requirements, showing that OMAG costs vary yearly and by utility while NDPP capital costs steadily increase. (Ex. 700 at 6.) NNIEU states that the Staff's hybrid methodology rationale suggests the possibility of increasing NDPP capital cost. (*Id.* at 7.)

147. NNIEU states that NV Energy proposed a rate design and allocation methodology which does not create a subsidy between NPC and SPPC ratepayers. (Ex. 700 at 8.) NNIEU states that the parties have claimed a subsidy due to the allocation of NDPP costs; however, this is incorrect as the NDPP is a publicly mandated program, and cost causation does not apply. (*Id.*) NNIEU states that the rate design should be equitable, collecting costs from as many customers as possible without disproportionately impacting a customer class. (*Id.*)

**SNMC's Position**

148. SNMC states that NPC and SPPC have proposed a statewide rate for OMAG costs that charges customers the same rate regardless of the system. (Ex. 800 at 5.) SNMC states that this approach ignores the two utilities' separate legal entities and rate structures, and creates a rate subsidy to SPPC ratepayers at the expense of NPC ratepayers of over \$19.6 million. (*Id.*)

149. SNMC states that most of the costs incurred in the SPPC service territory are improvements to the SPPC distribution system. (Ex. 800 at 6.) SNMC states that NV Energy has made no showing of benefit to the NPC customers that would justify the proposed allocation of SPPC distribution costs to NPC customers. (*Id.*) SNMC states that NPC customers receive no power from the SPPC distribution system. (*Id.*) As such, SNMC states that there is no benefit NPC customers could derive from the costs associated with the SPPC distribution system upgrades. (*Id.*)

150. SNMC states that the total subsidy between NPC and SPPC, so far, is \$67.9 million, comprised of the following amounts: 2019 - \$5.4 million, 2020 - \$12.0 million, 2021 - \$30.9 million, and 2022 - \$19.6 million. (Ex. 800 at 6.) Additionally, SNMC states that calculations show another \$102.2 million in subsidies for the period 2024-2026. SNMC provides that this would bring the total subsidy from NPC to SPPC to \$170.2 million through 2026. (*Id.*) SNMC states that the total OMAG costs on the SPPC system are \$31.1 million. (*Id.*) SNMC states that of that amount, \$27.1 million is for the distribution system, or about 87 percent of its total NDPP OMAG costs. (*Id.*)

151. SNMC states that NPC and SPPC, at least to some extent, share generation and transmission assets through joint dispatch, and the compensation for those transactions is considered in the joint dispatch pricing arrangements and the On-Line cost-sharing agreement.



(Ex. 800 at 8.) SNMC states, however, the distribution systems for the two utilities are insular and peculiar to each utility separately. (*Id.*) Thus, SNMC states that a distribution upgrade in SPPC's system provides no added benefit to NPC and vice versa. (*Id.*) SNMC states that this is the case is underscored by the fact that the specific NDPP capital assets will be assigned to the utility service territory receiving the asset and that the costs for those capital investments will be recovered from the customers in that service territory. (*Id.* at 9)

152. SNMC states that the proposed OMAG statewide rate in Nevada does not match with cost recovery for other investments. (Ex. 800 at 9.) SNMC states that Nevada has a principle of cost recovery that assigns costs to the service territory in which they are incurred. (*Id.*)

153. SNMC states that Nevada follows a universally-accepted rule that customers should only pay for the costs they cause and that rate design is implemented to ensure this rule is followed and cross-subsidization is avoided. (*Id.*) SNMC states that NV Energy has violated this rule, creating a cross-subsidization from NPC's to SPPC's customers that harms specific customers. (*Id.* at 10.)

154. SNMC sets forth that the proposed statewide NDPP OMAG rate violates the widely-recognized used and useful rule, which states that for an asset to be included in rates, it must be used and useful. (Ex. 800 at 10.) SNMC states that this rule is violated by NV Energy's request that NPC ratepayers pay for \$67.9M of SPPC service expenses that are used only by SPPC customers and not beneficial to NPC ratepayers. (*Id.*)

155. SNMC states that the requirement that electric utilities charge just and reasonable rates is a standard used in all 50 states to satisfy constitutional requirements. (Ex. 800 at 11.) SNMC further states that this standard is the same in Nevada, and requires that rates are cost-

based. (*Id.*) SNMC explains that the D.C. Court of Appeals said that this requirement incorporates a cost causation principle, meaning that rates should reflect the costs of providing electricity. (*Id.*)

156. SNMC states that a statewide rate proposed where customers of one utility heavily subsidize customers of another utility is not fair as it is not based on cost causation. (Ex. 800 at 11.) SNMC states that NPC customers did not cause these costs and receive no benefit, while SPPC ratepayers will receive a direct benefit and should be responsible for paying for them. (*Id.*)

157. SNMC states that costs must be necessary for the provision of service to be included in the rate, and both the used and useful rule and the necessary for the provision of service rule cover this. (Ex. 800 at 12.) SNMC argues that all expenditures included in rates must be essential to the service being paid for, and NDPP costs that would be misallocated to NPC ratepayers are not necessary for the provision of service. (*Id.*)

158. SNMC explains that NV Energy, Inc. owns both NPC and SPPC, two legally distinct jurisdictional utilities that operate as separate entities. (Ex. 800 at 13.) SNMC further explains that the costs of the On-Line, a transmission line that connects the two utilities, are allocated between them on a 70/30 basis. (*Id.* at 12.) However, SNMC states that NDPP costs, which provide service in SPPC's service territory, should be directly assigned to SPPC. (*Id.*) SNMC states that this creates a subsidy from NPC ratepayers to SPPC ratepayers, which would not be allowed if the two utilities were legally unaffiliated. (*Id.*)

159. SNMC states that NPC and SPPC requested approval for a merger in Docket 23-03028, but withdrew the filing on April 24, 2023. (Ex. 800 at 16.) SNMC states that they remain separate jurisdictional utilities, and have committed to maintaining separate rates. (*Id.*)

160. SNMC states that NPC and SPPC previously stated that in the absence of a merger they would operate with separate rates, and assigning costs of one utility to another and authorizing a statewide rate for those costs would be equivalent to a merger, which has not officially taken place. (Ex. 800 at 18.) SNMC states that this could result in regulating them as a merged entity. (*Id.*)

161. SNMC states that the Commission does not have the authority to assign costs of one utility to another, which it argues runs counter to basic utility regulation principles and raises serious equity issues. (Ex. 800 at 18.) SNMC states that NPC customers currently have higher rates than SPPC customers and consume more kWh per customer, making any effort to shift costs subjective, arbitrary, and policy driven. (*Id.* at 19.) Therefore, SNMC states that the Commission should not engage in this decision-making to maintain credibility and accountability. (*Id.*)

162. SNMC notes that if SPPC paid for its own OMAG costs the overall residential rate would be 88.65 percent of NPC's rate (NCP kWh 20.17 cents and SPPC 17.76 cents) and the average SPPC bill would increase by \$1.45 to \$213.40 verses the average NCP bill of \$470.04. (Ex. 800 at 22.)

### **Wynn and SEA's Position**

163. Wynn and SEA recommend that OMAG be allocated based on location instead of on a statewide basis, as suggested in past NDPP cost-recovery dockets. (Ex. 1000 at 2.) Wynn and SEA acknowledge that there is great potential for harm to Nevada due to wildfires and natural disasters, and investing in protection for these disasters is worth it. (*Id.*) However, Wynn and SEA note that the cost of this should not be allocated between the joint utilities. (*Id.*)

164. Wynn and SEA state that Senate Bill 329 (2019) (“SB 329”) highlighted the changing wildfire situation and NV Energy’s testimony amplified the need for increased investment in wildfire mitigation. (Ex. 1000 at 3.) Wynn and SEA agree that initial socialization of NDPP costs may be necessary to meet the new standard, but Wynn and SEA propose that long-term cost allocation should occur through situs allocation. (*Id.*) Specifically, Wynn and SEA state that OMAG should be situs-allocated or transitioned to a situs-based cost allocation by the end of 2026. (*Id.*)

165. Wynn and SEA note that several interveners in NV Energy’s 2021 NDPP cost recovery proceeding filed testimony contesting the use of a statewide rate for NDPP OMAG expense. (Ex. 1000 at 3.) Wynn and SEA further note that the Commission acknowledged the need for further refinements in the future to prevent inequities and directed NV Energy to provide additional analysis and supporting testimony in its 2023 cost recovery filing. (*Id.* at 4.)

166. Wynn and SEA determined that NV Energy’s rates include a social subsidy, with \$30,182,061 in subsidies paid by NPC’s customers being spent on NDPP activities in the north. (Ex. 1000 at 5.) Wynn and SEA state that 93.9 percent of the \$49,939,060 the OMAG expense was spent in SPPC’s service area, with only 6.1 percent spent in NPC’s service area, despite NPC serving twice the load as SPPC. (*Id.*)

167. Wynn and SEA note that the NDPP vegetation management program is transitioning to a more comprehensive treatment program for aerial tree trimming, grubbing, and right of way clearing, with more frequent treatment cycles. (Ex. 1000 at 7.) Wynn and SEA assert that these upfront costs may have been unnecessary had the system previously been maintained at such a level. (*Id.*)

168. Wynn and SEA recommend that OMAG be situs-allocated, rather than system-allocated. (Ex. 1000 at 7.) Wynn and SEA states that to the extent that there are statewide social benefits associated with the NDPP, however, those are predominantly occurring in the early years of the NDPP, when efforts were being made to correct and improve each system that have not been maintained to the heightened level required for each system in order to mitigate wildfire events. (Ex. 1000 at 7-8.) As the NDPP shifts from initial corrective actions to routine maintenance actions, Wynn and SEA notes that the benefits received are more closely tied to the service area where the routine maintenance activities are being performed and not the combined joint utilities' system. (*Id.* at 8.) Now that the system is improved and the NDPP activities are becoming more routine, Wynn and SEA claim that the incremental statewide benefits associated with the NDPP expenditures are declining. (*Id.*) Wynn and SEA further claim that maintaining the system at the improved, heightened level does not result in any incremental level of wildfire mitigation, but rather, is maintaining the new status quo. (*Id.*) Wynn and SEA states that NPC customers have invested significant amounts in improving the safety of SPPC's system. (*Id.*) Accordingly, Wynn and SEA state that it is desirable and appropriate for customers in the respective service territories to shoulder the cost of maintaining their own systems at safe and reliable levels. (*Id.*)

169. Wynn and SEA recommend that the Commission should require NV Energy transition to situs rates by the end of 2026, in order to reduce subsidization, would would be phased-in gradually, allow for a more gradual impact on customers, and be consistent with the NDPP. (*Id.*)

170. Wynn and SEA argue that the NDPP rate should not be treated like a tax. (Ex. 1000 at 10.) Wynn and SEA state that the Nevada Legislature created planning requirements

and enabled a separate cost recovery mechanism for natural disasters, instead of passing a statewide tax or specific fund like the California Wildfire Fund. (*Id.*) Wynn and SEA note that Education, transportation and healthcare costs are funded more broadly through taxes. (*Id.*) Wynn and SEA note that other utilities bear the costs of natural disaster mitigation measures without being able to pass costs on to others. (*Id.*)

171. Wynn and SEA agree that an indefinite subsidy in the NDPP rate is not desirable, and that SPPC rates should be set at a level that takes vegetation management and natural disaster costs into account. (Ex. 1000 at 11.) Wynn and SEA provide that NV Energy acknowledges that for the 2024-2026 planning period, 75 percent of NDPP costs are attributed to northern Nevada and 25 percent to southern Nevada. (*Id.*)

172. Wynn and SEA argue that the benefits of the NDPP are not spread equally across the state, with economic activity being concentrated in the south and disaster risk in the north. (Ex. 1000 at 11.) However, Wynn and SEA state that the conclusion that customers in the south should pay more ignores the fact that the electric service infrastructure in the north is creating the disaster risk, and so SPPC customers benefit from the use of the infrastructure and should be responsible for ensuring the facilities are properly maintained. (*Id.*)

173. Wynn and SEA's analysis suggests that the assumption that NPC customers have more ability to pay for NDPP costs and should be required to pay additional costs for vegetation management & wildfire mitigation in SPPC's service area is misleading. (Ex. 1000 at 11.) Wynn and SEA provide that Reno and Carson City have higher per capita personal income than Las Vegas-Henderson-Paradise, showing that economic activity does not imply a greater ability to pay. (*Id.*)

174. Wynn and SEA state that NPC's service territory has lower personal incomes and a higher proportion of residential loads compared to SPPC. (Ex. 1000 at 12.) Wynn and SEA state that a statewide rate allocates NDPP costs away from SPPC non-residential customers to NPC residential customers, creating a subsidy from NPC to SPPC and a subsidy between non-residential and residential customers. (*Id.* 12-13.)

175. Wynn and SEA state that wildfire mitigation enables electric services to be provided to customers in two service territories, avoiding the economic losses related to forced electricity outages and saving lives. (Ex. 1000 at 13.) Wynn and SEA state that the value of the electric services rendered is a situs benefit to customers of the respective utilities, and the natural disaster costs of serving SPPC customers are higher than for NPC customers and considered in the SPPC NDPP surcharge. (*Id.*)

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

176. BCP recommends that the Commission find that the distribution assets of NPC and SPPC are two separate systems, and that there is no benefit to NPC customers from NDPP operations and maintenance work performed on the SPPC distribution system. (Ex. 402 at 2.)

177. BCP states that NPC and SPPC have two separate distribution systems that are not interconnected. (Ex. 402 at 2.) BCP notes, however, that their transmission systems are interconnected via the ON Line. (*Id.*) BCP explains that electrons flow into these systems from sources within or outside their respective systems or from distribution resources within the system. (*Id.*) BCP further explains that the two systems are not connected due to impedances, and their distribution planning, operations, and maintenance are separated. (*Id.*)

178. BCP states that the NDPP is a plan by public utilities to ensure safe and reliable electrical service. (Ex. 401 at 4.) BCP states that the plan seeks to identify areas with a

heightened threat of a fire or other natural disaster, to minimize the risks of public utilities' electrical infrastructure from causing a fire, and to restore the distribution system in the event of a natural disaster. (*Id.*) However, BCP states that it cannot prevent natural disasters such as wildfires caused by lightning strikes or earthquakes, or human-caused disasters like fires caused by cigarettes. (*Id.*)

179. BCP notes that the public utilities in Oregon discuss three methods to minimize the risk of electrical infrastructure causing a fire: grid resilience and system hardening, vegetation management, and selective undergrounding. (Ex. 401 at 6.) BCP further notes that these methods are discussed in the NDPP filed in Docket No. 23-03003. (*Id.* at 7.)

180. BCP's position is that all public utilities must provide safe and reliable service, and this obligation has always existed in exchange for being granted a government-sanctioned monopoly service territory, made clear in NRS 704.001(3). (*Id.*)

181. BCP states that in the past three NDPP cost recovery orders, the focus has been on the spillover benefits of the NDPP, rather than the direct benefits, to determine NDPP rates. (Ex. 401 at 8.) BCP opines that there is no dispute that the NDPP relates to the electrical infrastructure of NPC and SPPC, which is separate except for the ON Line. (*Id.*) BCP asserts that electric service customers directly benefit from capital expenditures and operations and maintenance ("O&M") costs for electrical infrastructure. (*Id.*) BCP states that a system of setting rates based on spillover benefits rather than direct benefits is unjust, as the customers in this particular proceeding are being asked to pay 67.4 percent of the costs of the 2022 NDPP O&M, despite only receiving 12.0 percent of the direct benefit from it. (*Id.*)



182. BCP recommends that the Commission find the purpose of the NDPP is to reduce the risk of electrical infrastructure starting fires and to reduce the effects of natural disasters on the electrical infrastructure of public utilities. (Ex. 401 at 9.)

183. BCP notes that NARUC has determined that direct costs are those that can be specifically identified with a particular service or product, and the Joint Application's Exhibit D shows that all capital expenditures were direct costs in NPC or SPPC's service territories. (Ex. 401 at 9.)

184. BCP states that the direct costs that can be specifically identified as occurring in the service territory are assigned to the public utility and are not allocated among affiliated utilities. (Ex. 401 at 10.) However, BCP states that the indirect costs, such as the salary of the CEO, must be allocated between the affiliated public utilities. (*Id.*) BCP states that when customers are required to pay for the direct costs of another public utility, it is not a cost allocation, but a cost-shifting mechanism. (*Id.*) BCP states that the Commission and public utilities must not misrepresent cost shifting as cost allocation. (*Id.*) BCP states that Staff in Docket 20-02032 agree with this view that the NDDP cost recover rate has been cost shifting. (*Id.*)

185. BCP recommends that the Commission find that all 2022 NDPP costs were direct costs incurred in either NPC's or SPPC's separate service territories, as identified in NV Energy's workpapers. (Ex. 401 at 11-12.)

186. BCP states that the justification of shifting the direct costs incurred on the electrical infrastructure used to provide electric service for SPPC's customers to NPC's customers without any finding that the spillover benefits are greater than the direct benefit is an

unfair form of ratemaking which does not result in just and reasonable NDPP rates. (Ex. 401 at 12.)

187. BCP states that the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) in its March 4, 2022 Order in *Long Island Power Authority v. Federal Energy Regulatory Commission* (“FERC”), ruled that just and reasonable rates must reflect costs caused by the customer, and thus the burden of departing from cost causation principles falls on the joint applicants rather than the interveners. (Ex. 401 at 13.) BCP states that the Commission approved cross-subsidies from NPC’s customers to SPPC’s customers for NDPP costs incurred in SPPC’s service territory have been \$47.6 million as of 2021. (*Id.*)

188. BCP states that the Commission’s approval of the joint application would result in customers paying an extra \$19.6 million in 2022 as part of the cross-subsidies for NDPP costs. (Ex. 401 at 14.) BCP states that this brings the total cross-subsidies for the first four years of the NDPP to \$67.2 million, with 2023 NDPP costs still pending. (*Id.*)

189. BCP states that Exhibit F in the Joint Application shows that NPC’s single-family residential customers had an average monthly bill of \$193.57 at the time of filing. (Ex. 401 at 16.) In contrast, BCP states that SPPC’s single-family residential customers had an average bill of \$130.02. (*Id.*) BCP states that it is inequitable and unfair to shift costs onto the customers with a higher monthly bill — \$63.55, or 48.9 percent — from customers with the lower monthly bill. (*Id.*) Likewise, BCP states that Exhibit F shows that NPC’s multi-family residential customers had an average monthly bill of \$114.87 at the time of filing, whereas SPPC’s multi-family residential customers had an average bill of \$73.90. (*Id.* at 17.) Once again, BCP states that it is inequitable to shift NDPP costs onto customers that pay \$40.97 more per month, or 53.3 percent, from customers with the lower monthly bill. (*Id.*)

190. BCP states that the electric bills for NPC's customers are higher than SPPC's customers based on two factors: first, NPC's customers' rates are higher and they use more energy (kWh). (*Id.*) NPC's single-family residential customers have an average cost of 13.27 cents per kWh, while SPPC's average cost is 12.41 cents per kWh. (*Id.*)

191. BCP states that there should be no cost shifts or cross-subsidies to recognize spillover benefits from renewable energy projects, and that NPC's customers should only pay for the NDPP costs that directly benefit them. (Ex. 401 at 19.) Additionally, BCP states that there is no justification for shifting NDPP costs from SPPC's service territory to NPC's customers. (*Id.*)

192. BCP states that the NARUC Electric Utility Cost Allocation Manual provides an overview of an electric utility's distribution system, which connects customers to the transmission grid. (Ex. 401 at 20.) BCP states that it includes substations, primary and secondary conductors, poles, line transformers, services, meters and installations. (*Id.*) BCP states that these feed into the radial distribution circuits that are kept electrically separate under normal conditions, meaning any changes made in one part of the system will not affect the rest. (*Id.*)

193. BCP states that NARUC states that distribution circuits are divided into primary and secondary voltages, with primary voltages usually ranging from 35 KV to 4 KV and secondary below 4 KV. (Ex. 401 at 21.) BCP states that the advances in equipment and cable technology allow for using higher voltages for new installations, allowing a reasonably sized conductor to carry power to more customers. (*Id.*) BCP explains that the only direct interconnection between NPC and SPPC is the ON Line, which is a 500 kV transmission line, not a 4 kV distribution line, and it is not economically feasible to step the electricity back up to 500 KV to transmit via ON Line to NPC's service territory. (*Id.*)

194. BCP states that SPPC reported that there were 765 outages on their distribution system between December 30, 2022, and January 5, 2023, but that none of these affected the delivery of electricity to NPC's distribution system. (Ex. 401 at 21-22.) Thus, BCP recommends that the Commission find there is no benefit for NPC's customers from NDPP work on SPPC's distribution system, so no costs should be shifted from SPPC's service territory to be recovered from NPC's customers. (*Id.*)

195. BCP suggests a compromise that would result in a cross-subsidy of \$1.4 million from NPC's customers to SPPC's customers for 2022 NDPP costs, which is much more acceptable than the \$19.6 million proposed by NV Energy. (Ex. 401 at 25.) BCP states that this compromise is based on the Seventh Circuit Court's ruling that the postage stamp method of charging overcharged western utilities, which is identical to the per kWh methodology used by NPC. (*Id.*)

196. BCP recommends setting, based on this alternative theory, an NDPP rate of \$0.00025 per kWh for NPC's bundled customers and \$0.00017 per kWh for NPC's DOS customers and \$0.00279 per kWh for SPPC's bundled customers and \$0.00249 per kWh for SPPC's DOS customers. (Ex. 401 at 25-26.) BCP states that it uses the PJM hybrid methodology to shift some of SPPC's NDPP transmission costs onto NPC's customers. (*Id.*)

#### **Staff's Position**

197. Staff recommends that the Commission accept NV Energy's proposed cost allocation and rate design in the instant Docket. (Ex. 301 at 8.) Staff notes that the Commission, in Docket No. 22-03006, approved a single statewide rate for OMAG costs and a jurisdictional rate for capital costs. (*Id.*) Staff states that NV Energy is recommending the same allocation of costs in this Docket. (*Id.*)

198. Staff recommends that the Commission accept, in all material aspects, the mathematical accuracy of the calculations of the schedules and rates as filed, with the following caveat: that these schedules/rates should incorporate the recommended adjustments in the Prepared Direct Testimonies of Staff Witnesses Adam Danise, Nichole Loar and Andrew Greene in the instant docket. (Ex. 300 at 2.) Staff states that, in its review and audit of NV Energy's schedules in the instant Docket, Staff has determined that Exhibit C and D are materially correct. (*Id.* at 2-3.)

### **NV Energy's Rebuttal**

199. NV Energy recommends that, at least for the short term, costs continue to be allocated as they have been since 2021. (Ex. 114 at 30.) NV Energy also contends that the 2024-2026 NDPP should follow this existing cost allocation format, as the nature and characteristic of that Plan is similar to the inaugural plan, in that much work still must be done to achieve a steady level of work in the program before NV Energy can transition more toward recurring activities and away from the dynamic state the work is in today. (*Id.*) NV Energy notes as well, however, that in meeting the desire to move toward the "normal course of business," costs should eventually transition over time to jurisdictional rates, while also aligning cost recovery with GRC proceedings subject to the ongoing statutory directive that NDPP costs be recovered as a separate rate on customer bills. (*Id.*)

200. NV Energy states that the Commission should consider the intervener's viewpoint when addressing the question of cost allocation. (Ex. 114 at 29.) NV Energy cautions, however, that in each case, the interveners base their conclusions on narrow slices of the larger picture. (*Id.*) NV Energy contends that, through its analysis and supporting testimony, NV Energy has

advocated for a more complete picture, taking into account quantitative benefits, but also qualitative benefits that go beyond typical utility rate making and cost causation principles. (*Id.*)

201. NV Energy disagrees that the NDPP rates shift costs or create a subsidy between NPC and SPPC customers. (Ex. 113 at 9.) NV Energy notes that it has calculated the NDPP rates in compliance with the procedures ordered by the Commission in the previous NDPP regulatory asset filings and, therefore, there is no cost shifting or ongoing subsidy. (*Id.*)

202. NV Energy additionally disagrees with the contention that NV Energy's proposal violates rate making principles and results in rates that are not "just and reasonable." (Ex. 113 at 10.) NV Energy states that this proceeding is quite different from a general rate proceeding because NV Energy is seeking recovery of costs that have been incurred to carry out a legislative mandate and deferred for recovery in compliance with regulations adopted to specify the cost recovery mechanism. (*Id.*) NV Energy also notes that the Commission has determined in prior NDPP cost recovery cases that all rate classes in both service territories benefit from the natural disaster mitigation efforts, making these claims unjustified. (*Id.*)

203. NV Energy disagrees with BCP's proposal for revised rates. (Ex. 113 at 11.) NV Energy states that BCP's proposed different rates for DOS customers should not be applied because the Commission addressed this issue in last year's docket by ruling that DOS customers are not double charged because the third-party rates referenced by BCP were set before NDPP was implemented. (*Id.* at 11-12.)

204. NV Energy agrees with BCP's explanation that electrons do not flow between NPC's and SPPC's distribution systems, and that the only electrical connection today occurs through the ON Line transmission line; however, NV Energy disagrees with the conclusion that BCP asserts based on this premise. (Ex. 114 at 23.) NV Energy states that it is true that SPPC

distribution customers receive ancillary reliability and resiliency benefits from NDPP improvements made on that system that NPC customers do not, but this premise misses the overarching necessity and impact of the NDPP as a public safety program protecting all Nevadans. (*Id.* at 23-24.) NV Energy states that the main goal of NDPP is to mitigate wildfires and other natural disasters throughout Nevada, and such a benefit can be attributed to customers throughout the state, including NPC and SPPC customers. (*Id.* at 24.) NV Energy contends that the cost causation approach is too narrow to capture why NDPP is in existence. (*Id.*)

### **Commission Discussion and Findings**

205. The Commission approves NV Energy's proposed allocation of costs, whereby capital investments are recovered from the service territory in which the capital investment is made, and OMAG costs are recovered from all NV Energy ratepayers. The public policy behind the NDPP has statewide implications that necessitate at least partial socialization of the NDPP. The NDPP is managed as a statewide program for PSOM, IMT, cameras, weather stations, risk assessment software, and personnel. NV Energy has a statewide footprint with shared facilities and joint dispatch; therefore, cost-causation for natural disasters is not a simple equation. Furthermore, if there is a statewide cost associated with response and recovery related to a natural disaster, then costs associated with mitigating the risk of natural disasters would appropriately be recovered statewide.

206. SB 329 addresses the statewide significance of natural disasters, such as wildfires. On April 9, 2019, when introducing SB 329 to the Senate Committee on Growth and Infrastructure, Senator Brooks, the sponsor of SB 329 stated:

Nevada is no stranger to natural disasters. From increased wildfires which have burned north to south to earthquakes... such events have often posed a danger to our public safety, our economy, and critical infrastructure such as the electric grid. Because of this reality, we owe it to ourselves to take proactive measures against natural disasters.

207. The Legislature, in passing SB 329, clearly indicated that mitigating natural disasters is a statewide issue. The Commission finds that SB 329 protects the entire state from natural disasters and thus has statewide implications, whether the expenses are incurred in NPC's or SPPC's service territories. The Commission acknowledges that some parties deny the existence of a statewide societal benefit, arguing that any socialization of rates would be borne disproportionately based upon the aridification in SPPC's service territory. However, the Commission notes that NV Energy is unique in that NPC and SPPC share an interrelated system wherein NV Energy's On-Line connects both its north and south service territories, and the two utilities engage in joint planning, even jointly dispatching their combined generation facilities. If a significant fire were to strike in the Lake Tahoe Basin, similar to the Camp Fire in California, there would be obvious and significant conceivable consequences to all residents within Nevada, such as economic calamities, and, most importantly, consequences affecting public health and safety, including loss of life, resulting directly from fire and smoke and indirectly from NV Energy's inability to provide power to its customers.

208. Furthermore, the Commission has, in Docket Nos. 21-03004 and 22-03006, approved a single statewide rate for OMAG costs and a jurisdictional rate for capital costs. Along with NV Energy, Staff is recommending the same allocation of costs in this Docket. NV Energy's calculations for the NDPP rate design in this instant Docket are based on the Commission approved cost allocation and Staff's hybrid rate methodology first presented in Docket No. 21-03004. Though the Commission is not bound by *stare decisis* and must not engage in *ad hoc* rulemaking, it must also not make decisions that are arbitrary or capricious and unsupported by the record evidence. (NRS 703.373). The Commission must set just and reasonable rates, supported by substantial evidence, to avoid an arbitrary or capricious outcome.



The Commission finds insufficient evidence supporting a departure from a compromise methodology that it adopted in Docket Nos. 21-03004 and 22-03006. That methodology treated capital project costs as being caused by the customers within the service territory where the capital projects were located, and the costs of those improvements were assigned to and recovered from the customers within the service territory; however, in recognizing the Legislature's policy that natural disaster prevention is a statewide issue, the Commission determined that it was appropriate to recover OMAG costs via a statewide rate. The OMAG cost-allocation methodology reflects the distinction between NDPP costs and the costs associated with utility service generally, where upgrades or improvements occur based on customer demand for service; with the NDPP, the "cost-causer" is not the customer within the specific service territory where the upgrade occurred but, rather, the Legislature, which through state policy directed the Commission to establish the NDPP process requiring NV Energy to spend beyond what would be required in the normal course of business. This compromise of competing principles was supported by the record in Docket Nos. 21-03004 and 22-03006, and it is supported by the underlying record now.

209. NRS 704.130 provides that "1) [a]ll rates, charges, classifications and joint rates fixed by the Commission are in force, and are prima facie lawful, from the date of the order until changed or modified by the Commission, or pursuant to [judicial review; and] 2) [a]ll regulations, practices and service prescribed by the Commission must be enforced and are prima facie reasonable unless suspended or found otherwise in [a judicial review] action..., or until changed or modified by the Commission itself upon satisfactory showing made, or by the public utility by filing a bond pursuant to NRS 703.374." Staff and NV Energy propose the same cost allocation methodology in this docket as the Commission approved in Docket No. 21-03004 and

22-03006. The Commission finds that the cost-allocation methodology proposed by Staff and NV Energy continues to be the most reasonable cost-allocation methodology supported by the evidence in this Docket and that the other proposed cost allocation methodologies lack the necessary evidentiary support to warrant a change to the current cost allocation, which is prima facie reasonable and results in prima facie lawful rates.

## **IX. COMPLIANCES AND DIRECTIVES**

### **A. Previous Compliances and Directives**

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

210. NV Energy requests that the Commission find that NV Energy has complied with the compliances and directives in Docket Nos. 21-02031, 21-02032, 21-03004, 21-03040, 22-03006 and 22-08001. (Ex. 100 at 10.)

211. NV Energy states Exhibit 103 meets the Commission's Directive Number 4 in Docket No. 22-03006 to present a societal benefit analyses. (Ex. 102 at 3.)

212. NV Energy states that it plans to invest \$1.7 billion in Nevada through 2032 in order to prevent potential economic damage from natural disasters, which research indicates can be substantial. (Ex. 103 at 3.) NV Energy states that should a disaster event occur, it could affect the state's GDP, property value, and tourism economy. (*Id.*) NV Energy expounds that net savings to the region over a 20-year period could amount to 22.9 times the amount invested in the NDPP on an annualized basis, and similar comparisons can be seen for property values and the tourism economy. (*Id.*) NV Energy states that similar comparisons can be seen for property values (0.3 percent annual break even and 70.8 times net savings) and the tourism economy (4.3 percent annual break even and 4.6 times net savings), showing the benefits of these investments are likely to be widespread. (*Id.* at 3-4.)

**SNMC's Position**

213. SNMC states that the Commission has ordered NV Energy to provide an analysis of the costs and benefits of natural disasters, but NV Energy provided a study that showed an overall benefit without quantifying the benefits to NPC's customers. (Ex. 800 at 20.) SNMC states that this study was informative but did not address the subsidy provided by NPC's customers. (*Id.*)

214. SNMC states that the Commission issued Directive 4 in Docket No. 22-03003, which requires NV Energy to provide an economic analysis that quantifies the socialized benefits associated with the NDPP costs to safeguard against inequities in the cost allocation approach. (*Id.*) NV Energy's response stated that a disaster in one area of the state would have no measurable economic effect on other areas. (*Id.* at 21.) However, SNMC states that if the question is whether the societal benefits of disaster avoidance are such that the state should embrace them, Nevada has a clear precedent of broadly distributing the cost of services deemed essential for the common good of all Nevadans. (*Id.*)

215. SNMC states that Mr. Aguero admits that there is no evidence of economic benefit to southern Nevada from the NDPP allocation, and that nothing in the testimony complies with Directive 4. (Ex. 800 at 22.)

**Wynn and SEA's Position**

216. Wynn and SEA state that NV Energy evaluated potential economic harms resulting from a major natural disaster in California, concluding that economic damage can be substantial, and that NDPP-related initiatives would have a widespread impact on the region over a 20-year period. (Ex. 1000 at 5.) Wynn and SEA concluded that the evaluation was done without considering specific benefits on a utility-by-utility basis. (*Id.*)

217. Wynn and SEA acknowledge that wildfires can be incredibly costly, so it is vital for NPC and SPPC to uphold a high level of safety in their operations to prevent this. (Ex. 1000 at 5.) Wynn and SEA state that NV Energy's identified impacts are not limited to one service area, but would affect the whole state if a wildfire were to be caused by NPC or SPPC facilities. (*Id.* at 6.)

218. Wynn and SEA argue that the costs NV Energy identified in their testimony for wildfire mitigation are not benefits, but rather harms that customers could face if NV Energy fails to invest in mitigation. (Ex. 1000 at 6.) Wynn and SEA state that avoiding a harm is not the same as providing a benefit, and that investing in wildfire mitigation is a fiduciary responsibility for all electric utilities. (*Id.*) Therefore, Wynn and SEA state that any benefits of investing in wildfire mitigation would be the result of the utility meeting their obligation, not an additional benefit. (*Id.*)

219. Wynn and SEA argue that NV Energy's cost analysis for natural disasters is inappropriate for cost allocation. (Ex. 1000 at 9.) Wynn and SEA states that NV Energy's analysis reviews Nevada's economy and the effects of natural disasters on tourism and property values, but does not quantify the socialized benefits. (*Id.*) Wynn and SEA state NV Energy concludes that while there are economic considerations, the question of regional versus statewide costs is a policy decision. (*Id.*) Wynn and SEA recommend that the Commission should consider cost causation rather than social concepts that are difficult to quantify. (*Id.*)

### **BCP's Position**

220. BCP states that the utilities attempted an analysis, but failed to properly assess and quantify the socialized benefits associated with NDPP costs. (Ex. 400 at 4.) BCP states NV

Energy's testimony was "overly simplistic" and it relied on passages from a previous Commission order to justify the same cost allocation. (*Id.*)

221. BCP states that NV Energy agrees with the Commission's approach to allow for a partial socialization of the NDPP program, with a single statewide rate for all OMAG costs and a jurisdictional rate for capital costs. (Ex. 400 at 5.) BCP provides that the primary goal of the NDPP is to protect public safety and preserve Nevada's environmental and natural resources. (*Id.*)

222. BCP states that NV Energy argues that Nevada's government fiscal system, which redistributes gaming fees, consolidated taxes, property taxes, and net mineral proceeds taxes, establishes a precedent for private entities to redistribute their profits and carry. (Ex. 400 at 6.) However, BCP claims that this justification is unsubstantiated. (*Id.*)

223. BCP states that NV Energy's analysis quantified the NDPP benefits by dividing the metrics of GDP, property values, and tourism by the total NDPP spend of \$1.7 billion, to find a breakeven point. (Ex. 400 at 7.) BCP states that this analysis found a ratio for each metric to compare the size of the state's economy, value of property, and visitor spending to the investment in natural disaster protection. (*Id.* at 8.) BCP asserts that the ratios are not reliable evidence of the value and benefit of the NDPP, as they do not quantify the negative outcomes avoided and cannot measure the effectiveness of the plan. (*Id.*) BCP further asserts that NV Energy's ROI analysis is built on a flawed analysis of the ratios. (*Id.*)

224. BCP argues that the utilities' testimony is one-sided and ignores the benefits it receives as private companies. (Ex. 400 at 9.) BCP notes that a consulting firm provided anecdotal evidence of tax redistribution as a 'clear' precedent, but failed to differentiate between

a government and private entity. (*Id.*) Ultimately, BCP states that the Commission will decide if NDPP warrants redistribution of costs. (*Id.*)

### **Staff's Position**

225. Staff recommends that the Commission accept the analysis performed by NV Energy addressing Directive 4 from the Modified Final Order in Docket No. 22-03006 to "...provide detailed analysis and supporting testimony with their 2023 [NDPP] Annual Cost Recovery filing addressing how to assess or quantify the socialized benefits associate with the [NDPP] costs." (Ex. 301 at 10.) Staff notes that NV Energy provides testimony sponsoring an evaluation of the economic, fiscal, and social implications of NV Energy's 2023 NDPP on behalf of NV Energy in support of Directive No. 4. (*Id.* at 10-11.)

226. Staff contends, however, that NV Energy's method does not adequately assess or quantify the socialized benefits associated with NDPP costs. (Ex. 301 at 11.) Staff states that because the analysis is theoretical, its usefulness in quantifying the socialized benefits of NDPP projects is extremely limited. (*Id.*) Staff notes, however, the Commission stated in its Order on Petitions for Clarification and/or Reconsideration in Docket No. 23-03006 that "NV Energy may provide any evidence that it chooses to support the socialization of NDPP cost in its subsequent filings, and it has similar flexibility in proposing the methodology for quantifying such evidence." (*Id.* at 12.) Staff, therefore, recommends that, the Commission find that NV Energy complied with Directive No. 4, given the flexibility provided to NV Energy by the Commission regarding a proposed method for quantifying socialized benefits. (*Id.*)

### **NV Energy's Rebuttal**

227. NV Energy disagrees with the contention that its societal benefit analysis does not satisfy the Commission's directive in Docket No. 22-03006. (Ex. 114 at 24.) NV Energy states

that parties point to issues around Mr. Aguero's conclusions and argue that the report should be found inadequate because they disagree with those conclusions. (*Id.*)

228. NV Energy contends that BCP's critique of NV Energy's analysis is overly simplified and does not provide an alternative approach to the analysis provided. (Ex. 114 at 25.) NV Energy states that BCP's assessment points out that it is hard to assess the total value of avoided costs of events that did not occur, which is exactly the point that NV Energy made. (*Id.*) NV Energy also states that BCP's criticism that its analysis relies too heavily on previous Commission orders is misplaced because the substantial record generated through multiple NDPP filings, proceedings, and orders do help to inform the Commission as to the totality of this subject to ensure they have all of the information in front of them. (*Id.* at 26-27.)

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

229. The Commission finds that NV Energy has complied with the compliances and directives in Docket Nos. 21-02031, 21-02032, 21-03004, 21-03040, 22-03006 and 22-08001.

230. The Commission finds that NV Energy complied with Directive 4 from the Modified Final Order in Docket No. 22-03006 to "...provide detailed analysis and supporting testimony with their 2023 [NDPP] Annual Cost Recovery filing addressing how to assess or quantify the socialized benefits associate with the [NDPP] costs." NV Energy provides testimony sponsoring an evaluation of the economic, fiscal, and social implications of NV Energy's 2023 NDPP on behalf of NV Energy in support of Directive No. 4. However, the Commission finds that the method used does not adequately assess or quantify the socialized benefits associated with NDPP costs. Because the analysis is theoretical, its usefulness in quantifying the socialized benefits of NDPP projects is limited. However, the Commission stated in its Order on Petitions for Clarification and/or Reconsideration in Docket No. 22-03006

that “NV Energy may provide any evidence that it chooses to support the socialization of NDPP cost in its subsequent filings, and it has similar flexibility in proposing the methodology for quantifying such evidence.” Given the flexibility provided to NV Energy by the Commission regarding a proposed method for quantifying socialized benefits, the Commission finds that NV Energy complied with Directive No. 4.

## **B. Outstanding Expenses Directive**

### **Staff’s Position**

231. Staff recommends that the Commission issue a Directive that NV Energy provide a schedule delineating each capital and OMAG expense requested in a NDPP Regulatory Asset Docket whose expense date lies outside of the regulatory asset recovery year as well as each expense that is still outstanding and may be requested in a subsequent year, with anticipated vendor, dollar amounts, dates, description, and potential grant funding offsets. (Ex. 302 at 16.) Staff notes that it makes this recommendation because it found expenses from 2021 included for recovery in this Docket. (*Id.* at 16-17.) Staff states that an expense report included invoices from the Hard Rock Hotel & Casino at Lake Tahoe, with one charge from August 2021 for \$12,893.76 and another invoice from September 2021 for \$31,442.00 (\$44,335.76 in total). (*Id.* at 17.) Staff states that these expenses were related to NV Energy’s housing, feeding, and compensation for fuels mitigation firefighters and an aerial tree contractor (Asplundh) in South Lake Tahoe to perform NDPP resilient corridor fuels mitigation treatments on an expedited basis in response to the 2021 Caldor fire. (*Id.*)

232. Staff states that NV Energy claims the Hard Rock Casino lodging expenses were not included in the 2021 NDPP cost recovery filing because Hard Rock Casino did not provide the invoices to NV Energy until 2022. (Ex. 302 at 17.)



233. Staff states that grant monies were not used to offset the lodging and meal expenses, but grant monies were used to offset fire-crew compensation expenses. (Ex. 302 at 18.) Staff states that the grant funding dollar amounts and items that grant funding has been applied to have not been transparent or easily identifiable nor is the treatment of grant funding by the various contracted agencies clear and transparent. (*Id.*) Staff states that it is not clear why a 50 percent grant funding offset for compensation was applied for the Caldor Fire work whereas no grant funding offset was applied for meals and lodging for the Caldor Fire work. (*Id.*)

234. Staff additionally states that it is unclear whether NV Energy is required to pay for meals and lodging for the fire-crew members and utility contractors, which NV Energy claims to be responsible for. (Ex. 302 at 19.) Staff states that it is not proposing an adjustment for feeding and housing fire-crew and contractors, but notes that it is concerned that ratepayers are unaware that NV Energy is doing so and including these expenses within the NDPP (with carry). (*Id.*)

235. Staff states that it is unaware if there are additional 2021 invoices in this Docket, or whether there will be 2022 invoices in the 2023 NDPP cost recovery asset docket. (*Id.*) Thus, Staff recommends that the Commission issue a directive that requires NV Energy to specifically delineate each capital and OMAG expense whose expense date lies outside of the regulatory asset recovery year and those that may be requested in a subsequent year with corresponding vendors, dollar amounts, dates, and potential grant funding offsets. (*Id.*)

### **NV Energy's Rebuttal**

236. NV Energy disagrees with Staff's recommendation to issue a directive requiring NV Energy to provide a schedule delineating each capital and OMAG expense whose expense date lies outside of the regulatory asset recovery year. (Ex. 111 at 6.) NV Energy states it

operates under the accrual accounting principle of Generally Accepted Accounting Principles. (*Id.*) NV Energy explains that, under its accrual process, there may be instances where expenses are not accrued for because the information was unavailable or it did not meet NV Energy's minimum accrual threshold of \$100,000 per invoice. (*Id.*) NV Energy states, however, that these costs would still be prudent for recovery under the NDPP. (*Id.*) NV Energy provides that if NV Energy incurred a \$1,000 OMAG expense in December of 2021 but did not accrue for that expense and received the invoice in 2022, that \$1,000 would still be a prudent 2021 cost for recovery in the 2022 NDPP regulatory asset. (*Id.* at 6-7.)

237. NV Energy notes that it currently provides master data requests ("MDRs") that include OMAG expense details and comprehensive data in the capital MDRs that can be utilized to identify and test capital projects. (Ex. 111 at 7.) NV Energy also notes that, because capital projects can span multiple years, it is reasonable to expect there will be expenses that lie outside of the regulatory asset recovery year. (*Id.*)

238. NV Energy additionally disagrees with Staff's recommendation to issue a directive requiring NV Energy to provide a schedule delineating each capital and OMAG expense that is still outstanding and may be requested in a subsequent year with corresponding anticipated vendor, dollar amounts, dates, descriptions, and potential grant funding offsets. (Ex. 111 at 8.) NV Energy states that it already provides capital and OMAG MDRs that support the costs NV Energy is seeking recovery for in this docket. (*Id.*) NV Energy additionally notes that expenses that are outstanding and may be requested in a subsequent year is irrelevant to the current year's cost recovery docket. (*Id.*)

### **Commission Discussion and Findings**

239. The Commission declines to issue Staff's proposed directive at this time. The Commission finds that the NV Energy provides capital and OMAG MDRs, as well as testimony

at hearing to support its NDPP filing. Additionally, the Commission agrees with NV Energy that expenses that are outstanding and may be requested in a subsequent year are irrelevant to the current year's cost recovery docket.

### **C. OMAG Expense Witness Directive**

240. Staff recommends that the Commission issue a directive that NV Energy provide a witness to identify and support the recovery of each OMAG expense requested in each NDPP regulatory asset recovery docket and direct NV Energy to file a schedule of each OMAG expense being requested for recovery, by month within the recovery period, clearly delineating the vendor, dollar amounts, dates, descriptions, and the grant funding offsets that were applied and by which vendor. (Ex. 302 at 20.) Staff states that it makes this recommendation to increase the transparency of OMAG expenses requested in NDPP cost recovery filings and finds it necessary due to the issues it identifies above regarding capital expenses related to contracts between NV Energy and fire agencies. (*Id.*)

### **NV Energy's Rebuttal**

241. NV Energy disagrees with Staff's recommendation to issue a directive for NV Energy to provide a witness to support the recovery of OMAG expenses, and to file a schedule of each OMAG expense being requested for recovery. (Ex. 111 at 9.) NV Energy states that it already provides this information in a MDR and notes that NV Energy's witnesses supporting this Docket are listed in Section B of the Application. (*Id.*) NV Energy therefore contends that this directive is unnecessary. (*Id.*)

242. NV Energy agrees with Staff that that transparency in NDPP expenses is important both for the Commission and customers, but notes that NV Energy repeatedly provided details regarding these expenses in this case and prior cases. (Ex. 109 at 10.) NV

Energy states that, in addition to large volumes of information provided, NV Energy conducted targeted meetings with Staff personnel to better explain details where Staff had further questions.

*(Id.)*

243. NV Energy states that it has been consistent and transparent in its pursuit of fuel mitigation agreements with fire agencies and has communicated the benefits of partnerships with fire agencies throughout the inaugural plan implementation. (Ex. 109 at 12-13.) NV Energy explains that NV Energy first pursued fuels mitigation agreements with fire agencies as part of the inaugural plan in Docket Nos. 20-02031 & 20-02032, and the relationship is referenced in the first and second NDPP progress report as well as the NDPP cost recovery filing in Docket No. 22-03006. *(Id.)*

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

244. The Commission agrees with Staff's recommendation to issue a directive that NV Energy provide a witness to identify and support the recovery of each OMAG expense requested in each NDPP regulatory asset recovery docket and direct NV Energy to file a schedule of each OMAG expense being requested for recovery, by month within the recovery period, clearly delineating the vendor, dollar amounts, dates, descriptions, and the grant funding offsets that were applied and by which vendor. The Commission finds that this directive will increase the transparency of OMAG expenses requested in NDPP cost recovery filings and finds it necessary due to the issues regarding capital expenses related to contracts between NV Energy and fire agencies.

THEREFORE, it is ORDERED:

1. The Joint Application filed by Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy in Docket No. 23-03004 is granted in part and denied in part.

2. The Motion to Strike Testimony filed by Northern Nevada Industrial Energy Users is denied.

3. The Motion to Strike Portions of the Testimony of Nichole Loar and Adam E. Danise is denied.

### **Compliances**

4. Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy shall file updated tariffs in compliance with this Order.

5. Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy shall file a schedule of all meals, travel and lodging expenses for non-NDPP dedicated employees removed from the respective NDPP regulatory asset accounts pursuant to this Order to include at a minimum the date, type of expense (meals, travel or lodging) and amount.

6. Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy shall file a schedule of all meals and snacks provided for non-NDPP dedicated employees removed from the respective NDPP regulatory asset accounts pursuant to this Order to include at a minimum the date, type of expense (meals or snacks) and amount.

7. Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy shall file a schedule of all meal expenses paid by NDPP employees for meals with Government Employees, Government Officials and Utility Contractors removed from the

respective NDPP regulatory asset accounts pursuant to this Order to include at a minimum the date and amount.

### **Directives**

8. Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy shall provide a witness to identify and support the recovery of each OMAG expense requested in each NDPP regulatory asset recovery docket and direct NV Energy to file a schedule of each OMAG expense being requested for recovery, by month within the recovery period, clearly delineating the vendor, dollar amounts, dates, descriptions, and the grant funding offsets that were applied and by which vendor.

9. Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy shall continue to file information regarding grants to offset the costs of implementing the Natural Disaster Protection Plan, including information regarding what grant is being applied for, how that grant is applied to invoices, and how it is tracked to assure all benefits are received.

10. Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy shall establish separate regulatory NDPP OMAG and NDPP Capital regulatory asset accounts for the \$11,809,372.26 in 2022 fire agency contract costs for review in a subsequent NDPP recovery proceeding.

11. Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy shall reclassify all fire truck and equipment costs outstanding at January 1, 2022, and incurred through December 31, 2022, from the separate NDPP OMAG regulatory asset accounts to the separate NDPP Capital regulatory asset accounts.

12. Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy shall account for any non-NDPP event IMT costs and remove those costs from the NDPP recovery amount, as those costs should be sought in a GRC, not the NDPP. Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy shall file a schedule of IMT NDPP event costs that shall be recovered and non-NDPP event costs that shall be removed from NDPP recovery.

By the Commission,

\_\_\_\_\_  
HAYLEY WILLIAMSON, Chair

\_\_\_\_\_  
TAMMY CORDOVA, Commissioner

Attest: \_\_\_\_\_  
TRISHA OSBORNE,  
Assistant Commission Secretary

Dated: Carson City, Nevada

\_\_\_\_\_  
(SEAL)