

Agenda 16-23; Item No.2B 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

Application of Nevada Power Company d/b/a NV)
Energy for approval of fuel and purchased power)
expenses, to reset the Temporary Renewable Energy)
Development charge, reset all components of the)
Renewable Energy Program Rate, reset the Base)
Energy Efficiency Program Rates, reset the Base)
Energy Efficiency Implementation Rates, reset the)
Energy Efficiency Program Amortization Rate, reset)
the Energy Efficiency Implementation Amortization)
Rate, reset the Expanded Solar Program Costs Rate,)
and refund the total amount of Base Energy)
Efficiency Implementation Rate revenue received in)
2022, including carrying charges.)

Docket No. 23-03005

Application of Sierra Pacific Power Company d/b/a)
NV Energy for approval of fuel and purchased power)
expenses, to reset the Temporary Renewable Energy)
Development charge, reset all components of the)
Renewable Energy Program Rate, reset the Base)
Energy Efficiency Program Rates, reset the Base)
Energy Efficiency Implementation Rates, reset the)
Energy Efficiency Program Amortization Rate, reset)
the Energy Efficiency Implementation Amortization)
Rate, and reset the Expanded Solar Program Costs)
Rate.)

Docket No. 23-03006

Application of Sierra Pacific Power Company d/b/a)
NV Energy for approval of natural gas expenses and to)
cancel Incentive Natural Gas Rate Schedule INGR.)

Docket No. 23-03007

At a general session of the Public Utilities Commission of Nevada, held at its offices on September 12, 2023.

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

[PROPOSED] ORDER

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”) filed with the Public Utilities Commission of Nevada (“Commission”) an application, designated as Docket No. 23-03005 (“NPC Application”), for approval of fuel and purchased power expenses for the 12-month period ending December 31, 2022. The NPC Application also requests authorization to reset the Temporary Renewable Energy Development (“TRED”) charge, reset the Renewable Energy Program Rate (“REPR”), reset the Base Energy Efficiency Program Rate (“Base EEPR”), reset the Base Energy Efficiency Implementation Rate (“Base EEIR”), reset the Energy Efficiency Program Amortization Rate (“Amortization EEPR”), reset the Energy Efficiency Implementation Amortization Rate (“Amortization EEIR”), reset the Expanded Solar Program Costs (“ESPC”) rate, and refund the total amount of EEIR revenue received in 2022, including carrying charges. If granted as filed, this application will decrease overall revenue by \$8,267,731, or 0.26 percent, across all rate classes.

On March 1, 2023, Sierra Pacific Power Company d/b/a NV Energy (“SPPC”) filed with the Commission an application, designated as Docket No. 23-03006 (“SPPC Electric Application”), for approval of fuel and purchased power expenses for the 12-month period ending December 31, 2022. The SPPC Electric Application also requests authorization to reset the TRED charge, reset the REPR, reset the Base EEPR, reset the Base EEIR, reset the Amortization EEPR, reset the Amortization EEIR, and reset the ESPC rate. If granted as filed, this application will increase overall revenue by \$6,486,705, or 0.63 percent, across all rate classes.

On March 1, 2023, SPPC filed with the Commission an application, designated as Docket No. 23-03007 (“SPPC Gas Application” and collectively with the NPC Application and the SPPC Electric Application, the “Applications”), for approval of physical gas, transportation, and financial gas transactions that were recorded during the 12-month period ending December 31, 2022 (the “Deferral Period”), and to cancel schedule Incentive Natural Gas Rate (“INGR”).

On July 19, 2023, NPC and SPPC (collectively “NV Energy”), the Bureau of Consumer Protection (“BCP”), Northern Nevada Industrial Electric Users (“NNIEU”), and the Regulatory Operations Staff (“Staff”) of the Commission filed a stipulated agreement (“Stipulation”) resolving most issues in Docket No. 23-03005 and all issues in Docket Nos. 23-03006 and 23-03007.

On July 27, 2023, NPC filed a motion to compel the BCP to file an updated and redacted version of the Prepared Direct Testimony of BCP witness David Chairez. NPC alleges that Mr. Chairez's testimony inappropriately disclosed information that NPC designated as confidential. Shortly after filing its motion to compel, NPC filed a motion for penalties against the BCP stemming from the same factual circumstances as its motion to compel. In turn, the BCP filed a motion seeking that Mr. Chairez's testimony and its accompanying attachments be designated as non-confidential.

On August 18, 2023, the Presiding Officer held a hearing on NPC's motion for penalties. On August 21, 2023, the Presiding Officer held a hearing on BCP's motion regarding confidentiality. This Order addresses the three related motions identified above: (1) NPC's motion to compel; (2) NPC's motion for penalties; and (3) the BCP's motion to designate certain information as non-confidential.

II. SUMMARY

The Commission denies NPC's motion to compel as moot, grants in part NPC's motion for penalties, and grants the BCP's motion to designate certain information as non-confidential.

Although this Order finds that certain information at issue is not entitled to confidential treatment under Nevada law, that fact is not a basis for failure to follow agreed-upon processes pursuant to the Protective Agreement. This Order directs the BCP to participate in a continuing education class regarding ethics and confidentiality to ensure that BCP understands its responsibilities in following Commission rules in the future. In addition, NV Energy is directed to file with the Commission as non-confidential certain information that provides the basis for the disputed Amortization Energy Efficiency Program Rate.

III. PROCEDURAL HISTORY

- On March 1, 2023, NV Energy filed with the Commission the Applications.
- NV Energy filed the Applications pursuant to the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC"), Chapters 703 and 704, including but not limited to NRS 704.110 and 704.187. Pursuant to NRS 703.190(2) and NAC 703.527 *et seq.*,
- Staff participates as a matter of right pursuant to NRS 703.301.
- On March 13, 2023, the Commission issued a Notice of Annual Deferred Energy Accounting Application and Notice of Prehearing Conference in each of Docket Nos. 23-03005, 23-03006, and 23-03007.
- On March 14, 2023, BCP filed a Notice of Intent to Intervene in each of Docket Nos. 23-03005, 23-03006, and 23-03007 pursuant to Chapter 228 of the NRS.
- On March 29, 2023, NNIEU filed a Petition for Leave to Intervene ("PLTI") in Docket No. 23-03006.

- On March 29, 2023, NPC submitted an amendment in Docket No. 23-03005 consisting of an updated earned rate of return calculation from the 2020 Nevada Power general rate case, increasing the earned rate of return from 7.19 percent to 7.28 percent, and corresponding work papers.
- On March 31, 2023, the Presiding Officer held prehearing conferences in Docket Nos. 23-03005, 23-03006, and 23-03007 in accordance with Nevada Administrative Code (“NAC”) 703.655. NV Energy, BCP, Staff, and NNIEU made appearances. The PLTI and a procedural schedule were discussed.
- On April 5, 2023, the Commission a Procedural Order setting forth a procedural schedule and an order granting NNIEU’s PLTI.
- On April 18, 2023, the Commission issued a Notice of Amended Application of Annual Deferred Energy Accounting Adjustment.
- On May 23, 2023, the Commission issued a Notice of Consumer Session and Notice of Hearing.
- On May 26, 2023, Patrick M. Fitzgerald filed a comment in Docket No. 23-03005.
- On May 30, 2023, the Commission issued Procedural Order No. 2 and an Amended Notice of Consumer Session and Notice of Hearing.
- On June 16, 2023, the Nevada Conservation League filed a comment in Docket No. 23-03005.
- On June 20, 2023, Charles Macquarie filed a comment in Docket No. 23-03005, 23-03006, and 23-03007.
- On June 20, 2023, the Nevada Clinicians for Climate Action filed a comment in Docket No. 23-03005.
- On June 20, 2023, the Commission held a Consumer Session.
- On June 21, 2023, Gary Lewey, Tony Simmons, Jose Luis Chávez, Rodrigo Gonzales, Ivon Meneses, and Tracy Puckett filed comments in Docket No. 23-03005.
- On June 26, 2023, the Presiding Officer continued the prehearing conference at the request of the parties. NV Energy, BCP, Staff, and NNIEU made appearances.
- On July 11, 2023, the Presiding Officer continued the prehearing conference at the request of the parties. No participants made appearances.

- On July 13, 2023, the Presiding Officer continued the prehearing conference at the request of the interested participants. No participants made appearances.
- On July 19, 2023, NV Energy, BCP, Staff, and NNIEU made appearances (together, the “Signatories”), filed a Stipulation resolving most issues in Docket No. 23-03005 and all issues in Docket Nos. 23-03006 and 23-03007.
- On July 20, 2023, the Presiding Officer held a continued prehearing conference. The Signatories presented the Stipulation.
- On July 24, 2023, the Commission issued a draft order.
- On July 27, 2023, NPC filed a motion to compel (“NPC’s Motion to Compel”). On that same day, BCP filed corrected testimony and corrected confidential testimony.
- On August 2, 2023, the Commission issued an order accepting the Stipulation and thereby resolving most issues in Docket No. 23-03005 and all issues in Docket Nos. 23-03006 and 23-03007. On that same day, NPC filed a motion for penalties (“NPC’s Motion for Penalties”) requesting the Commission levy penalties on the BCP.
- On August 3, 2023, the Commission issued a notice of hearing regarding NPC’s Motion for Penalties. On that same day, the BCP filed an opposition in response to NPC’s Motion to Compel (“BCP’s Opposition to Motion to Compel”).
- On August 7, 2023, NPC filed prepared rebuttal testimony.
- On August 8, 2023, the BCP filed an opposition in response to NPC’s Motion for Penalties (“BCP Opposition to Motion for Penalties”). On that same day, the BCP filed a motion to require certain confidential attachments and the entirety of BCP Expert Witness David Chairez’s testimony to be designated as non-confidential information (“BCP’s Motion for Non-Confidentiality”).
- On August 11, 2023, NPC filed an opposition to BCP’s Motion for Non-Confidentiality (“NPC’s Opposition to Motion for Non-Confidentiality”).
- On August 15, 2023, NPC filed a reply in support of NPC’s Motion for Penalties (“NPC’s Reply”). On that same day, the BCP filed a reply in support of BCP’s Motion for Non-Confidentiality (“BCP’s Reply”).
- On August 18, 2023, the Presiding Officer held a hearing where NPC’s Motion for Penalties and NPC’s Motion to Compel were discussed. Staff, NPC, and the BCP made appearances.
- On August 21, 2023, the Presiding Officer held a hearing where BCP’s Motion for Non-Confidentiality was discussed. Staff, NPC, and the BCP made appearances.

- On August 29, 2023, the Commission issued a notice of a meeting to consider administrative action against the BCP.

IV. NPC's Motion to Compel

NPC's Position

1. NPC explains that on March 1, 2023, NPC and the BCP executed a protective agreement pursuant to NAC 703.5274(8), which sets forth the agreement on the treatment of confidential information shared during this proceeding ("Protective Agreement"). (*Id.*) NPC states that on June 29, 2023, the BCP issued BCP DR 6-1, which amongst other items requested electronic copies of NPC's master service agreements with certain vendors mentioned in the response to BCP DR 5-01. (*Id.*) NPC further states that on July 11, 2023, NPC responded to BCP DR 6-1, attached the requested agreements, and designated them as confidential pursuant to the terms of the Protective Agreement. (*Id.* at 2.) NPC argues that BCP was to maintain the confidentiality of those agreements pursuant to the Protective Agreement, or inform NPC that it disputed the designations and request the Commission decide as to the confidential nature of those agreements. (*Id.*) NPC notes that the BCP never asserted that the agreements were not confidential or that the information contained in the agreements was not confidential. (*Id.*)

2. NPC states that on July 24, 2023, the BCP filed the Prepared Direct Testimony of David Chairez. (*Id.*) NPC provides that the BCP attached the four agreements provided in the response to BCP 6-1 as confidential attachments. (*Id.*) However, NPC argues that in the body of Mr. Chairez's testimony, the BCP disclosed specific confidential terms and conditions from those confidential attachments without redacting the information. (*Id.*)

3. NPC states that upon discovery that confidential information was publicly disclosed, NPC requested the BCP withdraw the testimony and file a redacted version. (*Id.*) NPC states that the BCP did not respond to NPC's request. (*Id.*) As a result, NPC provides that

it was required to request the Commission's assistance to pull Mr. Chairez's testimony from its public website. (*Id.*) NPC states that by the time the filing was pulled, the confidential information—provided to BCP under the Protective Agreement—had already been disclosed and viewed by the public. (*Id.*)

4. NPC's Motion to Compel argues that Mr. Chairez's testimony must be redacted prior to being posted to the Commission's website and that any disputes regarding confidentiality designations of material must be resolved prior to public disclosure as required by the Protective Agreement and contemplated by the regulations. (*Id.* at 5.) Accordingly, NPC's Motion to Compel requests that the Commission compel the BCP to file a properly redacted version of Mr. Chairez's testimony in this docket. (*Id.*)

BCP's Position

5. The BCP argues that Mr. Chairez's testimony as originally filed does not violate the Protective Agreement or any applicable laws. (BCP's Opposition to Motion to Compel at 2.) The BCP further argues that, because the BCP has already completed the relief requested by NPC in its Motion to Compel by filing the redacted version of Mr. Chairez's testimony, NPC's Motion to Compel is moot and should be denied. (*Id.*)

Commission Discussion and Findings

6. The Commission finds that the BCP has already provided the relief requested by NPC's Motion to Compel. As such, the Commission further finds NPC's Motion to Compel to be moot and accordingly denies NPC's Motion to Compel on that basis.

V. NPC's Motion for Penalties

NPC's Position

7. Pursuant to NAC 703.5282, NPC requests that the Commission bar BCP's witness, Mr. Chairez, from appearing before the Commission in matters related to NPC filings and prohibit Mr. Chairez from obtaining or reviewing any information designated as confidential by NPC in Commission proceedings. (NPC's Motion for Penalties at 5.) NPC argues that NPC and the BCP executed a Protective Agreement that provides the process for maintaining and disclosing confidential information, which the BCP clearly violated in this proceeding. (*Id.*) NPC cites to paragraph 1 of the Protective Agreement, which NPC states provides the general process for maintaining confidential information. (*Id.* at 6.) Paragraph 1 of the Protective Agreement reads as follows:

[NPC] shall provide the information requested by the BCP, which [NPC] in good faith believe[s] that some information requested is confidential commercial information, proprietary, and/or a trade secret pursuant to NRS 703.190. BCP shall not disclose any information furnished by [NPC] that [NPC has] designated as confidential pursuant to the terms of this Protective Agreement, except as disclosure of such information by BCP is expressly provided herein or as otherwise provided by law. (*Id.*)

8. NPC states that NPC provided information that it designated as confidential in response to BCP DR 6-1. (*Id.*) Pursuant to the Protective Agreement, NPC argues that the BCP was not to disclose this information. (*Id.*) NPC argues that, in the BCP's publicly filed testimony, the BCP nonetheless disclosed specific information designated as confidential by NPC. (*Id.* at 6-7.) Further, NPC refutes any argument from BCP that the disclosed information constituted the BCP's work product or expert opinion. (*Id.* at 7.)

9. NPC argues that, if the BCP disagreed with NPC's confidentiality designations, the BCP had an agreed-upon procedure for challenging NPC's confidentiality designations as outlined in the Protected Agreement. (*Id.*) Specifically, NPC cites to paragraph 4 of the Protected Agreement, which provides as follows:

The BCP shall not be deemed, by reason of this Protective Agreement, to have waived the opportunity to argue before the Commission, or any other appropriate body, that any Protected Materials are not confidential, proprietary or privileged in nature. However, it is specifically agreed that unless otherwise agreed to by [NPC] or ordered by the Commission, all documents and other discovery materials or portions thereof that have been designated as Protected Materials pursuant to the terms of this Agreement shall only be used in accordance with the terms of this Agreement. (*Id.*)

10. NPC notes that the BCP never objected to NPC's confidentiality designation of the information that the BCP publicly disclosed, nor did the BCP request the Commission to decide whether the confidential designation was appropriate. (*Id.*) On the contrary, NPC argues that, in the BCP's testimony, the BCP readily admits that the information it publicly disclosed was obtained from confidential sources. (*Id.*) NPC argues that the BCP does not have the authority to unilaterally determine whether material is confidential or not, publicly disclose the material, and subsequently announce its objection to confidentiality designations. (*Id.*)

11. NPC also notes that the Protective Agreement specifically describes the process if the BCP desired to disclose the confidential information in its testimony. (*Id.* at 8.) NPC cites to paragraph 6 of the Protective Agreement, which states:

In the event that the BCP is subpoenaed or intends to disclose Protected Materials to any person to whom disclosure is not authorized by this Agreement, or if BCP wishes to include, use or disclose the substance of Protected Materials in testimony or exhibits, or wishes to object to the designation of certain information or materials as Protected Materials, prior to such disclosure or objection, the BCP will notify counsel for [NPC] in writing and identify with particularity the Protected Materials to be used, disclosed, or objected to and the manner and substance of such proposed use, disclosure, or objection. (*Id.*)

12. NPC provides that the BCP did not notify NPC in writing and identify with particularity the confidential information it ultimately disclosed to allow NPC to timely object. (*Id.*) Instead, days after publicly filing the confidential information, NPC states that the BCP retroactively informed NPC of its objection to the confidential designations pursuant to

paragraph 6 of the Protective Agreement. (*Id.*) Therefore, NPC argues that penalties are warranted as the BCP violated both the Protective Agreement and NAC 703.5282(1). (*Id.*)

13. NPC takes the position that BCP's argument post disclosure, whether such information is not confidential, is irrelevant in determining whether the BCP violated the terms of the Protective Agreement. (NPC's Reply at 4.) NPC argues that the BCP was to maintain the confidentiality of NPC's materials designated as confidential or inform NPC that it disputed the designations and request the Commission evaluate the confidential nature of those agreements prior to disclosure. (*Id.*) NPC argues that the BCP did not avail itself of either of these options. (*Id.*) Additionally, NPC notes that it is not requesting the Commission strike the BCP's testimony or exclude any of the confidential information included in its testimony. (*Id.* at 5.) Rather, NPC states that the confidential information, as well as the BCP's testimony opining on it, is a part of the record of this proceeding and can be reviewed and considered by the Commission, Staff, and the BCP. (*Id.*) NPC states that it is only requesting the Commission enforce the process outlined in the Protective Agreement prior to the public disclosure of confidential information. (*Id.*)

BCP's Position

14. The BCP agrees that it executed the Protective Agreement with NPC and acknowledges that information provided by NPC in response to BCP DR 2-01 and 6-01 was designated as confidential pursuant to that Protective Agreement. (BCP Opposition to Motion for Penalties at 3.) However, the BCP refutes that it failed to maintain the confidentiality of the information designated as confidential. (*Id.*) BCP provides that the attachments to Mr. Chairez's testimony were properly marked as Confidential Attachments DSC-5, DSC-7, DSC-9, DSC-10, and DSC-11, in accordance with the Protective Agreement. (*Id.*) BCP

notes that NPC nevertheless took issue with portions of Mr. Chairez's publicly filed testimony in which he made general statements about certain items claimed by NPC as confidential. (*Id.* at 4.)

15. While the BCP maintains its position that no part of Mr. Chairez's publicly-filed testimony is confidential, the BCP agreed to file a newly redacted version of Mr. Chairez's public testimony as requested by NPC. (*Id.* at 5.) The BCP states that this was an effort at compromise while BCP pursued its confidentiality dispute. (*Id.* at 4-5.)

16. Nonetheless, the BCP argues that Mr. Chairez's originally-filed testimony is not confidential because (1) Nevada law allows experts to form expert opinions using data and information regardless of the underlying information's admissibility; (2) Mr. Chairez followed the accepted standard of practice for experts in cases before the Commission of discussing topics contained in documents marked confidential generally but avoiding any particularities; and (3) public policy comports with this practice of non-confidential expert testimony. (*Id.* at 7.)

17. BCP further argues that, should the Commission find that the BCP did indeed violate the terms of the Protective Agreement, Mr. Chairez had no intent to disclose confidential information and that any penalty that the Commission pursues against the BCP should be proportionate to the violation. (*Id.* at 10-12.)

18. Finally, the BCP raises generalized concerns about NPC's use of the Protective Agreement in this case as being hypocritical, confusing, arbitrary, and inconsistent. (*Id.* at 15-16.) Accordingly, the BCP invites a review of the Protective Agreement language and the confidentiality procedure. (*Id.* at 16.)

Commission Discussion and Findings

19. The Commission finds that the BCP violated its Protective Agreement with NPC in this matter. The Protective Agreement at paragraph 6 provides that “[i]n the event BCP ... wishes to include, use or disclose the substance of Protected Materials in testimony..., prior to such disclosure or objection, the BCP will notify counsel for the Company in writing and identify with particularity the Protected Materials to be used, disclosed, or objected to and the manner and substance of such proposed use, disclosure, or objection.” BCP acknowledges that it used information from Protected Materials in the Prefiled Testimony of David Chairez, which it filed publicly with the Commission without notifying counsel for NPC in advance.

20. The Commission has reviewed the information in Mr. Chairez’s testimony that is at issue in NPC’s Motion for Penalties and concludes that the Chairez testimony includes information that was sourced from Protected Materials, as acknowledged by the BCP. BCP argues that it engaged in a subjective review of the Protected Materials and determined that the information included in Mr. Chairez’s testimony was not entitled to confidential treatment because he is an expert witness and his statements were general in nature. However, the subjective review that the BCP describes is not an option under the Protective Agreement. Further, as highlighted below, the restatement of Protected Materials by an expert witness in a different document is explicitly considered Protected Materials under the Protective Agreement. The Protective Agreement is straightforward in explaining the appropriate process when there is a question as to the confidentiality of Protected Materials. No such subjective review exists within the Protective Agreement or the Commission’s regulations.

21. Whether the BCP believed that the information revealed in the Chairez testimony was not entitled to confidential treatment is irrelevant when considering whether the terms of the Protective Agreement were violated. The Protective Agreement defines “Protected Materials” by providing that “[a]ll documents and information furnished subject to the terms of this Agreement shall be clearly stamped ‘Confidential’ or ‘Proprietary’ and shall hereinafter be referred to as ‘Protected Materials.’ All Protected Materials shall be accepted, maintained, and utilized in conformance with the provisions of this Protective Agreement. Protected Materials shall also include any handwritten notes or computer files which summarize all or portions of the Protected Materials or otherwise disclose the substance of such materials.” There is no requirement here that Protected Materials be in fact entitled to confidential treatment under the applicable law for the signatories to the Protective Agreement to be bound to treat information designated as Protected Materials as confidential according to the Protective Agreement. If any signatory questions the validity of NPC’s confidentiality claim, the Protective Agreement outlines the appropriate process to challenge that claim before revealing the information publicly. The BCP did not follow the process in the Protective Agreement despite executing the Protective Agreement. As contemplated by the Protective Agreement, a simple phone call or email between counsel could have avoided the filing of no less than eight Motions and Responses regarding this matter.

22. Notwithstanding the BCP’s argument that the process outlined in the Protective Agreement subjects it to an unfair burden, the BCP, Staff, and multiple other participants in proceedings before the Commission sign Protective Agreements with regulated utilities repeatedly. If the BCP is dissatisfied with the Protective Agreement

signed by its counsel, the BCP has ample opportunity to renegotiate that Protective Agreement, or even refuse to execute a Protective Agreement that it deems unreasonable. But raising the argument that the Protective Agreement is unfair only after the BCP has violated that agreement is troublesome and disingenuous.

23. This is a serious issue; improper use of the information provided in these matters can have consequences on the effective functioning of the Commission and the utilities regulated by the Commission, as well as a negative impact on the costs paid by ratepayers. It is imperative that all participants in Commission proceedings, whether technical expert or counsel, understand and faithfully execute their duty to the tribunal and the public. In this case, Mr. Chairez was the individual who provided testimony which revealed Protected Materials in violation of the Protective Agreement. However, counsel for the BCP (Mr. Paul Stuhff) executed the Protective Agreement and submitted Mr. Chairez's testimony to the Commission for public filing. Accordingly, counsel for the BCP is arguably the responsible individual who violated the Protective Agreement and NAC 703.5282(4)(c).

24. Throughout the pleadings and the Hearing, BCP maintains that it did not violate any provisions or rules. Given the Commission's finding that the BCP did violate the Protective Agreement, the Commission is concerned that there is a lack of understanding within the BCP regarding the appropriate process for handling Protected Materials and addressing related issues that may arise. As such, education appears to be the proper remedy for this violation. The BCP has a long history of advocating effectively in Nevada, and it is possible that appropriate training would mitigate the risk of future violations.

25. The Commission directs that all employees of the BCP who participate in public utility matters attend a continuing education class regarding ethics and confidentiality.

The class must be recognized by either the American Bar Association or the Nevada Board of Continuing Education and must be certified for a minimum of one hour of credit toward annual continuing education requirements. As a compliance, the BCP shall file a letter in the docket indicating the names of all employees who completed the class no later than Monday, September 25, 2023.

VI. BCP's Motion for Non-Confidentiality

BCP's Position

26. BCP filed its Motion for Non-Confidentiality pursuant to NAC 703.5282(1)(b) and 703.550, to require the confidential attachments to the response to BCP DR 6-01, the confidential attachment to the response to BCP DR 2-01, and the entirety of David Chairez's testimony (collectively, the "Subject Information") to be designated as non-confidential. (BCP's Motion for Non-Confidentiality at 1.)

27. The BCP supports its argument to designate the Subject Information as non-confidential with three primary arguments: (1) the Subject Information is not a trade secret; (2) the Subject Information is not confidential commercial information; and (3) ratepayers have a right to the Subject Information. (*Id.* at 6.)

28. The BCP provides that the Subject Information consists of sponsorship agreements between NPC and southern Nevada sports and entertainment entities, an email chain between NPC and/or its holding company, NV Energy, discussing a sponsorship agreement, and the now-redacted general discussion of the sponsorship agreements in BCP expert David Chairez's publicly filed testimony. (*Id.* at 7.) The BCP maintains that there is no good faith claim to be made that the sponsorship agreements and email chain are or contain a "formula, pattern, compilation, program, device, method, technique, product,

system, process, design, prototype, procedure, computer programming instruction or code” as provided in NRS 600A.030(5)(a)’s definition of trade secret. (*Id.*) Instead, the BCP argues that the Subject Information was designated as confidential by NPC because NPC sought to hide sponsorship costs and certain related items that NPC was obtaining solely for the benefit of NPC and not for ratepayers. (*Id.* at 9.)

29. The BCP provides that, under Nevada law, confidential commercial information is “information which, if disclosed, would cause substantial economic harm to the competitive position of the entity from whom the information was obtained.” (*Id.* at 9 (quoting *Diamond State Ins. Co. v. Rebel Oil Co.*, 157 F.R.D. 691, 697 (D. Nev. 1994)).) The BCP argues that the Subject Information fails to meet this definition for two reasons: (1) NPC does not have a competitive position that can be harmed, and (2) even if it did, disclosure of sponsorship agreements and email chain would not cause substantial harm to that competitive position. (*Id.* at 9.)

30. Further, the BCP argues that ratepayers have a right to be aware of the Subject Information. (*Id.* at 11.) The BCP points to a heightened transparency requirement enshrined in NRS 703.190(1). (*Id.*) The BCP explains that except for trade secrets and confidential commercial information, “all biennial reports, records, proceedings, papers and files of the Commission must be open at all reasonable times to the public.” (*Id.* (quoting NRS 703.190(1).) Thus, the BCP argues that the Subject Information, including the cost of the sponsorship agreements that NPC is requesting ratepayers to pay, and will ultimately be paying for, even in part, are filings that “must be open at all reasonable times to the public.” (*Id.*) BCP argues that the inequity of asking ratepayers to pay for purchases that NPC is not

even willing to publicly disclose is contrary to any public policy promoting transparency. (*Id.* at 11.)

31. The BCP also rejects arguments by NPC that the right to access a public utility's records is only held by regulators and not by the public. (BCP's Reply at 2-3.) The BCP notes that, under NRS 703.190, all files submitted to the Commission need to be available to the public unless a narrow exception applies to maintain the information as confidential, including the amount of time that information may remain confidential. (*Id.* at 3.) The BCP explains that the presumption begins that all documents filed with the utility's application in a docket need to be publicly accessible. (*Id.*) The BCP argues that NRS 703.196 provides the guidelines for how the utility can obtain confidential treatment of certain information up front — unless and until the Commission makes a determination that the information for which the utility is requesting confidential treatment should not, in fact, receive confidential treatment. (*Id.*)

NPC's Position

32. NPC opposes the BCP's Motion for Non-Confidentiality. (NPC's Opposition to Motion for Non-Confidentiality at 1.) NPC rejects BCP's position that the records of a public utility are generally required to be open to the public. (*Id.* at 3.) Instead, NPC argues that the right to review NPC's records is vested solely in the Commission and other officers of specific governmental entities. (*Id.*) NPC provides that these governmental entities, including the BCP, are entrusted with special access to NPC's records, including confidential records, to review this material on behalf of the public, but are explicitly prohibited by statute from disclosing confidential information to the public. (*Id.*)

33. NPC argues that NPC's business position can be harmed by the disclosure of confidential commercial information. (*Id.* at 4.) NPC points out that it enters a variety of commercial contracts and, in negotiation of those contracts, NPC or counterparties may require confidentiality of an agreement's terms. (*Id.*) NPC provides that if the terms are disclosed, NPC's negotiating position in future contracts may be hindered, which could in turn cause NPC's costs to increase. (*Id.*)

34. NPC points out that proceedings before this Commission, including proceedings regarding the rates charged to a utility's customers, often—indeed, almost always—include confidential information. (*Id.* at 5.) NPC argues that the fact that confidential material is being provided in a proceeding or used to support cost recovery does not have any bearing on the obligations of the Commission or other parties to preserve its confidential status. (*Id.*)

35. NPC argues that the Subject Information is commercially sensitive material which derives independent economic value from not being generally known to the public, and it is protected by contractual confidentiality provisions, under which NPC agreed that the terms of the agreement are confidential and that it would not disclose those terms to third parties. (*Id.* at 6.) NPC maintains that protecting commercially sensitive information from the public domain allows NPC and counterparties to negotiate for the best terms for their specific interests. (*Id.*) In addition, NPC states that the counterparties to these contracts rely on the confidentiality provisions to protect their confidential commercial information when dealing with NPC. (*Id.*) NPC cautions that public disclosure of this information not only harms NPC, but also the NPC's customers who entered these contracts in reliance upon the confidentiality provisions. (*Id.*)

36. NPC notes that the BCP claims that the BCP brings its Motion for Non-Confidentiality pursuant to the procedures outlined in the Protective Agreement. (*Id.*) However, NPC argues that the Protective Agreement does not provide a process to challenge post-disclosure and that allowing for such a process post hoc would undermine the entire agreement. (*Id.*)

Commission Discussion and Findings

37. The Commission finds that DSC-5 and DSC-7, and any reference to these materials in the prefiled testimony of Mr. Chairez and Ms. Steele, are not entitled to confidential treatment pursuant to NRS 703.190. This is a subset of the Subject Information. NRS 703.190(2) recognizes the Commission's obligation to evaluate and issue Protective Orders on confidential information that is entitled to protection as a trade secret or confidential commercial information as follows:

The Commission shall, upon receipt of a request from a public utility, alternative seller, provider of discretionary natural gas service or provider of new electric resources, prohibit the disclosure of any applicable information in the possession of the Commission or an affected governmental entity concerning the public utility, alternative seller, provider of discretionary natural gas service or provider of new electric resources, if the Commission determines that the information would otherwise be entitled to protection as a trade secret or confidential commercial information pursuant to NRS 49.325 or 600A.070 or Rule 26(c)(7) of the Nevada Rules of Civil Procedure. Upon making such a determination, the Commission shall establish the period during which the information must not be disclosed and a procedure for protecting the information during and after that period.

38. DSC-5 and DSC-7 are Sponsorship Agreements between NV Energy and Clark County Las Vegas Stadium, LLC and SK Team LLC d/b/a Henderson Silver Knights et al., respectively. These Sponsorship Agreements include, among other things, the terms under which ratepayer funds will be used to promote energy efficiency and conservation ("EEC") programs approved by the Commission pursuant to NRS 704.785 at the respective venues.

The Commission finds nothing in these Sponsorship Agreements that could be characterized as a trade secret or confidential commercial information pursuant to Nevada law.

39. The BCP is correct that as a baseline, information submitted by a public utility to the Commission for the purpose of setting rates is publicly available unless the Commission determines that the information is entitled to protection pursuant to NRS 703.190. Therefore, unless NPC can demonstrate that DSC-5 and DSC-7 are protected pursuant to NRS 703.190, DSC-5 and DSC-7 are not confidential. Further, there is no provision in NRS 703.190 that would render information confidential simply because two counterparties agree that it should be confidential. The burden remains on NPC as a public utility to contract with counterparties with transparency regarding the public's access to the information that a public utility files with the Commission.

40. NPC argues that the inability to keep information from its counterparties confidential could increase costs for NPC. The Commission appreciates that concern as it is the basis for the existence of NRS 703.190. NRS 703.190 provides the ability for NPC to demonstrate to the Commission the basis for the confidentiality claims on a case-by-case basis to ensure that the transparency of the process is balanced against any potential commercial impacts to the utility. However, NRS 703.190 cannot permit a public utility to negotiate away the Commission's ability to evaluate information pursuant to NRS 703.190 when a counterparty requests confidential treatment.

41. NPC argues that the information is commercially sensitive and derives independent value from not being generally known to the public. The Commission disagrees. Nevada case law defines confidential commercial information as "information which, if disclosed, would cause substantial economic harm to the competitive position of

the entity from whom the information was obtained.” *Diamond State Ins. Co. v. Rebel Oil Co.*, 157 F.R.D. 691 (D. Nev. 1994). The costs of the Sponsorship Agreement that are requested for recovery are already publicly available in NV Energy’s request for recovery in Docket No. 23-03005, which leaves only the Rights and Elements (Exhibit A to each Agreement) as substantive terms that are not otherwise publicly available. These Rights and Elements include activities and advertising that, by their very nature as marketing tools for the EEC Programs, are open to public purview. Though NPC argues that these costs are appropriate for recovery as a component of a marketing plan developed by R & R Partners to effectively reach a broad audience, and that NPC is only one of many entities accessing these same audiences at these locations under similar Sponsorship Agreements, NPC has provided no basis for the Commission to determine that revealing the Rights and Elements of these Sponsorship Agreements will cause economic harm or will detrimentally affect NPC’s ability to negotiate agreements in the future.

42. With regard to the BCP’s request for a ruling on the protected nature of DSC-9, DSC-10, and DSC-11, the request for recovery of costs associated with these agreements has been withdrawn. Any costs associated with these matters will not be included in utility rates, are therefore not subject to review by the Commission, and will not be a part of the evidentiary record supporting the Commission’s decision in this docket. The Commission finds that the request to evaluate DSC-9, DSC-10, and DSC-11 pursuant to NRS 703.190 is moot.

43. As a compliance, on or before September 19, 2023, NV Energy shall file with the Commission an unredacted version of DSC-5, DSC-7, and Ms. Steele’s rebuttal testimony, or a letter indicating NPC’s intention to file a Petition for Reconsideration.

44. Finally, with regard to BCP's assertion that NPC may be using the question of confidentiality, and the process outlined in the Protective Agreement, as a tactic to limit the BCP's ability to conduct a robust investigation, the Protective Agreement at Paragraph 1 requires that NPC have a good faith belief that information is entitled to confidential protection pursuant to NRS 703.190 prior to designating the material as Protected Materials. Accordingly, NPC should not designate any information as confidential without having a reasonable basis.

45. Transparency should be the goal in all Commission proceedings, and the Commission welcomes discussions in every case regarding the discovery process and confidentiality requests. If any party believes that the terms of the Protective Agreement, or the Commission's regulations pursuant to NAC 703.527 et al., warrant revision, the Commission encourages the party to pursue changes addressing its concerns.

THEREFORE, it is ORDERED:

1. The motion to compel filed by Nevada Power Company d/b/a NV Energy is denied.
2. The motion for penalties filed by Nevada Power Company d/b/a NV Energy is granted in part.
3. The motion to designate certain information as non-confidential filed by the Nevada Attorney General's Bureau of Consumer Protection is granted.

Compliances:

4. As a compliance, on or before September 19, 2023, NPC shall file with the Commission an unredacted version of DSC-5, DSC-7, and Ms. Steele's rebuttal testimony, or a letter indicating NV Energy's intention to file Petition for Reconsideration.

5. The Commission directs that all employees of the Nevada Attorney General's Bureau of Consumer Protection who participate in public utility matters participate in a continuing education class regarding ethics and confidentiality. The class must be recognized by either the American Bar Association or the Nevada Board of Continuing Education and must be certified for a minimum of one hour of credit toward annual continuing education requirements. As a compliance, the Nevada Attorney General's Bureau of Consumer Protection shall file a letter in this docket indicating the names of all employees who completed the class no later than Monday, September 25, 2023.

By the Commission,

HAYLEY WILLIAMSON, Chair

TAMMY CORDOVA, Commissioner

Attest: _____
TRISHA OSBORNE,
Assistant Commission Secretary

Dated: Carson City, Nevada

(SEAL)