

**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 )  
regulatory assets relating to the development and )  
implementation of their Joint Natural Disaster )  
Protection Plan. )  
\_\_\_\_\_ )

Docket No. 22-03006

At a general session of the Public Utilities  
Commission of Nevada, held at its offices  
on October 11, 2022.

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

**ORDER ON PETITIONS FOR CLARIFICATION AND/OR RECONSIDERATION**

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

## **I. INTRODUCTION**

On March 1, 2022, Nevada Power Company d/b/a NV Energy (“NPC”) and Sierra Pacific Power Company d/b/a NV Energy (“SPPC”) (together, “NV Energy”) filed with the Commission a joint application, designated as Docket No. 22-03006 (“Joint Application”), for approval of the cost recovery of the regulatory assets relating to the development and implementation of their Joint Natural Disaster Protection Plan (“NDPP”).

On July 13, 2022, the Commission held a hearing regarding NV Energy’s cost recovery from the NDPP regulatory assets.

On August 24, 2022, the Commission issued an order granting in part and denying in part NV Energy’s Joint Application (the “Order”).

On September 2, 2022, NV Energy timely filed its petition for reconsideration (titled, Petition for Clarification or in the Alternative Reconsideration) (“NV Energy’s Petition.”).

On September 7, 2022, Wynn Las Vegas, LLC (“Wynn”) and the Smart Energy Alliance (“SEA”) timely filed a petition for reconsideration (“Wynn and SEA’s Petition.”).

On September 8, 2022, Boyd Gaming Corporation (“Boyd”), Station Casinos LLC (“Station”), and Venetian Las Vegas Gaming, LLC (“Venetian”) (together, “SNGG”) timely filed a petition for reconsideration (“SNGG’s Petition.”).

Also on September 8, 2022, Caesars Enterprise Services, LLC (“Caesars”); MGM Resorts International (“MGM”); and the Nevada Resort Association (“NRA”) (together, “CMN”), timely filed a petition for reconsideration (“CMN’s Petition.”).

## **II. SUMMARY**

The Commission grants NV Energy’s, Wynn and SEA’s, SNGG’s, and CMN’s Petitions and issues a modified final order, which is attached hereto as Attachment 1.

## **III. PROCEDURAL HISTORY**

- On March 1, 2022, 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 8, 2022, the Commission issued a Notice of Joint Application and Prehearing Conference.
- On March 23, 2022, the Nevada Bureau of Consumer Protection (“BCP”) filed a Notice of Intent to Intervene pursuant to Chapter 228 of the NRS.
- On March 25, 2022, Wynn and SEA filed with the Commission a Joint Petition for Leave to Intervene (“PLTI”) and a Notice of Association of Counsel.
- On March 30, 2022, CMN; and EP Minerals, LLC; Heavenly Valley, Limited Partnership; Nevada Cement Company; Nugget Sparks, LLC d/b/a Nugget Casino Resort; Premier Magnesia, LLC; Prime Healthcare Services – Reno, LLC d/b/a Saint Mary’s Regional Medical Center, Inc.; and Renown Health (together, “Northern Nevada Industrial Electric Users” or “NNIEU”) each filed with the Commission a PLTI.
- On March 31, 2022, SNGG filed with the Commission a Joint PLTI.
- On April 5, 2022, the Presiding Officer held a prehearing conference in accordance with NAC 703.655. NV Energy, Wynn and SEA, SNGG, CMN, NNIEU, BCP, and Staff made appearances. A procedural schedule and PLTIs were discussed.
- On April 6, 2022, NV Energy filed work papers for the Joint Application.
- On April 8, 2022, the Commission issued a Procedural Order and an Order on Petitions for Leave to Intervene. NV Energy filed additional workpapers for the Joint Application.
- On May 12, 2022, the Commission issued a Notice of Consumer Session and Notice of Hearing.
- On May 24, 2022, the Commission issued an Amended Notice of Consumer Session and Notice of Hearing.
- On June 7, 2022, Polly Long filed comments.
- On June 8, 2022, the Commission held a consumer session.
- On June 16, 2022, the Presiding Officer held a continued prehearing conference. NV Energy, Wynn and SEA, SNGG, CMN, NNIEU, BCP, and Staff made appearances. The Parties discussed an update on a stipulation and a procedural schedule.

- On June 17, 2022, Wynn and SEA, SNGG, CMN, BCP, and Staff filed Direct Testimony<sup>1</sup>.
- On June 23, 2022, CMN filed an Errata to their Direct Testimony.
- On June 24, 2022, the Commission issued Procedural Order No. 2 adopting a procedural schedule and discovery processes.
- On July 1, 2022, NV Energy filed Rebuttal Testimony.
- On July 7, 2022, the Commission issued Procedural Order No. 3 setting forth the hearing process.
- On July 11, 2022, NV Energy, Wynn and SEA, SNGG, CMN, NNIEU, BCP, and Staff filed their respective notice of appearances, exhibit lists, and cross-examination statements.
- On July 13, 2022, the Commission held a hearing. NV Energy, Wynn and SEA, SNGG, CMN, NNIEU, BCP, and Staff made appearances. Pursuant to NAC 703.730, the Presiding Officer accepted Exhibits 100-118, 200-202, 300-303, 400, 500, 600, and Late-filed Exhibits 119 and 120 into the record as evidence
- On July 14, 2022, Wynn and SEA and Staff filed corrected testimony.
- On July 15, 2022, NV Energy and BCP filed corrected testimony.
- On July 18, 2022, the Commission issued Procedural Order. No. 4 setting forth a briefing schedule for the filing of legal briefs. The same day, NV Energy filed corrected testimony and Late-filed Exhibit 119.
- On July 19, 2022, NV Energy filed Late-filed Exhibit 120.
- On July 20, 2022, NV Energy filed workpapers.
- On July 21, 2022, NV Energy, Wynn and SEA, SNGG, CMN, NNIEU, BCP, and Staff filed Legal Briefs.
- On August 11, 2022, NV Energy filed an errata to Late-filed Exhibit 119.
- On August 24, 2022, the Commission issued the Order.
- On September 2, 2022, NV Energy filed its Petition and work papers.
- On September 7, 2022, Wynn and SEA filed its Petition.
- On September 8, 2022, SNGG and CMN each filed their Petitions.

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<sup>1</sup> NNIEU did not file direct testimony.

- On September 12, 2022, CMN filed a response to NV Energy’s Petition (“CMN’s Answer”).
- On September 19, 2022, SNGG filed an Answer to NV Energy’s Petition (“SNGG’s Answer”), Wynn and SEA filed an Answer to the filed petitions for reconsideration (“Wynn and SEA’s Answer”), Staff filed an Answer to NV Energy’s Petition (“Staff’s NVE Answer”), and BCP filed an Answer to NV Energy’s Petition (“BCP’s NVE Answer”).
- On September 21, 2022, NV Energy filed an Answer to the filed petitions for reconsideration (“NV Energy’s Answer”), Staff filed an Answer to Wynn and SEA’s Petition (“Staff’s Wynn and SEA Answer”), and BCP filed an Answer to Wynn and SEA, SNGG, and CMN’s Petitions (“BCP’s Intervenors Answer”).
- On September 22, 2022, Staff filed an Answer to SNGG and CMN’s Petitions (“Staff’s SNGG and CMN Answer”).

#### **IV. NV ENERGY’S PETITION**

##### **A. Procedural Sufficiency of NV Energy’s Petition**

##### **NV Energy’s Position**

1. NV Energy seeks clarification or reconsideration of paragraphs 27, 28, 151, and directive number 4 of the Commission’s Order. (NV Energy’s Petition at 3-4.)
2. NV Energy argues that paragraphs 27, 28, 151, and the directive contained in ordering paragraph 4 of the August 24, 2022, Order are unreasonable and based on erroneous conclusions of law or mistaken facts. (*Id.* at 4.)

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

3. A party may file for reconsideration within ten business days after the effective date of a Commission order. NAC 703.801 states in relevant part:

1. A petition for reconsideration must specifically:
  - (a) Identify each portion of the challenged order which the petitioner deems to be unlawful, unreasonable or based on erroneous conclusions of law or mistaken facts; and
  - (b) Cite those portions of the record, the law or the rules of the Commission which support the allegations in the petition. The petition may not contain additional evidentiary matter or require the submission or taking of evidence.

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7. If the Commission grants a petition for reconsideration, it will reexamine the record and order with regard to the issues on which reconsideration was granted and issue a modified final order or reaffirm its original order.

9. A modified final order of the Commission issued upon reconsideration or rehearing will incorporate those portions of the original order which are not changed or modified by the modified final order. A modified final order is the final decision of the Commission.

4. The Commission grants NV Energy's Petition because it has met the procedural threshold standard for reconsideration under NAC 703.801(1). Accordingly, the Commission reexamines the record and its decision, addressing the issues raised in NV Energy's Petition regarding labor expense, vegetation management, and the directive ordered by the Commission that requires NV Energy to provide additional analysis regarding NDPP costs.

## **B. Labor Expenses**

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

5. NV Energy argues that the Commission's determination that the Public Safety Outage Management Expense ("PSOM") labor expense was "contemplated when determining the labor components of revenue requirement used to establish the current base tariff general rates ("BTGRs") paid by customers in the last general rate case ("GRC")" is based upon a mistaken fact. (NV Energy's Petition at 4-5.) NV Energy provides that PSOMs are specific to the NDPP and were not contemplated as part of the prior general rate review proceedings. (*Id.* at 5.) NV Energy states that, as such, it requests that the Commission reconsider its determination with respect to the \$351,170 in PSOM labor costs as any costs associated with a PSOM event are necessarily incremental to NV Energy's normal course of business. (*Id.*)

6. NV Energy requests that the Commission reconsider its determination to move the PSOM labor costs into a general rate review proceeding because it is in violation of the mandate in NRS 704.78983(6) requiring that "all prudent and reasonable expenditures ... must

be recovered as a separate monthly rate charged to the customers of the electric utility.” (*Id.*) NV Energy explains that PSOM overtime costs are solely caused by an NDPP program and PSOM overtime costs are wholly dependent on the weather conditions in each service territory each year and will therefore fluctuate each year. (*Id.*) NV Energy states that removing PSOM labor charges from the NDPP recovery, where they belong, to a general rate review proceeding will increase the likelihood, and almost ensure, that these costs will not be recovered by NV Energy as required by NRS 704.7983(6). (*Id.*) NV Energy states that if the Commission believes that these costs are not prudently incurred for the benefit of customers in the event of a PSOM, it should be explicitly state so in the order. (*Id.*) NV Energy provides that, conversely, if the Commission believes these are prudently incurred costs to be recovered in a general rate review proceeding, it should likewise state so in the order. (*Id.*) NV Energy asserts that it should not be put in the position where it must speculate as to whether the costs it incurred facilitating a Commission approved plan are subject to cost recovery. (*Id.*)

7. NV Energy states that, in the alternative, it requests that the costs clearly associated with PSOM be allowed to be recorded in a separate regulatory asset within the general rate review proceeding to ensure they are recovered by NV Energy in accordance with NRS 704.7983(6). (*Id.*)

8. NV Energy explains that like PSOM events, the projects and programs that these represented employees completed was work approved in the 2020 NDPP – work that was neither contemplated during the adjudication of the 2019 SPPC general rate review proceeding nor the 2020 NPC general rate review proceeding as these charges are related to a higher operations and maintenance (“O&M”) work percentage than what was in the last general rate review

proceedings. (*Id.* at 6.) NV Energy provides that this higher rate represents more charges being directly recorded to O&M charges versus being capital on the balance sheet. (*Id.*)

9. NV Energy argues that the Commission's determination that the represented labor expenses were contemplated in the last general rate case is based upon a mistaken fact and focuses on the total number of employees in the BTGR rather than the work that was completed under the program. (*Id.* at 6.) NV Energy explains that these projects and programs were specific to the NDPP and were not contemplated as part of the general rate review proceeding and requests that the Commission reconsider its determination with respect to \$451,261 in incremental, internal labor costs related to the implementation of the NDPP. (*Id.*)

10. Alternatively, NV Energy requests that the costs clearly associated with represented labor be allowed to be recorded in a separate regulatory asset within the general rate review proceeding to ensure they are recovered by NV Energy in accordance with NRS 704.7983(6). (*Id.*)

#### **Wynn and SEA's Answer**

11. Wynn and SEA state that the Commission was correct in its determination that \$351,170 in PSOM costs are not incremental costs in its finding that these amounts "represent existing labor that is already being recovered under existing BTGR rates through the payroll proformas used to establish the revenue requirement in prior GRC proceedings." (Wynn and SEA's Answer at 4.) Wynn and SEA explain that the Commission has taken a consistent, correct view on incrementality, finding that incremental labor is not determined based on new program areas, whether there are overtime expenses, or even when a program came into existence relative to when the BTGR was set; instead, the issue is whether NDPP-related labor costs are incremental to the labor costs already included in the BTGR. (*Id.*) Wynn and SEA



further explain that the underlying record demonstrates that NV Energy's total expensed labor *decreased* and that the employees NV Energy isolated for cost recovery were included in NV Energy's analysis demonstrating an overall decrease in expendable time. (*Id.*)

12. Wynn and SEA recommend that the Commission also deny NV Energy's alternative request that PSOM costs be recorded in a regulatory asset given the lack of substantial evidence that would allow for such recovery of non-incremental costs in the NDPP. (*Id.* at 5.) Moreover, Wynn and SEA argue that granting such a proposal would deny other parties the ability to fully evaluate and respond to the proposal on reconsideration. (*Id.*)

13. Wynn and SEA state that the Commission appropriately concluded that \$415,261 in represented labor expense is not incremental. (*Id.*) Wynn and SEA state that the Commission correctly determined that isolating variations for overtime and percentages of labor spent on O&M versus capital work for existing employees that periodically perform NDPP-related activities in place of their regular job duties is not incremental NDPP labor and is not a basis for increasing labor cost recovery from customers through the NDPP. (*Id.*) Wynn and SEA argue that for the same reasons argued above, NV Energy's alternative request for a separate labor regulatory asset to be considered in conjunction with a general rate review proceeding should be denied. (*Id.*)

#### **SNGG's Answer**

14. SNGG asserts that the Commission should not reconsider paragraphs 27 and 28 of the Order regarding the PSOM labor expenses and represented labor expense because NV Energy misconstrues the incrementality requirement. (SNGG's Answer at 1.) SNGG explains that regardless of whether PSOM expenses were specifically contemplated in prior general

rate review proceedings, the labor associated with such programs for incrementality purposes was contemplated. (*Id.* at 2.)

15. SNGG asserts that NV Energy is also wrong in its assertion that moving PSOM labor costs into a general rate review violates NRS 704.7983(6) because nothing in NRS 704.7983(6) provides for the recovery of NDPP expenses that are not deemed to be incremental. (*Id.* at 2.) Further, SNGG asserts that it would also be inappropriate to allow NDPP expenses that are not incremental to be recorded to a regulatory asset (and to earn carry on that regulatory asset). (*Id.* 2-3.)

#### **CMN's Answer**

16. CMN states that the Commission's decision to disallow NV Energy from over-recovering on PSOM and represented labor is just, reasonable, and supported by substantial evidence. (CMN's Answer at 1.) CMN notes that the Commission appropriately found that PSOM and represented labor amounts sought for recovery in this Docket represent existing labor that is already being recovered under existing BTGR rates through the payroll proformas used to establish the revenue requirement in prior GRC proceedings. (*Id.* at 2.) CMN states that this conclusion is supported by substantial evidence. (*Id.* at 3.)

17. Regarding whether overtime costs may be considered incremental costs, CMN explains that a Wynn and SEA witness stated that the mere fact that an employee incurs overtime is not an indication that costs are incremental positions, as employees may incur overtime for many reasons unrelated to the NDPP. (*Id.* at 3.)

18. Moreover, CMN explains that this same Wynn and SEA witness examined NV Energy's employee count and found that it decreased by 8.3 percent. (*Id.* at 3.) CMN notes that this witness concluded that while a new department might have been created, the creation

of that department did not result in an increase to the number of employees. (*Id.*) Accordingly, CMN opines that this witnesses' testimony regarding NV Energy's failure to demonstrate that the costs associated with PSOM labor was not already being recovered in base rate labor expense demonstrates substantial evidence to disallow recovery of PSOM labor. (*Id.*)

19. Regarding represented labor, CMN asserts that there is substantial evidence provided in the record to support the conclusion that the costs associated with certain employees spending more time on NDPP-related expensed activities are actively being recovered through base rates. (*Id.* at 4.)

20. CMN states that the Commission's approach to both PSOM and represented labor is similar to how the Commission has viewed incrementality in the past. (*Id.* at 5.) CMN concludes that this approach is reasonable that the Commission should reaffirm its decision to disallow the recovery of PSOM and represented labor costs. (*Id.*)

#### **BCP's Answer**

21. BCP asserts that paragraphs 27 and 28 of the Order are not based on mistaken facts as alleged in NV Energy's Petition. (BCP's NVE Answer at 1-2.) BCP asserts that a complete reading of those paragraphs show that the Commission clearly explained that it is not approving NV Energy's request for recovering PSOM and represented labor costs as incremental labor costs because ratepayers' respective BTGRs already include total labor costs for a larger workforce than NV Energy currently employs. (*Id.* at 2-3.) BCP explains that it is irrelevant that the specific PSOM labor expense and specific represented labor expense were not included in the respective test years of NPC and SPPC's last general rate cases as the relevant metric is total labor costs as used by the Commission in paragraphs 27 and 28 for its findings of fact. (*Id.* at 3.)

22. BCP states that deferring disallowed PSOM and represented labor costs into separate regulatory asset accounts will not change the Commission's findings that these labor costs are not incremental. (*Id.*) Specifically, BCP further states that deferring recovery of these costs to NPC and SPPC's respective future GRCs does not change the fact that the Commission found that these costs were not incremental and therefore not recoverable from ratepayers. (*Id.* at 4.)

#### **Staff's Answer**

23. Staff states that the Commission should reaffirm paragraphs 27 and 28 of the Order regarding the disallowance of PSOM and represented labor as NV Energy misconstrues the Commission's decision. (Staff's NVE Answer at 2-3.) Staff states that the Order finds that the labor costs of the employees who spend some time performing the NDPP tasks were contemplated in prior rate cases; therefore, the Commission's decision in the Order pertains to employee costs rather than the specific NDPP tasks performed by them. (*Id.* at 3.) Staff explains that it is inconsequential that the PSOM program did not exist before the most recent GRCs, or that the specific work performed relating to the represented labor costs was not contemplated in the prior GRCs. (*Id.*) Notably, Staff agrees with Wynn and SEA that overtime is not an indication that costs are incremental because employees could incur overtime for many reasons unrelated to the NDPP. (*Id.*)

24. Staff notes that NV Energy also argues the Commission's decision to move PSOM labor costs into a GRC violates NRS 704.7983(6) because an NDPP program solely causes PSOM overtime costs. (*Id.* at 3.) However, Staff states that it is not unlawful for non-incremental labor costs to be addressed in a GRC. (*Id.*)

25. Staff opposes NV Energy's alternative requests that the costs associated with PSOM and represented labor be allowed to be recorded in a separate regulatory asset within the

general rate review proceeding because these non-incremental costs are attributed to existing labor being recovered in existing rates. (*Id.* at 3.) Furthermore, Staff explains that granting regulatory asset treatment would be an extraordinary step that should be reserved for circumstances that warrant such treatment (*Id.* at 4.) Staff states that evidence does not exist in the record that supports a finding that the PSOM and represented labor amounts at issue here are extraordinary. (*Id.* at 4.)

### **Commission Discussion and Findings**

26. The Commission reiterates its determination that the PSOM and represented labor costs included in the NDPP regulatory asset represent existing labor costs that are currently being recovered through the existing BTGR rates and thus are not incremental. The Commission agrees with the intervenors that incremental labor is not determined based on new programs, activities, or overtime expenditures, but on whether the labor costs are already included in the BTGRs. Stated plainly, the Commission finds that the PSOM and represented labor costs in this case are not incremental because NV Energy did not incur additional labor costs beyond the labor costs that were contemplated when the Commission set BTGRs in GRC proceedings.

27. The evidentiary record supports the finding that the PSOM and represented labor costs are not incremental. Specifically, Wynn and SEA's witness (Mullins) identified that NV Energy's employee count decreased by 8.3 percent and that overtime may be incurred for many reasons unrelated to the NDPP. Moreover, NV Energy's witness (Behrens) did not provide any specific breakdown of internal labor costs but confirmed that NV Energy's total expensed labor decreased.

28. Additionally, NV Energy and Staff agreed that only 3 of the 12 non-represented positions created by NV Energy, and specifically dedicated to NDPP activities, were found to be

incremental due to the positions being filled by existing internal employee transfers in which the positions vacated by the transferring employees remained unfilled. Thus, the Commission's decision regarding existing, internal employee PSOM and represented labor charges to the NDPP regulatory asset is consistent with the rational and incremental determination reached by NV Energy and Staff with regard to non-represented labor costs.

29. Therefore, the PSOM and represented labor costs are not incremental and not recoverable pursuant to the NDPP regulations.<sup>2</sup> The evidence provided by all parties denotes no increase in the cost of labor or any specific delineation of labor costs. Accordingly, the Commission affirms its finding that there is a lack of incrementality for PSOM and represented labor costs.

### **C. Vegetation Management**

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

30. NV Energy states that it does not object to the Commission's methodology with respect to the \$557,890.44 of vegetation management that has been ordered to be moved to the general rate review proceeding, but requests that the costs that were found to be prudent be allowed to be recorded in a separate regulatory asset within the general rate review proceeding to ensure they are recovered by NV Energy in the year they were expended. (NV Energy's Petition at 7.) NV Energy explains that pushing these costs to the general rate review proceeding unintentionally results in a disallowance which serves as a penalty to NV Energy this year. (*Id.*) NV Energy states that given these costs were prudently incurred, NV Energy does not believe the Commission intended to penalize NV Energy for completing vegetation management projects in 2021. (*Id.*)

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<sup>2</sup> Moreover, NV Energy's request for regulatory asset treatment is not appropriate as non-incremental NDPP expense is not subject to NRS 704.7983(6).

**Wynn and SEA's Answer**

31. Wynn and SEA assert that NV Energy's request for reconsideration regarding the \$557,890.44 of NDPP vegetation management found to be non-incremental should be procedurally denied as it lacks any assertion that the decision was unlawful, unreasonable, or erroneous under NAC 703.801(1). (Wynn and SEA's Answer at 6.) Wynn and SEA further assert that granting NV Energy's request would result in double recovery as the costs are already recovered in the BTGR. (*Id.*) Lastly, Wynn and SEA state that given that some of the parties in this Docket are not participating in Docket No. 22-06014, granting NV Energy's request would deprive some parties from the opportunity to respond to this issue. (*Id.*)

**SNGG's Answer**

32. Regarding NV Energy's assertion that \$557,890.44 in vegetation management costs should be recorded in a separate regulatory asset, SNGG states that the Commission should not reconsider its findings on this issue (in paragraph 76 of the Order) because these costs are not incremental. (SNGG's Answer at 3.) SNGG explains that whether these costs are prudently incurred is to be determined in a GRC, and thus it is inaccurate to state that this is a disallowance or a penalty because they are being treated like other GRC expenses. (*Id.*)

**CMN's Answer**

33. CMN opposed NV Energy's request that the Commission order that \$557,890.44 of non-incremental vegetation management costs be recorded in a regulatory asset because the request fails to satisfy the legal standard for reconsideration. (CMN's Answer at 5.) Moreover, CMN states that the Commission determined that these costs were not incremental. (*Id.*) Further, CMN notes that the Commission permitted SPPC to file an errata to its GRC to include these costs in additional operations, maintenance, administrative

and general (“OMAG”) expenses, and that if it permitted SPPC to recover these costs through a regulatory asset in a single year, it would render meaningless NV Energy’s failure to demonstrate that the vegetation management costs were incremental. (*Id.* at 5-6)

### **BCP’s Answer**

34. BCP asserts that NV Energy’s Petition neither meets the procedural requirements for reconsideration nor does it present a substantive reason to modify paragraph 76 of the Order (regarding the reclassification of \$557,890.44 of vegetation management costs). (BCP’s NVE Answer at 4.) Notably, BCP explains that NAC 703.801 does not allow an applicant to introduce an alternative request in a petition for reconsideration. (*Id.*) BCP concludes that the Commission’s directive for SPPC to recover the \$557,890.44 through the normal ratemaking process rather than through a single-issue regulatory asset account is not a disallowance, but a reclassification. (*Id.* at 5.)

### **Staff’s Answer**

35. Regarding NV Energy’s request to record specific vegetation management costs in a regulatory asset (as discussed in paragraph 76 of the Order), Staff argues that vegetation management should not be moved into a regulatory asset as it is not extraordinary. (Staff’s NVE Answer at 4.) Staff notes that NV Energy complains that not granting its request would result in a disallowance; however, Staff points out that regulatory lag is a common function of cost-of-service ratemaking and NV Energy has failed to justify why these costs should not be subject to normal treatment. (*Id.* at 5.)

### **Commission Discussion and Findings**

36. In requesting the alternative relief of regulatory asset treatment of the non-incremental vegetation management costs that were incurred for completing vegetation management projects in 2021, NV Energy inaccurately characterizes the Commission’s Order as



resulting in a disallowance or penalty. The actual result of the Order's findings regarding the 2021 non-incremental vegetation management costs is a reclassification, not a disallowance. Reclassification is not a penalty, and NV Energy confirmed that reclassification is not a disallowance at hearing. (Hr. Tr. at 367.) The impact of the reclassification would be no different than a subsequently-determined clerical error where an amount was recorded to an asset account which should have been expensed in the previous year. In making the determination that \$557,890.44 in 2021 vegetation management expenses is non-incremental, the Commission found that this amount was already being recovered through the currently-established BTGRs. Calendar year 2021 was also the test year for SPPC's pending GRC in Docket No. 22-06014. Accordingly, the Commission allowed the affected test year expense to be updated, not to ensure recovery of this amount, as that would have occurred through the existing BTGR, but to allow a corrected amount of vegetation management expenses which may be considered normal course of business to be considered in setting the BTGR for the rate-effective period beginning January 1, 2023.

37. Further, the Commission agrees with Staff's assessment that establishing a regulatory asset is an extraordinary step that disproportionately benefits utility shareholders to the detriment of ratepayers and thus must be restricted to circumstances that warrant such extraordinary treatment. This instance fails to meet that high bar. NV Energy has not justified why these ordinary costs should not be subject to regular recovery through a GRC; therefore, this request is denied. Moreover, NV Energy's request for regulatory asset treatment fails on procedural grounds because it was inappropriately introduced for the first time in its Petition.

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## **D. Directive**

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

38. NV Energy states that it agrees with the Commission that Senate Bill (“SB”) 329, codified as NRS 704.7983, is a societal bill that necessitates partial socialization of the NDPP program; however, the directive to NV Energy to provide additional analysis and supporting testimony with its 2023 cost recovery filing to further assess or quantify the socialized benefits associated with NDPP costs is unclear and will cause both an additional cost and burden on the parties in future proceedings without further direction. (NV Energy’s Petition at 7.) NV Energy states that the corresponding, additional cost of the directive is also not currently included in the approved budget for the NDPP. (*Id.*) Therefore, NV Energy, requests that the Commission reconsider ordering the directive requiring NV Energy to provide additional analysis until the requirements and parameters of what this analysis will entail has been vetted and a funding source for the analysis has been identified. (*Id.*)

### **Wynn and SEA’s Answer**

39. Regarding the directive discussed in paragraph 151 (and ordered in ordering paragraph 4), Wynn and SEA have no objection to NV Energy’s request for clarification. (Wynn and SEA’s Answer at 7.) However, Wynn and SEA state that the Commission is justified in ordering the directive. (*Id.*) Therefore, Wynn and SEA argue that NV Energy’s request for reconsideration on this issue should be denied. (*Id.*) Instead, paragraph 151 of the Order should be reconsidered, as requested in the petitions of Wynn and SEA, CMN, and SNGG, based upon NV Energy’s failure to meet its burden to show that the NDPP cost allocation is just and reasonable. (*Id.*)

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**SNGG's Answer**

40. SNGG asserts that the Commission should not reconsider the requirement delineated in paragraph 151 of the Order (and ordered in ordering paragraph 4) that NV Energy assess and quantify the benefits of the NDPP. (SNGG's Answer at 3.) SNGG explains that NV Energy has the burden to substantiate its rate request and disregards NV Energy's concerns that a funding source would need to be identified to respond to the directive. (*Id.* at 4.) Specifically, despite NV Energy's objections, SNGG states that NV Energy can identify funding to support the development of future NDPP filings from the same place and in the same manner as NV Energy has identified funding to file the cases to date. (*Id.*)

**CMN's Answer**

41. Regarding the directive discussed in paragraph 151 (and ordered in ordering paragraph 4), CMN states that the Commission should maintain its directive for NV Energy to provide testimony and evidence on the quantitative benefits of the NDPP program as NV Energy's request fails to meet the legal standard for reconsideration. (CMN's Answer at 6.) Further, CMN notes that it is NV Energy's burden to provide evidence quantifying the societal benefits to NPC's customers for NDPP expenditures and that stakeholders to NDPP proceedings should have wide latitude to recommend different cost allocations based on broad guidance from the Commission. (*Id.* at 6-7.)

**BCP's Answer**

42. Regarding the directive discussed in paragraph 151 (and ordered in ordering paragraph 4), BCP states that, assuming arguendo that it is lawful for the Commission to order cross-subsidies between two separate public utilities providing electric service, then the Commission needs some evidence to shift costs from the regulatory asset account of one utility to customers of a

different utility. (BCP's NVE Answer at 6.) Otherwise, BCP states that the Commission is subject to a judicial reversal for failing to make ballpark estimates of the statewide benefits of the NDPP that would justify a cost shift from SPPC's regulatory asset account to NPC's customers under cost causation principle. (*Id.*) If the Commission does issue a modified final order addressing this issue, BCP recommends that NV Energy comply with the directive but change the word "or" in the second sentence of paragraph 151 to "and" to prevent NV Energy from only providing a superficial assessment without any quantification of its 2023 NDPP cost recovery filing. (*Id.* at 7.)

### **Staff's Answer**

43. Regarding the directive discussed in paragraph 151 (and ordered in ordering paragraph 4), Staff opines that it is not unreasonable to require NV Energy to perform a benefit-cost quantification that has been historically advocated by NV Energy in other matters. (Staff's NVE Answer at 5-6.) Staff states that NV Energy's argument that this additional cost is not in NDPP's budget and is overly broad is without merit as the directive gives NV Energy latitude to present support for its position. (*Id.*) Furthermore, Staff notes that NV Energy had already alluded to the need for an analysis of trade-offs, including but not limited to the prioritization and reallocation of resources, central to the quantification of benefits and costs. (*Id.* at 6.) For example, Staff cites to testimony in Docket No. 21-03040 where NV Energy acknowledged that granular risk variations are not captured in coarse-grained metrics. (*Id.* at 6.)

### **Commission Discussion and Findings**

44. The Commission's directive to NV Energy to provide additional analysis and supporting testimony with its 2023 NDPP cost recovery filing to further assess or quantify the socialized benefits associated with NDPP costs is not overly broad. Instead, it provides NV

Energy with an opportunity to provide any evidence it believes will clarify the issue of societal benefits. This type of analysis is not so unique in that it will burden NV Energy. In other dockets, such as integrated resource plans, NV Energy has provided benefit analyses and evidence, which indicates that NV Energy is fully capable of producing additional evidentiary support. NV Energy has also supported the concept of quantifiable economic benefits when evaluating the merits of an energy supply agreement. This is not dissimilar to an assessment or quantification of societal benefits of the NDPP.

45. Cost allocation is not an exact science, and the Commission's Order is an intended incremental step toward more accurately assessing the cost allocation of the NDPP. NV Energy may provide any evidence that it chooses to support the socialization of NDPP costs in its subsequent filings, and it has similar flexibility in proposing the methodology for quantifying such evidence. The challenged directive is sufficiently clear to achieve the Commission's goal of prompting the submission of evidence that attempts to quantify the relative benefits of the NDPP within separate service territories.

## **V. INTERVENORS' PETITIONS**

### **A. Procedural Sufficiency**

#### **Wynn and SEA's Petition**

46. Wynn and SEA seek reconsideration of paragraphs 148, 149, 150, and 151 as Wynn and SEA claim that these paragraphs are based on erroneous conclusions of law or mistaken facts. (Wynn and SEA's Petition at 1, 3.)

47. Wynn and SEA request that the Commission modify any other portion of the Order inconsistent with the idea that public policy and equity considerations support allocation

of NDPP OMAG costs to NPC and SPPC's respective customers based on the level of benefit received because this idea is supported by substantial evidence. (*Id.* at 3.)

### **Commission Discussion and Findings**

48. The Commission grants Wynn and SEA's Petition because they have met the procedural threshold standard for reconsideration under NAC 703.801(1). Accordingly, the Commission reexamines the record and its decision, addressing the issues raised in Wynn and SEA's Petition.

### **SNGG'S Petition**

49. SNGG seek reconsideration of paragraphs 142 through 151 and ordering paragraph 1. (SNGG's Petition at 3.)

50. SNGG argues that the Commission's decision to allow recovery of NDPP OMAG expenses by way of a statewide rate is not only unlawful, but not based on substantial evidence. (*Id.* at 1.)

### **Commission Findings and Discussion**

51. The Commission grants SNGG's Petition because it has met the procedural threshold standard for reconsideration under NAC 703.801(1). Accordingly, the Commission reexamines the record and its decision, addressing the issues raised in SNGG's Petition.

### **CMN's Petition**

52. CMN seeks reconsideration of paragraphs 97, and 142 through 152. (CMN's Petition at 1.)

53. CMN argues that the Commission's decision to allow recovery of NDPP OMAG expenses by way of a statewide rate is not based on substantial evidence and is unlawful. (*Id.*) CMN additionally argues that it is unlawful for the Commission to charge Distribution Only

Service (“DOS”) customers transmission costs that are specifically allocated to NPC and SPPC bundled service customers. (*Id.*)

### **Commission Discussion and Findings**

54. The Commission grants CMN’s Petition because it has met the procedural threshold standard for reconsideration under NAC 703.801(1). Accordingly, the Commission reexamines the record and its decision, addressing the issues raised in CMN’s Petition.

#### **B. Cost Allocation and Statewide Rate for OMAG Costs**

##### **Wynn and SEA’s Position**

55. Wynn and SEA state that, contrary to the Commission’s conclusions otherwise, substantial evidence exists supporting Wynn and SEA’s proposed allocation method to allocate NDPP OMAG costs in accordance with the level of direct and indirect benefits received by customers. (Wynn and SEA’s Petition at 4.) Wynn and SEA state that substantial evidence does not exist to support continuation of a statewide NDPP OMAG rate. (*Id.*) Therefore, Wynn and SEA state that the Commission should grant its Petition and modify its August 24, 2022, Order to allocate NDPP OMAG costs based on the direct and indirect benefits accruing to customers. (*Id.*)

56. Wynn and SEA provide that in NV Energy’s 2020 NDPP Cost Recovery proceeding, several parties, including itself, argued that the law required NDPP OMAG costs to be allocated directly to the utility incurring the cost, and that the Commission declined to adopt that proposal in the current cost recovery proceeding. (*Id.* at 4-5.) Wynn and SEA state that in response to the Commission’s indication of its desire for parties to consider the “costs and benefits” of NDPP expenditures in proposing cost allocation methods, Wynn and SEA set aside its legal arguments in support of rates fully allocated by jurisdiction and proposing an alternative

