

**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

allocation method for NDPP OMAG costs. (*Id.* at 5.) Wynn and SEA state that its proposed OMAG cost allocation method considers the costs and benefits of the NDPP program, while balancing applicable rules and regulations in a manner that ensures that rates are just and reasonable. (*Id.*)

57. Wynn and SEA provide that its witness and other intervenor witnesses provided evidence and analysis that clearly weighs in favor of departing from Staff's hybrid cost allocation method based on both calculations of impacts and comparative benefits. (*Id.*) Wynn and SEA state that testimony in this proceeding highlights that the majority of the NDPP OMAG costs are incurred in SPPC's service territory, while most of the costs are borne by NPC customers based on the facts and figures provided by NV Energy. (*Id.*) Wynn and SEA explain that its witness calculated that the cost in SPPC's service territory coupled with the statewide allocation of OMAG costs "results in 67 percent of the NDPP operating expenses being allocated to NPC customers, and 33 percent of the NDPP operating expenses being allocated to SPPC's customers" despite the fact that 88.9 percent of the funds are being spent in SPPC's territory. (*Id.*)

58. Wynn and SEA provide that the evidence in this proceeding demonstrates the mismatch between costs incurred, and the approved rate recovery in Docket No. 21-03004, results in a substantial subsidy favoring SPPC customers over NPC customers. (*Id.* 5-6.) Wynn and SEA states that its witness, SNGG's witness, and BCP's witness calculated the subsidy to be \$22,880,790, \$31 million, and \$30.9 million, respectively, while CMN argued that "the magnitude of the proposed NDPP OMAG rate and associated inter-utility subsidy warrants reassessment by the Commission of the proper allocation and design of the NDPP rate." (*Id.*)



59. Wynn and SEA argue that the record demonstrates that the benefits received by customers are not commensurate with the costs incurred on a jurisdiction-by-jurisdiction basis and points out that its witness provided specific examples of the difference between benefits to ratepayers in forested areas with substantially higher property values compared to benefits to ratepayers in apartments in Las Vegas with substantially lower property values. (*Id.* at 6.)

60. Wynn and SEA state that most, if not all benefits from NDPP OMAG expenditures are appropriately considered direct benefits and should be allocated by service territory. (*Id.* at 6.) Wynn and SEA opine that the record demonstrates that a vast majority of OMAG costs are associated with the distribution system, which is “insular and peculiar to each utility separately,” and benefits such as avoidance of contingent loss to property owners, their utilities and municipalities, are direct benefits realized by the customers located in the fuel basin where the expenditures are made. (*Id.*) Wynn and SEA provide state that NV Energy’s witness acknowledged that for at least some NDPP OMAG costs, like weather stations located in SPPC’s territory, there is essentially no direct benefit to NPC customers. (*Id.*)

61. Wynn and SEA argue that social benefits are difficult but not impossible to quantify, and impact customers differently between the two service territories. (*Id.* at 7.) Wynn and SEA explain that the testimony in this case makes clear that the Commission could quantify both the direct and indirect benefits received by the customers in each service territory and use that as a basis for cost allocation. (*Id.*) Wynn and SEA state that its witness provided a calculation resulting in a maximum of 25 percent of NDPP related OMAG to be socialized and no less than 75 percent directly assigned to the utility that incurred the cost. (*Id.*) Additionally, Wynn and SEA state that they provided testimony at hearing of a range of alternatives for the Commission to consider. (*Id.*)

62. Wynn and SEA provide that NV Energy failed to provide substantive rebuttal to the arguments raised by the intervenors regarding inequitable rate treatment and subsidy from NPC customers to SPPC customers, and instead just reiterated policy arguments from prior cases. (*Id.*) Wynn and SEA therefore assert that NV Energy has failed to carry its burden that Staff's "hybrid" methodology results in fair, just and reasonable rates. (*Id.* at 7.)

63. Wynn and SEA states that there is substantial evidence in the record to support its cost allocation method; therefore, Wynn and SEA request that the Commission reconsider and modify its Order to include a determination that NDPP OMAG costs should be allocated based on the level of direct and indirect benefits received by customers in a manner consistent with its testimony. (*Id.* at 7-8.)

64. Moreover, Wynn and SEA argue that it's cost allocation method clearly considers and accounts for statewide NDPP benefits, and that Staff's hybrid approach fails to quantify or adequately compare the relative benefits of the proposed NDPP program and projects because it assumes that 100 percent of the benefits associated with OMAG costs are experienced equally, which is not based on any empirical analysis. (*Id.* at 8.) Wynn and SEA state that it appears the Commission acknowledges this conclusion in its Order when it directed NV Energy (in paragraph 151 and ordered in ordering paragraph 4) 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." (*Id.*) Wynn and SEA provide that, given the level of subsidy from NPC customers to SPPC customers for NDPP-related OMAG costs, allocating costs based on the assumption that 100 percent of benefits are social benefits does not result in just and reasonable rates. (*Id.*)

65. Wynn and SEA recommend states that through its witness' quantitative analysis, Wynn and SEA presented substantial evidence quantifying and adequately comparing the relative benefits of the NDPP programs and projects by service territory. (*Id.* at 8-9.) Therefore, Wynn and SEA recommend that the Commission reconsider its Order, clarify that quantitative analysis or adequate comparisons of costs and benefits is required to support NDPP rate design, and adopt Wynn and SEA's cost allocation method. (*Id.* at 8-9.)

### **SNGG's Position**

66. SNGG argues the Commission's decision to impose the hybrid methodology for allocating NDPP costs was not supported by substantial evidence and resulted in improper burden shifting and that NV Energy failed to sustain its burden of proof that its proposed rates are just, reasonable, and not unduly discriminatory. (SNGG's Petition at 3.) SNGG provides that while the Commission concluded that NDPP costs should be allocated on the basis of the flow of benefits and identified the issue of deciphering the benefits, the Commission nonetheless agreed with NV Energy (at paragraph 149 of the Order) "that most Nevadans will benefit from the NDPP because natural disasters are wide-reaching events" despite no evidence offered by NV Energy supporting such a proposition. (*Id.*) SNGG claims that the Commission attempted to resolve the inadequacies of the factual record, but that such attempts do not satisfy the law nor the evidentiary standard. (*Id.* at 4.) Instead, SNGG states that the Commission improperly shifted the burden to interveners to demonstrate the unjustness and unreasonableness of NV Energy's proposal. (*Id.*)

67. SNGG states that despite having concluded that the record did not contain an adequate analysis of benefits, the Commission allocated NDPP OMAG costs to SPPC and NPC customers equally, resulting in approximately two-thirds of those costs being allocated to

customers of NPC. (*Id.* at 4.) SNGG opines that the Commission justified its decision by concluding (in paragraph 148 of the Order) that the hybrid methodology “treated capital projects as being caused by the customers within the service territory where the capital projects were located” while at the same time allocating OMAG costs in recognition of “the Legislature’s policy supporting accelerated natural disaster prevention.” (*Id.*) SNGG state that despite having determined that NV Energy must properly support future applications with an analysis of the flow of benefits of NDPP spending, the Commission disregarded NV Energy’s failure to do so in this instance by citing an entirely different basis for allocating OMAG costs – state policy. (*Id.* 4-5.)

68. SNGG argue that the Commission articulated an inconsistent view of how NDPP spending should be recovered because in this case it can be recovered on the basis of policy, but in future cases it should be recovered on the basis of the flow of specific benefits. (*Id.* at 5.) SNGG further argues that recovery based on policy is not consistent with the law as nothing in SB 329 or existing utility framework supports this approach. (*Id.*) SNGG states that the Commission’s attempt to justify its decision was not based on substantial evidence. (*Id.*)

69. SNGG provides that the Commission supported its conclusion that there are societal benefits to NDPP spending by indicating that NV Energy is “unique” in that SPPC and NPC are linked via the One Nevada Transmission Line and engage in joint planning and that the consequences of issues in one of NV Energy’s service territory could affect its other service territory (*Id.* at 5-6.) Presuming that there was no evidence to supports the Commission’s reasoning, SNGG asserts that the Commission did not cite to any record evidence to support the consequences identified in the Order. (*Id.* at 6.) Moreover, SNGG states that not only was there no evidentiary support for the conclusions drawn by the Commission, but NV Energy’s own

witness specifically undermined the notion that whatever societal benefits the Commission believes exist could reasonably be allocated to SPPC and NPC ratepayers equally. (*Id.*)

70. SNGG further argues that the Commission improperly shifted the burden to interveners to prove the unjustness and unreasonableness of NV Energy's proposal. (*Id.* at 6-7.) SNGG opines that while the Commission acknowledged that some parties provided testimony that there are no statewide benefits from NDPP spending, the Commission misconstrued the burden in this case when it found that "those parties fail[ed] to present substantial evidence quantifying or adequately comparing the relative benefits of the proposed NDPP programs and projects." (*Id.* at 7.) SNGG concludes that tasking interveners with presenting substantial evidence to support their position is improper. (*Id.*)

71. Nonetheless, SNGG states that multiple interveners provided evidence of the absence of benefits from certain NDPP spending including SNGG's witness that points out that a vast majority of costs incurred in SPPC's service territory are improvements to its distribution system and is inconsistent with principles of cost-based rates, the used and useful principle, and the just and reasonable requirement. (*Id.* at 7.) SNGG notes that BCP's witness opined that NV Energy's proposed cost-shift of \$30.9 million is inconsistent with customer cost responsibility because NPC's customers did not cause any of the \$30 million dollars of NDPP costs that were incurred for SPPC's distribution system and SPPC's transmission system in 2021 and 2022. (*Id.*) Likewise, SNGG notes that CMN's witness identified in testimony that "the largest majority of NDPP costs being incurred by NV Energy are distribution-related; the balance is transmission-related, and if recovered in the normal course of ratemaking, these costs would be allocated to customer classes on basis of cost causation principles." (*Id.* at 8.) SNGG also adds that CMN's witnesses stated that "further, the rate design of the charge would comport, to the extent

practicable, with the nature of the costs being recovered. However, none of these fundamental ratemaking practices are followed in NDPP cost recovery.” (*Id.* at 8.)

72. SNGG states that not only did the Commission improperly shift the burden to interveners to prove the unreasonableness of NV Energy’s proposal, but it also improperly discounted the evidence that was presented. (*Id.*) SNGG states that the evidence yields only one conclusion: SPPC’s NDPP OMAG expenses are caused by SPPC customers and thus must be recovered from those customers to comport with lawful ratemaking practices. (*Id.*)

73. Regarding its challenge to a statewide rate to recover NDPP costs, SNGG states that the use of a single rate to recover NDPP OMAG costs from ratepayers by shifting the substantial majority of those costs to NPC ratepayers without regard to the service territory in which the costs were incurred violates Nevada law. (*Id.* at 9.) SNGG states that a fundamental principle of cost recovery in Nevada is that costs are assigned to the service territory in which they are incurred. (*Id.*) SNGG asserts that Nevada’s comprehensive ratemaking scheme prohibits the Commission from assigning costs incurred by one utility to the other to recover such costs by way of a single statewide rate. (*Id.* at 10)

74. SNGG argues that the Commission’s Order violates NRS 704.7983 as the statute does not provide authorization to impose a hybrid methodology, and the use of the statewide rate to recover NDPP OMAG costs violates the plain language of NRS 704.7983(6). (*Id.* at 11.) SNGG provides that the plain language of NRS 704.7983 requires that NDPP costs be recovered on a utility by utility basis. (*Id.*)

75. SNGG explains that NRS 704.7983 requires “electric utilities” to submit a natural disaster plan, and it further requires that such plans “[i]dentify areas within the service territory of the electric utility that are subject to a heightened threat of a fire or other natural disaster.” (*Id.*

at 11.) SNGG opines that by requiring plans to identify areas within the service territory of the utility filing the plan that are subject to a heightened threats of natural disasters, the Legislature clearly articulated a utility by utility planning standard and not one that supports shifting one utility's costs to another. (*Id.*) SNGG concludes that both SPPC and NPC must file natural disaster plans even if they do so in a joint filing. (*Id.*)

76. SNGG states that the Legislature intended utility specific planning and cost recovery which is evidenced by other elements in NRS 704.7983. (*Id.* at 11-12.) Moreover, SNGG states that under NRS 704.7983(7), the Legislature authorized cooperatives to recover their NDPP expenses from their customers, which SNGG opines is further evidence that it intended for SPPC and NPC to recover their expenses from their respective customers. (*Id.* at 12.)

77. SNGG provides that while SPPC and NPC filed a joint plan, the authority to do so was not granted by the Legislature, but is merely a feature of the Commission's NDPP regulation, and therefore, the fact that the utilities filed jointly does not change the character of the expense because they are separate jurisdictional utilities. (*Id.* at 12-13.)

78. SNGG provides that as a result of the Commission's Order, the costs recorded by each utility in their regulatory assets, specifically the costs in the SPPC regulatory asset, will be recovered from NPC ratepayers, and the revenue collected from NPC ratepayers will then be transferred to SPPC by way of an intercompany transfer. (*Id.* at 13.) SNGG explains that because NPC and SPPC filed an NDPP that reflects the needs of each individual utility, the plain language of NRS 704.7983(6) requires that each utility collect its NDPP costs from its customers, and the Commission's attempt to support its use of statewide rate to collect NDPP OMAG costs is entirely inconsistent with the plain meaning of the statute. (*Id.*)

79. SNGG argues that nothing in NRS 704.7983 empowers the Commission to use a cost recovery mechanism on the basis of a policy interest where the mechanism directly contradicts the foundational cost recovery mechanism in Nevada because it conflicts with the entire ratemaking scheme. (*Id.* at 14.)

80. SNGG argues that by shifting SPPC costs to NPC customers, imposing a statewide rate for NDPP OMAG violates the just and reasonable rule under NRS. 704.040 and the used and useful rule under NRS 704.440. (*Id.* at 14-15.) SNGG further argues that the statewide rate is an unjustly discriminatory and preferential rate in favor of SPPC customers in violation of NRS 704.120. (*Id.*)

81. SNGG continues to argue that NV Energy's Application is improper because it contains a request for the imposition of a rate that must be made in a general rate case. (*Id.* at 15.) Specifically, SNGG argues that NV Energy's proposal results in a change in rates that results in more than a \$15,000 increase in annual gross operating revenue of each utility and thus triggers the general rate case requirement under NRS 704.110. (*Id.*) SNGG asserts that, consequently, the Commission's decision to establish the NDPP rate here is unlawful. (*Id.*)

### **CMN's Position**

82. CMN argues that the Commission's imposition of a statewide OMAG NDPP rate is unlawful, unjust and unreasonable, and based on erroneous conclusions of law and fact. (CMN Petition at 2.) CMN also argues that, in the Order, the Commission unlawfully shifts NV Energy's burden onto the intervenors regarding the statewide rate design. (*Id.*) CMN asserts that NV Energy provided no evidence to demonstrate the prudence of NPC accepting and paying for OMAG incurred in SPPC's service territory. (*Id.* at 3.) CMN explains that NV Energy's only supportive testimony was on rebuttal. (*Id.*) Even then, CMN opines that NV



Energy simply made arguments that SB 329 requires the Commission to impose a statewide rate and made broad assertions that SB 329 represents public policy implemented to protect all Nevadans. (*Id.*) CMN argues that the Commission recognized NV Energy's lack of evidence when it directed NV Energy to provide detailed analysis and supporting testimony in its next NDPP filing. (*Id.* at 4.) Moreover, CMN asserts that there is a lack of substantial evidence to support NPC ratepayers paying \$30 million for OMAG expenditures on SPPC's system. (*Id.*)

83. CMN asserts that the intervenors provided substantial evidence that the statewide rate is unreasonable and cites to CMN, SNGG, Wynn and SEA and BCP's testimony. (*Id.* at 5-8.)

84. CMN states that the expert testimony of the intervenors discussed either (1) the appropriate way in which to allocate NDPP costs between NPC and SPPC or (2) important considerations the Commission should consider when doing the same. (*Id.* at 9.) CMN states that while the initial proposed draft order considered this evidence in the record, the Order improperly fails to substantively consider this testimony – merely providing a summary. (*Id.*)

85. CMN states that the original draft order found and the Commission's final order (in paragraph 149) recognizes that SPPC ratepayers benefit more from the NDPP spending in SPPC's service territory than NPC's southern urban ratepayers in apartments in Las Vegas; thus acknowledging that 100 percent of the benefits from the NDPP operating expenses are not social in nature. (*Id.*)

86. CMN acknowledges that while the Commission, through the Order, now notifies parties it would prefer that testimony in future NDPP cases focus on quantifying ratepayer benefit of NDPP expenditures, CMN asserts that “the record before the Commission does not

support approving NPC's expenditure of more than \$30 million on OMAG incurred in SPPC's service territory as occurs in the statewide OMAG rate." (*Id.* at 9-10.) In considering the proposed draft order and comments made by the Commission during the Commission's agenda, CMN argues that the record before the Commission requires, at a minimum, to directly assign at least 50 percent of NDPP OMAG costs in this case to SPPC until NPC and SPPC support an alternative allocation. (*Id.* at 10.)

87. CMN states that the Commission should reconsider the legal arguments raised by CMN and other intervenors and conclude that SB 329 and other public utility statutes and principles preclude imposing a statewide rate to recover NDPP expenditures and require the utilities to request recovery in a general rate case. (*Id.* at 11.)

#### **NV Energy's Answer**

88. NV Energy asserts that the NDPP cost allocation is supported by the record and substantial evidence. (NV Energy's Answer at 2.)

89. NV Energy explains that in paragraphs 148, 149, 150, and 151 of the Order, the Commission adopted NV Energy's request to use Staff's hybrid cost allocation methodology that was presented and adopted in the 2021 NDPP regulatory asset recovery case, Docket No. 21-03004, which is what NV Energy proposed in this Docket. (*Id.*) NV Energy states that the Commission's decision to maintain Staff's hybrid approach was based on the whole record and was clearly supported by the language of SB 329, the regulations that are currently in existence and directives from the prior dockets. (*Id.* at 4.)

90. NV Energy states that SB 329 allows for a deviation from traditional rulemaking principles and specifically permits a single rate like the single rate for OMAG in Staff's hybrid methodology. (*Id.* at 5.) Furthermore, NV Energy cites to a letter from Senator

Chris Brooks, Senator Melanie Scheible, and Assemblywoman Daniel Monroe-Moreno, that states the intent for a single rate for the entire state. (*Id.* at 5-6.)

**BCP's Answer**

91. BCP agrees with CMN and SNGG that paragraphs 142 to 147 of the Commission's Order fail to address the legal arguments made by BCP, CMN, and SNGG that a statewide NDPP rate for OMAG costs is unlawful and ad hoc rulemaking. (BCP's Intervenor's Answer at 2.)

92. BCP explains that the Order does not cite to the codified NDPP statute, NRS 704.7983, or to the definition of "electric utility" in NRS 704.7571, anywhere in paragraphs 142 to 147 to support the Commission's legal conclusion that it is permissible under Nevada law to shift \$30.2 million dollars of NDPP OMAG costs incurred in SPPC's service territory onto NPC's customers. (*Id.*) BCP asserts that these paragraphs need to be modified to include the Commission's conclusions of law regarding the appropriate definition of electric utility in NRS 704.7571 that is applicable to NRS 704.7983 as required by NRS 233B.125. (*Id.*)

93. BCP states that paragraphs 142 to 147 of the Order are incomplete as they fail to explain how a statewide rate for NDPP OMAG costs is consistent with NRS 704.040, 704.065, and 704.440. (*Id.* at 3.)

94. BCP explains that the term "rate" is used in NRS 704.7983(6) with respect to cost recovery for the NDPP. (*Id.* at 3.) BCP states that this term is defined in NRS 704.065 as a charge imposed by a public utility for a service [OMAG] performed or product [distribution and transmission lines] furnished by the public utility. (*Id.*) BCP supports the gaming parties' arguments and states that the Order needs to provide a legal explanation that justifies NPC's

customers paying for \$30.2 million dollars for service performed and products furnished to SPPC's customers given the definition of rate in NRS 704.065. (*Id.*)

95. BCP states that NRS 704.440 requires that utility property be used and useful. (*Id.*) BCP asserts that it is logically inconsistent to argue that the used and useful principle only applies to capital investments, but not to the expenses incurred to operate and maintain those capital investments. (*Id.* at 4.)

96. BCP states that the Order fails to explain how a statewide rate is not ad hoc rulemaking. (*Id.* at 4.) BCP asserts that NPC and SPPC are separate utilities, that in Section 7(1) of LCP File No. R085-19, electric utility was defined as used in NRS 704.7571(1)(1), and that the Commission is bound to use that definition. (*Id.*)

97. BCP states that Section 13 of the same regulation provides for the accounting and clearing (cost recovery) of the NDPP regulatory asset. (*Id.*) BCP asserts that there is no rule in Section 13 of the NDPP regulation that allows SPPC to shift direct costs from its NDPP regulatory asset account onto NPC's customers. (*Id.*) BCP states that in every other instance that has similar language of clearing a deferred debit account, it has been the practice of NPC and SPPC, and the direction of the Commission, that NPC's customers pay a clearing rate to clear their deferred accounts and SPPC's customers pay a clearing rate to clear their deferred accounts. (*Id.*) BCP states that the Commission's Order fails to explain how this cost shifting is permitted. (*Id.* at 4-5.)

98. BCP states that paragraphs 142 to 147 of the Order fail to explain how the legislative directive and public policy in NRS 704.7983 (NDPP) is any different than the legislative directive and public policy in 18 U.S.C. 824a-3 (Qualifying Facilities), NRS 704.7821 (Renewable Portfolio Standard), NRS 704.7827 (Temporary Renewable Energy

Development Program), NRS 704.785 (Energy Efficiency & Conservation Programs), and Chapter 701B of the NRS (Renewable Energy Programs). (*Id.* at 5.) BPC asserts that none of the direct costs in any of these other public policy programs incurred by one Nevada electric utility are shifted to customers of the other Nevada electric utility. (*Id.*)

99. BCP states that, importantly, the renewable portfolio standard found in NRS 704.7801 to NRS 704.7828 does not even use the term “electric utility”, but instead uses the term “provider of electric service” as defined in NRS 704.7808. (*Id.* at 5.) Utilizing an example and opining on the Commission’s reasoning, BCP disagrees with the Commission’s justification of the NDPP rate for OMAG costs. (*Id.*)

100. BCP states that paragraph 142 of the Order erroneously summarizes the purpose of the NDPP by stating that SB 329 requires utilities to take prudent measures to reduce the frequency and intensity of natural disasters. (*Id.* at 6.) BCP states that this claimed purpose is erroneous because NDPP cannot, and was not intended to, reduce the frequency/intensity of natural disasters. (*Id.*)

101. Further, BCP states that paragraph 142 and 143 of the Order also uses the term “rate design” when it is referring to “cost allocation” rather than rate design, which BCP opines are not synonymous. (*Id.* at 6-7.) BCP states that rate design is the setting of prices after costs have been allocated. (*Id.* at 6.)

102. BCP states that the Commission’s finding in paragraph 142 that the “Legislature left the rate design [cost allocation] elements, including the geographic implications, to the Commission” is inconsistent with the legal standard that the Commission has only those powers that are expressly conferred by statute. (*Id.* at 6.) BCP argues that there

is no language in NRS 704.7983 that gives the Commission the power or authority to shift direct NDPP costs from SPPC's regulatory asset account onto NPC's customers. (*Id.*)

103. BCP states that the finding in paragraph 145 that a cost shift from SPPC to NPC's customers is permissible because of the joint dispatch on the ON Line is also incorrect. (*Id.* at 7.) BCP opines that this implication is in direct conflict with the Commission's Order in Docket No. 15-03001, wherein the Commission wanted assurances for NPC's and SPPC's customers that there were no cross subsidies when using joint dispatch for Energy Imbalance Market transactions. (*Id.*)

104. BCP states that paragraph 145 also introduces an inaccurate material fact that is nowhere in the record — that the loss of a generation facility in the Lake Tahoe Basin resulted in a loss of power to NPC's customers. (*Id.* at 8.) BCP explains that the only generating facility in the Lake Tahoe Basin is Liberty Utilities' CalPeco's Kings Beach 12-megawatt diesel generators that produced 10 megawatt-hours of energy in all of 2020. (*Id.*) BCP states that the Order does not contain substantial evidence to explain how the loss of a 12-megawatt standby generating facility in the Lake Tahoe Basin will cause an outage in NPC's service territory. (*Id.*) BCP alleges that paragraph 145 also introduces an inaccurate finding that is nowhere in the record about the loss of transmission lines serving and interconnecting NPC's and SPPC's service territories leading to the loss of power for NPC's customers. (*Id.*)

105. BCP states that Paragraph 146 compares cost recovery of the NDPP to the tax revenues for the Nevada general fund. (*Id.* at 9.) BCP explains that the general fund supported Nevada Division of Forestry is responsible for the Wildland Fire Protection Program enacted in 2013 and the Nevada Division of Emergency Management; Homeland

Security is responsible for the Nevada State Comprehensive Emergency Management Plan.

(*Id.*) BCP states that it is inappropriate to compare cost recovery for the NDPP, which is done through utility rates, to programs which are funded through the general fund for the broader mission of addressing threats that natural disasters pose to the economy and public safety of Nevada as a whole. (*Id.*)

106. BCP states that paragraph 147 states that the Commission may depart from cost-causation standards [principles] when approving rates for public programs because the benefits are widespread. (*Id.*) BCP explains that there is no cost shifting between NPC and SPPC for any of the other public policy programs, and that the Order should be supported by substantial evidence to explain why socialization is permissible for some NDPP costs but not for other NDPP costs or any other public policy program enacted by the Nevada Legislature. (*Id.* at 9-10.)

107. BCP further adds that Paragraph 147 selectively quotes from Bonbright's *Principles of Public Utility Rates*, however, this paragraph fails to recognize Bonbright's criticism of socialized rates found on page 168 of this book. (*Id.* at 10.) BCP recommends that the Order should be amended to clarify which of Bonbright's principles the Commission is relying upon. (*Id.*)

108. BCP states that paragraphs 148 to 151 of the Order ignore the only testimony in the record that attempted to quantify direct and social benefits as it did not cite to any of the estimates provided by Wynn and SEA's witness. (*Id.* at 10-11.) BCP states that as argued by CMN, SNGG, and Wynn and SEA, the Commission should reconsider paragraphs 148 to 151 to recognize that it is clearly unreasonable for the Commission to disregard the only testimony in the record that attempted to quantify the direct and social benefits of the NDPP spending.

(*Id.* at 11.) BCP argues that it is inappropriate to assume that 100 percent of the NDPP OMAG costs are social in nature as argued by Wynn and SEA in their Petition. (*Id.*) BCP recommends that, at a minimum, the Commission should modify paragraphs 148 to 151 to reflect that only 50 percent of the OMAG costs can be considered social in nature based on the evidence in the record and as stated in CMN's Petition. (*Id.*)

### **Staff's Answer**

109. Staff states that the Commission's decision to adopt NV Energy's proposal to continue to use the cost allocation methodology adopted last year is based on the substantial evidence in the record and that the Commission did not improperly shift the burden of proof to the intervenors. (Staff's SNGG and CMN Answer at 2.)

110. Regarding the challenge to the Commission's decision to use the hybrid methodology proposed by NV Energy and supported by Staff in this Docket, Staff disagrees with Wynn and SEA's claim that their own methodology is supported by substantial evidence. (Staff's Wynn and SEA Answer at 2.) Moreover, Staff states that Wynn and SEA misconstrue the Order and place too much weight on too little evidence. (*Id.*)

111. Staff explains that the Commission determined that in passing SB 329, the Legislature made a policy determination that natural disasters affect all of Nevada. (*Id.*) Therefore, Staff explains that, consistent with the policy expressed by the Legislature in passing SB 329, the Commission determined that certain costs should be spread to all of NV Energy's customers. (*Id.*) Staff explains that the Commission identified in the Order the issue of determining how to decipher those benefits. (*Id.*) However, Staff also explains that the Commission found there was no adequate evidence on the record to determine how to decipher those benefits. (*Id.*)



112. Staff states that while Wynn and SEA may argue that they provided ample evidence to support a different cost allocation methodology, Staff concludes that they did not. (*Id.*) Notably, Staff states that despite Wynn and SEA's witness addressing the benefits between NPC and SPPC, he admits that there are no measurable benefits of SPPC costs to the NPC system. (*Id.* at 2-3.) Staff states that, rather, this witness merely provided calculations showing costs differences of the NDPP program in the NPC and SPPC territories. (*Id.* at 3.) Likewise, despite stating there are direct and social benefits of the NDPP, this witness failed to quantify them. (*Id.*) Staff notes that the Commission's decision regarding the allocation methodology reflects the absence of an analysis adequately quantifying the social benefits to the NDPP program. (*Id.*) Notably, Staff characterizes Wynn and SEA's analysis as "bare-bones" because their witness' analysis contains no quantification of benefits. (*Id.*)

113. Accordingly, Staff agrees with the Commission's use of the hybrid approach proposed by NV Energy and supported by Staff because it is the only methodology on the record that accounts for and recognizes the statewide benefits of the NDPP program. (*Id.*)

114. Moreover, Staff recommends that the Commission reaffirm its Order because it is not unlawful, unreasonable, or based on erroneous conclusions of law or mistaken facts because the cost allocation methodology adopted from last year is based on the substantial evidence in the record. (Staff's Answer to SNGG and CMN at 2.) Staff agrees with CMN and SNGG that the Commission's Order must be based on "substantial evidence" which a "reasonable mind might accept as adequate to support a conclusion." (*Id.* at 3.) However, Staff asserts that, contrary to CMN and SNGG's arguments, the Order is based on the substantial evidence in the record. (*Id.*) Staff provides that the Commission first determined (in paragraph 145 of the Order) that "[t]he Legislature, in passing SB 329, embraced a public

policy for the state that the electric utility should engage in planning to mitigate the potential for natural disasters.” (*Id.*) Staff asserts that it is not disputed that the Legislature passed SB 329 to mitigate natural disasters, and that while this finding is a legal conclusion based on controlling law, in applying the substantial evidence standard, a reasonable mind could certainly conclude that controlling law adequately supports the Commission’s determination. (*Id.* at 3-4.)

115. Staff provides that, having reiterated that social benefits exist and determining that the record contains no analysis quantifying those social benefits, the Commission made the only determination it could, finding that more information is needed and accordingly directing NV Energy to provide that information in a future filing so that the Commission can make a more informed decision. (*Id.* at 6.) Staff states that this decision is ultimately based on the substantial evidence in the record, and that CMN and SNGG would have the Commission believe it is unlawful for it to direct NV Energy to provide more information so the Commission can perform a better analysis in the future. (*Id.*) Staff state that, however, a reasonable mind could certainly conclude that Wynn and SEA and CMN’s recommendation analyses are not adequate to support their adoption and, as the Commission determined, more information is needed. (*Id.* at 6-7.) Staff concludes that the Commission’s decision was based on the substantial evidence on the record and is not unlawful, and rejects arguments that the Commission shifted the burden of proof to intervenors when it chose NV Energy’s proposed cost allocation methodology over the intervenors’ alternative proposals. (*Id.* at 7.)

116. Regarding SNGG’s and CMN’s arguments that the Order is unlawful, Staff states that these arguments are merely a regurgitation of arguments the Commission heard and clearly rejected in the past dockets. (*Id.* at 8.) Staff provides that both SNGG and CMN again

raise arguments concerning the legality of imposing a statewide rate. (*Id.*) Staff maintains that these are the same arguments that the Commission heard and rejected in Docket Nos. 21-03004 and 21-02032. (*Id.* at 8-9.) Regarding the recovery of NDPP expenses outside of a rate case, Staff explains that NV Energy filed its joint application to recover these costs pursuant to Section 12 of LCB File No. R085-19, a lawfully adopted regulation of the Commission. (*Id.* at 9.)

117. Regarding the notion that the statewide recovery of NDPP costs violates the just and reasonable and used and useful doctrines, Staff states that because the NDPP has statewide benefits, it is just and reasonable that NPC and SPPC customers pay for OMAG costs. (*Id.*) Staff provides that NV Energy testified extensively on the benefits that NDPP expenses in one area can have on another area of the State given the risks of extensive wildfire damage. (*Id.*)

118. Moreover, Staff rebuts SNGG's argument that a statewide rate violates NRS 704.7983(6) on the fact that NPC and SPPC are different utilities because this interpretation ignores the plain language of the statute as NRS 704.7983 defines "electric utility" as defined in NRS 704.7571, which defines electric utility to include holding companies, such as NV Energy. (*Id.*) Staff states that if the Legislature disagreed with this interpretation, it could have changed the definition, but it has not. (*Id.*)

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

119. Wynn and SEA provide that CMN and SNGG reach the same conclusions as Wynn and SEA regarding the NDPP OMAG expenses and that both of their petitions should be granted. (Wynn and SEA's Answer at 2.) Wynn and SEA state that the imposition of a statewide rate for OMAG expenses is inconsistent with and unsupported by substantial

evidence in the record, and that there is ample evidence in the record to support a decision that a statewide rate on OMAG costs is not just and reasonable. (*Id.*) Wynn and SEA provide that CMN and SNGG both conclude that the Commission's Order inappropriately shifts the burden of proof on proper cost allocation to the intervenors, and that the Commission should not shift this burden. (*Id.*) Wynn and SEA argue that the Commission should determine that there is not substantial evidence in the record that supports the decision to impose a statewide rate for OMAG costs. (*Id.*) Wynn and SEA state that the substantial evidence offered by intervenors regarding allocation of costs relative to the level of benefits received should be evaluated to deliver customers a more rational and balanced allocation of NDPP costs, as first contemplated by the proposed draft order. (*Id.*) Wynn and SEA assert that CMN's and SNGG's Petitions should be granted and that, at a minimum, paragraphs 148 to 151 of the Order be reconsidered. (*Id.*)

### **Commission Discussion and Findings**

120. The Commission reaffirms its finding that OMAG costs shall be socialized based on the evidence presented and the Commission's duty to set just and reasonable rates for all ratepayers.

121. The Commission assessed the legal arguments regarding statutory interpretation and legislative intent presented by all parties and concluded that the NDPP is a statewide public policy program enacted by the Nevada State Legislature and intended to spur investments to mitigate the risk of natural disasters to the benefit of all Nevadans. Moreover, the Commission found that all of NV Energy's customers, even customers who are not located where natural disasters may occur, experience a benefit from the NDPP's reduction of the risk of natural disasters. Accordingly, the Commission found that it was just and

reasonable to socialize some of the costs of the NDPP, and it therefore ordered a continuation of the existing NDPP cost allocation methodology that spreads OMAG costs equally among NV Energy's customers statewide and assigns 100 percent of capital project costs to the customers in the service territories where the capital projects are located. The Commission found that the existing approach – based on the available evidence – is still the best way to assign and recover costs in a manner that recognizes the statewide nature of the legislative policy behind the NDPP and the existence of a statewide benefit of the NDPP to all customers, while also attempting to recover more of the costs of the program from the customers who benefit from it the most.

122. The rate design resulting from the existing cost allocation methodology is *prima facie* just and reasonable pursuant to NRS 704.130<sup>3</sup>, and the Commission found no reason to deviate from that rate design, especially given the lack of evidence supporting alternative proposals. The parties who now challenge the Commission's decision argued that the Commission should adopt a benefit-based allocation of costs, yet, with the exception of Wynn and SEA, offered no testimony acknowledging the existence of any statewide benefit and made no attempt to quantify the relative benefits of the NDPP to customers in different service territories.<sup>4</sup> The petitioning intervenors advocated for a benefits-based allocation of costs and asked the Commission to assume that there are no statewide benefits associated with the NDPP's reduction of the risk of natural disasters; however, there is substantial evidence

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<sup>3</sup> 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."

<sup>4</sup> Wynn and SEA offered testimony suggesting that social benefits possibly exist that warrant up to 25 percent of NDPP costs being socialized, but they provided no analysis to support the 25-percent figure. (Ex. 400 at 27.)

on the record contradicting such an assumption and establishing the existence of at least *some* statewide benefit.<sup>5</sup> Rather than ignoring the evidence indicating that NPC customers benefit from expenditures that mitigate the risk of wildfires in SPPC's service territory, the Commission selected a cost allocation and rate design that balances the finding that there is a statewide benefit with the finding that there are obvious differences among SPPC's and NPC's service territories in terms of the type and flow of benefits.

123. Notwithstanding the sparse analysis of comparative benefits contained in the Application, NV Energy's cost allocation and rate design recommendations are supported by the fact that they continue an existing methodology presumed to be just and reasonable pursuant to Nevada law. Further, NV Energy presented evidence establishing that all NPC customers receive at least some benefit from NDPP investments that occur in SPPC's service territory. Similarly, the intervenors' testimony established that some individual SPPC customers receive a significant benefit from the NDPP investments in SPPC's service territory. No party, however, presented evidence quantifying relative benefits that the Commission could rely upon in adopting a true and accurate, benefit-based cost allocation that accounts for at least some benefit to NPC customers from NDPP expenditures in SPPC's service territory. The substantial evidence, therefore, supports the continued use of the existing cost allocation and rate design, which results in a just, reasonable, and balanced outcome consistent with the Commission's findings of fact.

124. The fact that intervenors failed to provide evidence necessary for the Commission to adopt their proposed cost allocations does not amount to a "burden shift." NAC 703.2231 provides that the applicant in a rate-setting proceeding must "sustain the

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<sup>5</sup> Ex. 117 at 9, 12, 17; Tr. at 30-32, 459, 461-462.

burden of proof of establishing that its proposed changes are just and reasonable and not unduly discriminatory or preferential.” With regard to cost allocation in this case, NV Energy did not propose any changes; instead, it proposed the continued use of the existing cost allocation methodology. But even if NV Energy had failed to sustain its burden to support its proposed cost allocation, such a scenario would not simply result in the Commission adopting a different party’s unsubstantiated proposal. The Commission has an independent duty to ensure just and reasonable rates, and “[i]f neither [the intervenor’s] recommendation nor the utility’s recommendation is supported by the evidence, it would be error for the [Commission] to uncritically adopt either one.”<sup>6</sup> Here, the issue is not *whether* a utility should be entitled to recover a cost; rather, the issue is *from whom* the utility should recover the cost. Generally, for questions of whether a utility should recover a cost, it is enough for intervening parties to simply poke holes in the applicant’s case; the utility’s failure to demonstrate that it is entitled to recovery means that the intervenor will achieve its preferred outcome of the utility not recovering the cost. However, when determining which customers will pay for something, the Commission must ensure that no customers are unjustly or unreasonably assigned costs, so any cost allocation decision that the Commission makes must be supported by affirmative, substantial evidence. Thus, an intervening party with a cost allocation recommendation should provide adequate evidentiary support to ensure that the Commission can actually adopt the recommendation.

125. Notably, the hybrid cost allocation methodology adopted in the Commission’s Order results in only recovering a portion of NDPP costs through a statewide rate—43 percent of the NDPP budget is dedicated to capital projects for which the costs will be recovered

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<sup>6</sup> *Sw. Gas Corp. v. Pub. Utilities Comm’n of Nevada*, 504 P.3d 503, 512 (2022).

exclusively from customers within the service territories where the investments occurred. Therefore, based on the approved budget amounts, the cost allocation in the Commission's order would result in SPPC's customers paying for a higher percentage of the total costs of the NDPP compared to NPC's customers. The Commission carefully considered the evidence and arrived at a balanced and equitable outcome. Indeed, "the total effect of the rate order cannot be said to be unjust or unreasonable"<sup>7</sup> because it appropriately spreads costs to reflect shared benefits and protect against rate shock, while also ensuring that the majority of costs are recovered from within the service territory where the majority of the investments occurred.

126. The Commission's decision to set a rate that provides for recovery of OMAG costs from customers statewide is well within its authority and discretion. The Nevada Supreme Court has stated that the Commission has plenary ratemaking authority and broad discretion to determine the methodology of rate design or how a utility's revenue requirement is distributed among rate classes.<sup>8</sup> In explaining why the Commission is entitled to such deference, the Court noted that ratemaking is unique in that it may "not fall neatly into traditional categories of findings of fact, conclusions of law, or even mixed questions of law and fact. Rather, within broad constitutional limits, '[t]he methods used by a regulatory body in establishing just and reasonable rates of return are generally considered to be outside the scope of judicial inquiry.'"<sup>9</sup> The Court adds that "even where a court can disentangle salient

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<sup>7</sup> *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 602; 64 S.Ct. 281, 288 (1944) (finding that "[i]t is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry... is at an end.")

<sup>8</sup> *Nev. Power Co. v. Eighth Judicial Dist. Court of Nev.*, 120 Nev. 948, 957, 102 P.3d 578, 584 (2004); *Sw. Gas Corp. v. Pub. Utilities Comm'n of Nevada*, 504 P.3d 503, 509 (2022).

<sup>9</sup> *Sw. Gas*, 504 P.3d at 509, citing *Nev. Power Co.*, 91 Nev. at 826, 544 P.2d at 435; *cf. Duquesne Light Co. v. Barasch*, 488 U.S. 299, 313, 109 S.Ct. 609, 102 L.Ed.2d 646 (1989) (stating that a utilities commission is "essentially an administrative arm of the legislature").



facts from the [Commission’s] order, it is ill-equipped to handle the complex financial analysis therein” and ultimately concludes that the Commission “has expertise to adjudicate ratemaking cases that the judiciary—both district courts and [the Supreme Court]—lacks.”<sup>10</sup>

127. Here, with regard to recovery of NDPP costs, the Legislature delegated exclusive authority to the Commission to set the rates charged by the utility, and it vested the Commission with considerable discretion in determining the justness and reasonableness of utility rates, which includes weighing the legislative directive to oversee a viable NDPP program that achieves the goal of mitigating natural disasters in a cost-effective, prudent, and reasonable manner.<sup>11</sup> Because of the level of complexity in setting utility rates, and the number of variables at issue, the Commission is not bound to use any singular formula in determining rates. Ratemaking is a function of the Commission that involves the employment of pragmatic adjustments, and it is the just and reasonable result reached, not the methodology employed, that is controlling in evaluating a ratemaking decision of the Commission.<sup>12</sup>

128. Additionally, the Legislature crafted SB 329 to address the unique situation in which two affiliated electric utilities provide service to the vast majority of customers within a state. The definition of “electric utility” in the applicable NDPP statute conspicuously differs from the definition applicable to other legislatively-mandated programs. NRS 704.7983(8), the relevant NDPP statute, uses the definition of “electric utility” at NRS 704.7571, which includes a holding company. Thus, the statutory language suggests a legislative intent to permit the grouping of SPPC’s and NPC’s customers together for the

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<sup>10</sup> *Id.*, referencing *Duquesne Light*, 488 U.S. at 314, 109 S.Ct. 609 (“The economic judgments required in rate proceedings are often hopelessly complex and do not admit of a single correct result.”).

<sup>11</sup> SB 329 at Sections 1 and 2.

<sup>12</sup> *Hope Nat. Gas* at 320 U.S. at 602, 64 S.Ct. at 288; *Duquesne Light*, 488 U.S. at 316, (finding that there is no single ratemaking theory mandated by the Constitution).

purposes of NDPP cost recovery because the two affiliated utility companies share a holding company: NV Energy, Inc.

129. Even in the absence of a unique definition of “electric utility” that signals a legislative intent for the Commission to consider socializing the costs of the NDPP statewide, the Commission would still possess authority to design rates that spread costs among all of NV Energy’s customers. “The only limit on the [Commission’s] authority to regulate utility rates is the legislative directive that rates charged for services provided by a public utility must be ‘just and reasonable’ and that it is unlawful for a public utility to charge an unjust or unreasonable rate.”<sup>13</sup> The rates resulting from the Commission’s Order are neither unjust nor unreasonable because they achieve a balanced, equitable outcome and are based on substantial evidence regarding the statewide nature of the NDPP program and the existence of shared benefits among all of NV Energy’s customers.

130. Incidentally, it is not unprecedented for the costs of a statewide public policy program in Nevada to be recovered through a statewide utility rate. For example, the Universal Energy Charge (“UEC”) is collected from all retail customers of electricity and natural gas service to fund the State’s energy assistance program,<sup>14</sup> and the Nevada Universal Service Fund (“NUSF”) receives support from telecommunication providers that are charged a uniform rate and pass the costs along to customers receiving telephone service throughout Nevada to maintain the availability of service to rural, insular, and high-cost areas.<sup>15</sup> The mill assessment that funds the Commission and the BCP is another example of a statewide rate being employed to fund a statewide, hard-to-quantify benefit.<sup>16</sup> Rather than attempting to

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<sup>13</sup> *Nev. Power v. Eighth JD*, 120 Nev. at 957, 102 P.3d at 584 (citing NRS 704.040).

<sup>14</sup> NRS 702.160

<sup>15</sup> NRS 704.001

<sup>16</sup> NRS 704.033

allocate the Commission's operational costs to different utility service territories based on the relative extent to which customers in those different locations experience a benefit from the Commission's regulation of utilities, the Commission simply applies a uniform mill assessment rate to all utilities across Nevada.

131. In this docket, faced with a record that does not contain the information necessary to properly allocate NDPP costs based on benefits, the Commission elects to maintain the equitable and reasonable methodology that results in recovery of capital project costs exclusively from within the local service territories and recovery of OMAG costs through a statewide rate to reflect the statewide nature of the policy behind the NDPP.

### **C. DOS Customers**

#### **CMN's Position**

132. CMN alleges that the Order unlawfully permits NV Energy to require DOS customers pay Nevada-jurisdictional transmission charges because CMN asserts that the Commission has no authority to establish Federal Energy Regulatory Commission ("FERC")-allocated rates. (CMN's Petition at 11.) Specifically, CMN states that its expert witness provided uncontroverted testimony that charging a single NDPP rate to DOS customers and bundled customers results in DOS customers paying Nevada-jurisdictional transmission rates, which is unlawful. (*Id.* at 12.) CMN asserts that it is unlawful because, as the Commission stated in Docket Nos. 2002031 and 20-02032, the portion of NDPP transmission costs properly allocated to state-jurisdictional rates are designed, indeed required, to recover from NV Energy's bundled retail customers their proportional share of transmission revenue requirement. (*Id.* 12-13)

133. CMN explains that the current statewide rate requires DOS customers to pay for a portion of Nevada-jurisdictional transmission costs, thereby decreasing NV Energy's bundled retail customers' proportional share of transmission revenue requirement. (*Id.* at 13.) CMN further explains that while DOS customers are subsidizing NV Energy's bundled retail customers now, DOS customers' FERC-allocated transmission costs are being held in a regulatory asset for future recovery from DOS customers. (*Id.*)

#### **NV Energy's Answer**

134. NV Energy asserts that the Commission's decision to deny CMN's request to separate NDPP transmission costs from the calculations of the NDPP rate applicable to DOS customers is lawful. (NV Energy's Answer at 7.)

135. NV Energy states that CMN is attempting to alter its position put forth in the hearing, in violation of NAC 703.801. (*Id.* at 7.) NV states that in its petition, CMN claims that the Commission did not understand its witness' testimony and that its witness provided uncontroverted testimony that charging a single NDPP rate to DOS customers and bundled customers results in DOS customers paying Nevada-jurisdictional transmission rates. (*Id.*) In reviewing pages 31-33 of its witness' (Higgins) testimony, NV Energy states that there is nothing in the testimony that directly or even indirectly makes this claim. (*Id.* at 7-8.) NV Energy states that a petition for reconsideration is not a vehicle to bolster or change a party's arguments that they did not make during the hearing. (*Id.* at 9.)

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

136. Staff states that the Commission's decision that DOS customers pay the same NDPP rates as all customers is not unlawful, and that the Commission is correct to reject CMN's proposal because NV Energy provided rebuttal testimony establishing that CMN is not

currently being double charged for NDPP costs. (Staff's SNGG and CMN Answer at 7-8.) Staff explains that the Commission's findings in paragraph 97 of the Order are not a "failure to comprehend" CMN's position, and that these findings reflect the fact that DOS customers benefit from the program. (*Id.* at 8.) Staff concludes that the Commission's findings are not unlawful and that the Commission should reaffirm paragraph 97. (*Id.*)

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

137. Wynn and SEA provide that CMN is correct that it is unlawful for the Commission to charge DOS customers transmission costs that are specifically allocated to NPC and SPPC bundled service customers. (Wynn and SEA's Answer at 2.) Wynn and SEA argue that NV Energy must recover the portion of NDPP transmission costs properly allocated to state-jurisdictional rates from NV Energy's bundled retail customers. (*Id.* at 3.) Wynn and SEA provide that the Federal Power Act grants FERC exclusive jurisdiction over transmission in interstate commerce. (*Id.*) Wynn and SEA state that unbundled retail transmission rates, which include transmission-specific OMAG costs, are within FERC's transmission jurisdiction, regardless of the fact that retail sales are within the state's jurisdiction. (*Id.*) Wynn and SEA state that the Commission has previously rejected NV Energy's attempts to remedy a potential under-recovery at FERC with an increase to state-jurisdictional rates, and thus should reconsider its Order and do the same again here. (*Id.*) Wynn and SEA state that if NV Energy is under-recovering its NDPP related transmission costs for failure to seek recovery at FERC, its remedy is with FERC, and the Commission should reconsider paragraph 97 of the Order accordingly (*Id.*)

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## **Commission Discussion and Findings**

138. The Commission again reiterates that the NDPP was enacted as a public policy program intended to provide a societal benefit to all of NV Energy's customers, including DOS customers, who surely benefit from transmission expenditures that enhance reliability. The Commission appreciates that DOS customers, though not currently being double-charged, have concerns that they could be in the future. However, the Commission notes that the current FERC rates were set before the NDPP program was implemented, so no NDPP-related transmission costs are included in FERC rates currently being paid by DOS customers. Therefore, the Commission affirms its decision and declines to separate NDPP transmission costs from calculations for the NDPP rate applicable to DOS customers. The Commission expects NV Energy to take appropriate actions in future Commission proceedings and at the FERC to avoid double-recovery of these costs from DOS customers.

### **D. Ad Hoc Rulemaking**

#### **SNGG's Position**

139. SNGG argues that that the Commission's decision to implement a statewide rate to recover NDPP OMAG expenses constitutes ad hoc rulemaking by creating a rule of general applicability that NDPP costs are to be recovered from NPC and SPPC ratepayers equally regardless of where the costs are incurred. (SNGG's Petition at 16.)

#### **NV Energy's Answer**

140. Regarding the allegation of ad hoc rulemaking, NV Energy asserts that SNGG is rearguing what has already been decided in prior dockets and the rulemaking in Docket No. 19-06009, which exempted the NDPP from a general rate review proceeding and set forth the requirements for recovery. (NV Energy's Answer at 6.) NV Energy further asserts that the

Commission in the Order is not issuing a rule, standard, directive or statement of general applicability. (*Id.* at 7.) Rather, NV Energy explains that the Commission addressed NV Energy's request to recover costs associated with the implementation of the approved NDPP and to continue using Staff's hybrid cost allocation methodology. (*Id.*) The Commission also provided further direction for next year's filing. (*Id.*) Therefore, NV Energy concludes that the Commission did not engage in not ad hoc rulemaking. (*Id.* at 7.)

### **BCP's Answer**

141. For the reasons discussed above in its position regarding the Commission's approval of a statewide NDPP rate for OMAG costs, BCP agrees with CMN and SNGG that paragraphs 142 to 147 of the Commission's Order fail to address the legal arguments made by BCP, CMN, and SNGG in their respective legal briefs that a statewide NDPP rate for OMAG costs is unlawful and ad hoc rulemaking. (BCP's Intervenors Answer at 2.)

### **Staff's Answer**

142. Regarding allegation of ad hoc rulemaking, Staff argues that the Order creates no general rule of applicability. (Staff's SNGG and CMN Answer at 9.) Staff states that the Commission's decision only applies to the facts at issue in this case based on the record, that the Commission previously rejected this same argument in Docket No. 21-03004, and that it should reject this same argument again. (*Id.*)

### **Commission Discussion and Findings**

143. The claim that the Commission engaged in ad hoc rulemaking in its decision to implement a statewide rate is without merit. An agency is deemed to engage in ad hoc rulemaking when it adopts a rule of general applicability without undergoing the rulemaking

process codified in NRS Chapter 233B.<sup>17</sup> The Commission did not engage in ad hoc rulemaking here because the Commission did not promulgate, amend, or repeal a rule or standard in its Order.

144. The Commission did not adopt any rule of general applicability when it found, based on the evidentiary record, as a matter of fact, that statewide benefits accrue from the NDPP, justifying a cost allocation that socializes the OMAG costs and leaves the capital costs within the service territories. The determination made in this Docket was constrained to the specific evidentiary record, including NV Energy's Joint Application, applied to NV Energy only, and supported by NV Energy and Staff. Moreover, the Commission did not set the rate for future NDPP dockets. The Order only set a rate that is just and reasonable in this Docket based upon the evidentiary record presented in this Docket. There is no general rule of applicability that NDPP costs are recovered in a specific manner from NPC and SPPC ratepayers. The evidence presented supported the methodology approved in the most recent NDPP cost-recovery proceeding, which was proposed by NV Energy in its Joint Application and supported by Staff's testimony. Similar findings—each based on substantial evidence in two contested cases—does not create a rule of general applicability.

145. Specifically, the Order recognizes that NDPP costs are not set in stone, and thus there is no adoption of a specific ratemaking methodology for cost recovery, cost allocation, or rate design applicable to future applications. In fact, the Commission's directive to NV Energy to provide greater evidentiary support and analysis of benefits for the purpose of cost allocation in its next filing buttresses that the decision in this case did not establish a long-term

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<sup>17</sup> “An agency engages in rulemaking when it promulgates, amends, or repeals “[a]n agency rule, standard, directive or statement of general applicability which effectuates or interprets law or policy, or describes the organization, procedure or practice requirements of any agency.” *Labor Com'r of State of Nevada v. Littlefield*, 123 Nev. 35, 39-40, 153 P.3d 26, 29 (2007) (quoting NRS 233B.038(1)(a)).



methodology for rate design or allocation of NDPP costs. The fact that the Commission reached the same conclusion as in Docket No. 21-03004 for cost allocation does not equate to ad hoc rulemaking. The Commission's decision does not rely on prior decisions but rather relies upon the same statute that set in motion the NDPP, and the factors contained within the statute create the legal foundation for just and reasonable rates for the recovery of NDPP costs.<sup>18</sup> Furthermore, the Commission is not subject to *stare decisis* and thus is not bound by any prior orders, nor are any future decisions bound by the Order. The setting of a statewide rate does not constitute ad hoc rulemaking as the decision is based on the underlying evidentiary record before the Commission.

146. The hybrid methodology represents a just and reasonable balance of public policy and cost allocation based upon the Commission's finding that the benefits of the NDPP expenditures includes societal benefits that affect both NPC's and SPPC's service territories. The evidence presented supported the methodology that was adopted in the prior year's case and proposed by the applicant in this year's case – that the same methodology was adopted in consecutive years does not amount to a rule of general applicability. Ratemaking occurs on a case-by-case basis based upon the evidence presented, and that is what occurred in this Docket. The Commission's decision is not a broad policy, but a decision based on the evidence in the record relating to this particular case and does not constitute ad hoc rulemaking.

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<sup>18</sup> “An administrative construction that is within the language of the statute will not readily be disturbed by the courts.” *Dep't of Human Res. v. UHS of The Colony, Inc.*, 103 Nev. 208, 211, 735 P.2d 319, 321 (1987). *See also State v. GNLV Corp.*, 108 Nev. 456, 458, 834 P.2d 411, 413 (1992) finding that the Commission did not engage in ad hoc rule-making because the Commission did not expand the scope of the statute, but merely enforced the requirements of NRS 463.3715(2) in accordance with the plain dictates of the statute.

THEREFORE, it is ORDERED:

1. Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy's Petition for Clarification or in the Alternative Reconsideration is Granted.

2. Wynn Las Vegas, LLC and Smart Energy Alliance's Petition for Reconsideration is Granted.

3. Boyd Gaming Corporation, Station Casinos LLC, and Venetian Las Vegas Gaming, LLC's Petition for Reconsideration is Granted.

4. Caesars Enterprise Services, LLC, MGM Resorts International, and the Nevada Resort Association's Petition for Reconsideration is Granted.

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5. The Order issued on August 24, 2022, is modified consistent with this Order and as reflected in the Modified Final Order attached hereto as Attachment 1.

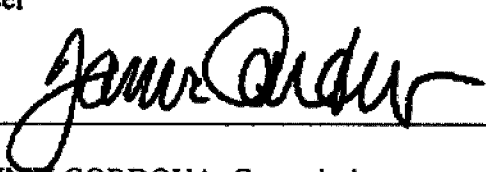
By the Commission,

  
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HAYLEY WILLIAMSON, Chair

  
\_\_\_\_\_

C.J. MANTHE, Commissioner and Presiding Officer

  
\_\_\_\_\_

TAMMY CORDOVA, Commissioner

Attest:   
\_\_\_\_\_

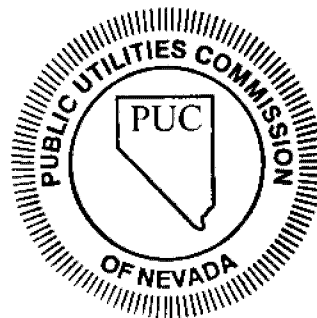
TRISHA OSBORNE,

Assistant Commission Secretary

Dated: Carson City, Nevada

10/12/22

(SEAL)



# **ATTACHMENT 1**

**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. )  
\_\_\_\_\_ )

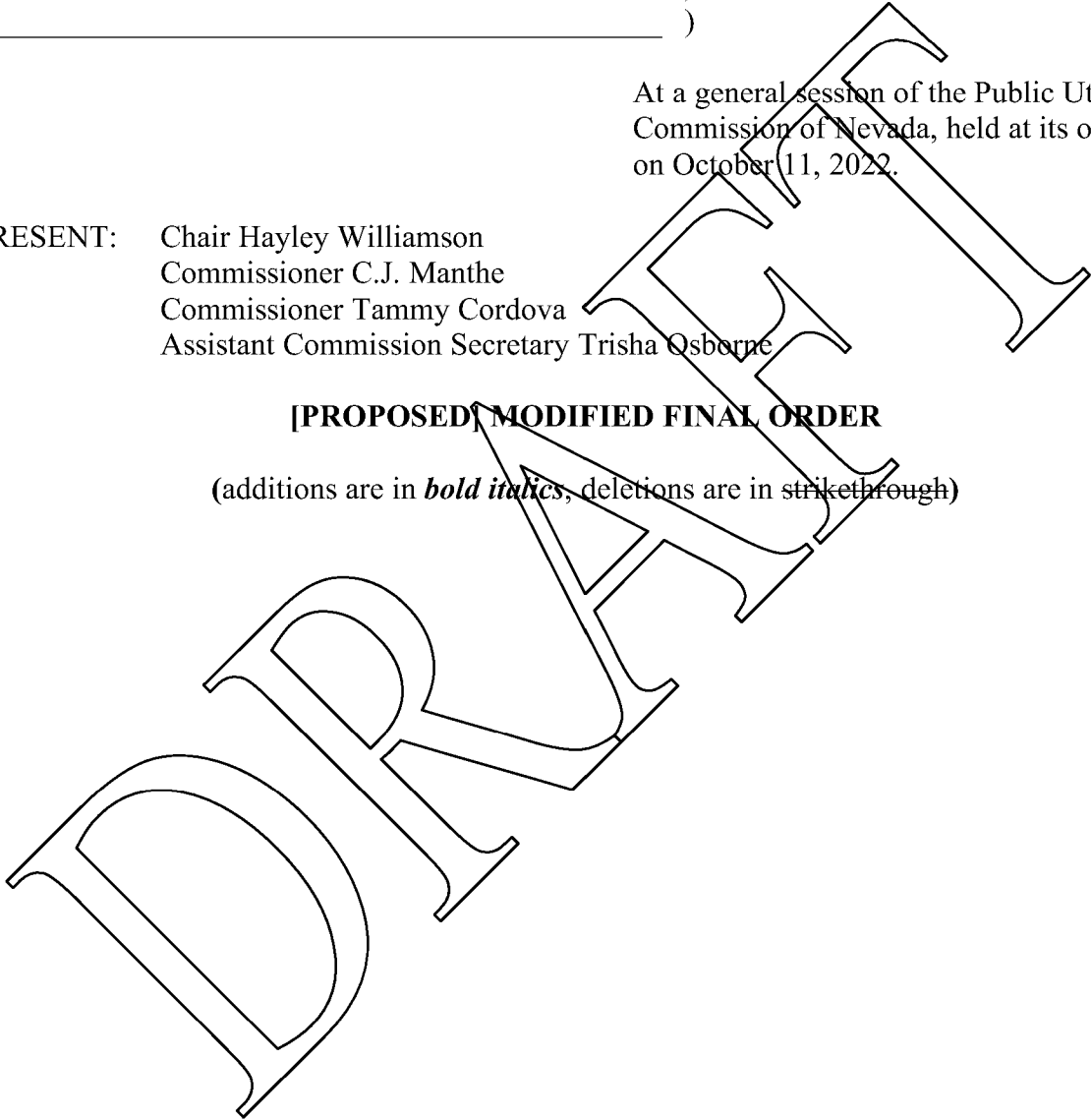
Docket No. 22-03006

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  
Commissioner Tammy Cordova  
Assistant Commission Secretary Trisha Osborne

**[PROPOSED] MODIFIED FINAL ORDER**

(additions are in *bold italics*, deletions are in ~~strickthrough~~)



**TABLE OF CONTENTS**

**I. INTRODUCTION..... 3**

**II. SUMMARY ..... 3**

**III. PROCEDURAL HISTORY..... 3**

**IV. JOINT APPLICATION REQUESTS..... 5**

**V. INTERNAL LABOR.....7**

**Commission Discussion and Findings.....15**

**VI. ALLOCATION OF NDPP REGULATORY ASSET COSTS.....17**

**Commission Discussion and Findings.....21**

**VII. INCREMENTALITY OF NDPP OMAG COSTS.....21**

**Commission Discussion and Findings.....29**

**VIII. NDPP ALTERNATIVE RATE PROPOSALS .....33**

**Commission Discussion and Findings.....37**

**IX. STATEWIDE NDPP OMAG RATE..... 38**

**Commission Discussion and Findings..... 52**

**X. CAPITAL PROJECT RECOVERY FOR POLES ..... 57**

**Commission Discussion and Findings..... 59**

**XI. GRANT FUNDING..... 60**

**Commission Discussion and Findings..... 61**

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

## **I. INTRODUCTION**

1. 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.

## **II. SUMMARY**

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

## **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 Las Vegas, LLC (“Wynn”) and the Smart Energy Alliance (“SEA”) filed with the Commission a Joint Petition for Leave to Intervene (“PLTI”) and a Notice of Association of Counsel.
- On March 30, 2022, Caesars Enterprise Services, LLC (“Caesars”); MGM Resorts International (“MGM”); and the Nevada Resort Association (“NRA”) (together, “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, Boyd Gaming Corporation (“Boyd”), Station Casinos LLC (“Station”), and Venetian Las Vegas Gaming, LLC (“Venetian”) (together, “Southern Nevada Gaming Group” or “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.

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



- 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.

**IV. JOINT APPLICATION REQUESTS**

1. In its Joint Application, NV Energy states that it created regulatory asset accounts for the 2021 NDPP expenditures, and as of December 31, 2021, the collective balance it seeks recovery of is \$51,865,715.00<sup>2</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 of NV Energy’s customers:

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<sup>2</sup> Most of the monetary amounts are rounded to exclude the cents.

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

	<b>Current – per kWh</b>	<b>Proposed – per kWh</b>	<b>Increase &lt;Decrease&gt;</b>
NDPP – NPC	\$0.00056	\$0.00148	\$0.00092
NDPP – SPPC	\$0.00060	\$0.00155	\$0.00095

(*Id.* at 4.)

2. NV Energy requests that the Commission issue an order granting the following relief:

- a. 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;
- b. A finding that the costs recorded in NV Energy’s regulatory asset accounts are incremental to the revenues it collects through base rates;
- c. A finding that the Joint Application fully satisfies the reporting requirements of NRS 704.7983 and related regulations;
- d. Permission to reset the NDPP charge in the amount of \$0.00148 per kWh for NPC customers;
- e. Permission to reset the NDPP charge in the amount of \$0.00155 per kWh for SPPC customers;
- f. Approval of NV Energy’s proposed allocation of costs, whereby capital investments are recovered from the service territory in which the capital 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 E, the direct testimony of Ms. Shelton-Patchell to the Joint Application;

- h. A finding that NV Energy has complied with the compliances and directives in Docket Nos. 20-02031, 20-02032, 21-03004 and 21-03040;
- 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.

(*Id.* at 9-10.)

## V. INTERNAL LABOR

### NV Energy's Position

3. NV Energy provides that during 2020 and 2021, it used both external and internal labor to complete projects and initiatives. (Ex. 109 at 5.) NV Energy states that when internal labor is used, it is generally identified as one of three categories consisting of 1) represented employee internal labor, 2) NDPP direct report internal labor, and 3) public safety outage management ("PSOM") work. (*Id.* at 5.)

4. NV Energy provides that for the represented employee category who directly worked on NDPP related projects, it calculated the percentage split for capital versus OMAG work that was included in the last general rate case ("GRC"), which is referred to as a group labor average. (*Id.* at 5-6.) NV Energy states that it completed the same calculation for employees for 2020 and 2021 and then compared the difference between the percentages from the test year to the updated group labor average calculation. (*Id.*) NV Energy states that the percent split increased in 2020 and 2021 versus the GRC test year because a majority of the NDPP-related work is more OMAG-driven. (*Id.*) NV Energy further states that it completed the calculation for NPC and SPPC, and that SPPC is the only territory included for either year as NPC was not considered to be material or incremental. (*Id.*) NV Energy explains that for 2020,

the OMAG rate increased from 27.91 percent to 32.24 percent and, for 2021, from 27.91 percent to 28.81 percent, which represents an increase due to a significant portion of the NDPP work being OMAG-driven. (*Id.*) NV Energy states that the amount of internal labor included in this case is \$343,159.00 for 2020 and \$72,102.00 for 2021, including carry charges. (*Id.*)

5. NV Energy provides that under the NDPP direct reporting employee category for represented and non-represented employees, it developed a new department in 2020 that is directly related to the NDPP initiative. (*Id.* at 7.) NV Energy states that these NDPP-dedicated employees will directly charge their time worked on NDPP efforts to the regulatory asset. (*Id.*) NV Energy states this direct reporting employee category includes new positions created directly for NDPP efforts and reflects a recovery amount of \$1,360,189.00, including carry charges. (*Id.*)

6. NV Energy provides that PSOM-related labor is also included in the regulatory asset for recovery for a total of \$351,170.00, including carry charges, as these charges are generally incurred in overtime hours and in addition to normal work levels. (*Id.*) NV Energy states that these costs are included in OMAG cost categories and are therefore incremental. (*Id.*) NV Energy provides that the total incremental internal labor requested for recovery, for represented and non-represented and PSOM, is \$1.7 million for 2021 and \$0.4 million for 2020. (*Id.*) NV Energy states that PSOM labor costs are associated with existing employees in non-NDPP-specific functions performing PSOM-related activities during overtime. (Tr. at 207.)

7. NV Energy provides that to ensure incremental labor under the NDPP will not be collected in general rates, the percentages for capital and OMAG splits will be adjusted to be more in line with how the work is completed versus the last GRC. (Ex. 109 at 8.) NV Energy agrees that costs that were considered in the last GRC proceeding cannot be considered incremental for the NDPP. (Tr. at 319-320.) NV Energy describes represented labor as a subset

of existing employees in non-NDPP-specific operations functions whose percentage of labor incurred as operations and maintenance (“O&M”) work versus capital work has increased in 2020 and 2021 compared to the O&M percentage determined for total company labor in the most recent GRC proceeding. (*Id.* at 201, 418-419.)

8. NV Energy states that going forward, it proposes to have a dedicated incremental NDPP budgeted amount that will be removed from the GRC payroll recovery request and moved to the NDPP regulatory asset for recovery. (Ex. 109 at 8.) NV Energy states that the amount of labor included in the Base Tariff General Rate (“BTGR”) charged to customers is based on the GRC test period total company labor pro forma, which covered total labor, including overtime, and that the internal labor component included in the BTGR remains in place until the analysis is performed for the test period for the next GRC. (Tr. at 418, 420-423.)

#### **CMN’s Position**

9. CMN recommends that NV Energy’s proposal for additional cost recovery associated with internal labor allocators be rejected because the request to include adjustments for 2020 internal labor allocators is an unreasonable attempt at retroactive ratemaking. (Ex. 500 at 23.) CMN provides that NV Energy seeks a second “bite at the apple” for 2020 cost recovery even though this proceeding is intended to only address recovery of 2021 NDPP costs and not internal labor allocator costs from a specific 2020 cost deferral. (*Id.*) CMN explains that labor capitalization rates are set in GRC proceedings, and actual capitalization rates can differ from test period amounts for various reasons, so therefore, it is overreaching to reset rates on a single-issue basis as part of the NDPP mechanism. (*Id.* at 5.) CMN provides that its recommendation reduces the requested revenue by a total of \$459,920.00, which represents \$387,219.00 for 2020

internal labor plus carrying costs plus \$72,701.00 for 2021 internal allocator plus carrying costs. (*Id.* at 24.)

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

10. Wynn and SEA state that NV Energy did not comply with the Commission's directive in Docket 21-03004 to provide an analysis of incremental internal labor, and instead provided qualitative analysis of why it believes the labor expenses are incremental. (Ex. 400 at 16-17.) Wynn and SEA disagree with NV Energy's analysis because some positions in wildfire management were created while others were eliminated, meaning new department costs are not necessarily incremental. (*Id.* at 17.) Wynn and SEA explain that when an employee incurs overtime, it is not an indication that costs are incremental because employees could incur overtime for many reasons unrelated to the NDPP. (*Id.*)

11. Wynn and SEA state that NV Energy's assertions are not borne out of actual data because NV Energy's employee count has been declining, and when a new department is created, it does not mean that there is an increase in employees. (*Id.* at 18.) Wynn and SEA state that labor loadings are already being recovered through base rates and that those costs are not incremental just because an employee happens to be working on the NDPP. (*Id.*)

12. Wynn and SEA recommend that all internal labor expenses be considered in base rate revenues through the BTGR because attempting to carve those expenditures out of base rates to determine whether they are incremental is too complicated in the context of the NDPP. (*Id.*) Wynn and SEA further recommend that \$1,711,359.00 of expense, including carrying charges, be removed from recovery and that the 2020 Wildfire Inspections and Corrections deferral balance be reduced by \$351,170.00 for internal labor expenses embedded in that amount. (*Id.* at 19.)

### Staff's Position

13. Staff recommends that the Commission disallow \$545,000.00 of the direct labor charges accrued for the 2021 NDPP regulatory asset account for which NV Energy seeks recovery. (Ex. 201 at 1.)

14. Staff takes issue with the internal labor charges in the Joint Application because it disagrees with NV Energy's assessment that all of the internal labor charges for non-represented employees are incremental in nature just because the employees now work in the new department. (*Id.* at 3.) Staff provides that among the twelve employees/roles that NV Energy identified as fully dedicated to the NDPP program, only three of those non-represented employees should be considered incremental for the 2021 NDPP regulatory asset account. (*Id.*) Staff states that the costs associated with internal labor of the remaining nine non-represented employees should not be considered incremental. (*Id.*)

15. Staff states that barring the consideration of employee salaries, benefits, and inflation costs, and considering each employee as fungible and each transition as lateral movement, the fact that unfilled positions exist because of employee transfers into the NDPP positions negates NV Energy's argument that all NDPP positions are incremental. (*Id.* at 6.) Staff provides that, stated differently, but for the NDPP roles; NV Energy has only shifted its employees, thereby leaving the total company roster unchanged. (*Id.*) Staff states that, specific to the Director of NDPP Execution position, this position is not incremental because NV Energy has not shown new manpower added to NV Energy; therefore, costs associated with the internal labor should be disallowed for recovery. (*Id.*) Staff provides that the following positions also should not be considered incremental in addition to the NDPP Executive position: Director, NDPP Compliance & Operations Support / Project Director, Senior ("Sr.") GIS Analyst, two Sr.

Project Managers for NDPP, Sr. Operations Analyst, and Sr. Project Manager for Delivery. (*Id.*) Staff provides that these positions each have their own individual circumstances that Staff considered to determine that the positions are not incremental in nature. (*Id.*)

16. Staff states that with regard to the Director, NDPP Compliance & Operations Support position, some of the circumstances related to the incrementality of the labor involved are similar to the Director of NDPP Executive. (*Id.* at 7.) Staff provides that the difference in the pegboard movement is that the job code description for the incumbent in this NDPP position had changed from the initial “Project Director” title to the current “Director, NDPP Compliance and Operations Support.” (*Id.*) Staff states that the second difference is the fact that the department from which the initial Project Director departed was “re-organized” with “positions redesigned and therefore difficult to trace” while the “workload remained the same.” (*Id.*) Staff provides that in its opinion, just because the balance of work and labor was re-organized after this departure, it does not dismiss the fact that those components were already accounted for in setting rates out of the last GRC proceeding. (*Id.*) Staff further explains that unlike the NDPP Executive position that left a vacant position at or around mid-year 2021, the Director of NDPP Compliance hired an external applicant, thereby increasing NV Energy’s workforce by one employee. (*Id.*) Staff provides that only one unfilled position remains because of the creation of the Director of NDPP Compliance, which is the position in Delivery Assurance that the employee transferred from when he became the first Project Director of NDPP. (*Id.*)

17. Staff states that regarding the Sr. GIS Analyst position, NV Energy attests that the position at the end of the pegboard was filled by a contractor that was given full-time employment (“FTE”). (*Id.*) Staff states that the contractor also worked within the same department in which the contractor was later hired to work under FTE status. (*Id.* at 7-8.) Staff



states that given that the lines of succession end with this contractor-turned-FTE, NV Energy has shown that the role as contractor has not been backfilled. (*Id.*) Staff explains that there is a likelihood that the contractor position costs were considered and factored in while setting rates from the 2018 GRC test period for SPPC; thus, those labor costs were simply shifted from contractor status to FTE status, unchanging the total amount of manpower when considering the NDPP efforts alone. (*Id.*)

18. Regarding the two Sr. Project Manager positions for the NDRP, Staff opines that NV Energy's argument that these positions were transferred from the Valmy power plant is highly speculative because in NV Energy's last Integrated Resource Plan, it recommended that the Commission authorize NV Energy to not run Valmy unit 1 at all and instead that that it only be operated during summer emergencies. (*Id.* at 8.) Staff further explains that NV Energy could not have had plans to backfill the employees with contractors because it was no longer their plan to keep Valmy unit 1 running. (*Id.*)

19. Staff further states that no evidence has been presented to support NV Energy's claim that it hired additional contractors to operate the Valmy units, and if there were, it would have been captured in the GRC filing that NV Energy just made for its SPPC operations. (*Id.* at 8-9.) Staff argues that this type of double cost recovery from customers leads to suspicion regarding NV Energy's incrementality arguments. (*Id.* at 9.)

20. Regarding the Sr. Operations Analyst position, Staff provides that NV Energy performed two transfers resulting from the creation of this NDPP position, but for the final, unfilled position in this line of succession, the position was reallocated in the department and ultimately eliminated. (*Id.*) Staff asserts that given the addition of the Sr. Operations Analyst position and the elimination of one of the positions in the line of succession, NV Energy has not

shown that the Sr. Operations Analyst position is incremental but rather an attempt to recover labor costs from the NDPP while still recovering labor costs baked into rates from the 2019 NPC GRC test period. (*Id.*)

21. Lastly, for the Sr. Project Manager for Delivery, Staff provides that this position resulted in the pegboard movement for only one employee that was transferred from Environmental Services and into the NDPP for 2021. (*Id.*) Staff explains that this position was neither eliminated nor backfilled, which shows that NV Energy did not increase its manpower as a result of the creation of this position due to the removal of one person to fill an NDPP role. (*Id.*)

22. Staff provides that only 3 of the 12 employee roles listed qualify as being incremental: the Sr. Project Manager for Delivery, the Fire Mitigation Specialist, and the Fire Management Officer. (*Id.* at 9-10.)

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

23. NV Energy states that the new NDPP employee positions were filled by existing employees that transferred from other positions while their original positions were filled by outside contractors or left unfilled. (Ex. 111 at 6.) NV Energy provides that while Staff identified nine positions that should be non-incremental and removed from recovery, it believes that hiring external people to complete work demonstrates incrementality but acknowledges subjectivity on this point. (*Id.*) NV Energy states that it is willing to compromise on this issue because Staff's position is not completely unreasonable. (*Id.* at 6-7.) NV Energy concedes that after utilizing Staff's methodology for internal labor charges, approximately \$563,016 could be removed from this filing. (*Id.* at 7.)

24. NV Energy asserts that Wynn and SEA incorrectly commingle costs from different years and different labor categories in their analysis, and NV Energy also disagrees with Wynn and SEA's claim that no quantitative analysis was provided to demonstrate that the internal labor costs were incremental. NV Energy states that it did provide such information, which was missed by Wynn and SEA's review. (*Id.*)

25. NV Energy explains that CMN's reference to adjusting labor allocator rates and capitalization of rates being "set" in GRC proceedings creates a misunderstanding as to how recovery works because NV Energy is using the 2018 test year, which does not mean that the amount capitalized will be locked in all years between cases. (*Id.* at 9.) NV Energy states that because capital and OMAG splits can vary on actual work completed, the calculation outlines how the NDPP program has increased the amount that is not capitalized and more costs shifted to OMAG. (*Id.*) NV Energy asserts that this calculation is appropriate because it more accurately articulates the percentage splits with the full NDPP program in place. (*Id.* at 9-10.)

### **Commission Discussion and Findings**

26. The Commission, in its Order in Docket No. 21-03004, expressed concern that there may be some internal labor costs allocated to the NDPP that may also be currently recovered through the BTGR and, thus, directed NV Energy to provide an analysis of incremental labor in future NDPP cost recovery filings.<sup>3</sup>

27. The Commission finds that the requested PSOM and represented labor amounts sought for recovery in this instant docket represent existing labor that is already being recovered under existing BTGR rates through the payroll pro formas used to establish the revenue requirement in prior GRC proceedings. Despite existing employees periodically performing

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<sup>3</sup> Docket No. 21-03004, Order dated September 3, 2021, at para. 137-38.

NDPP tasks, the Commission finds that the total labor costs for these positions were contemplated when determining the labor components of revenue requirement used to establish current BTGR rates paid by customers in the last GRC.

28. The PSOM and represented labor costs sought for recovery as incremental NDPP labor in the instant NDPP docket are derived from a subset of existing employees who allocate a portion of their time to NDPP activities and not new positions solely dedicated to the NDPP. The Commission finds 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 normal job duties is not incremental NDPP labor and is not a basis for increasing labor cost recovery from customers through the NDPP. Moreover, the Commission notes that after the implementation of the NDPP and following the test periods used to establish current BTGRs for both NPC and SPPC, NV Energy realized a net reduction of 200 employees.

29. The Commission finds that additional enhanced recovery for internal labor costs through the NDPP for the PSOM and represented labor costs is inappropriate when NV Energy's BTGRs are already collecting revenue to pay for labor costs of a larger workforce than the workforce that NV Energy currently employs. Therefore, the Commission finds that including PSOM and represented labor costs proposed by NV Energy for recovery as incremental NDPP costs is unjust and unreasonable ***because NV Energy did not incur additional labor costs beyond the labor costs that were contemplated when the Commission set BTGRs in GRC proceedings. The evidentiary record supports the finding that the PSOM and represented labor costs are not incremental. Specifically, Wynn and SEA's witness, Bradley Mullins pointed out 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.* Accordingly, the Commission orders that the amounts for PSOM and represented labor, including carry costs, shall be reclassified out of the NDPP regulatory asset and excluded from recovery as part of the NDPP rate charged to customers.

30. The Commission approves the inclusion of non-represented labor costs, including carry charges, associated with the NDPP-dedicated positions established by NV Energy in 2020 in the NDPP regulatory asset for recovery as part of the NDPP rate. However, the Commission finds that the \$563,016.00 adjustment proposed by Staff and recognized as reasonable by NV Energy, appropriately excludes from NDPP recovery non-incremental labor. The Commission agrees that the 2021 incremental internal NDPP program labor costs for this category would not have been included in a prior GRC test period and are not included in current BTGRs charged to customers.

31. Consistent with NV Energy's proposal to exclude labor amounts included for recovery through the NDPP from the revenue requirement in a GRC, and to provide clarity given the current contemporaneous GRC for SPPC and Joint NDPP Cost Recovery filings, the Commission orders that NV Energy's internal labor amount approved for recovery through the NDPP in the instant docket will be excluded from the revenue requirement established in the GRC proceeding in Docket No. 22-06014.

## **VI. ALLOCATION OF NDPP REGULATORY ASSET COSTS**

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

32. NV Energy proposes to allocate costs differently going forward because currently all costs incurred and recorded remain in the regulatory asset account of the service territory

where the costs were incurred for OMAG and capital. (Ex. 109 at 17.) NV Energy explains that this approach does not align the regulatory asset account balances in each service territory with the amounts that are intended to be recovered from customers in each service territory. (*Id.* at 18.) NV Energy explains that adjusting the cost allocation to move the costs to the regulatory asset where they will be recovered, when the costs are incurred, will better align revenues with the expenses to NV Energy. (*Id.*) NV Energy proposes allocating OMAG costs to NPC and SPPC when the costs are incurred to effectuate recovery of OMAG costs through a single statewide rate. (*Id.*) NV Energy provides that this would accurately reflect both the capital investment and OMAG costs that are expected to be recovered from customers in each service territory because each regulatory asset account balance would contain the allocated costs and collected rate revenue. (*Id.*)

33. NV Energy provides that its proposed allocation method would alleviate some pressure being put on SPPC's credit metrics by requiring NPC to pay for its portion of the OMAG costs that will be recovered from customers in its service territory, and better represents the amount to be recovered from the customers in the respective territory. (*Id.*)

#### **CMN's Position**

34. CMN states that NV Energy's proposal should be rejected as it would impede recovery of these costs from the customers in the service territory in which the costs were incurred and would likely obfuscate the recordkeeping necessary to do so. (Ex. 500 at 28.)

#### **SNGG's Position**

35. SNGG states that the OMAG costs incurred in SPPC's service territory should not be allocated to NPC because NPC receives no benefit and because the costs are not necessary for the provision of service, which is the standard for recovery in rates. (Ex. 600 at 23.) SNGG

provides that if the Commission elects to continue having NPC ratepayers subsidize SPPC, then OMAG costs incurred by SPPC to manage the NDPP should reside on the books of SPPC until the costs have been approved by the Commission and allocated to NPC. (*Id.*) SNGG states that NV Energy's recommendation is contrary to generally-accepted accounting standards and ratemaking rules because a utility can only book as a regulatory asset costs that have been approved for recovery by the regulatory authority. (*Id.*) SNGG explains that this means that costs can be deferred on the books of SPPC as they are incurred but can only be recorded as a regulatory asset on the books of NPC after approval of costs by the Commission. (*Id.*)

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

36. Wynn and SEA recommend following the "beneficiary pays approach" and requiring NV Energy to allocate all NDPP expenses incurred by NPC to its customers and all NDPP expenses incurred by SPPC to its customers. (Ex. 400 at 20.)

### **BCP's Position**

37. BCP recommends that the Commission deny NV Energy's recommendation to record NDPP O&M expenses incurred in SPPC's service territory into NPC's NDPP regulatory asset account because it was not properly included in the joint applicants' request for relief as required by NAC 704.535(2)(d), it is not permissible under accounting requirements, and it presumes that the Commission or a future Commission or Nevada District Court judge will continue approving NDPP rates that require cross-subsidies from NPC's customer to SPPC's customers. (Ex. 300 at 42-43.)

**Staff's Position**

38. Staff disagrees with NV Energy's proposal to allocate costs by adjusting the cost allocation and moving costs to the regulatory asset where they will be recovered when the costs are incurred. (Ex. 202 at 4-5.) Staff explains that the Commission wants costs tracked by service territory because the Commission ordered NV Energy to create multiple NDPP regulatory asset accounts, as illustrated in Docket Nos. 20-02031 and 20-02032 when the Commission ordered NDPP costs to be specifically segregated by distribution and transmission, and again in Docket No. 21-03004 when the Commission ordered capital-related costs to be segregated by service territory. (*Id.* at 5.) Staff argues that if NV Energy's proposal is granted, it believes that attempting to untangle the origin of these transactions would be burdensome. (*Id.*)

**NV Energy Rebuttal**

39. NV Energy disagrees with Staff's belief that burdensome forensic work would be necessary should the origin of costs need to be traced because costs will continue to be recorded in the territory where they are incurred, and the process for reallocation to appropriate regulatory asset accounts for recovery will still be able to track origin of costs. (Ex. 111 at 14-15.)

40. NV Energy maintains that regardless of whether the Commission chooses to uphold the statewide OMAG rate, it makes sense for expenses to be recorded on the books and records of the service territory that will be responsible for recovery. (*Id.* at 15.)

41. NV Energy states that while BCP identifies a multitude of statutes and regulatory and accounting principles that are contrary to NV Energy's cost allocation methodology, BCP fails to consider that NV Energy is following NRS 704.7983 and the Commission's order to apply a single statewide rate for recovery of NDPP OMAG expenses, which is consistent with Generally Accepting Accounting Principles ("GAAP"). (*Id.* at 16.) NV Energy provides that the



decision to implement a statewide OMAG rate was based on the logic that the natural disaster prevention efforts ultimately benefited Nevada as a whole. (*Id.*) NV Energy provides that if the statewide OMAG rate was to be repealed by the Commission, then the allocation of costs as proposed by NV Energy would no longer be applicable. (*Id.* at 16-17.)

42. NV Energy provides that despite SNGG's claim that its proposal is contrary to GAAP, NV Energy is requesting approval to allocate costs to an appropriate regulatory asset for the applicable service territory that is responsible for the recovery and in a manner not in violation of GAAP. (*Id.* at 17.)

### **Commission Discussion and Findings**

43. Recognizing that the allocation of NDPP costs may change over time, the Commission finds that NDPP costs and regulatory asset balances should continue to be recorded in the service territory where the costs are incurred to provide clarity regarding the origin of NDPP expenses. Therefore, the Commission denies NV Energy's request to record NDPP regulatory asset balances in the service territory from which the costs are expected to be recovered.

## **VII. INCREMENTALITY OF NDPP OMAG COSTS**

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

44. NV Energy states that its incrementality analysis is consistent with the direction from Docket No. 21-03004 to effectuate the goal of not incurring double collection of costs from customers. (Ex. 109 at 10.) NV Energy states that one modification to the incrementality analysis should be implemented for practical reasons to compare OMAG cost summaries in all categories to ensure that double collection is not occurring. (*Id.* at 10-11.) NV Energy explains that avoided costs such as less snow removal from low snow seasons can be reallocated to other

expenditures that address high fire season threats, thus assuring incrementality and practices related to the management of expenses within the revenue requirement. (*Id.* at 11.) NV Energy provides that increased flexibility to shift costs from one area to another assists in dealing with emergent needs and unexpected obstacles that cannot be predicted, thus allowing NV Energy to spend prudently. (*Id.*)

45. NV Energy states that it is changing the cost recovery approach to concentrate on improving the processes and documentation to ensure confidence from stakeholders and the Commission as it continues to learn more about meeting necessary objectives of natural disaster protection. (*Id.* at 11-12.) Regarding the Commission's directive in Docket No. 21-03004 requiring NV Energy to meet with Staff and other parties regarding options to improve the NDPP filing, NV Energy provides that the parties discussed using the transmission and distribution amount from the latest GRC to assist in determining incrementality for recovery. (*Id.* at 12.) NV Energy explains that in the cost-based incrementality approach, it would compare the non-NDPP transmission and distribution costs in total from the test year, used as a baseline, to the total non-NDPP costs in the current year for transmission and distribution spend to establish incrementality. (*Id.*) NV Energy proposes to use this methodology to establish a consistent approach to cost recovery as this approach is based on the amount approved in the NDPP against incremental costs from a GRC. (*Id.*)

46. NV Energy states that by using the cost-based concept, the non-NDPP costs are consistent from year to year in total and therefore supports its position that the NDPP costs are incremental and proposes that the NDPP costs be deemed prudent and incremental for recovery. (*Id.* at 13.) NV Energy states that the costs can fluctuate from year to year as compared to the revenue requirement set in a GRC. (*Id.* at 14.) NV Energy notes that the only amount it is

recovering in current general rates is the revenue requirement established based on the amount from the test year. (*Id.* at 14-15.) NV Energy explains that its allocation of OMAG dollars from the revenue requirement to different expense categories based on need changes yearly. (*Id.* at 15.) NV Energy provides that the One Nevada Transmission Line (“ON Line”) related costs were removed from the analysis due to causing unusual trends, and therefore, those costs are deferred into its reallocation regulatory assets through a regulatory amortization account. (*Id.*)

47. NV Energy states that it does not support incrementality being determined for recovery by breaking down each type of cost by category, and that there should be flexibility between cost categories. (*Id.*) NV Energy explains that if incrementality was to continue to be determined by a cost category strategy, it could result in incremental spending not being recovered. (*Id.* at 15-16.) NV Energy states that its request for flexibility for spending between cost categories is necessary to manage risk and operate the business. (*Id.* at 16.)

48. NV Energy states that it does not support using a three-year average basis for recovery of vegetation management because a three-year average is not what is used for setting rates in a GRC; therefore, a test year should be used to be consistent with how revenue requirement is currently set in rates. (*Id.* at 17.)

#### **CMN's Position**

49. CMN recommends that the Commission apply two screening tests to determine whether OMAG expenses that NV Energy seeks to recover through the NDPP mechanism are incremental. (Ex. 500 at 3.) CMN proposes that one screen consider only NDPP-related OMAG expenses and that the second screen consider total non-NDPP distribution and transmission OMAG expenses. (*Id.* at 4.)

50. CMN states that based on the application of its proposed screens, it recommends that if each service territory is considered on a standalone basis, then \$1,844,265.00 of NV Energy's claimed 2021 NDPP expense for SPPC should be considered non-incremental, and there would be a corresponding reduction in 2021 carrying costs of \$165,371.00. (*Id.*) CMN states that NPC passes both screens; therefore, all of the claimed NDPP expense for NPC would be considered incremental. (*Id.*)

51. CMN provides that if NV Energy continues to recover a uniform charge from customers of both service territories for NDPP OMAG costs, then its proposed screens should be applied to SPPC and NPC jointly, which in that case, CMN recommends that \$1,296,431.00 of NV Energy's total claimed 2021 NDPP expense should be considered non-incremental and have a corresponding reduction in 2021 carrying costs of \$111,140.00. (*Id.*) CMN further provides that it recommends that the 2020 deferral that is eligible for recovery in the NDPP mechanism should be reduced by \$135,484.00 because this amount is non-incremental after taking into account \$2,281,425.00 in vegetation management costs that the Commission previously determined to be non-incremental along with the carrying costs that should be reduced by \$14,484.00. (*Id.* at 4-5.)

#### **SNGG's Position**

52. SNGG provides that costs recovered through the NDPP must be incremental to the levels established for these costs in the utility's last rate case. (Ex. 600 at 24.) SNGG provides an example that the costs for vegetation management included for recovery in the NDPP must be above the level set for vegetation management in the last rate case because NV Energy could potentially over-recover its vegetation management costs by recovering the full amount included in rates even though the amount was not actually spent. (*Id.*)

53. SNGG states that NV Energy demonstrated the NDPP costs on a cumulative basis, making it appear that the NDPP costs are incremental. (*Id.* at 24-25.) SNGG states that the Commission will have to decide whether incrementality can be viewed both in total and on a cumulative basis; but with respect to ON Line costs, it does seem reasonable to extract these costs from the analysis as the change in these costs does net out between the two utilities. (*Id.* at 25.)

54. SNGG states that it does not support the distribution and transmission costs being commingled for the purpose of determining incrementality for NDPP costs because distribution and transmission are separate, distinct functions, and their costs are tracked separately for reporting purposes and ratemaking. (*Id.*) SNGG proposes that the Commission look at the incrementality analysis for each function separately. (*Id.*) SNGG states that NV Energy's over-spending on transmission costs and underspending on distribution costs should not result in NV Energy's NDPP spend being considered incremental. (*Id.*)

55. SNGG provides that because 96 percent of the NDPP costs are distribution costs, it is necessary to look at distribution functions separately and determine whether NV Energy was over-recovering its distribution costs relative to the amounts in rates. (*Id.* at 26.)

56. SNGG concludes that NPC over-recovered its distribution OMAG costs by a total of \$3,675,644.00 for the years 2020 and 2021, and SNGG proposes that this amount be deducted from the total amount of distribution NDPP costs allocated to NPC. (*Id.*)

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

57. Wynn and SEA recommend that the Commission find that \$2,416,912.00 of the 2020 inspections and corrections was not incremental to amounts included in base rates. (Ex. 400

at 13.) Wynn and SEA further recommend reducing the NDPP recovery for spending that was otherwise already recovered in 2020 through BTGRs. (*Id.*)

58. Wynn and SEA provide that NV Energy recovered revenues for distribution and operating expenses and spent the funds on the NDPP instead of ordinary operating activities. (*Id.* at 14.) Wynn and SEA argue that NV Energy's assertion about overspending in other years is not relevant because the issue regarding incrementality specifically relates to the accelerated Wildfire Inspections and Corrections expenditures made in 2020. (*Id.* at 15.) Wynn and SEA explain that the issue of incrementality is, by definition, asymmetrical and that the NDPP only allows NV Energy to recover additional NDPP costs and not those that are more than its NDPP costs if it underspent relative to its GRC. (*Id.*) Therefore, Wynn and SEA state that offsetting the underspending in 2020 with overspending in 2021 is not consistent with incrementality. (*Id.*)

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

59. Staff recommends that the Commission reject various recommendations put forth by NV Energy as these proposals are more appropriately addressed in the open rulemaking in Docket No. 19-06009 for the NDPP Program. (Ex. 202 at 3.)

60. Staff provides that determining incrementality for recovery by breaking down each type of cost category provides "guard rails" that will help all the stakeholders better monitor the various costs and provide benchmarks to evaluate costs against. (*Id.*) Staff explains that this approach is preferable to attempting to parse out costs which have been commingled. (*Id.*)

61. Staff provides that NV Energy indicated that it felt that certain decisions regarding accounting matters should be postponed in light of the upcoming rulemaking in Docket No. 19-06009. (*Id.* at 4.)

62. Staff provides that it disagrees with NV Energy's proposal to utilize a single test year to establish incrementality because utilizing a three-year average establishes a baseline that is much preferable to properly normalize costs. (*Id.* at 3.)

63. Staff provides that during two October 2021 meetings with NV Energy, no consensus was developed amongst the parties as to any particular methodology for determining incrementality. (Ex. 202 at 6.)

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

64. NV Energy disagrees with Staff's recommendation to reject its approach to incrementality because it believes that incrementality needs to be viewed at a high level to manage business risk. (Ex. 111 at 10.) NV Energy suggests that Staff's "guard rails" should be at a holistic level at the full amount in rates, such as transmission and distribution total level. (*Id.*) NV Energy disagrees that it would be appropriate to utilize a three-year average to establish the baseline for incrementality because the amount set in the last GRC is based upon a test year, not a three-year average. (*Id.* at 11.)

65. NV Energy disagrees with Wynn and SEA's recommendation to the Commission to find \$2,416,912.00 of the 2020 costs for the inspections and corrections non-incremental because Wynn and SEA should have included in their calculation the \$2,281,425.00 of OMAG that was removed from the NDPP recovery from the 2020 cost recovery case in Docket No. 21-03004. (*Id.*) NV Energy explains that after including the amount from the prior year into the calculation, the amount is reduced to \$135,487.00 and is a more reasonable amount, considering that NV Energy spent \$2,388,101.00 above the total transmission and distribution baseline amount in rates in 2021 from the last GRC proceedings. (*Id.* at 11-12.)

66. NV Energy disagrees with SNGG's recommendation that \$3,675,644.00 should be deducted from the amount recovered in NDPP rates from NPC customers for multiple reasons. (*Id.* at 12.) NV Energy argues that, first, SNGG's recommendation that distribution and transmission charges should be viewed separately when determining incrementality is contradicted by the Commission's approval of both transmission and distribution projects for the NDPP; second, SNGG only appears to consider NPC and does not consider SPPC; and third, similar to Wynn and SEA, SNGG ignores that there was already \$2,281,425.00 of OMAG that was removed from the NDPP recovery in the 2020 cost recovery case in Docket No. 21-03004. (*Id.*) NV Energy provides that, if all transmission and distribution costs for both territories are included and considering the \$2,281,425.00 removed in the prior year's case, NV Energy spent more than what was in rates by \$2,388,101.00 in 2021, while underspending by \$135,487.00 in 2020. (*Id.*)

67. NV Energy rebuts Wynn and SEA's recommendation that NV Energy should bear the burden of inflation and supply-chain shortages because NV Energy does not have control of these items and it is unreasonable for NV Energy to bear that burden. (*Id.* at 4.)

68. NV Energy disagrees with Wynn and SEA that it should only get recovery based upon the original NDPP budget because the costs in this filing were prudently incurred and are incremental to test year expenditures. (*Id.* at 5.) NV Energy disagrees with Wynn and SEA that it did not provide any additional information about the reasonableness of the 2020 expenditures because NV Energy provided detailed tables summarizing its NDPP and non-NDPP transactions for distribution and transmission since 2018 and included the test years for SPPC (2018) and NPC (2019), and further provided details for transactions in the on-site data room as well as in discovery. (*Id.*) NV Energy states that as Staff noted, NV Energy provided detailed information



for all NDPP and non-NDPP costs and states that Wynn and SEA's assertion that it did not provide information on incrementality is inaccurate. (Ex. 118 at 3.)

69. NV Energy disagrees with CMN's two screen tests because NV Energy believes that both transmission and distribution charges should be considered, and therefore, only one screen at the transmission and distribution level should be factored into the calculation for incrementality, and NPC and SPPC should be considered in the aggregate to get a proper level of incrementality. (Ex. 111 at 13.) NV Energy notes that CMN's second screen test is in line with its proposal. (*Id.*)

70. NV Energy states that CMN's two screen test results in two bites at the apple and does nothing more than selectively pick certain costs from the NDPP but does not prevent double collection. (Ex. 118 at 3.) NV Energy further disagrees with SNGG's proposal to separate transmission and distribution charges to determine incrementality because the NDPP consists of transmission and distribution work, and therefore, both should be viewed together for incrementality in the NDPP program, and the projects under the NDPP cover both transmission and distribution facilities that were approved in Docket No. 20-02031. (*Id.* at 4.)

### **Commission Discussion and Findings**

71. The Commission finds NV Energy's proposed incrementality measurement to be overly broad because it encompasses all OMAG for NPC and SPPC when the incrementality at issue in this instant docket distills into two discrete work programs. The Commission notes that distribution and transmission OMAG expenses are specifically separated in the FERC Uniform System of Accounts and are treated separately when performing cost allocations and rate design. The Commission finds that the costs are not related to the same functions and should not be combined when evaluating the incrementality of NDPP costs. The Commission acknowledges

that under NV Energy's approach, less could be spent on non-NDPP expenditures for vegetation management and more on employee benefits, which would be acceptable in its incrementality analysis. However, the issue of incrementality is very narrow as it relates to NDPP program costs because of defined programs with known costs.

72. Regarding incrementality of 2021 NDPP costs, the same programs that were addressed in Docket No. 21-03004 are at issue here, which include: Inspections and Corrections, PSOM, Risk-Based Approach, Situational Awareness, and Vegetation Management. One additional program, System Hardening, was included for 2021 in SPPC's service territory. The Commission notes that, except for Inspections and Corrections and Vegetation Management, no costs were incurred for the above programs prior to 2019, and minimal costs were recorded in NPC's 2019 test year of \$1,048 for PSOM and \$12,427 for Risk-Based Approach. Therefore, the Commission finds that all of the spending on these programs, PSOM, Risk-Based Approach, Situational Awareness, and System Hardening, are incremental because the programs did not effectively exist when BTGRs were last set for NPC and SPPC. The remaining two programs, Inspections and Corrections and Vegetation Management, are discussed below.

#### Inspections and Corrections

73. For 2020 costs, the Commission ordered in Docket No. 21-03004 the deferral of \$17,636,827.00 in NDPP inspections and corrections program costs based upon an inability to ascertain what was or was not incremental with respect to this program.<sup>4</sup> The Commission notes that substantial updates were provided in the rebuttal testimony of Jesse Murray in that docket in Ex. 111 at 8 and 9, Figures 3 and 4, which differed significantly from what was initially filed, listed in Figures 1 and 2 at 8 and 9 of Ex 111. The Commission found in Docket No. 21-03004

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<sup>4</sup> Order dated September 3, 2021, in Docket No. 21-03004, at para. 79.

that NV Energy would not fail to recover any of the costs associated with the program if it rehabilitated its request for recovery of the outstanding costs with substantial evidence that the expenses were incremental.<sup>5</sup> No party questioned the 2020 non-NDPP inspections and corrections amounts included in Ex. 109 at 11, Table 3.<sup>6</sup>

74. The Commission notes that the combined 2016-2018 three-year average for non-NDPP inspections and corrections is \$5,574,879.73<sup>7</sup>, and the combined test year total is \$7,106,161.00.<sup>8</sup> Using either the total 2020 inspections and corrections non-NDPP costs from this filing of \$9,111,880.00<sup>9</sup> or that from 21-03004 in Ex. 111 of \$8,535,159.23,<sup>10</sup> the 2020 non-NDPP inspections and corrections expenditures are in excess of the 2016-2018 three-year average and the combined test year total. Accordingly, the Commission finds that the \$17,636,827.00 in 2020 NDPP OMAG inspections and corrections expenditures were incremental.

75. For 2021 costs, the Commission finds that the total inspections and corrections of non-NDPP costs for 2021 were \$6,706,887.00.<sup>11</sup> The Commission notes that this is greater than the 2016-2018 combined three-year average of \$5,574,879.73, but less than the combined test year total of \$7,106,161.00 by \$399,274.00.

76. No party individually analyzed the inspections and corrections of 2021 non-NDPP costs for incrementality. Staff verified the mathematical accuracy of the schedules but did not propose a specific incrementality reclassification except for internal labor costs. Staff proposed utilizing a three-year average to establish a baseline for costs as a more preferable benchmark

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<sup>5</sup> *Id.* at para. 81.

<sup>6</sup> The Commission acknowledges that these figures did change from what was in Ex. 111 in Docket No. 21-03004.

<sup>7</sup> Docket No. 21-03004 Ex. 111 at 8 and 9, \$3,180,697.68 + \$2,394,182.05.

<sup>8</sup> Ex. 109 at 11, \$4,104,641.00 + \$3,001,520.00.

<sup>9</sup> *Id.* at 11, \$5,750,438.00 + \$3,361,442.00.

<sup>10</sup> Docket No. 21-03004 Ex. 111 at 8 and 9, (\$3,096,510.63 + \$246.37) + (\$33,936,586.72 - \$28,498,184.49).

<sup>11</sup> Ex. 109 at 11, \$3,034,882.00 + \$3,672,005.00.

than a single year as it serves to normalize the costs.<sup>12</sup> NV Energy in this docket has proposed to use the combined SPPC 2018 and NPC 2019 test years for the incrementality analysis.

However, the Commission agrees with Staff's three-year established baseline for costs and finds that a combined 2016-2018 three-year average is better for use in evaluating incrementality in the instant docket for three reasons. First, the three-year period of 2016-2018 is entirely outside of any NDPP plan or enabling legislation and, as such, has no relationship to NDPP. Second, using a three-year average allows for any anomalies in year-over-year spending to be taken into consideration. Third, the three-year average also includes two GRC test periods – 2018 for SPPC and 2016 for NPC. Accordingly, the Commission finds the total NDPP OMAG inspections and corrections costs to be incremental and subject to labor costs addressed above.

#### Vegetation Management

77. The Commission finds that total non-NDPP vegetation management costs for 2021 were \$6,239,740.00.<sup>13</sup> The Commission notes that this is less than the 2016-2018 combined three-year average of \$6,797,630.44<sup>14</sup> by \$557,890.44 and less than the combined test year total of \$7,695,685.00<sup>15</sup> by \$1,455,945.00. The Commission finds \$557,890.44 of the NDPP vegetation management costs to be non-incremental and orders that these costs be reclassified to the normal operating accounts for the same reasons as discussed for the NDPP inspections and corrections program. This amount may be adjusted by any incremental labor costs addressed elsewhere in this Order. The NDPP regulatory assets shall also be reduced by any related carrying charges. The Commission additionally orders SPPC to file an errata to its

<sup>12</sup> Ex. 301, Direct Testimony of John A. Brownrigg at p. 4, Q&A 11.

<sup>13</sup> Ex. 109 at 11, \$4,805,512.00 + \$1,434,228.00.

<sup>14</sup> Docket No. 21-03004 Ex. 111 at 8 and 9, \$5,116,600.39 + \$1,681,030.05.

<sup>15</sup> Ex. 109 at 11, \$6,057,274.00 + \$1,638,411.00.

GRC in Docket No. 22-06014 to include the \$557,890.04 (net of any related labor reclassification) in additional OMAG expenses.

78. In Docket No. 21-03004, the Commission ordered \$2,281,424.15 to be reclassified from NDPP vegetation management to the normal operating accounts.<sup>16</sup> In doing so, NV Energy's OMAG expenses for 2021 increased due to the accounting for this reclassification. This is most apparent in Ex. 109 at 14, Table 4, in looking at the SPPC overspend for distribution OMAG. The Commission notes that an adjustment is made to the incrementality evaluations in Ex. 111, Exhibit Behrens-Rebuttal-4, at the bottom of the page for the reclassification. This adjustment results in a calculation of total 2021 distribution and transmission non-NDPP OMAG overspend of \$2,388,101.00.

79. The portion of the \$2,281,424.15 reclassified to SPPC was removed from the test period expenses in SPPC's currently-pending GRC in Docket No. 22-06014 in Schedule H-Cert-24. The FERC accounts that are adjusted are 571000 in the amount of \$55,189.00 and 593000 in the amount of \$2,020,198.00. These two FERC accounts are where vegetation management costs are recorded normally.

80. The Commission determines that it is not clear whether the 2021 non-NDPP vegetation management costs in Ex. 109 at 11, Table 3, include the \$2,281,424.15 or if that reclassified amount is included in the "Other" category in Ex. 109 at 11, Table 3. It is, however, in one or the other based upon the data presented in Ex. 109 at 14, Table 4 and Ex. 111, Exhibit Behrens-Rebuttal-4. The Commission finds that NV Energy shall provide documentation to support where the \$2,281,424.15 is reflected in Ex. 109 at 11, Table 3. The Commission further finds that if the reclassified amount is included in the total 2021 non-NDPP vegetation

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<sup>16</sup> Order dated September 3, 2021, in Docket No. 21-03004, at para. 84.

management cost total of \$6,239,740.00, an additional reclassification is necessary to remove the \$2,281,424.15 from the 2021 incrementality analysis and reduce the 2021 NDPP OMAG vegetation management costs recorded in the regulatory asset. NV Energy shall file the supporting documentation within ten days of the date of issuance of this order.

## VIII. NDPP ALTERNATIVE RATE PROPOSALS

### CMN's Position

81. CMN states that NDPP rates should be separated by function, with both the distribution and transmission components applicable to bundled customers and only the distribution component applicable to Distribution-Only Service ("DOS") customers to prevent NV Energy from double-charging DOS customers for both the FERC transmission charges and again through the NDPP mechanism. (Ex. at 500 at 5.)

82. CMN states that transmission-related NDPP costs should be allocated among bundled rate classes in proportion to their share of transmission costs as determined in each service territory's most recent GRC. (*Id.* at 5-6.)

83. CMN states that distribution-related NDPP costs should be allocated among rate classes in proportion to their share of distribution costs as determined in each service territory's most recent general rate case. (*Id.* at 6.) CMN recommends that the NDPP rate should be designed as a per-kW charge for demand-metered customers, consistent with standard rate design practice for recovery of costs that are distribution- and transmission-related. (*Id.*)

### Wynn and SEA's Position

84. Wynn and SEA provide that it is understandable that capital projects take time to execute, but it is also important that the NDPP be developed in a realistic manner and that NV Energy execute on approved projects as laid out in the plan. (Ex. 400 at 6.) Wynn and SEA

provide that it is possible that higher project costs are due to supply-chain issues and inflation; however, Wynn and SEA recommend that ratepayers be held harmless with respect to the delayed in-service dates. (*Id.*)

85. Wynn and SEA recommend that NV Energy's recovery in this proceeding for Wildlife Inspections and Corrections be limited to the \$5,563,553.00 budget that the Commission originally approved for 2021 spending, plus \$1,270,815.00 in carrying charges. (*Id.* at 8.) Wynn and SEA further recommend that NV Energy continue to defer the remaining balance of \$12,073,274.00 of Wildfire Inspections and Corrections Expenditures into the 2022 and 2023 NDPP recovery dockets, including carrying charges. (*Id.*)

86. Wynn and SEA provide that in the 2020 NDPP, NV Energy determined that it would be prudent to continue inspections and corrections at an accelerated rate, and instead of spending the amounts according to the schedule in the NDPP, NV Energy accelerated almost the entire amount of the budget into 2020. (*Id.* at 9.) Wynn and SEA provide that NV Energy's inspections and corrections program is already over budget, and NV Energy's assessment showing that it is under budget is not accurate because NV Energy's analysis included an incorrect approved amount for 2022 of \$7,350,086.00 and not the \$5,563,553.00 included in the approved NDPP. (*Id.* at 10.) Wynn and SEA further explain that because there is still two years left in the NDPP plan period, any further expenditures will cause NV Energy to further exceed its overall budget. (*Id.*)

87. Wynn and SEA state that NV Energy did not provide any additional information about the reasonableness of the 2020 expenditures for Wildlife Inspections and Corrections or make any attempt to demonstrate the reasonableness of the deferred expenditures relative to the amounts that it is recovering in base rates. (*Id.* at 11.)

88. Wynn and SEA recommend that NV Energy's cost recovery continue to be limited to the amounts budgeted in the NDPP for 2021, or \$5,563,553.00. (*Id.*)

### **Staff's Position**

89. Staff recommends that the Commission accept in all material respects the mathematical accuracy of the calculations of the schedules and rates as filed, with the following caveat: that these schedules/rates incorporate the recommended adjustment in its testimony. (Ex. 202 at 1.)

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

90. NV Energy disagrees with Wynn and SEA's proposal to introduce a budget-based recovery because it contradicts the concept of cost-based rates. (Ex. 111 at 4.)

91. NV Energy's rebuttal to CMN regarding incrementality above also applies here to the OMAG rate proposals as NV Energy argues that both transmission and distribution charges should be considered; that only one screen at the transmission and distribution level should be factored into the calculation; and that NPC and SPFC should be considered in the aggregate to get a proper level of incrementality. (Ex. 111 at 13.)

92. NV Energy disagrees with CMN's assertion that DOS customers are being "double-charged" for the NDPP program because the current FERC rates were set before the NDPP program was implemented, and until NV Energy files a FERC rate case with NDPP costs, NDPP costs are not included in the FERC rates. (Ex. 113 at 3.) NV Energy explains that due to the FERC rate case not yet being filed, and because the allocation of a portion of total NDPP costs are away from retail customers, it is currently under-recovering NDPP costs. (*Id.*)

93. NV Energy disagrees with CMN's assertion that the rate recovery of the NDPP program is more appropriately accomplished through a demand charge instead of a volumetric



per-kWh charge because the objective of the NDPP program is to implement incremental steps that harden the grid to ensure safe and reliable operations of the system. (*Id.* at 4.) NV Energy explains that these are not direct capacity-related investments but rather investments that support the overall safety of the grid, and therefore the incremental nature of costs is more appropriately recovered through a flat dollar-per-kWh volumetric rate. (*Id.*)

94. NV Energy provides that CMN's demand charge proposal is inconsistent with how other public policy program surcharges are developed and recovered by customers. (*Id.* at 4-5.) NV Energy further provides that CMN's proposal would add additional complexities to the NDPP tariff, rate design, and subsequent recovery from customers. (*Id.* at 7-8.)

95. NV Energy provides that Wynn and SEA misstate NV Energy's budgets and costs approved in Docket No. 20-02031 by basing expenditures on the initial requested budget and not on the final approved budget that was reduced to \$242,081,904 by the Commission in previous NDPP orders. (Ex. 116 at 2.) NV Energy states that Wynn and SEA do not include the additional budget of \$8,787,583 approved in Docket No. 21-03040. (*Id.* at 3.) Moreover, NV Energy states that Wynn and SEA misstate NV Energy's proposed recovery for new capital, and therefore, NV Energy spent 25 percent over the expense budget and spent 66 percent below the capital budget and not 90 percent as stated by Wynn and SEA. (*Id.*)

96. NV Energy states that \$17,636,827.00 for inspections and corrections deferral represents the acceleration of projects during 2020 prior to 2021, 2022, and 2023 schedules, and the later years will reflect an underspend when excluding the \$17,636,827.00 deferral. (*Id.* at 5.) NV Energy provides that applying the deferral as a 2021 spend or as a carry-over will result in a forecasted overspend in budget for inspections and corrections of approximately \$5,000,000.00, and NV Energy will seek funding in a future filing. (*Id.*)

97. At the hearing, NV Energy indicated that no retail transmission costs are included in the calculation of the DOS rates in Statement O in a general rate case. (Tr. at 393.) NV Energy also stated that it should be its goal as a company and as part of rate design not to overcharge or undercharge depending on where the dollars are falling; because it is not related to their usage, it's not related to demand on the system, this is a public purpose cost that should be borne by all customers. (*Id.* at 394-395.)

### Commission Discussion and Findings

98. The Commission agrees with NV Energy that the NDPP was enacted as a public policy program where all NV Energy customers benefit from the program's implementation, including *especially* DOS customers *because of transmission expenditures*.<sup>17</sup> *Moreover, the Commission understands that DOS customers are not currently being double-charged, and as NV Energy notes, the current FERC rates were set before the NDPP program was implemented, so any NDPP-related transmission costs are not included in FERC rates currently being paid by the DOS customers.* Accordingly, the Commission declines to separate NDPP transmission costs from calculations of the NDPP rate applicable to DOS customers.

99. Regarding the rate design elements proposed by Wynn and SEA and CMN, the Commission agrees with NV Energy as no party has taken issue with the costs incurred in the inspections and corrections program, and the issue of incrementality is being addressed separately in this order. Approving only the 2021 inspections and corrections budget amount for inclusion in the calculation of the NDPP rate would create a lower immediate NDPP rate, but future NDPP rates would be increased by the carrying charges on any deferred amounts. Accordingly, the Commission rejects Wynn and SEA's proposal.

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<sup>17</sup> See discussion in Section IX.

100. Regarding CMN's proposals to allocate transmission- and distribution-related NDPP costs among bundled rate classes in proportion to their share of these costs and a rate design based on a per-kW charge for demand-related customers, the Commission rejects these proposals. The Commission finds that these proposals would unduly add complexity to the NDPP rate calculations, potentially create confusion amongst customers, and be generally inconsistent with the calculation of other public policy program charges. The Commission agrees with NV Energy that these charges are not driven by capacity addition requirements, but rather provide societal benefit to all NV Energy customers. Therefore, the Commission rejects CMN's proposal.

## **IX. STATEWIDE NDPP OMAG RATE**

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

101. NV Energy provides that the NDPP rate components include the NDPP statewide component, which consists of the total NDPP OMAG costs and the NDPP allocated OMAG transmission costs, which are divided by total NPC and SPPC kWh sales to calculate the statewide rate, and the NDPP capital component consisting of a calculation for either NPC or SPPC and is the total NDPP capital distribution costs recorded and the NDPP allocated capital transmission costs. (Ex. 108 at 2-3.) NV Energy states that the total NPC NDPP capital costs are divided by the 2021 NPC sales, and the total SPPC NDPP capital costs are divided by the 2021 SPPC sales to calculate separate kWh rates for each company. (*Id.* at 3.) NV Energy states that NPC and SPPC capital kWh rates are summed with the statewide kWh rate resulting in different NDPP kWh rates for each company. (*Id.*)

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### CMN's Position

102. CMN recommends that the Commission reconsider NV Energy's use of a uniform charge across both service territories to recover NDPP OMAG costs. (Ex. 500 at 25.) CMN provides that when the Commission first adopted a uniform NDPP rate, it stated that it was not bound to its decision and that there is no precedential effect on rate design adopted in future proceedings. (*Id.*) CMN states that the magnitude of the proposed NDPP OMAG rate and associated inter-utility subsidy warrants reassessment by the Commission of the proper allocation and design of the NDPP rate. (*Id.*)

103. CMN argues that the bulk of the NDPP costs and OMAG expenses arise from activities that NV Energy should be pursuing as a normal part of safe and reliable operations, such as inspections, patrols, and corrections, and vegetation management, and therefore, the shifting of costs is not justified to have one utility pay for the NDPP costs of another utility. (*Id.*) CMN recommends that separate NDPP OMAG rates be developed for the NPC and SPPC service territories to better align with cost-causation, compared to a uniform rate, which would be more equitable because costs would be borne by those who cause the costs to be incurred. (*Id.* at 27-28.)

104. CMN states that it encourages the Commission to reject the notion that this could only be accomplished through a uniform charge across the two service territories, an approach that fails to give any weight to the direct benefits to a service territory from the prudent expenses or capital investment made on its behalf. (*Id.* at 30.) CMN states that the Commission should begin with the premise that each service territory should be directly assigned the costs incurred in its respective territory and then, if the Commission determines that some amount of cross-subsidy is in the public interest, the Commission should make an explicit determination as to the

amount of the subsidy. (*Id.* at 30-31.) CMN provides that in weighing whether and how much of a subsidy should be levied, the Commission should give weight to the direct benefits to each service territory from prudent expenses or capital investments made on its behalf, and in considering a subsidy from NPC customers to SPPC customers, should also consider the extent to which current rates paid by SPPC customers may be lower than the rates paid by similarly-situated customers served by NPC. (*Id.* at 31.)

105. CMN provides that the current NDPP rate design and recovery does not reflect cost-causation, and NV Energy's proposed allocation of costs in this case would perpetuate this situation. (*Id.* at 33.) CMN states that in the normal course of ratemaking principles, these costs would be allocated to customer classes on the basis of cost-causation principles; however, none of these fundamental ratemaking practices are followed in the NDPP cost recovery. (*Id.* at 34.)

106. CMN provides that the distribution-related costs that NV Energy is seeking to recover are allocated and recovered on a kWh basis, which is in contravention of basic principles of cost allocation because distribution costs are either demand-related or customer-related, not energy-related. (*Id.*) CMN explains that because distribution costs are not energy-related, then equitable recovery of distribution-related costs should not occur through kWh charges for customer classes that are demand-metered, and to do so would bias the recovery of costs to the disadvantage of higher-load-factor customers within each class. (*Id.* at 35.) CMN further explains that the incremental transmission-related costs that NV Energy is seeking to recover are also allocated and recovered on a kWh basis, also in contravention of the basic principles of cost allocation. (*Id.* at 35-36.) CMN provides that it is not aware of any jurisdiction that classifies transmission costs as 100 percent energy related, as NV Energy proposes for its NDPP rate

mechanism, and similarly is not aware of a jurisdiction that recovers transmission costs entirely on an energy basis from customers that have demand meters. (*Id.* at 36.)

### **SNGG's Position**

107. SNGG argues that NV Energy's proposal to continue recovering NDPP OMAG expenses through a statewide rate ignores that NPC and SPPC are separate legal entities with separate rates for separate service territories and creates an objectionable rate subsidy to the SPPC ratepayers at the expense of NPC ratepayers. (Ex. 600 at 5.)

108. SNGG states that the subsidy from NPC customers is \$31,051,000.00 and asserts that NV Energy has not made any compelling argument that NDPP costs spent in the SPPC territory benefit the NPC system. (*Id.* at 6.) SNGG explains that NPC customers receive no power from the SPPC distribution system, and there is no benefit for NPC customers from costs associated with the SPPC distribution system upgrades. (*Id.*) SNGG provides that of the \$47,480,328.00 in total costs on the SPPC system, \$45,854,201.00 is for the distribution system, which is about 97 percent of the total NDPP costs. (*Id.* at 7.) SNGG asserts that this is important because distribution upgrades to SPPC's system provide no benefit to NPC, whereas specific capital assets will be assigned to the utility service territory receiving the asset, and the costs will be recovered from those territories' customers. (*Id.*)

109. SNGG argues that the 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. (*Id.* at 9.) SNGG explains that the proposed NDPP OMAG expenses in the SPPC service territory are used only for SPPC customers despite the NV Energy's request to have \$31,051 thousand of these costs paid by NPC ratepayers. (*Id.*) SNGG asserts that because SPPC distribution expenses

are not beneficial to NPC ratepayers, including these costs in NPC's customers' rates violates the used and useful rule. (*Id.*)

110. SNGG additionally argues that the statewide rate for NDPP OMAG is not just and reasonable because NPC's customers are heavily subsidizing the costs of another utility that they did not cause and from which they are not receiving any direct benefit. (*Id.* at 10.) SNGG states that SPPC ratepayers, on the other hand, will receive a direct benefit from these costs and, therefore, should be held responsible for paying for them. (*Id.*)

111. SNGG states that it is additionally concerned that the proposed statewide rate violates the "necessary for the provision of service" rule because the NDPP costs that would be misallocated to NPC ratepayers are not necessary for the provision of service to those NPC ratepayers. (*Id.* at 10-11.)

112. SNGG provides that the difference between the allocation of costs for the NDPP and the ON Line transmission line is that ON Line serves both utilities so therefore both utilities should pay for it; however, the NDPP costs are separate distinct costs that provide service in the SPPC service territory, and as a result, the NDPP costs should be directly assigned to only the SPPC territory. (*Id.* at 11.)

113. SNGG argues that if the same parent company did not own NPC and SPPC, costs could not be allocated from SPPC's service territory to NPC's customers. (*Id.*) SNGG states that SPPC and NPC are legally distinct jurisdictional utilities that operate as separate utilities. (*Id.* at 11-12.) SNGG explains that because NPC and SPPC have never merged and remain legally distinct entities, there is no basis for either NPC or SPPC to have their costs allocated to the other service territory. (*Id.* at 15.)

114. SNGG states that the NDPP OMAG costs are exactly the type of activity that NPC and SPPC acknowledged in Docket No. 15-03001 would be inappropriate absent a merger of the two companies. (*Id.* at 16.) SNGG further states that shifting costs from one utility to another and applying a statewide rate would result in regulating NPC and SPPC as a merged entity when a merger has not been approved. (*Id.* at 16-17.)

115. SNGG provides that the foregoing makes clear that NPC and SPPC do not have the authority to seek or grant the assignment of costs from one utility to another to implement a statewide rate for OMAG. (*Id.* at 19.) SNGG asserts that not only does imposing the statewide rate run counter to basic utility regulation principles but imposing the costs of one utility on customers of another raises serious equity issues because there is not a way to demonstrate the benefit of expenses incurred by SPPC for NPC customers. (*Id.*)

116. SNGG provides that SPPC does not need NPC customers to subsidize OMAG costs for them because the rate increase that SPPC would experience is about 3.54 percent, and therefore, SPPC ratepayers can accommodate the rate increase that would result if they paid for all of the costs incurred within their system for their own benefit. (*Id.* at 19-20.) Furthermore, SNGG notes that for policy reasons, the NDPP subsidy should not be imposed because it could translate to lost productivity by commercial or industrial customers and may lead to companies leaving NPC's system. (*Id.* at 21.)

117. SNGG states that if the Commission determines NPC customers should bear some of the NDPP costs, it should begin assessing recovery by leaving directly assigned costs in the service territory incurred, and then if the Commission determines that some amount of cross subsidy is in the public interest, it can make explicit determinations as to the amount of the



subsidy after weighing the direct benefits to each service territory from expenses and investments. (*Id.* at 30.)

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

118. Wynn and SEA recommend that the Commission follow the well-established principle that costs be allocated “at least roughly commensurate with the estimated benefits received.” (Ex. 400 at 20.) Wynn and SEA provide that the wildfire mitigation costs do not provide a measurable benefit to NPC’s service territory and recommend that the Commission require NV Energy to allocate all NDPP expenses that occur in either of its territories to only be paid by those respective territory’s customers. (*Id.*) Therefore, Wynn and SEA argue that the view that “100 percent of the benefits from the NDPP operating expenses are social in nature” is incorrect. (*Id.*)

119. Wynn and SEA argue that the subsidy based on benefits received by customers of the respective utilities is not justified despite the broader social benefits because those benefits are not possible to measure or are social in nature. (Ex. 400 at 22-23.) Wynn and SEA state that benefits of wildfire prevention may be either direct or social but that SPPC customers are the main beneficiaries of these benefits to secure property in forested areas. (*Id.* at 23.)

120. Wynn and SEA provide that direct benefits are monetary benefits derived from the avoidance of a contingent loss and in this case one resulting from wildfire. (*Id.* at 24.) Wynn and SEA further provide that direct benefits represent a reduction in risk to property owners, utilities, and municipalities. (*Id.*) Wynn and SEA state that one might consider other broader social benefits associated with the health and safety impacts of avoiding wildfires to include environmental impacts, avoided personal injury, and impacts to the State as a whole. (*Id.*)

121. Wynn and SEA explain that direct benefits of NDPP expenditures are realized by customers located in the fuel basin where the expenditures are made and further point out that customers residing in forested areas such as Incline Village benefit more from wildfire prevention than customers living in Henderson. (*Id.*) Wynn and SEA explain that social benefits stemming from wildfire prevention are difficult to quantify because the benefits do not impact all customers equally between the two service territories. (*Id.* at 25-26.) Wynn and SEA illustrate that the loss of forest in the north impacts individuals living in the north that enjoy the forest more regularly than customers living in apartments in Las Vegas. (*Id.* at 26.)

122. Wynn and SEA state that 100 percent of the NDPP benefits are not social, and if the Commission is to consider social benefits in its analysis, then it is necessary to consider the proportion of the NDPP benefits that are direct versus social. (*Id.* at 27.) Wynn and SEA recommend that no more than 25 percent of the NDPP expenses be socialized and no less than 75 percent be directly assigned to the utility that incurred that cost, which results in 23 percent of the NDPP costs being allocated to NPC and 77 percent of the costs being allocated to SPPC. (*Id.*)

123. Wynn and SEA state that they would not foresee a circumstance where social benefits would be any larger than the direct benefits; at minimum, it would be sort of a 50/50 split. (*Id.* at 232.)

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

124. BCP recommends that the Commission deny SPPC's request for what BCP characterizes as a cross-subsidy from NPC's customers of \$30.9 million for NDPP direct costs that were incurred in SPPC's service territory in 2021 and deferred from 2020. BCP states that NV Energy's proposal to continue with the existing cost-allocation is contrary to Nevada statutes

and regulations, accounting requirements, prior Commission merger orders, and Berkshire Hathaway Energy agreements. (Ex. 300 at 2.)

125. BCP explains that a direct cost is not allocated to a public utility's rate jurisdiction or to the customer classes of the public and can be specifically identified as being caused by a public utility's rate jurisdiction, a class of customers, or an individual customer. (*Id.* at 6.) BCP states that direct costs are assigned to the rate jurisdiction, class of customers, or individual customer that caused the direct cost to be incurred. (*Id.*) BCP provides that public utilities experience both joint costs and common costs and that the electric utilities did not incur any indirect costs for the NDPP in 2021 or 2022 that need to be allocated between NPC and SPPC. (*Id.* at 6-7.)

126. BCP provides that a cost-shift of \$30.9 million is inconsistent with customer cost responsibility because NPC's customers did not cause any of the \$30.9 million of NDPP costs that were incurred for SPPC's distribution system and SPPC's transmission system in 2021 and 2020. (*Id.* at 11.) BCP further provides that SPPC's distribution facilities and services are directly assigned to SPPC's retail customers – bundled and DOS – in SPPC's jurisdictional cost-of-service study, and NPC's distribution facilities and services are directly assigned to NPC's retail customers – bundled and DOS – in NPC's jurisdictional cost-of-service study. (*Id.* at 11-12.)

127. BCP provides that SPPC's and NPC's transmission facilities and services are allocated to their respective jurisdictional customers, and that the only common transmission facility that provides transmission service to both territories' customers is the ON Line where customer cost responsibility is allocated 75 percent to NPC and 25 percent to SPPC. (*Id.* at 12.) BCP explains that if NDPP work is performed on ON Line in the future, then it would be

appropriate to allocate the costs the same – 75 percent to NPC and 25 percent to SPPC because otherwise, the cost responsibility for NDPP work on transmission facilities should be directly assigned to those customers who receive service from those transmission facilities. (*Id.*)

128. BCP asserts that a cross-subsidy of \$30.9 million from customers of one public utility to customers of another public utility results in unjust and unreasonable charges for the customers providing the cross-subsidy. (*Id.* at 15.) BCP states that the cost-shift to have NPC's customers pay \$30.9 million for NDPP costs incurred on the facilities to provide service to SPPC's customers clearly results in unjust and unreasonable charges to NPC's customers and therefore is unlawful. (*Id.* at 15-16.)

129. BCP provides that the direct NDPP costs incurred in NPC's service territory in 2021 were only 6.9 percent of the total 2020 and 2021 NDPP costs incurred in NPC's and SPPC's service territories, but NV Energy is requesting a rate order that would require NPC's customers to pay 66.5 percent of the total 2020 and 2021 NDPP costs incurred in NPC's and SPPC's service territories. (*Id.* at 17.) BCP asserts that the effects and consequences of a \$30.9-million cross-subsidy from customers of one public utility to customers of another result in unjust and unreasonable rates for NPC's customers, which is unlawful pursuant to NRS 704.040(2). (*Id.*)

130. BCP provides that NRS 704.7983 does not exempt the NDPP from NRS 704.120, which is the statute that gives the Commission the power to fix any unjustly discriminatory rates. (*Id.* at 17-18.)

131. BCP explains that NPC and SPPC have separate customers and that when subsection 6 of NRS 704.7983 is read in conjunction with subsection 2 of NRS 704.7983, the reasonable interpretation is that NPC must collect the costs of its NDPP expenditures from its

separate customers, and SPPC must collect the costs of its NDPP expenditures from its separate customers. (*Id.* at 22.)

132. BCP provides that Section 13 of the Commission's NDPP regulation (LCB File No. R085-19) requires separate regulatory asset accounts for NPC and SPPC, which requires NPC and SPPC to file separate applications to clear their regulatory asset accounts. (*Id.* at 22-23.) BCP states that NPC and SPPC have differing pre-tax rates of return, depreciation rates, authorized rates of return, separate GRCs, and different customer classes for customers. (*Id.* at 24-25.) BCP notes that there is no language in subsection 4 of Section 13 of the Commission's NDPP regulation that provides for a shift of deferred costs between NPC's NDPP regulatory asset account and SPPC's NDPP regulatory asset account. (*Id.* at 25.) BCP provides that in Docket No. 21-03004, BCP filed a legal brief and a reply that supports BCP's consistent position that a cross-subsidy is unlawful. (*Id.* at 26.)

133. BCP notes that NPC and SPPC have separate revenues, expenses, gains, and losses, along with separate net income determinations. (*Id.* at 26-27.) BCP further provides that NPC and SPPC have separate accounting books and records provide separate utility services because of their separate service territories. (*Id.* at 27.) BCP explains that the definition of regulatory asset in the FERC Uniform System of Accounts does not allow customers of one public utility to pay for the deferred costs recorded in a different public utility's regulatory asset account. (*Id.* at 28.) BCP asserts that the amounts deferred in one public utility's regulatory asset account must be recovered from customers of that public utility and not from customers of an affiliated public utility. (*Id.*)

134. BCP states that rates of a regulated entity need to be cost-based to qualify for ASC 980 – Regulated Operations, and because NPC and SPPC are separate regulated entities,

each of their rates must be cost-based to qualify for rate-regulated accounting under ASC 980. (*Id.* at 19.) BCP explains that if NPC's customers are paying for \$30.9 million of SPPC's costs, then no reasonable person can argue that NPC or SPPC's rates are cost-based. (*Id.* at 29.) BCP provides that it explained in its legal brief in 21-03004 that a rate-regulated utility must discontinue the application of ASC 980-10 if its rates are not cost-based. (*Id.*)

135. BCP states that NPC and SPPC made a commitment to not cross-subsidize between the two electric utilities as part of the 1999 merger, and that the two entities agreed to hold ratepayers harmless as a commitment for merger approval. (Ex. 300 at 29.) BCP asserts that the allowance for a cross-subsidy of \$30.9 million from NPC to SPPC is not harmless to NPC's ratepayers. (*Id.*)

136. BCP further provides that both utilities and Berkshire Hathaway Energy made commitments to not have any cross-subsidization between the entities as part of commitment no. 25 to the stipulation accepted in the Commission's Order in Docket No. 13-07021. (*Id.* at 30.)

137. BCP additionally asserts that a cross-subsidy from NPC's customers for NDPP costs incurred in SPPC's service territory is inequitable because NPC's customers currently pay higher rates, have higher electric usage than SPPC's customers, and do more to conserve energy. (*Id.* at 3.)

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

138. Staff explains that the existing cost allocation, in which OMAG costs are recovered on a per-kWh basis from all of NV Energy's customers, was Staff's proposed methodology that the Commission adopted in Docket No. 21-03004. (Staff Br. at 1.) Staff states that the parties opposing the existing approach are seeking yet another bite at the apple by resurrecting arguments that the Commission previously heard and clearly rejected. (*Id.* at 2.)

Staff adds that multiple witnesses testified in this docket and in Docket No. 21-03004 as to the statewide benefits experienced by all customers when NV Energy invests in natural disaster mitigation, particularly with OMAG costs. (*Id.*) Staff notes that no party has produced any new evidence showing that NDPP costs do not benefit all customers or that the Commission cannot continue spreading OMAG costs among all customers. (*Id.*)

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

139. NV Energy asserts that preventing natural disasters is critical to the entire state of Nevada, which led the Legislature to make it a priority to pass SB 329 in 2019 and prevent disasters such as the Camp Fire. (Ex. 117 at 17.) NV Energy provides that the legislation was clear that all customers should pay the costs to implement the NDPP, and the Legislature intended for there to be a statewide rate; therefore, arguing two years later that some customers should not have the same rate is unreasonable. (*Id.*) NV Energy states that the NDPP does not follow traditional ratemaking principles because that it not what the legislature intended, and if parties to this proceeding disagreed, they could have pursued changes in the 2021 legislative session. (*Id.*, Tr. at 461-462.) NV Energy asserts that a benefit cannot simply be assigned to one service territory if a natural disaster occurs because natural disasters are far-reaching events; their consequence impacts all of us who live in Nevada. (*Id.*) NV Energy adds that the statewide impact associated with a fire in the Tahoe basin would include devastating effects on tourism, loss of tax revenue, loss of jobs, and health costs. (Tr. at 459.) NV Energy further explains that the costs of fighting fires and responding to the damage caused by fires can be significant, and those costs are paid with general funds collected statewide; NV Energy refers to Arizona approving \$100 million to fund wildfire relief efforts through its general fund. (Ex. 117 at 9.)

140. NV Energy states that the purpose of the bill was to avoid wildfires and natural disasters, so the social benefit is how the rate should be designed, and it should not be based on capital cost-causation. (*Id.* at 457.) NV Energy asserts that the legislation did not contemplate a typical rate design methodology based on what infrastructure is built within each utility or differentiating between a customer's use of functional parts of the electric system. (*Id.* at 56; Ex. 117 at 11.) NV Energy references the definition of "electric utility" applicable to the NDPP legislation and notes that it includes affiliate subsidiaries or affiliates and holding companies, reflecting legislative intent to allow costs to be spread between NPC and SPPC. (Ex. 117 at 5-8.) NV Energy also refers to a letter, dated June 9, 2020, in which the legislator who sponsored the NDPP legislation, as well as the legislators who chaired the Senate Natural Resources Committee and the Assembly Growth and Infrastructure Committee, state that the intent of SB 329 was to recover the costs of the NDPP through a single, statewide rate charged to all of NV Energy's customers. (*Id.* at 6-7.)

141. With regard to the argument that a statewide rate violates the "used and useful" rule, NV Energy cites the Commission's Order in Docket Nos. 20-02031 and 20-02032, which provides that "[a] functioning electrical grid in Nevada is used and useful to every electric utility customer. SB 329's focus is on the electrical grid as a whole across Nevada." (*Id.* at 14.)

142. Regarding capital costs, NV Energy provides that it has 25 weather stations in the North and 5 in the South, and the costs associated with them would be allocated in each service territory, but the OMAG and maintenance costs associated with them would be allocated statewide under NV Energy's proposal. (*Id.* at 458.) NV Energy states that those weather stations are key components in predicting when fires might occur, which benefits the entire state. (*Id.* at 459.)



## Commission Discussion and Findings

### Background and Legality

143. In 2019, the Nevada Legislature passed SB 329, which requires utilities to take prudent measures to reduce the frequency and intensity *impact* of natural disasters, including wildfires, by adopting new forest management practices, undertaking fuel reduction and vegetation trimming, and requiring the hardening of electric utility infrastructure. The Legislature recognized the catastrophic nature of wildfires caused by electric infrastructure.<sup>18</sup> Specifically, Senator Chris Brooks, the sponsor of SB 329, took note of the Camp Fire in California and PG&E's culpability in the fire when he stated that Nevada must prevent this from happening in Nevada.<sup>19</sup> However, SB 329 and its legislative history are silent regarding the aspects of rate design, aside from the direction that prudent NDPP expenditures be charged as a separate monthly line item. Therefore, the Legislature left the rate design elements, including the geographic implications, to the Commission.

144. Rate design is comprised of complex issues that involve multiple factors, of which cost causation is a fundamental building block. Thus, the statutes governing the Commission's ratemaking decisions afford it broad discretion regarding the specific factors to consider when addressing the statutory rate considerations and the weight given to those factors.

145. In setting rates to recover NDPP costs, the Commission must balance the legislative directive and public policy in SB 329 to mitigate potential fires and other natural disasters in a cost-effective, prudent, and reasonable manner with providing proper incentives for

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<sup>18</sup> SB 329 at Section 2.

<sup>19</sup> SB 329 remarks of Senator Chris Brooks, April 9, 2019, Hearing of the Senate Committee on Growth and Infrastructure.

NV Energy to implement the NDPP to mitigate the risks and impacts of natural disasters.<sup>20</sup>

Furthermore, in balancing both interests, the Commission must stay within its statutory powers.<sup>21</sup>

As such, the Commission must “provide for the safe, economic, efficient, prudent and reliable operation and service of public utilities” and “balance the interests of customers and shareholders of public utilities by providing public utilities with the opportunity to earn a fair return on their investments while providing customers with just and reasonable rates.”<sup>22</sup>

146. The Legislature, in passing SB 329, embraced a public policy for the state that the electric utility should engage in planning to mitigate the potential for natural disasters. 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 argued against the existence of a statewide societal benefit, stating that any socialization of rates *costs* would be borne disproportionately by NPC ratepayers as NV Energy’s current NDPP plan emphasizes fire protection based upon the aridification in SPPC’s service territory. However, the Commission notes that NV Energy is unique in that NPC and SPPC are 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. Therefore, if a significant fire were to strike *within SPPC’s service territory* the Lake Tahoe Basin, similar to the Camp Fire in California, there would be obvious and conceivably significant consequences to all residents within Nevada, such as economic calamities associated with the loss of a generating resource

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<sup>20</sup> SB 329 at Sections 1 and 2.

<sup>21</sup> *Nevada Power Co. v. Eighth Judicial Dist. Court of Nevada ex rel. Cnty. of Clark*, 120 Nev. 948, 955–56, 102 P.3d 578, 583–84 (2004) (holding that the Commission “is a creature of statute, it has no inherent power; rather, its powers and jurisdiction are determined by statute.”)

<sup>22</sup> NRS 704.001(3)(4).

jointly dispatched to serve all Nevadans (this could lead to a loss of power to customers in both northern and southern Nevada); the loss of transmission lines serving and interconnecting NPC's and SPPC's service territories; 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 during Nevada's hottest months.

147. Moreover, the bulk of the costs of responding to and recovering from a devastating wildfire is unlikely to be paid for through utility rates but, instead, through general funding derived from sources outside of the service territory where the fire occurred. Thus, all Nevadans benefit from the NDPP, whether the expenditures are within NPC's or SPPC's service territories.

148. The Commission finds that SB 329 is a societal bill that necessitates partial socialization of the NDPP program. The Commission notes that public utility commissions may depart from cost-causation standards when approving rates for public policy programs as the benefits are widespread.<sup>23</sup> This follows the fundamental policy that the costs of utility infrastructure improvements that benefit the entire State can be spread among all those who benefit – whether directly or indirectly – rather than allocated to a small utility zone wherein specific expenditures occur. Accordingly, the socialization of the NDPP costs provides for just and reasonable rates while ensuring safe, economic, efficient, prudent, and reliable operation and service.

#### NDPP Cost Allocation

149. In Docket No. 21-03004, the Commission adopted an allocation methodology that assigns capital costs directly to the utility where the costs are incurred, and OMAG costs are

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<sup>23</sup> *Principles of Public Utilities Rates*, Second Edition, (March 1988), James Bonbright. Pgs. 165-167.

recovered on a kWh basis through a statewide rate regardless of the service territory. Though the Commission is not bound by *stare decisis*<sup>24</sup> and must not engage in ad hoc rulemaking,<sup>25</sup> it must set just and reasonable rates, supported by substantial evidence, to avoid an arbitrary or capricious outcome. The Commission continues to find that the utilization of the compromise methodology it ordered just last year in Docket No. 21-03004 results in just and reasonable rates. 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 supporting accelerated natural disaster prevention, the Commission determined that it was appropriate to recover OMAG costs via a statewide rate.

150. The Commission recognizes that as a widely-accepted ratemaking principle, costs should be allocated to match the flow of benefits to an extent that is reasonably possible. However, at issue here is deciphering the benefits. The Commission notes that in the 2021 NDPP proceeding and here, the parties are particularly more focused on debating legislative intent than on unravelling the quantifiable benefits attributable to the different service territories. Determining how these benefits are allocated is necessary to set the rate for cost recovery. The Commission agrees with NV Energy that most Nevadans will benefit from the NDPP because natural disasters are wide-reaching events regardless of where they occur because of their environmental impacts, potential for personal injury, and the overall impact on the State as a

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<sup>24</sup> *State Dep't of Taxation v. Chrysler Grp., LLC* 129 Nev. 274, 280, P.3d 713, 717 (2013) (“We reject this argument because ‘administrative agencies are not bound by *stare decisis*’”); citing *Motor Cargo v. Public Service Comm’n*, 108 Nev. 335, 337, 830 P.2d 1328, 1330 (1992); see also *Desert Irrigation Ltd. V. State of Nevada*, 113 Nev. 1049, 1057, 944 P.2d 835, 841 (1997) (“[N]o binding effect is given to prior administrative determinations.”).

<sup>25</sup> NRS Chapter 233B lays out the requirements for the regulations for the regulation-making and adjudication procedure of all Executive Department agencies.

whole.<sup>26</sup> However, the Commission also takes under consideration that there are critical differences among SPPC's northern and NPC's southern service territories in terms of the *type and* flow of benefits. Indeed, as pointed out by Wynn and SEA, *an individual ratepayer located in one of* SPPC's northern ratepayers in forested areas such as Incline Village *likely* benefits more from the NDPP spending in SPPC's service territory than *the average* NPC's ratepayer southern urban ratepayers in apartments in Las Vegas.<sup>27</sup>

151. While the Commission considers these opposing viewpoints, it is within the context that SB 329 was passed by the Legislature as a public policy program that benefits all of NV Energy's customers, whether they live in NPC's or SPPC's service territory. Therefore, while some parties in this case continue to assert that there are no statewide benefits or that the benefits of the NDPP are disproportionately experienced by SPPC's customers, those parties fail to present substantial evidence quantifying or adequately comparing the relative benefits of the proposed NDPP programs and projects. Given the Commission's consistent findings that there are statewide benefits, and in the absence of quantitative analysis addressing whether and to what extent one service territory experiences greater benefits than the other, the Commission accepts the recommendation of Staff and NV Energy to use the same allocation methodology that the Commission approved last year in Docket No. 21-03004 given that it is the only methodology in this record that adequately considers and accounts for the statewide benefits of the NDPP.

152. NDPP cost allocation is still in the early stages and further refinements will be necessary in the future to safeguard against inequities, including any that might exist among SPPC's customers. Therefore, NV Energy is directed to provide additional analysis and

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<sup>26</sup> Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy's Legal Brief filed on July 21, 2022, in Docket No. 22-03006

<sup>27</sup> Ex. 400, Prepared Direct Testimony of Bradley G. Mullins, QA 46 at p. 26.

supporting testimony with its 2023 cost recovery filing to further assess or quantify the socialized benefits associated with NDPP costs. A failure to provide substantial evidence on the value and benefits of the components of the program in future cases may result in a different just and reasonable rate *cost-allocation* than the ~~rate design~~ *cost-allocation* ordered in this case.

## **X. CAPITAL PROJECT RECOVERY FOR POLES**

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

153. NV Energy provides that the 2021 NDPP capital budget was underspent by \$21,533,943 due to factors relating to timing and resource availability issues. (Ex. 104 at 23.) NV Energy states that it is currently evaluating mechanisms for improved reporting and automation of manual processes to increase efficiency, including utilizing a project approval process, tracking progress and financial reporting, accelerating programs or projects, exploring new initiatives, and assessing NDPP budgets on a regular basis. (*Id.* at 23-28.)

154. NV Energy states that as a result of the First Amendment to the NDPP Plan in Docket No. 21-03040, it reevaluated pole projects to identify what poles qualified for recovery in the NDPP regulatory asset; therefore, the capital work relating to those pole replacement classifications was moved to general operating capital to be recovered in a GRC. (Ex. 107 at 9-10.)

155. NV Energy states that the identified NDPP work orders will be tracked through a class code titled, "Natural Disaster Mitigation." (*Id.*) NV Energy provides that for cost recovery relating to NDPP capital assets, the depreciation and return on capital investments will be recovered from all customers in the service territory in which the capital assets reside, which is consistent with Docket No. 21-03004. (*Id.*)

156. NV Energy provides that replacement of poles identified by detailed circuit inspections or circuit patrols is a proactive means to remediate a potential or existing hazard associated with a structural issue identified on existing poles and that it replaced 208 poles during 2021. (Ex. 104 at 28.) NV Energy states that it is seeking recovery of costs for 31 pole replacements that occurred during 2021 including 3 tier-3 poles whose vintage is 1968 or newer, 16 poles with a vintage of 1967 or older, and 2 tier-1E poles replaced due to priority zero designation. (*Id.* at 29.) NV Energy seeks \$782,126.00 in capital cost recovery for the 31 poles. (*Id.* at 31.) NV Energy provides that for the 16 poles with vintages older than 1968, it is seeking \$288,793.00 for recovery. (Ex. 119.) NV Energy explains that the variance between actual spending and the 2021 annual budget for priority pole replacements represents an 85-percent underspend in actual costs versus the 2021 approved budget and is attributable to factors such as short timeframes between commencement of the NDPP and NDPP 2021 construction milestones and the lack of available design resources to manage the volume of formal design and permitting required. (Ex. 104 at 30-31.)

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

157. Staff states that it is comfortable with NV Energy's recovery of NV Energy's identified poles for the Tier 3 poles which have a vintage of 1968 or newer and the Tier 2 1-E poles. (Tr. at 266-267.) Staff states that for the 16 poles with a vintage of 1967 or older, it would be something that would have to be debated or discussed just because of the vintage of those poles because they are past the threshold that was listed in the stipulation for Docket No. 21-03040. (*Id.* at 267.)

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

158. NV Energy did not provide pre-filed rebuttal testimony on this issue; however, at the hearing NV Energy agreed that the poles would have to be reviewed (Tr. at 435-437.)

### **Commission Discussion and Findings**

159. The Commission acknowledges that in Docket No. 21-03040, the parties reached a stipulation regarding certain poles to be considered for replacement under the NDPP, excluding poles with vintage dates of 1967 or earlier.<sup>28</sup> In that docket, context was provided for those selected poles, including that the approximate average service life of distribution poles is 70 years and that 1967 vintage dates represent 75 percent of the service life.<sup>29</sup>

160. Here, the Commission notes that of the 16 pre-1968 vintage poles listed in Ex. 119, 4 are high-voltage distribution poles and 12 are distribution poles. Of the 4 high-voltage distribution poles, 3 have a vintage date of 1941, and 1 has a vintage date of 1950. The vintage dates for the distribution poles range from 1938 to 1966. The Commission finds that all of the vintages of these poles exceed 75 percent of the 70-year average service life, and 6 of the distribution poles exceed the average service life of 70 years. Despite NV Energy stating how pole replacements are categorized and which Tier-3 poles will be funded by the NDPP, the Commission finds that this statement conflicts with Exhibit 2 to the Stipulation filed in Docket No. 21-03040.<sup>30</sup> Because that exhibit includes distribution poles in the same Tier-3 geographic areas as the 16 poles at issue in this docket, the Commission finds that there needs to be a threshold for which poles should be recovered through the NDPP, and which poles would be replaced in the normal course of business. The Commission finds that the vintage of the poles is

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<sup>28</sup> Order dated July 1, 2021, in Docket No. 21-03040.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*



a reasonable basis for establishing when pole replacement is within the normal course of business.

161. Accordingly, the Commission orders that the expenditures for the 16 poles listed in Late-Filed Exhibit 119 be reclassified from the NDPP regulatory asset to the SPPC respective plant and, if applicable, OMAG accounts and filed as an errata in SPPC's pending GRC in Docket No. 22-06014. The Commission determines that such an errata will not require re-noticing due to the size of the adjustment relative to the overall GRC filing.

## **XI. GRANT FUNDING**

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

162. NV Energy provides that the acceleration of resilient corridors project will reduce the wildfire risk to communities and utility infrastructure, and it will improve the quality of life for all who live in and visit Lake Tahoe communities by enhancing the resilience of Tahoe's forests and communities to disturbances such as a wildfire, insect and disease, drought, and climate change. (Ex. 103 at 18.)

163. NV Energy provides that part of the \$4.7-million in SB 508 vegetation management funds that was allocated to NV Energy from the State as matching funds under the contract with the Nevada Division of Forestry ("NDF") was used to help fund the vegetation treatments performed during the Caldor Fire. (*Id.* at 20.) NV Energy further provides that the total cost of the vegetation treatments for the Caldor event was \$1,526,206.20. (*Id.*) NV Energy states that by using the NDF/SB 508 contract, \$399,675.61 was contributed from the State for this vegetation treatment and an additional \$408,705.79 savings on equipment cost was also captured using the contracts that NV Energy has with local fire agencies. (*Id.* at 20-21.) NV Energy states that utilizing the partnerships that it has with stakeholders, it had 53 percent

savings of \$808,381.40 and had costs billed to NV Energy of \$717,824.41, which it is seeking recovery of under the 2021 vegetation budget. (*Id.* at 21.)

164. Regarding stewardship agreements with the Lake Tahoe Basin Management Unit, NV Energy states that its Fire Mitigation Specialist/Fire Chief Mark Regan is the responsible person for seeking out grants and other funding in addition to his other duties. (Tr. at 41-42, 115, 124-126.) NV Energy explains that its partnership with the Forest Service recognized treatments that NV Energy was doing and had funding available to implement healthy forest treatments in the Tahoe Basin that aligned with its resilient corridor program. (*Id.* at 42.) NV Energy provides that the way that these funds work is that first they do the work and then seek reimbursement from the Forest Service on repayment. (*Id.*) NV Energy further provides that the process includes a monthly report for tracking progress that is submitted to the Lake Tahoe Basin Unit where it is verified. (*Id.*)

165. NV Energy states that Mark Regan works with the partnerships to see what type of grants are available and how NV Energy can execute on them, but that all financial tracking and billing occurs through its financial department. (*Id.* at 43.) NV Energy states that it meets on a weekly basis with the NDF and emergency management to become aware of new available funding. (*Id.* at 44-45.)

### **Commission Discussion and Findings**

166. The Commission recognizes that NV Energy sought external funding to reimburse the monetary amounts that it expended under the NDPP. The Commission further acknowledges that additional funding obtained through grants reduces the amounts to be recovered from ratepayers. Due to this benefit, the Commission strongly encourages NV Energy to continue to seek out all possible opportunities to obtain additional funding.

167. NV Energy provides that grant procurement is solely delegated to the Fire Mitigation Specialist/Fire Chief Mark Regan. To maximize the ability to take advantage of external funding opportunities, the Commission finds that it would be prudent for NV Energy to share grant procurement and funding responsibilities with additional employees in addition to Mark Regan. The Commission orders NV Energy in its 2023 NDPP plan update to file with the Commission information that identifies in detail: 1) all NV Energy employees assigned to grant procurement; 2) the grant or matching funding applied for; and specific dollar amounts obtained, if any; 3) the specific NDPP components for which the grant or matching funding are to be spent; and 4) how the funding obtained affects the costs being sought for recovery and remaining budgets.

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. 22-03006 is granted in part and denied in part as delineated in this order.

### **Compliances**

2. Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy shall file with the Commission updated tariff sheets and supporting documentation including in electronic executable form as available to reflect the reclassifications and rate design contained in this order within ten days of the issuance of this order.

3. Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy shall file with the Commission a schedule or other documentation supporting where the 2020 vegetation management reclassification in the amount of \$2,281,424.15 is reflected in Ex. 109, Table 3, within ten days of the issuance of this order.

**Directives**

4. Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy shall provide detailed analysis and supporting testimony with their 2023 Natural Disaster Protection Plan Annual Cost Recovery filing addressing how to assess or quantify the socialized benefits associated with the Natural Disaster Protection Plan costs.

5. Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy shall include in its 2023 Natural Disaster Protection Plan Annual Plan Update information that identifies in detail: 1) all Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy employees assigned to grant procurement; 2) the grant or matching funding applied for and specific dollar amounts obtained, if any; 3) the specific Natural Disaster Protection Plan components for which the grant or matching funding are to be spent; and 4) how the funding obtained affects the costs being sought for recovery and remaining budgets.

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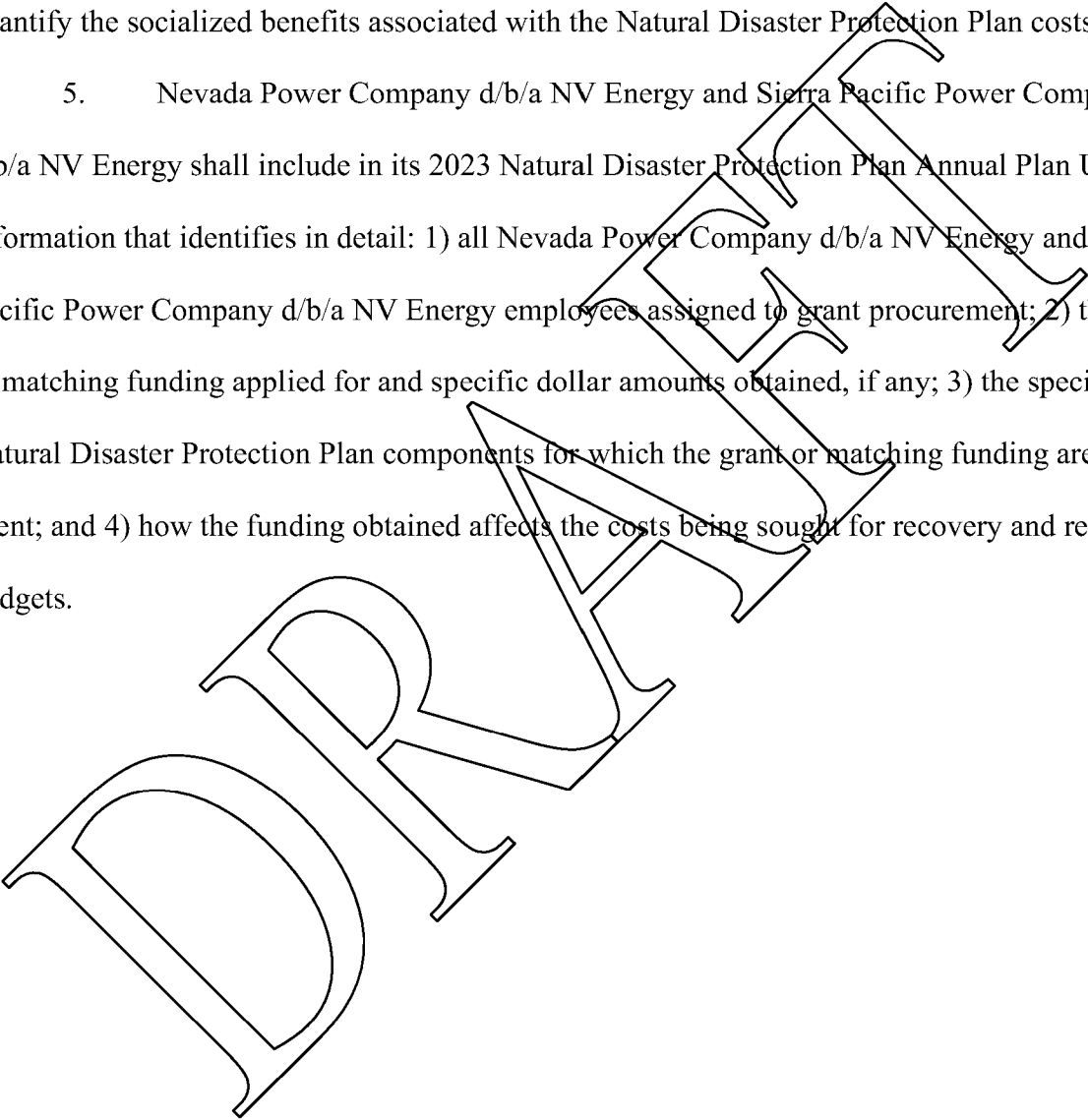
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6. Sierra Pacific Power Company d/b/a NV Energy shall, **by Friday, October 14, at 2:00 p.m.**, file an errata to its General Rate Case Application Revenue Requirement Certification filing in Docket No. 22-06014 to reflect the reclassifications of a) incremental labor operations and maintenance, administrative and general costs; b) incremental vegetation management operations and maintenance, administrative and general costs; and c) the 16 distribution and high voltage distribution pole capital costs and any related operations and maintenance, administrative and general costs incurred in its test period, January 1, 2021, through December 31, 2021.

By the Commission,

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HAYLEY WILLIAMSON, Chair

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C.J. MANTHE, Commissioner and Presiding Officer

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TAMMY CORDOVA, Commissioner

Attest:

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TRISHA OSBORNE,  
Assistant Commission Secretary

Dated: Carson City, Nevada

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(SEAL)