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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 their 2027-2046 Triennial Integrated Resource Plan and 2027-2029 Energy Supply Plan.

Docket No. 26-05007

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REGULATORY OPERATIONS STAFF'S REPLY BRIEF

The Regulatory Operations Staff ("Staff") of the Public Utilities Commission of Nevada ("Commission") hereby files this Brief in reply to the responsive briefs filed by various parties pertaining to Phase II issues.

I. NV Energy is a regulated public utility with an obligation to serve within the statutory framework set forth by the Legislature and Commission's regulations.

NV Energy is a monopoly public utility regulated by this Commission.[1] As a public utility, NV Energy has an affirmative obligation to furnish reasonably adequate utility service and facilities to customers within its certificated service territory.[2] In doing so, NV Energy must operate within the statutory framework established by the Legislature and comply with the Commission's regulatory requirements.[3] The Commission should not allow NV Energy to reverse its role as the regulated utility by unilaterally establishing new contractual and rate requirements, selectively imposing those requirements upon its customers, and then asking the Commission to endorse the resulting arrangement through an integrated resource planning ("IRP") proceeding.[4]

As Staff and others have explained, NV Energy's argument that it has the authority to impose the large load energy service agreement ("LLESA") containing new contractual requirements and rate structures on large load customers pursuant to Condition 10 of its Schedules LGS-3 and GS-3 is

[1] NRS 704.001, 704.020, 704.040.

[2] NRS 704.040. *See* NAC 704.348 (a utility may only refuse to provide service to a customer under limited circumstances such as fraud or nonpayment of a delinquent bill). *Sw. Gas Corp. v. Pub. Serv. Comm'n*, 86 Nev. 662, 668, 474 P.2d 379, 383 (1970) (duty to serve exists independent of statute).

[3] The Nevada Legislature has "created a complete and comprehensive statutory scheme for the regulation" of public utilities and has "vested performance of that function" in the Commission, a state agency. *Consumers League of Nevada v. Southwest Gas Corp.*, 94 Nev. 153, 157, 576 P.2d 737, 739 (1978). Because the Commission is a "creature of statute," it does not have any constitutional or common law existence or authority, and only possesses those powers that are "expressly or 'by necessary or fair implication' conferred" upon it in statute by the Nevada Legislature. *Nevada Power Co. v. Eighth Jud. Dist. Ct. of Nevada*, 120 Nev. 948, 955-56, 102 P.3d 578, 583-84 (2004).

[4] Ex. 304 at 5-8 (Olesky-Dir).

unfounded.[5] Despite multiple rounds of testimony and briefing, NV Energy has repeatedly failed to explain how the LLESA proposal is consistent with the service and rate structure contemplated under those Commission-approved schedules. That is because it is not. As the evidence illustrates and briefing explains, NV Energy's LLESA proposal introduces new contractual terms and rate components, including minimum demand charge, minimum energy charge, a customer-specific generation charge, a long-term energy rate, an "ESA overall rate," termination provisions, customer security, etc.[6] NV Energy admits that prior to this proposal, "no specific service contract was typically signed by Rule 9 applicants who wanted to become large-load bundled customers," and separate service contracts have historically only been utilized when customers voluntarily execute them pursuant to optional tariffs, not contracts deemed mandatory to receive electric service.[7]

In addition, rather than seek Commission guidance on the appropriate path to address large load issues, or present its proposal through an applicable tariff or ratemaking proceeding, NV Energy decided to implement its LLESA framework by circumventing the requirements in NRS 704.100 and NRS 704.110 and rushing the decision through the IRP process.[8] The IRP statutes authorize the Commission to evaluate a utility's resource requirements, forecasts, generation and transmission needs, and proposed resource plans, and authorize the Commission to accept or modify a resource plan based on various resource planning considerations.[9] NRS 704.751 further permits NV Energy to elect not to accept the Commission's order modifying its resource plan in this case. This statutory provision highlights the distinction between the Commission's authority over resource planning and its authority to regulate the rates and conditions under which NV Energy provides electric service. In

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[5] Staff's Resp. Brief at 7; Tract's Resp. Brief at 6-7; EdgeCore Op. Brief at 5; Microsoft Op. Brief at 2-3; Novva Op. Brief at 6; WPA Op. Brief at 2-3.

[6] Tract's Resp. Brief at 6-7; EdgeCore Op. Brief at 5; Microsoft Op. Brief at 2-3; Novva Op. Brief at 6; WPA Op. Brief at 2-3.

[7] Phase II Hrg. Tr., Vol. III at 28:17-29:7 (Danise); Ex. 306 at 22-23, Att. AED-5 (Danise-Dir).

[8] Ex. 101 at 4-5 (Jt. App.) (requesting to expedite a decision on its form LLESA proposal); Ex. 169 at 3, 15 (Elicegui-Dir); Phase II Hrg Tr., Vol. IV at 186-189 (explaining why NV Energy proposed a form LLESA in this IRP rather than through a separate docket). Further, while at least one intervener argued the Commission has the authority pursuant to NRS 704.120 to substitute just and reasonable rates, regulations, practices, or services (e.g., Fleet's Resp. Brief at 3.), that authority cannot be read in conflict or ignorance of NRS 704.100 and NRS 704.110 or NRS Chapter 233B, particularly when the proceeding was initiated by the regulated utility (rather than Commission-initiated in response to a complaint or on its own motion). *See Washington v. State*, 117 Nev. 735, 739, 30 P.3d 1134, 1137 ("Statutes within a scheme and provisions within a statute must be interpreted harmoniously with one another in accordance with the general purpose of those statues and should not be read to produce unreasonable or absurd results.").

[9] NRS 704.741, 704.746, 704.751.

this IRP, NV Energy asks the Commission to conflate these separate regulatory functions and allow NV Energy to use the resource planning process as a path to obtain approval of contractual provisions that serve to establish new rates, and terms and conditions of service for large load customers. However, a Commission order setting forth its decision on its modifications to NV Energy's service rates, terms, and conditions for large load customers should not be subject to NV Energy's ability to reject those modifications. The Commission should not allow this IRP to become a substitute for the statutory procedures governing changes to utility schedules.[10]

The Commission should also be mindful that its decision in this case will serve as important guidance concerning the relationship between resource planning, ratemaking, and the Commission's general regulatory authority. The Commission should not allow NV Energy to establish new contractual requirements through individual negotiations and then seek approval of those requirements through an unrelated resource planning proceeding. Not only did NV Energy's actions result in an extremely complex proceeding requiring multiple rounds of testimony and briefing and raise numerous unprecedented issues, they also created uncertainty for both its existing and prospective customers who need to be able to rely on established regulatory frameworks when making investment decisions in Nevada. If NV Energy is permitted to establish new rates and conditions of service through a pro forma contract approved in an IRP proceeding, there could be little reason for NV Energy (or other utilities) to pursue the appropriate statutory procedures governing changes to their schedules. That is not the framework established by the Legislature, and it is not a practice the Commission should condone.

II. Any determination of customer priority must be based on objective, nondiscriminatory criteria—not based on who executed an LLESA.

As a regulated utility, NV Energy does not have the discretion to select which customers it will serve or decline to serve on the basis that doing so presents resource planning, infrastructure, or financial challenges.[11] While NV Energy argues that it did not unilaterally force the LLESA form on

[10] This is not to suggest that the Commission can never consider or approve a pro forma agreement in an IRP proceeding. The distinction is between approving a form agreement as a component of resource planning and establishing a new regulatory framework governing the rates, terms, and conditions under which large load customers are allowed to receive electric service.

[11] NRS 704.001, 704.020, 704.040.

its customers but merely "proposed" one in this IRP proceeding, the evidence in this case demonstrates the opposite.[12] NV Energy not only unilaterally selected the customers who would be offered the LLESA and the point in time at which the LLESA would be offered, it then used its position as the provider of last resort to pressure hesitant customers into signing the LLESA by notifying customers their load ramps would be mitigated in the IRP load forecast if they did not sign the LLESA, inferring there would be no guarantee of being served at the time expected, if those customers did not execute the LLESA prior to the filing of the IRP.[13]

Those who have already executed LLESAs and filed them with the Commission have requested priority of service as LLESA signatories, and their place in any queue be preserved on the basis that they did what was required of them by NV Energy because no alternative path to long-term utility service was available at the time.[14] However, NV Energy did not possess the authority to condition service on signing an LLESA in the manner that it did and NV Energy's unfair and discriminatory practices make this proposal untenable. Staff appreciates the interveners' concerns about potential delays in an investigatory proceeding or adopting a large load tariff, as well as concerns that delays in regulatory proceedings could have practical impacts on service to large customers.[15] This is why objective and nondiscriminatory criteria, including the timing of signed Rule 9 Agreements, whether a large load customer brought its own generation resources, load ramp schedules, and other considerations should factor into determining priority of service.

III. All parties agree that large-load customers should pay the costs they cause.

NV Energy argues that the "core tenants of the LLESA framework are necessary to protect existing customers."[16] There is clearly no dispute in this case that those customers whose loads necessitate additional generation, transmission, and distribution infrastructure should be responsible

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[12] NV Energy Resp. Brief at 2.
[13] Ex. 304 at 5-8, 10-11, 14 (Olesky-Dir). Moreover, the undue pressure imposed upon customers is further illustrated by the fact that every single customer submitted "customer reserve positions" due to their disagreements with various provisions NV Energy inserted into the proposed LLESA form.
[14] *See, e.g.,* Amazon Resp. Brief at 4., Ex. 602 at 12 (Bieber-Reb), Ex. 1005 at 1-2, 15 (Barlett-Reb), Ex. 2006 at 6-7 (Augustine-Reb).
[15] Ex. 601 at 4-5, 27 (Bieber-Resp); Ex. 1002 at 13-14 (Bartlett-Supp); Ex. 2004 at 5-6 (Augustine-Resp); Ex. 1602 at 5-6 (Swenson-Supp); Ex. 3000 at 13-14 (Brown-Dir).
[16] NV Energy Resp. Brief at 3-5.

for the costs incurred to serve them.[17] And, there is no question that the Commission must address the challenges that have been presented regarding service to large load customers by ensuring that the incremental costs and risks associated with large loads are appropriately allocated, that existing customers are protected, and that NV Energy is able to reasonably and prudently meet its service obligations. However, all of this should be achieved through lawful regulatory processes. The urgency of the underlying resource planning issues created by NV Energy does not justify circumventing lawful procedures or rushing an underdeveloped LLESA framework.[18]

IV. Staff's recommendation to conduct an expedited investigation to develop a ratepayer protection mechanism (RPM) should be approved.

NV Energy's request for approval of the form LLESA raises issues that are broader than the approval of a pro forma service agreement, including the allocation of limited electric capacity, the conditions imposed on customers seeking service, and whether the treatment of similarly situated customers was fair and nondiscriminatory.[19] The concerns raised by Staff and multiple interveners demonstrate that the proposed and subsequently revised LLESAs fail to resolve the substantial legal, regulatory, and policy issues, and they should not be used as a substitute for establishing an RPM and allocating limited resources fairly. Staff's recommendation to deny the proposed LLESA form and initiate an expedited, transparent investigation provides the appropriate means for the Commission to establish an RPM, uniform eligibility requirements, and objective criteria for allocating existing and incremental generation resources and prioritizing future large-load service requests. This process will also ensure meaningful participation by affected customers, provide regulatory certainty, preserve affordability and reliability, and ensure that the costs and risks of serving large-load customers are appropriately assigned consistent with cost-causation principles.

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[17] Staff continues to believe that those existing large customers with permanent service that NV Energy incorporated in its prior IRP filings and asserted it could serve "without the buildout of extensive transmission and generation infrastructure attributed to subsequent large load customer requests" should be exempt from paying for the incremental costs to serve their load. Ex. 306 at 26-29 (Danise-Dir).

[18] Ex. 304 at 20-21 (Olesky-Dir).

[19] Prologis Resp. Brief at 3.

RESPECTFULLY SUBMITTED this 18th day of November 2026.

PUBLIC UTILITIES COMMISSION OF NEVADA
REGULATORY OPERATIONS STAFF

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PROOF OF SERVICE

I hereby certify that I have on this day served the foregoing document upon all parties of record in this proceeding by electronic mail to the recipient's current electronic mail address.

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DATED at Las Vegas, Nevada, on the _18th_ day of November, 2026.

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