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FILED WITH THE PUBLIC UTILITIES COMMISSION OF NEVADA - 10/27/2026

October 27, 2026

Trisha Osborn
Assistant Commission Secretary
Public Utilities Commission of Nevada
1150 East William Street
Carson City, Nevada 89701

RE: 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 Integrated Resource Plan,2027-2029 Action Plan, and 2027-2029 Energy Supply Plan.

Docket No. 26-05007

Dear Ms. Osborn:

Please find the enclosed Response in Opposition to NV Energy's Motion to Strike on behalf of Vote Solar in the above-referenced Docket.

Sincerely,

s/ Robert Rigonan

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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 Action Plan and 2027-2029 Energy Supply Plan.	)))))	**Docket No. 26-05007**

VOTE SOLAR'S RESPONSE IN OPPOSITION TO NV ENERGY'S MOTION TO STRIKE PORTIONS OF THE DIRECT TESTIMONY OF RAO KONIDENA AND REQUEST FOR EXPEDITED TREATMENT

Pursuant to NAC 703.712, Vote Solar responds and opposes Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy's Motion to Strike Portions of the Direct Testimony of Rao Konidena and Request for Expedited Treatment ("Motion"), which was filed and served on Vote Solar on October 22, 2026.

The Motion should be denied for three independent reasons. First, a demand side plan is defined by Nevada statutes and regulations, not NV Energy's filing labels. Under those statutes and regulations, the Grid Service Riders belong in the supply-side plan—in Phase III—and not the demand side plan. Second, because the riders set rates for wholesale power their compensation must be approved exclusively under the Commission's Public Utility Regulatory Policies Act ("PURPA") authority. PURPA is also a Phase III issue. Finally, NV Energy identifies no prejudice because it has a full Phase III rebuttal opportunity to respond to Vote Solar's testimony and already deferred its own response on these issues to that phase.

Accordingly, the Motion lacks merit and should be denied.

Background Facts

On October 14, 2025, NV Energy filed applications for new Energy Grid Services Rider ("GSR-E") and Capacity Grid Services Rider ("GSR-C") in dockets 25-

10012 (Nevada Power) and 25-10013 (Sierra Pacific). According to the utilities, these riders were intended to expand beyond traditional demand response to "a broader set of DER programs as more customers start acquiring electric vehicles, rooftop solar photovoltaic ("PV") systems, demand responsive water heaters and pool pumps, battery energy storage devices..." Direct Testimony of M. Brown 5:12–18, Docket 25-10012 (April 30, 2026). The riders compensate for electricity exported from the customer to the utility. *Id.* at 6:14–15; *see also id.* at 7:20–21, 9:15–17.[1]

On May 6, 2026, NV Energy filed its 2026 Joint IRP. That filing included a discussion of the utilities' GSR-E and GSR-C tariffs in Volume 33 Section 9 of the Application—ostensibly as part of the utilities' "Demand Response Programs." The Application confirmed that customer-exported electricity is compensated under the tariffs. Appl., Vol. 33 at 206.

On September 22, 2026, Vote Solar filed the Direct Testimony and Exhibits of Claudine Custodio. Ms. Custodio's testimony addressed the Grid Service Riders, GSR-E and GSR-C, generally. Custodio Direct Test. at 22:2–27:16 (Sept. 22, 2026). Ms. Custodio noted that while NV Energy proposes the tariffs as part of its DSM plan, "the DSM plan is not a natural fit for services and resources that provide more than one value and have many attributes, like dispatchability, that are more analogous to supply-side resources than historic demand-side programs." *Id.* at 22:16–21. She also explained that including dispatchable resources, such as batteries, alongside energy efficiency or smart thermostat demand reductions overlooks

[1] NV Energy's witness, Michael Brown, also confirmed in testimony on October 26 that customer exports are compensated under the GSR-E and GSR-C tariffs.

important legal distinctions between them, including that some constitute qualifying facilities under PURPA. *Id.* at 22:21–23:5. In addition to noting that NV Energy's current tariffs fail to implement PURPA's required standard offer tariff for small qualifying facilities, she states that the GSR-E and GSR-C tariffs also fail to comply with PURPA. *Id.* at 24–27. However, she noted that "PURPA issues in this proceeding are appropriately in phase three... and will be more fully developed by a different witness for Vote Solar in that phase." *Id.* at 25:18–20.

On October 6, 2026, NV Energy filed its Phase II rebuttal. The only witness to respond to Ms. Custodio's testimony regarding the GSR-E and GSR-C tariffs was NV Energy witness Janet Wells. Ms. Wells states that "Ms. Custodio represents that Vote Solar will present a more fully developed position" about the GSR-E and GSR-C issues in Ms. Custodio's Q&A 40 "through a different witness in Phase III" and that "[t]he Companies likewise will respond more fully to Vote Solar's position in that phase through the appropriate witness or witnesses." Prepared Rebuttal Testimony of Janet Wells (Phase II) 46:12-15.

On October 16, 2026, Vote Solar filed the Prepared Direct Testimony of Rao Konidena. Mr. Konidena is an expert in resource planning, loss of load expectation, effective load carrying capability, capacity benefits, and behind the meter resources. Rao Konidena Direct Test. 3:14–4:20 (Oct. 6, 2026). As Mr. Konidena states, he addresses the capacity accreditation and value of behind the meter battery storage in Phase III because it does not meet the definition of "energy efficiency and conservation" within the requirement to submit a demand side plan in NAC 704.934. *Id.* at 6:14–19. In fact, he states that NRS 704.7366 precludes consideration of the

GSR-E and GSR-C as energy efficiency or conservation within the demand side plan because they implement compensation rates based on the time of day, day of the week, or time of year during which electricity is used. *Id.* at 7:1–3.

Instead, Mr. Konidena explains that virtual power plants ("VPPs")—like those envisioned in the GSR-E and GSR-C tariffs involving dispatchable resources, are "more like utility scale generation than traditional energy efficiency programs that reduce total consumption" and are "more appropriate as part of a Supply Side Plan." *Id.* at 6:12–7:1. Mr. Konidena further explained that VPPs can and should be modeled as dispatchable resources in the utilities' PLEXOS model, rather than as exogenous hard-coded inputs. *Id.* 7:4–11, 8:13–9:6. And furthermore, Mr. Konidena explained that customers covered by the GSR-E and GSR-C tariffs include qualifying facilities—or "QFs"—under PURPA that are entitled to minimum compensation not provided by the GSR-E and GSR-C tariffs and cannot be capped like DSM programs. *Id.* at 7:12–19; *see also Winding Creek Solar, LLC v. Peterman*, 932 F.3d 861, 865 (9th Cir. 2019) (a cap on the amount of electricity a utility must purchase from QFs violates PURPA); *Indep. Energy Producers Ass'n v. Cal. Pub. Util. Comm'n*, 36 F.3d 848, 854 (9th Cir. 1994) ("QFs are entitled to receive the *full* avoided cost rates... not a rate that is 80% (or less than 80%) of the full avoided cost rate" (emphasis in original)).

On October 22, 2026, NV Energy filed its Motion seeking to strike most of the substantive portions of Mr. Konidena's testimony addressing the appropriate price for capacity supplied by behind the meter battery storage—including both the appropriate per-kilowatt-month price and the inappropriate application of a 40 or

70% "Capacity Resource Rate" reduction. But NV Energy does not seek to strike all of Mr. Konidena's testimony and the portions that NV Energy seeks to strike are internally inconsistent. It seeks to strike some testimony comparing the value of capacity calculated under the GSR-E and GSR-C method with utility-scale resources, while not seeking to strike other discussion of the same comparison. *Compare* Mot. Ex. A at 6:3–11, 11:19–12:4 (not requesting that the commission strike inputs to the GSR-C compensation calculation compared to utility-scale storage costs) *with id.* at 13:17–14:15 (requesting that the Commission strike a comparison of the same values on an equivalent ELCC basis). And it seeks to strike some discussion of applying PURPA's full avoided cost requirement to the GSR-E and GSR-C tariffs, *id.* at 7:12–19, but not other discussions of the same thing. *Id.* at 10:9–12:4, 14:16–16:10, 16:16–18.

The entire basis for the Motion is NV Energy's claim that Mr. Konidena's testimony addresses issues "related to the Companies' proposed DSM Plan," which it contends is "exclusively addressed in Phase II" rather than Phase III. Mot. 2–3. It repeats that argument for each of the Q&As from Mr. Konidena's testimony that the utility seeks to strike: claiming only that NV Energy's choice to insert the GSR-E and GSR-C in the DSM Plan portion of its application is controlling. *Id.* at 3–4.

Argument

The foundational premise of NV Energy's Motion is wrong: the GSR-E and GSR-C tariffs are not appropriate for a demand side plan and, therefore, cannot be appropriate in Phase II. That is not merely Mr. Konidena's opinion, as NV Energy contends. Mot. 2. It is provided by law that the Motion ignores. Even NV Energy's

witness Wells concedes that at least the interplay between the GSR tariffs and PURPA are appropriate topics for Phase III. *See* Wells Rebuttal (Phase II) 46:5–15 (responding to Vote Solar's Phase II testimony regarding the GSR-E and GSR-C tariffs' compliance with PURPA by deferring the utilities' response to Phase III).[2]

I. GSR-E and GSR-C tariffs do not belong in the DSM Plan because they are supply side resources rather than energy efficiency or conservation within the meaning of NAC 704.9057.

NV Energy's Motion is premised on its own legal error by including the GSR-E and GSR-C tariff issues in a demand side plan despite not meeting the requirements for such a plan.[3]

A demand side plan includes energy efficiency and conservation. NAC 704.9057, 704.934(2). Energy efficiency and conservation are reductions in consumption, not injections of power. *See* NAC 704.904 (defining conservation), 704.90605 (defining energy efficiency). The GSR-E and GSR-C riders compensate customers' injections of power and, therefore, fall outside the appropriate components of a DSM Plan: energy efficiency or conservation. Moreover, because the tariffs' compensation is event-based and calculated from baselines set in prior days, they constitute rates that depend on the time of day, day of the week, or time of year when electricity is used. Such rates are explicitly prohibited from inclusion in a DSM Plan. NRS 704.7366. Instead, they constitute resources for meeting forecasted demand and energy covered by a "supply plan." NAC 704.9166.

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[2] Ms. Wells confirmed that agreement in her testimony during the hearing on October 26, 2026.

[3] What NV Energy calls its Demand Side Management Plan, or DSM Plan, the rules call a "demand side plan." *See* NAC 704.9057, 704.934.

Therefore, NV Energy erred by including the GSR-E and GSR-C tariffs in its DSM Plan rather than its supply plan. Vote Solar's testimony correctly addressed the tariffs in Phase III as part of a supply plan, where they belong under the Commission's administrative rules and the statutes. Thus, the Motion should be denied on this basis.

II. GSR-E and GSR-C must comply with PURPA, which is a supply plan issue for Phase III.

The Motion should also be denied because Konidena's testimony addresses whether compensation for customer exports complies with PURPA—an issue reserved for Phase III, as NV Energy agrees.

Because the GSR-E and GSR-C compensate electricity exports from customers to the grid, which power is resold by NV Energy to other customers or the CAISO market, they are sales for resale in interstate commerce. Only FERC can set those rates unless the Commission approves them under PURPA. 16 U.S.C. §§ 824(b)(1), 824d(a), 824e(a) (granting FERC exclusive jurisdiction to set wholesale rates); 16 U.S.C. § 824a-3(f)(1) (providing authority to set rates pursuant to FERC's PURPA regulations); *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 153–54, 165 (2016) (states may not exercise authority over in-state rates or generation to set prices for power sold wholesale); *Pub. Util. Dist. No. 1 v. IDACORP, Inc.*, 379 F.3d 641, 646–48 (9th Cir. 2004) (FERC has exclusive jurisdiction to determine the appropriate price for power sold for resale); *Connecticut Light & Power Co.*, 70 FERC ¶ 61,012, 61,030 (1995) (authority to set "rates for sales at wholesale in interstate commerce is thus beyond the reach of state authority and is instead subject to exclusive [FERC]

authority"), 61,023 (states may only set wholesale prices under PURPA). In short, the GSR-E and GSR-C tariffs are necessarily topics related to the Commission's PURPA ratemaking—a Phase III issue—because that is the only legal authority under which the Commission can set the tariff compensation rates. Considering them in Phase II, under the Commission's authority to approve demand side plans under state law, runs into Federal Power Act preemption. Therefore, Mr. Konidena's discussion of whether the GSR-E and GSR-C tariffs comply with PURPA is appropriate in Phase III. The Motion should also be denied for this reason.

III. NV Energy fails to show prejudice.

Third, NV Energy's Motion must be denied because it fails to show any prejudice. To preclude testimony on the basis that it was introduced in the wrong phase of a proceeding requires the movant to show prejudice if the testimony is not excluded. *Cf. Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 236, 808 P.2d 919 (1991) (reversing trial court's exclusion of testimony as introduced in the wrong phase of trial where there was no prejudice). A party cannot make that showing where it can cross-examine the witness and introduce contradictory evidence. *Id.* Here, NV Energy's Motion fails to show that it cannot cross-examine or introduce contradictory evidence because the deadline to file a rebuttal has not passed, and it can cross-examine and seek to introduce evidence at the hearing.

Contrary to NV Energy's claim that Q&A 11, 12, 14, 17, and 18 of Mr. Konidena's testimony in Phase III "deprives the Companies of the ability to meaningfully rebut it," Mot. 3, NV Energy has the full time allotted for rebuttal to respond. It provides no evidence that addressing Mr. Konidena's testimony during

Phase III—where it appropriately belongs, notwithstanding NV Energy's erroneous inclusion in the DSM Plan portion of its application—is prejudicial. NV Energy's own witness deferred the company's response to at least some of the same issues to Phase III. *See* Wells Prepared Rebuttal Testimony of Janet Wells (Phase II) 46:5–15. It can still do so.

And, even if the Commission were to strike the portion of Mr. Konidena's testimony that NV Energy requests, NV Energy must still respond to Mr. Konidena's testimony that addresses the same or related matters but NV Energy does not seek to strike, including his request that customer-side DERs be treated as supply side resources rather than part of the DSM Plan, that aggregated customer-side DERs not be capped through DSM Plans, that the capacity component of the GSR-C tariff cannot be based on the WoodMac projection NV Energy uses, that NV Energy's marginal capacity from front-of-meter resources is significantly higher than the GSR-C price, and that the GSR-E and GSR-C tariffs fail to comply with PURPA. Konidena Test. 8:6–9, 10:9–12:4, 14:16–16:10, 1–17. The Motion fails to explain why responding to the lines of testimony it seeks to strike imposes any additional burden, much less an unfair one, justifying its request to strike.

CONCLUSION

Statutes and administrative rules do not permit the Grid Service Riders to be placed in a DSM Plan. Nor does federal law permit the Commission to approve them outside its authority under PURPA. NV Energy's erroneous inclusion of the tariffs in the DSM portion of its application should not dictate the appropriate scope of hearing on the demand side plan. NV Energy also expressly deferred its own response to

PURPA issues to Phase III and shows no cognizable prejudice; the Commission should deny the Motion.

Dated: October 27, 2026

Respectfully submitted,

EARTHJUSTICE

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Nevada that I delivered true and correct copies of the forgoing, I served a copy of this **VOTE SOLAR'S RESPONSE IN OPPOSITION TO NV ENERGY'S MOTION TO STRIKE** in Docket No. 26-05007 the following persons via the method of service noted.

DATED this 27th day of October, 2026

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