UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

NV Energy, Inc.	**)**	**Docket Nos. ER13-1605-000**
	)	**ER13-1607-000**
	)	**(consolidated)**

REPLY COMMENTS OF NV ENERGY, INC.

Pursuant to Rule 602(f)(2) of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure,[1] NV Energy, Inc., on behalf of its public utility subsidiaries Nevada Power Company ("Nevada Power") and Sierra Pacific Power Company ("Sierra Pacific") (collectively "NV Energy" or the "Companies"), hereby submits these reply comments in response to comments filed by Commission Trial Staff ("Trial Staff") on October 9, 2014 in the above-captioned proceeding.

I. BACKGROUND

These consolidated proceedings address rate and non-rate changes to the Companies' open access transmission tariff ("OATT"). A comprehensive recitation of the history of these proceedings can be found in the settlement agreement (the "Settlement"), which was filed with the Commission on September 19, 2014 by the Settling Parties.[2] In accordance with Rule 602(d)(2) and (f)(2), the Settlement advised all parties that comments must be filed on or before October 9, 2014, and reply comments must be filed on or before October 20, 2014. On October

[1] 18 C.F.R. § 385.602(f)(2) (2014) ("A comment on an offer of settlement may be filed not later than 20 days after the filing of the offer of settlement and reply comments may be filed not later than 30 days after the filing the offer, unless otherwise provided by the Commission or the presiding officer.").

[2] The "Settling Parties" are NV Energy, The Barrick Mines, Deseret Generation & Transmission Cooperative, Inc., the City of Fallon, Nevada, Colorado River Commission, Las Vegas Power Company, LLC, Los Angeles Department of Water and Power, Newmont USA Limited, the Southern California Public Power Authority, Truckee Donner Public Utility District, Liberty Utilities (CalPeco Electric) LLC, and Ormat Nevada Inc. and ORNI 47 LLC (together "Ormat").

9, 2014, Trial Staff submitted comments supporting the Settlement.[3] In particular, Trial Staff found that the Settlement "resolves all issues concerning NV Energy's single-system rates made possible by the completion of its ON Line project."[4] Trial Staff also found that the Settlement "resolves issues concerning non-rate terms and conditions concerning current NV Energy customers Barrick Mines, CRC and Ormat" and that it "substantially reduces all of the rates in relation to those contained in NV Energy's original filing in Docket No. ER13-1605-000 other than the loss factor in Schedule 10."[5] Trial Staff concluded that "[i]n sum, the Settlement represents a fair negotiated resolution of the contested issues by the Settling Parties."[6]

While supporting the Settlement, Trial Staff asks the Commission to modify the Settlement to incorporate certain depreciation rate schedules that accompanied the rate filing. NV Energy respectfully submits these reply comments to address that issue.

II. REPLY COMMENTS

A The Commission Should Reject Trial Staff's Request to Modify the Settlement to Address Depreciation

While noting its general support for the Settlement, Trial Staff raises concerns about depreciation rates, and asks that the schedules of depreciation rates that accompanied the rate filing in this case be made part of the Settlement.[7] To avoid upsetting an uncontested settlement, the Commission should reject that request, for the following reasons.

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3 *NV Energy, Inc*., Docket Nos. ER13-1605-000 and ER13-1607-000, Initial Comments of the Commission Trial Staff on the Offer of Settlement and Settlement Agreement at pp. 1-2 (October 9, 2014) ("Trial Staff Comments") ("Staff believes that the Settlement is fair, reasonable and in the public interest and, accordingly, supports acceptance of the Settlement by the Commission, provided that the attached depreciation schedules for Nevada Power and Sierra Pacific are included as part of the Settlement.").

4 *Id.* at p. 9.

5 *Id*.

6 *Id*. at p. 10.

7 *Id*. at pp. 10-11.

First, Trial Staff's request is inconsistent with the nature of the black-box settlement reached in this case. Like many other components to the stated (as opposed to formula) transmission rate at issue in this case, the Settling Parties have reached a settlement in this case instead of litigating cost of service issues including, among others, the depreciation-related inputs to those rates. The Commission should not upset that settlement by injecting into it an issue that the Settling Parties have agreed not to litigate. The Commission regularly accepts black-box settlements of transmission rates without compelling the settling parties to specify depreciation rates.[8] The Commission has also accepted uncontested settlements and rejected Trial Staff's request to insert depreciation issues into the settlement after fact.[9] NV Energy asks the Commission to do the same here.

Second, Trial Staff's request is inconsistent with the Commission's chosen method of regulating depreciation. Indeed, as Trial Staff has noted previously, "under Order No. 618, a utility is allowed to change its depreciation rates for accounting purposes without Commission

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[8] *See, e.g., Southwest Power Pool, Inc.*, 148 FERC ¶ 61,014 (2014) (approving settlement agreement containing "black box" transmission revenue requirement); *New York Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,017 (2013) (approving settlement agreement containing "black box" transmission revenue requirement). *See also El Paso Natural Gas Co.*, 132 FERC ¶ 61,139 at P 82 (2010) ("The Commission routinely approves black box settlements and, in doing so, does not require settling parties to justify individual elements of a settlement package.").

[9] *See, e.g., Florida Power & Light Co*., 138 FERC ¶ 61,063 at P 4, 8 (2012) ("Trial Staff asks that the Settlement be modified to require a Federal Power Act (FPA) section 205 filing to effectuate any changes to depreciation and amortization rates for wholesale services under the Tariff…With regard to the depreciation and amortization rates, we find no reason to modify section 3.12 of the Settlement."); *Tampa Electric Co*., 141 FERC ¶ 61,015 at P 15 (2012) ("With regard to Trial Staff's request that the Commission specify what depreciation data Tampa Electric must provide in any future filing to revise Tampa Electric's depreciation rates and condition approval of the Settlement on Tampa Electric's compliance with such instructions, we find no reason to condition our approval of the Settlement in that manner."); *The Empire District Elec. Co.*, 137 FERC ¶ 61,106 at P 6, 12-13 (2011) ("Staff recommends that Empire should report any difference between the amounts of depreciation expense that is computed using the Commission-approved depreciation rates and the rates approved by Empire's retail regulators in its FERC Form No. 1…It is not necessary to address the accounting for potential differences in depreciation rates approved by the Commission and retail regulators when at present it is not known whether differences exist…The Settlement is hereby approved, as it appears fair and reasonable and in the public interest as discussed above.").

approval."[10] Rather, the Commission undertakes its regulation of depreciation rates in the context of rate cases,[11] as it did in this case by setting NV Energy's cost of service for hearing and settlement procedures. Therefore, Trial Staff's proposal to insert depreciation rates into the Settlement will be contrary to the Commission's system of regulating depreciation practices.

The few cases Trial Staff cites as support for its request are not on point. Indeed, Trial Staff cites only one case where the Commission has conditioned a settlement in this manner.[12] However, in that 1990 *Caprock Pipeline* decision, the pipeline had agreed to accept Trial Staff's cost of service, which contained a specific depreciation rate.[13] That is not the case in this proceeding; before the Commission in this case is a black-box settlement. The *AEP* decision Trail Staff cites is also inapposite.[14] There the Commission required depreciation rates be stated in a *formula* transmission rate, consistent with its policy on formula rates, because changing depreciation rates in the formula would have changed rates charged to customers without a section 205 filing. By contrast, the instant proceeding deals with *stated* transmission rates. With stated rates, no intervening change in depreciation methods (if one were to occur) would impact OATT rates unless and until the utility files and supports a section 205 rate change filing (or a rate change is ordered under section 206). At that point, the Commission and customers would have ample opportunity to evaluate any impact the depreciation change had on Commission-jurisdictional rates.

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[10] *Florida Power & Light Co.*, Docket No. ER10-1149-000, Initial Comments of the Commission Trial Staff on Settlement Agreement, at p. 9 (Oct. 13, 2011).

[11] *See Depreciation Accounting*, Order No. 618, 62 FERC ¶ 61,078 (2000).

[12] Trial Staff Comments at p. 11, *citing Caprock Pipeline Co.*, 50 FERC ¶ 61,246 (1990).

[13] *Id.*

[14] Trial Staff Comments at p. 11, *citing American Electric Power Serv. Corp.*, 120 FERC ¶ 61,205 (2007).

Finally, Trial Staff's request to modify the Settlement should be rejected because Trial Staff's concern appears to be more about NV Energy's *next* rate case than the one before the Commission.[15] Concerns about how NV Energy will calculate transmission rates in some future case are beyond the scope of this case and, therefore, the Settlement. Suffice it to say the Commission maintains full jurisdiction to evaluate the depreciation rates underlying any such future rate filing at the time such a case is filed. Moreover, because public utilities report their plant balances and depreciation amounts on an annual basis in FERC Form 1, the Commission and customers will have ample data to measure, verify, or contest the company's rate base and depreciation expense calculations in any future rate case.

B. The Capital Cost Credit Mechanism Was Agreed to by the Settling Parties and Should be Approved

Trial Staff also points out, but does not object to, a component of the settlement that addresses the possibility that NV Energy may recover some contribution to the capital costs of its transmission plant from third parties through litigation or insurance. While the negotiated mechanism in the Settlement may be unusual, the Settling Parties developed that mechanism as an equitable way to address an unusual circumstance – a future event that may or may not materialize. Sections 3.9 and 3.10 of the settlement ensure that customers will get the benefit of any offset to capital costs recovered from third parties.

[15] *Id*. at p. 10 ("Unless these depreciation rates are specified, it will be difficult to corroborate or establish accrued depreciation and net plant balances…the next time NV Energy makes a rate filing….").

III. CONCLUSION

WHEREFORE, for the reasons set forth above, NV Energy requests that the Commission approve the settlement and reject Trial Staff's request to modify it after the fact.

Respectfully submitted,

/s/ *Christopher R. Jones*

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Dated: October 20, 2014
Washington, DC

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of October, 2014, I have served a copy of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding, Docket Nos. ER13-1605-000 and ER13-1607-000.

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