

144 FERC ¶ 61,105  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

NV Energy, Inc.

Docket Nos. ER13-1605-000  
ER13-1607-000

ORDER ACCEPTING IN PART, REJECTING IN PART, ACCEPTING AND  
SUSPENDING FILINGS IN PART, ESTABLISHING HEARING AND SETTLEMENT  
JUDGE PROCEDURES AND CONSOLIDATING PROCEEDINGS

(Issued August 5, 2013)

1. On May 31, 2013, NV Energy, Inc. (NV Energy), on behalf of its public utility subsidiaries Nevada Power Company (Nevada Power) and Sierra Pacific Power Company (Sierra Pacific), filed in Docket No. ER13-1605-000 revisions to the rates contained in the current NV Energy Open Access Transmission Tariff (OATT), replacing them with single-system rates made possible by the One Nevada Transmission Line Project (ON Line), which will provide a direct interconnection between the Nevada Power and Sierra Pacific transmission systems (May 31 Rate Filing). Also on May 31, 2013, NV Energy filed in Docket No. ER13-1607-000 revisions to the non-rate terms and conditions contained in the current NV Energy OATT to reflect the consolidation of the Sierra Pacific and Nevada Power utilities and their transmission systems (May 31 OATT Filing).<sup>1</sup> In this order, we accept in part, subject to acceptance of NV Energy's internal reorganization in Docket No. EC13-113-000, reject in part, and accept and suspend in part the revised NV Energy OATT. We suspend the revised NV Energy OATT for a nominal period to become effective on the later of January 1, 2014 or the in-service date

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<sup>1</sup> NV Energy filed an errata to the May 31 OATT Filing on June 20, 2013.

of the ON Line, subject to refund, and establish hearing and settlement judge procedures. Additionally, this order consolidates Docket No. ER13-1605-000 with Docket No. ER13-1607-000 for purposes of hearing and settlement judge proceedings.

## **I. Background**

### **A. History**

2. Nevada Power is a public utility serving retail and wholesale customers in southern Nevada; its territory covers approximately 4,500 square miles and includes the City of Las Vegas. Nevada Power owns approximately 1,724 miles of transmission lines and other transmission facilities ranging from 60 kV to 500 kV.<sup>2</sup> Sierra Pacific is a public utility that serves load in western, central and northeastern Nevada; its territory covers approximately 50,000 square miles and includes the Cities of Reno and Carson City. Sierra Pacific owns approximately 2,145 miles of transmission lines and other transmission facilities ranging from 60 kV to 345 kV.<sup>3</sup>

3. In April 1999, the Commission approved the merger of Nevada Power and Sierra Pacific, which subsequently became operating utility subsidiaries of NV Energy.<sup>4</sup> Currently, Nevada Power and Sierra Pacific have no direct transmission ties with one another, do not exchange power, and operate as separate balancing authority areas. Nevada Power and Sierra Pacific provide transmission service under a single OATT, which contains separate zonal transmission service rates for the Nevada Power zone and the Sierra Pacific zone. In the 1999 Merger Order, the Commission noted that single system rates were not appropriate at that time because Nevada Power and Sierra Pacific were not interconnected.<sup>5</sup>

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<sup>2</sup> May 31 Rate Filing at 3.

<sup>3</sup> *Id.*

<sup>4</sup> *Sierra Pacific Power Company*, 87 FERC ¶ 61,077 (1999) (1999 Merger Order).

<sup>5</sup> *Id.* at 61,337.

4. In 2009, NV Energy, along with Great Basin Transmission, LLC (Great Basin), entered into discussions to jointly develop the ON Line.<sup>6</sup> As a result of the negotiations with Great Basin, NV Energy entered into, and the Commission accepted, the ON Line Transmission Use and Capacity Exchange Agreement (Transmission Use Agreement), which provides for development, ownership, and usage arrangements between the parties.<sup>7</sup> Under the Transmission Use Agreement, NV Energy has rights to 100 percent of the capacity over the ON Line, but only directly owns 25 percent of the project. NV Energy will make lease payments to Great Basin for its capacity rights with respect to the remaining 75 percent, which will be owned by Great Basin.<sup>8</sup> The ON Line is necessary for NV Energy to consolidate the separate Sierra Pacific and Nevada Power balancing authority areas into a single balancing authority area, through which NV Energy will provide single-system transmission service. The costs of the ON Line as well as the necessary system operations enhancements are included in the transmission rates proposed in the May 31 Rate Filing.

5. On May 31, 2013, NV Energy filed an application in Docket No. EC13-113-000 pursuant to section 203(a)(1)(B) of Federal Power Act (FPA)<sup>9</sup> for an internal corporate reorganization, under which Sierra Pacific would merge into Nevada Power and the surviving entity would be renamed “NV Energy Operating Company,” doing business as “NV Energy.” NV Energy has committed to make any necessary filings to ensure that the revised OATT reflects the proper utility name.<sup>10</sup>

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<sup>6</sup> The ON Line was designed as a 235-mile, 500 kV line interconnecting Sierra Pacific’s Robinson Summit Substation with Nevada Power’s Harry Allen Substation. May 31 Rate Filing at 5.

<sup>7</sup> See *Nevada Power Company*, 133 FERC ¶ 61,166 (2010) (accepting Transmission Use Agreement for filing).

<sup>8</sup> May 31 Rate Filing at 7-8.

<sup>9</sup> 16 U.S.C. § 824b(a)(1)(B) (2006).

<sup>10</sup> May 31 Rate Filing at 10.

## **B. Current OATT Rates**

6. Currently, Sierra Pacific and Nevada Power provide transmission and associated ancillary services under a single NV Energy OATT, which contains separate rates for the Sierra Pacific zone (Zone A) and the Nevada Power zone (Zone B) (collectively, Zonal Rates). The current transmission and ancillary service rates for both Sierra Pacific and Nevada Power were recently accepted by the Commission in several proceedings, subject to refund, and set for hearing and settlement proceedings.<sup>11</sup>

## **II. NV Energy's Rate Filing in Docket No. ER13-1605-000**

### **A. Proposed Single-System Rates**

7. NV Energy proposes to replace its current Zonal Rate structure with a single-system transmission rate structure (Single-System Rates) over the NV Energy transmission system. NV Energy states that because the ON Line will establish the first interconnection between the two utilities, and will effectively transform NV Energy's

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<sup>11</sup> On December 31, 2012, the Commission accepted Sierra Pacific's and Nevada Power's transmission and ancillary service rates in Schedules 2, 3, 5, 6, 7, 8, 11, and Attachment H effective June 1, 2013, subject to refund and Schedules 1 and 10 effective January 1, 2013, subject to refund, in Docket Nos. ER13-247-000 and EL13-29-000 (for Sierra Pacific) and Docket Nos. ER13-255-000 and EL13-28-000 (for Nevada Power), established hearing and settlement judge procedures in the consolidated dockets, and instituted section 206 investigations in Docket Nos. EL13-29-000 and EL13-28-000, respectively, to determine whether Sierra Pacific and Nevada Power's rate decreases were just and reasonable. *Sierra Pacific Power Co.*, 141 FERC ¶ 61,266; *Nevada Power Co.*, 141 FERC ¶ 61,267 (2012). Additionally, the Commission accepted Sierra Pacific's and Nevada Power's imbalance rates in Schedules 4 and 9 effective March 1, 2013, subject to refund in Docket Nos. ER13-684-000 and EL13-44-000. *NV Energy Operating Companies*, 142 FERC ¶ 61,166 (2013). On July 2, 2013, the Chief Judge granted Sierra Pacific's request to implement the rates from a settlement agreed to by the parties to Docket Nos. ER13-247-000 and EL13-29-000, beginning June 1, 2013, pending Commission approval of the settlement agreement. *Sierra Pacific Power Company*, Docket No. ER13-247-000 *et al.*, unpublished letter order (July 2, 2013). The parties in the other proceedings are still in settlement discussions.

previous two transmission systems into one, it must now adopt single-system transmission rates, consistent with Commission policy.<sup>12</sup>

8. NV Energy states that the transmission and ancillary service rates are based on a Period II test year of calendar year 2014 to ensure that the test period is fully reflective of the costs the company will incur during a full year of single-system service.<sup>13</sup> NV Energy derives the single-system revenue requirement by combining the revenue requirements of the Nevada Power and Sierra Pacific systems, updating them to reflect test period values, and adding in the costs of the ON Line.<sup>14</sup> NV Energy proposes to use a 12-coincident peak (CP) load calculation in order to develop the proposed transmission rates.<sup>15</sup> Ancillary service rates, as well as the loss factor, will also reflect the transition to a single-system.<sup>16</sup>

9. With respect to the inclusion of the ON Line in the transmission service rates, NV Energy's 25 percent direct ownership will be included as plant-in-service. NV Energy proposes to include the lease payments it makes to Great Basin for the remaining 75 percent in Account No. 567 (Rent Expense).<sup>17</sup>

10. NV Energy's proposed Single-System Rates are set forth in Table 1, below:<sup>18</sup>

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<sup>12</sup> May 31 Rate Filing at 15-17 (citing *Central Maine Power Co.*, 54 FERC ¶ 61,206, at 61,611-61,612 (1991); *Utah Power & Light Co.*, Opinion No. 220, 27 FERC ¶ 61,258, at 61,487, *reh'g denied*, 28 FERC ¶ 61,088, at 61,165-61,167 (1984), *aff'd*, 793 F.2d 1086, 1088-90 (9<sup>th</sup> Cir. 1986); *El Paso Elec. Co.*, 68 FERC ¶ 61,181 (1994); *American Electric Power Service Corp.*, Opinion No. 311, 44 FERC ¶ 61,206, at 61,748, *reh'g denied*, Opinion No. 311-A, 45 FERC ¶ 61,408, at 61,282-61,283 (1988), *reh'g denied*, Opinion No. 311-B, 46 FERC ¶ 61,382 (1989)).

<sup>13</sup> NV Energy notes that reactive power and the other ancillary service rates are based on calendar year 2012 Period I data. *Id.* at 17.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 20.

<sup>16</sup> *Id.* at 19.

<sup>17</sup> *Id.* at 18.

<sup>18</sup> *Id.* at 13-15.

**Table 1**

<b>Service</b>	<b>Current Zone A Rate (Sierra Pacific)<sup>19</sup></b>	<b>Current Zone B Rate (Nevada Power)<sup>20</sup></b>	<b>Proposed Single-System Rate</b>
Schedule 1 (Scheduling)	\$160.59/MW/Mo.	\$70.92/MW/Mo.	\$99.15/MW/Mo.
Schedule 2 (Reactive Power)	\$281.00/MW/Mo.	\$506.48/MW/Mo.	\$416.09/MW/Mo.
Schedules 3 & 11 (Regulation & Regulation and Frequency Response for Generators Outside of Control Area)	\$8,500.00/MW/Mo.	\$7,760.00/MW/Mo.	\$8,280.00/MW/Mo.
Schedule 5 (Spinning)	\$8,500.00/MW/Mo.	\$7,760.00/MW/Mo.	\$8,280.00/MW/Mo.
Schedule 6 (Supplemental)	\$7,000.00/MW/Mo.	\$8,060.00/MW/Mo.	\$7,360.00/MW/Mo.
Schedules 7 & 8 (Firm & Non-Firm Point-to-Point)	\$3.21/MW/Mo.	\$2.51/MW/Mo.	\$3.57/MW/Mo.
Schedule 10 (Loss Factor)	2.28 percent	1.26 percent	1.57 percent
Attachment H (Network)	\$3.21/MW/Mo.	\$2.51/MW/Mo.	\$3.57/MW/Mo.

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<sup>19</sup> The current rates for Sierra Pacific are the rates agreed to by the parties to the settlement proceedings in Docket Nos. ER13-247-000 and EL13-29-000. As discussed supra note 11, the Chief Judge accepted Sierra Pacific's proposal to implement these rates on an interim basis, effective June 1, 2013, pending Commission acceptance of the settlement agreement filed in these dockets.

<sup>20</sup> The current rates for Nevada Power are subject to refund in Docket No. ER13-255-000, *et al.*

**B. Request for Summary Disposition on 12-CP Allocator**

11. NV Energy requests that the Commission summarily approve its use of a 12-CP load denominator to allocate transmission system costs among customer groups. NV Energy asserts that the methodology for allocating the company's transmission revenue requirements is a policy question appropriate for summary disposition, and that summary disposition is necessary because the 12-CP methodology is "extremely important to the resolution of this case," previously has been disputed between Nevada Power and its customers, and thus could "significantly impede" future negotiations toward a potential settlement.<sup>21</sup>

12. NV Energy concedes that the Commission's traditional tests for determining the appropriate CP allocator could dictate an allocator as low as 4 CP or even 1 CP, but contends that its proposed 12-CP methodology is consistent with the "totality" of the Commission's transmission planning policy and precedent.<sup>22</sup> NV Energy argues that the traditional tests are not dispositive, have primarily been applied in the context of bundled production/transmission costs (i.e., not open access transmission) and, in any event, were developed at a time when it was assumed that peak native load drove transmission planning, which is no longer true for NV Energy.<sup>23</sup> Specifically, NV Energy explains that the Commission's policy regarding public utility transmission planning has expanded, through Order Nos. 888,<sup>24</sup> 890,<sup>25</sup> and 1000,<sup>26</sup> such that utilities like NV Energy

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<sup>21</sup> May 31 Rate Filing at 20.

<sup>22</sup> *Id.* at 23, 27.

<sup>23</sup> *Id.* at 23-25.

<sup>24</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996) (Order No. 888), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>25</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (Order No. 890), *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123

can no longer plan their systems to serve only their native loads.<sup>27</sup> Furthermore, NV Energy states, the mandatory North American Electric Reliability Corporation (NERC) planning standards require that it plan its system for all critical conditions, “includ[ing] firm transfers to and from other systems, and unscheduled flow from parallel systems, transmission outages, and reactive requirements.”<sup>28</sup>

13. Finally, NV Energy points out that Sierra Pacific and Nevada Power now both use 12 CP with respect to their state retail rates, and contends that using a 4 CP method for NV Energy’s wholesale rates could therefore result in “cost trapping,” as the wholesale rates would assume a greater level of contribution from native load than is reflected in the retail rates.<sup>29</sup>

### **III. NV Energy’s Terms and Conditions Filing in Docket No. ER13-1607-000**

14. NV Energy proposes to amend certain non-rate terms and conditions in its OATT to eliminate references to two transmission providers operating separate geographic zones.<sup>30</sup> For example, NV Energy states that (1) the term “Load Ratio Share” no longer accounts for two separate geographic zones; (2) the term “Transmission Provider” has been amended to reflect the consolidation of Sierra Pacific and Nevada Power; (3) accounting procedures under section 8 have been revised to no longer specify two separate transmission provider accountings; (4) section 35.2 has been edited such that the network operating committee will no longer have separate committees for Zone A and Zone B; and (5) Attachment M (Zone B Transmission System Overview) has been deleted. NV Energy states that these examples are not intended to serve as an exhaustive list of all changes made in regard to the consolidation of Sierra Pacific and Nevada Power.

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FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>26</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 76 Fed. Reg. 49,842 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323 (2011) (Order No. 1000), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012), *order on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

<sup>27</sup> May 31 Rate Filing at 25-27.

<sup>28</sup> *Id.* at 27 (quoting Whalen Testimony, Exhibit No. NV-10.0 at 17).

<sup>29</sup> *Id.* at 28.

<sup>30</sup> May 31 OATT Filing at 3.

15. NV Energy states that, in 2011, Sierra Pacific sold its California electric distribution and generation assets to California Pacific Electric Company, and as a result, proposes to amend the OATT to reflect that NV Energy no longer offers retail access transmission service to customers in California.<sup>31</sup> Additionally, NV Energy states that, to improve clarity, the preambles to part III and section 17.1 of the OATT have been revised to instruct retail open access customers to seek transmission service under part IV of the OATT. NV Energy also proposes to revise the definitions of “Retail Access Transmission Service” and “Retail Open Access Program” to remove all references to California retail open access. NV Energy adds that revisions to the definition of “End-Use Customer” were necessary to reflect that this term only applies to the Colorado River Commission and that Attachment J-1 has been removed because it relates only to California retail open access.<sup>32</sup>

16. NV Energy also states that section 35A has been removed, along with all associated references to capacity-based network service, because this provision terminated on July 12, 2010.<sup>33</sup>

17. NV Energy also proposes modifications to section 19.1 of its OATT regarding the provision of planning redispatch or conditional firm transmission service, consistent with Order No. 890.<sup>34</sup> In proposing these changes, NV Energy asserts that Order No. 890 does not state by what time a customer must request such study, and the Commission did not explain how transmission providers should respond to a customer’s request that the transmission provider study conditional firm or planning redispatch options that is received after the system impact study has begun or is completed.

18. As a result, NV Energy proposes to revise the *pro forma* language of section 19.1 to explain that any request to study conditional firm or planning redispatch options received after the system impact study agreement is executed will be treated as a new transmission service request. NV Energy believes the proposed language is consistent with and/or superior to the Commission’s *pro forma* language because it effectuates the intent of the Commission by: (1) clarifying the requirement that transmission providers must study conditional firm and planning redispatch options in the system impact study;

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<sup>31</sup> *Id.* at 4.

<sup>32</sup> *Id.* at 4-5.

<sup>33</sup> *Id.* at 5.

<sup>34</sup> *Id.* at 6 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 957-958, 978, 986).

(2) increasing transparency and protections for the transmission customer requesting service; (3) increasing transparency and protections for transmission customers waiting in the queue and; and (4) promoting consistency and removing transmission provider discretion in managing the study process.<sup>35</sup>

19. NV Energy asserts that, when a customer requests that the transmission provider study conditional firm or planning redispatch options after the system impact study has begun or after the system impact study is completed, it prolongs the study period.<sup>36</sup> NV Energy states that this “gaming” permits customers to delay the system impact study process while maintaining their queue position. NV Energy adds that other customers waiting in the queue are also disadvantaged by this because system impact studies are produced based on assumptions from earlier-queued requests for service, and system impact studies for a customer lower in the transmission queue may be inaccurate if an earlier-queued customer later amends its requested service to include conditional firm and/or planning redispatch options.

20. NV Energy states that, in anticipation of necessary tariff amendments for compliance with Order Nos. 764 and 764-A due on November 12, 2013, NV Energy proposes revisions to section 13.8, section 14.6, and the Large Generator Interconnection Agreement (LGIA) in conformity with the *pro forma* tariff amendments issued by the Commission in Order No. 764.<sup>37</sup> NV Energy states that it also proposes to remove Appendix H (Reliability Management System) to the LGIA because it is no longer used by the Western Electricity Coordinating Council (WECC), as it has been replaced by NERC standards.

21. NV Energy states that it amended the version of Attachment K submitted on May 10, 2013 in Docket No. ER13-1466-000.<sup>38</sup> NV Energy points out that the changes made to Attachment K do not reflect directives in the Commission’s order issued on March 22, 2013 in Docket No. ER13-105-000.<sup>39</sup> NV Energy commits to make all

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<sup>35</sup> *Id.* at 7.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 6, 8 (citing *Integration of Variable Energy Resources*, Order No. 764, 77 Fed. Reg. 41,482 (July 13, 2012), FERC Stats. & Regs. ¶ 31,331 (Order No. 764), *order on reh’g*, Order No. 764-A, 141 FERC ¶ 61,232 (2012)).

<sup>38</sup> *Id.* at 8.

<sup>39</sup> *Id.* (citing *Public Service Company of Colorado*, 142 FERC ¶ 61,206 (2013)).

necessary compliance filings as directed by the Commission in that order, and states that the Attachment K provided in the instant proceeding merely reflects company name changes and OASIS website changes.

22. Lastly, NV Energy states that it made changes to Attachment C to reflect the new, consolidated system and other ministerial changes throughout the OATT that it believes provide clarification to customers, correct typographical errors, revert to *pro forma* language, and/or update outdated information.<sup>40</sup>

#### **IV. Proposed Effective Date of OATT Revisions**

23. NV Energy states that the ON Line in-service date is currently expected to be January 1, 2014. NV Energy requests that the Commission accept the proposed OATT modifications to become effective on the later of January 1, 2014 or the ON Line in-service date, either by accepting its filings with 60-days' prior notice and a five-month suspension, or with greater than 120-days' notice and a nominal suspension.<sup>41</sup> NV Energy requests such an effective date to ensure that the applicable transmission rates reflect the service being provided as of the in-service date of the ON Line. NV Energy states that if the Commission does not permit these rates to go into effect on the in-service date of the ON Line, NV Energy would be compelled to charge its existing Zonal Rates for single-system service, and that it is unclear how that could be accomplished.<sup>42</sup> NV Energy also states that delaying the effectiveness of the rates would require NV Energy to provide service over a new line without compensation for a significant period of time and that it could be required to provide transmission service at a loss considering its contractual lease obligations to Great Basin. Therefore, NV Energy states that it has tendered this filing seven months in advance of the anticipated in-service date of the ON Line to provide customers with as much notice as they would receive under a maximum suspension.

#### **V. Notice of Filing and Responsive Pleadings**

24. Notice of NV Energy's filings in Docket Nos. ER13-1605-000 and ER13-1607-000 was published in the *Federal Register*, 78 Fed. Reg. 34,362 (2013) with protests or interventions in each docket due on or before June 21, 2013. On June 7, 2013, Deseret Generation and Transmission Co-operative, Inc. d/b/a Deseret Power (Deseret),

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<sup>40</sup> *Id.* at 8-9.

<sup>41</sup> May 31 Rate Filing at 28; May 31 OATT Filing at 9.

<sup>42</sup> May 31 Rate Filing at 30.

Southern Nevada Water Authority, the Colorado River Commission of Nevada, and the Public Utilities Commission of Nevada (Nevada Commission) submitted a joint motion requesting to extend the intervention and comment date in these proceedings to July 12, 2013. Truckee Donner Public Utility District (Truckee Donner) filed a statement supporting this motion. On June 11, 2013, notice was given to all parties that the period of time for filing interventions and protests had been extended, to and including July 1, 2013.

25. Timely motions to intervene were filed in both Docket Nos. ER13-1605-000 and ER13-1607-000 by California Pacific Electric Company, LLC; the Office of the Attorney General for the State of Nevada, Bureau of Consumer Protection; the Plumas Sierra Rural Electric Cooperative; and Cargill Power Markets, LLC. Lincoln County Power District No. 1 and Overton Power District No. 5 filed timely motions to intervene in Docket No. ER13-1605-000. On July 2, 2013, Barrick Goldstrike Mines Inc., Barrick Turquoise Ridge Inc. as Operator of Turquoise Ridge Joint Venture, and Barrick Cortez Inc. as Operator of Cortez Mines (collectively, Barrick Mines) filed motions to intervene out of time in both dockets.

26. Powerex Corp. (Powerex) filed a timely motion to intervene and comments in Docket No. ER13-1605-000.<sup>43</sup> The Nevada Commission filed a timely notice of intervention and comments in both dockets, which it amended on July 2, 2013.

27. Timely motions to intervene and protests were filed in Docket No. ER13-1605-000 by the Bonneville Power Administration (Bonneville),<sup>44</sup> and Nevada Cogeneration Associates #1 and #2 (Nevada Cogeneration Associates).<sup>45</sup> Ormat Nevada Inc. (Ormat) and ORNI 47 LLC (ORNI) filed a joint motion to intervene and protest in Docket No. ER13-1605-000 and a separate motion to intervene and protest in Docket No. ER13-1607-000. Southwest Generation Operating Company, LLC (Southwest Generation) filed timely motions to intervene, motions to consolidate, and protests in Docket Nos. ER13-1605-000 and ER13-1607-000. Deseret filed a timely motion to intervene, motion to consolidate, protest, and request for maximum suspension, institution of a section 206 proceeding, hearing, and settlement judge procedures in both dockets, as did the Colorado River Commission of Nevada and Southern Nevada Water Authority (Colorado/Southern Nevada). Las Vegas Power Company, LLC (Las Vegas

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<sup>43</sup> Powerex also filed a motion to intervene in Docket No. ER13-1607-000.

<sup>44</sup> Bonneville also filed a motion to intervene in Docket No. ER13-1607-000.

<sup>45</sup> Nevada Cogeneration Associates also filed a motion to intervene in Docket No. ER13-1607-000.

Power) filed a timely motion to intervene, answer to request for summary disposition, protest, request for rejection or, in the alternative, for maximum suspension, request for institution of a section 206 proceeding and request for evidentiary hearing in Docket No. ER13-1605-000 and a timely motion to intervene and request for summary rejection or, in the alternative, maximum suspension in Docket No. ER13-1607-000. Newmont USA Limited (Newmont) and the City of Fallon, NV (Fallon) filed a joint motion to intervene, protest, and request for suspension, section 206 investigation and hearing in Docket No. ER13-1605-000. Truckee Donner filed motions to intervene in Docket Nos. ER13-1605-000 and ER13-1607-000, followed by a timely protest, opposition to request for summary disposition, and request for suspension and section 206 investigation in Docket No. ER13-1605-000.<sup>46</sup>

28. On July 16, 2013, NV Energy filed motions for leave to answer and answers separately in Docket Nos. ER13-1605-000 and ER13-1607-000. On July 26, 2013, Las Vegas Power filed a motion for leave to reply and reply to NV Energy's answer in Docket No. ER13-1605-000.

29. On July 25, 2013, Nevada Cogeneration Associates filed to withdraw their motions to intervene and any requests for relief in Docket Nos. ER13-1605-000 and ER13-1607-000.

#### **A. Comments**

30. Powerex expresses general support for NV Energy's efforts to develop a blended rate for the previously-distinct Sierra Pacific and Nevada Power systems as consistent with Commission objectives. Powerex argues, however, that the Commission must ensure that all transmission customers are adequately protected under the proposed rates, with no windfall to affiliated merchant entities, and that the rate proposal must provide sufficient transparency for the Commission to make this determination.<sup>47</sup>

31. In its comments, and as further discussed below, the Nevada Commission asserts that summarily ruling on NV Energy's proposed 12-CP methodology is not appropriate.<sup>48</sup>

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<sup>46</sup> On July 2, 2013, Truckee Donner submitted a corrected protest. Truckee Donner and Newmont and Fallon include the same "Combined Protest of Intervenors City of Fallon, Nevada, Newmont Mining Corporation, and Truckee Donner Public Utility District" as an attachment to their respective pleadings.

<sup>47</sup> Powerex Comments at 4-5.

<sup>48</sup> Nevada Commission Comments at 2-8.

In addition, the Nevada Commission requests that, should the Commission grant NV Energy's request to implement Single-System Rates, the Commission afford NV Energy flexibility to implement or not implement parts of its planned system integration depending on the authorizations ultimately issued by the Nevada Commission and FERC, by stating expressly that NV Energy is authorized but not required to combine its balancing authority areas.<sup>49</sup> Finally, the Nevada Commission notes that NV Energy is prohibited from passing increased costs from the ON Line through to its ratepayers and that the Nevada Commission will assess the prudence of these costs in a future proceeding.<sup>50</sup>

## **B. Protests**

32. Protestors generally allege that NV Energy's proposed Single-System Rates are unjust and unreasonable and unduly discriminatory and preferential.<sup>51</sup> In addition, protestors assert that the proposed rate increase is excessive, particularly as applied to customers in the Nevada Power zone (Zone B). Several protestors point to the fact that the proposed Single-System Rate for firm point-to-point service of \$3.57/kW/month represents a 155 percent increase from the \$1.40/kW/month rate for network and point-to-point service effective at the time Nevada Power made its May 31 Rate Filing, and a 42.22 percent increase over the \$2.51/kW/month proposed rate increase, which became effective on June 1, 2013 and is currently in settlement discussions in Docket No. ER13-255-000. Fallon, Newmont, and Truckee Donner contend that the proposed rates also represent an increase in the Sierra Pacific zone (Zone A), and that preliminary review of the May 31 Rate Filing indicates that a just and reasonable rate should be at or below \$3.151/kW-month.<sup>52</sup> Protestors also state that the majority of the proposed ancillary services rates for Schedule 2 (Reactive Supply and Voltage Control), Schedule 3 (Regulation and Frequency Response), Schedule 5 (Operating Reserve/Spinning) and Schedule 6 (Supplemental Reserve) represent significant increases from the rates in effect

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<sup>49</sup> *Id.* at 8-9.

<sup>50</sup> *Id.* at 9-10.

<sup>51</sup> The protest filed by Ormat and ORNI in Docket No. ER13-1605-000 addresses only NV Energy's request to use a 12-CP divisor, as discussed below.

<sup>52</sup> *See* Fallon, Newmont, and Truckee Donner Combined Protest at 69-72.

as of May 2013 (although the proposed rates in Schedules 2 and 6 are less than the rates for these services in the Nevada Power zone, which took effect on June 1, 2013).<sup>53</sup>

33. In addition to the cumulative rate increase for Nevada Power customers, several protestors point to additional aspects of NV Energy's filing that they believe, suggest that the proposed rates are excessive, including: (1) NV Energy's use of an unsupported 12-CP allocation factor, as further discussed below;<sup>54</sup> (2) NV Energy's failure to honor Nevada Power's commitments that the acquisition of the Higgins facility and an interest in the Silverhawk facility would not impact transmission rates;<sup>55</sup> (3) lack of necessary support for, and errors in calculating, the proposed Schedule 2 rates;<sup>56</sup> (4) understatement of revenue credits and failure to properly credit unfunded revenues;<sup>57</sup> (5) overstatement of NV Energy's proposed capital structure;<sup>58</sup> (6) inflation of administrative and general expenses allocated to transmission;<sup>59</sup> (7) understatement of NV Energy's transmission

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<sup>53</sup> See Colorado/Southern Nevada Protest at 37-40; Deseret Protest at 29-34. Colorado/Southern Nevada and Deseret further state that the proposed ancillary services rates for Schedules 4 and 9, while an improvement over the current methodology for determining energy imbalances, should be modified to retain language requiring NV Energy to credit non-offending transmission customers for charges for deviations that permit NV Energy to collect revenues in excess of its costs, and to clarify that only the portion of an energy imbalance that falls within the deviation bands will be assessed the applicable penalty. Colorado/Southern Nevada Protest at 40-42; Deseret Protest at 34-36. Fallon, Newmont, and Truckee Donner assert that *all* of NV Energy's proposed ancillary service rates (including the rates in Schedules 1 and 11) are excessive. Fallon, Newmont, and Truckee Donner Combined Protest at 53-69.

<sup>54</sup> See Las Vegas Power Protest at 47-48.

<sup>55</sup> *Id.* at 63-66.

<sup>56</sup> *Id.* at 71-79.

<sup>57</sup> *Id.* at 81-82, 84; Colorado/Southern Nevada Protest at 34-35; Deseret Protest at 27-29; Fallon, Newmont, and Truckee Donner Combined Protest at 32-34, 49-50.

<sup>58</sup> Colorado/Southern Nevada Protest at 34-35; Deseret Protest at 26-27; Las Vegas Power Protest at 85-86; Fallon, Newmont, and Truckee Donner Combined Protest at 34-35, 50-51.

<sup>59</sup> See Las Vegas Power Protest at 84-85, 87; Fallon, Newmont, and Truckee Donner Combined Protest at 35-37.

peak demand;<sup>60</sup> (8) flawed functionalization and allocation of transmission prepayments;<sup>61</sup> (9) understatement of Accumulated Deferred Income Taxes;<sup>62</sup> (10) use of an excessive transmission loss factor with respect to Sierra Pacific;<sup>63</sup> and (11) the addition of \$64.2 million in costs associated with the ON Line incurred, Fallon, Newmont, and Truckee Donner allege, to correct a design flaw that created wind-induced vibration issues and delayed construction.<sup>64</sup>

34. Southwest Generation states that NV Energy's rate proposal appears to favor its merchant business affiliates and native load customers over point-to-point transmission customers.<sup>65</sup> Southwest Generation asserts that, by making point-to-point transmission service prohibitively expensive for former customers of Nevada Power, the proposed rate increase could discourage competition and effectively force companies to become captive sellers to NV Energy.<sup>66</sup> Likewise, several protestors reason that the costs of the ON Line cannot justify dramatic rate increases for third-party transmission customers, because the

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<sup>60</sup> See Fallon, Newmont, and Truckee Donner Combined Protest at 38-39.

<sup>61</sup> See Las Vegas Power Protest at 86; Fallon, Newmont, and Truckee Donner Combined Protest at 41-44.

<sup>62</sup> See Las Vegas Power Protest at 87; Fallon, Newmont, and Truckee Donner Combined Protest at 44-46.

<sup>63</sup> See Fallon, Newmont, and Truckee Donner Combined Protest at 51-53. Fallon, Newmont, and Truckee Donner acknowledge that the proposed 1.57 percent transmission loss factor represents a significant decrease from Sierra Pacific's current 2.28 percent transmission loss factor and only a slight increase from Nevada Pacific's current 1.26 percent transmission loss factor, and therefore asks that the proposed loss factor be suspended for only a nominal period, to be effective upon service of the ON Line. *Id.* at 53.

<sup>64</sup> See Fallon, Newmont, and Truckee Donner Combined Protest at 25-32 (asking that the Commission "set for investigation the prudence and justness and reasonableness of the costs of the ON Line to determine...whether the portion associated with the cost overruns due to the design flaw should be disallowed").

<sup>65</sup> Southwest Generation Protest at 4.

<sup>66</sup> *Id.* at 4-5.

ON Line will primarily—or even entirely—benefit network and native customers.<sup>67</sup> For this reason, Las Vegas Power opposes NV Energy’s proposal to move from zonal to Single-System Rates, and instead asks the Commission to direct NV Energy to retain its current Zonal Rates.<sup>68</sup>

**1. Requests for Rejection, Hearing, Maximum Suspension and Institution of a Section 206 Proceeding**

35. Las Vegas Power asks the Commission to summarily reject the May 31 Rate Filing as patently deficient, asserting that not only are the proposed Single-System Rates excessive, but NV Energy has failed to meet its evidentiary burden pursuant to sections 35.13(e)(2) and (3) of the Commission’s regulations.<sup>69</sup> Should the Commission not reject the May 31 Rate Filing, Las Vegas Power, and the protestors generally, request that the Commission set the proposal for hearing, suspend the hearing, and set the matter for settlement judge proceedings.

36. Protestors ask the Commission to deny NV Energy’s requested effective date and instead suspend the proposed rates for five months from January 1, 2014 (or the in-service date of the ON Line), to be effective, subject to refund, on June 1, 2014 at the earliest.<sup>70</sup> Protestors generally assert that NV Energy’s proposed rate increase is excessive by more than 10 percent and therefore warrants the maximum five-month suspension under *West Texas Utilities Company*.<sup>71</sup> In addition, several protestors advocate a bifurcated approach, asking the Commission to impose a five-month

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<sup>67</sup> See Las Vegas Power Protest at 6, 56-62 (“As a Long-Term Firm Point-to-Point Transmission Service Customer of Nevada Power, Las Vegas Power will receive no benefit from ON Line. Instead, it will be saddled with a rate that, including ON Line costs will have risen from \$1.21/kW/mo. in 2003 to the proposed rate here of \$3.57/kW/mo. without any beneficial change in the underlying service.”); Southwest Generation Protest at 6.

<sup>68</sup> Las Vegas Power Protest at 62-63.

<sup>69</sup> *Id.* at 41-44, 53-56.

<sup>70</sup> See Bonneville Protest at 5-6; Deseret Protest at 41-46; Colorado/Southern Nevada Protest at 46-52; Las Vegas Power Protest at 45-53; Fallon, Newmont, and Truckee Donner Combined Protest at 74-80.

<sup>71</sup> 18 FERC ¶ 61,189, at 61,375 (1982) (*West Texas*).

suspension of all increase in NV Energy's rate proposal, while making any proposed rates that are lower than the current rates effective immediately, subject to refund.<sup>72</sup>

37. Several protestors explain that the Commission will only exercise its discretion to permit a shorter suspension period for a rate increase meeting this threshold if the full five-month suspension will result in "harsh or inequitable results," a showing that NV Energy has not attempted to make in its filing.<sup>73</sup> In addition, protestors state that the cases cited by NV Energy in support of its requested effective date are not on point, because Commission precedent and policy support suspensions beginning *on* the proposed effective date.<sup>74</sup> Protestors claim that Commission's policy strongly supports five-month suspensions, even in cases involving new transmission projects, and particularly in cases involving new rate designs, where customers must make economic decisions based on prospective changes to non-rate terms and conditions that are not subject to refund.<sup>75</sup> Moreover, Bonneville argues that suspending the rates prior to January 1, 2014 does not provide NV Energy adequate incentive to "be forthcoming with information to demonstrate that the rates are just and reasonable" prior to January 1, 2014, given that no costs will be recovered prior to that date.<sup>76</sup>

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<sup>72</sup> See Las Vegas Power Protest at 46-47 (asking that the Commission make the rate decreases in Schedule 2 and Schedule 6 effective as requested (subject to hearing), and suspend the remainder of NV Energy's rate proposal for the full five-month period); Truckee Donner Protest at 4-5; Fallon, Newmont, and Truckee Donner Combined Protest at n.187.

<sup>73</sup> See Deseret Protest at 42-43 (citing *Valley Gas Transmission*, 12 FERC ¶ 61,197 (1980)); Colorado/Southern Nevada Protest at 47; Fallon, Newmont, and Truckee Donner Combined Protest at 79-80. These protestors further claim that NV Energy would, in any event have no basis for arguing that a shorter suspension period would be "harsh and inequitable," even if had attempted to make this showing. Deseret Protest at 43; Colorado/Southern Nevada Protest at 49; Fallon, Newmont, and Truckee Donner Combined Protest at 79-80.

<sup>74</sup> See Bonneville Protest at 6; Deseret Protest at 42; Colorado/Southern Nevada Protest at 48.

<sup>75</sup> See Deseret Protest at 43-47; Colorado/Southern Nevada Protest at 49-51.

<sup>76</sup> Bonneville Protest at 6.

38. Several protestors also request that the Commission institute a proceeding pursuant to section 206 of the FPA<sup>77</sup> with a refund effective date of the earlier of January 1, 2014 or the in-service date of the ON Line, to determine whether NV Energy's proposed rate decreases are just and reasonable.<sup>78</sup>

## 2. 12-CP Methodology

39. Protestors generally oppose NV Energy's request for summary approval of its proposed 12-CP allocator, and ask that the Commission set this issue for determination in a trial-type evidentiary hearing.<sup>79</sup> As an initial matter, protestors and the Nevada Commission assert that NV Energy's proposal to use a 12-CP denominator raises issues of material fact that are disputed by the parties, and thus is not appropriate for summary disposition.<sup>80</sup> The parties dispute various representations on which NV Energy relies to

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<sup>77</sup> 16 U.S.C. § 824e (2006).

<sup>78</sup> Deseret Protest at 46 (“Commission policy is clear that where the Commission’s preliminary review that forms the basis of its analysis also reveals that a further decrease in rates may be warranted, a section 206 refund effective date on the earliest possible date is appropriate.”) (citing *Sierra Pacific Power Company*, 141 FERC ¶ 61,266, at PP 40-42 (2012)); Las Vegas Power Protest at 89-91 (noting that “NV Energy’s proposed rates for which it has identified rate decreases may ultimately result in rate increases from the rates ultimately put into effect for Zone A and Zone B and a further decrease may be warranted based on those proceedings”); Colorado/Southern Nevada Protest at 51; Fallon, Newmont, and Truckee Donner Combined Protest at 80. To the extent that the proposed rate increases become rate decreases as an outcome of the proceedings in Docket Nos. ER13-247-00, *et al.* and ER13-255-000, *et al.*, Las Vegas Power asks that the Commission subject these rates to the same five-month suspension as the rate increases.

<sup>79</sup> See Bonneville Protest at 7-8; Southwest Generation Protest at 5-6; Deseret Protest at 6-18; Las Vegas Power Protest at 17-41; Ormat and ORNI Protest at 3-9; Nevada Commission Comments at 2-8; Colorado/Southern Nevada Protest at 8-26; Fallon, Newmont, and Truckee Donner Combined Protest at 3-15.

<sup>80</sup> See Bonneville Protest at 7 (arguing that NV Energy cannot demonstrate that there is no genuine issue of material fact, because it has admitted that the use of 12 CP the choice of denominator is “a major issue which the company and interveners have had difficulty resolving in the past”); Deseret Protest at 6-7 (asserting that parties should be given the opportunity at hearing to examine the facts on which NV Energy bases its request and to present their own record evidence); Las Vegas Power Protest at 18-20 (“there are genuine issues of material fact that must be resolved before the Commission

(continued...)

justify its use of 12 CP, including NV Energy's claims that: (1) the use of 12 CP is necessary for consistency with its retail rates;<sup>81</sup> (2) the Commission has approved rates based on 12 CP for Nevada Power;<sup>82</sup> (3) Order No. 888 and other open access precedent and reliability standards essentially mandate use of 12 CP;<sup>83</sup> (4) NV Energy actually plans its system consistent with open access objectives and reliability standards (and that such planning justifies use of 12 CP);<sup>84</sup> and (5) the Commission's traditional tests for determining demand allocation have been superseded by open access transmission planning and reliability standards.<sup>85</sup>

40. Las Vegas Power points out that the burden for obtaining summary disposition of an issue before the Commission rests on the moving party and is extremely high, and contends that NV Energy has established neither that its 12-CP methodology is warranted by system planning, nor that its system will not otherwise be driven by a summer peak.<sup>86</sup>

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can issue a determination"); Nevada Commission Comments at 3 (observing that "NV Energy's extensive discussion in support of 12 CP is an indication in itself of the importance of this issue"); Colorado/Southern Nevada Protest at 8 ("The Commission should deny summary disposition because such matters are inherently fact based and there are significant, material facts in dispute here that are germane to the outcome of the case.").

<sup>81</sup> See Nevada Commission Comments at 4-8; Colorado/Southern Nevada Protest at 20-24; Deseret Protest at 16.

<sup>82</sup> See Las Vegas Power Protest at 22-24; Colorado/Southern Nevada Protest at 17-19; Deseret Protest at 15.

<sup>83</sup> See Las Vegas Power Protest at 24-28; Colorado/Southern Nevada Protest at 24-25; Deseret Protest at 8-9, 17; Fallon, Newmont, and Truckee Donner Combined Protest at 5-7.

<sup>84</sup> See Las Vegas Power Protest at 31-37 and 38 (noting that NV Energy elected not to pursue the Western Electricity Coordinating Council Path Rating process for the ON Line); Colorado/Southern Nevada Protest at 25-26 (describing system usage data that, according to Colorado/Southern Nevada, "demonstrates a drastic decline in third-party use of the system and that Nevada Power uses its system for its own native load now more than ever"); Deseret Protest at 16-17, 17-18; Fallon, Newmont, and Truckee Donner Combined Protest at 11-12.

<sup>85</sup> See Colorado/Southern Nevada Protest at 12-13; Deseret Protest at 10-11.

<sup>86</sup> Las Vegas Power Protest at 18-19.

Ormat and ORNI maintain that NV Energy cannot meet its burden without providing evidence with respect to the amount of capacity on the ON Line that will be available for third party transmission service versus the amount that will be reserved for native load.<sup>87</sup> Specifically, Ormat and ORNI report that NV Energy denied ORNI's request for long-term firm transmission service on the ON Line on the grounds that the line's entire capacity was reserved for native load, and thus question whether using a 12-CP divisor is consistent with the Commission's cost causation principles and open access objectives.<sup>88</sup> Similarly, several protestors argue that a 12-CP methodology will inappropriately shift costs from native load to wholesale customers, even though these customers will not benefit from the ON Line, and may not benefit from the integration of the Nevada Power and Sierra Pacific systems.<sup>89</sup> Deseret and Colorado/Southern Nevada further argue that a change in demand allocation can only be supported by a change in circumstance or policy, neither of which is present here.<sup>90</sup>

41. In addition, several protestors apply the Commission's demand tests to demonstrate that NV Energy's system does not qualify as a 12-CP system.<sup>91</sup>

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<sup>87</sup> Ormat and ORNI Protest at 3-9.

<sup>88</sup> *Id.* at 5-8. *See also* Fallon, Newmont, and Truckee Donner Combined Protest at 14 (pointing to the recent dispute between Cargill Power Markets, LLC and NV Energy in Docket No. EL13-14-000 to suggest that NV Energy "is positioning itself to capture the entire available capacity of the ON Line for [NV Energy's] native load").

<sup>89</sup> *See* Colorado/Southern Nevada Protest at 10-12 ("[I]t is unclear how and to what extent such [wholesale] customers will benefit [from the combination of the system] in the absence of either (i) the contractual ability to designate network resources in the other geographical portion of the state in a manner comparable to native load...or (i) (*sic*) defined long-term point-to-point or network reservations utilizing the ON Line."); Fallon, Newmont, and Truckee Donner Combined Protest at 13-14 ("It is far from an established fact that major third-party benefits will arise from the ON Line."); Deseret Protest at 13-15; Las Vegas Power Protest at 40-41.

<sup>90</sup> Deseret Protest at 9; Colorado/Southern Nevada Protest at 19.

<sup>91</sup> *See* Las Vegas Power Protest at 28-31 (applying four demand tests using data from the May 31 Rate Filing and historical Form 1 data for the period 2004-2012 and concluding that a 12-CP allocator is not supported); Colorado/Southern Nevada Protest at 13-16 (applying three Commission tests using NV Energy's forecasted monthly system peak characteristics in 2014 to demonstrate that the summer peak load on the transmission system drives the use of the system and planning decisions); Deseret Protest

(continued...)

### 3. Return on Equity

42. Protestors state that NV Energy has not demonstrated that its requested 10.5 percent return on equity (ROE) is just and reasonable, and raise concerns with NV Energy's selection of its proxy group as well as establishment of an ROE that exceeds the median ROE of the proxy group using a Discounted Cash Flow (DCF) analysis.<sup>92</sup> In addition, protestors also assert that NV Energy has not justified its proposed 0.89 percent "risk premium" over the median of the proxy group used in its DCF analysis.<sup>93</sup> Truckee Donner requests that the Commission direct NV Energy to make a compliance filing within 30 days reducing its proposed ROE to no higher than 9.61 percent.<sup>94</sup>

### 4. Transparency

43. Protestors also claim that NV Energy has not provided the detailed information and functioning spreadsheets necessary for customers to verify the representations in the filing and for NV Energy to meet its evidentiary burden.<sup>95</sup> Fallon, Newmont, and

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at 11-13 (applying the Commission's three tests to confirm "that the combined system is a summer peaking utility with large, pronounced peaks in July and August which must factor into reliability and planning decisions"); Fallon, Newmont, and Truckee Donner Combined Protest at 7-10.

<sup>92</sup> See Las Vegas Power Protest at 66-71 (Las Vegas Power also asserts that NV Energy has not supported its requested 8.30 percent rate of return); Colorado/Southern Nevada Protest at 26-35 (asserting that an appropriate ROE to preserve and maintain NV Energy's financial integrity would be 9.0 percent); Deseret Protest at 18-25 (also advocating an ROE of 9.0 percent); Fallon, Newmont, and Truckee Donner Combined Protest at 15-25 (stating that NV Energy has failed to justify an ROE higher than 8.86 percent); Bonneville Protest at 4; Southwest Generation Protest at 5.

<sup>93</sup> See Bonneville Protest at 4; Las Vegas Power Protest at 69-70; Colorado/Southern Nevada Protest at 29-31; Deseret Protest at 21-23; Fallon, Newmont, and Truckee Donner Combined Protest at 21-25.

<sup>94</sup> Truckee Donner Transmittal Letter at 3.

<sup>95</sup> See Bonneville Protest at 5 ("In order for a transmission customer or the Commission to determine if the rate has been correctly determined, these spreadsheets need to be in a workable Excel file."); Las Vegas Power Protest at 53-56. Las Vegas Power further asserts that specific components of the May 31 Rate Filing, such as the allocators and generator and exciter costs for the Schedule 2 rates and the 2014 load estimates, are not adequately supported. Las Vegas Power Protest at 72-77 and 80-81.

Truckee Donner assert, in fact, that NV Energy “has failed to submit any substantive work papers,” which they maintain is particularly troubling with respect to forecasted Period II data, which presumably is intended to reflect unified operation of Nevada Power and Sierra Pacific as a merged entity.<sup>96</sup> In addition, Bonneville states that the filing lacks sufficient detail for customers to ascertain the just and reasonableness of the proposed rates, noting that NV Energy does not describe how costs attributed to wind damage to the ON Line in February 2012, and the associated delays in construction, have been accounted for in the proposed rates.<sup>97</sup>

### **5. Retail Access Provisions**

44. Colorado/Southern Nevada assert that NV Energy’s proposals to modify certain definitions and section 36 of the OATT above and beyond the elimination of the applicability of California “Retail Open Access Programs” and the term “Uncongested Grid” are unjust and unreasonable.<sup>98</sup> Colorado/Southern Nevada argue that there is no valid reason to modify the definitions in the OATT to restrict the ability to participate in a retail access program.<sup>99</sup>

### **6. Conditional Firm and Planning Redispatch**

45. Ormat and ORNI contend that NV Energy’s revisions to section 19.1 of the OATT, which would require the transmission customer to request the study of conditional firm and planning redispatch at the time the customer requests firm transmission service, should be rejected. Likewise, Ormat and ORNI argue that the proposed section 19.1 language that would require a transmission customer to take a new queue position if the customer requests that NV Energy study conditional firm and/or planning redispatch after the execution of a system impact study should be rejected.<sup>100</sup>

46. Ormat and ORNI assert that the customer is not required to provide notice to the transmission provider of its request for conditional firm to be studied in the system impact study prior to the tender or execution of the system impact study agreement. However, Ormat and ORNI argue that if the customer does notify the transmission

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<sup>96</sup> Fallon, Newmont, and Truckee Donner Combined Protest at 1-3.

<sup>97</sup> Bonneville Protest at 5.

<sup>98</sup> Colorado/Southern Nevada Protest at 43.

<sup>99</sup> *Id.*

<sup>100</sup> Ormat and ORNI Protest at 4.

provider of such request prior to the execution of the system impact study agreement, the customer can avoid costs associated with the study of these options.<sup>101</sup> Ormat and ORNI contend that the Commission did not require that the customer must elect to have conditional firm service studied prior to the initial system impact study and that the customer might not know until receipt of the initial impact study that its requested firm transmission service is not available.<sup>102</sup>

47. Southwest Generation asserts that a hearing is required to determine whether the proposed changes to the conditional firm and planning redispatch sections of the NV Energy OATT are just and reasonable and not unduly discriminatory. Southwest Generation argues that requiring a customer to start over in the queue is a severe penalty, will delay projects, and potentially cause the customer to bear much higher upgrade costs.<sup>103</sup>

## 7. Provisions in Existing Transmission Service Agreements

48. Colorado/Southern Nevada state that, while changing the provisions of the OATT to conform the terms and conditions of service to a single system structure is important, it is equally as important to ensure that individual transmission service agreements are conformed such that customers avail themselves of the benefits of single system service. Colorado/Southern Nevada assert that this has not happened, nor has NV Energy addressed how and when such changes will happen.<sup>104</sup>

### C. Motions to Consolidate

49. Southwest Generation, Deseret, and Colorado/Southern Nevada move to consolidate the proceedings in Docket Nos. ER13-1605-000 and ER13-1607-000, because the May 31 Rate Filing and May 31 OATT Filing each contain revisions to NV Energy's OATT to reflect a single transmission system, and will involve common parties, fact and issues.<sup>105</sup>

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<sup>101</sup> *Id.* at 6.

<sup>102</sup> *Id.*

<sup>103</sup> Southwest Generation Protest at 4.

<sup>104</sup> Colorado/Southern Nevada Protest at 45.

<sup>105</sup> Southwest Generation Protest at 3; Deseret Protest at 5; Colorado/Southern Nevada Protest at 6.

#### D. Answers

50. In its answers, NV Energy asserts that the Commission should deny requests to consolidate the proceedings in Docket Nos. ER13-1605-000 and ER13-1607-000 because there are no issues relating to the proceeding in Docket No. ER13-1607-000 that need to be set for a trial-type evidentiary hearing. NV Energy contends that, in general, the Commission consolidates matters only if a trial-type evidentiary hearing is required to resolve common issues of law and fact, and consolidation will ultimately result in great administrative efficiency.<sup>106</sup> However, NV Energy states that if the Commission decides to set the issues for hearing, NV Energy does not object to consolidating the dockets if it is determined that consolidation will provide efficiency and reduce administrative burden.<sup>107</sup>

51. In its reply, Las Vegas Power asks the Commission to reject NV Energy's answer because it "misstates critical facts, and fails to rebut any of the points raised in the [Las Vegas Power] Protest."<sup>108</sup> Should the Commission accept NV Energy's answer, however, Las Vegas Power submits a reply "correct[ing] the various inaccuracies advanced in the [NV Energy] Answer"<sup>109</sup> and clarifying and reasserting Las Vegas Power's arguments regarding NV Energy's requested 12-CP methodology, effective date, and inclusion of the ON Line costs in rates.

#### 1. NV Energy Rate Answer in Docket No. ER13-1605-000

52. In its answer in Docket No. ER13-1605-000, NV Energy contends that protestors have failed to identify disputed issues of material fact that would prevent summary approval of its proposed 12-CP methodology, reasoning that it is not in dispute that Nevada Power is a summer peaking utility or that application the Commission's traditional tests would yield a lower CP.<sup>110</sup> NV Energy reasserts, however, that 12 CP is the appropriate divisor for its Single-System Rates, arguing that: (1) these tests were

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<sup>106</sup> NV Energy OATT Answer at 9 (citing *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 25 (2008); *In re: Terra-Gen Dixie Valley*, 132 FERC ¶ 61,215, at P 44 n.74 (2010)); NV Energy Rate Answer at 47.

<sup>107</sup> NV Energy OATT Answer at 10; NV Energy Rate Answer at 47-48.

<sup>108</sup> Las Vegas Power Answer at n.3.

<sup>109</sup> *Id.* at 4.

<sup>110</sup> NV Energy Rate Answer at 5-7.

intended to function as indirect evidence of a utility's transmission planning, and thus are not dispositive where NV Energy has presented actual evidence that it does not plan its system only to meet summer peak; (2) 12 CP is "fundamentally equitable" because it is based on more data; (3) even if not required, the Commission has endorsed 12 CP as its default method; (4) NV Energy's retail rate design is, in fact, based on 12 CP; (5) the ON Line is indeed part of the WECC path rating process, as part of the Southwest Intertie Project; and (6) using a summer-only rate design would shift costs from point-to-point customers to network load.<sup>111</sup>

53. NV Energy also repeats its request that the OATT revisions become effective on the later of January 1, 2014 or the in-service date of the ON Line, explaining that aligning the effective date with the in-service date of the ON Line is "critical to ensure that the rates match the service being provided, and [to] avoid having two different sets of customers paying two different sets of rates for the same service."<sup>112</sup> NV Energy insists that granting its requested effective date is within the Commission's discretion, and will not harm customers because, by filing seven months prior to its requested effective date, NV Energy has provided the Commission and customers time to assess the new rates, and because permitting the rates to go into effect subject to refund will provide adequate protection.<sup>113</sup> NV Energy opposes protestors' requests to bifurcate the suspension periods; NV Energy asserts that suspending the rate for five months for some customers with only a nominal suspension for others would be unduly discriminatory, because *all* customers will use the entire, integrated transmission system.<sup>114</sup>

54. In addition, NV Energy responds to protestors' claims that the ON Line will not benefit third parties, and Las Vegas Power's request that the ON Line be excluded from transmission rates entirely.<sup>115</sup> NV Energy argues that, even if short-term availability for point-to-point service over the ON Line may be limited, there is considerable third party demand for the line, and that NV Energy has already offered firm service to customers subject to necessary modifications related to Phase 2 of the project, and intends to offer non-firm service as available.<sup>116</sup> In any event, NV Energy asserts, the Commission does

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<sup>111</sup> *Id.* at 17-14.

<sup>112</sup> *Id.* at 14-15.

<sup>113</sup> *Id.* at 16-19.

<sup>114</sup> *Id.* at 19-20.

<sup>115</sup> *Id.* at 20-27.

<sup>116</sup> *Id.* at 21-23.

not permit the direct assignment to native load of high-voltage facilities, which, by their nature, are presumed to provide wide-spread benefits to the entire system.<sup>117</sup> NV Energy also dismisses concerns about cost overruns resulting from a wind-induced vibration problem, asserting that rates must be consistent with actual costs—not original estimates, which are often exceeded.<sup>118</sup> Moreover, NV Energy states that, contrary to Las Vegas Power’s assertions, Single-System Rates are appropriate because the disparity in zonal rates noted by the Commission in the 1999 Merger Order is no longer as pronounced, and because, in any event, all customers will now take service under a single system.<sup>119</sup>

55. NV Energy points to its voluminous testimony and workpapers to rebut allegations that the cost of service information in its May 31 Rate Filing is not adequately supported.<sup>120</sup> NV Energy defends its 10.5 percent ROE as properly calculated based on the median of its DCF analysis and a proxy group from which outliers were properly excluded, and appropriately adjusted to reflect objective indicators of risk.<sup>121</sup> NV Energy also contests protestors’ representations regarding its 2014 load estimates, single-system loss factor, proposed reactive power and other ancillary service rates, capital structure, depreciation, revenue credits, and cash working capital.<sup>122</sup>

56. NV Energy acknowledges protestors’ concerns regarding credits for non-offending customers under Schedules 4 and 9, and would be willing on compliance to add language to these schedules addressing the crediting of imbalance charges to non-offending customers.<sup>123</sup> Finally, NV Energy asserts that protestors’ requested clarification that only a portion of the energy imbalance that falls within a deviation band will be assessed the indicated penalty is not supported by Commission precedent, and is not necessary, as the current language in Schedules 4 and 9 of the NV Energy OATT tracks the Commission’s *pro forma* language.<sup>124</sup>

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<sup>117</sup> *Id.* at 24-26.

<sup>118</sup> *Id.* at 26-27.

<sup>119</sup> *Id.* at 27.

<sup>120</sup> *Id.* at 28-30.

<sup>121</sup> *Id.* at 30-33.

<sup>122</sup> *Id.* at 37-43, 45-47.

<sup>123</sup> *Id.* at 43.

<sup>124</sup> *Id.* at 44-45.

## 2. NV Energy OATT Answer in Docket No. ER13-1607-000

57. NV Energy asserts that the definition of “Retail Open Access Programs” provided in section 1.50 of the NV Energy OATT describes the two types of retail access programs created by the Nevada legislature and that it does not agree with Colorado/Southern Nevada that section 1.50 is prohibitively restrictive. NV Energy states that it amended the definition of end-use customer to specifically apply to customers of the Colorado River Commission and that while other retail open access customers might exist, they are not defined as end-use customers in the NV Energy OATT.<sup>125</sup> Lastly, NV Energy asserts that the OATT revisions to eliminate the term “Scheduling Coordinator” do not eliminate the ability of the Colorado River Commission to use a scheduling coordinator.<sup>126</sup>

58. NV Energy states that it disagrees, in part, with Ormat and ORNI’s interpretation of Order No. 890. However, NV Energy states that if the Commission agrees with Ormat and ORNI, it should clarify that a new 60-day time period begins for each system impact study conducted.<sup>127</sup> NV Energy points out that the Commission requires transmission providers to conduct system impact studies within a 60-day time frame and that penalties can be assessed for failure to comply with this timing requirement. NV Energy asserts that the revisions to section 19.1 are intended to provide clear instruction to customers regarding the deadline to submit requests to study conditional firm and/or planning redispatch options. If the Commission agrees with Ormat and ORNI, NV Energy requests that the Commission allow NV Energy to revise section 19.1 to state “[i]f notification is provided after the tender of the System Impact Study Agreement, the study of redispatch or conditional curtailment will be conducted in a subsequent system impact study.”<sup>128</sup>

59. NV Energy states that it will reach out to all customers towards the end of the third quarter to revise transmission service agreements as appropriate.<sup>129</sup>

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<sup>125</sup> NV Energy OATT Answer at 3-4.

<sup>126</sup> *Id.* at 4.

<sup>127</sup> *Id.* at 6.

<sup>128</sup> *Id.* at 9.

<sup>129</sup> *Id.* at 6.

## **VI. Discussion**

### **A. Procedural Matters**

60. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed notice of intervention and motions to intervene in either docket serve to make the entities that filed them parties to the consolidated proceeding. Further, pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant the late motion to intervene filed by Barrick Mines given its interests in the proceeding, the early stage of the proceeding and the absence of undue prejudice or delay.

61. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept NV Energy and Las Vegas Power's answers because they have provided information that assisted us in our decision-making process.

62. The Commission's practice is to consolidate proceedings where the issues are closely intertwined with each other.<sup>130</sup> We find that the issues that have been raised with respect to the May 31 Rate Filing in Docket No. ER13-1605-000 and the May 31 OATT Filing in Docket No. ER13-1607-000 are closely interrelated, and this warrants consideration of these two proceedings jointly for purposes of settlement, hearing and decision. Consequently, we will consolidate the proceedings in Docket Nos. ER13-1605-000 and ER13-1607-000 for purposes of settlement, hearing and decision, as discussed further below.

### **B. Hearing and Settlement Judge Procedures**

63. Our preliminary analysis indicates that NV Energy's proposed rates and non-rate terms and conditions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Protestors have raised several concerns regarding NV Energy's proposed rates, including the proposed ROE, the use of the 12-CP denominator, the amount of revenue credits, and other cost of service related issues, such as prepayments, accumulated deferred income taxes, operation and maintenance costs, and administrative and general costs. Additionally, protestors have raised concerns regarding the proposed changes to the non-rate terms and conditions under NV Energy's OATT. NV Energy's proposed

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<sup>130</sup> *Missouri River Energy Servs.*, 124 FERC ¶ 61,309, at P 39 (2008); *Public Service Company of New Mexico*, 142 FERC ¶ 61,168, at P 19 (2013); *ITC Holdings Corp.*, 143 FERC ¶ 61,257, at P 39 (2013).

revisions to its OATT raise issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in hearing and settlement judge procedures. Therefore, with the exception of the issues summarily decided below, we are setting these matters for a trial-type evidentiary hearing.

64. Additionally, we will grant waiver of the Commission's 120-day prior notice requirement to allow NV Energy's OATT revisions to become effective on the later of January 1, 2014 or the in-service date of the ON Line.<sup>131</sup> Section 35.3(b) of the Commission's regulations<sup>132</sup> provides that the Commission, upon request, may permit a rate schedule that is predicated on the construction of facilities to be filed more than 120 days in advance of the proposed effective date. In this case, we find good cause to grant NV Energy's request for waiver of the 120-day advance notice requirement for its proposed OATT revisions. Granting waiver of the prior notice requirement will prevent NV Energy from charging its existing Zonal Rates for single-system service.

65. Accordingly, we will accept, in part, NV Energy's proposed revisions to its OATT to implement single-system transmission and ancillary service rates, subject to acceptance of NV Energy's internal reorganization in Docket No. EC13-113-000, suspend these proposed revisions for a nominal period, to be effective on the later of January 1, 2014 or the in-service date of the ON Line, subject to refund, and set all issues, except those summarily decided below, for hearing and settlement judge procedures.

66. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>133</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>134</sup> The settlement judge

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<sup>131</sup> To the extent that the in-service date of the ON Line goes beyond January 1, 2014, NV Energy must notify the Commission of the actual in-service date.

<sup>132</sup> 18 C.F.R. § 35.3(b) (2012).

<sup>133</sup> 18 C.F.R. § 385.603 (2012).

<sup>134</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for

shall report to the Chief Judge and the Commission within sixty (60) days of the date of this order concerning the status of settlement discussion. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

### C. Other Issues

67. NV Energy has not shown that its proposed change to section 19.1 of the OATT to treat any request to study conditional firm or planning redispatch options received after the system impact study agreement is executed as a new transmission service request is consistent with or superior to the requirements of Order No. 890, and we therefore reject it. Section 19.1 provides that an eligible customer may request that the transmission provider study planning redispatch or conditional firm transmission service as part of the system impact study. Protestors reasonably posit that section 19.1 does not affirmatively require that an election to select planning redispatch or conditional firm be treated as a new request.<sup>135</sup> To the contrary, the transmission customer may elect not to undertake transmission upgrades and rather select planning redispatch or conditional firm.<sup>136</sup> A transmission customer may want the results of the initial system impact study before deciding whether to request a study of conditional firm or planning redispatch options. However, it does not change the eligible customer's opportunity to fulfill the entirety or portion of its initial transmission service request.

68. However, we understand NV Energy's concern that the time frames for which a transmission provider must complete a system impact study may need to be extended in instances where the eligible customer subsequently requests study of planning redispatch or conditional firm transmission service. As a result, we encourage the parties to explore as part of hearing and settlement judge proceedings whether a modification such as the language discussed in NV Energy's answer in Docket No. ER13-1607-000 would appropriately address this concern.<sup>137</sup>

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settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

<sup>135</sup> See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 978.

<sup>136</sup> *Id.* P 981.

<sup>137</sup> NV Energy OATT Answer at 9.

69. We will accept NV Energy's revisions to section 13.8, section 14.6, and the LGIA to comply with Order Nos. 764 and 764-A. We find that these revisions comply with Order No. 764.

70. With regard to NV Energy's proposed Attachment K, we find that this matter is part of a pending proceeding and should be resolved in such proceeding; therefore, we will reject proposed Attachment K.

71. We note that in Docket No. ER13-1605-000, NV Energy's Attachment H eTariff record is missing information, including the rate, and is therefore incomplete. Thus, we direct NV Energy to submit a compliance filing within fifteen (15) days of the issuance of this order in order to complete the Attachment H eTariff record.

The Commission orders:

(A) NV Energy's proposed revisions to the *pro forma* language of section 19.1 and proposed Attachment K of the NV Energy OATT are hereby rejected, as discussed in the body of this order.

(B) NV Energy's proposed revisions to section 13.8, section 14.6, and the LGIA to comply with Order Nos. 764 and 764-A are hereby accepted, as discussed in the body of this order.

(C) NV Energy's revised tariff records are otherwise hereby accepted for filing, subject to acceptance of NV Energy's internal reorganization in Docket No. EC13-113-000, and suspended, to be effective on the later of January 1, 2014 or the in-service date of the ON Line, subject to refund, and hearing and settlement procedures, as discussed in the body of this order.

(D) NV Energy is directed to submit a compliance filing within fifteen (15) days of the issuance of this order, as discussed in the body of this order.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning NV Energy's proposed OATT revisions. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (G) and (H) below.

(F) Docket Nos. ER13-1605-000 and ER13-1607-000 are hereby consolidated for purposes of hearing and settlement judge procedures.

(G) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(H) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(I) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

Document Content(s)

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