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BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Application of Nevada Power Company d/b/a NV Energy for approval of a cost of service study and net metering tariffs.)
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Docket No. 15-07041

Application of Sierra Pacific Power Company d/b/a NV Energy for approval of a cost of service study and net metering tariffs.)
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Docket No. 15-07042

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At a general session of the Public Utilities Commission of Nevada, held at its offices on August 26, 2015.

PRESENT: Chairman Alaina Burtenshaw
Commissioner Rebecca D. Wagner
Commissioner David Noble
Assistant Commission Secretary Trisha Osborne

[PROPOSED] INTERIM ORDER

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

I. INTRODUCTION

Nevada Power Company d/b/a NV Energy (“NPC”) filed an Application for approval of a cost of service study and net energy metering (“NEM”) tariffs.

Sierra Pacific Power Company d/b/a NV Energy (“SPPC”) filed an Application for approval of a cost of service study and NEM tariffs.

NPC and SPPC (collectively “NV Energy”) included interim proposals to facilitate the interconnection of additional renewable distributed generation, if the 235-megawatt (“MW”)

DAVID NOBLE		MEETING
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<input checked="" type="checkbox"/> COMM COUNSEL	DSN for GCW	8/25/15
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limitation set forth in the existing NEM rules is met prior to January 1, 2016.¹

II. SUMMARY

The Commission approves interim NEM 2² rates as discussed below.

III. PROCEDURAL HISTORY

- On July 31, 2015, NPC filed its Application, designated as Docket No. 15-07041.
- NPC's Application was filed pursuant to the Nevada Revised Statutes ("NRS") and Nevada Administrative Code ("NAC") Chapter 703 and 704, including but not limited to Section 4.5 of SB 374 and NAC 703.535.
- On July 31, 2015, SPPC filed its Application, designated as Docket No. 15-07042.
- SPPC's Application was filed pursuant to the NRS and NAC Chapter 703 and 704, including but not limited to Section 4.5 of SB 374 and NAC 703.535.
- On August 3, 2015, the Commission issued a Notice of Application in Docket No. 15-07041.
- On August 3, 2015, the Commission issued a Notice of Application in Docket No. 15-07042.
- The Regulatory Operations Staff ("Staff") of the Commission participates as a matter of right in these proceedings pursuant to NRS 703.301.
- On August 3, 2015, the Commission issued a Notice of Prehearing Conference and Notice of Hearing in Docket No. 15-07041.
- On August 3, 2015, the Commission issued a Notice of Prehearing Conference and Notice of Hearing in Docket No. 15-07042.
- On August 4, 2015, the Attorney General's Bureau of Consumer Protection ("BCP") filed a Notice of Intent to Intervene pursuant to NRS 228.360 in Docket No. 15-07041.
- On August 4, 2015, the BCP filed a Notice of Intent to Intervene pursuant to NRS 228.360 in Docket No. 15-07042.
- On August 7, 2015, NPC filed Errata 1 to the Application in Docket No. 15-07041.
- On August 7, 2015, SPPC filed Errata 1 to the Application in Docket No. 15-07042.

¹ Pursuant to Senate Bill ("SB") 374 (2015) Section 4.5, the Commission shall issue a final order on the Applications no later than December 31, 2015

² "NEM 1" refers to the NEM tariff in existence until the 235-MW limitation is met "NEM 2" refers to the tariff applicable after the 235-MW limitation is reached, which must be implemented prior to December 31, 2015 See Senate Bill ("SB") 374 of the 78th Nevada Legislature ("SB 374")

- On August 12, 2015, Fred Voltz filed a Comment in Docket No. 15-07041.
- On August 12, 2015, Fred Voltz filed a Comment in Docket No. 15-07042.
- On August 14, 2015, the Sierra Club filed a Petition for Leave to Intervene (“PLTI”) in Docket No. 15-07041.
- On August 14, 2015, the Sierra Club filed a PLTI in Docket No. 15-07042.
- On August 17, 2015, Angel De Fazio filed a Comment in Docket No. 15-07041.
- On August 17, 2015, Angel De Fazio filed a Comment in Docket No. 15-07042.
- On August 17, 2015, Fred Voltz filed a Comment in Docket No. 15-07041.
- On August 17, 2015, Fred Voltz filed a Comment in Docket No. 15-07042.
- On August 17, 2015, the Alliance for Solar Choice (“TASC”) filed a PLTI in Docket No. 15-07041.
- On August 17, 2015, TASC filed a Notice of Association of Kevin T. Fox with Kathleen M. Drakulich to Appear as Counsel for the Alliance for Solar Choice, in Docket No. 15-07041.
- On August 17, 2015, TASC filed a PLTI in Docket No. 15-07042.
- On August 17, 2015, TASC filed a Notice of Association of Kevin T. Fox with Kathleen M. Drakulich to Appear as Counsel for the Alliance for Solar Choice, in Docket No. 15-07042.
- On August 17, 2015, Bombard Renewable Energy (“Bombard”) filed a PLTI in Docket No. 15-07041.
- On August 17, 2015, Bombard Renewable Energy (“Bombard”) filed a PLTI in Docket No. 15-07042.
- On August 17, 2015, Travis G Miller filed a PLTI in Docket No. 15-07042.
- On August 17, 2015, Nevadans for Clean Affordable Reliable Energy (“NCARE”) filed a PLTI in Docket No. 15-07041.
- On August 17, 2015, NCARE filed a PLTI in Docket No. 15-07042.
- On August 17, 2015, the Southern Nevada Homebuilders Association (“SNHB”) filed a PLTI in Docket Nos. 15-07041 and 15-07042.
- On August 17, 2015, SNHB filed a Notice of Association of Counsel in Docket Nos. 15-07041 and 15-07042.

- On August 17, 2015, the United States Green Building Council, Nevada Chapter (“USGBC”) filed a PLTI and Notice of Association in Docket No. 15-07041.
- On August 17, 2015, Vote Solar filed a PLTI in Docket No. 15-07041.
- On August 17, 2015, Vote Solar filed a Notice of Association in Docket No. 15-07041.
- On August 17, 2015, Vote Solar filed a PLTI in Docket No. 15-07042.
- On August 17, 2015, Voted Solar filed a Notice of Association in Docket No. 15-07042
- On August 18, 2015, Shawn O’Meara (on behalf of SUNworks, Black Rock Solar, Inc., The Power Company, and Alternative Energy Solutions) filed a late-filed PLTI in Docket No. 15-07042.
- On August 18, 2015, the Solar Energy Industries Association (“SEIA”) filed a late-filed PLTI in Docket No. 15-07042.
- On August 18, 2015, the Washoe County School District (“WCSD”) filed a PLTI in Docket No. 15-07042.
- On August 18, 2015, TASC filed a Motion for Order Rejecting the Implementation of NV Energy’s Proposed Net Metering Tariffs on an Interim Basis and Proposing an Alternative Interim Tariff (“Motion”) in Docket Nos. 15-07041 and 15-07042. On August 20, 2015, BCP filed a Response.
- On August 19, 2015, the Commission held a prehearing conference. BCP, Bombard, Mr. Miller, NCARE, NV Energy, SEIA, SNHB, Staff, TASC, USGBC, Vote Solar, and WCSD made appearances. The Presiding Officer excused the Sierra Club and Mr. O’Meara from appearing. The Presiding Officer consolidated Docket Nos. 15-07041 and 15-07042 for hearing purposes. The Presiding Officer granted the PTIs filed by Bombard, NCARE, TASC, Vote Solar, and WCSD. The Presiding Officer conditionally granted the PTIs filed by Mr. O’Meara, SEIA, Sierra Club, SNHB, and USGBC, subject to those parties filing supplemental information. The Presiding Officer denied the PLTI filed by Mr. Miller.
- On August 19, 2015, the Great Basin Solar Collective (“GBSC”)³, formerly Mr. O’Meara, filed supplemental information.
- On August 19, 2015, the Sierra Club filed a Reply to Staff Response to Petition to Intervene in Docket Nos. 15-07041 and 15-07042.
- On August 20, 2015, SEIA filed a Supplement to Late-Filed Petition for Leave to Intervene in

³ GBSC alternately refers to itself as the “Great Basin Solar Coalition” and is comprised of SUNworks, Black Rock Solar, Inc , The Power Company, Alternative Energy Solutions, and Hamilton Solar, LLC.

Docket Nos. 15-07041 and 15-07042.⁴

- On August 20, 2015, SNHB filed a Supplement to the Petition for Leave to Intervene in Docket Nos. 15-07041 and 15-07042
- On August 20, 2015, USGBC filed a letter rescinding its PLTI in Docket No. 15-07041.
- On August 20, 2015, Vote Solar filed a Supplemental and Errata Filing in Support of Vote Solar's Petition for Leave to Intervene in Docket Nos. 15-07041 and 15-07042.
- On August 21, 2015, the Commission held a hearing in Docket Nos. 15-07041 and 15-07042. BCP, Bombard, GBSC, NCARE, NV Energy, SEIA, Sierra Club, SNHB, Staff, TASC, and Vote Solar, made appearances. At the conclusion of the hearing, the Presiding Officer granted a motion to accept Exhibits 1-28 into the record.⁵

IV. ATTRITION UNDER THE 235-MW LIMITATION

Background

1. On August 20, 2015, at approximately 8:00 p.m., NV Energy's website (SB374 Net Metering Cap) reported that the total applied capacity for NEM projects reached the 235-MW limitation under the NEM 1 tariffs (Completed Projects—126.3 MWs; Active Projects—108.7 MWs). (Tr. at 46.)⁶

NV Energy Position

1. NV Energy notes that the applicable statutes allow it to simply tell all prospective NEM ratepayers who filed applications after the 235-MW limitation was met on August 20, 2015, that they will be subject to the NEM 2 tariff when the Commission approves it on or before December 31, 2015. (Tr. at 47.) However, NV Energy is instead proposing to allow these post-cap applicants to be qualify under NEM 1 as attrition allows.

2. NV Energy states that it is time-stamping applications received after the 235-MW

⁴ The supplement demonstrates that two of SEIA's members, NRG Energy, Inc. and Renewable Energy Electric, appear to have a direct and substantial interest in these proceedings. Vivint Solar, Inc. does not have a direct and substantial interest in these proceedings.

⁵ TASC objected to the admission of portions of Exhibits 1, 2, 4, and 5 into the record. (Tr. at 404-412.)

⁶ In Docket No. 15-07021, the Commission found that SB 374 requires the Commission to approve new tariffs once the 235-MW limitation is met.

limitation was reached, sending letters out electronically to all such applicants informing the applicants that they have been identified as NEM 2 ratepayers. However, understanding that attrition will take place as projects drop out of the 235-MW queue, NV Energy will move applicants on a time-stamped basis under the 235-MW limitation to the NEM 1 tariff and then send them a subsequent letter notifying them of the change. Since August of 2014, the attrition rate is 6.5 percent; prior to August of 2014, the attrition rate was 40 percent. NV Energy does not have an explanation for the difference in attrition rates. (Tr. at 47, 50.)

BCP Position

3. BCP states that when the 235-MW limitation is hit, NEM 1 is closed. (Tr. at 56.)

Bombard Position

4. Bombard states that the attrition rate may be due to the fact that a contract was required before August 2014, which is not the case now. (Tr. at 51.)

GBSC Position

5. GBSC has no position on this issue. (Tr. at 53.)

NCARE Position

6. NCARE has no position on this issue. (Tr. at 54.)

SEIA Position

7. SEIA has no position on this issue. (Tr. at 53.)

Sierra Club Position

8. Sierra Club has no position on this issue. (Tr. at 52.)

SNHB Position

9. SNHB state that the 235-MW limitation was supposed to be a trigger requiring the Commission to look at what kind of tariff is appropriate going forward, not a cap that was intended to signal the end of NEM in Nevada. (Tr. at 52.)

Staff Position

10. Staff has not position on this issue. (Tr. at 56-57.)

TASC Position

11. TASC states that ratepayers who submit applications will not know when they will receive a decision on whether attrition is going to allow them to qualify under the 235-MW limitation. It is confusing for the ratepayers. Anyone outside of NV Energy has very little visibility into the queue. There is little information about how long some of the projects have been in the queue. In fact, TASC just learned about the varying attrition rates. The lack of visibility creates a tremendous amount of uncertainty because nobody has any idea what to do. To the extent there is attrition under the 235-MW limitation, that additional capacity should be made available. (Tr. at 54-55, 58.)

Vote Solar Position

12. Vote Solar questions under what authority NV Energy gets to unilaterally determine that the 235-MW limitation is reached and under what authority NV Energy gets to send out letters to new applicants unilaterally determining that those new applicants will be NEM 2 ratepayers. (Tr. at 53.)

NV Energy Reply Position

13. NV Energy states that it determines attrition in at least two ways. First, a ratepayer in the pipeline may notify NV Energy that the project is withdrawn. Second, a project is terminated if 12 months pass after the application is filed and the project has not been completed. (Tr. at 137.)

14. NV Energy states that it will notify applicants if they qualify for the NEM 1 tariff due to attrition at the time of the installation. However, upon further questioning, NV Energy indicated that if there has been a certain amount of attrition in one week, NV Energy should be

able to notify those NEM 2 ratepayers who would then qualify for the NEM 1 tariff the following week. (Tr. at 58-59, 137-138.)

Commission Discussion and Findings

15. It is in the public interest to ensure that the 235-MW limitation is ultimately satisfied with completed projects. There is no indication in the language or legislative history of SB 374 that the intent was to reduce that limitation due to the attrition of applications resulting from withdrawals or cancellations. Given the current attrition rate of 6.5 percent with 108.7 MWs of active projects still waiting for completion under the NEM 1 tariff, it is likely that over six percent of applications under the NEM 2 tariff will ultimately qualify for the NEM 1 tariff.

16. On a weekly basis, NV Energy shall notify in writing those NEM 2 ratepayers who qualify for the NEM 1 tariff the week following the applicable attrition. NV Energy shall also update its SB 374 Net Metering Cap website on a weekly basis with the attrition in capacity and the latest application, identified by its date/time stamp, that qualifies for the NEM 1 tariff.

V. MOTION

TASC Position⁷

17. TASC states that the Commission should reject NV Energy's interim NEM 2 proposal. NV Energy's interim NEM 2 proposal cannot be considered substantial evidence without being subject to discovery and a full hearing, which would support just and reasonable rates. Instead, the Commission should approve an interim NEM 2 tariff rooted in the existing NEM 1 tariff, which has already been vetted and approved. Alternatively, requiring NEM ratepayers to take utility service under an existing time-of-use ("TOU") rate is a legally supportable option that the Commission could consider. NEM 2 ratepayers should be eligible to remain on the NEM 2 tariff for 20-year terms from the date of system interconnection to provide

⁷ TASC also summarized its position during the hearing (Tr at 7-12)

the initial NEM 2 ratepayer with the certainty required to make the investment. (Motion at 2.)

18. TASC states that the plain language, structure, and legislative history of SB 374 contemplate the uninterrupted continuation of net metering. The Nevada Legislature enacted SB 374 and expanded NEM availability because the number of NEM ratepayers was on course to exceed the three percent threshold prior to the next legislative session. The NEM provisions now allow participation in NEM by an unlimited number of ratepayers. (See SB 374 Section 2.95.) In uncapping NEM, the Nevada Legislature provided for continuous and uninterrupted participation in NEM under two sequential legal frameworks—the first (NEM 1) until a 235-MW threshold is met and the second (NEM 2) after a 235-MW threshold is met. The failsafe mechanism of Section 4.5 of SB 374 provides for NEM 1 tariff terms starting on January 1, 2016, if the Commission does not approve a NEM 2 tariff on or before December 31, 2015. (See SB 374 Section 4.5(5).) (Motion at 2-5.)

19. TASC states that NV Energy's forecasting errors have resulted in the need for the Commission to adopt an interim NEM 2 tariff. There was considerable controversy as to when the 235-MW threshold would be reached and whether the Commission would have time to approve a NEM 2 tariff before that occurred. TASC argued to the Nevada Legislature that the threshold would be met by the end of Summer 2015, well before the Commission could approve a new tariff. NV Energy represented to the Nevada Legislature that the threshold would not be met until February 2016. On June 30, 2015, NV Energy announced that the cap could be met in less than two months, before the end of August. The solar industry predicted the precise timeframe that NV Energy has now identified as the date the 235-MW cap will be reached. (Motion at 5-6.)

20. TASC states that NV Energy's NEM 2 proposal includes 16 new rate schedules, 15 modified rate schedules, and four modified rules that include exorbitant new fixed charges

and an unprecedented proposal to impose demand charges on residential ratepayers for the first time. NV Energy's proposal is voluminous, complicated, extreme, unprecedented, and requires opportunity for discovery and more than a single day of hearings. Notwithstanding the enormous complexity and unprecedented nature of these filings, NV Energy proposes that the Commission apply the NEM 2 tariffs beginning on September 15, 2015. NV Energy offers to issue refunds to interim NEM 2 ratepayers in the event that the final NEM 2 tariffs provides more favorable financial terms to the NEM 2 ratepayers. The refund offer is entirely insufficient to remedy the immediate and irreparable harm that use of NV Energy's proposed rates would cause. The energy rates assessed under the NEM 2 tariffs are approximately half what they originally were for NEM 1 ratepayers, which results in a dramatic loss of bill savings. There is no reason to create even more uncertainty and risk for NEM ratepayers by departing significantly from the NEM 1 tariffs during the very brief four-month interim period in which the NEM 2 tariffs are litigated. (Motion at 6-11.)

21. TASC states that developing interim NEM 2 tariffs rooted in existing rates until new tariffs and rates are properly vetted and all sides are sufficiently heard will best protect ratepayers. SB 374 does not require the interim NEM 2 tariffs to be different from the NEM 1 tariffs. TASC intends to present at or before the hearing on August 21, 2015, interim NEM 2 tariffs that are rooted in existing Commission-approved rates for the Commission's consideration. (Motion at 8.)

22. TASC states that the Commission could require NEM 2 ratepayers to take utility service under existing TOU rates. Existing TOU rates are more aligned with marginal costs than existing flat rates. Nevertheless, TASC prefers to implement an interim tariff rooted in the existing NEM 1 tariff because there could be unintended negative consequences that have not been fully analyzed and understood from limiting NEM 2 ratepayers to existing TOU rates. SB

374 provides the necessary legal support to authorize the implementation of the existing TOU rates. (*See* Sections 2.5(1) and 2.5(2).) (Motion at 8-9.)

23. TASC states that interim NEM 2 ratepayers should be eligible to either maintain service under the interim NEM 2 tariff for 20-year terms from the date of install or switch to the new NEM tariff. NEM ratepayers should be provided reasonable certainty regarding rate options and associated charges that may apply to them over the course of their investment. (Motion at 9; Tr. at 45.)

24. TASC states that NV Energy's proposal for the four-month interim period would violate statutory due process. Although proceedings before administrative agencies may be subject to more relaxed procedural and evidentiary rules, due process guarantees of fundamental fairness still apply. (*Dutchess Business Services, Inc. v. Nevada State Bd. of Pharmacy*, 124 Nev. 702, 711 (2008) citing e.g. *Bivens Constr. v. State Contractors' Bd.*, 107 Nev. 281, 283 (1991).) Administrative bodies in Nevada must follow their established procedural guidelines. (*Id.* citing *McClelland v. Andrus*, 606 F.2d 1278, 1285-86 (D.C. Cir. 1979).) Section 4.5 of SB 374 provides that the Commission shall conduct a review of each tariff filed by a utility pursuant to subsection 1. Further, NAC Chapter 703 contains a number of additional procedural protections for parties to a proceeding, including NAC 703.680 (right to conduct discovery), 703.685 (right to cross-examination), and 703.695 (right to present evidence). With the prehearing conference set for August 19, 2015, neither TASC nor any other party attempting to intervene in these proceedings will know whether they are a party to the proceeding until that time. With the hearing on the interim NEM 2 tariff scheduled for August 21, 2015, interveners will be unable to meaningfully participate in the hearing. The two-day time frame means that each intervenor will be unable to conduct discovery, engage expert witnesses, develop an intervenor case, or prepare for cross-examination. Two days is simply not enough time to

prepare and participate meaningfully in any substantive hearing to be held on August 21, 2015. Requiring interveners to do so would violate their statutory due process rights. (*New Mexico Indus. Energy Consumers v. New Mexico Pub. Serv. Comm'n*, 725 P.2d 244, 247 (N.M. 1986); *In the Matter of Application of PacifiCorp for Approval of a General Rate Increase*, 2005 WL 7146869 (Wyo. P.S.C. 2005); *In re Application of Mountainridge Telephone*, 2015 WL 328410 (Kan S.C.C. 2015).) (Motion at 11-17.)

25. TASC states that adopting NV Energy's proposed NEM 2 tariffs for the interim period would be arbitrary and capricious and not supported by substantial evidence. The procedural protections described above are in place to ensure the thorough vetting of any rate increase proposed by NV Energy. Without the ability of interveners to effectively develop the record through discovery, cross-examination, and their own affirmative case, the record will be incomplete. (Motion at 18-19.)

26. TASC states that NV Energy's filings do not support the creation of a separate ratepayer class for NEM ratepayers. The overall differences between NEM ratepayers and non-NEM ratepayers with smart meters are small. On average, after installing solar, NEM ratepayers are 15 percent smaller than regular residential ratepayers in terms of usage. Further, NEM ratepayers are just 8 percent more expensive to serve in terms of the dollar per kilowatt-hour ("kWh") marginal cost of service. These are not major cost-of-service differences, and they are the sort of differences that one would expect to find within an individual ratepayer class. (Motion at 21.)

27. TASC states that even if NEM ratepayers are slightly more expensive to serve, the marginal cost of service does not include important long-term benefits of NEM that reduce costs for utility ratepayers and that the Commission should consider in determining whether a separate rate class for NEM ratepayers is justified. Such benefits include avoided emission costs,

including the benefit of reduced carbon emission, and the associated reduced costs to comply with the renewable portfolio standard (“RPS”) and the federal Clean Power Plan (“CPP”).

(Motion at 21-22.)

28. TASC states that demand charges are not supported by the filings, industry precedent, metering technology, or public policy. Nevada has never imposed demand charges on residential ratepayers and TASC would like a reasonable opportunity to introduce evidence that no state has ever imposed a mandatory demand charge on residential ratepayers. Further, NV Energy proposes demand charges to recover distribution costs that are based on a ratepayer’s peak 15-minute demand regardless of when it occurs. However, NV Energy’s probability of peak allocation factors show that virtually all distribution costs are allocated to the 2:00 p.m. to 8:00 p.m. hours. Thus, it is not cost-based to charge a ratepayer a demand charge covering distribution costs that applies outside of these hours. Finally, there is nothing inherently more accurate in price allocation amongst ratepayers with the use of demand charges. It is simply the traditional way that utilities have charged large ratepayers for certain costs, a means that the utilities like because maximum demand is hard for ratepayers to reduce. (Motion at 22-24.)

BCP Position

29. BCP recommends that the Commission grant the Motion and approve an interim NEM tariff rooted in the existing NEM tariff to span the gap between the reaching of the 235-MW cap and the Commission’s approval of a NEM 2 tariff. First, the Legislature was assured that the existing NEM 1 tariff would be in effect up to the Commission’s adoption of a new tariff following a full investigative process and hearing on the matter because there would be sufficient space under the cap to last until the Commission approved a new tariff. Second, the Legislature established a process whereby the existing NEM 1 tariff would be effective until the Commission’s proceeding was complete. If the Commission has not had an opportunity to

complete the proceeding prior to the 235-MW limitation being hit, the Commission can apply the same rule for the interim period and approve BCP's proposal, a tariff rooted in the currently effective tariff to cover the interim period. Third, non-NEM residential ratepayers will likely not be prejudiced to any significant degree by continuation of the existing rates for another four months. The rates currently in place were determined to be just and reasonable in both NPC's and SPPC's respective most recent general rate cases. Fourth, adherence to the status quo, or something very close to it, minimizes potential chaos and confusion to all parties by imposition of new rates and rules which have not been fully vetted and discussed by the Commission. Adherence to the status quo enhances certainty and predictability for the affected parties until the new paradigm is implemented. Fifth, the non-NEM ratepayers who are allegedly subsidizing the NEM ratepayers are not going to receive any rate adjustment until the rates for SPPC and NPC are adjusted on January 1, 2017, and January 1, 2018, respectively. Finally, the Commission should not implement demand charges on an interim basis because parties and the Commission have not had sufficient time to investigate them. Introducing demand charges on an interim basis will only serve to cause more confusion for ratepayers. (Response at 2-5.)

30. BCP states that the Commission has great flexibility in setting rates. However, an interim tariff rooted in the existing NEM 1 tariff has the virtues of predictability and simplicity, and it will help mitigate confusion regarding the state of NEM in Nevada. BCP notes that there is strong consensus between the BCP's proposed interim tariff language and TASC's proposed interim tariff language. (Tr. at 31-32.)

Bombard Position

31. Bombard recommends that the Commission grant TASC's Motion. NV Energy's voluminous and complex filing puts the parties in the untenable position of attempting to digest and analyze a huge amount of information in an unreasonably short period of time. The attempt

to address NV Energy's proposal in such a short period of time raises significant due process issues. As a consequence, an interim NEM 2 tariff based upon the existing NEM 1 tariff that has already been fully vetted and approved is the best way to proceed for this relatively short interim period of time. The Commission may reasonably consider requiring interim NEM 2 ratepayers to take service under an existing TOU rate. This approach is legally supported by Section 2.5(1) and 2.5(2) of SB 374. (Tr. at 20-21.)

GBSC Position

32. GBSC recommends that the Commission grant TASC's Motion. (Tr. at 26-27.)

NCARE Position

33. NCARE recommends that the Commission grant TASC's Motion. The Commission should replace the NEM 1 tariff with one substantially similar until the Commission has time to create an evidentiary record in order to act on NV Energy's filings. SB 374 provides the Commission the flexibility that the Commission requested in its Report to the Legislature in Docket No. 13-07010 to take a look at NEM and potentially make changes based on a solid evidentiary record. The Commission should take the time anticipated by SB 374 to go through a full evidentiary process and come up with any changes that the Commission finds are just and reasonable to NEM ratepayers and non-NEM ratepayers. There is no cost-shift crisis or claimed intra-class rate inequity that is of such a magnitude during this short four-month interim period that the Commission must act now. The Commission has the time to get it right. The parties need to take the time to develop a solid evidentiary record in order for the Commission to come up with a fair decision. (Tr. at 27-31.)

NV Energy Position

34. NV Energy recommends that the Commission deny TASC's Motion. NV Energy states that due process is a complicated area of the law. Courts look at the processes established

by the administrative agencies both before and after action is taken. (*See Mathews v. Eldridge*, 424 U.S. 319 at 335 (1976), *Brock v. Roadway Express*, 481 U.S. 252 (1987); *Barry v. Barchi*, 443 U.S. 55 (1979); *Ingram v. Wright*, 430 U.S. 651 (1977).) In these proceedings before the Commission, NV Energy proposes a transition plan whereby the hearing may result in cost-based rates for NEM ratepayers. These cost-based rates will be tested again and compared with proposals made by other parties in a post-action hearing beginning on November 18, 2015. Therefore, the Commission has established both a pre-action and post-action process to guide the determinations, coupled with a refund mechanism if the post-action process yields different results. (Tr. at 15-18.)

35. NV Energy states that Section 2.3(2)(e) of SB 374 mandates that any action the Commission takes does not unreasonably shift costs from NEM ratepayers to non-NEM ratepayers. If there is insufficient process at the end of the interim hearing on NV Energy's interim NEM 2 proposal, there is likewise insufficient process at the end of the interim hearing on any action that maintains or exacerbates that cost shift. If that is the case, the Commission cannot adopt any proposal and must wait until after the hearing on November 18, 2015, to address the issues in a final order. (Tr. at 18-20.)

36. NV Energy states that the need for a transition plan is driven by the pace of the applications being submitted by the solar industry. In May, the industry was submitting applications at a pace of 3.5 MW per week. Since then, in only five of the 12 subsequent weeks has the industry submitted 3.5 MW or less of capacity; in the remaining seven weeks, the solar industry has submitted between four and over six MW of capacity. Thus, the 17-MW error by NV Energy described in the Motion is worth at most three weeks. During the legislative debate on SB 374, Solar City, the largest rooftop solar installer in Nevada, acknowledged that the solar industry was itself going to drive when the cap was going to be hit; instead of pacing its activity

to reach the cap in December or later, the industry would likely compete with one another and actually accelerate its activity in order to beat one another to the cap. This is a pace over which neither NV Energy nor the Commission has had any control. (Tr. at 12-15.)

SEIA Position

37. SEIA recommends that the Commission grant TASC's Motion for the reasons provided by TASC. (Tr. at 26.)

Sierra Club Position

38. Sierra Club recommends that the Commission grant TASC's Motion. Sierra Club supports setting an interim NEM 2 tariff that is substantially similar to the residential ratepayers rates and the mechanisms that ratepayers are used to today. Sierra Club's members who are NV Energy ratepayers are confused and do not understand what NV Energy's proposal means. NV Energy's proposal, in particular the demand charge, is a radical departure from existing residential rates. Sierra Club's members do not understand how to act in order to keep their bills low, which is something that they have a great interest in doing. Sierra Club needs time to figure out how to give advice to its members so that their bills will not skyrocket. These are complicated issues and Sierra Club is still trying to marshal its resources, talking with policy experts who have experience nationally with various other policies in other states. (Tr. at 22-24.)

SNHB Position

39. SNHB recommends that the Commission grant TASC's Motion. SNHB supports the concept of maintaining the existing NEM 1 tariff as an interim NEM 2 tariff until the final NEM 2 tariff can be put in place. Utilizing the existing tariff in the interim will do the least harm to the ratepayers and the system. NV Energy's proposal cannot reasonably be fully understood and vetted in the time period that has been allowed. (Tr. at 21.)

Staff Position

40. Staff recommends that the Commission deny in part TASC's Motion. Staff disagrees that the plain language, structure, and legislative history of SB 374 contemplated the uninterrupted continuation of NEM. SB 374 addresses many contingencies, but it does not address what would happen if the 235-MW NEM capacity is hit before the Commission deadline of December 31, 2015. Notwithstanding, the Commission has the authority to establish interim NEM 2 rates pursuant to NRS 703.025, 703.151, and 704.120. Staff agrees with TASC that the Commission should utilize existing schedules for NEM ratepayers; however, Staff's proposal is different than TASC's proposal. Further, other parties should not be precluded from proposing alternative interim proposals. While Staff is concerned that NV Energy's interim NEM 2 proposal is very complex, the Legislature clearly contemplated that three-part NEM rates, including a demand charge, could be established. (Tr. at 32-34, 37.)

41. Staff states that TASC cannot have it both ways regarding due process. TASC cannot claim that it is unlawful for a decision to be rendered on NV Energy's interim proposal and yet demand that TASC's interim proposal be put in place instead. TASC recommends continuation of the expiring tariff and rates, which from Staff's perspective is inconsistent with the legislative history of SB 374, yet trying to prevent other parties from challenging that proposal and presenting possible alternatives to this Commission. By holding the hearing, the Commission presents all parties with an opportunity to be heard on the possible interim rates, terms, and conditions. Parties are given an opportunity to present witnesses, cross-examine opposing witnesses, and provide oral argument regarding legal issues. TASC was provided notice by the Commission of the filings, the prehearing conference, and the hearing on the interim proposal, as soon as practicable. Both the notice and the opportunity to be heard comply with due process in this matter. (Tr. at 34-36.)

Vote Solar Position

42. Vote Solar recommends that the Commission grant TASC's Motion. The Commission should approve an interim NEM 2 tariff that is the same as the NEM 1 tariff. The language and legislative history of SB 374 suggests the Legislature intended the NEM 1 tariff to continue until the Commission approves the NEM 2 tariff. (Tr. at 24-25.)

43. Vote Solar states that NV Energy's interim NEM 2 proposal violates due process. The interim NEM 2 proposal is a radical departure from the NEM 1 tariff. The interim NEM 2 proposal relies on highly technical data, requiring the analysis of expert witnesses, which has been impossible for Vote Solar in this extremely short time frame. There is no good reason to rush into a new tariff at the expense of due process. A single day of hearing with no opportunity for discovery does not comport with due process for this highly important matter. NV Energy's refund proposal does not alleviate this problem. In fact, the Commission rejected such an interim proposal with a refund mechanism in Docket No. 14-11006. (Tr. at 24-26.)

TASC Reply Position

44. TASC states that it disagrees with Staff's argument that SB 374 contemplates or allows an interruption. There is a gap because the information provided to and accepted by the Legislature only contemplated a gap to occur on or about December 31, 2015. During the 2015 legislative session, the solar industry predicted the precise time frame that NV Energy has now identified as the date the 235-MW cap would be reached; the timeframe just was not taken into consideration in drafting SB 374. Had the Nevada Legislature accepted the solar industry's prediction, an August 31, 2015 date would have been used instead of December 31, 2015, for allowing the existing NEM 1 tariff to continue until a final order is issued by the Commission. (Tr. at 37-40, 43.)

45. TASC states that it has not had an opportunity to review the cases cited by NV Energy. However, TASC's recollection is that the U.S. Supreme Court has a preference to

