

**BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

Joint Application of Sierra Pacific Power Company d/b/a )	
NV Energy and Nevada Power Company d/b/a NV )	
Energy for authority to establish and implement three )	Docket No. 12-05003
separate trial non-standard metering option riders )	
pursuant to the Order issued in Docket No. 11-10007. )	
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**PROCEDURAL ORDER NO. 3**

The Presiding Officer in this docket makes the following findings and conclusions:

1. Sierra Pacific Power Company d/b/a NV Energy ("SPPC") and Nevada Power Company d/b/a NV Energy ("NPC") (collectively, "NV Energy") filed a Joint Application with the Public Utilities Commission of Nevada ("Commission"), designated as Docket No. 12-05003, pursuant to the Order issued in Docket No. 11-10007. In the Joint Application, NV Energy is requesting authority to establish and implement three separate trial non-standard metering option ("Trial NSMO") riders for NPC, SPPC's electric operations, and SPPC's natural gas operations. Additionally, NV Energy is requesting approval of proposed changes to existing rules and schedules associated with its implementation of the Trial NSMO riders
2. NV Energy filed this Joint Application pursuant to the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC"), Chapters 703 and 704, including but not limited to NAC 703.535.
3. On May 2, 2012, the Nevada Attorney General's Bureau of Consumer Protection ("BCP") filed a Notice of Intent to Intervene pursuant to NRS Chapter 228.
4. On May 10, 2012, AARP Nevada ("AARP") filed a Notice of Intent to Participate as a Commenter ("NIPC").
5. On May 11, 2012, the Commission issued a Notice of Joint Application and Notice of Prehearing Conference.

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DRAFTED BY: SAC	
FINAL DRAFT ON: 12/4/12	12/20
REVIEWED & APPROVED BY:	
<input type="checkbox"/> ADMIN/ASST. ( )	1
<input checked="" type="checkbox"/> COMM/COUNSEL <i>[Signature]</i>	12/4/12
<input type="checkbox"/> SECRETARY/ASST. SEC.	1
<input type="checkbox"/> OTHER ( )	1

6. The Regulatory Operations Staff ("Staff") of the Commission participates as a matter of right, pursuant to NRS 703.301.

7. On May 14, 2012, the National Toxic Encephalopathy Foundation ("NTEF") filed a Petition for Leave to Intervene ("PLTI").

8. On May 18, 2012, NIPCs were filed by Tony Simmons, Mike Hazard, and Joyce Hazard. On May 23, 2012, Jonathan Friedrich filed a NIPC. On May 29, 2012, NIPCs were filed by Sheila Stirling, Karen Smith, Mary Lahren, John Snatic, Bruce Kittess, and Fred Voltz. On May 31, 2012, NIPCs were filed by Christian Salmon, Richard Salmon, and Rapatsorn Salmon. On June 2, 2012, Eleanor Ahern filed a NIPC. On June 4, 2012, NIPCs were filed by Penny Hess, Angel De Fazio, NV Energy Stop Smart Meters/S.A.F.E.R., Lisa Toulouse, Cheryl Wisecup, Wendy Ellis, Joseph Lavenburg, Neil Ohriner, John Mahler, Crystal Smith, Ru Dugdale, Charles Noce, and Cynthia Coletti. Also on June 4, 2012, Bruce Kittess filed Comments. On June 5, 2012, NIPCs were filed by Andrea Glenn, Katrin Ivanoff, Richard Schweickert, Robert Frank, Rita Hickey, and Daniel Hickey. On June 6, 2012, NIPCs were filed by George Sovitsky, Patty Vinikow, and Matthew and Melody Chutter. Also on June 6, 2012, Comments were filed by Sheila Stirling, Carole Fineberg, A. Jane Lyon, and Fred Voltz. On June 11, 2012, Comments were filed by Angel De Fazio, NV Energy Stop Smart Meters/S.A.F.E.R., NTEF, Mary Lahren, and John Snatic.

9. On June 13, 2012, NV Energy filed a Response to NTEF's PLTI.

10. On June 14, 2012, NTEF filed a Reply to NV Energy's Response.

11. On June 15, 2012, Mike Hazard and Joyce Hazard filed Comments.

12. On June 19, 2012, the Commission held a Prehearing Conference. Appearances were made by NV Energy, BCP, and Staff. The PLTI of NTEF and a procedural schedule were

discussed, and public comments were allowed.

13. On June 26, 2012, the Presiding Officer issued Procedural Order No. 1 setting a procedural schedule for NTEF to revise its PLTI, the filing of testimony, and a hearing.

14. On July 2, 2012, the Commission issued a Notice of Hearing.

15. On July 3, 2012, NTEF filed an Amended PLTI, and on July 6, 2012, NTEF filed an Amended Certificate of Service.

16. On July 10, 2012, NV Energy filed a Response to NTEF's Amended PLTI.

17. On July 17, 2012, NTEF filed a Reply to NV Energy's Response to Amended PLTI.

18. On August 8, 2012, the Commission issued an Order denying NTEF's PLTI (the "PLTI Order").

19. On August 22, 2012, NTEF filed a Request for Rehearing/Reconsideration of the PLTI Order ("NTEF Petition").

20. On August 27, 2012, NV Energy filed its Answer to NTEF's Petition.

21. On August 27, 2012, NTEF filed a Notice of Representation for Petitioner Regarding Request for Rehearing/Reconsideration of Order on Petition for Leave to Intervene of the National Toxic Encephalopathy Foundation and Request for Rescheduling for Dates in this Docket to Conform under Due Process ("Request for Rescheduling").

22. On September 4, 2012, the Presiding Officer issued an Order on Petition for Reconsideration/Rehearing of the National Toxic Encephalopathy Foundation.

23. On September 11, 2012, BCP and Staff filed Prepared Direct Testimony.

24. On September 18, 2012, Bruce Kittess filed Comments. On September 19, 2012, Fred Voltz filed Comments. On September 20, Sheila Stirling filed Comments. On September

21, 2012, Mike Hazard filed Comments.

25. On September 25, 2012, NV Energy filed Prepared Rebuttal Testimony.

26. On September 26, 2012, Jonathan Friedrich filed Comments. On September 28, 2012, Fred Voltz filed Comments. On October 1, 2012, Comments were filed by Crystal Smith, Penny Hess, Mary Lahren, John Snatic, Richard Schweickert, Daniel and Rita Hickey, Cheryl Wisecup, Matthew and Melody Chutter, Joyce Hazard, Wendy Ellis, John Mahler, Neil Ohriner, Jonathan Friedrich, George Sovitsky, and Cynthia Coletti. On October 2, 2012, Comments were filed by Angel De Fazio, NV Energy Stop Smart Meters and SAFER, NTEF, Mike Hazard, and Robert and Louise Frank. On October 3, 2012, the AARP filed Comments.

27. On October 3-4, 2012, the Commission held a hearing. Appearances were made by NV Energy, BCP, and Staff. Exhibit Nos. 1 through 17 and Confidential Exhibit No. 1 were entered into evidence. Administrative Notice was also taken of the Commission's Docket Nos. 04-5003, 10-02009, 10-03023, 10-07024, and 11-10007.

28. On November 21, 2012, the Commission issued a Draft Order.

29. On November 27, 2012, the Commission voted to grant NV Energy's Joint Application as modified by the Order, and issued the Order.

30. On November 30, 2012, BCP filed a Motion for Stay, and NV Energy filed a Response to BCP's Motion for Stay.

31. On December 3, 2012, Staff filed a Response to BCP's Motion for Stay.

### **BCP's MOTION FOR STAY**

#### **BCP's Position**

32. BCP moves the Commission for an order staying the effectiveness of its November 27, 2012 Order as BCP intends on filing a petition pursuant to NAC 703.801 with

respect to the issue of continued use of analog meters and related pricing. (BCP's Motion at 2.) BCP argues that if the Commission does not stay the effectiveness of the Order, ratepayers who opt out of the smart meter program will have their analog meters removed and experience an increase in charges and fees which may change pending the outcome of a petition for reconsideration or rehearing. (*Id.* at 3.)

33. BCP asserts that staying the effectiveness of the Order is reasonable, in the public interest, and necessary to avoid confusion on the part of ratepayers with respect to opting out of the use of smart meters. (*Id.*) Depending on the outcome of the petition for reconsideration or rehearing, the meter to be used by those not using smart meters may not be limited to the meter approved in the Commission's Order and the associated cost may also change. (*Id.*)

34. In the alternative, BCP requests that if the Commission does not suspend the effectiveness of the Order, that it suspend the necessity for review by Staff or suspend the effectiveness of the tariffs following Staff's review. (*Id.*)

35. BCP argues that staying the effectiveness of the Order may ultimately reduce administrative expense and labor since NV Energy will not have to unnecessarily remove analog meters and charge customers for amounts that may result in refunds at a later date. (*Id.*) In addition, because the Commission appeared to suggest during deliberations at the agenda meeting that it may entertain additional argument and testimony regarding the continued use of analog meters, staying the Order will facilitate further consideration of the use of meters that are alternatives to smart meters and the attendant costs. (*Id.* at 3-4.)

#### **NV Energy's Position**

36. NV Energy filed a Response in Support of BCP's Motion for Stay. NV Energy agrees with BCP that if BCP were to file a post-hearing motion and such motion were granted,

the filing of NV Energy's tariffs could lead to additional confusion. (NV Energy's Response at 1.) NV Energy agrees that it is in the public interest to avoid any additional confusion. (*Id.*)

37. NV Energy specifically requests that the Commission stay the Order, including NV Energy's obligation to file new tariffs before the December 4, 2012 deadline for filing such tariffs. (*Id.* at 2.) NV Energy believes that the Presiding Officer has the power and authority to grant or deny the Motion pursuant to NAC 703.550(8) because the Motion is not a dispositive motion, but preserves the existing status quo until the Commission has the opportunity to rule on a post-hearing motion, if filed. (*Id.*) NV Energy notes that if BCP files a post-hearing motion, the full Commission could take up the request for a stay at the same time it takes up the post-hearing motion. (*Id.*)

38. NV Energy states that it recognizes that the relief requested by the Motion is somewhat extraordinary, but NV Energy believes it is appropriate under the circumstances of this case to grant a stay. (*Id.*)

#### **Staff's Position**

39. Staff filed a Response to BCP's Motion, stating that although it has not had the opportunity to fully analyze the relief BCP states it will be requesting in its anticipated reconsideration or rehearing, Staff does not object to a stay of the implementation and review of the revised compliance tariffs as requested by BCP. (Staff Response at 1-2.) Staff believes that, given the high level of customer interest in this case and the fact that BCP represents the interests of the residential ratepayer, it is reasonable to delay the implementation of the tariffs in order to fully vet any reconsideration or rehearing. (*Id.* at 2.)

### **Commission Discussion and Findings**

40. Pursuant to NAC 703.690, a presiding officer has the authority to act upon any pending motions or petitions that do not involve a final determination of the proceeding and to rule on all procedural matters.<sup>1</sup>

41. The Presiding Officer in this docket finds that BCP's Motion for Stay is a motion that does not involve the final determination of this proceeding and involves a procedural matter. BCP's Motion seeks to stay the enforcement of the Commission's Order until such later time that the Commission is able to rule on a petition to be filed by BCP. The Presiding Officer believes that granting or denying the Motion will not involve a final determination of this proceeding because such a decision is not dispositive of the docket and will not change the substance of the Commission's Order. Moreover, a decision on the Motion is procedural in nature in that it may result in no change to the Order (if denied) or have the effect of placing the Order in abeyance (if granted). Thus, the Presiding Officer is vested with the authority to rule on BCP's pending Motion.

42. The Commission's regulations provide little to no guidance for evaluating a motion to stay a Commission Order. In its Motion, BCP requests that the Commission stay its November 27, 2012 Order pending the filing of a petition by BCP pursuant to NAC 703.801, or that the Commission suspend Staff's review of NV Energy's tariffs, or suspend the effectiveness of the tariffs following Staff's review. The Presiding Officer agrees with BCP that if the Order is not stayed, NV Energy's compliance tariffs will be implemented upon review by Staff and that the tariffs could later be modified depending on the outcome of a petition for reconsideration or rehearing. The Presiding Officer finds that this is not in the public interest and does not promote

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<sup>1</sup> Motions and petitions that involve a final determination of the proceeding must be referred to the Commission for determination. (See NAC 703.550(7), 703.735.)



administrative efficiencies. The Presiding Officer agrees with BCP and NV Energy that it is in the public interest to stay the Order to avoid additional confusion on the part of ratepayers, particularly given the high level of customer interest in this case as noted by Staff. Moreover, the Presiding Officer believes that the Order needs to be stayed to reduce unnecessary administrative expense and labor involved in reviewing the tariffs that may change in the future, and that involve unnecessarily installing and uninstalling meters and collecting charges that could later change.

43. Accordingly, the Presiding Officer finds that, due to the unique circumstances presented by the docket, there is good cause and it is in the public interest to grant BCP's Motion to stay the effectiveness of the Order pending a Commission decision on a petition to be filed by BCP. In granting BCP's Motion for Stay, the Presiding Officer is in no way suggesting that BCP's intent to file a petition pursuant to NAC 703.801 is appropriate, supported by the Presiding Officer or the Commission, or that such a petition will be granted.

**THEREFORE, it is ORDERED that:**

1. The Motion for Stay filed by the Nevada Attorney General's Bureau of Consumer Protection is GRANTED.

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2. The Commission may correct errors that have occurred in the drafting or issuance of this Order.

By the Commission,



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ALAINA BURTENSHAW  
Chairman and Presiding Officer

Attest:   
BREANNE POTTER,  
Assistant Commission Secretary

Dated: Carson City, Nevada

12-04-12  
(SEAL)

