

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Application of MGM Resorts International to purchase)
energy, capacity, and/or ancillary services from a) Docket No. 15-05017
provider of new electric resources.)
_____)

At a general session of the Public Utilities
Commission of Nevada, held at its offices
on January 13, 2015.

PRESENT: Chairman Paul A. Thomsen
Commissioner Alaina Burtenshaw
Commissioner David Noble
Assistant Commission Secretary Trisha Osborne

MODIFIED FINAL ORDER

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

I. INTRODUCTION

MGM Resorts International (“MGM”) filed with the Commission an Application, designated as Docket No. 15-05017, for authority to exit the system of Nevada Power Company d/b/a NV Energy (“Nevada Power”) and to purchase energy, capacity, and/or ancillary services from a provider of new electric resources (the “Application”).

II. SUMMARY

The Commission grants the Application, subject to the payment of an impact fee and the satisfaction of the compliances and directives delineated in this Order.

III. PROCEDURAL HISTORY

- On May 12, 2015, MGM filed the Application.
- MGM filed the Application pursuant to the Nevada Revised Statutes (“NRS”) and the Nevada Administrative Code (“NAC”), Chapters 703, 704, and 704B, including but not limited to NAC 704B.340 and 704B.380.
- On May 19, 2015, the Attorney General’s Bureau of Consumer Protection (“BCP”) filed a Notice of Intent to Intervene pursuant to NRS Chapter 228.
- On May 22, 2015, the Commission issued a Notice of Application to Exit System and Notice

DOCUMENT REVIEW AND APPROVAL ROUTING

DRAFTED BY: MSF

FINAL DRAFT ON: 1/20/16 AT 12:00 P M

REVIEWED & APPROVED BY: _____ DATE: _____

ADMIN. ASST. (_____) _____ / /

COMM. COUNCIL MSF for CET 1/20/16

SECRETARY / ASST. SEC. _____ / /

OTHER (_____) _____ / /

of Prehearing Conference.

- On May 27, 2015, MGM filed revised exhibits to its Application.
- The Regulatory Operations Staff (“Staff”) of the Commission participates as a matter of right pursuant to NRS 703.301.
- On June 16, 2015, Nevadans for Clean Affordable Reliable Energy (“NCARE”) filed a Petition for Leave to Intervene (“PLTI”).
- On June 18, 2015, Staff filed its Response to NCARE’s PLTI.
- On June 23, 2015, the Commission held a prehearing conference. BCP, NCARE, Nevada Power, Staff, and MGM made appearances. A procedural schedule was discussed. The prehearing conference was continued to July 16, 2015.
- On June 26, 2015, BCP, Nevada Power, Staff, and MGM (collectively, the “Parties”) filed a Stipulation regarding the procedural schedule.
- On July 2, 2015, the Presiding Officer issued an Order denying NCARE’s PLTI.
- On July 8, 2015, the Presiding Officer issued Order on Stipulation, revising the procedural schedule.
- On July 8, 2015, the Presiding Officer issued Procedural Order No. 1, requesting additional information.
- On July 16, 2015, the Commission held the continued prehearing conference. The Parties made appearances, and a procedural schedule was discussed.
- On July 31, 2015, the Commission issued a Notice of Hearing.
- On July 31, 2015, the Presiding Officer issued Procedural Order No. 2, setting a procedural schedule.
- On August 18, 2015, and in accordance with NAC 704B.350(3), Staff filed its finalized analysis (“Final Impact Analysis”).
- On September 2, 2015, the Presiding Officer issued Procedural Order No. 3, requesting additional information.
- On September 8, 2015, MGM filed Supplemental Direct testimony.
- On September 10, 2015, Staff filed information in response to Procedural Order No. 3.
- On September 10, 2015, MGM filed information in response to Procedural Order No. 3.

- On October 1, 2015, BCP, Nevada Power, and Staff each filed prepared direct testimony.
- On October 15, 2015, MGM filed prepared rebuttal testimony.
- On October 21 and 22, 2015, the Commission held a hearing. The Parties made appearances. At the conclusion of the hearing, which was continued to November 18, 2015, the Presiding Officer granted an oral motion to accept Exhibit Nos. 1 through 35 and Confidential Exhibit Nos. C-1 through C-8 into the record pursuant to NAC 703.730.
- On November 16, 2015, the Parties each filed legal briefs.
- On November 18, 2015, a continued hearing was held. The Parties made appearances. Late-Filed Exhibit No. 33 was discussed. At the conclusion of the hearing, the Presiding Officer granted an oral motion to also accept Late-Filed Exhibit No. 33 into the record pursuant to NAC 703.730.

IV. APPLICATION

MGM's Position

1. MGM seeks approval of its Application and thereby requests that the Commission issue an order authorizing MGM to no longer receive bundled retail electric service from Nevada Power. (Ex. 1 at 8.)

A. Compliance with Procedural Requirements of NRS and NAC 704B

2. MGM seeks to purchase energy, capacity, and ancillary services from a provider of new electric resources pursuant to NRS and NAC Chapter 704B. (Ex. 1 at 1-2.) MGM states that it is an “eligible customer” under NRS 704B.080 because each of its facilities “is a nongovernmental commercial end-use customer that has an average annual load in excess of 1 megawatt [(“MW”)] and has consumed in excess of consumed 8,760,000 kilowatt-hours [(“kWh”)] of energy at of its contiguous properties, or the properties that are treated as a single service location for billing purposes, and each property is located within Nevada Power’s service

territory.”¹ (*Id.* at 2.)

3. MGM states that the Exhibit B of its Application sets forth the points of delivery (the “Points of Delivery”) “at which MGM intends to receive energy...including the physical locations, the current account numbers, and the current billing addresses for MGM’s eligible facilities.” (Ex. 1 at 5; Ex. 1 at Exhibit B; Ex. 4 at Exhibit B.)

4. MGM states that it “is also an ‘eligible customer’ under Section 1.14(ii) of Nevada Power’s [Open Access Transmission Tariff (“OATT”).” MGM states that it “has the ability to enter into all service agreements necessary for the delivery of energy from the Point of Receipt to MGM’s Points of Delivery.” (Ex. 1 at 3.)

5. MGM states that it “intends to enter into an agreement with Tenaska Power Services Co. (“Tenaska” or “Provider”) for Tenaska to acquire on MGM’s behalf the necessary energy, capacity and ancillary services required to ensure the delivery of energy to MGM.” (*Id.* at 3.) MGM states that it is negotiating with Tenaska to be its provider of new electric resources and its scheduling coordinator for purposes of taking transmission service pursuant to Nevada Power’s OATT. (Ex. 6 at 1-2; Ex. 1 at 6.) MGM states that, once it fully executes its underlying contract with Tenaska, it will submit the underlying contract to the Commission. (Ex. 6 at 3.)

6. MGM states that “[Tenaska] will provide energy, capacity and ancillary resources to meet MGM’s load requirements from electric resources located outside the service area of Nevada Power.” (Ex. 1 at 4.) MGM states that Tenaska will supply energy that “will be delivered from generation assets located outside of Nevada Power’s service territory to the 230 [kilovolt (“kV”)] Mead substation.” (Ex. 1 at 4.) MGM states that, thereafter, “the electricity will be delivered pursuant to the terms of Nevada Power’s OATT to MGM’s Points of Delivery.”

¹ MGM states that Revised Application Exhibit A provides a table that shows MGM’s annual loads at each MGM facility. (Ex. 1 at 2; Ex. 1 at Exhibit A; Ex. 4 at Exhibit A.)

(*Id.* at 6.)

7. MGM states that, following its proposed exit, “MGM has no intention of taking service for the NRS 704B accounts listed in Exhibit B [of its Application] from Nevada Power generating facilities or receiving energy from generation assets that are contractually committed to Nevada Power.” (*Id.*) MGM states that “Tenaska will deliver energy to MGM on a firm basis at available delivery stations priced at market prices.” (Ex. 6 at 3.) MGM states that Tenaska can “prevent directly contracting with Nevada Power to use energy supplied by Nevada Power as part of the supplies Tenaska would deliver to MGM...[by]...instruct[ing] its traders not to purchase energy directly from Nevada Power at Nevada bound delivery points, and...[by]...instruct[ing] brokers and the Intercontinental Exchange Trading platform (who might arrange trades for Tenaska) not to match Tenaska purchase requests with any sales offers by Nevada Power at those delivery Points.” (*Id.*)

8. MGM states that it “anticipates that ancillary services will be procured from Nevada Power pursuant to the terms of its OATT.” (Ex. 1 at 5.)

9. MGM states that Tenaska, as its proposed scheduling coordinator, “will provide firm energy supply service to MGM’s Points of Delivery... [through]...the use of Nevada Power’s transmission and distribution system. (*Id.* at 6.) MGM states that “Nevada Power will be compensated for use of its network pursuant to applicable Commission-approved Distribution-only Service (“DOS”) Tariffs.” (*Id.*)

10. MGM states that it “will be a Nevada Power Network Integration Transmission Service (“NITS”) customer and will utilize the Provider as its agent to manage the NITS services to facilitate the delivery of power from the Point of Receipt to MGM’s Points of Delivery.” (*Id.*)

11. MGM states that it will submit a NITS agreement (the “NITS Application”) “to

Nevada Power's transmission division to facilitate the purchase of 174 MW of energy, capacity and ancillary services, as well as transmission services pursuant to the terms of Nevada Power's OATT." (*Id.*)

12. MGM further states that it "will enter into a Network Operating Agreement ("NOA") with Nevada Power in the standard form contained within Attachment G of Nevada Power's OATT." (*Id.*) MGM states that once the NOA is executed, it will file it with the Commission and serve it on the Parties. (*Id.*)

13. MGM states that it "plans to receive its energy via Nevada Power's distribution system upon departure from Nevada Power's retail load commencing February 1, 2016." (*Id.*) MGM states that once it negotiates and executes the terms of its DOS Agreement, it will file it with the Commission and serve it on the Parties. (*Id.*)

14. MGM states that many of its Points of Delivery are equipped with "time-of-use meters and related communications systems, as required by NAC 704B.340(1)(b)." (*Id.*) MGM states that the Points of Delivery that are not equipped correctly "will either be upgraded to time-of-use meters, connected into other meters, or withdrawn from [the] Application." (*Id.* at 6-7.)

15. Additionally, MGM states that, pursuant to NRS 704B.320, it will "obtain the required contractual rights for an additional amount of energy equal to 10-percent of the total amount of energy that MGM is purchasing for its own use under the proposed transaction." (Ex. 1 at 7.) MGM states that it has executed a binding offer to assign the 10-percent contract to Nevada Power if its Application is approved.² (*Id.*)

16. MGM states that, pursuant to NAC 704B.500 and NRS 704.78213, Tenaska will comply with Nevada renewable portfolio standard ("RPS"). (*Id.*)

² MGM states that it has included the binding offer to assign the 10-percent contract to Nevada Power under Exhibit C of its Application. (Ex. 1 at 7; Ex. 1 at Exhibit C.)

17. MGM states that it “intends to pay its share of annual assessments and other taxes required under NRS 704B.360.” (*Id.*)

18. MGM states that it “intends to pay its load ratio share of unrecovered adjusted balances in Nevada Power’s deferred accounts, as reasonably determined by the Commission.” (*Id.* at 8.) Additionally, MGM states that it “intends to pay an impact fee, if any is necessary, as reasonable determined by the Commission.” (*Id.*) Accordingly, MGM states that “its exit from the Nevada Power system will not be contrary to the public interest, or otherwise place undue burdens on remaining utility ratepayers.” (Ex. 1 at 8.)

B. Staff’s Final Impact Analysis

19. MGM states that it “recommends three important changes” to the methodology utilized by Staff to develop its Final Impact Analysis. (Ex. 5 at 7.)

20. First, MGM recommends that the exit fee calculated under Staff’s Final Impact Analysis for the costs associated with the Base Tariff General Rate (“BTGR”), Base Tariff Energy Rate (“BTER”) and Emissions Reduction and Capacity Replacement plan (“ERCR”) costs, be based on a 3-year rather than a 6-year analysis period. (*Id.*) MGM recommends that these costs be recovered “through monthly payments based on MGM’s actual usage levels over the same time period these costs would have been incurred rather than in a lump-sum present value payment at the time of exit.” (*Id.* at 8.)

21. Second, MGM recommends that the term for the non-bypassable charges used to capture the costs associated with the above-market renewable energy contracts, Senate Bill (“SB”) 123 (2013) compliance costs, Renewable Energy Program Rate (“REPR”), Temporary Renewable Energy Development (“TRED”) trust, and the Merrill Lynch regulatory asset, should all be limited “to a fixed 6-year period.” (*Id.*)

22. Third, MGM recommends that the Commission credit MGM with all of the off-system sales (“OSS”) “created solely through MGM’s departure...as an offset to MGM’s non-bypassable surcharge as such sales are incurred.” (*Id.*)

23. MGM claims that recommendations contained in Staff’s Final Impact Analysis are unnecessary to address the concerns expressed by the Commission in its June 11, 2015, Order in Docket No. 14-11007,³ regarding Switch Ltd.’s application to depart bundled retail service (the “Switch Order”). Therefore, MGM states the “rationale for its first change is to recommend a balanced approach to address the specific concerns raised by the Commission in the Switch Order that an exit fee based on a three-year analysis is an insufficient time period for certain long term costs.” (Ex. 5 at 8.) MGM “asserts that an across-the-board doubling of all cost components, plus a non-bypassable surcharge, is not necessary to address the Commission’s concerns raised in the Switch Order.” (*Id.* at 9.) While MGM “agrees with Staff that each of the long-term renewable cost items identified by the Commission should be extended beyond the initial three-year analysis through the assessment of a non-bypassable surcharge,” MGM recommends to limit these non-bypassable surcharges to a six-year period. (*Id.*) MGM states that, “with [these] surcharge[s] in place, it appears unnecessary to also extend the analysis period for the BTGR, BTER and ERCR costs beyond the three-year analyses followed in prior [NRS] 704B cases.” (*Id.*)

24. MGM states that the rationale for its second change “is that it provides more certainty in the exit fee calculation.” (*Id.*) MGM claims that “any increase in BTER costs to the remaining customers (including the costs that will ultimately be recovered through the non-bypassable surcharge) will have been fully paid by exiting customers by the end of the six-year period.” (*Id.* at 9-10.) MGM states that Nevada Power provided MGM with “revised

³ While this Order is dated June 10, 2015, it was issued on June 11, 2015.

calculations based upon Staff's Second Directive for [Nevada Power] to perform exit fee calculations using assumptions from [Nevada Power's] recent 2015 [integrated resource plan ("IRP")] filing." (*Id.* at 10.) MGM states that, under this analysis, a ten-year BTER strip (the "BTER Strip") "shows a net benefit to [Nevada Power's] system from MGM's departure starting in [year seven]." (*Id.*) MGM states that this analysis uses PROMOD runs to show "the difference in BTER costs...with MGM both on and off the system." (*Id.*) MGM states that, "[b]ased on this data, MGM recommends a fixed six-year period be used for the non-bypassable surcharge." (*Id.*)

25. MGM states that the BTER Strip shows that in years eight, nine, and ten, "the net benefits to remaining customers continue to increase for even more significant savings." (*Id.* at 11.) MGM states that given the BTER Strip includes the costs associated with the above-market renewable energy contracts and the TRED, it is "reasonable to cut-off the non-bypassable surcharge" for each of these costs after year six. (*Id.* at 12.)

26. MGM states that "REPR costs are negative" and that it "would relinquish any claim it has on this balance after the fixed six-year period." (*Id.* at 10.) However, MGM acknowledges that it was not aware the REPR "was no longer negative." (Tr. at 15-16.)

27. MGM States that the "[s]tranded costs associated with SB 123 plant closures including decommissioning and site remediation costs should be fully known and quantified by the end of the six-year period." (Ex. 5 at 10.) MGM states that "[a]ny unpaid SB 123 balance at the end of the six-year period could be determined at that time." (Ex. 5 at 10.)

28. MGM states that the "Merrill Lynch costs are fully amortized and recovered after four years." (*Id.* at 10-11.)

29. MGM states that its rationale for its third change is that it resolves the uncertainty

regarding its load forecast, and allows Nevada Power to recover the BTGR, BTER, and ERCR costs in a manner comparable to how Nevada Power would have recovered these costs had MGM “remained on the system as a full requirements customer.” (*Id.* at 13.) MGM states that while it does not know the exact amount by which “MGM will materially decrease its load” during the applicable analysis periods, it is certain that “decreases will occur.” Therefore, by paying a per kWh charge that is “equal to the calculated amount of the BTGR, BTER... and ERCR costs divided by the MGM loads assumed in the Staff calculations,” MGM would have a “substantial incentive...to maximize its energy efficiency [(“EE”)] program results.” (*Id.*)

30. MGM states that, in addition to these foregoing changes, it recommends that the SB 123 costs be allocated to MGM “in the same manner that these costs would be allocated to [MGM] in a general rate case [(“GRC”)].” (*Id.* at 15.)

C. Overearnings

31. MGM states that it seeks to depart bundled retail service because Nevada Power “is significantly over-earning and has been for several years.” (Ex. 5 at 5.) MGM states that “[i]nstead of filing applications at the Commission to reduce its rates, to eliminate its over-earnings and to bring its prices in line with market-based prices in the region, [Nevada Power] has continued to seek further increases, even when those increases are clearly not in the public interest and are detrimental to the Nevada economy.” (*Id.*) MGM states that Nevada Power’s “request in Docket No. 14-05003 to add the Moapa solar project to rate base,” and its more recent proposal to terminate a power-purchase agreement in Docket No. 15-07004, which may lead to the construction of a new combined cycle plant in 2020, are examples that show that Nevada Power’s “efforts appear to be driven by a desire to add to its rate base to increase earnings.” (*Id.* at 6.)

Staff's Position

32. Staff recommends that the Commission “[f]ind that it is in the public interest to allow the fifty-nine accounts identified by MGM in its [Application] to depart bundled retail service, only if MGM pays an impact fee of \$90.2622 million and its [energy] load ratio share of any non-bypassable charges (referenced together as ‘Staff’s Recommended Impact Fee’) instituted by the Commission such that departure of these loads does not negatively impact and increase costs to [Nevada Power] or its remaining customers, and MGM otherwise complies with all compliance items and directives [outlined under Attachment AED-2 to Exhibit 32].” (Ex. 32 at 24.)

A. Staff’s Final Impact Analysis**a. Methodology**

33. Staff states that it directed Nevada Power to perform two separate impact fee calculations – one utilizing only a lump sum payment (the “Lump Sum Methodology”) and another utilizing a mix of an upfront payment and non-bypassable charges (the “NBC Methodology”) – to determine the impact that a departure of MGM, Las Vegas Sands Corp. (“LVSC”), and Wynn Las Vegas, LLC’s (“Wynn”) (collectively, the “2015 NRS 704B Applicants”) aggregate load would have on remaining ratepayers and Nevada Power.⁴ (Ex. 32 at 3-4.) Staff states that, in considering the concerns expressed by the Commission in the Switch Order, it decided to utilize the NBC Methodology to develop the Final Impact Analysis. (Ex. 32 at 4.)

34. Staff explains that the impact fee calculations under both methodologies analyze similar categories of rates and costs that would be affected by MGM’s departure, except that where the Lump Sum Methodology assumes that the entire impact fee will be collected through a

⁴ Staff states that a copy of its directions to Nevada Power is provided under Attachment 1 to Exhibit 7. (Ex. 7 at 2.)

single, lump sum payment upon the MGM's exit, the NBC Methodology assumes that the impact fee will be collected through a combination of an upfront payment (the "Upfront Fee") and non-bypassable charges. (Ex. 7 at 3 and at Attachment 1.)

35. Staff states that the NBC Methodology uses an Upfront Fee to collect the portions of the impact fee associated with the following categories of rates and costs: (1) the BTGR; (2) MGM's load ratio share of the costs associated with the generation assets that were approved while MGM was a customer, specifically, those generation assets that were approved pursuant to the Commission's partial approval of Nevada Power's ERCR Plan in Docket No. 14-05003 (the "ERCR Approved Generation Assets"); (3) MGM's load ratio share of the costs associated with the 25-percent share of Silverhawk; (4) the 5-percent fee that Clark County mandates that Nevada Power collect on revenue generated within Clark County ("Local Government Fees"); (5) the remaining program life associated with the demand side management ("DSM") incentives provided by Nevada Power to MGM (the "DSM Recapture"); and (6) MGM's share of the EE program and implementation costs that were included in rates prior to MGM's proposed departure (the "EE Adjustment"). (Ex. 7 at 4 - 7.)

36. Staff explains that, to determine the impact MGM's proposed exit would have on Nevada Power's BTGR revenue, Staff directed Nevada Power to perform a BTGR rate analysis to initially determine the total impact on Nevada Power's BTGR revenue that would be caused by the 2015 NRS 704B Applicants' aggregate load departing Nevada Power's bundled retail electric service. (Ex. 7 at Attachment 1.) Staff explains the BTGR cost component of MGM's Upfront Fee represents MGM's share of the "[BTGR] revenue impact that [Nevada Power] will experience, and remaining customers will be burdened with, once [MGM's] load leaves bundled retail service." (Ex. 7 at 4.) Staff explains that "[t]his impact is caused by [Nevada Power]

receiving less revenue from [MGM] over the six-year timeframe” analyzed under the Final Impact Analysis and “is mainly the result of [MGM] no longer paying for the generation assets that were built, in part, to serve its load.” (*Id.*)

37. Staff states that the NBC Methodology uses non-bypassable charges to collect the portions of the impact fee associated with the following categories of rates and costs: the Merrill Lynch regulatory asset; the REPR; the TRED; and MGM’s load ratio share of those regulatory assets that are either currently in rates but will not be fully paid off by the end of the impact analysis period, have been created and not yet included in rates, or will be created as a result of NRS 704.7316 *et seq.* and the Commission’s partial approval of Nevada Power’s ERCR Plan, including, but not limited to, the decommissioning and site remediation costs associated with SB123 (the “Regulatory Assets/SB 123” costs). (Ex. 7 at 3 and at Attachment 1.)

38. Staff states that the NBC Methodology uses both an Upfront Fee and a non-bypassable charge to collect the portions of the impact fee associated with the impact of MGM’s departure to the base tariff energy rate (“BTER”). (Ex. 7 at 3.) Staff explains that, based on its understanding of the Commission’s concerns regarding the embedded costs associated with the long term, above-market (or out-of-the money), must-take renewable energy resource contracts that affect the BTER, Staff sought to utilize a cost recovery mechanism by which MGM’s remaining share of these costs would be recovered through a non-bypassable rate (the “R-BTER”), while the other costs associated with the BTER component would be collected as part of the Upfront Fee (the “Net-BTER”). (*Id.*)

39. Staff states that, “[t]o estimate the R-BTER, Staff substituted Nevada Power’s average monthly system costs and added a capacity component for the summer months for the contractual prices for each of the out-of-the-money long-term must-take renewable energy

contracts to obtain a proxy market cost.” (Ex. 32 at 12-13.) Staff states that “[t]he proxy market cost of the renewable energy contracts was then subtracted from the actual forecasted costs of the same renewable energy contracts to obtain the R-BTER costs.”⁵ (*Id.* at 13.) Staff states that it then relied on the results of the Lump Sum Methodology to calculate the Net-BTER component of the Upfront Fee. (Ex. 7 at 3.) Staff states that the estimated R-BTER costs were subtracted from the costs associated with the BTER component of the impact fee that was calculated utilizing the Lump Sum Methodology to determine the Net-BTER component of the impact fee calculated utilizing the NBC Methodology. (*Id.*)

40. Given that both the R-BTER and Net-BTER components of Staff’s Recommended Impact Fee rely on the BTER component that was calculated under the Lump Sum Methodology (the “Lump Sum BTER Component”), Staff provides an explanation as to how this Lump Sum BTER Component was calculated. (Ex. 32 at 4.)

41. Staff explains that, to determine the impact that a departure of the 2015 NRS 704B Applicants’ load would have on the BTER, it directed Nevada Power to perform two sets of production cost simulations using PROMOD: a base case (the “Base Case”) and an aggregated load change case (the “Aggregated Load Change Case”). (*Id.* at 4-6) Staff explains that both the Base Case and the Aggregated Load Change Case were modeled with and without OSS and that both utilized a six-year time period. Staff explains that the Final Impact Analysis uses the load forecasts for Nevada Power and Sierra Pacific Power Company d/b/a NV Energy (“SPPC”) that are included in Exhibit Nos. 18 and 19, respectively. (Tr. at 371.)

42. Staff explains that the Base Case: uses Nevada Power’s preferred Plan, Case B, contained in Nevada Power’s 2015 IRP (“Nevada Power’s 2015 IRP Preferred Plan” or

⁵ Staff notes that the estimated R-BTER costs are not the actual R-BTER costs that will be assessed to the 2015 NRS 704B Applicants should they ultimately depart Nevada Power’s bundled retail electric service. (Ex. 26 at 13.) Rather, Staff states that “the actual R-BTER costs will vary based upon actual usage.” (*Id.*)

“Preferred Plan”); excludes all placeholder resources except Silverhawk; utilizes Nevada Power’s base load forecast but includes Switch’s load; uses “[Nevada Power’s] base fuel and purchased power forecast with the Clean Power Plan carbon assumption;”⁶ and replaces all of the excluded placeholder resources with market purchases, at the forecasted prices contained in Nevada Power’s fuel and purchased power forecast, to meet any additional energy and capacity requirements that would be needed to serve Nevada Power’s customers’ forecasted load.⁷ (Ex. 32 at 6.)

43. Staff explains that it excluded all of the placeholder resources with the exception of Silverhawk because: (1) Nevada Power does not specifically seek Commission approval of the generation facilities identified in its Preferred Plan, which means that these facilities were only used as placeholders for purposes of conducting the IRP analysis and may not represent the actual generation built to fulfill Nevada Power’s future capacity and energy requirements; (2) the passage of Assembly Bill 498 of the 2015 Nevada Legislature (“AB 498”) requires Nevada Power to demonstrate a specific need for ERCR generation capacity prior to constructing the ERCR resources identified in Nevada Power’s first amendment to its ERCR Plan;⁸ and (3) “eliminating placeholder resources when performing NRS 704B impact analyses eliminates the need to perform resource planning activities,” which would place the risk associated with whether these activities ultimately occur in an IRP docket “solely on [Nevada Power’s] remaining customers.” (Ex. 32 at 7.)

⁶ Staff explains that Nevada Power’s base fuel and purchased power forecast in the 2015 IRP reflects market conditions as of February 2, 2015, through February 27, 2015. (Ex. 32 at 17, fn. 17.)

⁷ Regarding its use of market purchases to replace all of the excluded placeholder resources under the Base Case, Staff states that any shortcomings that may result from utilizing market purchases to replace all of the excluded placeholder resources are mitigated when “the time period studied is not too long, such as Staff’s proposed six year analysis period,” but that, “like any forecast, there is going to be some level of uncertainty since forecasted prices are utilized.” (Ex. 32 at 7.)

⁸ Staff explains that “[t]hese ERCR generation resources include the remaining 54 MW of non-technology specific generation, 35 MW of company owned renewable resources, and the remaining 100 MW of renewable resources from the third and final ERCR related renewable request for proposal.” (Ex. 32 at 7, fn. 9.)

44. Finally, to complete its analysis, Staff explains that the Aggregated Load Change Case removes the 2015 NRS 704B Applicants' aggregated load "to calculate the incremental BTER costs associated with [their] departure." (Ex. 32 at 8.) Staff states that it used each of the 2015 NRS 704B Applicants' "actual billing determinants during the 12-month period [of] April 2014 through March 2015 for each of the service locations identified in Amended Exhibit B of [MGM's Application], Exhibit 1 of [LVSC's Application], and Exhibit 1 of [Wynn's Application] as each applicant's respective ten-year load forecast." (*Id.*) Finally, Staff states that the BTER portion of the impact fee "associated with the [2015 NRS 704B Applicants'] aggregated load production cost simulation" was allocated to each respective applicant based upon the applicant's "energy load ratio share of the... aggregated load." (*Id.*)

45. In summary, Staff uses the Base Case and the Aggregated Load Change Case to initially determine the total impact on Nevada Power's BTER revenue that would be caused by the 2015 NRS 704B Applicants' aggregate load departing Nevada Power's bundled retail electric service (the "Aggregate BTER Impact"). (Ex. 32 at 4-8; Ex. 7 at 3 and Attachment 1.) Next, Staff allocates to each 2015 NRS 704B Applicant its energy load ratio share of the costs associated with the Aggregate BTER Impact, the results of which become the Lump Sum BTER Component under the Lump Sum Methodology. (*Id.*) Finally, Staff uses the NBC Methodology to bifurcate the Lump Sum BTER Component into a Net-BTER cost component to be collected as part of an Upfront Fee and an R-BTER component to be collected as part of a non-bypassable charge. (*Id.*)

b. Aggregate Impact Analysis

46. Staff states that it aggregated the 2015 NRS 704B Applicants' loads for purposes of its Final Impact Analysis based on the Commission's discussions regarding this concept at the

Utility Agenda held on June 10, 2015, and because of the Commission's request under Procedural Order No. 1 to perform an impact analysis that considers the 2015 NRS 704B Applicants' aggregate load. (Ex. 26 at 8-9.) Staff states that "[a]ggregating loads or using a sequential load departure methodology for [NRS] 704B impact analyses only impacts the BTER calculation; it does not impact the BTGR calculation, the regulatory assets or the non-bypassable rate components." (*Id.* at 9, fn. 13.) Therefore, Staff states that "both concepts are reasonable." (*Id.* at 9.)

c. Analysis Period

47. As discussed herein, Staff uses a six-year analysis period for the Final Impact Analysis. (*See generally* Ex. 7.) Staff states that it utilizes a six-year analysis period because: (1) given that the 2015 NRS 704B Applicants' aggregate load proposing to depart bundled retail service is approximately 250 MW, it would take approximately ten years for Nevada Power to recover from the loss of the energy sales associated with the proposed, aggregate departing load; (2) a six-year analysis period "allows for two full [IRP] cycles and at least one [GRC] for [Nevada Power] to modify its electric operations and plans;" (3) "energy and natural gas market pricing are reasonably forecasted with some level of confidence going out five to six years;" and (4) "businesses can come and go due to changes in the economy and any analysis period should take this fact into account." (Ex. 32 at 10-11.) Staff explains that each of the criterion is relevant, but its primary criterion is that 250 MW of load is seeking to depart bundled retail service "at roughly the same time, or at the same time." (Tr. at 370.)

48. By using Exhibit No. 18, which contains Nevada Power's load forecast, including sales forecast, that Staff used to develop its Final Impact Analysis, Staff states that Nevada Power will not recover the sales associated with the 2015 NRS 704B Applicants' departing load

in six years. (Tr. at 374.)

d. MGM's Load Forecast

49. Staff states that it did not use the load forecast that MGM included in its Amended Exhibit A to its Application because it only includes load data for each month, and PROMOD requires load data for all 8,760 hours of the year. (Ex. 32 at 9.) Therefore, Staff states that MGM's proposed load forecast "was inappropriately formatted and not useable." (*Id.*)

50. Moreover, Staff states that while "MGM assumes a linear reduction of its load over all 8,760 hours of the year," most DSM measures do not provide such a linear reduction over each hour of the year. (*Id.*) Staff explains that DSM measures have "a unique hourly load profile" and that, because MGM failed to provide this information to Staff, Staff ultimately used MGM's actual billing determinants for the most recent 12-month period (April 2014 through March 2015), which includes any DSM programs that MGM recently implemented. (*Id.*)

e. Off-System Sales Credit

51. Staff states that MGM should receive a credit for forecasted OSS because it will be leaving capacity and energy if it exits. (Ex. 32 at 13.)

52. Staff explains that Nevada Power makes OSS when it determines that selling power into the wholesale power market is economical. (*Id.*) Staff states that the net revenue from OSS mitigates some of Nevada Power's energy costs, which in turn reduces ratepayer costs, but that these sales do not provide a source of revenue or profit to Nevada Power's shareholders. (*Id.*)

53. Staff states that PROMOD often overstates the amount of OSS that Nevada Power actually makes because PROMOD "is unable to model market liquidity and/or market depth, and therefore, cannot precisely model actual market conditions." (*Id.* at 13.) Therefore, given Staff's

concerns with PROMOD's accuracy in forecasting OSS, Staff states that "applying a 50 percent discount to the forecasted revenue PROMOD calculates from [OSS] is appropriate." (Ex. *Id.* at 13-14.)

54. Staff states that the Applicant's pre-discounted load energy ratio share of the PROMOD forecasted OSS due to the departure of the 2015 NRS 704B Applicants' aggregated load during the six-year analysis period is approximately \$2.9 million. (*Id.* at 13-14.) After applying Staff's proposed 50-percent discount, the Final Impact Analysis credits MGM with an approximately \$1.45 million credit to the Net-BTER component of the Upfront Fee. (*Id.* at 14.)

f. Silverhawk

55. Staff recommends that MGM pay, as part of Staff's recommended Upfront Fee, MGM's energy load ratio share of the acquisition price of the 25-percent share of the Silverhawk generation resource Nevada Power seeks to acquire as part of its preferred resource plan under its 2015 IRP. (Ex. 7 at 5.) Staff states that it is appropriate to include the costs associated with this resource because the acquisition of this resource "was negotiated and executed before MGM would depart [Nevada Power's] bundled retail service." (*Id.*)

g. Allocation and Accounting Methodology

1) Upfront Fee

56. Staff recommends that the payments associated with the individual components of its recommended Upfront Fee be placed in "regulatory liability accounts and brought into rates during a [GRC] or a Deferred Energy Account Adjustment ("DEAA") filing." (Ex. 31 at 2.)

57. Staff explains that, because the Upfront Fee "is comprised of several rate elements," it is necessary to account for each one of these rate elements individually to ensure that the total amount collected for the Upfront Fee can be broken down and "credited to the

correct programs, projects or accounts to ensure that funds are applied properly and to the purposes for which they were collected.” (*Id.* at 3.)

58. Staff proposes that the regulatory liability account for the BTGR component of the Upfront Fee be amortized monthly, beginning on the first month after the applicant exits bundled retail service. (*Id.* at 4.) Staff explains that once Nevada Power files “its first GRC after receipt of the...[Upfront Fee,]... the unamortized account balance will be amortized into rates over a time period that closely matches the time period for which it was collected.” (*Id.*) Staff states that, consistent with the impact period used in the Final Impact Analysis, Staff recommends this amortization period be six years. (*Id.*)

59. Staff proposes that the regulatory liability account for the Net-BTER component of the Upfront Fee be amortized starting with the first quarterly DEAA filing that Nevada Power makes following receipt of the Upfront Fee and that the amortization period reflect the same six-year period used in Staff’s Final Impact Analysis. (*Id.*) Staff explains that “[e]ach month the amortization amount would be credited to the BTER revenue account in much the same manner as BTER revenue from bundled customers is treated.” (*Id.*)

60. Staff proposes that MGM’s share of the costs associated with the ERCR Approved Generation Assets be allocated to MGM by using an energy allocation methodology. (Ex. 26 at 2-4.) Thereafter, Staff proposes that the regulatory liability account for the component of the Upfront Fee associated with the ERCR Approved Generation Assets be dealt with “[w]hen [Nevada Power] files a GRC in which these generation assets are included in rates.” (Ex. 31 at 5.) Staff states that the balance of the regulatory liability would be amortized over the same six-year period used in the Final Impact Analysis. (*Id.*)

61. Staff proposes that the regulatory liability account for the DSM Recapture

component of the Upfront Fee be applied as a “onetime credit to [Energy Efficiency Program Rate (“EEPR”)] costs, equal to the balance of the regulatory liability,” during the first DEAA filing that Nevada Power makes following receipt of the Upfront Fee. (*Id.*)

62. Staff proposes that the regulatory liability account for the EE Adjustment component of the Upfront Fee be applied as a credit to EE revenue during the first DEAA filing that Nevada Power makes following receipt of the Upfront Fee “as if it had been received during the rate effective period.” (*Id.*)

63. Staff explains that, as Nevada Power reports the revenues it receives from MGM to Clark County, the corresponding fee amount collected under the regulatory liability account for the Local Government Fees would be remitted to Clark County. (*Id.* at 6.)

2) Non-Bypassable Charge

64. Staff recommends that the non-bypassable charges “relating to specific programs or projects (i.e. REPR and TRED) be calculated in a manner similar to that currently used and that the rates be reset annually during Nevada Power’s DEAA filing.” (Ex. 31 at 2.) Staff states that “[t]he only modification to the current process Staff is recommending is that the revenue requirement for each program be divided by the total projected retail sales with the addition of the billing determinants from the [2015 NRS 704B Applicants].” (*Id.* at 6-7.) Staff recommends that the non-bypassable charge associated with the TRED charge be applied until the current contract with Nevada Solar One expires. (*Id.* at 7.) Staff recommends that the non-bypassable charge associated with the REPR extend until the current REPR program is completed. (*Id.*)

65. Staff recommends that the non-bypassable charges associated with the Merrill Lynch regulatory asset be collected under the same rate that is currently charged to Nevada Power’s ratepayers and that this charge be collected until this regulatory obligation is fully

amortized, which Staff states will be by the end of 2019. (Ex. 31 at 6.)

66. Staff recommends that non-bypassable charges “relating to the... R-BTER be set during [Nevada Power’s] quarterly BTER and DEAA filings and that the rates be reset quarterly thereafter with annual reviews and possible adjustments being made during [Nevada Power’s] future DEAA filings.” (*Id.* at 2.) Staff recommends that the R-BTER be calculated in the first quarter following the Applicant’s exit, when Nevada Power files its quarterly DEAA filing. (*Id.* at 7.) Staff recommends that the R-BTER be calculated by: (1) determining the “out-of-the-money” portion of each renewable contract;⁹ (2) multiplying the out of the money portion by the renewable contract’s energy output for time period under review; (3) multiplying the sum of all of the out-of-the-money contract totals by the 2015 NRS 704B Applicants’ energy ratio share of the total annual system sales (including the 2015 NRS 704B Applicants) to arrive at an amount that represents the total contract price of renewable energy attributable to the 2015 NRS 704B Applicants; and (4) dividing this total amount by the projected energy usage for each of the 2015 NRS 704B Applicants over the next twelve months to determine their kWh charge for the next quarter.¹⁰ (*Id.* at 7-8.)

67. Staff recommends that non-bypassable charges “associated with regulatory asset accounts that the Commission finds are applicable to exiting customers be set during the GRC in which those regulatory assets are brought into rates for all other customers.” (Ex. 31 at 2.) Staff states that MGM’s share of these costs is determined by first comparing MGM’s total annual energy usage relative to the total annual usage of all Nevada Power ratepayers from April 2014 through March 2015. (Ex. 24 at 2.) Staff states that once this percentage share is calculated, it is

⁹ Staff states that the out-of-the-money portion of these renewable contracts is calculated for each quarter by determining Nevada Power’s average system cost for energy and capacity and then subtracting the cost from the current prices for renewable contracts. (Ex. 31 at 8.)

¹⁰ Staff states that it provides an outline of this methodology under Attachment CW-2 to Exhibit 31. (Ex. 31 at 8.)

“then applied against the annual revenue requirement for all applicable regulatory assets in order to allocate costs of the regulatory assets to [MGM] for the six-year analysis period.” (*Id.*)

h. DSM Recapture

68. Staff recommends that MGM be ordered to pay \$4,466,782 for the DSM Recapture cost component reflected under the Upfront Fee portion of Staff’s Recommended Impact Fee. (Ex. 22 at 12.) Staff explains that the DSM programs implemented by Nevada Power are funded by all of its ratepayers “to produce system wide benefits over time.” (*Id.* at 3.) Staff states that should MGM depart bundled retail service, remaining ratepayers would no longer receive the forecasted benefits associated with the DSM projects MGM implemented via these ratepayer-funded DSM programs. (*Id.* at 3.)

69. Staff states that Nevada Power incurs a number of costs in order to implement DSM programs, including costs associated with rebates, implementation contractors, Nevada Power employee salaries and resources, and third-party measurement and verification costs. (*Id.* at 4.) Staff states that given that MGM participated in DSM programs, namely the Commercial Services Program, MGM should pay a prorated portion of the DSM program costs to remaining ratepayers because MGM would be taking DSM-associated benefits away from remaining ratepayers if it chooses to exit bundled retail service.¹¹ (*Id.*)

70. Additionally, Staff explains that “DSM capacity benefits in the form of avoided capacity/demand” are factored into Nevada Power’s resource planning and that if this avoided capacity/demand is not delivered, Nevada Power would need to acquire additional, unplanned

¹¹ Staff states that Nevada Power’s standard agreement with DSM program participants for all projects completed through the incentives offered under the Commercial Services Program includes the following provision: “The Applicant may be required to refund some or all of the incentives they receive if the measures do not remain installed for a period of five (5) years or the expected life of the measure, whichever is greater, or the facility where the measures are installed ceases to be a bundled, full requirement’s customer of NV Energy during said time period.” (Ex. 22 at 4-5.)

capacity. (Ex. 25 at 7.) Therefore, should MGM be permitted to exit without repaying the costs associated with the DSM programs in which it was a participant, Staff claims that remaining ratepayers will not only lose the money they paid to receive “the promised DSM capacity benefits,” but they will also be left with unplanned, additional costs to mitigate the “non-delivered avoided capacity/demand.” (*Id.*)

71. Staff states that Nevada Power includes three categories of costs when it presents a DSM program for Commission approval and cost recovery: rebate, implementation, and administrative costs. (Ex. 22 at 6.) Staff states that rebate costs offset the costs of EE measures installed under the DSM program, implementation costs represent the costs paid to implementation contractors, and administrative costs include personnel costs associated with the resources Nevada Power uses to implement DSM programs. (*Id.*) Staff states that each of these costs are prorated and included in its DSM Recapture proposal “because the cost to implement a project goes beyond just a rebate.” (*Id.*)

72. Staff explains that it calculated the DSM Recapture cost component by first determining the effective useful life (“EUL”) of the total rebates received by MGM “and an implementation amount that is a portion of all implementation costs for the Commercial Services DSM Program.” (*Id.* at 7.) Staff states that the rebate portion of the DSM Recapture amount “is taken directly from the annual amounts received by [MGM] as documented by [Nevada Power].” (*Id.*) Staff states that “[t]he implementation amount allocated to [MGM] is calculated based upon specific participation from [MGM] in a given year.” (*Id.*) Staff states that it determines the monthly cost of the DSM program by dividing the sum of the rebate amount and the Nevada Power implementation amount by the DSM program’s monthly EUL. (*Id.*) Staff states that the monthly program cost is then multiplied by the remaining monthly EUL to calculate an initial

DSM Recapture cost. (*Id.*) Staff states that MGM receives an EEPR credit to offset a portion of the DSM Recapture cost because MGM has paid EEPRs based upon the original DSM program costs associated with the Commercial Services Program. (*Id.*) Staff concludes that the total of the EUL costs and the EEPR credit equal the DSM Recapture cost component reflected under the Upfront Fee portion of its Recommended Impact Fee. (*Id.* at 8.)

i. EE Adjustment

73. Staff recommends that MGM be ordered to pay \$1,301,702 for the EE Adjustment cost component reflected under the Upfront Fee portion of Staff's Recommended Impact Fee. (Ex. 22 at 1.) Staff explains that the EE Adjustment represents the costs that MGM would have paid under the EEPR and Energy Efficiency Implementation Rate ("EEIR") had it remained a bundled retail customer for the length of the 2015 DSM programs approved in Docket No. 15-02039.¹² (*Id.* at 2.) Staff states that the rates for the 2015 DSM programs are in effect until September 30, 2016, and that these rates reflect the costs to implement DSM programs for 2015. (*Id.*) Therefore, Staff states that MGM is responsible for paying the remaining \$1,301,702 that MGM would have paid for the period of February 1, 2016, through September 30, 2016. (*Id.*)

j. Variable Operations and Maintenance Costs Adjustment

74. Staff states that, because VOM costs are included in the BTGR rate and not in the BTER rate, MGM "is paying for a fixed amount of VOM costs in the exit fee calculation, and therefore should be given credit for the reduction in VOM costs that incurs when [MGM's] loads are removed." (Ex. 7 at 6-7.) Staff estimates this VOM credit to be approximately \$8.792

¹² Docket No. 15-02039 is the Application of Nevada Power for approval of fuel and purchased power expenses and to reset the Temporary Renewable Energy Development charge, reset all components of the Renewable Energy Program Rate, reset the base Energy Efficiency Program Rates and base Energy Efficiency Implementation Rates, reset the Energy Efficiency Program and Energy Efficiency Implementation Amortization Rates, and refund the total amount of Energy Efficiency Implementation Rate revenue received in 2014, including carrying charges.

million. (*Id.*)

k. Portfolio Energy Credits

75. Staff recommends that, if MGM is ultimately authorized to depart bundled retail service, MGM should be allocated an annual amount of portfolio energy credits (“PEC”). (Ex. 21 at 1.) Staff explains that the costs associated with power purchase agreements (“PPAs”) and PEC-only contracts, which Nevada Power entered into for Renewable Portfolio Standard (“RPS”) compliance on behalf of all ratepayers, are included as part of Staff’s proposed R-BTER component of the non-bypassable charge portion of Staff’s Recommended Impact Fee. (*Id.* at 2.) Therefore, Staff states that MGM is entitled to receive its share of the PECs associated with MGM’s R-BTER, REPR, and DSM Recapture charges under the Final Impact Analysis and Recommended Impact Fee. (*Id.* at 3.)

76. Staff recommends allocating the PECs on an annual basis because “such calculation and allocation occurring simultaneously with the retirement of PECs for [Nevada Power’s] annual RPS compliance would create administrative efficiencies.” (*Id.*) Staff recommends the following calculation methodology should MGM be ordered to pay the R-BTER non-bypassable charge upon departing bundled retail service: (1) the number of PECs generated from the contracts included in the R-BTER should be summed; (2) then, MGM’s “annual load ratio should be calculated by dividing [MGM’s] prior year actual usage by the sum of [MGM’s] prior year usage and Nevada Power’s prior year sales to determine what load share MGM would have had in that prior year if [it] had remained a bundled retail customer; and, finally, (3) MGM’s “calculated prior year load ratio should be applied to the prior year’s annual amount of PECs to determine the allocation.” (*Id.* at 5.)

77. Staff explains that MGM will not receive a constant amount of annual PECs

associated with MGM's R-BTER payments, and that, once MGM is no longer a bundled retail customer, any subsequent renewable contracts that Nevada Power enters into will be excluded from future R-BTER calculations and related PEC allocations. (*Id.* at 6.)

78. Staff explains that, similar to its proposed allocation methodology for the PECs associated with MGM's R-BTER payments, Staff recommends calculating MGM's load ratio that it would have had in the prior year had it remained a bundled retail customer and applying that ratio to the number of PECs generated from the solar and non-solar projects associated with the renewable energy projects paid for via the REPR in the previous calendar year. (*Id.*)

79. Staff explains that MGM's provider of new electric resources will be responsible for calculating and certifying PECs from EE measures pursuant to NAC 704.8927. (*Id.*)

80. Staff recommends that MGM be allocated PECs associated with its R-BTER and REPR payments for the same period of time in which these charges are paid and that the PECs associated with DSM be allocated throughout the calculated useful life of the DSM programs only if Staff's DSM Recapture proposal is approved. (*Id.* at 7.) Staff recommends that MGM be allocated its 2015 load ratio share of any surplus PECs. (*Id.*)

81. Staff recommends that MGM's allocated PECs be discounted to help repay the PECs Nevada Power borrowed from SPPC. (*Id.* at 8.) Specifically, Staff explains that the Commission authorized Nevada Power and SPPC to enter into a PEC exchange agreement, which allows for the loaning of PECs between the two utilities for purposes of RPS compliance. (*Id.*) Staff claims that Nevada Power plans to repay the remaining PEC balance in the five-year period of 2017-2021. (*Id.* at 9.) Therefore, Staff recommends that, "for a five year period, an annual amount of non-solar PECs should be subtracted from the amount of non-solar PECs

[MGM] is annually allocated from the R-BTER and REPR PECs and used to repay SPPC.”¹³ (*Id.* at 10.) Staff recommends “splitting the total amount of borrowed PECs into five equal installments and then annually applying [MGM’s] prior year load ratio share.” (*Id.*) Staff states that the “resulting value should be subtracted from the annual amount of non-solar R-BTER PECs to be allocated to [MGM].” (*Id.*)

82. In summary, Staff recommends that MGM “be allocated an annual amount of PECs upon departure resulting from the payment of the R-BTER and REPR non-bypassable charges, to be calculated using [MGM’s] prior year’s load ratio and the calculated remaining kWh savings for previously implemented DSM programs.” (*Id.* at 11.) Staff further recommends that MGM repay its share of the borrowed non-solar PECs to SPPC in a timely manner. (*Id.*)

B. Compliances and Directives

83. Staff recommends that the Commission order MGM to comply with the compliances and directives listed in Attachment AED-2 to Exhibit 26. (Ex. 32 at 24.)

C. New Electric Resources

84. Staff states that market purchases are permitted under NRS 704B.310(6)(c). (Ex. 32 at 24.)

D. NRS 704B.320: 10-Percent Contract

85. Staff recommends that the Commission “find that there is insufficient information available with respect to MGM’s contract with Tenaska to determine if the 10-percent contract is in the best interest of Nevada Power’s remaining ratepayers.” (Ex. 32 at 22.) Staff states that, if the Commission ultimately grants the Application and approves MGM’s exit, the Commission should issue a compliance item requiring “MGM to file with the Commission an executed

¹³ Staff explains that “replacement PECs must be the same solar/non-solar designation as the borrowed PECs.” (Ex. 21 at 10.)

contract with Tenaska within an adequate time frame for the Commission to review the contract and make the required determination pursuant to NRS 704B.320.” (*Id.*)

E. NRS 704B.310(6)(b): Reliability

86. Staff recommends that the Commission find that the proposed departure of MGM’s four accounts will not negatively affect the reliability of Nevada Power’s transmission system, nor will it negatively affect the reliability of Nevada Power’s electrical service to remaining customers. (Ex. 32 at 20.) Staff states that “[Nevada Power] has transmission capacity available to grant MGM its full requested transmission import rights at the Mead 230 kV substation without any upgrades.” (*Id.* at 20-21.)

F. MGM’s Proposed Changes

87. Staff disagrees with MGM’s analysis that MGM’s departure results in a net benefit to Nevada Power’s system after six years. (Ex. 32 at 16.) Staff states that, despite recommending that “the impact fee analysis period for the BTGR, BTER and ERCR costs should be limited to three-years,” MGM’s assertion fails to consider “the impacts to the BTGR or SB 123 costs as a result of MGM’s departure.” (*Id.*) Rather, Staff states that MGM’s “analysis only reflects BTER costs.” (*Id.*)

88. Staff states that given its Final Impact Analysis relies “on market purchases to fill any capacity or energy needs, [Nevada Power’s] BTER costs reflect market prices. (*Id.*) Staff explains that “[a]s natural gas prices increase or excess generating capacity in the wholesale market declines, the purchased power market price also increases and [Nevada Power’s] BTER costs proportionately with the increase in purchased power prices.” (*Id.*) Staff states, “[t]herefore, [Nevada Power’s] BTER costs increase proportionately with the forecasted increases in market energy and capacity prices.” (*Id.* at 16-17.)

89. Staff states that market purchases are used in its Final Impact Analysis to “close” the open positions contained in Nevada Power’s load forecast. (Tr. at 377.) Therefore, Staff states that the level of the open position would affect the figures in the BTER Strip. (Tr. at 376-377.) Staff states that, under its Final Impact Analysis, “the open position would be closed by market purchases and therefore relied on the fuel and purchased power forecast, and it would be highly sensitive to that forecast.” (*Id.* at 377.) Staff states that as Nevada Power “has a larger open position it has to procure that amount on the market, and if the capacity and energy prices were high then there would be an increased cost [to fill that open position].” (Tr. at 378)

90. Additionally, Staff states that its Final Impact Analysis assumes that Nevada Power and SPPC would jointly dispatch of their resources. (*Id.* at 379.) Staff states that the fuel and purchased power component of the BTER is affected by joint dispatch. (*Id.*) Staff states that the BTER Strip reflects the billing determinants for both SPPC and Nevada Power. (*Id.*) Therefore, in the PROMOD modeling used to develop Staff’s BTER analysis, Staff acknowledges that the purchased price for market purchases is affected by purchases required by both Nevada Power and SPPC. (*Id.* at 380-381.)

91. Staff states that “if MGM believes energy and capacity prices increase considerably after 2018, then [Staff] question[s] why MGM would subject itself to this type of market risk.” (Ex. 32 at 17.) Staff states that “if [MGM] is correct and natural gas and energy prices increase substantially in 2018, then the calculated R-BTER rate would decrease and could even become a credit, since the energy and capacity value associated with these [must-take renewable energy contracts]... would be greater than the contractual price.” (*Id.*)

92. Regarding MGM’s proposal to allocate the ERCR resources by using a different methodology than the energy ratio allocator Staff proposes, Staff states that “an argument can be

made that some of the regulatory assets associated with operating plants... could reasonably be allocated based upon different methodologies.” (*Id.* at 18.)

93. Regarding MGM’s monthly payment proposal, Staff does not agree with MGM’s proposal to pay the impact fee components via monthly payments. (*Id.* at 19.)

BCP’s Position

94. BCP states that the Commission should approve MGM’s Application, “with the caveat that the Commission establishes terms, conditions and payments pursuant to NRS 704B.310 to ensure that MGM’s departure does not increase costs for Nevada Power’s remaining customers.” (Ex. 10 at 2.) BCP states that MGM should be required to “pay an upfront impact fee and non-bypassable charge as calculated by Staff’s Final Impact Analysis.” (*Id.*) BCP states that it finds the Final Impact Analysis “reasonable” but that “the impact fee could be more than that calculated by Staff due to Staff’s OSS calculations,” which may give too much credit for OSS. (*Id.* at 3-4.)

95. BCP recommends “that non-bypassable charges be collected over the life of Nevada Power’s liability for costs, especially costs that are uncertain or may change over time.” (*Id.* at 6.) BCP states that costs that are uncertain or may change over time include some renewable contracts, decommissioning costs for Reid Gardner, remaining Navajo net book costs, obligations for the Merrill Lynch regulatory asset, obligations for the TRED rate and obligations for the REPR.” (*Id.*) BCP states, “[t]hese charges are not presently known and may be significant,” which is why the non-bypassable charges should be recovered over the life of the obligation rather than over the six-year time period. (*Id.* at 6-7.)

96. BCP states that the Commission should require “a six-year time period to calculate the upfront impact fee, or the charges needed to maintain revenue neutrality” for the

BTGR and the BTER. (Ex. 10 at 7.) BCP states that “this calculation would include costs currently reflected in the BTGR, plus costs that will be incurred for new generation related to the [ERCR] plan.” (*Id.*) BCP states that the calculation period has to be long enough “to calculate the costs that the remaining ratepayers will incur as a result of [MGM’s] exit from bundled service.” (*Id.*) BCP states that the two factors present are “the costs that [Nevada Power] has incurred on behalf of its customers... that would suggest charging [for] longer periods until the costs of all such infrastructure and operations are recovered from [MGM]... and actions that [Nevada Power] can take to mitigate those costs through modified resource plans and operations.” (*Id.* at 8.) BCP states that calculating the costs over six years is reasonable because: six years gives Nevada Power two IRP cycles to modify and adjust its resource plans to re-optimize its resource mix; system peak demand growth alone is an inadequate measure of when MGM load departure is no longer causing remaining ratepayers to pay more; and production costs indicate that Nevada Power’s resource mix will be less optimal as a result of the 704B customer loads through 2021. (*Id.* at 8-10, 19.)

97. BCP states that the Commission should not accept MGM’s proposal to calculate the exit fee for BTGR, BTER and ECR costs based on a three-year period. (Ex. 10 at 13.) BCP states, “there is ample evidence in the analysis presented by Staff and in [BCP’s] testimony to demonstrate that [Nevada Power’s] remaining customers would face increased costs for electric service under MGM’s proposals to shorten the calculation period for the upfront impact fee, to limit the term for the non-bypassable charge, and to increase the credit for off-system sales.” (*Id.*)

98. BCP states that the Commission should not accept MGM’s modifications to Staff’s proposed upfront impact fee and non-bypassable charge because “remaining ratepayers

would pay increased costs for electric service under MGM's proposal relative to what the ratepayers would pay if the [NRS] 704B Applicants did not depart." (Ex. 10 at 13.) BCP states that a "three-year period is too short a time to properly evaluate the costs associated with the departing customers," and that "a six-year period is much more appropriate." (Ex. 10 at 14.)

99. BCP states that MGM's proposal to limit the term of collection for the non-bypassable charge to six years will increase costs to remaining customers. (*Id.* at 15.) BCP states that "there are some costs that cannot be currently calculated and that a non-bypassable charge collected over the life of the obligation is a more appropriate mechanism to ensure that departing [NRS] 704B customers do not increase costs for electric service to Nevada Power's remaining customers." (Ex. 10 at 15.)

100. BCP states that the above-market renewables costs are still being paid long after six years. (*Id.*) BCP states that Nevada Power "constructed or acquired resources to serve loads (including MGM's), some of which will provide no incremental benefit to existing or remaining customers and no benefit to new customers." (*Id.* at 16.) BCP states that Nevada Power "entered into renewable energy contracts in order to meet Nevada's legislatively mandated [RPS]." (*Id.*) BCP states that "[t]he amount of renewable power that was required of [Nevada Power] was a percentage of its loads being served; therefore, MGM's load directly contributed to the amount of renewable energy [Nevada Power] was required to acquire. (*Id.*)

101. BCP states that "[to] the extent that MGM is not held accountable for any out of the money renewable contracts entered into on behalf of all [Nevada Power's] then existing customers (including MGM) through the entire lifetimes of those contracts, the remainder of those costs is shifted to the remaining and new customers, whose cost of electric service will necessarily increase." (Ex. 10 at 17.)

102. BCP states it is unclear whether MGM's proposal regarding the SB 123 costs will ensure that MGM's share of these costs are fully recovered. (Ex. 10 at 18-19.)

103. BCP does not object to MGM's proposal to collect the BTGR, BTER and ERCR costs monthly, with the caveat that "BCP is concerned that basing the collection on actual usage could result in under-recovery of impact fees if MGM's loads are lower than expected within the six-year period." (Ex. 10 at 19.)

104. BCP opposes MGM's recommendation that it receive 100-percent of OSS. (*Id.* at 20.)

Nevada Power's Position

105. While Nevada Power does not recommend a specific impact fee, or even a recommendation regarding whether the Commission should approve the Applicant's request to depart bundled electric retail service, Nevada Power does provide: (1) a discussion regarding Staff's Final Impact Analysis; (2) a discussion regarding whether Tenaska will be providing MGM with energy from NRS 704B-eligible new electric resources; (3) proposed allocation and accounting methodologies should the Application be approved; and (4) a response to the Applicant's claims regarding Nevada Power's financial performance.

A. Staff's Final Impact Analysis

106. Nevada Power states that NAC 704B.350 requires Staff to perform an analysis of the estimated impacts of the NRS 704B customer's departure. (Ex. 13 at 10.) Nevada Power states that NAC 704B.250(6) requires Nevada Power to provide Staff the necessary data or information Staff requires to perform its analysis. (*Id.*) Nevada Power states that it provided

production cost simulations for scenarios specified by Staff.¹⁴ (*Id.*) Nevada Power states that it also provided spreadsheets with calculations for both a traditional upfront-only impact fee, as well as an impact fee with ongoing charges. (*Id.*) Nevada Power explains that these calculations were used to calculate the following impacts:

BTGR impact: The difference between BTGR revenue if the customer remained a bundled retail customer and the amount of revenue Nevada Power would receive for DOS, transmission service, and ancillary service.

BTER impact and Net-BTER: Using the PROMOD results, the impact to remaining customers of fuel and purchased power costs, including the reduction in such costs due to the lower system load post-departure. Nevada Power calculated the BTER impact for a scenario with an ongoing charge for renewable energy contracts as well as a scenario without such a charge.

Other components: TRED, REPR, EEPR and EE rate impacts, allocation of costs associated with the ERCR Approved Generation Assets, Merrill Lynch obligation, the acquisition of a 25-percent share in the Silverhawk, and other, certain regulatory assets.

(Ex. 13 at 11.)

107. Nevada Power states that performing these calculations for Staff does not mean that “the Commission and Staff have relinquished their responsibilities” under NRS 704B to Nevada Power. (*Id.* at 11.) Nevada Power states that, at Staff’s request and in satisfaction of Nevada Power’s legal obligation under NRS 704B, Nevada Power provided the requested calculations to Staff. (*Id.* at 12.)

108. Nevada Power states that “Staff’s process is very transparent.” (*Id.* at 12.) Specifically, Nevada Power states that the directives Staff gave to the Company to perform the impact analysis were also provided to the Applicant and to BCP. (*Id.*) Moreover, Nevada Power explains that while Staff ultimately decided which assumptions to use to conduct its NAC 704B.350 impact analysis, “Staff provided the [A]pplicant the opportunity to provide input on

Nevada Power states that Staff directed Nevada Power to use, as a starting point, the base load forecast from Nevada Power’s 2015 IRP, which was developed using load forecasting methodologies that the Commission, Staff, BCP, and other stakeholders had previously reviewed and accepted to develop a load forecast. (Ex. 13 at 12.)

the analysis.” (*Id.* at 11-12) Additionally, Nevada Power states that the PROMOD results used to determine the BTER impact and the Net-BTER were also made available to the Applicant. (*Id.* at 12.)

109. When asked to compare the two load forecasts between Nevada Power and SPPC, Nevada Power states: “Nevada Power, in terms of energy sales . . . from 2016 through 2022, the sales forecast increases 836 gigawatt hours. For [SPPC and for] the same period 2016 through 2011, the growth in sales is 1,099 gigawatt hours.” (Tr. at 189.)

110. Moreover, Nevada Power states that its efforts to own or control the generation capacity required to meet the needs of its customers,¹⁵ as well as its efforts to comply with the energy policies adopted by the Legislature,¹⁶ are reflected and considered in “Staff’s impact fee calculation directives and Staff’s resulting recommendation.” (Ex. 13 at 9) Nevada Power further states that the changes experienced in the electric industry environment over the last fifteen years explain why impact fee calculations in this Docket differ from impact fee calculations completed over a decade ago. (*Id.* at 10.)

B. New Electric Resource

111. Nevada Power expresses concerns regarding whether Tenaska will be providing MGM with energy from NRS 704B-eligible new electric resources. (Ex. 13 at 20-22.)

Therefore, Nevada Power states that, if the Commission approves the Application, it should require Tenaska to file with the Commission operating procedures that Tenaska will implement to ensure that Tenaska does not use, either directly or indirectly, resources owned or controlled

¹⁵ To illustrate these efforts, Nevada Power explains that its 2003 IRP reflects that Nevada Power only controlled 68 percent of the capacity necessary to meet its obligations, but that its 2015 IRP shows that the Company will control, in 2016, 96 percent of the capacity it requires to meet its obligations. (Ex. 13 at 7, fn. 14.)

¹⁶ Nevada Power explains that, to comply with Nevada’s RPS, the Company entered into long-term PPAs for renewable energy at “prices that exceed current market prices.” (Ex. 13 at 9.)

by Nevada Power to provide services to MGM.¹⁷ (*Id.* at 21.) Nevada Power states that Tenaska has not identified a specific new electric resource that it will use to meet its contractual obligations to MGM but, rather, has indicated that it will deliver service pursuant to Western Systems Power Pool (“WSPP”) Agreement, Schedule C service. (*Id.* at 20-21.)

112. Nevada Power is concerned that it might involuntarily make an OSS to Tenaska in violation of NRS 704B. Specifically, Nevada Power explains that it makes OSS into the same wholesale market in which Tenaska is a participant, and from which Tenaska has stated it will exclusively serve the Applicant. (*Id.* at 21.) Therefore, Nevada Power states that it “should not be put in a position to ensure that it does not sell, either directly or indirectly, energy to Tenaska.” (*Id.*) Instead, Nevada Power states that “the burden should be placed on Tenaska to operate in compliance with Nevada law.” (*Id.*)

113. Nevada Power states that wholesale market purchases of energy may be utilized by an eligible customer as long as the market purchases satisfy the definition of “new electric resource.” (Ex. 17 at 8.)

114. Nevada Power states that while the terms under WSPP service Schedule C allow Tenaska to establish conditions under which it is willing to receive power and/or capacity deliveries, these terms do not eliminate the possibility for Nevada Power to be the generating source for market-based purchases Tenaska executes under WSPP Service Schedule C. (*Id.* at 9.) Specifically, Nevada Power states:

[Nevada Power] cannot be certain that it will not ever be the generating source for the services Tenaska offers to this or other NRS Chapter 704B applicants. While Tenaska negotiates terms with its direct market supplier, under WSPP Service Schedule C it does not have similar rights to enforce those terms on the entire chain of counterparties involved in most electric power transactions that are not from a specified source. Any

¹⁷ Nevada Power states that, under “Exhibit Branch-Direct-3” to Exhibit No. 13, it provides a list of possible operating conditions for the Commission’s consideration. (Ex. 13 at 21.)

counterparty restriction that Nevada Power may encounter may affect both the price and ability of [Nevada Power] to execute off-system sales for the benefit of its customers.

(*Id.*)

C. Allocation and Accounting Methodology

115. Nevada Power provides a description of how the BTGR component of previous impact fees has been accounted for in the past. (Ex. 20 at 3-4.) Nevada Power states that the BTGR impact fee is normally accounted for in “Account No. 254, Regulatory liabilities.” (*Id.* at 3.) Nevada Power explains:

A monthly allowance is determined by dividing the impact fee by the months in the analysis period. In each month between the exit date and the effective date of rates in the next [GRC], the monthly amount is moved from the regulatory liability to Account No. 456, Other Revenue. As part of the GRC certification process, the remaining balance in the regulatory liability at the rate effective date is amortized over the three-year rate case cycle. This amortization reduces the amount of sales revenue that would otherwise be collected from customers through rates. Finally, the unamortized balance of the regulatory liability (net of accumulated deferred income taxes) reduces rate base and, therefore, revenue requirement. Thus, rates established in this subsequent GRC are reduced in two ways, first through the recognition of an annual amortization of impact fee revenue and, second, through a reduction in rate base.

(*Id.* at 3-4.)

116. Nevada Power explains that “[t]here are two ways to treat lump sum payments for BTER.” (Ex. 20 at 4.) Nevada Power states: “The first treatment involves crediting the lump sum payments directly to the deferred energy balancing account as has been done in the past. This treatment pre-dates the current deferred energy recovery mechanism and would result in an immediate but relatively short lived impact on rates assuming that the DEAA is not zero.” (*Id.* at 4-5) Nevada Power states, “[i]n the event of a zero DEAA, the payment would simply accrue carrying charges in the balancing account until such time as the bandwidth is exceeded and the payment plus carrying charges is disbursed to customers.” (*Id.* at 5.)

117. Nevada Power states that “[i]f, however, the Commission adopts a longer analysis

period, the Commission may want to spread the relief more uniformly over the analysis period.”

(*Id.*) Nevada Power states that, “[i]n that case, the Company would recommend that the impact fees be accounted for in a separate regulatory liability account subject to the appropriate calculation of carrying charges as provided in [NAC] 704.150.” (*Id.*) Nevada Power states that “[u]nlike DEAA, there is no limiting factor that would result in a zero BTER, other than an absence of fuel and purchased power cost.” (*Id.*)

118. Nevada Power states that it has two DEAA accounts, residential and non-residential, and the impact fee should impact both residential and non-residential customers, even though the departing customer is non-residential. (Ex. 20 at 6.) Nevada Power states: “The impact of the reduction in load affects total fuel and purchased power costs and not just the portion allocated to non-residential customers. Therefore, the impact fee should be spread to both residential and non-residential customers based on allocated cost to total cost.” (*Id.*)

119. Nevada Power states that if the Commission were to assess a lump sum payment for a Net-BTER component, then it would propose to account for it in the same manner as BTER. (Ex. 20 at 7.)

120. Regarding the treatment of Silverhawk, Nevada Power states that “[t]he Silverhawk acquisition is expected to occur in 2017 and will not have regulatory asset accounts for the accrual of revenue requirement between the in-service date and the effective date of rates in the next general rate case when it will be reflected in the BTGR.” (Ex. 20 at 7.) Nevada Power explains:

As with the three other plants included in the impact analysis, details of the impact are provided for each year of the analysis period. Consistent with the treatment of the BTGR impact, the Company proposes to establish a regulatory liability for this payment. One twelfth of the impact fee identified for 2017 would be accrued to revenue each month and the regulatory liability reduced. One third of the remaining regulatory liability would be used to offset revenue requirement in the general rate case resulting in a lower BTGR for

each of the three years of the rate effective period. As with the BTGR impact fee, the balance of the Silverhawk impact fee regulatory liability at January 1, 2018, would be included as a deduction to rate base.

(Id.)

121. Nevada Power states that the lump sum payment for revenue requirement associated with the ERCR Approved Generation Assets “either have or will have regulatory asset accounts for the accrual of revenue requirement between the in-service date and the effective date of rates in the next GRC.” (Ex. 20 at 6.) Nevada Power states that the impact analysis details the impact for each year of the analysis period. *(Id.)* Nevada Power “proposes to reduce the regulatory asset account by the annual amounts for the years in which the regulatory asset balance is accruing.” *(Id.)* Nevada Power states that “[a]ny amortization of the impact fee during the rate effective period for the next general rate case would be treated as revenue credit, which offsets what otherwise would be an increase in cost for bundled retail customers.” *(Id.)*

122. Regarding the Merrill Lynch regulatory asset, Nevada Power states that “[t]he lump sum payment for the Merrill Lynch surcharge would be credit against the non-residential balance of the Merrill Lynch regulatory Asset.” *(Id.)* at 8.) Nevada Power explains: “This regulatory asset was established specifically to recover a disallowance of purchased power costs in Docket No. 01-11029. This is a one-time amortization, and the surcharge will expire when the regulatory asset is fully recovered. At this time, that recovery is expected in 2019.” *(Id.)*

123. Nevada Power states that, “[a]s with the BTER impact payment, the amounts associated with REPR and EEPR can either be credited directly to the appropriate balancing account or spread over the analysis period as a reduction to rate base recovery.” (Ex. 16 at 8.) Nevada Power explains: “The REPR uses a cumulative balance to establish the amortization rate and both base and amortization rates reflect a uniform cents-per-kWh across classes. The EEPR

balance is period specific.” (*Id.*) Nevada Power states: “Therefore, the entire impact fee would be spread over a one year amortization period. Additionally, the EEPR base is class differentiated which would result in a different reduction by rate class than would occur using the EEPR amortization.” (*Id.*)

124. Nevada Power states that the portion of the impact fee that is collected for and associated with the TRED belongs to the TRED Trust. (Ex. 16 at 8.) Therefore, Nevada Power states that “this amount would be remitted to the TRED Trust upon payment.” (*Id.*) Nevada Power explains: “The TRED rate is reset in the annual DEAA filing. At that time, the entire amount could be offset to current funding requirements or it could be prorated over the analysis period at the Commission’s discretion.” (*Id.*)

125. Nevada Power proposes that the portion of the impact fee associated with a lump sum payment for regulatory assets “be credited against the regulatory assets with an adjustment for any return already being recovered in current rates.” (*Id.* at 9.) Nevada Power explains that “[t]his recovery would cease with the next GRC when the reduced amounts are reflected in rates.” (*Id.*) Regarding payment for future regulatory assets, Nevada Power states that these payments will be recovered in future rates and should be credited directly to the given future regulatory asset, which Nevada Power explains will reduce the principle amount and the carrying charges included in the balances. (*Id.*)

D. Overearnings

126. Nevada Power states that its current financial performance is not a consideration under NRS and NAC 704B and therefore should not be considered by the Commission in evaluating an application to exit bundled retail electric service. (Ex. 13 at 19.) Rather, Nevada Power suggests that the reduction in billing determinants caused by an NRS 704B eligible

customer's decision to purchase energy from a different provider is what ultimately should be considered because it affects remaining ratepayers. (*Id.*) Specifically, Nevada Power explains that fixed costs contribute to a significant portion of Nevada Power's overall revenue requirement and that a customer's decision to purchase energy from an alternative provider effectively reduces the amount of billing determinants available to pay for these fixed costs. (*Id.*) Therefore, Nevada Power explains that "[i]f billing determinants are reduced, but fixed costs remain the same, then electric rates [paid by remaining customers] increase (because the numerator in the rate setting equation – the revenue requirement – remains the same, while the denominator—billing determinants—decreases)." (*Id.*)

127. Moreover, Nevada Power states that it filed a GRC in 2014 and settled the case through an agreement with all parties, including the Southern Nevada Hotel Group ("SNHG"), of which MGM was a member. (Ex. 13 at 16.) The settlement agreement resulted in no change in Nevada Power's revenue requirement. (*Id.*) Nevada Power states that, in 2014, Nevada Power reduced operating and maintenance expenses by \$55 million, or 12 percent from 2013. (*Id.*) Nevada Power states that its focus on operating and maintenance expenses, and approach to investments, including investing in the least-cost facilities that are necessary to provide safe and reliable service, helps ensure that Nevada Power will continue to provide safe and reliable service at stable, predictable rates. (*Id.*)

128. Nevada Power states that, in light of the commitments it made to ensure that it owns or controls the resources necessary to serve the load of its customers, Nevada Power's "commercial and industrial rates remain competitive with those of other vertically integrated utilities." (Ex. 13 at 9.) Specifically, Nevada Power claims, "For the 12-month periods ending December 31, 2013, and December 31, 2014, Nevada average electric rates were approximately

12 percent and 10 percent lower than the national averages.” (*Id.* at 9-10) Nevada Power states that the industrial rates were approximately 4.4 percent lower than the comparable national average rates for the 12-month period ending December 31, 2013, and 1 percent higher than the comparable national average in the 12-month period ending December 31, 2014. (*Id.* at 10.)

MGM’s Rebuttal Position

A. Analysis Period

129. MGM reiterates that it disagrees with Staff that a six-year exit fee calculation is necessary to account for BTGR, BTER, and ERCR-related costs. (Ex. 35 at 4.) MGM suggests that Staff’s analysis “focuses only on [Nevada Power’s] new, lower energy forecasts and ignores the projected system peak load increases.” (*Id.* at 4.) Specifically, with respect to the BTGR, MGM notes that “[s]ince the BTGR collects the fixed costs of the system, not the energy costs, the focus should be on peak load growth.” (*Id.*)

130. MGM disagrees with Staff that two full IRP cycles and one rate case is necessary to modify plans and mitigate costs. (*Id.*) MGM asserts “[Nevada Power’s] load forecasts for its recommended Action Plan in the current 2015 IRP docket already take into account the potential loss of the departing customers’ loads” and the Action plan “only includes resources that can be justified under all load forecast scenarios.” (*Id.*) Consequently, MGM believes that “no resources necessary to serve MGM are being requested in the 2015 IRP” and “[t]here can be no possible reason to account for the loss of MGM load in a third IRP docket.” (*Id.* at 4-5.) MGM notes that Staff’s concern related to needing a rate case is alleviated because a rate case is “scheduled to occur in 2017, before the initial 3-year period is over.” (*Id.* at 5) Therefore, MGM states that “Staff’s primary arguments for a 6-year analysis...are satisfied in a 3-year fee.” (*Id.*)

131. MGM contends that there is “sufficient evidence, even from PROMOD runs, that

[MGM] is saving the system money after six years and “all of those dollars saved are attributable to MGM’s exit.” (Tr. 399.)

132. Regarding the manner in which load forecasting affects the analysis, MGM states that “three years is the right number of years instead of six or ten...because of the significant costs that will be saved in years 20 and 21 from change in the nature of the planned resource in that period.” (*Id.* at 405.)

133. In response to BCP’s assertion that MGM is shirking its “obligation to pay for the above-market renewable contract costs beyond six years, MGM suggests that “[MGM] could stay on the system through the life of the [renewable] contracts, if [MGM] got the BTER savings over that same period of time because [MGM] would be making a lot of money off of that.” (*Id.* at 406-7.)

B. Non-Bypassable Charge Calculations

134. MGM disagrees with Staff’s recommended approach “that the non-bypassable surcharge for renewable, SB 123, REPR, and Merrill Lynch costs continues indefinitely.” (Ex. 35 at 6.) MGM asserts that the non-bypassable surcharge should only extend for a 6 year period because “any increase in costs to the remaining customers will have been fully paid by the exiting customers by the end of the 6-year period.” (*Id.* at 6-7) In response to BCP’s similarly suggested approach, MGM notes that “[e]ven with [Nevada Power’s] lower cost gas forecast and the lower load growth assumption for the 2015 IRP docket, the Company’s calculations still shows (sic) a net benefit to the system from MGM’s departure in Year 7”, thus, “customers remaining on the system begin saving money in Year 7.” (*Id.*)

C. Monthly Payments

135. MGM disagrees with Staff’s position that a lump sum payment of non-bypassable

charges is necessary to avoid the “risk of non-payment” placed on Nevada Power’s remaining customers. (*Id.* at 10) MGM contends that it is “a remaining customer of [Nevada Power] through the Distribution-only Service tariffs and will have to makes (sic) its payments in a timely manner like every other customer in order to receive service.” (*Id.*)

136. In response to BCP’s concern that basing collection of charges on actual usage could result in under-payment of impact fees if MGM’s load is lower than expected, MGM responds that MGM may pay less as a result of a lower load but will not “under-pay” as MGM would be paying “the same amount it would pay if it remained on the system.” (*Id.*)

D. Staff’s Proposed DSM Recapture and EE Adjustment

137. MGM disagrees with Staff’s assertion that MGM should pay a DSM recapture amount to offset the benefits which were paid for, at least in part, by remaining customers. (Ex. 35 at 16.) MGM contends that it “has always paid much more into the [DSM] program than it ever took out, so there has always been a net cost to MGM, not a near term net benefit.” (*Id.*) MGM states that Staff’s proposal seeks to refund implementation costs which MGM claims it already paid through rates. (*Id.* at 17.)

E. Staff- and Nevada Power-Recommended Compliances and Directives

138. Generally, MGM indicates it plans to comply with the compliances and directives recommended by Staff, should the Commission approve its Application. (*Id.* at 18-21.) Notwithstanding, with regard to Item 8 of Staff’s recommended compliances and directives, MGM requests that “[i]f the Commission determines that non-bypassable impact fee is a condition of its approval of MGM’s application, and such fee reflects an obligation for MGM to pay R-BTER costs over time, then the Commission should direct Nevada Power to calculate and timely transfer to MGM its load ratio share of associated [PECs].” (*Id.* at 20.) If the

Commission's imposed impact fee "requires reimbursement for energy efficiency rebates received by MGM, then Nevada Power should be required to calculate the PECs associated with MGM's participation in the related energy efficiency programs, and transfer the associated PECs to MGM for RPS compliance." (*Id.* at 21.)

Commission Discussion and Findings

139. Based on the evidence on this record, and for reasons that will be addressed in more detail below, the Commission finds, pursuant to NRS 704B.310(5), that it is not contrary to the public interest to approve the MGM's Application and allow the accounts identified by MGM in its Application to depart bundled retail service; and the Commission orders, pursuant to NRS 704B.310(7)(b), a number of terms, conditions and payments that the Commission deems are necessary and appropriate to ensure that the proposed transaction will not be contrary to the public interest.

140. As a bundled electric service customer of Nevada Power, MGM cannot purchase energy, capacity or ancillary services from a provider of new electric resources until it files an application with the Commission and the Commission approves the application. NRS 704B.310(1). MGM filed its Application pursuant to the provisions of NRS and NAC Chapters 704B. (Ex. 1 at 1.) NRS 704B.310(2) provides in relevant part:

... each application filed pursuant to this section must include:

(a) Information demonstrating that the person filing the application is an eligible customer;

(b) Information demonstrating that the proposed provider will provide energy, capacity or ancillary services from a new electric resource;

(c) Information concerning the terms and conditions of the proposed transaction that is necessary for the Commission to evaluate the impact of the proposed transaction on customers and the public interest, including, without limitation, information concerning the duration of the proposed transaction and the amount of energy, capacity or ancillary services to be purchased from the provider; and

(d) Any other information required pursuant to the regulations adopted by the Commission.

141. As discussed herein, the Commission must assess the Application pursuant to the considerations identified in NRS 704B.310(6) and any additional considerations necessary to determine whether the Application is contrary to the public interest, as required by NRS 704B.310(5). Pursuant to NRS 704B.310(7)(b), if the Commission approves an exit application, it “shall order such terms, conditions and payments as the Commission deems necessary and appropriate to ensure that the proposed transaction will not be contrary to the public interest.”

142. Specifically, NRS 704B.310(5) through (7), provides:

...

5. The Commission shall approve the application of the eligible customer unless the Commission finds that the proposed transaction:

- (a) Will be contrary to the public interest; or
- (b) Does not comply with the provisions of NRS 704B.320, if those provisions apply to the proposed transaction.

6. In determining whether the proposed transaction will be contrary to the public interest, the Commission shall consider, without limitation:

- (a) Whether the electric utility that has been providing electric service to the eligible customer will be burdened by increased costs as a result of the proposed transaction or whether any remaining customer of the electric utility will pay increased costs for electric service as a result of the proposed transaction;
- (b) Whether the proposed transaction will impair system reliability or the ability of the electric utility to provide electric service to its remaining customers; and
- (c) Whether the proposed transaction will add energy, capacity or ancillary services to the supply in this State.

7. If the Commission approves the application of the eligible customer:

- (a) The eligible customer shall not begin purchasing energy, capacity or ancillary services from the provider pursuant to the proposed transaction sooner than 180 days after the date on which the application was filed, unless the Commission allows the eligible customer to begin purchasing energy, capacity or ancillary services from the provider at an earlier date; and

(b) The Commission shall order such terms, conditions and payments as the Commission deems necessary and appropriate to ensure that the proposed transaction will not be contrary to the public interest. Such terms, conditions and payments:

- (1) Must be fair and nondiscriminatory as between the eligible customer and the remaining customers of the electric utility; and

(2) Must include, without limitation:

- (I) Payment by the eligible customer to the electric utility of the eligible customer’s load-share portion of any unrecovered balance in the deferred accounts of the electric utility; and

(II) Payment by the eligible customer of the annual assessment and any other tax, fee or assessment required by NRS 704B.360.

...

143. In applying the governing statute, the Commission must give the statute its plain meaning unless an ambiguity exists, the plain meaning violates the spirit or purpose of the enacting legislation, or the plain meaning would otherwise lead to a result that is inconsistent with the intent of the Legislature. *McKay v. Bd. of Sup'rs of Carson City*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986) (*see also V & S Ry. LLC v. White Pine County*, 125 Nev. 233, 239, 211 P.3d 879, 882 (2009)).

144. The Commission notes that “administrative agencies are not bound by *stare decisis*.” *State, Dept. of Taxation v. Chrysler Group LLC*, 129 Nev. Adv. Op. 29, 300 P.3d 713, 717 at fn.3 (2013) (*quoting Motor Cargo v. Public Service Comm'n*, 108 Nev. 335, 337, 830 P.2d 1328, 1330 (1992); *see also Desert Irrigation, Ltd. v. State of Nevada*, 113 Nev. 1049, 1058, 944 P.2d 835, 841 (1997) (“[N]o binding effect is given to prior administrative determinations.”))

145. Applying these statutes and common law principles, the Commission must assess the Application to determine whether it conforms with the statutory requirements and must assess, based off of the evidentiary record, an appropriate impact fee¹⁸ to ensure that MGM’s departure from bundled retail service will not burden the electric utility or subject its remaining customers to increased costs. Therefore, before addressing its findings pursuant to NRS 704B.310(5) and NRS 704B.310(6), the Commission first addresses the terms, conditions and payments that the Commission finds are necessary and appropriate, pursuant to NRS 704B.310(7)(b), to ensure that the proposed transaction will not be contrary to the public interest.

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¹⁸ Pursuant to NAC 704B.100, an impact fee is an amount assessed by the Commission against an eligible customer pursuant to NRS 704B.310(7), but it does not include any payment required by NRS 704B.310(7)(b)(2).

A. NRS 704B.310(7)(b)

146. Pursuant to NRS 704B.310(7)(b), the Commission finds that MGM must comply with terms, conditions and payments *similar* to those recommended by Staff to ensure that the Commission's approval of the proposed transaction will not be contrary to the public interest. Therefore, the Commission finds that it is prudent to address why the use of Staff's NBC Methodology will ensure that approval of the Application will not be contrary to the public interest, given that Staff uses the NBC Methodology to develop its Recommended Impact Fee.

147. The Commission finds that the NBC Methodology adequately accounts for the aggregate impact of the 2015 NRS 704B Applicants' total load proposing to depart bundled retail service. The Commission finds that, given how close in time each of the 2015 NRS 704B Applicants filed their respective applications, the Commission's analysis under NRS 704B.310(5) must consider the substantial load seeking to exit. While the Commission acknowledges that NRS 704B.310 requires the Commission to consider whether approval of *the* (singular) proposed transaction will be contrary to the public interest, the Commission finds that NRS 704B.310 does not prohibit the Commission from assessing whether approval of a single proposed transaction, in relation to other, similar pending applications requiring the same review, will be contrary to the public interest. In fact, in considering whether approval of the proposed transaction will be contrary to the public interest, the Commission's consideration is "without limitation."¹⁹ Therefore, considering that the three 2015 NRS 704B Applicants all filed their Applications within four days of one another, the Commission finds it not only reasonable, but necessary to protect the public interest, to consider in this Docket the aggregate impact of the 2015 NRS 704B Applicants' total load proposing to depart bundled retail service.

148. Additionally, the Commission notes that it will be issuing orders for each of these

¹⁹ NAC 704B.310(6)

2015 NRS 704B Applicants on the very same day. This means that each of the 2015 NRS 704B Applicants must comply with all of the terms, conditions and compliance items imposed by the Commission pursuant to NAC 704B.370, including the filing of a completed and fully-executed contract between the exit applicant and its selected provider, within the same 120-calendar-day timeframe.²⁰ Therefore, given the possibility that any one of the 2015 NRS 704B Applicants will be the first to depart despite their accepted filing date, the Commission finds that an aggregate analysis ensures that each of these 2015 NRS 704B Applicants is treated fairly and non-discriminatorily and enables the Commission to more accurately address whether approval of these proposed transactions will be contrary to the public interest given the substantial load seeking to exit.

149. The Commission finds that the NBC Methodology adequately addresses the concerns that the Commission expressed in the Switch Order. Specifically, Staff claims that it utilized the NBC Methodology to develop the Final Impact Analysis and, in turn, the Recommended Impact Fee based on concerns expressed by the Commission in the Switch Order. Indeed, the Commission expressed a number of concerns in the Switch Order and suggested that non-bypassable charges may be one option to adequately account for the embedded costs associated with the significant investment on Nevada Power's system since 2001.

150. Roughly six months later, the Commission still finds that these significant investments remain on Nevada Power's system. The Commission finds that Nevada Power's efforts to own or control the generation capacity required to meet the needs of its customers,²¹ as

²⁰ NAC 704B.370(7)

²¹ To illustrate these efforts, Nevada Power explains that its 2003 IRP reflects that Nevada Power only controlled 68 percent of the capacity necessary to meet its obligations but that its 2015 IRP shows that Nevada Power will control, in 2016, 96 percent of the capacity it requires to meet its obligations. (Ex. 13 at 8, fn. 14.)

well as Nevada Power's efforts to comply with the energy policies adopted by the Legislature,²² are reflected and considered in "Staff's impact fee calculation directives and Staff's resulting recommendation." (Ex. 13 at 9.) The Commission further finds that the changes experienced in the electric industry environment over the last fifteen years explain why impact fee calculations in this Docket differ from impact fee calculations completed over a decade ago. (*Id.* at 10.)

151. The Commission finds that the Nevada Power's efforts to comply with the energy policies adopted by the Legislature include, but are not limited to, the uneconomic, sunk costs associated with the R-BTER, TRED, and the Regulatory Assets/SB 123 costs (collectively, the "Legacy Costs"). The Commission finds that these Legacy Costs are all examples of legislative exceptions to the least-cost resource planning process and extend well beyond the three- and six-year impact periods proposed by MGM.

152. Therefore, the Commission finds that MGM's use of the BTER Strip to limit the various terms of Staff's Recommended Impact Fee, including limiting the BTGR cost component to a three-year analysis period, is illogical given the substantial evidence on this record, and the fact that load growth will not even replace the 2015 NRS 704B Applicants' departing load for at least ten years.²³ The Commission finds that MGM's use of the BTER Strip to limit its responsibilities for the sake of certainty is, at the very least, questionable. The Commission agrees with Staff that if MGM truly believes energy and capacity prices will increase exponentially after 2018, MGM's request to depart bundled retail service simply makes no sense. Rather, the Commission finds that MGM's attempted use of the BTER Strip to limit its obligations only highlights the shortcomings the Commission finds existing in Staff's BTER analysis. Specifically, as will be discussed in more detail below, the Commission has substantial

²² Nevada Power explains that, to comply with Nevada's RPS, Nevada Power entered into long-term PPAs for renewable energy at "prices that exceed current market prices." (Ex. 13 at 9.)

²³ See generally Ex. 32.

concerns regarding the simplifying assumptions that Staff used to conduct its BTER analysis, and to address these concerns, the Commission recommends a true-up mechanism to ensure that the Net-BTER costs associated with MGM's impact fee accurately reflect the realized costs to Nevada Power's system.

153. However, with the proposed true-up, the Commission finds that use of Staff's NBC Methodology will ensure that approval of the Application will not be contrary to the public interest because it adequately accounts for the amount of load growth that will be necessary to ensure that remaining ratepayers will not experience increased costs and ensures that MGM will pay its fair share of the legislatively-mandated Legacy Costs that were incurred, in part, to service MGM's load. Moreover, the Commission finds that Staff's NBC Methodology strikes the appropriate balance between ensuring that MGM does not pay more than it should and ensuring that remaining ratepayers will not experience increased costs. Therefore, in this Docket, the Commission adopts Staff's NBC Methodology and uses it to assess terms, conditions, and payments similar to those recommended by Staff.

1. Impact Fee

154. The Commission finds that, to ensure the Commission's approval of the proposed transaction will not be contrary to the public interest, MGM must comply with terms, conditions and payments *similar* to those recommended by Staff. Therefore, the Commission will address the individual components of Staff's Recommended Impact Fee and will explain where the Commission either adopts or modifies Staff's recommendation.

155. However, to ensure that there is no confusion regarding its decision, the Commission notes the following, most significant deviations between Staff's Recommended Impact Fee and the terms, conditions, and payments the Commission requires for MGM should it

choose to depart bundled retail service: (1) the Commission finds that a true-up mechanism is required to address its concerns regarding the Net-BTER component of the Upfront Fee portion of Staff's Recommended Impact Fee; (2) the Commission finds that MGM should be given a 100-percent credit for the OSS associated with its departure but that this credit accounts for the additional VOM costs associated with the increased OSS; (3) the Commission finds that the costs associated with the ERCR Approved Generation Assets shall be allocated based on the MCSS; (4) the Commission finds that the costs associated with the Silverhawk resource shall be allocated based on the MCSS; and (5) the Commission finds that the costs associated with the DSM Recapture component shall be reduced so that MGM does not pay for the implementation portion of the DSM programs it participated in during 2011-2015.

156. With this discussion in mind, the Commission finds that MGM must comply with the following terms, conditions, and payments to ensure that approval of the proposed transaction will not be contrary to the public interest.

i. Upfront Fee

157. Consistent with the adopted NBC Methodology, the Commission assesses an Upfront Fee to collect the portions of the impact fee associated with the following categories of rates and costs: (1) BTGR; (2) Net-BTER; (3) the "ERCR Approved Generation Assets; (4) MGM's load ratio share of the costs associated with the 25-percent share of Silverhawk; (5) the Local Government Fees; (6) the DSM Recapture cost component; and (7) the EE Adjustment.

158. The Commission finds that the NBC Methodology uses forecasted load growth to calculate the costs associated with the BTGR and Net-BTER components of the Upfront Fee. The Commission finds that the long-term load forecasts that were discussed and used in this Docket include Nevada Power's base long-term load forecast for its Preferred Plan in Docket

No. 15-07004²⁴ and SPPC's base long-term load forecast that is included in Docket No. 15-08011.²⁵ Given that no party objected to the use of these forecasts, the Commission finds that these forecasts are acceptable for use in determining an appropriate impact fee.

BTGR

159. The Commission finds that the BTGR component of the Upfront Fee represents the revenue impact that Nevada Power will experience, and that remaining customers will be burdened with, following MGM's proposed departure from bundled retail service.

160. The Commission finds that forecasted growth in energy sales (i.e. growth in the number of billing determinants) that will be added to Nevada Power's system must be sufficient to ensure that Nevada Power's remaining customers are not burdened with increased BTGR costs as a result of the 2015 NRS 704B Applicants' departure from bundled retail service. The Commission finds that Nevada Power's forecasted sales growth is expected to only replace approximately 50 percent of the 2015 NRS 704B Applicants' aggregate departing load over a six-year period.²⁶ In fact, the Commission finds that it would take approximately ten years to recover from the total loss of load associated with the 2015 NRS 704B Applicants' aggregate departing load.²⁷ Therefore, given that the fixed costs embedded in Nevada Power's system will remain following the 2015 NRS 704B Applicants' departure from bundled retail service, the Commission must calculate a sufficient amount for the BTGR component of MGM's Upfront Fee to ensure that remaining customers do not experience increased BTGR costs.

161. The Commission finds that the adopted NBC Methodology uses a six-year

²⁴ The Commission took administrative notice of Docket No. 15-07004 in this Docket. The Commission notes that the first three years of the long-term load forecast, the forecast years for the Energy Supply Plan, have been approved by the Commission.

²⁵ The Commission took administrative notice of Docket No. 15-08011 in this Docket, and notes that a stipulation has been submitted by the parties to Docket No. 15-08011 regarding the long-term load forecast. The Commission notes that all parties to Docket No. 15-08011 either support, or do not oppose the stipulation.

²⁶ Ex. 18.

²⁷ Ex. 18; Ex. 32 at 10.

analysis period to determine the impact that MGM's proposed exit would have on Nevada Power's revenue. As discussed above, a BTGR rate analysis was used to initially determine the total impact on Nevada Power's BTGR revenue that would be caused by the 2015 NRS 704B Applicants' aggregate load departing Nevada Power's bundled retail electric service.²⁸ The Commission finds that the BTGR component of the Upfront Fee represents MGM's share of this BTGR revenue impact.

162. The Commission finds that, given the aggregate amount of load departing (250 MW of capacity and associated energy) and the time periods studied by Staff (3, 6, 10 years), a six-year analysis period for the BTGR cost component strikes the best balance between ensuring that remaining customers do not experience increased costs and ensuring that MGM is treated fairly. The Commission finds that, under a six-year analysis period, departing customers are allocated approximately 100 percent of the benefits associated with load growth.²⁹ However, the Commission finds that this disproportionate allocation of the benefits associated with load growth is only acceptable because BTGR costs are "net" of the Regulatory Assets/SB 123 Costs, and because the time period selected for the BTGR will be balanced with the time periods for the other cost components of the impact fee (i.e., Net-BTER & the non-bypassable charges).

163. Therefore, the Commission finds that a combination of MGM's payment for the costs associated with the BTGR component of the Upfront Fee and the sales growth forecasted to occur on Nevada Power's system over the next six years will ensure that remaining customers do not realize an increase to their BTGR costs as a result of MGM's departure from bundled retail

²⁸ Ex. 7 at Attachment 1.

²⁹ The Commission notes that the 2015 NRS 704B Applicants are getting the benefit of the simplifying assumptions used in Staff's BTER analysis with respect to the type of resources used to replace all placeholder and open positions in the relevant time period. In other words, because no generation capital projects with the exception of Silverhawk acquisition are added to rate base during the impact analysis period, the BTGR cost component is essentially minimized by ensuring that any demand and energy requirements will be exclusively served with market purchases over the impact period.

service.

164. Accordingly, to ensure that approval of MGM's proposed transaction is not contrary to the public interest, the Commission finds that MGM is responsible for approximately \$74.644 million in nominal dollars and approximately \$57.739 million in net present value for the BTGR cost component of the Upfront Fee portion of its impact fee.³⁰ The Commission notes that these numbers adjust Staff's calculated VOM credit to account for the Commission's decision to give MGM 100 percent credit for the OSS associated with its departure.

165. The Commission finds that MGM may elect to pay the net present value for its BTGR obligation in a lump sum or may elect to pay the nominal value monthly, over a six-year period, on a per kWh basis, calculated as \$74.644 million divided by six and then divided by MGM's historical sales for the twelve-month period ending March 31, 2015. This rate would then be applied to MGM's actual kWh usage for the six-year period following its departure from bundled retail service. The Commission finds that no true-up is proposed and that, if MGM's future load is reduced as it expects, MGM's payments for its BTGR obligation would also be reduced.

166. The Commission finds that the BTGR component of MGM's Upfront Fee shall be accounted in a manner consistent with the accounting treatment described in paragraph 115 of this Order.

Net-BTER

167. The Commission finds that the simplifying assumptions used to develop Staff's BTER analysis raise concerns regarding the credibility of the Net-BTER cost component developed under the adopted NBC Methodology. Specifically, the Commission finds that Staff's

³⁰ This amount is calculated using Exhibit No. 7, Attachment 2, Schedule A-1; and VOM credit in Exhibit No. 7, Attachment 4 (modified for 100 percent OSS).

predominate use of market purchases to replace almost all of the placeholder resources contained in Nevada Power's 2015 IRP Preferred Plan represents an unquantified risk to remaining ratepayers. The Commission finds that by replacing almost all of the placeholder resources with market purchases, Staff's BTER analysis overstates the demand for market purchases given that this modeling assumption is based on another assumption that no new generation resources will be built over the applicable analysis period.³¹ The Commission finds that Staff's BTER analysis assumes that any load growth to Nevada Power's system that cannot be served with Nevada Power's existing generation portfolio will be served with market purchases at prices projected to rise over the applicable analysis period. Therefore, the Commission finds that the apparent benefit caused by MGM's departure to BTER costs is not necessarily due to MGM's departure from bundled retail service but rather due to the modeling assumption that Nevada Power would no longer have to purchase expensive market power to meet MGM's energy and demand requirements.³²

168. The Commission finds that these modeling assumptions become even more problematic when considering that Nevada Power and SPPC jointly dispatch their resources, which means that, to some extent, the BTER Analysis provides MGM with a benefit from the growth forecasted to occur on SPPC's system.³³ Given that MGM is seeking to exit Nevada Power's system and not SPPC's, the Commission finds that MGM is not entitled to any benefits associated with the load growth on SPPC's system.

169. Therefore, given that the Commission has serious concerns regarding the extent to which SPPC's forecasted load growth and overstated market purchases are influencing Staff's BTER analysis, the Commission finds that the only equitable resolution is to accept Staff's Net-

³¹ Ex. 32 at 6-8.

³² See Tr. at 376-378.

³³ See Tr. at 379-390.

BTER analysis, but to order a true-up to ensure that approval of MGM's proposed transaction is not contrary to the public interest.

170. The Commission directs Staff to initiate and direct a true-up analysis that is consistent with the original BTER analysis it directed to determine the Net-BTER and R-BTER cost components of its Final Impact Analysis.³⁴ The Commission finds that, given MGM is assessed a non-bypassable charge for the R-BTER component,³⁵ a Net-BTER amount would already be calculated when the R-BTER is calculated. Therefore, the Commission finds that the first true-up analysis for the Net-BTER must be completed in the first quarterly DEAA filing that is made following one year from the date that MGM departs bundled retail service and shall be calculated annually in the applicable quarterly DEAA filings thereafter for the entire six-year analysis period.

171. The Commission directs Staff to use the true-up analysis to compare the Net-BTER value assessed in this Order to a Net-BTER value that is based on: (1) Nevada Power's actual system load; (2) MGM's actual load; (3) the most recently-available data regarding fuel and purchased power costs; and (4) Nevada Power's actual resource mix data (i.e. replace any of the placeholder resources with the actual resource that Nevada Power added since MGM's departure). The Commission finds that the true-up value shall be compared to the Net-BTER value assessed in this Order to determine whether a credit or debit is due to MGM. The Commission finds that the credit or debit shall be assessed in the applicable DEAA filing that determines the true-up Net-BTER value.

172. The Commission finds that MGM should receive a 100-percent credit for the OSS associated with its departure but that this credit correspondingly accounts for the additional

³⁴ This process is outlined in paragraph 45 of this Order.

³⁵ This process is outlined in paragraph 66 of this Order.

VOM costs associated with the increased OSS credit allocated to MGM. The Commission finds that the net benefits of the California Independent System Operator Energy Imbalance Market (“EIM”) should not be considered when discussing the credit that MGM should be given for OSS. However, the Commission acknowledges that there are benefits associated with the EIM and joint dispatch that are unknown at this time and that MGM would have been credited its share of these benefits had these benefits been quantifiable. Therefore, in lieu of these unknown benefits, the Commission finds that MGM is entitled to a 100-percent credit for the OSS associated with its departure. However, given that there are VOM costs associated with OSS, and given that MGM is receiving a 100-percent credit for the OSS associated with its departure, this increased OSS credit must account for the increased VOM costs.

173. Accordingly, to ensure that approval of MGM’s proposed transaction is not contrary to the public interest, the Commission finds that MGM is responsible for approximately \$16.151 million in nominal dollars, or approximately \$14.977 million in net present value, for the Net-BTER cost component of the Upfront Fee portion of its impact fee. The Commission notes that these figures adjusted Staff’s initial Net-BTER calculation to reflect a 100-percent credit to MGM for the OSS associated with MGM’s departure.³⁶ The Commission finds that MGM may elect to pay the net present value for the Net-BTER obligation in a lump sum, or may elect to pay the nominal value monthly over a six year period, on a per kWh basis, calculated as \$16.151 million divided by six and then divided by MGM’s historical sales for the twelve-month period ending March 31, 2015. The Commission finds that this rate would then be applied to MGM’s actual kWh usage for the six-year period subsequent to departing bundled retail service. The Commission finds that the true-up analysis will include adjustments for MGM’s actual

³⁶ This adjustment uses Confidential Exhibit No. C-3. (Calculated from 100 percent OSS economy sales in the Production Cost Scenario, Schedule A-4b)

annual load whether the lump sum or per-kWh payment option is selected by MGM.

174. The Commission finds that the Net-BTER component of MGM's Upfront Fee shall be accounted in a manner consistent with the methodology discussed in paragraphs 117-118 of this Order.

ERCR Approved Generation Assets

175. The Commission finds that the costs associated with the ERCR Approved Generation Assets were incurred while MGM was a full requirements, bundled retail customer of Nevada Power and therefore are reasonably included as a cost component of MGM's impact fee. Thus, to ensure that approval of MGM's proposed transaction is not contrary to the public interest, MGM is ordered to pay its share of the costs associated with the ERCR Approved Generation Assets. However, the Commission finds that these costs should be allocated based on the marginal cost of service study ("MCSS") methodology, given that it is likely these costs will be allocated under the MCSS in Nevada Power's next GRC. Therefore, the Commission finds that these costs shall be allocated in a manner consistent with the "NVE MCSS Revenue" method reflected under column D of Late-filed Exhibit No. 33.

176. The Commission finds that the nominal total value for these assets is approximately \$6.107 million, with a net present value of approximately \$4.751 million. The Commission finds that MGM may elect to pay the net present value for these assets in a lump sum or may elect to pay the nominal value monthly, over a six year period on a per kWh basis calculated as \$6.107 million divided by six and then divided by MGM's historical sales for the twelve-month period ending March 31, 2015.³⁷ The Commission finds that this rate would then be applied to MGM's actual kWh usage for the six-year period subsequent to departing bundled retail service. The Commission notes that if MGM's future load is reduced, its payments for the

³⁷ Calculated using Late-Filed Exhibit No. 33 and Confidential Exhibit No. C-3.

ERCR Approved Generation Assets will likewise be reduced.

Silverhawk

177. The Commission finds that Nevada Power's request in Docket No. 15-07004 to purchase the Silverhawk resource has not been approved by the Commission. The Commission notes that it will not make its decision regarding whether to approve the Silverhawk resource until after the Commission issues its Order in this Docket. However, the Commission finds that the use of the proposed Silverhawk resource, in this Docket, is a reasonable compromise between ensuring that Applicant pays for a resource that will still be needed to serve Nevada Power's customers, whether or not MGM chooses to depart bundled retail service, and providing MGM with some of the certainty regarding its impact fee obligations.

178. Accordingly, to ensure that approval of MGM's proposed transaction is not contrary to the public interest, the Commission finds that MGM is responsible for its share of the costs associated with the Silverhawk acquisition. The Commission finds that these costs should be allocated based on the MCSS methodology, given that it is likely these costs will be allocated under the MCSS in Nevada Power's next GRC. Therefore, the Commission finds that these costs shall be allocated in a manner consistent with the "NVE MCSS Revenue" method reflected under column D of Late-filed Exhibit No. 33. The Commission finds that MGM's share of the nominal total value for the Silverhawk resource is approximately \$2.095 million, with a net present value of approximately \$1.540 million.³⁸ The Commission finds that MGM may elect to pay the net present value for the Silverhawk acquisition in a lump sum, or may elect to pay the nominal value monthly over a six year period, on a per kWh basis calculated as \$2.095 million divided by six and then divided by MGM's historical sales for the twelve-month period ending March 31, 2015. The Commission finds that this rate would then be applied to MGM's actual

³⁸ Calculated using Late-Filed Exhibit No. 33 and Confidential Exhibit No. C-3.

kWh usage for the six-year period subsequent to departing bundled retail service. The Commission notes that if MGM's future load is reduced, its payments for the Silverhawk resource will likewise be reduced.

Local Government Fees

179. The Commission finds that the Local Government Fees represent the 5-percent fee that Clark County mandates Nevada Power to collect on revenue generated within Clark County. The Commission finds that, pursuant to NRS 704B.360, the Commission is required to order MGM to pay this fee. Therefore, the Commission finds that MGM shall pay the fee that would be due to Clark County had MGM continued to be a bundled retail customer of Nevada Power.

DSM Recapture

180. The Commission finds that, because remaining ratepayers will no longer realize the benefits of the costs that they paid to fund the DSM programs that MGM participated in during 2011-2015, it would be contrary to the public interest to not order MGM to repay the prorated amount associated with the rebates it received for participating in DSM programs. Therefore, the Commission finds that MGM shall pay a prorated portion of the DSM program costs because MGM would be taking DSM-associated benefits from remaining ratepayers if it elects to exit bundled retail service.

181. However, the Commission agrees with MGM that the implementation costs associated with Staff's DSM Recapture are unnecessary to ensure that approval of MGM's proposed transaction is not contrary to the public interest.³⁹ Therefore, Commission finds that the costs associated with the DSM Recapture component shall be reduced so that MGM does not pay for the implementation portion of the DSM programs it participated in during 2011-2015 but

³⁹ Ex. 35 at 17.

rather repays just a prorated amount of the rebates it received as a DSM program participant.

182. Accordingly, to ensure that approval of MGM's proposed transaction is not contrary to the public interest, the Commission finds that MGM is required to pay a prorated amount of the rebates MGM received as a DSM participant. The Commission finds that the net present value reflecting this amount is approximately \$2.478 million.⁴⁰ The Commission finds that this portion of the Upfront Fee must be paid upon MGM's exit, and this portion of the impact fee shall be used to add to the annual DSM Commercial Services program budget.⁴¹

EE Adjustment

183. The Commission finds that the EE Adjustment represents the costs that MGM would have paid under the EEPR and EEIR had it remained a bundled retail customer for the length of the 2015 DSM programs approved in Docket No. 15-02039. Given that the rates for the 2015 DSM programs are in effect until September 30, 2016, and that these rates reflect the costs to implement DSM programs for 2015, the Commission finds that MGM shall pay the remaining \$1.302 million that MGM would have paid for the period of February 1, 2016, through September 30, 2016.⁴² The Commission finds that payment of this EE Adjustment will ensure that approval of MGM's proposed transaction is not contrary to the public interest. The Commission finds that given the short-term nature of this obligation, MGM shall pay the full nominal value upon exit from bundled retail service.

Total Adjusted Upfront Fee

184. The Commission finds that the net present value of the total adjusted Upfront Fee

⁴⁰ Calculated using Exhibit No. 24.

⁴¹ For example, if the DSM Recapture amount is \$700,000 and the 2016 DSM Commercial Services program budget for Nevada Power is \$5,000,000, Nevada Power should be authorized to expend up to \$5,700,000 in the Commercial Services program. The 2016 EEPR rate should be based upon the approved budget amount without consideration of any DSM Recapture.

⁴² Adjusted using Exhibit No. 7. (Ex. 7 at 8.)

portion of MGM's impact fee is \$86.927 million (including \$4.139 million in Local Government Fees). Given that MGM is provided with a variety of payment options for some of the cost components discussed above, MGM may elect to pay, as applicable, the nominal, monthly value of some components and the net present value of others. In any event, the Commission finds that the amount reflected for the Upfront Fee portion of MGM's impact fee, in conjunction with the non-bypassable charges discussed below, will ensure that remaining ratepayers and Nevada Power are not subjected to or burdened with increased costs and that approval of the proposed transaction will otherwise not be contrary to the public interest.

ii. Non-Bypassable Charges

185. The Commission finds that, to ensure that approval of the proposed transaction will not be contrary to the public interest, MGM shall pay non-bypassable charges to collect the portions of the impact fee associated with the following categories of rates and costs: the R-BTER; the Merrill Lynch regulatory asset; the REPR; the TRED; and MGM's load ratio share of the Regulatory Assets/SB 123 costs.

R-BTER

186. The Commission finds that, to ensure that approval of the proposed transaction is not contrary to the public interest, the Applicant shall pay a non-bypassable charge for the R-BTER. The Commission finds that the R-BTER represents the embedded costs associated with the long term, above-market-price (or out-of-the money), must-take renewable energy resource contracts, ("Must-Take Resource Contracts") that affect the BTER.

187. The Commission finds that the R-BTER is part of the Legacy Costs, which represent legislative exceptions to the least-cost resource planning process. Specifically, the Commission finds that Nevada Power entered into these Must-Take Resource Contracts at

“prices that exceed current market prices” to comply with Nevada’s RPS⁴³ The Commission finds that it would be contrary to the public interest to permit MGM to circumvent these R-BTER costs by departing from bundled retail service because these costs were incurred to comply with legislative mandates.

188. Moreover, the Commission finds that, given the above allocation of all of the benefits associated with load growth to the 2015 NRS 704B Applicants over the impact period, and given that many of these Must-Take Resource Contracts extend well beyond the impact period analyzed in this Docket, the adopted NBC Methodology ensures that costs associated with these Must-Take Resource Contracts are allocated fairly between the departing Applicant and remaining customers under the proposed R-BTER methodology.

189. Additionally, NRS 704B.310(7)(b)(1) requires that the Commission order terms, conditions, and payments that are “fair and nondiscriminatory” as between MGM and Nevada Power’s ratepayers. Therefore, the Commission finds that the substantially disproportionate allocation of the benefits associated with load growth to MGM is balanced by requiring MGM to pay for its share of the costs associated with the remaining term of the Must-Take Resource Contracts that comprise the R-BTER and were incurred, in part, to serve MGM’s load. The Commission finds that if it were to not require MGM to pay these R-BTER costs, the Commission would not be able to disproportionately allocate the benefits associated with load growth to MGM for the BTGR component of the Upfront Fee.

190. Accordingly, for all of these reasons, the Commission finds that it would be contrary to the public interest to permit MGM to circumvent these R-BTER costs upon its departure from bundled retail service. Therefore, to ensure that approval of MGM’s proposed transaction is not contrary to the public interest, MGM shall pay, as a non-bypassable charge, the

⁴³ Ex. 13 at 9.

costs associated with the R-BTER. The Commission finds that the list of renewable energy PPAs included under Attachment A to this Order represents the Must-Take Resource Contracts that compose the R-BTER.

191. The Commission finds that the R-BTER shall be calculated and assessed in a manner consistent with Staff's recommended allocation and accounting methodologies, which are discussed under paragraph 66 of this Order.⁴⁴ The Commission finds that MGM will not be responsible for nor receive any benefit from any renewable energy contracts that Nevada Power enters into subsequent to MGM's exit from bundled retail service. The Commission finds that the non-bypassable charges associated with the R-BTER shall commence with the first quarterly BTER filing subsequent to the calendar quarter in which MGM departs bundled retail service.

TRED

192. The Commission finds that there is one long-term PPA, the Nevada Solar One PPA, that is recovered via the TRED. The Commission finds that the TRED is set to expire in 2027.

193. The Commission finds that the TRED is part of the Legacy Costs, which means it also represents a legislative exception to the least-cost resource planning process. Therefore, the Commission finds that it would be contrary to the public interest to permit MGM to circumvent the costs associated with the TRED upon its departure from bundled retail service because these costs were incurred to comply with legislative mandates.

194. Moreover, the Commission finds that, given the above allocation of all of the benefits associated with load growth to the 2015 NRS 704B Applicants over the impact period, and given that costs associated with the TRED extend well beyond the impact period analyzed in this Docket, the adopted NBC Methodology ensures that costs associated with TRED are

⁴⁴ These methodologies are discussed on pages 7 and 8 of Exhibit No. 31.

allocated fairly between the departing Applicant and remaining customers.

195. Additionally, to comply with NRS 704B.310(7)(b)(1), the Commission finds that the substantially disproportionate allocation of the benefits associated with load growth to MGM is balanced by requiring MGM to pay for its share of the costs associated with the remaining term of the TRED, which were incurred, in part, to serve MGM's load. The Commission finds that if it were to not require MGM to pay the remaining TRED costs, than the Commission would not be able to disproportionately allocate the benefits associated with load growth to MGM.

196. Accordingly, for all of these reasons, the Commission finds that it would be contrary to the public interest to permit MGM to circumvent the TRED costs following its departure from bundled retail service. Therefore, in order to ensure that approval of MGM's proposed transaction is not contrary to the public interest, MGM shall pay, as a non-bypassable charge, the costs associated with the TRED. The Commission finds that the non-bypassable charges collected for and associated with the TRED belong to the TRED Trust.⁴⁵ Therefore, the Commission finds that charges collected for the TRED shall be "remitted to the TRED Trust upon payment,"⁴⁶ as is currently done.

REPR

197. The Commission finds that the REPR consists of charges related to the legislatively-mandated renewable generations programs, each of which are codified under NRS 701B. Pursuant to NRS Chapter 701B, these programs are effective through 2025. Therefore, given that the REPR was established while MGM was a bundled retail customer, the Commission finds that a non-bypassable charge to collect MGM's share of the costs associated

⁴⁵ Ex. 20 at 8.

⁴⁶ *Id.*

with the legislatively-sponsored REPR will ensure that approval of MGM's proposed transaction is not contrary to the public interest.

198. Moreover, the Commission finds that, given the above allocation of all of the benefits associated with load growth to the 2015 NRS 704B Applicants over the impact period, and given that costs associated with the REPR extend well beyond the impact period analyzed in this Docket, the adopted NBC Methodology ensures that costs associated with REPR are allocated fairly between the departing Applicant and remaining customers.

199. The Commission finds that the non-bypassable charge associated with the REPR shall be assessed until the current REPR program is completed and shall be assessed on a per-kWh basis, as is currently done. The Commission finds that MGM shall not be responsible for any additions or extensions to the renewable generations programs under NRS 701B. The Commission finds that MGM's billing determinants shall be used in the calculation of future REPR rates until MGM is no longer obligated to pay the REPR non-by-passable charge. The Commission notes that MGM's obligation for REPR is reduced if MGM's future load is likewise reduced.

Merrill Lynch

200. The Commission finds that the Merrill Lynch regulatory asset "was established specifically to recover a disallowance of purchased power costs in Docket No. 01-11029."⁴⁷ The Commission finds that this obligation is being paid through per-kWh rates added to the BTGR for the respective rate classes and that it is estimated to be fully amortized in 2019.⁴⁸ Therefore, the Commission finds that this is a charge that could have been collected through the BTGR component of the Upfront Fee, which means that MGM must pay its share of these costs

⁴⁷ Ex. 20 at 8.

⁴⁸ *Id.*

to ensure that approval of MGM's proposed transaction is not contrary to the public interest.

201. The Commission finds that MGM can either pay the costs associated with the Merrill Lynch obligation through a non-bypassable charge until it is fully amortized, or, in the alternative, MGM may elect to pay its load ratio share of the non-residential Merrill Lynch regulatory asset balance on the date it departs bundled retail service.

202. The Commission finds that it includes the costs associated with the Merrill Lynch regulatory asset as a possible non-bypassable charge to provide MGM with an opportunity to realize reduced costs associated with the Merrill Lynch regulatory asset. Specifically, the Commission notes that MGM's obligation for Merrill Lynch is reduced if MGM's future load is likewise reduced.

Regulatory Assets/SB 123 Costs

203. The Commission finds that the proposed non-bypassable charges for the Regulatory Assets/SB 123 Costs represent MGM's load ratio share of those regulatory assets that are either currently in rates but will not be fully paid off by the end of the impact analysis period, have been created and not yet included in rates, or will be created as a result of NRS 704.7316 *et seq.* and the Commission's partial approval of Nevada Power's ERCR Plan, including, but not limited to, the decommissioning and site remediation costs associated with SB123.⁴⁹

204. The Commission finds that the Regulatory Assets/SB 123 Costs include each of the following: (1) Generation Obsolete Inventory; (2) Incremental General Rate Case Expenses Docket No. 14-05004; (3) Incremental General Rate Case Expenses Docket No. 17-XXXXXX; (4) Incremental General Rate Case Expenses Docket No. 20-XXXXXX; (5) Navajo - Decommissioning - 2019; (6) Navajo - Net Plant Value; (7) NVEnergize Project-Legacy Meters (post Docket No. 14-05004); (8) Reid Gardner 1, 2 & 3 - Net Plant Value; (9) Reid Gardner 1, 2

⁴⁹ Ex. 7 at 3 and at Attachment 1.

& 3 Decommissioning - Period 1; (10) Reid Gardner 1, 2 & 3 Decommissioning - Period 2; (11) Reid Gardner 4 - Net Plant Value; (12) Reid Gardner 4 Decommissioning - Period 1; (13) Reid Gardner 4 Decommissioning - Period 2; (14) Reid Gardner Remediation.⁵⁰

205. The Commission finds that there is a substantial level of uncertainty regarding the costs associated with these Regulatory Assets/SB 123 Costs. The Commission finds that given this uncertainty, the Commission is unable to account for these costs under the Upfront Fee portion of the impact fee. The Commission finds that any determination regarding the costs associated with these substantial obligations in this Docket could result in remaining ratepayers experiencing increased costs, which would make the Commission's approval of the proposed transaction contrary to the public interest. Therefore, to ensure the approval of the proposed transaction will not be contrary to the public interest, the Commission finds that MGM shall be assessed a non-bypassable charge which will be calculated in Nevada Power's next GRC. Given that MGM will have an opportunity to provide input on the nature, timing and extent of recovery for Regulatory Assets/SB 123 Costs, the Commission finds that a non-bypassable charge for these costs is fair and nondiscriminatory as between MGM and Nevada Power's remaining customers.

206. Additionally, to comply with NRS 704B.310(7)(b)(1), the Commission finds that the substantially disproportionate allocation of the benefits associated with load growth to MGM is balanced by requiring MGM to pay for its share of the costs associated with these unquantifiable, remaining Regulatory Assets/SB 123 Costs, which were incurred, in part, to serve MGM's load. The Commission finds that if it were to not require MGM to pay these Regulatory Assets/SB 123 Costs, the Commission would not be able to disproportionately

⁵⁰ See Ex. 31 at Exhibit NLP-REB-15 in Docket No. 15-05006. The Commission notes that the Presiding Officer took administrative notice of Docket No. 15-05006.

allocate the benefits associated with load growth to MGM.

207. The Commission finds that the SB 123 Costs are part of the Legacy Costs, which means that they also represent a legislative exception to the least-cost resource planning process. Therefore, the Commission finds that it would be contrary to the public interest to permit MGM to circumvent the SB 123 Costs upon its departure from bundled retail service because these costs were incurred to comply with legislative mandates.

iii. Portfolio Energy Credits

208. The Commission adopts Staff's methodology to allocate MGM its proportionate share of PECs. The Commission finds that Staff's methodology is discussed in paragraphs 75-82 of this Order and is specifically detailed in Exhibit 21.

2. Compliance Items

209. The Commission finds that, to ensure that approval of the proposed transaction will not be contrary to the public interest, approval of the Application is conditioned on fulfilling the terms of the following compliance items, listed as follows.

210. Pursuant to NAC 704B.370(5), and within 120 days of the date of issuance of this Order, MGM shall submit to the Commission, Staff, the BCP, and Nevada Power a copy of the completed and fully-executed contract between Applicant and Provider ("Underlying Contract").

211. Pursuant to NAC 704B.370(5), upon receipt of the Underlying Contract, Staff shall: (a) Review the underlying contract to verify that the terms of the Underlying Contract are the same as the terms that Applicant provided to Staff when Staff performed its final analysis of the proposed transaction; and (b) Staff shall inform the Commission and each party of record whether the terms are the same or whether the terms differ. If the terms differ, the Commission

will issue an order identifying the terms that differ and providing Applicant with an opportunity to resolve the differences. If MGM fails to resolve the differences within seven days, the Commission's granting of the Application shall be deemed to be rescinded.

212. Pursuant to NAC 704B.370(5), NAC 704B.360, and NRS 704B.320, the Parties and the Commission will utilize the fully-executed Underlying Contract between the Provider and MGM to evaluate the 10-percent contract to determine whether the energy that is the subject of the 10-percent contract will be purchased at the same price, terms, and conditions as the energy purchased by MGM. Such review will be conducted by BCP, Staff, and Nevada Power, and each shall make a recommendation to the Commission within 45 days of receiving the 10-percent contract regarding whether the offer of assignment of the 10-percent contract should be exercised.

213. Within 120 days of the date of issuance of this Order, the Provider will provide written confirmation to Staff, Nevada Power, and BCP that it will perform the function of Scheduling Coordinator for Applicant.

214. Pursuant to NAC 704B.370(2), and within 120 days of the date of issuance of this Order, MGM shall file with the Commission and serve on Staff and BCP completed and fully-executed transmission agreements. The transmission agreements should be comprised of a network integration transmission service agreement, a network operating agreement, a transmission reduction plan, and all other applicable documents required by the NV Energy OATT. If the Federal Energy Regulatory Commission ("FERC") materially changes the completed and fully-executed Transmission Agreements, any party may request a hearing, and the Commission may conduct a final review of the changes and may impose conditions it deems appropriate before granting Applicant's final approval to exit under NRS 704B and NAC 704B.

215. Within 120 days of the date of issuance of this Order, MGM shall execute a DOS Agreement with Nevada Power. The DOS Agreement shall include all items set forth in NAC 704B.370(1)(a). A complete and fully-executed copy of the DOS Agreement shall be filed with the Commission and served on Staff and BCP. The DOS Agreement shall include Applicant's obligation to pay its share of the charges specified therein, consistent with this Order and shall specify the load and the locations at which Nevada Power shall deliver energy pursuant to the agreement.

216. Pursuant to NRS 704B.340 MGM shall use necessary real-time metering and communications equipment. The facilities required by Nevada Power's OATT and by NRS 704B.340 and NAC 704B.380(3)(b) must be operational at Applicant's property on or before Applicant's departure date. Applicant must provide the Commission notification, filed in this Docket, when the metering and communications equipment are operational. Any metering and communications equipment and other facilities required to be installed to provide transmission service under Nevada Power's OATT will be installed at Applicant's expense.

217. Within 120 days of the date of issuance of this Order, MGM shall provide written notification to Staff, BCP, and Nevada Power stating whether or not it intends to purchase ancillary services from Nevada Power or will purchase some of the ancillary services from its Provider. If MGM does not intend to purchase ancillary services from its Provider, Staff shall recalculate the impact fee to address this changed circumstance in its impact analysis.

218. Prior to departure and pursuant to NRS 704B.360, MGM shall: (a) pay its share of the annual assessment levied pursuant to NRS 704.033; (b) pay any other tax, fee, or assessment that would be due to a local governmental entity had MGM continued to purchase energy, capacity, or ancillary services from Nevada Power; and (c) remit any tax, fee, or assessment

collected pursuant to paragraph (b) to the applicable local governmental entity.

219. Pursuant to NAC 704B.400, no later than seven calendar days after receiving notification pursuant to NAC 704B.380(1) or NAC 704B.380(2), Nevada Power will provide MGM with an estimate of MGM's load-share of any unrecovered positive balance in the deferred energy accounts of Nevada Power as of the date of commencement, and Nevada Power will provide to MGM the actual final load-share portion immediately following Nevada Power's next quarterly application to adjust the BTER and DEAA rates to clear its deferred accounts pursuant to NRS 704.110. Prior to departure, MGM will be responsible for paying or arranging payment of its load share portion, consistent with this Order, of the deferred balances pursuant to NRS 704B.310(7)(b)(2)(I). If MGM's load-share portion of Nevada Power's deferred energy accounts results in a credit, MGM shall be entitled to an offset to the impact fee in an amount equal to the credit.

220. Pursuant to NRS 704.78213 and NAC 704B.500, MGM's Provider of New Electric Resources must comply with the provisions of the renewable energy portfolio standard, including without limitation, any applicable requirements pursuant to NRS 704.7801 to 704.7828, inclusive, and NAC 704.8831 to 704.8899, inclusive, and 704.8901 to 704.8937, inclusive. Under NRS 704.7821(1)(f), for calendar years 2015 through 2019, providers of new electric resources must generate, acquire, or save electricity in an amount not less than 20 percent of the total amount of electricity sold by the provider to its retail customer(s) in Nevada per calendar year.

221. Within 120 days of the date of issuance of this Order, the Provider shall develop and file with the Commission a compliance policy (the "Compliance Policy") designed to ensure that the Provider does not directly purchase, from Nevada Power, energy or capacity for resale to

the MGM. This requirement applies to any alternative provider that provides service to MGM pursuant to NRS 704B.325. This Compliance Policy shall be implemented and adhered to during the term of the Provider's engagement with MGM.

222. After 120 days following the date of issuance of this Order, and prior to MGM's departure, Staff shall file with the Commission information identifying Applicant's compliance with all terms, conditions, and compliances items imposed herein. Thereafter, pursuant to NAC 704B.380(1), and within 20 days of the date the Commission determines that MGM has complied with all terms, conditions, and compliance items imposed pursuant to NRS 704B.370, MGM shall file in this Docket a notice stating whether MGM intends to proceed with the proposed exit and, if so, the date of commencement. MGM shall serve this notice on Nevada Power, BCP, and Staff.

223. The Commission retains jurisdiction to monitor and ensure MGM and Provider adhere to these Compliances.

B. NRS 704B.310(6)

224. NRS 704B.310(6)(a) requires that the Commission consider whether Nevada Power will be burdened by increased costs as a result of MGM's proposed exit. The Commission finds that while Nevada Power has incurred substantial costs associated with the development and diversification of its energy portfolio, these projects and programs have already been approved by the Commission pursuant to Nevada's resource planning statutes. These projects and programs undertaken to develop and diversify the energy portfolio have already been deemed to be prudent pursuant to NRS 704.110(13)⁵¹ and NRS 704.751(3).⁵² Therefore,

⁵¹ NRS 704.110(13) provides that "[a] utility facility identified in a 3-year plan submitted pursuant to NRS 704.741 and accepted by the Commission for acquisition or construction pursuant to NRS 704.751 and the regulations adopted pursuant thereto, or the retirement or elimination of a utility facility identified in an emissions reduction and capacity replacement plan submitted pursuant to NRS 704.7316 and accepted by the Commission for retirement or

the substantial costs associated with these activities, other than the ERCR costs, were found to be prudent and reasonable through the approval of applications pursuant to NRS 704.110(3), 704.110(11)(e) and 704.187.⁵³ Accordingly, the Commission finds that Nevada Power will not be burdened by any increased costs associated with MGM's potential departure.

225. NRS 704B.310(6)(a) requires the Commission to consider whether any of Nevada Power's remaining customers will pay increased costs as a result of MGM's proposed exit. The Commission finds that Nevada Power's remaining customers will not pay increased costs as a result of MGM's proposed exit only if MGM complies with all of the terms, conditions, and payments that are provided by, consistent with, and assessed in this Order.

226. NRS 704B.310(6)(b) requires that the Commission consider "[w]hether the proposed transaction will impair system reliability or the ability of the electric utility to provide electric service to its remaining customers." The Commission finds that the proposed departure of MGM's four accounts will not negatively affect the reliability of Nevada Power's transmission system nor will it negatively affect the reliability of Nevada Power's electrical service to remaining customers because "[Nevada Power] has transmission capacity available to grant MGM its full requested transmission import rights at the Mead 230 kV substation without any upgrades."⁵⁴

elimination pursuant to NRS 704.751 and the regulations adopted pursuant thereto, shall be deemed to be a prudent investment. The utility may recover all just and reasonable costs of planning and constructing, or retiring or eliminating, as applicable, such a facility.

⁵² NRS 704.751(3) provides that "all prudent and reasonable expenditures made to develop the utility's plan [pursuant to NRS 704.741], including environmental, engineering and other studies, must be recovered from the rates charged to the utility's customers."

⁵³ Pursuant to NRS 704.110(11)(e), Nevada Power is obligated to prudently manage its costs. Specifically, NRS 704.110(11)(e) provides that "[t]he Commission shall not allow the electric utility to recover any recorded costs of purchased fuel and purchased power which were the result of any practice or transaction that was unreasonable or was undertaken, managed or performed imprudently by the electric utility, and the Commission shall order the electric utility to adjust its rates if the Commission determines that any recorded costs of purchased fuel and purchased power included in any quarterly rate adjustment or the annual deferred energy accounting adjustment application were not reasonable or prudent."

⁵⁴ Ex. 32 at 20-21.

227. NRS 704B.310(6)(c) requires the Commission to consider “[w]hether the proposed transaction will add energy, capacity or ancillary services to the supply in this State.” The Commission finds that, given MGM’s exclusive use of market resources, the Commission is unable to determine whether the proposed transaction will add energy, capacity or ancillary services to the supply in this State. However, in balancing this consideration with the other considerations listed under NRS 704B.310(6), the Commission finds that, as long as MGM fully complies with the terms conditions, and payments provided by, consistent with, and assessed in this Order, approval of the proposed transaction will not be contrary to the public interest.

C. NAC 704B.410(1)

228. Pursuant to NAC 704B.410(1), in order to approve the Application, “the Commission must determine that the proposed transaction does not subject the electric utility or its remaining customers to increased costs as a result of the proposed transaction.” The Commission finds that, as long as MGM fully complies with the terms, conditions, and payments provided by, consistent with, and assessed in this Order, approval of the proposed transaction will not subject the electric utility or its remaining customers to increased costs.

D. NRS 704B.310(5)

229. NRS 704B.310(5)(a) provides that the Commission “shall approve the application of the eligible customer unless the Commission finds that the proposed transaction... will be contrary to the public interest.” The Commission finds that, as long as MGM fully complies with the terms, conditions, and payments provided by, consistent with, and assessed in this Order, the Commission finds that approval of the proposed transaction will not be contrary to the public interest.

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E. New Electric Resources

230. The Commission finds that market purchases are permitted under NRS 704B.310(6)(c). The Commission finds that the compliances ordered herein will ensure that the Provider does not directly use resources owned or controlled by NV Energy to provide services to MGM. The Commission finds that, given the current market structure, there is no reasonable way to ensure that the provider does not indirectly use resources owned or controlled by NV Energy to provide services to the MGM. The Commission agrees with Staff that once Nevada Power makes energy, capacity or ancillary services available in the market it is no longer “unavailable for purchase by an eligible customer.”

231. The Commission finds that it must order such terms, conditions, and payments as the Commission deems necessary and appropriate to ensure that the proposed transaction will not be contrary to the public interest, and which are nondiscriminatory as between MGM and the remaining customers of Nevada Power. The Commission finds that this Order assesses MGM an impact fee composed of two parts: an Upfront Fee and non-bypassable charges. The Commission finds that all of the non-bypassable charges assessed in this Order have either a definitive term or will have a definitive term following the next GRC (i.e. the Regulatory Assets/SB 123 Costs). The Commission finds that, to the extent that it could provide MGM with certainty, it did. The Commission finds that the terms, conditions, and payments assessed in this Order strike the appropriate balance between ensuring that MGM does not pay more than it should and ensuring that remaining ratepayers will not experience increased costs. Therefore, the Commission finds that the terms, conditions, and payments assessed to MGM are: clearly equitable; necessary and appropriate to ensure that the proposed transaction will not be contrary to the public interest; and nondiscriminatory as between MGM and the remaining customers of

Nevada Power.

232. Accordingly, consistent with each of the findings made in this Order, the Commission finds that the approval of the Application will not be contrary to the public interest, approves the Application, and orders the terms, conditions, and payments discussed in this Order.

THEREFORE, it is ORDERED that:

1. The Application filed by MGM Resorts International, designated as Docket No. 15-05017, is **GRANTED** as provided by and consistent with this Order.

2. The Commission retains jurisdiction to monitor and ensure that MGM Resorts International and its provider of new electric resources adhere to the compliances listed herein.

Compliances:

3. Pursuant to NAC 704B.370(5), and within 120 days of the date of issuance of this Order, MGM Resorts International shall submit to the Commission, Regulatory Operations Staff, the Attorney General's Bureau of Consumer Protection, and Nevada Power Company d/b/a NV Energy a copy of the completed and fully-executed contract between MGM Resorts International and its provider of new electric resources ("Underlying Contract").

4. Pursuant to Nevada Administrative Code 704B.370(5), upon receipt of the Underlying Contract, Regulatory Operations Staff shall: (a) review the underlying contract to verify that the terms of the Underlying Contract are the same as the terms that MGM Resorts International provided to Regulatory Operations Staff when Regulatory Operations Staff performed its final analysis of the proposed transaction; and (b) inform the Commission and each party of record whether the terms are the same or whether the terms differ. If the terms differ, the Commission will issue an order identifying the terms that differ and providing MGM Resorts

International with an opportunity to resolve the differences. If MGM Resorts International fails to resolve the differences within seven days, the Commission's granting of the Application shall be deemed to be rescinded.

5. Regulatory Operations Staff, the Attorney General's Bureau of Consumer Protection, and Nevada Power Company d/b/a NV Energy shall review the fully-executed Underlying Contract between MGM Resorts International and the provider of new electric resources to evaluate the 10-percent contract to determine whether the energy that is the subject of the 10-percent contract will be purchased at the same price, terms, and conditions as the energy purchased by Applicant. Regulatory Operations Staff, the Attorney General's Bureau of Consumer Protection, and Nevada Power Company shall make a recommendation to the Commission within 45 days of receiving the 10-percent contract as to whether the offer of assignment of the 10-percent contract should be exercised.

6. Within 120 days of the date of issuance of this Order, MGM Resorts International's provider of new electric resources will provide written confirmation to Regulatory Operations Staff, the Attorney General's Bureau of Consumer Protection, and Nevada Power Company d/b/a NV Energy that it will perform the function of Scheduling Coordinator for MGM Resorts International.

7. Within 120 days of the date of issuance of this Order, MGM Resorts International shall file with the Commission and serve on Regulatory Operations Staff and the Attorney General's Bureau of Consumer Protection completed and fully-executed transmission agreements. The transmission agreements should be comprised of a network integration transmission service agreement, a network operating agreement, a transmission reduction plan, and all other applicable documents required by Nevada Power Company d/b/a NV Energy's

Open Access Transmission Tariff. If the Federal Energy Regulatory Commission materially changes the completed and fully-executed transmission agreements, any party may request a hearing, and the Commission may conduct a final review of the changes and may impose conditions it deems appropriate before granting MGM Resorts International's final approval to exit bundled retail electric service pursuant to Chapter 704B of the Nevada Revised Statutes and Nevada Administrative Code.

8. Within 120 days of the date of issuance of this Order, MGM Resorts International shall execute a Distribution Only Service Agreement with Nevada Power Company d/b/a NV Energy. The Distribution Only Service Agreement shall include all items set forth in Nevada Administrative Code 704B.370(1)(a). A complete and fully-executed copy of the Distribution Only Service Agreement will be filed with the Commission and served on Regulatory Operations Staff and the Attorney General's Bureau of Consumer Protection. The Distribution Only Service Agreement shall include MGM Resorts International's obligation to pay its share of the charges specified therein, consistent with this Order and shall specify the load and the locations at which Nevada Power Company d/b/a NV Energy shall deliver energy pursuant to the agreement.

9. MGM Resorts International shall use necessary real-time metering and communications equipment. The facilities required by Nevada Power Company d/b/a NV Energy's Open Access Transmission Tariff and by Nevada Revised Statutes 704B.340 and Nevada Administrative Code 704B.380(3)(b) must be operational at MGM Resorts International's property on or before its departure date. MGM Resorts International must provide the Commission notification when the metering and communications equipment are operational. Any metering and communications equipment and other facilities required to be installed to provide transmission service under Nevada Power Company d/b/a NV Energy's

Open Access Transmission Tariff will be installed at MGM Resorts International's expense.

10. Within 120 days of the date of issuance of this Order, MGM Resorts International shall provide written notification to Regulatory Operations Staff, the Attorney General's Bureau of Consumer Protection, and Nevada Power Company d/b/a NV Energy stating whether or not it intends to purchase ancillary services from Nevada Power Company d/b/a NV Energy or will purchase some of the ancillary services from its provider of new electric resources. If MGM Resorts International does not intend to purchase ancillary services from Nevada Power Company d/b/a NV Energy, Regulatory Operations Staff shall recalculate the impact fee to address this changed circumstance in its impact analysis.

11. Pursuant to Nevada Revised Statutes 704B.360, prior to departure and thereafter as applicable, MGM Resorts International shall pay: (a) its share of the annual assessment levied pursuant to Nevada Revised Statutes 704.033; (b) pay any other tax, fee, or assessment that would be due to a local governmental entity had MGM Resorts International continued to purchase energy, capacity, or ancillary services from Nevada Power Company d/b/a NV Energy; and (c) remit any tax, fee, or assessment collected pursuant to paragraph (b) to the applicable local governmental entity.

12. No later than seven calendar days after receiving notification pursuant to Nevada Administrative Code 704B.380(1) or 704B.380(2), Nevada Power Company d/b/a NV Energy will provide MGM Resorts International with an estimate of its load-share of any unrecovered positive balance in the deferred energy accounts of Nevada Power Company d/b/a NV Energy as of the date of commencement, and Nevada Power Company d/b/a NV Energy will provide to MGM Resorts International the actual final load-share portion immediately following Nevada Power Company d/b/a NV Energy's next quarterly application to adjust the BTER and DEAA

rates to clear its deferred accounts pursuant to Nevada Revised Statutes 704.110. Prior to departure, MGM Resorts International will be responsible for paying or arranging payment of its load-share portion, consistent with this Order, of the deferred balances pursuant to Nevada Revised Statutes 704B.310(7)(b)(2)(I). If MGM Resorts International's load-share portion of Nevada Power Company d/b/a NV Energy's deferred energy accounts results in a credit, MGM Resorts International shall be entitled to an offset to the impact fee in an amount equal to the credit.

13. MGM Resorts International's provider of new electric resources must comply with the provisions of the renewable energy portfolio standard, including without limitation, any applicable requirements pursuant to Nevada Revised Statutes 704.7801 to 704.7828, inclusive, and Nevada Administrative Code 704.8831 to 704.8899, inclusive, and 704.8901 to 704.8937, inclusive. Under Nevada Revised Statutes 704.7821(1)(f), for calendar years 2015 through 2019, providers of new electric resources must generate, acquire, or save electricity in an amount not less than 20 percent of the total amount of electricity sold by the provider to its retail customer(s) in Nevada per calendar year.

14. Within 120 days of the date of issuance of this Order, the provider of new electric resources shall develop and file in this Docket a compliance policy designed to ensure that the provider of new electric resources does not directly purchase, from Nevada Power Company d/b/a NV Energy, energy or capacity for resale to MGM Resorts International. This requirement applies to any provider of new electric resources that provides service to MGM Resorts International pursuant to Nevada Revised Statutes 704B.325. This compliance policy shall be implemented and adhered to during the term of the provider of new electric resources' engagement with MGM Resorts International.

15. After 120 days of the date of issuance of this Order, and prior to MGM Resorts International's departure, Regulatory Operations Staff shall file in this Docket information identifying MGM Resorts International's compliance with all terms, conditions, and compliance items imposed herein. Such filing by the Regulatory Operations Staff shall be made within 30 days after MGM Resorts International has filed all of the required compliance items identified in this Order. Thereafter, pursuant to Nevada Administrative Code 704B.380(1), and within 20 days of the date on which the Commission determines that MGM Resorts International has complied with all terms, conditions, and compliance items imposed pursuant to Nevada Revised Statutes 704B.370, MGM Resorts International shall file a notice in this Docket stating whether it intends to proceed with the proposed exit and, if so, the date of commencement of the exit.

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16. The Commission may correct any errors that have occurred in the drafting or issuance of this Order without further proceedings.

By the Commission,

 dissenting
PAUL A. THOMSEN, Chairman

Alaina Burtenshaw

ALAINA BURTENSCHAW, Commissioner and
Presiding Officer

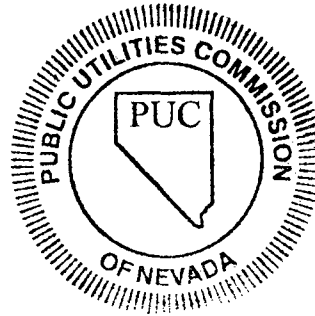
David Noble

DAVID NOBLE, Commissioner

Attest: *Trisha Osborne*
TRISHA OSBORNE,
Assistant Commission Secretary

Dated: Carson City, Nevada
1.20.16

(SEAL)



ATTACHMENT A

Nevada Power Company Renewable Energy Contract Commitments

<u>Counterparty</u>	<u>Nameplate</u>	<u>Resource Type</u>	<u>Contract Start</u>	<u>Contract End</u>	<u>NPV</u>	<u>Total Nominal \$</u>
<u>RENEWABLE ENERGY PPA'S</u>						
Ace Searchlight	17.5	Solar	12/16/2014	12/31/2034	\$67,025,636	\$130,368,049
CC Landfill	12.0	Biogas	3/1/2012	12/31/2032	\$62,119,207	\$113,101,781
Enel Salt Wells	23.6	Geothermal	9/18/2009	12/31/2029	\$71,091,481	\$117,451,279
Enel Stillwater	69.2	Geothermal/Solar	10/10/2009	12/31/2029	\$139,874,714	\$230,626,988
FRV Spectrum	30.0	Solar	9/23/2013	12/31/2038	\$101,852,297	\$224,206,840
Mountain View	20.0	Solar	1/5/2014	12/31/2039	\$77,091,912	\$174,885,609
Nevada Geothermal						
Power –Blue Mountain (Faulkner 1)	49.5	Geothermal	11/20/2009	12/31/2029	\$216,846,109	\$358,555,905
Ormat NV ORNI 15	22.5	Geothermal	8/30/2011	12/31/2031	\$51,266,561	\$90,550,538
Jersey Valley						
Ormat NV ORNI 13	25.0	Geothermal	4/17/2007	12/31/2027	\$32,754,524	\$48,958,991
Desert Peak 2						
Ormat NV ORNI 39	96.0	Geothermal	6/20/2012	12/31/2032	\$511,147,435	\$934,461,828
McGinness Hills						
Ormat NV ORNI 42	32.0	Geothermal	1/11/2012	12/31/2032	\$137,952,899	\$251,721,549
Tuscarora						
Ormat NV ORNI 9						
Galena 2	13.0	Geothermal	5/2/2007	12/31/2027	\$26,817,560	\$41,008,148
RV Apex	20.0	Solar	7/21/2012	12/31/2037	\$88,602,898	\$189,197,911
Silver State	52.0	Solar	4/25/2012	12/31/2037	\$204,533,834	\$436,748,470
Spring Valley	151.8	Wind	8/16/2012	12/31/2032	\$373,836,383	\$682,129,317
WM Renewable						
Energy – Lockwood	3.2	Biogas	4/1/2012	12/31/2032	\$21,966,469	\$40,082,039

Nevada Power Company Renewable Energy Contract Commitments (cont.)

<u>Counterparty</u>	<u>Nameplate</u>	<u>Resource Type</u>	<u>Contract Start</u>	<u>Contract End</u>	<u>NPV</u>	<u>Total Nominal \$</u>
<u>RENEWABLE PC ONLY AGREEMENTS</u>						
Solar Star NAFB	13.2	Solar	12/15/2007	12/31/2027	\$55,563,379	\$85,416,003
Sun Power (LVVWD)	3.0	Solar	4/20/2026	12/31/2026	\$8,769,483	\$13,037,619
Your Vitamins	2.3	Solar	9/1/2014	4/30/2017	\$262,512	\$276,145
SPPC dba NV Energy	2.3	Geothermal	10/30/2009	12/31/2028	\$4,415,589	\$6,941,861
<u>PRE-COMMERCIAL RENEWABLE ENERGY PPAS</u>						
Tonopah-Crescent Dunes (Solar Reserve)	110.0	Solar	08/31/15	12/31/2040	\$780,573,870	\$1,882,425,181
Sun Power	100.0	Solar	3/31/2017	3/30/2037	(approved in Docket No. 15-07003)	