

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

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

Sierra Pacific Power Company
Nevada Power Company

Docket No. EL13-14-000

Cargill Power Markets, LLC

v.

Docket No. EL13-42-000

NV Energy, Inc.

ORDER GRANTING IN PART AND DENYING IN PART PETITION FOR
DECLARATORY ORDER AND DENYING COMPLAINT

(Issued May 17, 2013)

1. On October 25, 2012, Sierra Pacific Power Company (Sierra Pacific) and Nevada Power Company (Nevada Power) (collectively, Petitioners) filed in Docket No. EL13-14-000, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure,¹ a petition for declaratory order (Petition) requesting that the Commission approve Petitioners' interim process and procedures for managing requests for transmission service requiring the capacity of the One Nevada Transmission Line Project (ON Line),² as well as confirm that Petitioners are permitted to exercise native load priority for service over their potential combined system, including the ON Line. Additionally, on January 18, 2013, pursuant to section 206 of the Federal Power Act (FPA),³ Cargill

¹ 18 C.F.R. § 385.207 (2012).

² As described more fully below, the ON Line is a transmission facility currently under construction, which is designed to, among other things, effectuate the anticipated consolidation of the Petitioners' balancing authority areas (BAAs).

³ 16 U.S.C. § 824e (2006).

Power Markets, LLC (Cargill) filed in Docket No. EL13-42-000 a complaint (Complaint) against NV Energy, Inc. (NV Energy), the Petitioners' parent company,⁴ requesting that the Commission find that NV Energy is engaging in unjust, unreasonable, and unduly discriminatory or preferential behavior, in violation of section 206 of the FPA, through the manner in which it is processing Cargill's transmission service requests for transmission service requiring capacity of the ON Line, including NV Energy's assumption when studying the Cargill transmission service requests addressed in the Complaint that it has established a native load priority right to the project's north-to-south transmission capacity.

2. As discussed more fully below, with respect to the Petition, we deny Petitioners' request that we approve their "interim process" for processing transmission service requests received for service over their combined systems, including the ON Line, and we conclude that the existing NV Energy, Inc. Operating Companies Open Access Transmission Tariff (NV Energy OATT) properly governs those transmission service requests. We also grant Petitioners' limited request that we confirm that they are permitted to invoke the native load priority for priority transmission service within the combined system. However, in granting this aspect of the Petition, we find only that Petitioners are *eligible* to invoke the native load priority over the potential, combined system, and we do not address in response to the Petition whether Petitioners have properly *exercised* their right to the native load priority or whether they have properly established the *amount* of transmission capacity that they require to serve their native load needs. We conclude that these two related issues – i.e., whether NV Energy has properly exercised its native load priority through designation of its network resources and native loads, and whether NV Energy has properly established, through load flow or other analyses, the amount of transmission capacity that it will require to serve its native load needs over the potential, combined system, including the ON Line – have not been raised by Petitioners and therefore are beyond the scope of the Petition proceeding.

3. We find that the issue, whether NV Energy has properly exercised its native load priority through designation of its network resources and native loads, is properly within the scope of the Complaint, and accordingly we address that issue separately in section III(B)(2)(a) of this order. We find that NV Energy, by jointly designating the network resources of Sierra Pacific and Nevada Power and identifying the network loads that will be served by those network resources, has properly exercised its native load priority

⁴ Because the parties to both proceedings often refer to Nevada Power and Sierra Pacific collectively as NV Energy, we do the same in this order. However, we refer to Nevada Power and Sierra Pacific as Petitioners in our discussion of the filings and arguments raised in the Petition proceeding.

under Order No. 888.⁵ We therefore deny Cargill's requests that we (1) reject NV Energy's claimed right to native load priority over the combined system, including the ON Line, and (2) direct NV Energy to re-process its transmission queue without that claimed priority.

4. Finally, with respect to the issue of whether NV Energy has properly established, through load flow or other analyses, the amount of transmission capacity that it will require to serve its native load needs, we find that this issue has not been adequately raised in either the Petition or the Complaint. Accordingly, we do not reach that issue in this order and instead will address whether NV Energy has properly established the amount of transmission capacity it claims through the native load priority in any future proceedings regarding disputed transmission service agreements.

I. Background

A. NV Energy Transmission System

5. Sierra Pacific and Nevada Power are both public utilities operating in the State of Nevada and are both wholly-owned subsidiaries of NV Energy, a public utility holding company. In 1999, the Commission approved a business combination wherein Sierra Pacific Resources, together with its operating company, Sierra Pacific, merged with Nevada Power. This transaction created an exempt holding company structure in which Sierra Pacific and Nevada Power became the operating utility subsidiaries of Sierra Pacific Resources (later, NV Energy).⁶

⁵ *E.g., Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, at 30,279 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd sub nom. Transmission Access Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *cert. denied in relevant part*, 121 S.Ct. 1185 (2001) ("In particular, the transmission provider is responsible for planning and maintaining sufficient transmission capacity to safely and reliably serve its native load. Order Nos. 888 and 889 permit the transmission provider to reserve, in its calculation of ATC, sufficient capacity to serve native load.").

⁶ Petition at 3; *see also Sierra Pacific Power Co.*, 87 FERC ¶ 61,077 (1999) (*Sierra Pacific*). This prior merger will be referred to as the 1999 merger, while the forthcoming application to create a single operating company and utility will be referred to as the 2013 merger.

6. Pursuant to the NV Energy OATT, Sierra Pacific and Nevada Power currently provide transmission service by operating two separate transmission systems and BAAs. The NV Energy OATT provides that service for Sierra Pacific's customers is stated as a Zone A price and service for Nevada Power's customers is stated as a Zone B price. In *Sierra Pacific*, the Commission approved the use of separate zonal rates because, at the time, Sierra Pacific and Nevada Power did not intend to interconnect their systems.⁷ Sierra Pacific and Nevada Power also operate two OASIS sites.⁸

B. The ON Line

7. NV Energy, in conjunction with Great Basin Transmission, LLC (Great Basin), an affiliate of LS Power Development, LLC, are developing and constructing the ON Line, a 235-mile 500 kilovolt transmission line that will provide the first direct interconnection between the Nevada Power and Sierra Pacific systems. Sierra Pacific and Nevada Power intend to consolidate their respective BAAs and merge their two utilities in coordination with the completion of the ON Line. The ON Line will run from a proposed Robinson Summit Substation near Ely, Nevada to Nevada Power's Harry Allen Substation near Las Vegas, Nevada.⁹

8. Ownership and capacity rights to the ON Line have been established through a Commission-approved Transmission Use and Capacity Exchange Agreement (TUA) for the ON Line among Great Basin and NV Energy, which allocates capacity ownership rights among the parties and gives NV Energy, through a combination of direct ownership in the ON Line and monthly payments to Great Basin, capacity rights to all of

⁷ *Sierra Pacific*, 87 FERC at 61,337.

⁸ Petition at 4.

⁹ *Id.* at 5; *see also Nevada Power Co.*, 133 FERC ¶ 61,166, at P 6 (2010) (TUA Order). The ON Line is Phase 1 of a larger joint transmission project that is being developed in two phases consisting of three segments. In Phase 2, Great Basin is considering constructing and owning the Southwestern Intertie Project North, a 275-mile 500 kV transmission line that would run from Idaho Power Company's Midpoint Substation to the Robinson Substation. In addition, also as part of Phase 2, Great Basin is considering constructing and owning the Southern Nevada Intertie Project, a 60-mile transmission line that would run from Nevada Power's existing Harry Allen Substation to the Eldorado Substation south of Las Vegas. Once completed, the larger transmission project would be a 570-mile, 500 kV alternating current transmission line that runs from southern Idaho to southern Nevada. TUA Order, 133 FERC ¶ 61,166 at P 7.

the ON Line's Phase 1 capacity.¹⁰ The TUA governs rights to, but not service over, the ON Line, with service governed by the NV Energy OATT.¹¹

9. On February 1, 2010, NV Energy initiated its integrated resource planning (IRP) proceeding before the Public Utilities Commission of Nevada (Nevada Commission) to obtain authorization to construct the ON Line. On July 30, 2010, following testimony presented by NV Energy's witness regarding the reliability, environmental, and economic benefits of the ON Line, the Nevada Commission conditionally accepted NV Energy's request to construct the ON Line through a joint project with Great Basin.¹²

II. Notice of Filings, Interventions, and Responsive Pleadings

10. Notice of the Petition was published in the *Federal Register*, 77 Fed. Reg. 66,607 (2012), with interventions and protests due on or before November 26, 2012.

11. A timely motion to intervene was filed by the Nevada Bureau of Consumer Protection. A notice of intervention and comments was filed by the Nevada Commission. Timely motions to intervene and protest were filed by Cargill and Ormat Nevada, Inc. (Ormat). On December 3, 2012, Petitioners moved for leave to file an answer and filed an answer to the protests filed by Cargill and Ormat. On December 17, 2012, Cargill filed a motion for leave to reply and reply to the answer filed by Petitioners. Cargill also filed a motion to lodge the Nevada Commission's order addressing Petitioners' most recent IRP in Nevada Commission Docket No. 12-06053.

¹⁰ Joint Filing of Transmission Use and Capacity Exchange Agreement and Request for Expedited Action, Docket No. ER10-3317-000, at § V.A.1 (TUA Transmittal). Sierra Pacific and Nevada Power jointly own 25 percent of the ON Line, with Great Basin owning the remaining 75 percent and exchanging its capacity rights, in the manner of a lease, to Sierra Pacific and Nevada Power for monthly payments. *Id.* at § I. Should Great Basin pursue Phase 2, Nevada Power and Sierra Pacific's capacity rights in the larger line would be revised pursuant to the terms of the TUA. TUA Order, 133 FERC ¶ 61,166 at P 15.

¹¹ For example, in their transmittal letter for the TUA, NV Energy and Great Basin state that Nevada Power and Sierra Pacific "will have the rights to 100 percent of the capacity on the ON Line during Phase 1, which they will offer as transmission service on its system, pursuant to the rates, terms, and conditions set forth in the NVE Tariff." TUA Transmittal at § V.A.1.

¹² Order, Nevada Commission Docket No. 10-02009, ¶ 416 (July 30, 2010).

12. Notice of the Complaint was published in the *Federal Register*, 78 Fed. Reg. 7,773 (2013), with interventions and protests due on or before February 7, 2013. On January 30, 2013, NV Energy filed a motion of extension of time until February 18, 2013 to file their answer in response to the Complaint. On February 1, 2013, Cargill filed a motion opposing NV Energy's motion. On February 5, 2013, notice was given to all parties that the period of time for filing NV Energy's answer and all motions to intervene, comment, and protest were extended, to and including February 19, 2013.

13. Timely motions to intervene and comments were filed by Ormat and Powerex Corp. (Powerex). On February 19, 2013, NV Energy filed an answer to the Complaint and a Motion for Summary Disposition or, In the Alternative, to Hold Proceedings in Abeyance. On February 22, 2013, NV Energy filed a motion to amend its answer and amended answer.¹³ On March 7, 2013, Cargill filed an answer to NV Energy's Answer. On March 22, 2013, NV Energy filed a Motion to Reject Cargill's Answer or, In the Alternative, to Respond to Cargill's Answer. On April 23, 2013, Cargill filed a Motion to Supplement the Affidavit of Riley Rhorer (Rhorer Motion).

III. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they sought intervention.

15. Rule 213(a)(2) of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers filed in both proceedings because they provided information that assisted us in our decision-making process.

16. Cargill filed a motion to lodge the Nevada Commission's most recent IRP in Nevada Commission Docket No. 12-06053, in which the Nevada Commission determined that it is reasonable for Petitioners to proceed with construction of the ON Line despite increased project costs and schedule delays. We grant Cargill's motion to lodge because it has provided information that assisted us in our decision-making process. However, we deny Cargill's Rhorer Motion, which we conclude addresses

¹³ We grant NV Energy's motion and accept its amended answer. Citations to NV Energy's answer to the Complaint are therefore citations to the amended answer and will be referred to as "NV Energy's Answer."

issues that were not put at issue by the Complaint and which are properly addressed in subsequent proceedings on Cargill's disputed transmission service agreements.

B. Substantive Matters

1. Docket No. EL13-14-000 Petition

a. Background

17. Petitioners state that they anticipated filing a merger application and other necessary filings with the Commission by June 2012, in coordination with the ON Line's then planned in-service date of December 2012. Petitioners state that they instituted temporary processes and procedures to afford potential customers the opportunity to initiate requests for transmission service originating in one of the existing BAAs and terminating in the other, i.e., for the combined system, to be used for a limited time period as they prepared their merger and other necessary filings. Subsequently, according to Petitioners, the ON Line experienced construction delays, which delayed the filing of Petitioners' application to merge the utilities and consolidate the BAAs and the filing of an OATT for the combined system. As a result, Petitioners assert that they have used the temporary procedures longer than originally anticipated or foreseen. Petitioners now expect the ON Line to enter commercial service by the end of 2013.¹⁴

b. Petitioners' Interim Process

i. Summary of Petition

18. Petitioners state that following commencement of the ON Line's construction but prior to NV Energy submitting a merger application or filing an OATT for the consolidated systems, NV Energy received informal inquiries from customers interested in obtaining transmission service following consolidation of the Sierra Pacific and Nevada Power BAAs. Petitioners state that, in order to process these transmission service requests, they developed an interim process that is intended, to the extent possible, to duplicate the *pro forma* OATT procedures and electronic process provided by OATI, NV Energy's OASIS service provider. Petitioners state that on June 6, 2011, they posted to their respective OASIS sites a public notice explaining how transmission customers could submit applications for service over their combined system.¹⁵

¹⁴ Petition at 1-2.

¹⁵ *Id.* at 9-10.

19. According to Petitioners, once NV Energy receives a completed transmission service request (i.e., a written request that provides the information otherwise required under the OATT and the required deposit), it date stamps the request and then processes requests in date stamp order. It conducts system impact and facilities studies as needed (i.e., if there is insufficient capacity to provide the requested service), and seeks to adhere to the timelines provided for such studies in the OATT. NV Energy posts on OASIS a list of completed studies.¹⁶

20. Petitioners state that NV Energy does not enter into transmission service agreements based upon those study results, as would be required by the OATT, and instead, the request remains in the transmission queue with a status of “study.” Petitioners state that in early 2013, NV Energy will determine whether it is necessary to reevaluate the earlier conducted studies.¹⁷ NV Energy asserts that such reevaluations will not, in and of itself, displace a customer’s position in the queue.¹⁸

21. Petitioners state that NV Energy later updated the posted interim process to, among other things, describe a “letter of intent” between NV Energy and potential customers. Petitioners state the letter of intent is a non-binding agreement that acknowledges the customer’s request for service and place in the queue and indicates a good faith intent to enter into a transmission service agreement after NV Energy receives Nevada Commission approval to resume construction of the ON Line¹⁹ and makes the necessary merger and OATT filings with the Commission. Petitioners seek approval to use the letters of intent as part of the interim process and request that the Commission permit NV Energy to begin filing transmission service agreements for service over the combined system at the time NV Energy files its merger application and single system OATT with the Commission.²⁰

22. As of the date the Petition was filed, NV Energy had received 27 requests for transmission service over the consolidated BAA. Petitioners state that NV Energy had completed 16 system impact studies and five facilities studies in response to those

¹⁶ *Id.* at 10-11.

¹⁷ *Id.* at 11-12.

¹⁸ *Id.* at 20.

¹⁹ Cargill later informed the Commission that in December 2012, the Nevada Commission approved NV Energy’s request to resume construction of the ON Line. Cargill Motion to Lodge at 2-3.

²⁰ Petition at 12-13.

requests. Petitioners indicate that the only requests not studied were those that were retracted or that NV Energy deemed invalid. As noted above, Petitioners seek Commission approval to reevaluate these studies before entering into transmission service agreements.²¹

23. Petitioners state that they intend to continue using the interim process until the summer of 2013 when they make their merger filing with the Commission, at which time the Petitioners would follow their proposed OATT. Petitioners state that the interim process is an appropriate temporary solution to ensure that open access principles are maintained in the absence of a single system OATT. The interim process, Petitioners contend, furnishes customers with information required to take steps toward building or purchasing generation and/or making financing agreements. Petitioners also argue that, by requiring customers to submit requests for service and a deposit in a manner similar to the *pro forma* OATT, the interim process will curtail any potential queue hoarding or queue flooding. Moreover, Petitioners assert that the only alternative to the use of the interim process would be to deny every request for service that commences in one BAA and terminates in another. In support of their position, Petitioners cite *Portland General Electric Co.*, which they assert holds that deviation from the process of a *pro forma* OATT is appropriate where the deviation is limited in scope, addresses a concrete problem, and will not have undesirable consequences.²²

24. Petitioners assert that filing a single system OATT at the time of the 2013 merger is consistent with Commission rules and precedent. Petitioners note that Orders Nos. 888 and 890 require public utilities that own, control, or operate transmission facilities for use in interstate commerce to file an OATT before providing transmission service. Petitioners state that, in *El Paso Electric Co. and Central and South West Services Inc.*, the Commission found that an “open-access comparable transmission tariff is necessary before the Commission can find that mergers or consolidations involving public utilities are in the public interest.”²³ Thus, Petitioners explain that the Order Nos. 888 and 890 requirements to file an OATT have not yet been triggered and that it is appropriate for them to file a single system OATT at the same time they file the 2013 merger application.²⁴

²¹ *Id.* at 11-12.

²² *Id.* at 15-17 (citing *Portland General Electric Co.*, 139 FERC ¶ 61,133 (2012) (*Portland General*)).

²³ *Id.* at 18 (citing *El Paso Electric Co.*, 68 FERC ¶ 61,181 (1994)).

²⁴ *Id.* at 17-20.

25. Petitioners assert that the interim process is consistent with the 1999 merger order and the TUA. For example, Petitioners note that the 1999 merger order requires them to establish a single system rate for transmission service should they interconnect their systems. Additionally, Petitioners state that in the TUA Order, the Commission acknowledged that Petitioners committed to submit any new rates, or changes to existing rates for jurisdictional service through subsequent section 205 filings. Petitioners assert that their approach honors this commitment to the Commission and respects that the Commission intended the Companies' zonal rates to apply only as long as the Companies' systems remained physically separate.²⁵

26. Furthermore, Petitioners maintain that the issue with which the Commission is faced—whether a transmission provider is required to enter into transmission service agreements for future transmission service within a yet-to-be established, future, combined BAA—is one of first impression. Accordingly, Petitioners contend that Commission precedent regarding generator lead lines is not on point. In these cases, Petitioners posit that the Commission “has interpreted its requirement that public utilities that own, operate, or control ‘limited and discrete transmission facilities (facilities that do not form an integrated transmission grid),’ must file an OATT within 60 days of receiving a third-party request for transmission service.”²⁶ Petitioners argue that the cases regarding generator lead lines are distinguishable because, in those cases, the transmission provider was either refusing to provide capacity to third parties²⁷ or attempting to govern transmission service for an unaffiliated third party over a transmission line outside the context of an OATT.²⁸ By contrast, Petitioners assert that the interim process here allows third parties to request service and preserve their place in the queue until the ON Line is completed and the BAAs are consolidated. In addition, Petitioners contend that the interim process preserves customers' rights until such time as the Petitioners are capable of providing service pursuant to an approved OATT.²⁹

27. Finally, Petitioners distinguish the Commission's recent holding in *TGP Granada*, in which the Commission addressed a dispute between a lessor and lessee regarding whose obligation it was to provide service after the expiration of the current operator's

²⁵ *Id.* at 19.

²⁶ *Id.* at 20-21 (citing *Milford Wind Corridor*, 129 FERC ¶ 61,149, at P 25 (2009); *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,132, at 61,941 (1996)).

²⁷ *Id.* at 21 (citing *Terra-Gen Dixie Valley, LLC*, 132 FERC ¶ 61,215 (2010)).

²⁸ *Id.* at 21-22 (citing *Sky River, LLC*, 134 FERC ¶ 61,064 (2011)).

²⁹ *Id.* at 20-22.

lease agreement. Petitioners state that, in *TGP Granada*, the dispute concerned an existing transmission system, while here the uncertainties stemming from the construction delays prevent Petitioners from being able to provide transmission service within the future consolidated BAA.³⁰

28. With respect to their interim procedures, Petitioners request confirmation that:

1. Petitioners appropriately communicated to their customers in a transparent manner the mechanism for submitting a transmission service request;³¹
2. Petitioners appropriately established and may continue to use their mechanism for receiving requests, collecting deposits with Applications and maintaining a transmission queue that allows customers to establish their reservation priority;
3. Petitioners performed and may continue to perform and complete in a timely fashion system impact studies and facilities studies, subject to the limitation described above, for all submitted requests for service;
4. Petitioners may reevaluate any completed system impact studies and/or facilities studies in early 2013 and prior to making the filings detailed above with the Commission;
5. Petitioners are not required to tender transmission service agreements following completion of a system impact study and/or facilities studies until they make the filings detailed above with the Commission;
6. In place of a transmission service agreement, Petitioners may require all customers wishing to take service over the combined system to sign a letter of intent reflecting both parties' intent to move forward in good faith; and
7. Petitioners may begin filing transmission service agreements for service over the combined system at the time they file their merger application and their single system OATT with the Commission.

³⁰ *Id.* at 22 (citing *TGP Granada, LLC, et. al. v. Pub. Serv. Co. of New Mexico, et al.*, 140 FERC ¶ 61,005 (2012) (*TGP Granada*)).

³¹ Petitioners also request, as request for relief number two in the Petition, that the Commission confirm that they “may invoke the native load priority for priority service within the combined system.” *Id.* at 24. Because this request is not part of their interim process, but rather concerns broader rights regarding transmission capacity rights over the potential, combined system, we separately address below it in section III(B)(1)(c).

ii. **Protests**

(a) **Ormat's Protest**

29. Ormat states that it is currently in the final stages of development of its Wild Rose geothermal project, which will be an approximately 22 MW (with possible expansion to 27 MW) geothermal generating substation owned by its subsidiary, ORNI 47 LLC. Ormat further explains that the Wild Rose power plant will interconnect to the NV Energy transmission system in Northern Nevada, at which point Ormat will take transmission service from NV Energy to a point of delivery at the intertie between NV Energy's southern Nevada system and California.³²

30. Ormat states that in October 2012 it executed a large generator interconnector agreement with NV Energy for the Wild Rose geothermal project. Ormat states that it has agreed to assume the cost of particular transmission upgrades, which NV Energy's system impact studies and facility study indicated were necessary in order for NV Energy to provide conditional firm service for the Wild Rose geothermal project. However, Ormat reports that NV Energy now refuses to execute the transmission service agreement that NV Energy tendered to Ormat for conditional firm service. According to Ormat, NV Energy also refuses to file the transmission service agreement unexecuted with the Commission. Rather, Ormat states that NV Energy has requested that Ormat execute two different versions of a letter of intent. Ormat states that NV Energy first tendered a letter of intent to Ormat in August 2012, and then months later, on November 9, 2012, NV Energy tendered a revised letter of intent to Ormat. Ormat states that on multiple occasions, it conveyed to NV Energy its belief that neither the August nor November letter of intent constituted a valid mechanism by which to request transmission service or maintain queue position. Nonetheless, Ormat indicates that NV Energy continues to refuse to execute the transmission service agreement the parties agreed upon in June 2012 or to file it unexecuted with the Commission.³³

31. Ormat states that the Petition conflicts with NV Energy's OATT, which is the filed rate; seeks to perpetuate Petitioners' OATT violations; and fails to satisfy the Commission's requirements for a waiver of the OATT. At the outset, Ormat disagrees with Petitioners' position that no OATT governs transmission service over the ON Line. Ormat states that Petitioners maintain a single OATT governing transmission service on their transmission systems and only differentiates between zones (Zone A operated by Sierra Pacific and Zone B operated by Nevada Power) for purposes of the rate charged

³² Ormat Protest at 8-9.

³³ *Id.* at 9-10.

for service in each zone.³⁴ Moreover, Ormat contends that the existing NV Energy OATT includes provisions that allow a transmission customer to move power from one portion of the NV Energy system, to and through a third-party system, and back onto the other portion of the NV Energy system.³⁵ Ormat notes as well that the NV Energy OATT obligates the Transmission Provider to expand its system, or offer redispatch or conditional firm service options, if it determines that its current system capability is insufficient to meet a customer's request for firm transmission service.³⁶ Furthermore, Ormat argues that NV Energy's existing methodology for calculating available transmission capacity, as set forth in Attachment C to their OATT, gives NV Energy the means to address Ormat's request for service between the two portions of the NV Energy system, which Ormat asserts contradicts the Petition's premise that NV Energy's existing OATT does not cover service over the potential, combined system.³⁷

32. Ormat next argues that NV Energy has violated its OATT by failing to follow the procedures regarding transmission service requests. Ormat argues that NV Energy maintain a single, joint OATT that governs the services of both of its operating companies and that NV Energy is bound to follow the procedures in the OATT when processing transmission service requests for service on its system. Specifically, Ormat notes that, after the completion of the required studies, NV Energy must offer a customer

³⁴ *Id.* at 10-12. For example, Ormat cites section 15.1 of the NV Energy OATT, which obligates the "Transmission Provider [to] provide Firm and Non-Firm Point-to-Point Transmission Service over, on or across its Transmission System to any Transmission Customer that has met the requirements of Section 16.1" Section 1.59 of the NV Energy OATT, in turn, defines "Transmission System" as the "facilities owned, controlled or operated by the Transmission Provider that are used to provide transmission service under Part II and Part III of the Tariff," and Transmission Provider, in turn, is defined as "Sierra Pacific Power Company . . . and/or Nevada Power Company . . . , as appropriate, each of which is a public utility (or its Designated Agent) that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce and provides transmission service under the Tariff."

³⁵ *Id.* at 11 (citing NV Energy OATT § 16.1(c) (providing that the "Transmission Customer will have arrangements in place for any other transmission service necessary to effect the delivery from the generating source to the Transmission Provider prior to the time service under Part II [governing Point-to-Point Transmission Service] of the Tariff commences"))).

³⁶ *Id.* at 12 (citing NV Energy OATT § 15.4).

³⁷ *Id.* at 13.

a transmission service agreement in the form set forth in Attachment A of the NV Energy OATT. NV Energy must then either file the executed transmission service agreement, if the parties are in agreement regarding the transmission service agreement's terms and conditions, or, if the parties cannot reach an agreement regarding the transmission service agreement's terms and conditions, NV Energy must file an unexecuted transmission service agreement and request that the Commission rule on the issues upon which the parties disagree.³⁸ Ormat rejects Petitioners' argument that Petitioners lack authority to sign or file transmission service agreements for transmission service over the ON Line, and asserts that the Commission's regulations will require a reorganized NV Energy to assume the tariff obligations of the predecessor companies.³⁹ Furthermore, Ormat argues that NV Energy followed its OATT procedures for processing Ormat's transmission service request and until August 2012, in negotiating a transmission service agreement. Ormat argues that NV Energy's refusal to execute or file the transmission service agreement that it proffered to Ormat violated the NV Energy OATT.⁴⁰

33. Ormat states that Petitioners have failed to satisfy the requirements for a retroactive waiver of the NV Energy OATT. As a general rule, Ormat observes, the Commission will grant waivers of rate and tariff provisions on a prospective basis only. Even so, Ormat claims that for a prospective waiver to be granted, the waiver must be limited in scope, there must be no undesirable consequences, or there must be some resultant benefit to customers.⁴¹ Ormat states that Petitioners have failed to cite any applicable Commission precedent justifying their request for a retroactive waiver in the present case.⁴²

34. Ormat alleges that the NV Energy OATT does not condition queue priority on a customer's willingness to execute a letter of intent that waives their tariff rights and that the Commission should not embrace such a position. Ormat argues that granting the relief sought in the Petition would undercut the studies that Petitioners performed on Ormat's behalf and introduce uncertainty regarding the processing of transmission service requests on the NV Energy system.⁴³ Ormat therefore requests that, in order for

³⁸ *Id.* at 14 (citing NV Energy OATT § 15.3).

³⁹ *Id.* (citing 18 C.F.R. § 35.16 (2012)).

⁴⁰ *Id.* at 15-16.

⁴¹ *Id.* at 16 (citing *TGP Granada*, 140 FERC ¶ 61,005 at P 41; *Pacific Gas & Electric Co.*, 134 FERC ¶ 61,265, at P 14 (2011)).

⁴² *Id.* at 16-17.

⁴³ *Id.* at 17.

Petitioners to comply with the NV Energy OATT, the Commission direct Petitioners to (1) sign the conditional firm transmission service agreement NV Energy negotiated with Ormat, and (2) confirm that the system impact study finding of what facilities and upgrades are needed—i.e., the additional transformer at the Harry Allen substation—are still the facilities Ormat needs to agree to fund in order for Ormat to obtain its originally-requested, fully firm transmission service.⁴⁴ Notwithstanding, Ormat argues that, if the Commission does grant the Petition and authorizes Petitioners' use of the interim process, the Commission should still confirm that, based on the studies already completed regarding Ormat's pending transmission service request, Petitioners must provide Ormat with its requested 27 MW of fully firm service upon Ormat's agreement to fund the construction of the \$46.1 million transformer at the Harry Allen substation.⁴⁵

35. As a matter of policy, Ormat contends that the Commission should not permit transmission providers to circumvent their OATT obligations whenever they plan to add new transmission lines or alter their corporate form. Ormat asserts that the Commission's open access requirements—as set forth in Order Nos. 888 and 890—are not altered when a utility merges with another utility, is acquired by a different parent corporation, or otherwise changes its corporate form.⁴⁶

(b) Cargill's Protest

36. Cargill states that, on August 17, 2011, it submitted three 100 MW requests for long-term firm point-to-point service. Cargill asserts that all three transmission requests have a point of receipt at NV Energy's new Robinson Substation and a point of delivery at NV Energy's existing Crystal Substation in southern Nevada. Cargill anticipates that all three transmission service requests will require southbound capacity over the ON Line. As a result, NV Energy conducted a series of studies related to the transmission service requests, which included a preliminary system impact study, a revised system impact study, an addendum for conditional curtailment options, and a facilities study. Cargill states that the studies revealed that, in order for Petitioners to accommodate Cargill's request for transmission service, Cargill must agree to finance \$90 million to \$350 million in transmission upgrades at different incremental "breakpoints."⁴⁷

⁴⁴ *Id.* at 18.

⁴⁵ *Id.* at 19.

⁴⁶ *Id.* at 31-32.

⁴⁷ Cargill Protest at 8-9.

37. Cargill asserts that it disagreed with the study results provided by NV Energy, and consequently, Cargill states that it requested to exercise its right to have NV Energy file an unexecuted transmission service agreement with the Commission that identified NV Energy's proposed upgrades and conditions for the Cargill transmission service requests to be granted, thereby allowing Cargill to formally protest Petitioners' proposal at the Commission. While Cargill states that NV Energy was at first amenable to this request, Cargill asserts that, in August 2012, NV Energy changed its position and argued instead that it no longer believed that it had a tariff in effect that would allow the filing of an unexecuted transmission service agreement regarding service over the ON Line.⁴⁸

38. Cargill first argues that Petitioners should have requested formal guidance from the Commission at least two years ago if they had concerns regarding the applicability of their current OATT to the ON Line Project. Cargill asserts that the Commission precedent Petitioners rely upon in justifying their interim processes is distinguishable from the present case. Particularly, Cargill states that Petitioners erroneously rely upon the Commission's recent decision in *Portland General*, which holds that a waiver is appropriate where it is limited in scope, will address a concrete problem, and will not have undesirable consequences.⁴⁹ Cargill comments that in *Portland General*, unlike in the present case, the utility had an OATT on file with the Commission governing the requests for transmission service and none of *Portland General*'s customers opposed having its individual studies placed on hold.⁵⁰ Cargill asserts that, here, Petitioners have no OATT that covers transmission service over the ON Line and that Cargill is challenging Petitioners' processing of Cargill's transmission service requests. In addition, Cargill asserts that Petitioners erroneously rely upon the Commission's determination in *TGP Granada* to bolster their argument that uncertainties in construction delays can prevent a transmission provider from being able to provide transmission service. By contrast, Cargill asserts that, in *TGP Granada*, the Commission determined that uncertainty pertaining to future availability or capacity on a transmission line does not justify the failure to comply with open access mandates.⁵¹

39. Additionally, Cargill contends that, as a general rule, the Commission will only grant a waiver of the obligations to file an OATT on a prospective basis. In *Terra-Gen Dixie Valley* and *Sky River*, Cargill argues, the Commission found that, when determining whether to grant approval of a waiver, the Commission will consider whether "the

⁴⁸ *Id.* at 14.

⁴⁹ *Id.* at 16-17 (citing *Portland General*, 139 FERC ¶ 61,133).

⁵⁰ *Id.* at 17 (citing *Portland General*, 139 FERC ¶ 61,133 at PP 1, 5, 13).

⁵¹ *Id.* at 18 (citing *TGP Granada*, 140 FERC ¶ 61,005 at PP 19-21).

relevant facility is ‘limited’ or ‘discrete,’ is part of ‘an integrated transmission grid’ and/or will be used to provide transmission service to third-parties or affiliates.”⁵² Moreover, Cargill argues that, assuming waiver of the requirement to file an OATT is justifiable, such waiver is only valid until 60 days after a party receives the first request for service over the applicable transmission facility.⁵³ Cargill goes on to point out that in *Terra-Gen Dixie Valley* and *Sky River*, the Commission denied requests for waiver from the requirement to file an OATT where over 60 days had passed since the applicable transmission service request had been submitted.⁵⁴ Cargill concludes that Petitioners have failed to meet the requirements set forth in *Terra-Gen Dixie Valley* and *Sky River*. First, Cargill argues that the waiver here is neither “limited” nor “discrete” because it involves a 235-mile, 500 kV transmission line. Second, Cargill remarks that the waiver is not appropriate because, as the ON Line will serve as an internal transmission line for the combined NV Energy system, it is part of an integrated transmission grid. Third, Cargill argues that the Commission should not approve Petitioners’ waiver request because the ON Line will serve third parties.⁵⁵

40. Lastly, Cargill sets forth four additional potential OATT compliance violations. First, Cargill states that the Petitioners made conflicting statements regarding which tariff—either the current NV Energy OATT on file with the Commission or the potential yet-to-be filed NV Energy OATT governing the combined system—would govern transmission service requests utilizing the ON Line. Second, Cargill avers that there is evidence that Petitioners may have attempted to reserve service for themselves over the ON Line a full two years, eight months before third-party customers had a comparable opportunity to request such service. Third, Cargill states that there is potential evidence that Petitioners attempted to “double commit” their network resources in violation of the *pro forma* OATT and Commission precedent. Fourth, Cargill states that there is potential evidence that Petitioners attempted to employ Network Service, rather than Point-to-Point Service, to deliver off-system resources to on-system delivery points.⁵⁶

⁵² *Id.* (citing *Terra-Gen Dixie Valley*, 132 FERC ¶ 61,215 at P 54; *Sky River*, 134 FERC ¶ 61,064 at P 13; *TGP Granada*, 140 FERC ¶ 61,005 at PP 19-20).

⁵³ *Id.* (citing *Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149 at P 25).

⁵⁴ *Id.* (citing *Terra-Gen Dixie Valley*, 132 FERC ¶ 61,215 at PP 47-48; *Sky River*, 134 FERC ¶ 61,064 at P 13).

⁵⁵ *Id.* at 18-19.

⁵⁶ *Id.* at 33-38.

iii. Answers**(a) Petitioners**

41. In their answer, Petitioners acknowledge Ormat's opposition to NV Energy's request to re-evaluate any completed system impact studies and/or facilities studies in early 2013. Petitioners clarify that, unless NV Energy becomes aware of any unanticipated or unforeseen system changes that were not present at the time NV Energy conducted the initial studies, NV Energy does not believe additional review of the earlier-completed system impact studies and facilities studies will be required.⁵⁷

42. Petitioners reemphasize their belief that no OATT exists to govern the proposed combined transmission system. Petitioners state that NV Energy anticipates filing an application to merge its utilities and establish an OATT for the resulting utility, which will govern transmission service within its single transmission system. As a result, Petitioners assert that they are not seeking a retroactive waiver of the existing NV Energy OATT, but instead, they are merely seeking approval of the interim processes before the new OATT is filed. Petitioners explain that the interim processes mirror, to the extent possible, those procedures set forth in the *pro forma* OATT and that the 1999 merger order confirms that no OATT exists to govern the proposed combined system. Petitioners explain that the Commission's statement that the use of zonal rates for their respective systems was acceptable because they did not intend to interconnect their systems also means that Petitioners may not rely on the existing NV Energy OATT to provide transmission service within an interconnected system without first seeking additional approval from the Commission. Petitioners argue that the lack of a single system rate demonstrates that the current NV Energy OATT was never intended to govern service within an interconnected service territory.⁵⁸

(b) Cargill

43. Cargill argues that the Commission's requirement in the 1999 merger proceeding that NV Energy have a single transmission rate for a combined NV Energy system does not justify Petitioners' failure to process transmission service requests for transmission service over the ON Line pursuant to an OATT. Moreover, Cargill asserts that Petitioners have provided no reasonable explanation or Commission precedent that dictates that the obligation to have a single system-wide rate supersedes the obligation to process transmission service requests pursuant to the NV Energy OATT. Cargill remarks that, instead of employing the interim process, Petitioners should have requested that the

⁵⁷ Petitioners Answer at 7, 12.

⁵⁸ *Id.* at 11-15.

ON Line be included in either the Nevada Power or Sierra Power BAA on an interim basis, subject to the applicable zonal rate under the current NV Energy OATT, and requested temporary waiver of the obligation to have a single system rate until the 2013 merger is approved and the BAAs are combined.⁵⁹

44. Cargill asserts that, in their answer, Petitioners made at least two misstatements of fact concerning their interim procedures. First, Cargill states that Petitioners are misleading regarding how long they have been applying the interim procedures to transmission service requests over the ON Line. Specifically, Cargill notes that NV Energy's June 9, 2011 OASIS posting, which Petitioners assert describes the interim procedures, in fact makes no reference to the letters of intent process, the manner in which final studies will be treated, or any other aspect of the interim procedures. Instead, Cargill asserts that the June 9, 2011 OASIS posting specifically requests information according to the NV Energy OATT and suggests that the terms of the NV Energy OATT will apply to service over the ON Line. Second, Cargill contends that the TUA governs only ownership rights to the ON Line, not rates, terms, or conditions for service over the ON Line. Cargill avers that the applicable OATT governs the rates, terms and conditions.⁶⁰

45. Cargill claims that Petitioners' answer ignores numerous arguments Cargill made in its protest regarding Petitioners' processing of transmission service requests for transmission capacity over the ON Line and Petitioners' potential violations of open access obligations. First, Cargill states that Petitioners have not sufficiently articulated why NV Energy could not file an unexecuted transmission service agreement in August 2012. Cargill states that, until that time, NV Energy and Cargill had proceeded as if the NV Energy OATT would apply to service over the ON Line. Cargill contends that Petitioners have never proffered an explanation for their sudden change in position. Second, Cargill avers that Petitioners have not explained why they made inconsistent statements regarding which OATT—either the currently existing NV Energy OATT or the yet-to-be filed NV Energy OATT for the combined system—governs Petitioners' designation of their purported network resources and processing of requests for transmission service over the ON Line. Third, Cargill states that Petitioners' answer does not explain how Petitioners will process the transmission service requests if the ON Line is placed in service before the merger is approved by the Commission and the Nevada Commission.⁶¹

⁵⁹ Cargill Answer at 8-10.

⁶⁰ *Id.* at 13-14.

⁶¹ *Id.* at 15-17.

iv. **Commission Determination**

46. We find that the existing NV Energy OATT governs the terms and conditions for transmission service over the ON Line in NV Energy's anticipated, consolidated BAA. Therefore, we reject Petitioners' request to use the interim process to manage customers' requests for transmission service over the ON Line to the extent that the interim process is inconsistent with the procedures set forth in the existing NV Energy OATT. We have explained before that transmission providers must comply with the Commission's open access policies to provide for open, transparent, and non-discriminatory access to their transmission systems.⁶² As a result, we agree with Ormat that Petitioners should have followed the existing NV Energy OATT's procedures regarding transmission service requests when processing requests for transmission service over the combined system. In particular, we find that Petitioners' refusal to timely execute, or file unexecuted with the Commission, Ormat and Cargill's respective transmission service agreements was inconsistent with Petitioners' obligations under the NV Energy OATT. As discussed further below, we direct Petitioners to execute or file those agreements unexecuted by the earlier of the date on which NV Energy files its 2013 merger application with the Commission, or 30 days following the issuance of this order, if the customers so request.

47. In the 1999 merger order, the Commission accepted NV Energy's joint open access transmission tariff, which governs transmission service over both the Sierra Pacific and Nevada Power systems. In that order, the Commission noted that the NV Energy OATT is based on the Order No. 888 *pro forma* tariff, with the exception that it has been modified to provide for a zonal rate structure with service for Sierra Pacific's customers labeled as Zone A and service for Nevada Power's customers labeled as Zone B.⁶³ Petitioners argue that this zonal rate structure, which does not include a single system rate, establishes that the existing NV Energy OATT does not govern requests for transmission service over the combined system that would result from a merger of Sierra Pacific and Nevada Power. We disagree as Petitioners confuse having a single system *rate*, which Petitioners currently lack, with having a single system *OATT*, which Petitioners currently have. Indeed, the 1999 merger order recognized as much, stating that:

⁶² See, e.g., Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,635-636 (requiring that all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce file open access non-discriminatory transmission tariffs that contain minimum terms and conditions of non-discriminatory service, and take transmission service for their own new wholesale sales and purchases of electric energy under those open access tariffs).

⁶³ *Sierra Pacific*, 87 FERC at 61,335.

Service on one system would be priced based on the applicable rates for that system. *Service across both systems would be priced at a single rate based on the location of the delivery point.*⁶⁴

Thus, as the Commission recognized in the 1999 merger order, and Ormat correctly notes in its protest,⁶⁵ the existing NV Energy OATT does contemplate governing service across both systems, notwithstanding the fact that no single system rate exists. Furthermore, Petitioners provide no explanation, beyond pointing to the inability of their current OASIS sites to electronically receive such requests, as to why the existing *terms and conditions* governing transmission service requests in the NV Energy OATT are inadequate to handle the requests they have received, nor any indication even of how those terms and conditions might change in its “single system OATT.” Indeed, Petitioners so much as concede that the existing procedures *can* be used, in that they explain at length how NV Energy adhered to those procedures related to timing and studies, and instead simply argue why they *should not* be used, because no single system rate exists for the service. We are particularly troubled by Petitioners’ refusal to either execute, or file unexecuted with the Commission, transmission service agreements based on the studies it performed for Ormat and Cargill, as required by the NV Energy OATT and requested by both customers. That both Cargill and Ormat explain, without rebuttal from Petitioners, that NV Energy negotiated transmission service agreements with both customers and indicated a willingness to file those agreements with the Commission prior to filing its “single system OATT” further undercuts the credibility of Petitioners’ position. Accordingly, if the affected transmission customer so requests, we direct Petitioners to execute or file unexecuted the applicable transmission service agreements by the earlier of the date on which NV Energy files its 2013 merger application with the Commission, or 30 days following the issuance of this order.

48. Although we recognize that NV Energy will need to make subsequent filings to establish a single system rate and might need to make certain revisions to its OATT, we are not persuaded that, until those filings are made, requests for transmission service over the ON Line should not be processed under the existing terms and conditions of NV Energy’s OATT. The corporate structure of the owner of a transmission line does not affect the obligation to provide open access transmission service.⁶⁶ As such, NV Energy

⁶⁴ *Id.* at 61,336 (emphasis added).

⁶⁵ *E.g.*, Ormat Protest at 10-13 (noting that the NV Energy OATT defines “Transmission Provider” as “Sierra Pacific Power Company . . . and/or Nevada Power . . . as appropriate” and that “Transmission System” is defined as the “facilities owned, controlled or operated by the Transmission Provider that are used to provide transmission service under Part II and Part III of the Tariff” (emphasis added)); *see also supra* P 31.

⁶⁶ *See, e.g., TGP Granada, LLC*, 140 FERC ¶ 61,005 at PP 19-20.

(whether through Nevada Power, Sierra Pacific, or a combination of the two) has an obligation to process requests for transmission service pursuant to its OATT, consistent with the assurances it made to the Commission when the Commission accepted the TUA in 2010.⁶⁷ For these reasons, we will deny Petitioners' requested relief for a declaratory order confirming and approving the interim process for managing transmission service requests for the consolidated BAA. Specifically, we deny the numbers (3), (4), (5), (6), (7), and (8) of Petitioners' enumerated requests for relief set forth in the Petition.⁶⁸

49. With regard to request number (1)—whether NV Energy appropriately communicated to its customers in a transparent manner the mechanism for submitting a transmission service request—we find that with its June 9, 2011 OASIS posting, NV Energy transparently conveyed to customers that transmission service requests must be submitted in written form and must contain the information that is required under the NV Energy OATT. We note that, at that time, NV Energy was not capable of processing such requests online via OASIS, and we find that NV Energy's posting was a reasonable way to communicate to interested customers the procedures for manually submitting transmission service requests.

c. Petitioners' Eligibility to Invoke Native Load Priority

i. Summary of Petition

50. Petitioners explain that, since the 1999 merger, each of the NV Energy operating companies has separately designated its own designated network resources, and NV Energy has separately dispatched each company's designated network resources to meet each Company's respective native load and reserve obligations. Petitioners state that, once in service, the ON Line will connect NV Energy's northern and southern service areas and thereby enable NV Energy to use a single-system economic dispatch to more

⁶⁷ *E.g.*, TUA Transmittal § V.A.1 (committing to offer transmission service over the ON Line pursuant to the NV Energy OATT). We similarly reject Petitioners' argument that they could have refused to accept the transmission service requests filed by Ormat, Cargill, and other parties seeking service over the ON Line. Petitioners provide no support for the proposition that a transmission provider may refuse to receive transmission service requests for service over a transmission line that is under construction, simply because the transmission provider concludes that no OATT governs service over the line.

⁶⁸ These requests are enumerated as numbers (2) through (7) in section III(B)(1)(b)(1) above. We address request Petition request number (2) (i.e., Petitioners' ability to invoke native load priority for priority service within the combined system) below in section III(B)(1)(c).

efficiently serve native load customers. Petitioners state that most or all of the ON Line capacity, at least for deliveries from north-to-south, will be reserved to serve NV Energy's native load customers, and that, following the merger, the Companies intend for all of their designated network resources to be designated for the merged company. Petitioners state that a list of designated network resources for the combined system, which were previously designated for one system or the other, and a list of NV Energy's native loads, can be found on the public portal of the NV Energy OASIS site.⁶⁹

51. Petitioners state that NV Energy's reservation of capacity to serve native load is consistent with Commission policy. They assert that Order No. 888 established that the amount of capacity available for third-party uses is calculated after accounting for current and future native load uses, and that in Order No. 888-A the Commission clarified that the "ability to reserve capacity to meet the reliability needs of a transmission provider's native load applies equally to present transmission and transmission that is built in the future."⁷⁰ Petitioners assert that the Commission has also addressed the native load priority in the merger context. According to Petitioners, in *Ohio Edison*, the Commission stated that because "[u]tilities are permitted to reserve internal capability to serve their native load before other suppliers have an opportunity to use it," all internal transmission capability was appropriately allocated to the merger applicants.⁷¹ Petitioners assert that the Commission affirmed its holding on rehearing.⁷²

52. Petitioners also state that they explained in the TUA proceeding that among the many benefits of constructing the ON Line are that it would facilitate the interconnection of NV Energy's operating companies' systems and therefore permit Nevada Power to access more affordable renewable resources located in northern Nevada and NV Energy to jointly dispatch the combined system. Petitioners assert that these benefits will be realized because they will be able to jointly dispatch their designated network resources.⁷³ Petitioners assert that the Commission, in accepting the TUA, expressly recognized the anticipated benefits of the ON Line, stating that the project would:

⁶⁹ Petition at 7.

⁷⁰ *Id.* at 7-8 (quoting Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,181).

⁷¹ *Id.* at 8 (quoting *Ohio Edison Co.*, 80 FERC ¶ 61,039, at 61,103 (1997) (*Ohio Edison*)). The *Ohio Edison* cases cited and discussed herein concerned the merger that created FirstEnergy Corp. (FirstEnergy).

⁷² *Id.* (quoting *Ohio Edison Co.*, 85 FERC ¶ 61,203, at 61,848-849 (1998)).

⁷³ *Id.* at 8-9.

(1) facilitate costs savings as the result of joint dispatch of generation resources by combining two separate balancing authority areas; (2) increase operational and reliability benefits by pairing conventional generation resources to support renewable resources; (3) provide renewable generation projects in northern and eastern Nevada, and Idaho a means to access load located in southern Nevada; and (4) help the Parties satisfy Nevada's Renewable Portfolio Standards.⁷⁴

53. Petitioners conclude that the Commission's approval of the TUA is consistent with its precedent as expressed in *Ohio Edison* and Order No. 888, and that the TUA established the foundation, premises, and basis for NV Energy to proceed with development of the ON Line.⁷⁵ They request that the Commission confirm that they may invoke the native load priority for priority service within the combined system.⁷⁶

ii. Protests/Comments

(a) Cargill's Protest

54. Cargill argues that NV Energy's reliance on *Ohio Edison* is meritless because the case is factually and legally distinguishable. Cargill asserts that *Ohio Edison* speaks to the assumptions that should be employed by the Commission to model the market power of the combined utilities as part of the applicants' market concentration analysis.⁷⁷

55. Cargill also argues that NV Energy used improper assumptions, particularly related to NV Energy's right to native load priority, when studying transmission service requests seeking service over the ON Line. Specifically, Cargill argues that (1) the network resources NV Energy purportedly designated through a January 25, 2011 letter and accompanying attachments (collectively, the Torrey Letter) from NV Energy's merchant function to its transmission function⁷⁸ are not valid network resources for

⁷⁴ *Id.* at 9 (quoting TUA Order, 133 FERC ¶ 61,666 at P 29 (footnotes omitted)).

⁷⁵ *Id.*

⁷⁶ *Id.* at 24.

⁷⁷ Cargill Protest at 22-23.

⁷⁸ Petitioners explain that, through the Torrey Letter, NV Energy properly requested to designate the network resources of the separate Sierra Pacific and Nevada Power systems as collective designated network resources of both Sierra Pacific and

(continued...)

service over the combined system,⁷⁹ and (2) that NV Energy has improperly invoked native load growth priority over the ON Line.⁸⁰

(b) **Ormat's Protest**

56. Ormat objects to NV Energy's claim that it is entitled to all of the ON Line north-to-south capacity because NV Energy has reserved all of the capacity for its designated network resources and to serve its native load. In support of its objection, Ormat cites two previous instances where the Commission rejected NV Energy's proposed transmission service agreement language limiting transmission customers' rollover rights.⁸¹ Additionally, Ormat argues that the Commission permits a utility to reserve capacity for native load growth, but such reservations must be supported by substantial evidence. Ormat claims that NV Energy has not provided sufficient evidence to support its claim to full capacity of the ON Line.⁸²

57. Ormat argues that NV Energy's reliance on the *Ohio Edison* merger case as support for its reservation of capacity on the ON Line for its native load is misplaced. Ormat asserts that the Commission specifically found that, in *Ohio Edison*, the companies' assumptions employed in calculating available transmission capacity for their market power analysis were inappropriate, and that, after correcting the assumptions, the Commission found the merger raised market power concerns that required mitigation. Ormat concludes that under the *Ohio Edison* precedent NV Energy relies upon, the Commission cannot accede to NV Energy's request for priority transmission access

Nevada Power (or the combined utility in the resulting merged company). They further state that NV Energy's merchant function properly designated the network resources for the combined system by submitting the information required in section 29.2 of the *pro forma* OATT to NV Energy's transmission function. Specifically, Petitioners state that the two attachments included in the Torrey Letter were (1) an application required under section 29.2 of the *pro forma* OATT, which includes information considered market-sensitive, and (2) the public version of the application (*i.e.*, a list of the combined designated network resources), which Petitioners provided to the Commission as part of the Petition. Petitioners Answer at 23-24.

⁷⁹ Cargill Protest at 20-24.

⁸⁰ *Id.* at 24-33.

⁸¹ Ormat Protest at 19-21 (citing *Nevada Power Co.*, 97 FERC ¶ 61,324 (2001); *Nevada Power Co.*, 112 FERC ¶ 61,072 (2005)).

⁸² *Id.* at 21-23.

without, at a minimum, evaluating the full market power implications of NV Energy's proposal.⁸³

58. Ormat asserts that the TUA allocates electrical capacity rights between NV Energy and Great Basin according to their relative investments in the ON Line project and that NV Energy committed to offer ON Line capacity under its OATT when it filed the TUA with the Commission. Ormat adds that, in accepting the TUA for filing, the Commission did not find that the TUA granted NV Energy all of the capacity of the ON Line only for use in serving its retail native load and that the order did not address NV Energy's reservation priority for native load over its planned consolidated BAA.⁸⁴

(c) Nevada Commission's Comments

59. The Nevada Commission states that it takes no position regarding the Petition and, instead, comments only to provide information related to pending Nevada Commission dockets and past Nevada Commission decisions. The Nevada Commission takes issue with Petitioners' statement in their Petition that "[c]ombining the two BAAs through construction of ON Line was designed, presented, and justified to the [Nevada Commission] . . . through the submittal of a [TUA]."⁸⁵ The Nevada Commission asserts that it approved the TUA, but such approval was not conditioned upon consolidation of the BAAs. The Nevada Commission notes that, in anticipation of the balancing authorities remaining separate, it opened an investigation to develop inter-exchange accounting protocols and payment transfer methodologies in order to have procedures developed and approved by the Nevada Commission by the previously anticipated in-service date for the ON Line. Furthermore, the Nevada Commission reports that Nevada Power and Sierra Pacific expressed an intent to merge the utilities to avoid the need to implement complex contractual and tariff arrangements, but that, as of the date the Nevada Commission filed its comments, the investigation is ongoing.⁸⁶

60. The Nevada Commission states that it has neither considered a proposal to merge Nevada Power and Sierra Pacific's operating companies and retail service territories, nor

⁸³ *Id.* at 24-26.

⁸⁴ *Id.* at 26-28.

⁸⁵ Nevada Commission Comments at 3 (quoting Petition at 4).

⁸⁶ *Id.* at 3-4.

has it rendered a determination on the issue. The Nevada Commission notes, however, that such a merger is not a forgone conclusion.⁸⁷

iii. Answers

(a) Petitioners

61. In their answer, Petitioners assert that the mitigation measures imposed by the Commission in *Ohio Edison* do not undermine the Commission's point that utilities may serve their native load customers prior to offering transmission to the marketplace. Petitioners argue that NV Energy's market power concentration is not an issue in its Petition and any comments regarding that issue should be reserved for the proceeding evaluating the utilities' merger application. Petitioners also argue that their native load priority claim can be justified based on current native load needs, and that as a result they do not need to demonstrate native load growth to establish that priority. Petitioners acknowledge that the ON Line will provide environmental and economic benefits for their native load, but also assert that Cargill fails to acknowledge that there are reliability and operational benefits to the ON Line that further justify the native load priority claim. In support of their native load priority claim, Petitioners attached their network loads filed with, and approved by, the Nevada Commission.⁸⁸

62. Petitioners reiterate that they are not seeking for the Commission to determine that NV Energy properly designated network resources for the future, combined system. However, Petitioners nevertheless argue that they did properly designate network resources, citing the Torrey Letter as the mechanism by which NV Energy requested to designate network resources for the combined system.⁸⁹

(b) Cargill

63. Cargill rejects Petitioners' reliance on *Ohio Edison*, arguing that the statements in that case were made in the context of a merger application and were part of the Commission's market power examination, neither of which is present in the current proceeding.⁹⁰

⁸⁷ *Id.* at 5.

⁸⁸ Petitioners Answer at 17-21.

⁸⁹ *Id.* at 21-22.

⁹⁰ Cargill Reply at 7-8.

64. Cargill, responding to Petitioners' assertion that they properly designated network resources for service over the combined system, alleges that Petitioners have failed to establish a right to native load priority because (1) they has not established when NV Energy posted the list of designated network resources for the combined system, (2) they failed to timely designate the corresponding loads for which it sought to designate network resources, and (3) the network resources do not meet the Commission's eligibility requirements.⁹¹

iv. Commission Determination

65. As discussed below, we grant Petitioners' request that we confirm that the Petitioners may invoke native load priority for priority service within their combined system.

66. First, as we understand the Petition, the specific relief sought by Petitioners is confirmation, for the combined BAA that would result from their proposed 2013 merger, that they "may invoke the native load priority for priority service within the combined system."⁹² As NV Energy explains in its answer to the protests, it "did not ask the Commission to approve the manner in which it designated its network resources. . . ."⁹³ Accordingly, we understand Petitioners' request simply to seek confirmation that they, as utilities that intend to merge their respective transmission systems, are *eligible* to invoke the native load priority over the combined system that would result from successful completion of their merger.⁹⁴

67. We agree with Petitioners that merging companies may invoke the native load priority over their combined, post-merger transmission system, and therefore grant Petitioners' request. Order No. 888 established the native load priority to ensure that utilities are able to reserve sufficient transmission capacity to reliably serve the needs of their native load.⁹⁵ Transmission capacity reserved pursuant to a proper exercise of the

⁹¹ *Id.* at 3-7.

⁹² Petition at 24.

⁹³ Petitioners Answer at 16.

⁹⁴ We do not address in this order whether Petitioners may be eligible to seek native load priority over the ON Line even if they do not combine their respective systems.

⁹⁵ *E.g.*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,279 ("In particular, the transmission provider is responsible for planning and maintaining sufficient transmission capacity to safely and reliably serve its native load. Order Nos. 888 and 889 (continued...)

native load priority is accounted for as an Existing Transmission Commitment when the transmission provider performs its Available Transmission Capacity calculations, and thus is not available for third party use.⁹⁶ Consistent with this, utilities that decide to merge their systems are able to claim native load priority to serve their native load needs for their future combined system, just as they would be able to over their individual systems.

68. As Petitioners correctly note, this principle is reflected in Commission merger precedent, in which the Commission has recognized that “[u]tilities are permitted to reserve internal capability to serve their native load before other suppliers have an opportunity to use it. . . .”⁹⁷ While Cargill and Ormat are correct that, in *Ohio Edison*, the Commission recognized utilities’ right to reserve capacity to serve native load needs while addressing assumptions used in the market power analysis conducted for the FirstEnergy merger, that fact does not change the policy that underlies the assumption, i.e., that utilities have a right to reserve transmission capacity for native load needs before honoring third parties’ requests. Indeed, the assumption used in the market power analysis would be unreasonable if it was not grounded in Commission policy. Similarly, that the Commission also imposed merger-related conditions upon FirstEnergy’s ability to exercise its native load priority over its combined system does not change the fact that FirstEnergy, consistent with Commission policy, had an initial right to transmission capacity based upon the native load priority. We therefore disagree with Ormat and Cargill’s position that *Ohio Edison* undermines, rather than supports, Petitioners’ request. Furthermore, Ormat and Cargill have not cited any precedent holding that merging companies may not invoke native load priority over their combined systems or otherwise

permit the transmission provider to reserve, in its calculation of [Available Transfer Capacity], sufficient capacity to serve native load.”).

⁹⁶ *E.g.*, NV Energy OATT, Attachment C §§ 1.2.6 (defining Existing Transmission Commitments to include “firm capacity set aside to serve peak Native Load forecast commitments”), 1.2 (defining Available Transfer Capability (ATC) as the “amount of remaining MW of transfer capability on the Transmission Provider’s ATC Paths over and above the committed uses,” including Existing Transmission Commitments).

⁹⁷ *Ohio Edison*, 80 FERC at 61,103; *see also id.* at 61,107 (explaining that, for calculating post-merger market concentration, it was reasonable to allocate all of the capability of a transmission interface to the merged company “because the merged company can remove that internal capability from the ATC it posts on its OASIS if it asserts that the capability is needed to serve its native load”).

provided compelling arguments that native load priority should be denied to merging companies.⁹⁸

69. Accordingly, we grant Petitioners' request that we confirm that they may invoke native load priority over their combined system. However, granting this request establishes only that Petitioners are *eligible* to claim the native load priority, and does not establish that they have properly effectuated that right. We reject, as beyond the scope of the Petition proceeding, requests by Cargill and Ormat in their respective protests that we find that Petitioners have failed to properly invoke their right to native load priority. Instead, as discussed further below in section III(B)(2)(a), we find that those arguments are properly addressed in response to the Complaint.

2. Docket No. EL13-42-000 Complaint

a. NV Energy's Exercise of Native Load Priority

i. Summary of Complaint

70. Cargill states that its Complaint primarily concerns three 100 MW requests for long-term firm point-to-point service that it submitted to NV Energy on August 17, 2011. Cargill notes that it has since submitted, on November 29, 2012, two 300 MW requests for long-term point-to-point transmission service, the first of which was rejected by NV Energy. Cargill states that each transmission service request is expected to require north-to-south capacity on the ON Line. Notwithstanding that it currently has pending requests for 600 MW of transmission service over the ON Line, Cargill states that its current objective is to have approximately 300 MW of service over the ON Line.⁹⁹

⁹⁸ We find that Ormat's argument that the TUA does not establish Petitioners' native load priority right to the full capacity of the ON Line is beyond the scope of the Petition proceeding, as it relates not to Petitioners' *eligibility* to invoke the priority, but rather the *scope* of the priority once it has been properly invoked. We similarly find beyond the scope of the Petition proceeding protesters' arguments that Petitioners have failed to demonstrate native load growth and therefore cannot claim the full capacity of the ON Line. Those arguments concern whether Petitioners have properly exercised their right to native load priority, not whether Petitioners are eligible for the priority, and therefore are addressed in section III(B)(2)(a) of this order, regarding the Complaint.

⁹⁹ Complaint at 14-15, 53-54. Cargill explains that its two 300 MW requests, one of which it submitted under NV Energy's existing OATT and the second of which was submitted under NV Energy's interim process, were submitted as a precautionary measure in the event that the Commission took action concerning the Petition that negatively impacted Cargill's three pending 100 MW requests. *Id.* at 53-54.

71. Cargill explains that it began communicating with NV Energy regarding submission of transmission service requests in July 2011, at which time it inquired about NV Energy's OASIS postings concerning NV Energy's planned use of the ON Line to serve a combined system. Cargill states that it contacted the Commission's Enforcement Hotline because NV Energy's OASIS postings did not accurately reflect NV Energy's proposed use of network resources to serve a potential, combined NV Energy system. Following a series of discussions among Cargill, NV Energy, and Commission enforcement staff, on September 1, 2011 NV Energy revised its OASIS postings to reflect its list of designated network resources for service over its potential, combined system.¹⁰⁰

72. Cargill states that, following its submission of its transmission service requests on August 17, 2011, NV Energy conducted a series of studies regarding those requests, including an initial system impact study, a revised system impact study, an addendum for conditional curtailment options, and a facilities study. Cargill states that both system impact studies assumed that existing Nevada Power and Sierra Pacific network resources will serve as system-wide network resources in the future when (or if) there is a NV Energy combined system. Furthermore, Cargill notes that the addendum and facilities study state that "NV Energy plans to use all of its current capacity entitlements [on the ON Line] for its network and native load obligations."¹⁰¹ Cargill asserts that, based on conversations with Petitioners, the studies conditioned granting Cargill's transmission service requests on (1) the completion of the ON Line; (2) the merger of the Nevada Power BAA and Sierra Pacific BAA; (3) the merger of the Nevada Power and Sierra Pacific corporate entities; and (4) the completion of Phase 2 of the ON Line (even if Cargill finances the upgrades that Petitioners' studies have identified).¹⁰²

73. Cargill reports that from January 2012 through the summer of 2012, it engaged in a series of discussions with NV Energy regarding the studies. Cargill maintains that, throughout these discussions, it continuously raised questions and expressed concern regarding, among other things, NV Energy's assumption that it was entitled to claim a priority to transmission capacity over the ON Line. Cargill asserts that it also questioned NV Energy's application of Order No. 888's native load growth priority to transmission capacity over the ON Line. Cargill states that, based on its conversations with NV Energy, including an April 13, 2012 conference call, it understood NV Energy's position

¹⁰⁰ *Id.* at 15-16.

¹⁰¹ *Id.* at 17-18 (quoting Ex. B, Attach. 4, Addendum for Conditional Curtailment Options at 7; Ex. B, Attach. 5, Facilities Study at 9).

¹⁰² *Id.* at 18.

to be that Nevada Power and Sierra Pacific's current network resources would automatically "rollover" and become system-wide network resources for the combined NV Energy system. Therefore, according to Cargill, NV Energy's position was that the past designation of Nevada Power's and Sierra Pacific's existing network resources was sufficient for purposes of designating these resources as system-wide network resources for a potential, combined, NV Energy BAA. Cargill states that, on April 17, 2012, it sent a letter to NV Energy expressing its disagreement with NV Energy's position.¹⁰³

74. Cargill states that, on May 3, 2012, NV Energy responded to Cargill's April 17, 2012 letter. Rather than arguing that the current Nevada Power and Sierra Pacific network resources would roll over to become network resources of a potential, combined NV Energy system, Cargill asserts that NV Energy reversed course and argued instead that it had "properly submitted information to designate its network resources following consolidation of [the Sierra Pacific] and [Nevada Power] Balancing Authority Areas."¹⁰⁴ Cargill avers that, as evidence of this designation, NV Energy offered a letter, dated January 25, 2011, from Sheryl Torrey of NV Energy's merchant function to Mario Villar of NV Energy's transmission function,¹⁰⁵ which purportedly designates Nevada Power's and Sierra Pacific's existing network resources for the potential, combined NV Energy system. The Torrey Letter states:

By this letter, each of [Sierra Pacific] and [Nevada Power] wish to formally document their intentions to have designated combined network resources for the proposed combined NV Energy balancing authority area, effective upon the in-service date of the [ON Line] and the consolidation of the existing [Nevada Power] and [Sierra Pacific] balancing authority areas.

.....

It is our understanding that, consistent with FERC policy, these existing resources automatically would become [designated network resources] of the [potential, combined NV Energy system] upon the consolidation of the balancing authority areas because these

¹⁰³ *Id* at 18-19.

¹⁰⁴ *Id.* at 20 (quoting Ex. B, Attach. 11, NV Energy May 3 Letter at 1).

¹⁰⁵ This January 25, 2011 letter and its accompanying attachments are the same documents referred to above as the "Torrey Letter" in our discussion of the Petition, and described in more detail in footnote 78. We will continue to refer to both the letter and its attachments as the "Torrey Letter" in our discussion of the Complaint.

resources were planned and continuously have been operated as [designated network resources] to serve the native load of each utility. However, to the extent that this request might be deemed to require a formal designation of network resources pursuant to sections 29.2 and 30.2 of the [NV Energy OATT], please consider this letter and attached spreadsheet (appropriately attested) to constitute such formal application.¹⁰⁶

According to Cargill, the Torrey Letter was accompanied by a spreadsheet that included a list of Nevada Power's and Sierra Pacific's then-current generation resources and power supply agreements that the NV Energy merchant function intends to serve as system-wide network resources for the combined NV Energy system. Cargill maintains it had not seen the Torrey Letter or the attached spreadsheet until that time. Cargill states that NV Energy's OASIS at the time of Cargill's Complaint included a link titled "NV Energy Consolidated BAA DNRs," which appears to include an updated list of the purported network resources identified in the spreadsheet attached to the Torrey Letter. Cargill questions when the spreadsheet was posted on OASIS and if the Torrey Letter itself was ever posted on OASIS. Cargill states that it believes that this list of resources is the original version of the document entitled "NV Energy Consolidated DNRs" that NV Energy posted on OASIS for the first time on September 1, 2011.¹⁰⁷

75. Cargill asserts that throughout the summer of 2012, it continued to express to NV Energy its belief that the Torrey Letter did not sufficiently satisfy NV Energy's obligation to designate network resources and network loads for a combined NV Energy system. Cargill states that, in August 2012, NV Energy refused to file the parties' unexecuted transmission service agreement based on the studies completed to date because, according to NV Energy, it had no OATT in place governing service over its potential, combined system.¹⁰⁸ Cargill states that it asked NV Energy how the Torrey Letter's purported designation of network resources for its potential, combined system could establish a priority right if NV Energy did not have an OATT in place; according to Cargill, NV Energy never meaningfully responded to its question.¹⁰⁹

76. With respect to NV Energy's asserted native load priority for service over its potential, combined system, Cargill argues that NV Energy has failed to demonstrate its

¹⁰⁶ Complaint, Ex. A, Torrey Letter.

¹⁰⁷ *Id.* at 19-22.

¹⁰⁸ This event is discussed in more detail above, *supra* PP 36-37.

¹⁰⁹ Complaint at 22-23.

right to such priority. First, Cargill argues that NV Energy's economic and environmental policy-related objectives for the ON Line do not relieve NV Energy of its open access obligations. Cargill asserts that NV Energy's processing of its transmission queue for service over the ON Line reflects an improper preference for NV Energy's merchant function, and that NV Energy's misleading and inconsistent OASIS postings, statements, and conduct have resulted in an unjust, unreasonable, and unduly discriminatory process in which Cargill has had to initiate regulatory litigation to obtain information regarding the processing of its transmission service requests. Cargill accordingly requests that the Commission deny NV Energy's claimed native load priority to north-to-south capacity on the ON Line.¹¹⁰

77. Cargill next argues that NV Energy applied improper assumptions and limitations when studying Cargill's transmission service requests. Cargill claims that the network resources NV Energy used in the studies are invalid. Cargill argues that NV Energy's claimed network resources were not validly designated because there was no OATT in effect governing the potential, combined system, and therefore that regardless of when the network resources were posted to OASIS, that posting cannot be deemed to have legitimately designated the resources. Cargill then states that the Commission should find that NV Energy has failed to satisfy the *pro forma* network resource designation requirements.¹¹¹

78. Cargill also argues that there is no Commission precedent supporting the Torrey Letter's assumption that the existing Sierra Pacific and Nevada Power network resources would automatically become designated network resources for a potential, combined NV Energy system. Moreover, according to Cargill, the network resources purportedly designated by the Torrey Letter are improperly conditioned upon the potential merger of the Sierra Pacific and Nevada Power BAAs, which the *pro forma* OATT does not list as a permissible conditioning event. Rather, according to Cargill, this express merger condition is analogous to a power supply arrangement that is still under "negotiation" or subject to an "unexecuted transaction," which the Commission prohibits. Cargill also asserts that the network resources may not be designated by NV Energy because the ultimate firm deliverability of the resources will depend on, among other things, the outcome of the Commission and Nevada Commission proceedings on NV Energy's merger, including any mitigation measures imposed as a condition of approval. Cargill also notes that the ON Line might be completed prior to NV Energy receiving merger

¹¹⁰ *Id.* at 29-33.

¹¹¹ *Id.* at 34-36.

approval, and that NV Energy is in effect seeking to create an improper “option” for priority access to the ON Line’s capacity.¹¹²

79. Cargill argues that the Commission should deny NV Energy’s native load priority claim because NV Energy has never credibly established when it designated its network resources for the potential, combined system. Cargill explains that NV Energy has made conflicting statements regarding when it posted the network resource list to OASIS, and that without establishing when those resources were posted, NV Energy cannot establish that it has priority over Cargill’s transmission service requests.¹¹³

80. Cargill also argues that NV Energy does not qualify for the native load growth priority for transmission service over the ON Line.¹¹⁴ Cargill asserts that the ON Line is being developed primarily for economic and environmental policy-related reasons, which Cargill asserts do not constitute a basis for claiming native load growth priority. Cargill cites to NV Energy’s state integrated resource planning filings to demonstrate that NV Energy expects negative load growth until 2016 for Nevada Power’s territory and very low levels of growth for the subsequent six years. Cargill further argues that NV Energy, even if it is eligible for native load growth priority, has implemented it in a manner that violates Order No. 888. Cargill states that NV Energy was required, but failed, to identify the ON Line as being necessary to serve native load growth and to identify the network resources that NV Energy planned to use to serve that growth. Cargill argues that NV Energy bears the burden of demonstrating the reasonableness of its native load growth forecasts, and that in this case NV Energy did not identify the loads that it intends to pair with the generation resources identified in the Torrey letter until it filed its answer in support of its Petition, on December 3, 2012. Cargill reiterates its position that NV Energy’s network resources are not eligible to be designated and were not appropriately designated, even if they are eligible.¹¹⁵

81. Cargill also argues that NV Energy’s designations are not required to ensure reliability. While Cargill acknowledges that the ON Line will provide NV Energy with a measure of increased reliability, Cargill cites to evidence from Nevada Commission proceedings regarding the ON Line, in which NV Energy represented that the vast majority of the ON Line’s anticipated benefits (between \$351 million and \$873 million)

¹¹² *Id.* at 36-39.

¹¹³ *Id.* at 39-40.

¹¹⁴ *Id.* at 41-42 (citing *Wis. Pub. Power Inc., System v. Wis. Pub. Serv. Corp.*, 83 FERC ¶ 61,198 (1998) (*WPPI I*), *order on reh’g*, 84 FERC ¶ 61,120 (*WPPI II*)).

¹¹⁵ *Id.* at 41-46.

would be derived from joint dispatch and seasonal exchanges, while load diversity (\$55 million) and reduced planning reserve margins (\$8 million) provide significantly smaller benefits. Cargill also cites statements made before the Nevada Commission, in which the Nevada Commission staff asserted that the primary benefit of the ON Line is that it will allow NV Energy to mitigate the economic consequences of having to curtail the output from renewable resources located in the Sierra Pacific BAA during low load periods. Cargill states that the Nevada Commission authorized NV Energy to resume construction of the ON Line, in part, because of this same concern.

82. Finally, Cargill argues that NV Energy has placed improper limitations on Cargill's transmission service requests. According to Cargill, NV Energy proposes to limit Cargill's firm service so that it is conditional on (1) whether Phase 2 of the ON Line is developed, even if Cargill finances the transmission upgrades required by the results of NV Energy's studies, and (2) the successful merger of Sierra Pacific and Nevada Power, including Commission approval of a single OATT for the combined system. Cargill argues that these limitations contravene Commission policy, which only permits limits on firm transmission service offered to third-party customers in order to serve reasonably forecasted native load growth. Furthermore, Cargill challenges NV Energy's assumptions concerning the ON Line's rating. Cargill states that its system impact studies establish that NV Energy has reserved 760 MW for its own use, but on an assumed 2,000 MW rating for the ON Line following construction of Phase 2. However, according to Cargill, the TUA provides that NV Energy's entitlement is more than 760 MW if the project's rating is greater than 2,000 MW, and NV Energy has failed to explain what amount of transmission capacity over 760 MW NV Energy intends to claim for its own use, in the event that Phase 2 is constructed.¹¹⁶

ii. Answers/Comments

(a) NV Energy Answer

83. At the outset, NV Energy argues that it is entitled to summary disposition because (1) Cargill has been afforded a reasonable opportunity to present its arguments and factual support and (2) even if the Commission views the facts presented by Cargill in the most favorable light, Cargill has not alleged any facts that amount to a violation of Commission rules or regulations.¹¹⁷

¹¹⁶ *Id.* at 50-52.

¹¹⁷ NV Energy Answer at 17-18 (citing *Coastal States Mktg., Inc. v. Texas-New Mexico Pipeline Co.*, 25 FERC ¶ 61,164, at 61,452 (1983)).

84. Similar to its discussion in its Petition addressed above, NV Energy contends that it has reserved transmission capacity to meet its native load obligations consistent with the Commission's rules and regulations. NV Energy argues that Order Nos. 888 and 888-A allow transmission providers to reserve sufficient capacity to serve native loads reliably, and note that even Cargill's Complaint recognizes this right. Thus, according to NV Energy, the parties agree that the Commission not only permits, but requires, transmission providers to serve their native load customers. NV Energy also states that the Commission has extended native load protection to native load growth, thus allowing transmission providers to reserve transmission capacity both for existing needs and reasonably forecasted growth.¹¹⁸ NV Energy further asserts that in Order No. 888-A, the Commission clarified that "the ability to reserve capacity to meet the reliability needs of a transmission provider's native load applies equally to *present transmission* and transmission that is *built in the future*."¹¹⁹

85. NV Energy argues that in *Puget Sound Energy, Inc.*, the Commission determined that Puget Sound Energy, Inc. (Puget) could reserve transmission capacity both for its current native load obligations and its future native load needs for planned transmission.¹²⁰ NV Energy contends that the Commission's determination in *Puget Sound* was premised on the fact that Puget had an existing OATT that governed transmission service across the planned transmission lead lines. Though NV Energy asserts that no OATT governs transmission service over the ON Line, it argues that it processed requests for transmission service over the ON Line in accordance with the *pro forma* OATT. Furthermore, NV Energy states that in the yet-to-be filed NV Energy OATT, NV Energy will have an available transfer capability calculation methodology for the combined system, and its existing transmission commitments component will reflect commitments for its native load needs. In addition, NV Energy cites *Ohio Edison* to argue that in conducting a market power analysis in the context of a merger, the Commission has recognized that a transmission provider is entitled to serve its native load customers before making any remaining capacity available to other customers.¹²¹

86. Based on the Commission's holdings in *Puget Sound* and *Ohio Edison*, NV Energy dismisses Cargill's argument that NV Energy may only reserve capacity for its native load needs based on native load growth. Even more, NV Energy asserts that in

¹¹⁸ *Id.* at 16-18.

¹¹⁹ *Id.* at 19 (quoting Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,181 (emphasis added)).

¹²⁰ *Id.* (citing *Puget Sound Energy, Inc.*, 133 FERC ¶ 61,160, at P 12 (2010)).

¹²¹ *Id.* at 20 (citing *Ohio Edison*, 80 FERC at 61,103).

WPPI II, which Cargill cites in support of its position, the Commission acknowledged that reserving transmission for current native load need and for future native load growth are two separate issues.¹²² Thus, NV Energy concludes that *current* native load obligations justify its reservation of capacity for the future, combined system.¹²³

87. NV Energy argues that it properly designated its network resources for the future, combined system. First, NV Energy avers that its statements in the Torrey Letter, which express NV Energy's understanding that the existing designated network resources of both Sierra Pacific and Nevada would automatically "rollover" to become designated network resources for the combined system, cannot negate its formal application to designate its network resources. Second, NV Energy contends that its network resources identified in the attachments included in the Torrey Letter meet the requirements of the *pro forma* OATT because it owns the resources at issue or has an executed contract to purchase their generation. Third, NV Energy states that the absence of an OATT for the combined system did not prevent NV Energy from designating its network resources in accordance with section 29.2 of the *pro forma* OATT because NV Energy submitted its application pursuant to the *pro forma* OATT, just as it allowed third party customers to submit transmission service requests pursuant to the *pro forma* OATT. Finally, NV Energy asserts that it has established January 25, 2011, the date of the Torrey Letter, as the date on which it designated its network resources. Specifically, NV Energy explains that, through the Torrey Letter, which includes the information required pursuant to section 29.2 of the *pro forma* OATT, NV Energy's merchant function designated the Network Resources for the future, combined system by submitting an application to NV Energy's transmission function on behalf of NV Energy's native load customers.¹²⁴

88. NV Energy asserts that it has set aside transmission to meet its native load obligation and has not provided its merchant function with any priority rights to point-to-point service. NV Energy maintains that the capacity set aside by NV Energy's transmission function is for the transmission provider's native load, not NV Energy's wholesale merchant function. Additionally, as evidence that there has been no preferential treatment to its merchant function, NV Energy notes that its merchant function has no pending point-to-point transmission requests in the queue and that NV Energy has permitted all third parties the opportunity to submit requests for transmission service.¹²⁵

¹²² *Id.* at 21 (citing *WPPI II*, 84 FERC at 61,658).

¹²³ *Id.*

¹²⁴ *Id.* at 25-31.

¹²⁵ *Id.* at 31-32.

89. NV Energy rejects Cargill's assertion that NV Energy's OASIS postings have been ambiguous, conflicting, and lacked transparency. Most significant, according to NV Energy, is Cargill's assertion that NV Energy's postings did not provide customers with critical information and did not inform customers of their rights as transmission customers. In response, NV Energy asserts that, even if the facts alleged in Cargill's complaint are true, Cargill has failed to allege a violation of any specific OASIS posting requirement under the Commission's regulations. Furthermore, NV Energy contends that the Commission has dismissed complaints in the past for failure to allege a violation of any specific OASIS posting requirement and that the Commission should do the same here.¹²⁶

90. Finally, with respect to Cargill's pending transmission service requests, NV Energy states that Cargill originally submitted four 100 MW transmission service requests for service over the ON Line on August 17, 2011 and that Cargill paid the required deposit for these transmission service requests on August 18, 2011. NV Energy claims that the transmission service requests submitted by Cargill, did not, however, specify an exact Point of Receipt. NV Energy indicates that Cargill corrected this error on September 7, 2011, which is the date that NV Energy placed Cargill's transmission service requests in the queue. NV Energy states that on September 9, 2011, Cargill submitted two additional transmission service requests. NV Energy adds that, at the request of Cargill, NV Energy then conducted two system impact studies to determine whether NV Energy could accommodate the six 100 MW transmission service requests submitted by Cargill. NV Energy reports that it also studied a conditional firm option for three of Cargill's six requests, and subsequently conducted a Facilities Study for those three requests.¹²⁷

91. NV Energy states that the power flow load used in its studies was the NV Energy-North Stressed Base Case, which includes a 2016 summer peak forecasted load of 2137 MW for Sierra Pacific and 6488 MW for Nevada Power. NV Energy indicates that these loads are based on the 2016 forecasted loads of 2215 MW of Sierra Pacific and 6488 for Nevada Power. The System Impact Study evaluating conditional firm service, according to NV Energy, concluded that Cargill's first request for 100 MW does not require conditional curtailment, but that the second and third requests (each for 100 MWs) will require conditional curtailment. NV Energy states that it has not denied Cargill

¹²⁶ *Id.* at 33-36 (citing *330 Fund I, L.P. v. New York Indep. Sys. Operator, Inc.*, 121 FERC ¶ 61,001, at P 46 (2009)).

¹²⁷ *Id.* at 14-15.

transmission service, but that it has expressed to Cargill that network upgrades are necessary to accommodate the requests.¹²⁸

(b) **Other Comments**

92. Ormat agrees with Cargill that NV Energy's management of its transmission queue violates the Commission's open access requirements, and that the Commission needs to address NV Energy's improper queue management. However, Ormat disagrees with Cargill's claim that NV Energy has no OATT applicable to service on the ON Line, and reiterates the arguments it raised in its protest of the Petition.¹²⁹ Ormat requests that the Commission direct NV Energy to honor prior studies performed for transmission customers seeking service over the ON Line, except that the studies should be modified to remove NV Energy's improper capacity reservation.¹³⁰ Ormat argues that NV Energy has failed to substantiate its claim to native load priority and rejects NV Energy's argument that the TUA grants NV Energy priority rights to the ON Line's capacity.¹³¹

93. Powerex explains that it also submitted transmission service requests for firm point-to-point service over the ON Line, and that a system impact study performed by NV Energy revealed a lack of available capacity on the ON Line. Powerex requests that, to the extent the Commission concludes that NV Energy acted improperly in processing requests for transmission service for north-to-south capacity on the ON Line, any relief should provide a remedy for all affected transmission customers' requests, including Powerex's requests.¹³²

¹²⁸ *Id.* at 15-16. NV Energy states that, after the Petition was filed with the Commission, Cargill filed two additional requests for transmission service over the ON Line, each for 300 MW. Petitioners state that one request complies with the interim process, but that the second was rejected because it requested that the transmission service be processed pursuant to the currently-existing NV Energy OATT, under which the Point of Receipt and Point of Delivery provided by Cargill are invalid. *Id.* at 16.

¹²⁹ Ormat Comments at 2-3, 7-10.

¹³⁰ *Id.* at 10-12.

¹³¹ *Id.* at 12-14.

¹³² Powerex Comments at 3-4.

(c) **Cargill Reply**

94. Cargill asserts that NV Energy, in its answer, fails to adequately respond to or address the concerns raised in the Complaint and therefore provides no basis for NV Energy's requested summary disposition of the Complaint. Cargill states that NV Energy simply ignores the fact that no OATT is on file governing transmission service over the ON Line or a potential, combined NV Energy system, and instead seeks to justify NV Energy's actions by its overall service and transmission obligations. Cargill states that it has not challenged NV Energy's general ability to designate network resources or reserve priority rights over its transmission facilities to serve its native load or reasonably forecasted native load growth, but rather NV Energy's attempt to do so here, despite having no OATT on file and failing to adhere to the Commission's *pro forma* network resource designation requirements.¹³³ Cargill requests that the Commission deny NV Energy's motion for summary dismissal, arguing that it has satisfied the burden of establishing a *prima facie* case sufficient to defeat NV Energy's motion.¹³⁴

95. Cargill argues that NV Energy has failed to justify its use of *pro forma* OATT "principles," rather than an OATT, to govern transmission service over the ON Line. Cargill states that the Commission's requirement in NV Energy's 1999 merger proceeding that NV Energy have a single system transmission rate in the event that NV Energy combines its systems does not exempt NV Energy from using an OATT to process transmission service over the ON Line. To the contrary, according to Cargill, NV Energy has provided no reasonable explanation or Commission precedent supporting its claim that the obligations imposed by NV Energy's merger proceeding outweigh the general obligation to have an OATT on file and/or to process transmission service requests in a just, reasonable, and not unduly discriminatory manner.¹³⁵

96. Cargill rejects NV Energy's argument that Cargill has confused the processes used to designate network resources for current network load and to reserve transmission capacity for reasonably forecasted load growth. Cargill argues that NV Energy has failed to satisfy its burden under either the native load priority for existing needs or for reasonably forecasted growth; instead, Cargill argues that NV Energy's load will not require the ON Line's north-to-south capacity and, instead, will cause power to flow from south-to-north over the ON Line. Cargill also reiterates its arguments regarding NV Energy's failure to follow the Commission's procedures for properly designating network resources, and NV Energy's failure to provide any support for its position that merging

¹³³ Cargill Complaint Reply at 3-4.

¹³⁴ *Id.* at 4-12.

¹³⁵ *Id.* at 12-14.

utilities' designated network resources "automatically" rollover to become designated network resources for the combined system.¹³⁶

97. Cargill asserts that NV Energy's answer perpetuates the uncertainty surrounding the Torrey Letter by stating that, although the network resources purportedly designated through the Torrey Letter were not posted until September 1, 2011, the designation was nonetheless effective on January 25, 2011, the date that the letter was sent to NV Energy's transmission function. Cargill argues that NV Energy, in testimony under oath before the Nevada Commission, specifically rejected the position that the letter was the designation. Cargill cites this as another instance of NV Energy failing to provide accurate and consistent information to regulatory bodies and argues that it is proof that NV Energy's sworn statements cannot be trusted. Cargill also requests that the Commission reject NV Energy's argument that the Torrey Letter conditions its designation on merger only of the Nevada Power and Sierra Pacific BAAs, and not on the merger of both the BAAs and corporate entities. Cargill argues that the plain language of the letter, as well as statements by NV Energy to the Nevada Commission that merging only the BAAs and not the corporate entities would be unnecessarily burdensome to administer and operate, demonstrate that the Torrey Letter should properly be read to condition the designation on both the BAA and corporate merger.¹³⁷

98. With respect to the deliverability of NV Energy's network resources, Cargill requests that the Commission reject NV Energy's claim that there are no "conceivable circumstances" in which the resources would not be deliverable on a firm basis to a potential, combined NV Energy system. Cargill explains that the resources' deliverability is conditioned upon consummation of the merger, notwithstanding that the Commission and Nevada Commission have not yet ruled on any proposed merger. Furthermore, Cargill notes that both the Commission and Nevada Commission have authority to impose a wide range of mitigation measures that may impact the resources' firm deliverability.¹³⁸

99. Cargill also claims that, even assuming that NV Energy had an OATT in place, NV Energy failed to establish a priority right to the ON Line's north-to-south transmission capacity through the so-called "WPPI process." Cargill argues that, under the WPPI process, a public utility must post or otherwise make available to transmission customers its plans for using network resources for serving reasonably forecasted native load growth. Cargill argues that the Complaint demonstrates that NV Energy has failed

¹³⁶ *Id.* at 15-18.

¹³⁷ *Id.* at 19-24.

¹³⁸ *Id.* at 24-26.

to satisfy this standard, and states that NV Energy has not justified a load obligation, whether current or future, with the requisite level of specificity to satisfy its burden under Order No. 888. Cargill argues that, because there is no OATT in effect, NV Energy has no mechanism for calculating Existing Transmission Commitments (including native load obligations) to determine the Available Transmission Capacity on the ON Line.¹³⁹

100. With respect to NV Energy's claim to priority for the ON Line's north-to-south transmission capacity, Cargill argues that NV Energy has never explained what specific load will require all of NV Energy's ownership entitlement on the north-to-south capacity, regardless of the final amount of that capacity. Cargill submits an affidavit¹⁴⁰ to support its argument that NV Energy's native load priority argument is misleading because NV Energy's current and future loads would cause power to flow from south-to-north, rather than north-to-south, as would be necessary to establish a native load priority claim. According to the Rhorer Affidavit, Cargill asserts that the real effect of NV Energy's claimed native load priority is to give NV Energy the ability to select which generators use the ON Line, or what the affidavit deems a "generation priority" rather than a "native load priority." Cargill argues that this priority would guarantee NV Energy a competitive advantage by, for example, allowing NV Energy to purchase energy from generators north of the ON Line that have been denied market access and selling energy from NV Energy's own generators in the south to markets in California and elsewhere. Cargill explains that, to date, NV Energy has not provided Cargill with the power cases in their original format, but instead has provided only PDF files, which do not allow Cargill to recreate NV Energy's results. Cargill argues that it is entitled to these data in their original format, per the Commission's regulations, and that it has contacted the Commission's Enforcement Hotline regarding this matter.¹⁴¹

101. Cargill also responds to what it deems misstatements of law and fact in NV Energy's Answer. First, Cargill argues that NV Energy must seek prior Commission approval before imposing restrictions, such as limitations based on the possible construction of Phase 2 of the ON Line, on Cargill's transmission service requests that are analogous to conditional firm service. Second, Cargill argues that its transmission service requests submitted on August 18, 2011 were complete, and should be deemed submitted as of that date, rather than September 7, 2011, as NV Energy argues. Cargill maintains that its filed requests were complete, and that NV Energy sought only a

¹³⁹ *Id.* at 27-30.

¹⁴⁰ *Id.*, Ex. C, Affidavit of Riley Rhorer on Behalf of Cargill Power Markets, LLC (Rhorer Affidavit).

¹⁴¹ *Id.* at 30-34.

clarification of the point of receipt, which does not justify giving Cargill a later queue date. Third, Cargill seeks to rebut NV Energy's arguments that Cargill mis-cited *WPPI II* by arguing that *WPPI II*, in which the Commission found that Wisconsin Public Service Corporation failed to take the necessary steps to designate its network resources and failed to provide both customers and the Commission with material information on a timely basis, supports its requested relief. Fourth, Cargill clarifies its contacts with the Commission's Enforcement Hotline during 2011 to rebut NV Energy's assertions that the Enforcement Hotline had investigated and cleared NV Energy of alleged wrongdoing with respect to its OASIS posting obligations.¹⁴²

(d) NV Energy Reply

102. NV Energy asks the Commission to reject Cargill's reply, and in the alternative moves for leave to respond. NV Energy states that, contrary to Cargill's assertions, it has never provided its merchant function transmission service, let alone preferential transmission service, for the future, combined system, and explains that NV Energy's merchant function designated network resources on behalf of NV Energy's native load customers. NV Energy asserts that Cargill is confusing the issues in the proceeding by continuing to allege that NV Energy's transmission function gave an improper preference to NV Energy's merchant function.¹⁴³

103. NV Energy alleges that Cargill, by requesting that the Commission allow Cargill's transmission service requests to remain in the queue even if the Commission finds that the absence of an OATT for the combined system precluded NV Energy from exercising its native load priority, is itself seeking preferential treatment over NV Energy's native load customers. NV Energy argues that accepting Cargill's request would result in a clear violation of the Commission's principles of non-discriminatory open access and its long-established rules requiring transmission providers to serve native load customers prior to offering remaining capacity to third parties.¹⁴⁴

104. NV Energy argues that the present situation is distinguishable from the generator lead line precedent cited by Cargill that Cargill alleges requires NV Energy to have an OATT in place within 60 days of offering service within the future, consolidated system. NV Energy states that the Commission's analysis in those cases is based on the unique characteristics of limited and discrete facilities, in which owner/operators of limited facilities are eligible for waivers of the Commission's open access requirements until

¹⁴² *Id.* at 34-39.

¹⁴³ NV Energy Complaint Reply at 2-5.

¹⁴⁴ *Id.* at 5.

they receive a third party request. By comparison, according to NV Energy, NV Energy is already required to file an OATT prior to providing transmission service, and has committed to provide transmission service pursuant a single OATT that it will file concurrently with its merger application.¹⁴⁵

105. NV Energy also responds to Cargill's discussion of *WPPI II*, which NV Energy states permits generators whose underlying contracts are entered into for economic purposes to be designated as a network resource. NV Energy argues that Cargill has contradicted its argument in its Complaint that generators or contracts serving as "economic hedges" may not be designated as network resources, and instead now recognizes that generating capacity built for economic purposes may be designated as a network resource so long as it otherwise complies with the Commission's network resource designation requirements.¹⁴⁶

106. NV Energy rejects Cargill's argument that it relied on *Ohio Edison* for the proposition that merging utilities' existing designated network resources automatically become jointly-designated network resources for the combined system. Instead, NV Energy argues that it never relied on *Ohio Edison* for this rollover argument, and states that NV Energy properly designated its resources rather than relying on a mere rollover.¹⁴⁷

107. With respect to the date of the Torrey Letter and the posting of NV Energy's designated network resources reflected in that letter, NV Energy says there is no dispute between it and Cargill, as they both recognize the Torrey Letter was sent on January 25, 2011 and the network resources were posted on September 1, 2011.¹⁴⁸ NV Energy also states that, consistent with Commission precedent, it has provided "reasonably forecasted" native load growth projections.¹⁴⁹ NV Energy argues that Cargill submitted its requests pursuant to the "interim process," and that Cargill's August 18, 2011 transmission service requests were properly queued on September 7, 2011 because Cargill did not specify which side of the Robinson Summit substation would receive

¹⁴⁵ *Id.* at 6-7.

¹⁴⁶ *Id.* at 7-9.

¹⁴⁷ *Id.* at 9-10.

¹⁴⁸ *Id.* at 10.

¹⁴⁹ *Id.* at 10-11 (citing *Arizona Public Service Co. v. Idaho Power Co.*, 87 FERC ¶ 61,303, at 62,223 (1999)).

power delivery.¹⁵⁰ NV Energy also states that it has provided Cargill with power flow and generation dispatch information, and that due to commercially sensitive information contained in its power flow files, NV Energy has agreed to allow Cargill to review those files at NV Energy's campus, in a manner that will protect sensitive and third-party information. NV Energy states that it is working with Cargill to establish a mutually agreeable process for Cargill to review the files.¹⁵¹ Finally, NV Energy objects to the submission of the Rhorer Affidavit, arguing that it is not relevant to rebutting NV Energy's request for summary disposition of the Complaint. NV Energy states that it is evaluating the Rhorer Affidavit's claims and requests leave to update its reply upon completion of its review.¹⁵²

iii. Commission Determination

108. We deny Cargill's requests that we (1) find that NV Energy's processing of its transmission service requests has been unjust, unreasonable, and unduly discriminatory; (2) deny NV Energy's claimed native load priority over the ON Line; and (3) direct NV Energy to restudy Cargill's transmission service requests without NV Energy's assumed native load priority over the ON Line.

109. We first address Cargill's argument that NV Energy's purported network resource designations in the Torrey Letter are not valid because NV Energy did not have an OATT governing transmission service over the ON Line in January 2011, when the designations were made by NV Energy's merchant function (on behalf of native load) to NV Energy's transmission function. As addressed above in section III(B)(1)(b)(4), we reject NV Energy's argument that no OATT governed the requests received for service over the ON Line, and instead find that the existing terms and conditions of NV Energy's existing OATT govern those requests, including Cargill's requests. Therefore, we reject Cargill's argument as moot, as the NV Energy OATT governed requests for transmission service over the ON Line in January 2011.

110. Cargill asserts that the network resources that NV Energy sought to designate in the Torrey Letter are not valid, and that consequently NV Energy cannot claim native load priority over the ON Line. Specifically, Cargill asserts that (1) the Torrey Letter incorrectly assumes that Petitioners' designated network resources for their individual systems would, upon completion of their merger, automatically rollover to serve their combined system, and (2) the network resources that NV Energy sought to designate

¹⁵⁰ *Id.* at 11-12.

¹⁵¹ *Id.* at 12-13.

¹⁵² *Id.* at 13.

through the Torrey Letter violate the Commission's network resource requirements because they are subject to conditions not expressly permitted by the *pro forma* OATT.¹⁵³ We disagree with Cargill and affirm that the network resources identified in the Torrey Letter are eligible to be designated.¹⁵⁴ In so finding, we note that there is a critical difference between firm resources, under the control of the designating entity, being conditionally designated upon some future event (such as a merger), and firm resources that are not under the designating entity's control being conditionally designated upon those resources eventually being transferred to its control (e.g., a power supply arrangement that is still under negotiation or subject to an unexecuted transaction). Namely, in the former situation, the designating entity actually *controls the resource*, whether through direct ownership or contractual commitment. Control of a resource is the centerpiece of the Commission's *pro forma* OATT provisions governing which resources may be designated as network resources,¹⁵⁵ and Cargill has provided no evidence that NV Energy lacks control of the network resources that it designated. Furthermore, adopting Cargill's position would make it effectively impossible for merging utilities to exercise their right to invoke native load priority until after the merger was complete, because *all* designated network resources for the merging utilities' combined system would be conditioned upon completion of the merger, and therefore ineligible to be designated as network resources.

111. Cargill argues that, even if NV Energy's network resources are *eligible* to be designated, NV Energy has failed to demonstrate that it designated those resources prior to Cargill submitting its transmission service requests. We disagree. NV Energy's merchant function, acting on behalf of native load, timely designated its network

¹⁵³ Complaint at 36-39.

¹⁵⁴ Because we find these resources eligible to be designated as network resources, we do not address the Torrey Letter's underlying assumption that merging utilities' network resources for their individual systems automatically rollover following completion of the utilities' merger.

¹⁵⁵ *E.g.*, NV Energy OATT § 30.2 (requiring that network resource designations include a statement that "(1) the Network Customer owns the resource, has committed to purchase generation pursuant to an executed contract, or has committed to purchase generation where execution or a contract is contingent upon the availability of transmission service under Part III of the Tariff; and (2) The Network Resources do not include any resources, or any portion thereof, that are committed for sale to non-designated third party load or otherwise cannot be called upon to meet the Network Customer's Network Load on a noninterruptible basis, except for purposes of fulfilling obligations under a reserve sharing program").

resources for the combined system through the Torrey Letter on January 25, 2011, when it provided NV Energy's transmission function with the information consistent with a formal network resource designation under sections 29.2 and 30.2 of the NV Energy OATT.¹⁵⁶ NV Energy's transmission function apparently failed to post those resources to Sierra Pacific and Nevada Power's respective OASIS sites until September 1, 2011, i.e., after Cargill submitted certain of its transmission service requests. While we acknowledge that NV Energy's transmission function failed to timely post the list of designated network resources for the combined system on the Sierra Pacific and Nevada Power OASIS sites, we nonetheless find that NV Energy's network resources have a priority date of January 25, 2011, i.e., the date that the Torrey Letter, which sought to designate the combined systems' network resources, was filed with NV Energy's transmission function.¹⁵⁷

112. Cargill next argues that NV Energy cannot assert native load priority because the ON Line is being constructed not exclusively, or even primarily, for reliability reasons, but rather to allow for economic joint dispatch of the combined systems' designated network resources, and to address NV Energy's obligations under Nevada's renewable portfolio standard. Order No. 888 allows transmission providers to reserve, through the native load priority, sufficient transmission capacity to reliably serve their native loads.¹⁵⁸ However, Cargill incorrectly claims that native load priority may only be invoked to serve the *reliability* needs of native load. Contrary to Cargill's claims, the native load priority is not so limited and inherently includes economic needs. Indeed, the definition

¹⁵⁶ Complaint, Ex. A, Torrey Letter at 1 ("However, to the extent that this request might be deemed to require a formal designation of network resources pursuant to sections 29.2 and 30.2 of the NV Energy [OATT], please consider this letter and attached spreadsheet (appropriately attested) to constitute such formal application.").

¹⁵⁷ Given our finding that NV Energy's combined network resources were designated effective as of the date the Torrey Letter was received, we need not address whether Cargill's transmission service requests filed on August 17, 2011 were properly queued on that date, as Cargill asserts, or on September 7, 2011, as NV Energy asserts.

¹⁵⁸ *E.g.*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,279 ("In particular, the transmission provider is responsible for planning and maintaining sufficient transmission capacity to safely and reliably serve its native load. Order Nos. 888 and 889 permit the transmission provider to reserve, in its calculation of ATC, sufficient capacity to serve native load."); *see also Aquila Power Corp. v. Entergy Services Inc.*, 90 FERC ¶ 61,260, at 61,859 (2000) ("While Entergy is correct that Order Nos. 888 and 888-A allow transmission providers to reserve sufficient capacity to serve native loads reliably, that is not the issue here.").

of Network Integration Transmission Service recognizes that the service “allows Network Customers to *efficiently and economically* utilize their Network Resources . . . to serve their Network Load. . . .”¹⁵⁹ Thus, Network Integration Transmission Service expressly recognizes the underlying right of the transmission provider to use its network resources to serve its native load needs, including through economic dispatch of those network resources. Accordingly, we disagree with Cargill that NV Energy inappropriately invoked its native load priority.

113. Furthermore, we find that Cargill’s arguments regarding NV Energy’s purported exercise of the native load *growth* priority are misplaced. NV Energy is claiming native load priority to serve the needs of its *existing* native load, rather than to serve future anticipated load growth. As NV Energy notes, Order No. 888 authorizes utilities to reserve transmission capacity to serve both existing native load needs and anticipated load growth, with different showings required for each case.¹⁶⁰ Because NV Energy bases its native load priority claim upon *existing* native load needs, NV Energy does not also need to demonstrate native load growth to establish its native load priority, and we therefore reject Cargill’s request that we deny NV Energy’s native load priority on that ground.

114. With respect to Cargill’s arguments that NV Energy’s OASIS postings regarding the ON Line project were misleading, in that they did not expressly indicate NV Energy’s view that its existing OATT did not govern requests received for transmission service over the ON Line, we agree that NV Energy should have been more forthcoming with transmission customers regarding NV Energy’s views on the applicability of its OATT to their transmission service requests, which would have given transmission customers a

¹⁵⁹ NV Energy OATT § 28.1 (emphasis added); *see also id.* § III (Preamble) (“Network Integration Transmission Service allows the Network Customer to integrate, *economically dispatch* and regulate its current and planned Network Resources to serve its Network Load in a manner comparable to that in which the Transmission Provider utilizes its Transmission System to serve its Native Load Customers.” (emphasis added)); *accord* 18 C.F.R. § 33.3(d)(3)(i) (defining native load commitments as “commitments to serve wholesale and retail power customers on whose behalf the potential supplier, by statute, franchise, regulatory requirement, or contract, has undertaken an obligation to construct and operate its system to meet their reliable electricity needs”).

¹⁶⁰ *See, e.g., Puget Sound*, 133 FERC ¶ 61,160 at P 12 (“Under its ATC calculation, Puget may reflect its Existing Transmission Commitments . . ., including, among other things, capacity needed to serve native load, *as well as* reasonably forecasted native or network load growth over Puget’s planning horizon” (emphasis added)).

timely opportunity to challenge NV Energy's position either directly or through a complaint with the Commission. However, as we explain above in section III(B)(1)(b)(4), regardless of whether NV Energy provided proper notice of its position, NV Energy should not have used its interim procedures in lieu of its existing OATT procedures. Prospectively, NV Energy will be required to process Cargill and other customers' transmission service requests pursuant to the procedures in the NV Energy OATT.

115. While we find that NV Energy has properly invoked its right to native load priority,¹⁶¹ and therefore deny Cargill and Ormat's request that we hold to the contrary, we do not find in this order that NV Energy has established its right to the full capacity of the ON Line. Although Cargill filed, with its reply to NV Energy's answer, an affidavit questioning NV Energy's conclusions regarding NV Energy's use of the ON Line's north-to-south capacity, we find that the record before us does not provide sufficient information to allow us to decide that issue.¹⁶² Accordingly, if customers object to the amount of transmission capacity that NV Energy seeks to reserve through its native load priority claim, NV Energy will bear the burden to justify that amount when it files their transmission service agreements. Similarly, NV Energy will have to explain and support the assumptions it used in the studies it performed for the customers' transmission service requests, as well as justify any conditions that it seeks to impose upon the customers' transmission service. Consistent with Commission precedent, those burdens of proof properly rest with NV Energy.

¹⁶¹ We do not address in this order the questions of whether NV Energy may invoke native load priority, and if so, whether NV Energy properly invoked that authority, if its planned 2013 merger is not consummated. Furthermore, our conclusion that it is reasonable for NV Energy to assume, in performing transmission studies for customers seeking service over the ON Line, that its proposed 2013 merger will be consummated, and therefore that it may invoke native load priority based on that merger, does not prejudice whether we will ultimately approve the merger or relieve NV Energy of its burdens under section 203 of the FPA and the Commission's regulations.

¹⁶² We also note that Cargill's Complaint focuses on NV Energy's eligibility to invoke the native load priority and whether NV Energy followed the correct procedures, and does not allege that, even if NV Energy is eligible for the priority and followed the correct procedures, NV Energy improperly calculated the amount of transmission capacity to which NV Energy is entitled to serve its native load. As discussed in P 116 *infra*, we find that NV Energy must provide Cargill with the information it needs to evaluate that issue.

116. We also note that the Commission's regulations require that NV Energy provide customers with the data necessary to fully analyze NV Energy's claimed native load priority, specifically including the amount of transmission capacity that NV Energy seeks to reserve over its system.¹⁶³ The record in this proceeding suggests that NV Energy has not been adequately forthcoming in providing that information to customers seeking it, and while we find here that NV Energy is entitled to claim native load priority, we are troubled by unrefuted allegations in the record that NV Energy failed to meaningfully respond to legitimate inquiries by Cargill and Ormat regarding how NV Energy was processing their transmission service requests. We also agree with Cargill that it should not have to file a Complaint with the Commission to obtain the information it seeks.¹⁶⁴ Accordingly, we expect that NV Energy will provide Cargill, Ormat, and other affected transmission customers with the information they need to fully evaluate whether NV Energy has justified the amount of transmission capacity it has reserved to serve its native load.

117. Finally, we hold that, should the ON Line be put into service prior to consummation of the proposed 2013 merger (provided that it is ultimately approved), NV Energy must make the ON Line capacity available to third parties pursuant to its OATT. Because NV Energy has not claimed the right to invoke native load priority over the ON Line prior to consummation of the merger, we believe that it is appropriate that third party customers be given an equal opportunity to use the line's capacity if NV Energy is not yet using the line to serve its native load needs.

b. Other Matters

i. Summary of Complaint

118. Cargill contends that, based on its own research, NV Energy appears to have attempted to designate network resources for its future, combined system as early as April 30, 2009, in a document posted to its OASIS sites titled "IPP OATT Applications for Transmission Service."¹⁶⁵ As Cargill explains, these postings, which appear to have been taken down around December 3, 2010, predate the Torrey Letter's attempted

¹⁶³ See, e.g., 18 C.F.R. § 37.6 (2012).

¹⁶⁴ We are also optimistic that the regional transmission planning requirements of Order No. 1000 will provide a forum for transmission customers, like Ormat and Cargill, to include their transmission needs in the regional transmission planning process, thereby reducing the likelihood of future disputes regarding transmission capacity allocations between native load and third party users.

¹⁶⁵ Complaint, Ex. B, Attach. No. 8.

designation on January 25, 2011. Cargill describes the resources listed on the OASIS postings, noting that these requests have an application date of April 20, 2009 and a commencement date of December 31, 2012, which Cargill notes was the original anticipated in-service date for the ON Line. While Cargill states that these postings do not explicitly state that NV Energy is requesting service over the ON Line, Cargill argues that the combined points of receipt and delivery make clear that the postings constitute NV Energy's attempted reservation of transmission service over the ON Line. Cargill asserts that, in discovery requests and during testimony before the Nevada Commission, NV Energy has claimed that these postings are outdated and/or are inaccurate, and that NV Energy did not know what they were intended to implement. Cargill contends that, regardless of whether these statements are true, NV Energy has never explained why NV Energy was seemingly allowing its merchant function to request service over the ON Line so far in advance of third-party customers and/or before the Torrey Letter was sent from NV Energy's merchant function to its transmission function. Cargill requests that the Commission investigate whether the postings are evidence that NV Energy has provided itself preferential access to the ON Line.

119. Cargill also alleges that it appears that NV Energy attempted to "double commit" certain network resources in the Sierra Pacific BAA through its designation of those resources to serve Sierra Pacific's existing native load while simultaneously being designated to serve loads over the future, combined system. However, Cargill contends that the *pro forma* OATT and Commission precedent require that a generation resource designated as a network resource may be committed on a firm basis to only a single network load. Cargill claims that NV Energy has failed to provide any meaningful response to Cargill's inquiries on this issue, replying only that the postings are outdated and/or inaccurate. Cargill requests that the Commission investigate whether NV Energy was improperly "double committing" network resources in order to secure preferential access to the ON Line.¹⁶⁶

120. Finally, Cargill alleges that NV Energy appears to have improperly attempted to use network service, rather than point-to-point service, to deliver off-system resources to on-system delivery points. Cargill states that the 2009-2010 OASIS postings include two requests by NV Energy to allow its merchant function to use two Nevada Power network transmission service requests with points of receipt in Sierra Pacific's BAA. According to Cargill, NV Energy explained that the postings are outdated and contained information that is no longer accurate, and that the referenced points of receipt are for facilities that are Sierra Pacific designated network resources until the BAAs are consolidated, at which time they would become designated network resources for the combined system. Cargill asserts that it is unaware of any Commission precedent allowing for flexible, subject-to-

¹⁶⁶ *Id.* at 59-60.

change designations of network resources in anticipation of a BAA consolidation that has not received regulatory approval. Cargill requests that the Commission investigate whether NV Energy intended to use network service to deliver off-system network resources to NV Energy loads in a manner intended to secure preferential access to the ON Line.¹⁶⁷

ii. Answer and Replies

121. NV Energy responds to Cargill's allegations by stating that they are unrelated to Cargill's request for relief in its Complaint, and that Cargill cites no OATT requirement that NV Energy is alleged to have violated. NV Energy contends that Cargill previously raised these allegations with Commission enforcement staff, and is simply requesting again that the Commission investigate the prior posting. NV Energy requests that the Commission dismiss the allegations.¹⁶⁸

122. In reply, Cargill provides additional information regarding its communications with Commission enforcement staff during 2011, explaining that it questioned the process pursuant to which NV Energy claimed to have reserved transmission capacity for itself over the ON Line. Cargill explains that after several email exchanges among Cargill, NV Energy, and enforcement staff, staff indicated its plans to close the matter without providing a substantive explanation, apparently due to NV Energy's indication that the issues Cargill had raised would be addressed through NV Energy's forthcoming transmission study request process. Cargill contacted enforcement staff again approximately one month later, at which time enforcement staff provided an informal, non-binding opinion that there was not a tariff violation based on the facts presented. Cargill states that, to the best of its knowledge, enforcement staff has not been made aware of the proposed "interim process" that NV Energy has used to process third party transmission service requests.¹⁶⁹

iii. Commission Determination

123. We find that NV Energy's network resource designations subsequent to the allegations at issue and our determinations in this order render these allegations moot. NV Energy does not purport to rely on the 2009-2010 OASIS postings in support of its native load priority claim, which we separately address in this order. Furthermore, the record demonstrates that the 2009-2010 OASIS transmission service requests were

¹⁶⁷ *Id.* at 60-61.

¹⁶⁸ NV Energy Complaint Answer at 35-36.

¹⁶⁹ Cargill Complaint Reply at 37-39.

obsolete as of December 3, 2010 and that NV Energy subsequently took steps to properly invoke priority to transmission service over its potential, future combined system, including the ON Line. We therefore find that Cargill's allegations do not warrant further relief.

The Commission orders:

(A) The Petition is hereby granted in part, and denied in part, as discussed in the body of this order.

(B) The Complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.