

145 FERC ¶ 61,237
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Nevada Power Company

Docket Nos. ER13-1724-000
ER13-1860-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING TRANSMISSION
SERVICE AGREEMENTS, CONSOLIDATING PROCEEDINGS, AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 19, 2013)

1. On June 18, 2013, in Docket No. ER13-1724-000, Nevada Power Company d/b/a NV Energy (NV Energy) filed an unexecuted transmission service agreement (TSA) between NV Energy and ORNI 47, LLC (collectively with Ormat Nevada, Inc., Ormat). On June 28, 2013, in Docket No. ER13-1860-000, NV Energy filed an unexecuted TSA with Cargill Power Markets, LLC (Cargill). As discussed below, we accept, subject to modification, the Ormat and Cargill TSAs for filing; suspend them for a nominal period to become effective January 1, 2014 and January 1, 2016, respectively, subject to refund; and establish hearing and settlement judge procedures. Additionally, we consolidate these proceedings for purposes of hearing and settlement judge procedures.

I. Background

2. These proceedings are a continuation of prior proceedings¹ concerning NV Energy's development of the One Nevada Transmission Line (ON Line), a 235-mile 500 kilovolt (kV) transmission line that will provide the first direct interconnection between the Nevada Power Company (Nevada Power) and Sierra Pacific Power Company (Sierra Pacific) transmission systems.² The ON Line will run from a proposed

¹ *Sierra Pacific Power Co.*, 143 FERC ¶ 61,144 (2013) (May 17 Order).

² On May 31, 2013, NV Energy filed an application pursuant to section 203 of the Federal Power Act (FPA) for approval of an internal reorganization under which Sierra Pacific will merge into Nevada Power, as well as a revised open access transmission tariff (OATT) and transmission rates, pursuant to section 205 of the FPA, to reflect Sierra

(continued...)

Robinson Summit Substation near Ely, Nevada to Nevada Power's Harry Allen Substation near Las Vegas, Nevada,³ and is Phase 1 of a larger joint transmission project that is being developed in two phases consisting of three segments.⁴ Ownership and capacity rights to the ON Line have been established through a Transmission Use and Capacity Exchange Agreement (TUA) for the ON Line between Great Basin and NV Energy, accepted by the Commission in the TUA Order, 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 the ON Line's Phase 1 capacity.⁵ The TUA governs rights to, but not service over, the ON Line, with service governed by the NV Energy OATT.

3. The May 17 Order addressed a petition for declaratory order filed by NV Energy, which was protested by Ormat and Cargill, and a subsequent complaint filed by Cargill,

Pacific and Nevada Power's consolidation into a single operating company. On August 5, 2013, the Commission issued an order accepting in part and rejecting in part the OATT and transmission rate filings, and set both filings for settlement and hearing. *NV Energy, Inc.*, 144 FERC ¶ 61,105 (2013). On November 27, 2013, the Commission issued an order accepting NV Energy's proposed internal reorganization. *NV Energy, Inc.*, 145 FERC ¶ 61,170 (2013).

³ Ormat TSA Filing at 2; Cargill TSA Filing at 2. *See also Nevada Power Co.*, 133 FERC ¶ 61,166, at P 6 (2010) (TUA Order).

⁴ In Phase 2, Great Basin Transmission, LLC (Great Basin), an affiliate of LS Power Development, LLC and co-developer of the ON Line, 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.

⁵ May 17 Order, 143 FERC ¶ 61,144 at P 8 n.10. 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. 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.

in which Ormat and Cargill challenged, among other things, NV Energy's authority to claim transmission rights under the native load priority recognized by the Commission in Order No. 888. As pertinent to these proceedings, the Commission confirmed that NV Energy was eligible to invoke the native load priority over its potential, combined system⁶ and found that NV Energy had properly exercised its native load priority through the designation of its network resources and native loads.⁷ However, the Commission found that the issue squarely raised in these proceedings – i.e., whether NV Energy properly established, through load flow or other analyses, the amount of transmission capacity that it will require to serve its native load needs – had not been adequately raised by the petition or complaint. The Commission held that, 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 TSAs, as well as explain and support the assumptions it used in the studies performed for those TSAs and justify any proposed conditions on the customers' service.⁸ Finally, the Commission directed NV Energy to provide customers with the data necessary to fully analyze its claimed native load priority.⁹

II. The Filed Unexecuted TSAs

A. Ormat

4. On June 18, 2013, NV Energy submitted an unexecuted TSA with Ormat for 27 MW of long-term, conditional firm, point-to-point transmission service with a point of receipt at a new switching station on NV Energy's existing #140 transmission line, and point of delivery at the Mead 230 kV Substation. Ormat requests service for a term of 20 years, starting on December 1, 2013, and terminating on November 30, 2033. Ormat requested that the TSA be filed unexecuted.¹⁰

⁶ *Id.* PP 65-69.

⁷ *Id.* PP 108-114. In a companion order issued with this order, we grant limited clarification of this holding and clarify that the Commission's intent in the May 17 Order was to confirm that the resources that NV Energy sought to designate are *eligible* to be designated as network resources, provided that they otherwise satisfy the requirements of sections 29 and 30 of the NV Energy OATT.

⁸ *Id.* P 115.

⁹ *Id.* P 116.

¹⁰ Ormat TSA Filing at 1.

5. NV Energy states that, in September 2011, it performed a system impact study (Initial Ormat SIS) that concluded that insufficient transmission capacity exists over the ON Line to accommodate Ormat's request for firm service without installation of upgrades to NV Energy's transmission system. NV Energy adds that, in December 2011, at Ormat's request, it conducted a second system impact study to study conditional firm options (Ormat Conditional Firm SIS). According to NV Energy, the Ormat Conditional Firm SIS concluded that Ormat's request could be accommodated on a conditional firm basis, with firm transmission service available following the completion of certain system upgrades. NV Energy states that the Conditional Firm SIS analyzed options for both hours and system conditions. Furthermore, NV Energy reports that, in March 2012, it provided Ormat with a facilities study that contained a more refined cost estimate, planned facility design, and major construction timelines.¹¹

6. NV Energy explains that the TSA provides Ormat with 27 MW of conditional firm point-to-point transmission service, contingent upon: (a) completion of a point of receipt substation and (b) all necessary land and environmental permits associated with the point of receipt substation. In addition, NV Energy states that the TSA provides Ormat with 27 MW of firm point-to-point transmission service, contingent upon: (a) Western Electricity Coordinating Council (WECC) transmission service request Path 81 re-rating and (b) the installation of the Harry Allen 500/230 kV 1500 MVA Transformer upgrade and associated facilities. NV Energy reports that direct assignment charges are \$50,000 for the re-rating or redefinition of WECC Path 81 and \$1,600,000 for the point of receipt substation.¹²

7. NV Energy avers that Ormat's TSA must include conditional curtailment options because NV Energy cannot accommodate Ormat's request for transmission capacity without a new Harry Allen Transformer. According to NV Energy, Ormat has decided to receive conditional firm transmission service until the necessary upgrades are complete. Therefore, NV Energy reports that the TSA provides it with the flexibility to conditionally curtail Ormat's service up to a maximum of 452 hours per each 12-month period commencing on the start date defined in the TSA. Furthermore, NV Energy states that the TSA provides Ormat with firm service upon the re-rating of WECC Path 81 and the completion of the new Harry Allen Transformer.¹³

¹¹ *Id.* at 7.

¹² *Id.*

¹³ *Id.* at 7-8.

B. Cargill

8. NV Energy submitted an unexecuted TSA for 300 MW of transmission service with a point of receipt at the Robinson Summit Substation, under construction as part of the ON Line and located in the current Sierra Pacific balancing authority area, and a point of delivery in the current Nevada Power balancing authority area. Cargill requests that the service start on January 1, 2016 for a five-year term, but requested that the TSA be filed unexecuted because Cargill disputes NV Energy's claimed native load uses and the conditions of service included in the TSA.¹⁴ As further discussed below in section IV.B.2, Cargill is responsible for funding a series of system upgrades to obtain its 300 MW of requested firm service.¹⁵

9. NV Energy explains that Cargill submitted a total of six 100 MW long-term firm point-to-point transmission service requests to NV Energy, with four requests submitted on August 17, 2011 and the remaining two submitting on September 9, 2011. NV Energy states that, at Cargill's request, it conducted initial and revised system impact studies for these requests, which it provided to Cargill in December 2011 and January 2012, respectively. NV Energy concluded that there was insufficient capacity on its system to meet Cargill's request without installing additional upgrades. In response, on February 8, 2012, Cargill requested that NV Energy study conditional firm service options for three of its six 100 MW requests, with a point of receipt at the Robinson Summit Substation (i.e., the northern terminus of the ON Line) and a point of delivery at the Crystal substation on Nevada Power's system. NV Energy states that it has identified limitations on its system that may prevent it from providing the requested service under certain conditions.¹⁶

III. Notice of Filings, Interventions, and Responsive Pleadings

10. Notice of the Ormat TSA Filing was published in the *Federal Register*, 78 Fed. Reg. 38,711 (2013), with interventions and protests due on or before July 9, 2013. A notice of intervention and comments was filed by the Public Utilities Commission of Nevada (Nevada Commission). Ormat filed a timely motion to intervene and protest (Ormat Protest). On July 24, 2013, NV Energy moved for leave to file an answer and filed an answer to the Ormat Protest (NV Energy Answer to Ormat Protest). On August 8, 2013, Ormat filed a motion for leave to answer and answer to NV Energy's

¹⁴ Cargill TSA Filing at 1-2.

¹⁵ *Id.* at 9.

¹⁶ *Id.* at 3-4.

answer (Ormat Answer). On November 21, 2013, Ormat submitted a supplemental protest. On December 16, 2013, Cargill submitted a motion to intervene out-of-time.

11. Notice of the Cargill TSA Filing was published in the *Federal Register*, 78 Fed. Reg. 41,056 (2013), with interventions and protests due on or before July 19, 2013. A notice of intervention and comments was filed by the Nevada Commission, and a timely motion to intervene and comments was filed by Ormat (Ormat Comments). Cargill submitted a timely motion to intervene and protest of the Cargill TSA Filing (Cargill Protest),¹⁷ and on August 5, 2013, NV Energy moved for leave to file an answer and filed an answer responding to the Cargill Protest and the Ormat Comments (NV Energy Answer to Cargill Protest). On the same day, Cargill moved for leave to file an answer and filed an answer responding to the Ormat Comments (Cargill Answer to Ormat Comments). On August 20, 2013, Cargill filed a motion for leave to reply and a reply to NV Energy's answer to its protest. On September 4, 2013, NV Energy moved for leave to answer and answered Cargill's reply, and on September 19, 2013, Cargill also moved for leave to answer and answered NV Energy's second answer. On December 16, 2013, Cargill moved for leave to file a supplemental answer and filed a supplemental answer.

IV. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), 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. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant Cargill's late-filed motion to intervene in Docket No. ER13-1724-000 given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

13. Rule 213(a)(2) of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. In the Ormat proceeding, we will accept the answers filed by Ormat and NV Energy, but reject Ormat's supplemental protest.

¹⁷ On August 9, 2013, Cargill filed an erratum to its protest to correct two included attachments. We accept Cargill's corrections to its protest.

14. In the Cargill proceeding, we will accept the answer filed by NV Energy to Cargill's protest and Ormat's comments and the answer filed by Cargill to Ormat's comments, but reject the subsequent reply and answers filed by Cargill and NV Energy.

B. Substantive Matters

15. As discussed below, we find that NV Energy has failed to satisfy its burden to justify the amount of north-to-south transmission capacity it seeks to reserve on the ON Line to serve its native load, and set for hearing and settlement judge procedures the determination of the amount of north-to-south transmission capacity that NV Energy requires on the ON Line to reasonably meet its native load obligations. Second, we find that the assumptions used by NV Energy in studies underlying the Ormat and Cargill TSAs may be flawed, and set the TSAs for hearing and settlement judge procedures.

16. In addition to the matters we set for hearing, we summarily find that NV Energy has failed to justify its alleged need to unilaterally terminate service to Ormat and Cargill upon the completion or in-service date of Phase 2 of the ON Line to the extent that NV Energy's ability to accommodate Ormat and Cargill's transmission service requests is dependent upon NV Energy's capacity entitlement under the TUA. We therefore direct NV Energy to remove those provisions from the Ormat and Cargill TSAs.

1. NV Energy Native Load Priority Claim

a. Background

17. NV Energy asserts that it is limited to 760 MWs of ON Line capacity in the event that Phase 2 of the ON Line is constructed, and that it intends to utilize the full 760 MWs of north-to-south ON Line capacity to serve its native load obligations.¹⁸ The benefits of the ON Line, according to NV Energy, were presented to the Nevada Commission as part of an integrated resource plan filing, and include the following: (1) allowing Sierra Pacific and Nevada Power to access diverse renewable energy resources within Nevada to transfer renewable generation from north to south, so as to reduce the cost of compliance with Nevada's renewable portfolio standard; (2) mitigating the operational difficulties associated with large quantities of must-take and intermittent renewable resources on the NV Energy system; (3) creating significant savings from joint dispatch of the combined resources of the previously separate systems and reducing the cost of incorporating intermittent resources into both the Sierra Pacific and Nevada Power

¹⁸ NV Energy notes that, should Phase 2 not be developed, it has not attempted to reserve any north-to-south ON Line capacity above 760 MW. Cargill TSA Filing at 4; Ormat TSA Filing at 3.

systems; (4) expanding opportunities to import renewable energy if needed; (5) providing a hedge against greenhouse gas regulation by allowing Sierra Pacific and Nevada Power to potentially exceed the renewable portfolio standard if economic to do so; (6) providing load diversity benefits resulting in reduced planning and operating resource sharing obligations for the combined system; and (7) improving system reliability and support during outages.¹⁹

18. Of particular importance, according to NV Energy, in the consideration of, and justification for, building the ON Line was the large amount of “must-take” (i.e., contracts for renewables to meet renewable portfolio standard requirements) and intermittent resources located in northern Nevada. NV Energy represents that the Sierra Pacific system is too small to accommodate the amount of renewable resources in northern Nevada, and that loads on the Sierra Pacific system can dip below 800 MWs often during the off season, when geothermal and wind resources can generate their highest output. Because NV Energy’s northern must-take resources can approach or exceed 800 MWs, NV Energy claims that the ON Line addresses this problem by allowing the must-take resources to be delivered onto the much larger combined system load of the two utilities, where they are more easily absorbed. NV Energy argues that the 760 MW of contractual capacity it secured under the TUA allows for this, or other combinations of designated network resources, to provide the planned benefits and uses to meet and serve native load obligations.²⁰

19. NV Energy explains that the ON Line will be a large line interconnecting two existing systems and that, as such, the existing systems are subject to limitations or constraints that affect the ON Line’s transfer capability. According to NV Energy, the Sierra Pacific (i.e., northern) system is limited in its ability to deliver generation across the 345 and 230 kV systems to the northern terminus of the ON Line, while the Nevada Power (i.e., southern) system is limited in its ability to absorb southbound flows over ON Line at the Harry Allen or Crystal substations. While NV Energy notes that these limitations can be resolved by upgrades or modifications, NV Energy states that its planned native load uses can be accommodated, within the 760 MW of contractual capacity should Phase 2 be developed, through the dispatch of different combinations of designated network resources without having to fund those upgrades.²¹

¹⁹ Cargill TSA Filing at 4; Ormat TSA Filing at 3.

²⁰ Cargill TSA Filing at 4-5; Ormat TSA Filing at 3-4.

²¹ Cargill TSA Filing at 5; Ormat TSA Filing at 4.

20. NV Energy describes the system resources and loads in both the Sierra Pacific and Nevada Power systems that support its native load priority claim. In the Sierra Pacific system, NV Energy has over 2,500 MWs of designated network resources, approximately 800 MW of which are must-take renewable resources. NV Energy claims that during low load periods it is necessary to run conventional generation in the north to maintain system reliability and thus all of these must-take resources need to flow north-to-south over the ON Line to serve load in the southern part of the system, where the majority of NV Energy's load is located. NV Energy also states that during other times of the year it might dispatch any combination of all of its designated network resources to meet native load needs. On the Nevada Power system, NV Energy explains that it has approximately 6,100 MWs of designated network resources.²²

b. Comments and Protests

21. In its comments, the Nevada Commission seeks to clarify certain representations made by NV Energy in the Ormat TSA Filing regarding the Nevada Commission's consideration and approval of the TUA, which established NV Energy's ownership rights with respect to the ON Line. The Nevada Commission states that, contrary to NV Energy's characterization, in approving the TUA, the Nevada Commission was aware of a TUA provision stating that the ON Line may be located in one or both of NV Energy's balancing authority areas, but the Nevada Commission granted no authority to NV Energy to combine or consolidate the balancing authority areas, as NV Energy did not request or present any evidence to support such authority. The Nevada Commission states that in an application currently pending before the Nevada Commission, NV Energy seeks to consolidate the balancing authority areas in conjunction with its request for authority to merge its subsidiaries, and the Nevada Commission states that it has not yet determined whether merging the subsidiaries is in Nevada's public interest.²³

22. Ormat argues that NV Energy has failed to meet the Commission's requirements for demonstrating native load priority and, thus, NV Energy has not carried its burden of proof to support its claim that all 760 MW of the available transmission capacity (ATC) on the ON Line's north-to-south transmission path is needed to serve its native load. Ormat alleges that NV Energy failed to document its existing native load requirements from designated network resources, did not show what those native load requirements were at the time it asserted native load priority, and did not produce an analysis consistent with Attachment C of its OATT to show that it will require all of the ON Line capacity to

²² Cargill TSA Filing at 6-7; Ormat TSA Filing at 4-6.

²³ Nevada Commission Comments at 2-4.

dispatch its designated network resources to serve existing native load. Moreover, Ormat contends that it is unclear whether NV Energy's priority use claim pertains to existing native load or anticipated load growth, and appears to use gross output instead of net output of the designated network resources to inflate its transmission needs.²⁴

23. Ormat states that NV Energy's methodology for determining how much capacity it needs to reserve for native load is unclear and should be made transparent. Ormat further states that NV Energy has failed to provide Ormat or the Commission with any meaningful support for its claims to all of the ON Line capacity for the NV Energy operating companies. For example, Ormat states that it is unclear what native load priority assumptions supported its system impact study. Ormat claims that the Commission found in the May 17 Order that NV Energy was claiming a priority to ON Line capacity to serve existing native load needs, but that NV Energy seems to have used native load forecasts from its 2010 integrated resource plan in evaluating Ormat's firm transmission service request. Thus, Ormat concludes that NV Energy continues to be inconsistent regarding the various bases for its claimed need to reserve the entire ON Line capacity, and has not provided data to support a native load capacity reservation under any theory. Similarly, Ormat asserts that NV Energy's assumptions underpinning its network resource designations are opaque. First, Ormat avers that it is unclear which resources are included in the designations, whether the list used in its study is the same one that it posted on NV Energy's OASIS on January 25, 2011, how those resources will be dispatched to use ON Line ATC, and whether the ATC calculations it performed with its designated network resources complied with its method in Attachment C of its OATT. Second, Ormat alleges that, while NV Energy seems to assume the full gross output of its designated network resources in claiming ON Line capacity, NV Energy assumes only net output for transmission planning purposes. Finally, Ormat argues that, even though NV Energy states that it needs the ON Line to meet state renewable portfolio requirements, NV Energy has provided no evidence to show the economic dispatch of renewables on its combined system.²⁵

24. Ormat contends that Commission policy and precedent require a utility to substantiate its reservation of transmission capacity for its native load. Ormat notes that NV Energy's study of Ormat's TSA seems to have taken account of anticipated native load growth. According to Ormat, in Order Nos. 888 and 890, the Commission established a policy that permits a utility to reserve capacity for native load growth in accordance with the terms and conditions of the utility's OATT. However, Ormat states

²⁴ Ormat Protest at 8-9.

²⁵ *Id.* at 9-11.

that such reservation must be supported by substantial evidence of the anticipated load growth such as testimony of experts, contractual commitments to new customers, and/or demonstration of need for additional designated network resources. Ormat argues that, in providing a list of network-wide resources, NV Energy has failed to justify its claim of native load priority.²⁶

25. Cargill alleges that NV Energy has failed to satisfy its burden of proof to justify its claim to all of the ON Line's north-south transmission capacity. Cargill asserts that NV Energy, in support of its native load priority claim, lists the purported benefits of the ON Line, describes the various purported limitations that affect NV Energy's northern and southern systems, and generally describes NV Energy's transmission studies of Cargill's requests. However, rather than performing a proper analysis of Cargill's transmission service requests by using (1) a realistic economic-based dispatch of properly designated network resources, (2) the expected system topology and load at the time frame being evaluated, (3) realistic settings of phase shifting transformers, and (4) allowance for other firm uses of the transmission system that have priority of the request being studied, Cargill asserts that NV Energy improperly used WECC's path rating style "stress cases," with available system capacity already consumed for NV Energy's native load.²⁷ Cargill claims that NV Energy simply reiterates the flawed assumptions underlying its flawed studies by asserting that "NV Energy will be utilizing the 760 MWs of north-to-south capacity to meet its native load obligations" as a foregone conclusion.²⁸ Specifically, Cargill asserts that NV Energy's discussion of its northern and southern "resources and limitations" does not provide a meaningful justification of NV Energy's native load priority claim, with NV Energy simply assuming a priority right to 760 MW of north-south transmission capacity without analysis, including an economic dispatch of its designated network resources.²⁹

²⁶ *Id.* at 13-16.

²⁷ Cargill Protest at 22. Cargill asserts that NV Energy's Northern Case (i.e., for the Sierra Pacific system) fails (1), (2), and (4) because of the way that NV Energy applied the WECC path rating process to inappropriately stress its system, while NV Energy's Southern Case (i.e., for the Nevada Power system) fails (1), (2), and (4) for the same reasons, and (3) by preloading certain phase transformers. These alleged deficiencies are discussed in more detail below in section IV.B.2.

²⁸ *Id.* at 29-30 (quoting Cargill TSA Filing at 2 n.2).

²⁹ *Id.* at 30-31.

26. Cargill further asserts that the purported benefits of the ON Line do not support NV Energy's native load priority claim. Cargill disputes NV Energy's assertion that, given the location of extensive renewable generation in northern Nevada, most of the renewable power in the north will begin flowing south once the ON Line is completed. Cargill explains that, based on 2012 FERC Form No. 1 data, Sierra Pacific has a 29 percent higher cost of generation than Nevada Power, and Sierra Pacific currently takes delivery of most of the renewable designated network resources in the north, including 430.5 MW from renewable facilities contracted to Nevada Power. If these northern resources are instead assumed to serve Nevada Power load, Cargill asserts that Sierra Pacific can replace them with a joint system economic dispatch of all designated network resources for the combined NV Energy system, i.e., from Nevada Power's less expensive resources in the south. As a result, according to Cargill, Sierra Pacific's replacement of its current designated network resources in the north using a joint economic dispatch for the combined system will cancel the assumed flows from north to south, thereby negating NV Energy's claimed need for north-to-south transmission capacity.³⁰

27. Cargill similarly rejects NV Energy's assertion that operational difficulties of mitigating "must-take" and intermittent generation justify NV Energy's native load priority claim. Cargill notes that many of NV Energy's must-take renewables in the north are geothermal resources, not intermittent wind resources that must be supported by imbalance and/or reserve services. In addition, Sierra Pacific already uses virtually all of the output from its renewable resources in the north without requiring the use of the ON Line's north-to-south transmission capacity. Furthermore, Cargill claims that NV Energy has not included all of Sierra Pacific's firm obligations when it asserts that Sierra Pacific's loads dip below 800 MW, as Sierra Pacific's (1) 2012 FERC Form No. 1 data indicate that Sierra Pacific's firm network service for its customers is approximately 80 percent of its total peak load on an average monthly basis, and (2) 2011 FERC Form 714 data indicate the minimum hourly demand in the Sierra Pacific balancing authority area was 982 MW. Cargill also questions NV Energy's off peak hour argument, given that NV Energy used a summer peak load analysis to evaluate Cargill's transmission service requests, and NV Energy provides no evidence that its system is somehow more limited during off peak hours than summer peak.³¹

28. Cargill challenges each of the remaining benefits as well. First, Cargill notes that, while the ON Line might create savings resulting from joint dispatch of the combined

³⁰ *Id.* at 32-33.

³¹ *Id.* at 34-35.

systems' designated network resources, NV Energy failed to utilize a joint economic dispatch when studying the Cargill transmission service requests. With respect to future imports of renewable generation, Cargill argues that this benefit cannot support NV Energy's native load claim because it is for unknown, and therefore undesignated, future resources, and actually supports arguments that there is additional capacity on the ON Line. Cargill makes the same objections to the claimed benefit that the ON Line will serve as a hedge against future greenhouse gas regulation. With respect to NV Energy's load diversity benefits, Cargill observes that NV Energy has not quantified the amount of north-to-south capacity that may be required to obtain these benefits; in any event, Cargill asserts that NV Energy experienced no load diversity at all during its peak month of 2012. Finally, regarding alleged system reliability benefits and support during system outages, Cargill asserts that NV Energy's analyses already take into account necessary support for line outages in the calculation of ATC, and notes that the renewable resources in the Sierra Pacific system cannot be ramped up to provide support for generation outages, meaning that such support is more likely to come from the south and therefore not require north-to-south capacity.³²

c. Answers

(1) NV Energy

29. In its answer to Ormat, NV Energy argues that its designated network resources and existing native load needs satisfy the Commission's requirements for demonstrating native load priority. At the outset, NV Energy reports that it has over 2,500 MW of designated network resources located in the Sierra Pacific northern system, 800 MW of which are must-take renewable resources. NV Energy adds that Nevada Power's peak load for retail and network native load customers in 2011 was 5,884 MW. Thus, NV Energy concludes that, based on the fact that northern resources total 2,500 MW and the fact that the load in the south is 5,884 MW, it is clear that NV Energy has enough resources and load to justify its reservation of 760 MW from the northern system to the southern system via the ON Line.³³

30. NV Energy reiterates that its native load need of 760 MW is justified based upon existing native load needs, not anticipated native load growth. NV Energy states that the Initial Ormat SIS assumed that NV Energy will utilize 760 MW of north-to-south capacity over the ON Line because, while NV Energy's existing load obligations and designation of network resources already exceeded the capacity of the system to flow

³² *Id.* at 35-38.

³³ NV Energy Answer to Ormat Protest at 2-4.

power from northern Nevada to southern Nevada, NV Energy is contractually limited under the terms of the TUA to a capacity entitlement of up to 760 MW if both segments of Phase 2 are completed. Furthermore, NV Energy explains that, in analyzing Ormat's transmission service request, NV Energy conducted test cases that incorporated forecasted 2014 loads as set forth in the 2010 state integrated resource planning proceeding. These assumptions, according to NV Energy, are appropriate because Ormat is requesting that transmission service begin in 2014.³⁴

31. In regard to Ormat's argument that it is unclear what resources NV Energy studied when evaluating Ormat's transmission service request, NV Energy avers that the modeled generation dispatch is separate and distinct from NV Energy's designated network resources, which are the basis for the capacity set aside to serve NV Energy's native load obligations. Also, concerning Ormat's point that traditional generation in the southern system is more economic than the renewable generation in the north, NV Energy responds that this fact has no bearing on how NV Energy established the capacity needed to serve native load. NV Energy alleges that it is free to dispatch its generation in economic order or out of economic order to meet reliability or public policy needs. Moreover, in support of its decision to use full gross output of its designated network resources in claiming ON Line capacity, NV Energy argues that Commission regulations permit a transmission customer to designate the total installed capacity of a network resource.³⁵

32. In its answer to Cargill, NV Energy argues that it has properly established its claim to ON Line capacity based upon its existing native load needs. NV Energy asserts that Cargill's transmission studies were not intended to establish or justify NV Energy's native load priority right to 760 MWs of capacity on the ON Line, as those rights are established through different mechanisms, such as a transmission provider's normal planning processes, state integrated resource planning processes, or individual customers' transmission service requests. NV Energy explains that information supporting its native load obligations and needs was provided and demonstrated in its integrated resource plan filing submitted to the Nevada Commission in requesting authorization and approval to move forward with the proposed ON Line project under the terms of the TUA. Accordingly, NV Energy states that the purpose of its studies of Cargill's transmission service requests was to evaluate the impact of Cargill's requested service on NV

³⁴ *Id.* at 5.

³⁵ NV Energy Answer to Ormat Protest at 6-7.

Energy's transmission system and determine what upgrades, if any, would be required to provide the requested service.³⁶

33. NV Energy argues that Cargill has not pointed to any Commission precedent regarding the burden that a transmission provider must satisfy to justify using its transmission system to serve its existing native load needs, and reiterates its justification for claiming 760 MW of north-to-south capacity to dispatch the output of network resources from northern to southern Nevada, where the majority of NV Energy's system load is located. NV Energy explains that it has over 2,500 MW of designated network resources located in the Sierra Pacific system, 800 MW of which are must-take renewable resources, with 250 MW of those must-take resources having some degree of intermittency. Because NV Energy's loads in the north are significantly smaller than the south, NV Energy asserts that it must have the ability to maintain sufficient dispatchable generating resources (e.g., fossil resources on automatic generation control) online in the north to be able to balance the system and maintain reliability. NV Energy states that when Sierra Pacific's load drops to approximately 800 MW during off-peak times, it is imperative that the 800 MWs of must-take resources be able to be dispatched towards southern Nevada, where there is a much greater load to absorb them. However, NV Energy also states that the need to move generation to the southern part of the system is not exclusive to the must-take resources or limited only to those instances when Sierra Pacific loads are at their minimum, as there are many instances in which generation in the north could assist load service and reliability in the south (e.g., due to the availability of cheaper northern generation, at times of system maintenance, or in the event of a loss of generation or gas supply disruption in the south).³⁷

34. NV Energy states that its combined northern and southern balancing authority area loads in 2011 were in excess of 7,400 MWs, and NV Energy designs its system to serve all of those loads. It states that Nevada Power's peak retail and network native load in 2011 was 5,884 MW, and argues that, therefore, at times the northern system may have up to 1,700 MW of generation to transfer to its southern loads. NV Energy explains that, while NV Energy's amount of designated network resources and native load needs far exceed 760 MW of capacity, NV Energy considered the need to move the must-take resources south during periods of low load, reliability considerations and benefits, and the joint dispatch benefits provided by single system operations in arriving at a MW amount that would allow NV Energy to capture such benefits in the event that Phase 2 were to be developed. NV Energy provides confidential copies of PROMOD runs purporting to

³⁶ NV Energy Answer to Cargill Protest at 3-6.

³⁷ *Id.* at 6-7.

show joint dispatch benefits that were developed in support of its Nevada Commission filings,³⁸ and claims that the 760 MWs of negotiated capacity entitlement under the TUA represented the optimum capacity amount needed to serve native load obligations, in light of cost of construction (e.g., the amount of capacity entitlement over the ON Line, as well as the overall project was weighed against the cost of construction and the most beneficial solution was selected to meet NV Energy's native load obligations).³⁹

35. In addition, NV Energy explains that, in obtaining approval to move forward with construction of the ON Line, NV Energy provided information to the Nevada Commission that demonstrated NV Energy's multiple uses for the ON Line to meet its native load obligations and the estimated costs to meet those obligations. These obligations include the requirement to meet Nevada's renewable portfolio standard, and NV Energy states that the need to move must-take renewable resources south was recognized as part of the justification for the ON Line and one of the reasons given by the Nevada Commission staff for supporting the ON Line. NV Energy states that, to the extent it is contractually provided more than 760 MW of capacity, it has made its excess capacity rights, i.e., that which is not needed for native load, available to the market place. NV Energy also states that, to the extent NV Energy's capacity rights following construction of Phase 2 are limited to only 760 MW of north-to-south capacity, the additional capacity will be owned by Great Basin and made available to the marketplace.⁴⁰

36. Finally, NV Energy rejects Cargill's argument that the purported benefits of the ON Line do not support NV Energy's native load priority claim. NV Energy states that it described those benefits in this proceeding to provide context and background to support the need for and purpose of building the ON Line, as presented to and approved by the Nevada Commission. Furthermore, NV Energy argues that, as required by Nevada law,

³⁸ In his affidavit, Mr. Whelan states that NV Energy performed PROMOD studies that demonstrated the hours when it would be economic to transfer at least 760 MW of designated network resources from northern Nevada to serve load in southern Nevada, as well as the hours when it would be economic to transfer at least 760 MW of designated network resources from southern Nevada to load in northern Nevada. Mr. Whelan explains that the model underlying the analysis was based on information available at the time to NV Energy, and that the Northern Case demonstrates the need for 760 MW of capacity, which represents an economic dispatch. Whelan Aff. at 18-19.

³⁹ NV Energy Answer to Cargill Protest at 7-8.

⁴⁰ *Id.* at 8-9.

NV Energy's obligation to serve its native load customers is regulated by the Nevada Commission, and the Nevada Commission accordingly determines whether or not NV Energy's integrated resource plan is a prudent means of meeting its native load obligations. NV Energy notes that Cargill intervened in some of the Nevada Commission proceedings and could have challenged the benefits of the ON Line to NV Energy's native load, but instead Cargill supported the ON Line's construction, and the current proceeding is not a proper forum to re-litigate the ON Line's benefits.⁴¹

(2) Ormat

37. In Ormat's answer to NV Energy's answer, Ormat asserts that NV Energy has not presented a *prima facie* case to support its native load priority claim under section 205(e) of the FPA as directed by the May 17 Order. Regarding NV Energy's argument that it is entitled to all of the ON Line's north-south transmission capacity because load in the Nevada Power balancing authority area exceeds capacity in the Sierra Pacific balancing authority area, Ormat maintains that such argument fails to meet the just and reasonable standard of section 205 of the FPA, and fails to comply with the Commission's directive that NV Energy explain and support its decision to withhold firm ON Line capacity from Ormat.⁴² Section 205(e) of the FPA, Ormat explains, requires NV Energy to demonstrate that the Ormat TSA is just and reasonable and not unduly discriminatory based on substantial evidence.⁴³ Ormat adds that general statements, such as the one that NV Energy has made regarding native load obligations, do not allow a transmission provider to deny and/or limit a third-party customer's request for firm transmission service.⁴⁴ Ormat contends that NV Energy's position lacks any analysis demonstrating the reasonableness of NV Energy's designated network resource-based native load priority claim. Specifically, Ormat alleges that NV Energy has made no attempt to show—at the time it performed its studies for Ormat—that it had any reasonable expectation to need designated network resources in the Sierra Pacific balancing authority area to serve network load in the Nevada Power balancing authority area. Ormat also asserts that NV Energy has not produced any ATC calculation that it performed for the ON Line capacity at the time when its merchant function purportedly submitted its designated network

⁴¹ *Id.* at 9-10.

⁴² Ormat Answer to NV Energy Answer at 1.

⁴³ *Id.* at 3 (citing *NRG Power Marketing, LLC v. FERC*, 718 F.3d 947 (D.C. Cir. 2013); *Amerada Hess Pipeline Corp.*, 71 FERC ¶ 61,040, at 61,166 (1995)).

⁴⁴ *Id.* at 6 (citing *Nevada Power Co.*, 112 FERC ¶ 61,072, at P 9 (2005); *Nevada Power Corp.*, 97 FERC ¶ 61,324, at 62,493 (2001)).

resource list, along with an explanation and support for any assumptions that it may have made in its analysis.⁴⁵

38. Ormat rejects NV Energy's claim that the Torrey Letter⁴⁶ established designated network resources to serve existing load. First, Ormat states that Sierra Pacific had no network load on the Nevada Power system on January 25, 2011, when NV Energy's merchant function sent the Torrey letter to its transmission function, and that it still has none today. Moreover, Ormat contends that, because the Torrey Letter's designation of designated network resources was conditioned on the approval of the merger, if the merger does not go forward, there is no basis upon which NV Energy could designate the designated network resources and withhold the 760 MW of ON Line capacity for itself. Ormat also states that, since NV Energy has indicated that it will move forward with construction of the ON Line regardless of whether it obtains regulatory approval to operate a consolidated balancing authority area, it is inappropriate for NV Energy to condition service to Ormat across the ON Line on merged system operations, or operations under the "merged" system OATT.⁴⁷ Ormat also argues that the Commission should closely scrutinize NV Energy's native load priority claim to ensure that NV Energy has not simply exercised a cost-free option to reserve future transmission capacity in circumvention of Commission policy. The Commission, according to Ormat, has restricted the ability of transmission owners and transmission customers to designate resources only to those resources that are owned or committed for purchase.⁴⁸ Ormat explains that such restrictions are intended to prevent transmission customers and transmission providers from designating network resources above their needs and,

⁴⁵ *Id.* at 3-8.

⁴⁶ The Torrey Letter is a January 25, 2011 letter and accompanying attachments sent from NV Energy's merchant function, on behalf of NV Energy's native load, to NV Energy's transmission function that sought to designate network resources for the future, to-be-combined NV Energy transmission system. The Commission addressed the Torrey Letter in more detail in the May 17 Order. May 17 Order, 143 FERC ¶ 61,144 at PP 109-111.

⁴⁷ Ormat Answer to NV Energy Answer at 9-10.

⁴⁸ *Id.* at 11 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299, at P 236 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

consequently, tying up valuable capacity.⁴⁹ Ormat concludes that, here, NV Energy has faced no economic consequence for using the Torrey Letter to tie up ON Line capacity indefinitely because it has been permitted to recover the costs of its network resources fully from existing native load customers of its separate balancing authority areas for the past three years.⁵⁰

39. Ormat argues that NV Energy has failed to show that it complied with its OATT requirements for designating network resources. Ormat stresses that NV Energy bears the burden of proof in this case to demonstrate that its designated network resources were properly designated under sections 29 and 30 of its OATT. Ormat maintains that NV Energy has not satisfied this burden because NV Energy has not demonstrated that its merchant function showed firm commitment to support the designations made in the Torrey Letter. Furthermore, Ormat contends that NV Energy is mathematically incorrect regarding the extent of capacity from “must take” renewables in its northern system. Specifically, Ormat states that, while NV Energy maintains that its designated network resources include 800 MW of renewable resources that are interconnected to its northern system, the table of NV Energy’s designated network resources from its May 22, 2013 OASIS posting add up to a total capacity of 753.1 MW.⁵¹

d. Commission Determination

40. In the May 17 Order, the Commission affirmed that NV Energy bears the burden to establish, 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.⁵² We find that NV Energy has failed to satisfy its burden to justify the amount of north-to-south transmission capacity it seeks to reserve on the ON Line to serve its native load. Accordingly, and as discussed further below in section IV.B.2, we set for hearing the issue of how much north-to-south transmission capacity NV Energy may properly claim on the ON Line to serve its native load needs pursuant to the native load priority recognized in Order No. 888.

⁴⁹ *Id.* (quoting *Wisconsin Pub. Power Inc. System v. Wisconsin Pub. Serv. Corp.*, 83 FERC ¶ 61,198, at 61,856, *order on reh’g*, 84 FERC 61,120 (1998)).

⁵⁰ *Id.* at 12.

⁵¹ *Id.* at 12-14.

⁵² May 17 Order, 143 FERC ¶ 61,144 at PP 2, 115.

41. NV Energy asserts that it needs approximately 760 MW of north-to-south capacity on the ON Line to meet its native load needs. While the ON Line is capable of transmitting approximately 1,050 MW prior to the construction of Phase 2 absent constraints,⁵³ NV Energy asserts that constraints at the northern and southern termini of the ON Line restrict its ability to offer service up to that full amount without upgrades that mitigate those constraints.⁵⁴ However, NV Energy claims that, through management of its north-to-south capacity of 760 MWs and the dispatch of its designated network resources near the southern terminus of the ON Line, it can account for those system constraints and serve its native load without triggering the need for those upgrades.⁵⁵ Accordingly, under NV Energy's position, the combination of NV Energy's claimed native load priority and these system constraints would require that third-party customers (i.e., Ormat and Cargill) provide security for network upgrades if they wish to obtain firm point-to-point service from the northern to southern systems.

42. In support of its native load priority claim, NV Energy primarily relies on two arguments. First, NV Energy argues that it needs the claimed north-to-south capacity to serve its southern loads using designated network resources in the north. NV Energy explains that its combined northern and southern loads exceed 7,400 MWs, with loads in the south, which peaked at 5,884 MW in 2011, far exceeding loads in the north. Given the historic separation of the two systems, however, NV Energy maintains roughly 2,500 MWs of designated network resources in the north, and NV Energy argues that these resources might be used to serve the significantly larger loads in the south, thereby requiring some or all of the ON Line's available north-to-south transmission capacity.⁵⁶

43. We find this argument unpersuasive and agree with Ormat and Cargill that it is insufficient to simply list the amounts of loads and resources in northern and southern systems, and assert that the larger southern loads might need to be served by resources in the north. NV Energy provides no useful dispatch information to identify the circumstances in which resources in the north would actually be used to serve load in the south and create the north-to-south flows that would require the claimed 760 MW of capacity. NV Energy's failure to provide any meaningful joint economic dispatch data is

⁵³ Ormat TSA Filing at 5; Cargill TSA Filing at 6.

⁵⁴ These upgrades are discussed in more detail below in section IV.B.2.

⁵⁵ Cargill TSA Filing at 7; Ormat TSA Filing at 5.

⁵⁶ NV Energy Answer to Cargill Protest at 7-8; NV Energy Answer to Ormat Protest at 3.

especially problematic⁵⁷ given that, on average, it appears that the cost of power in the north exceeds that in the south,⁵⁸ raising questions as to whether northern resources routinely would be economically dispatched to serve southern loads. In the absence of such support, we cannot accept NV Energy's claimed need to the full north-to-south capacity of the ON Line simply because there might be circumstances in which NV Energy would use that capacity to serve its southern loads using northern resources.

44. Second, NV Energy argues that, due to the combination of approximately 800 MW of must-take renewable generation and loads as low as approximately 700 MW in the Sierra Pacific system, it requires significant north-to-south transmission capacity over the ON Line to deliver those must-take resources to loads in the south.⁵⁹ However,

⁵⁷ We note that, in its answer to Cargill's protest, NV Energy provided the Commission with data, previously provided to the Nevada Commission, that purport to reflect a joint economic dispatch of the combined NV Energy system and the corresponding use of the ON Line's north-to-south transmission capacity. However, in the Ormat proceeding, NV Energy rejected the argument that it need perform an economic dispatch to determine the amount of capacity needed to serve its native load and failed to provide any similar data to respond to Ormat's protest. NV Energy Answer to Ormat Protest at 6 ("The order of NV Energy's generation dispatch has no bearing on establishing the capacity needed to serve NV Energy's native load."). Regardless, NV Energy provides no context or explanation of the assumptions or model underlying the economic dispatch data that it did provide, which precludes the Commission and the parties from evaluating whether it reasonably supports NV Energy's native load priority claim.

⁵⁸ Cargill Protest at 32 (reporting that, based on 2012 FERC Form 1 data, Sierra Pacific has a 29 percent higher cost of generation than Nevada Power); Ormat Protest at 11 (asserting that "[b]ased on historical costs, it appears that traditional generation attached to Nevada Power in the south is more economic than renewable generation attached to the Sierra Pacific system in the north").

⁵⁹ As a threshold matter, we note that Ormat questions NV Energy's representation that it does, in fact, have 800 MW of must-take renewable resources, and instead argues that NV Energy has only 753.1 MW of such resources. Ormat Answer at 13. NV Energy did not refute Ormat's calculation. In any event, given our holding here, we need not verify the exact amount of must-take renewable generation that NV Energy actually has in the Sierra Pacific system, as we find that NV Energy's argument does not support its native load priority claim, regardless of whether the amount is 800 MW, 753.1 MW, or some lesser amount.

in order for flows north-to-south to equal approximately 760 MW while loads in the north are approximately 700 MW and the must-take renewable generation output is 800 MW, the amount of conventional generation output in the north would have to be approximately 660 MW. NV Energy provides no credible evidence that such northern dispatch would actually occur during low load or any other period. While NV Energy argues that it must pair its must-take renewable power with conventional generation, it fails to explain why it must pair those resources in such a manner that would effectively double the amount of generating capacity running as a result of the must-take resources. NV Energy's argument is further undermined by the fact that, as Ormat and Cargill note, it appears that only a portion of NV Energy's must-take resources are intermittent in nature, with the vast majority constituting baseload resources that do not require the same amount of paired conventional resources. NV Energy fails to substantiate that these must-take resources will, in fact, result in significant north-to-south flows on the ON Line during low load or other periods, let alone flows that would consume the full north-to-south capacity of the ON Line.

45. In addition, both Ormat and Cargill call into question whether the resources that NV Energy claims to have designated, including the must-take renewable resources discussed above, actually have a higher queue priority than Ormat and Cargill's respective transmission service requests. For example, Ormat notes that approximately 347 MW of NV Energy's renewable designated network resources were submitted after June 13, 2011, the date Ormat submitted its transmission service request, and asserts therefore that only roughly 406 MW even arguably have priority over Ormat's request.⁶⁰ As clarified in our concurrently-issued order on rehearing and clarification of the May 17 Order, it remains NV Energy's burden to establish that the resources that it claims are properly designated as network resources satisfy the requirements of its OATT. NV Energy may satisfy this burden in the hearing directed below in section IV.B.2.

46. Furthermore, we note that NV Energy repeatedly lists the benefits of the ON Line in support of its native load priority claim.⁶¹ However, that the ON Line is expected to provide significant benefits does not, in and of itself, justify the amount of north-to-south transmission capacity that NV Energy claims. NV Energy fails to explain how the 760 MW of north-to-south capacity is necessary to achieve the identified benefits or how those benefits correlate to specific native load needs that may be served by NV Energy's claimed capacity.

⁶⁰ Ormat Answer at 13-14.

⁶¹ See *supra* P 17.

47. Simply put, NV Energy has not demonstrated why securing approximately 760 MW of north-to-south capacity is necessary to meet the needs of its native load customers. We recognize that NV Energy secured approximately that amount of capacity under the TUA, but to date it has failed to correlate its priority needs with that amount of capacity. Furthermore, Ormat and Cargill have raised serious questions both about the accuracy of NV Energy's argument that NV Energy actually needs significant north-to-south transmission capacity to transmit these northern resources to southern load, and the legitimacy of NV Energy's claim that the resources purportedly designated as network resources have priority over their transmission service requests. NV Energy has failed to adequately address those concerns, and we cannot find based on the record before us that NV Energy has satisfied its burden to establish, through load flow or other analyses, the amount of north-to-south ON Line capacity it will require to serve its native load.⁶²

48. Accordingly, we set for hearing and settlement judge procedures the determination of the amount of transmission capacity, particularly north-to-south capacity, that NV Energy requires on the ON Line to reasonably meet its native load obligations, given reasonable assumptions about the resources it has designated to serve native load, weather patterns, load and generation characteristics, must-take requirements, and any other appropriate considerations.

2. Study Assumptions and Upgrade Cost Responsibility

a. Background

49. NV Energy states that the transfer capability of the ON Line, a large line interconnecting two existing systems, is affected by the limitations or constraints on the existing Sierra Pacific and Nevada Power systems. NV Energy explains that the Sierra Pacific system is limited in its ability to deliver generation across the 345 kV and 230 kV systems to the northern terminus of the ON Line, while the Nevada Power system is limited in its ability to absorb southbound flows over ON Line. While these constraints can be resolved by upgrades or modifications, NV Energy states that its planned uses to serve native load can be accommodated, within the 760 MW of contractual capacity NV Energy would own should Phase 2 be developed and which NV Energy generally seeks to reserve for native load priority during Phase 1, through the dispatch of different combinations of designated network resources without having to spend additional funds. In other words, NV Energy asserts that it can optimize the use of its designated network resources at any one time to achieve native load benefits for reliability, economics,

⁶² May 17 Order, 143 FERC ¶ 61,144 at PP 2, 115.

reserve sharing, balancing for the intermittency of renewable resources, or combinations thereof.⁶³

50. As is pertains to the Ormat TSA, in September 2011, NV Energy conducted the Ormat Initial SIS to determine whether Ormat's request would cause reliability or other system violations either from the Sierra Pacific bulk electric system across the Robinson Summit 345/500 kV transformer, or into the Las Vegas bulk electric system across the 500/230 kV transformers located at Northwest and Crystal Substations.⁶⁴ NV Energy explains that, in conducting the Ormat Initial SIS, it analyzed various cases to determine what impacts Ormat's request would have on the NV Energy transmission system. NV Energy states that these cases studied the stresses that Ormat's requested transmission service would have on the NV Energy integrated system, by examining the balancing area peak loads of the integrated system. According to NV Energy, because it has the ability to optimize the use of its designated network resources to achieve native load benefits, there are several combinations of ON Line loadings and generating resources that can be used. NV Energy states that, here, the combinations are designed to test whether the system would "break."⁶⁵

51. Regarding the northern system limitations, NV Energy reports that the Ormat request, coupled with NV Energy's plan to use 760 MWs to meet native load obligations, do not reach or exceed the northern limitations. NV Energy reports that this is due to Ormat's point of receipt on a 120 kV line that feeds into the 230 kV system that flows into Gonder. Specifically, NV Energy claims that the 180 MWs of flows into Gonder via the 230 kV system, plus the 600 MWs of NV Energy flows from the Falcon – Robinson Summit 345 kV Line, plus up to 150 MWs of contracted wind resources, do not exceed the limitations of the Robinson Summit 345 to 500 kV transformers.⁶⁶

52. NV Energy reports that, concerning the southern system limitations, the existing Northwest and Crystal transformers have post-contingency emergency ratings of 1,770 MWs and 1,750 MWs, respectively, which provide the constraint with respect to how much power can be injected into the system at Harry Allen Substation. NV Energy can manage this constraint, it explains, by either electing to have higher flows on the ON Line (up to a full 760 MW) by backing down generation at Harry Allen Substation, or, in

⁶³ Ormat TSA Filing at 4; Cargill TSA Filing at 5.

⁶⁴ Ormat TSA Filing at 6.

⁶⁵ *Id.*

⁶⁶ *Id.*

the alternative, by reducing flows on the ON Line and dispatching additional generation at Harry Allen Substation. NV Energy states that it tested the known and existing limitations in the Las Vegas 500 kV system by modeling heavy NV Energy and IPP generation dispatch at the Harry Allen Substation. Of particular importance, NV Energy states that the additional capacity from Ormat's request, coupled with the loss of the Harry Allen – Mead 500 kV Line, caused the Northwest transformer to exceed its emergency rating. NV Energy concludes that, to mitigate this overload, it is necessary to build a new 500/230 kV transformer at the Harry Allen Substation. In addition, NV Energy claims that the studies demonstrated a need to re-rate or redefine WECC Path 81 in order to accommodate Ormat's request of 27 MWs.⁶⁷

53. NV Energy explains that the Ormat TSA provides Ormat with 27 MW of conditional firm point-to-point transmission service, contingent upon: (a) completion of a point of receipt substation and (b) all necessary land and environmental permits associated with the point of receipt substation. In addition, NV Energy states that the Ormat TSA provides Ormat with 27 MW of firm point-to-point transmission service, contingent upon: (a) WECC Path 81 re-rating and (b) the installation of the Harry Allen 500/230 kV 1500MVA Transformer upgrade and associated facilities. NV Energy reports that direct assignment charges are \$50,000 for the re-rating or redefinition of WECC Path 81 and \$1,600,000 for the Point of Receipt Substation.⁶⁸

54. NV Energy avers that Ormat's TSA must include conditional curtailment options because NV Energy cannot accommodate Ormat's request for transmission capacity without a new Harry Allen Transformer. According to NV Energy, Ormat has decided to receive conditional firm transmission service until the necessary upgrades are complete. Therefore, NV Energy reports that the Ormat TSA provides it with the flexibility to conditionally curtail Ormat's service up to a maximum of 452 hours per each 12-month period commencing on the start date defined in the TSA, until such time as the necessary upgrades for Ormat's firm service are in place. NV Energy states that the TSA provides Ormat with firm service upon the re-rating of WECC Path 81 and the completion of the new Harry Allen Transformer.⁶⁹

55. With regard to the Cargill TSA, NV Energy explains the system constraints that it claims prevent NV Energy from granting Cargill's 300 MW transmission service requests without additional system upgrades. On the Sierra Pacific system, NV Energy explains

⁶⁷ *Id.* at 6-7.

⁶⁸ *Id.* at 7.

⁶⁹ *Id.* at 7-8.

that, due to the size of the 345/500 kV transformers at the northern terminus of the ON Line, the maximum flows on the ON Line are limited to 1,050 MWs without additional upgrades; however, when Cargill's 300 MW of requested service is added to NV Energy's native load reservation (760 MWs) and Ormat's prior-queued service request (27 MW), the total capacity exceeds 1,050 MW, thereby requiring additional upgrades before the service can be provided.⁷⁰

56. NV Energy explains that the Nevada Power system also has significant system constraints that limit its ability to grant Cargill's service requests without additional upgrades. According to NV Energy, the total power that can be injected at the Harry Allen Substation, the southern terminus of the ON Line, is approximately 3,500 MW; however, when NV Energy modeled the impact of Cargill's 300 MW request, the study indicated that the installation of a new 500/230 kV 1,500 MVA transformer, as well as the addition of associated facilities, is required at the Harry Allen Substation, and WECC Path 81 must be re-rated or redefined in the amounts specified in the studies.⁷¹

57. NV Energy explains that it initially performed a system impact study for each of Cargill's six 100 MW transmission service requests (Initial Cargill SIS). The Initial Cargill SIS assumed 760 MWs of northern resources dispatched to serve load in the south and 27 MW of firm point-to-point service associated with Ormat's transmission service request, and showed actual flows of approximately 825 MW (which NV Energy states is higher than the "scheduled" service due to loop flows). Upon reaching 300 MWs of service, the Initial Cargill SIS indicated that total flows would exceed the 1,050 MW limitation at the Robinson Summit transformers, and therefore the study identified that the Robinson Summit substation would need to be expanded to add a third 525 MVA 345/500 kV transformer. In addition, the Initial Cargill SIS identified upgrades that would be required at the southern terminus of the ON Line. Using the assumption that approximately 3,500 MWs of power can be injected into the system at the Harry Allen substation, the point at which the ON Line would connect to the Nevada Power system, the Initial Cargill SIS indicated that system upgrades would be required to grant just 200 MW of Cargill's requested service, given other assumptions regarding generation dispatch over the ON Line and on the Nevada Power system. The Initial Cargill SIS further concluded that the identified upgrade – an additional 500/230 kV 1,500 MVA transformer – and a re-rating or reconfiguring of WECC Path 81 would alleviate the

⁷⁰ Cargill TSA Filing at 6. In Attachment 1 to the Cargill TSA Filing, NV Energy also demonstrates the possible system flows onto the ON Line through its northern terminus.

⁷¹ *Id.* at 7.

overload and allow Cargill to obtain up to 300 MW of service without requiring further upgrades.⁷²

58. Cargill ultimately elected to proceed with a transmission service agreement for 300 MW of firm point-to-point service, contingent upon: (1) further WECC Path 81 re-rating or redefinition in the amounts specified in the Initial Cargill SIS, at a cost of \$50,000; (2) installation of the Harry Allen 500/230 kV 1,500 MVA Transformer upgrade and associated facilities, at a cost of \$51.215 million; and (3) the installation of the Robinson Summit 500/345 kV 525 MVA Transformer upgrade and associated facilities, at a cost of \$38.864 million. NV Energy explains that the only direct assignment charge would be the cost associated with the re-rating or redefinition of WECC Path 81, and that the remaining costs, totaling \$90.079 million, are network upgrades for which Cargill would be required to provide security.⁷³

b. Protests and Comments

59. Ormat argues that the Commission should find that NV Energy's prior studies completed in response to Ormat's transmission service request for capacity on the combined balancing authority area, including the ON Line, were flawed because they included the assumption that NV Energy was entitled to 760 MW of ON Line capacity. Ormat also states that, in the Ormat Initial SIS, NV Energy indicated that Ormat would need to securitize a \$46.1 million new transformer at the Harry Allen substation, but that, in the unexecuted Ormat TSA, NV Energy now seeks for Ormat to fund upgrades at the Harry Allen Substation at a cost of \$51.5 million, and proposes for Ormat to fund the costs of upgrading WECC Path 81. However, Ormat states that, in the Cargill TSA, NV Energy claims that Cargill also must securitize, at the same cost levels, the upgrades at Harry Allen Substation and WECC Path 81. Ormat avers that NV Energy has provided no cost support to back these charges, did not explain why it is appropriate for two customers to provide the same security for the same facilities, and did not take into account that Ormat has requested less than one-tenth the capacity that Cargill has requested.⁷⁴

⁷² *Id.* at 7-8. NV states that, at Cargill's request, NV Energy also studied conditional firm options for three of Cargill's transmission service requests, for a total of 300 MW, but that Cargill ultimately decided not to proceed with conditional firm service. *Id.* at 8-9.

⁷³ *Id.* at 9.

⁷⁴ Ormat Protest at 23-25.

60. Cargill challenges certain assumptions used by NV Energy in the system impact studies it performed for Cargill's transmission service requests. Cargill explains that NV Energy developed two "stressed" base cases for studying the requests, each of which was used to evaluate the impact of those requests on the Sierra Pacific system (Northern Case) or the Nevada Power system (Southern Case). However, according to Cargill, NV Energy improperly used a process similar to WECC's transmission path rating process, which Cargill asserts is different than the process that should be used to evaluate transmission service requests, and which is designed to consume all available transmission capacity, leaving no capacity for purposes such as Cargill's transmission service requests. Cargill argues that a realistic base case used to evaluate its transmission service requests instead should include (1) a realistic economic-based dispatch of properly designated Network Resources, (2) the expected system topology and load at the time frame being evaluated, (3) realistic settings of phase shifting transformers, and (4) allowance for other firm uses of the transmission system that have a legitimate priority over the request being evaluated. According to Cargill, the Northern Case fails (1), (2), and (4) because of NV Energy's improper use of the WECC path rating process, while the Southern Case fails (1), (2), and (4) for the same reasons, and (3) by preloading certain phase shifting transformers.⁷⁵

61. Cargill also identifies a series of purported flawed assumptions used in NV Energy's studies of its transmission service requests. First, with respect to the Northern Case, Cargill notes it identified manipulative alterations of certain interchange values that appear to reflect third-party transactions, with a higher priority than Cargill's requests, crossing the combined NV Energy system that are not identified in Cargill's revised system impact study,⁷⁶ and that inappropriately stress north-to-south flow over the ON Line. With respect to the Southern Case, Cargill argues that NV Energy has applied the same type of inappropriate load and generation manipulations as in the Northern Case, as well as modeling an export to Arizona that has a higher priority right than Cargill's transmission service requests, despite the fact that the export is not associated with a designated network resource for the combined NV Energy system. In addition, Cargill explains that one of the upgrades required by NV Energy's studies, a \$51.5 million transformer upgrade at the Harry Allen substation, is a planned addition for 2015 and is

⁷⁵ Cargill Protest at 22-24.

⁷⁶ Cargill requested that NV Energy perform the revised system impact study to identify the service "breakpoints" at which the need for specific upgrades would be required, i.e., so that Cargill would know how much of Cargill's 300 MW of requested transmission service could be offered, incrementally, without the next identified upgrade. *Id.* at 9 n.16.

included in the Northern Case, yet was inexplicably excluded from the Southern Case. Cargill argues that the removal of this upgrade from the Southern Case improperly stressed the Nevada Power system and ultimately triggered the need for Cargill to finance the upgrade. Cargill also argues that NV Energy improperly pre-loaded certain phase shifting transformers, thereby triggering the overload of those transformers under certain conditions, notwithstanding that such preloading is inconsistent with both the WECC 2014 Heavy Summer case and the export cases that NV Energy presented in a 2012 report to WECC. Ultimately, Cargill argues that the Southern Case is so flawed that it cannot be relied upon to justify NV Energy's studies.⁷⁷

62. Cargill argues that, given its review of NV Energy's studies, certain NV Energy statements in its transmittal letter are misleading. Cargill disputes NV Energy's representation that it "analyzed the stresses" caused by Cargill's requests, instead arguing that NV Energy intentionally created the stresses in its base cases via the above-discussed manipulations prior to adding Cargill's requests. Cargill further argues that NV Energy, notwithstanding its representation to the contrary, did not use "reasonably forecasted and expected transmission uses" in the studies, but instead manipulated generation and load data to stress its system. Finally, Cargill argues that NV Energy did not apply a "practical" dispatch of its designated network resources, particularly not the economic dispatch that NV Energy cites as justification for its native load priority claim. Cargill concludes that NV Energy's transmittal letter provides no meaningful or accurate discussion of NV Energy's transmission studies and fails to provide a persuasive defense of the proposed limitations on Cargill's transmission service.⁷⁸

63. Cargill submits its own transmission studies that, according to Cargill, demonstrate that NV Energy can accommodate Cargill's transmission service requests without the upgrades identified by NV Energy. Cargill explains that its studies eliminate the purported manipulations described above and include an approximate economic dispatch of NV Energy's designated network resources to calculate the amount of north-to-south flow over the ON Line. Cargill represents that its analysis demonstrates that NV Energy's attempt to reserve all of its ownership entitlement to the ON Line's north-to-south capacity cannot be justified.⁷⁹

64. Finally, Cargill asserts that NV Energy is improperly attempting to impose costs and other limitations on Cargill's requested service. First, referring to section 8.3 of the

⁷⁷ *Id.* at 24-29.

⁷⁸ *Id.* at 31-32.

⁷⁹ *Id.* at 40-42.

specifications sheet included with the Cargill TSA, which states that the “Transmission Customer will be responsible for charges identified in the [large generator interconnection agreement or small generator interconnection agreement] and/or any changes related to the establishment or upgrade of a [point of receipt] and/or [point of delivery] associated with its service request,” Cargill states that the Commission distinguishes between transmission service and generator interconnection service, and neither the *pro forma* OATT nor the current NV Energy OATT require that transmission service requests identify a point of receipt with an existing generator. Cargill further notes that its revised system impact study did not identify any upgrades at the point of receipt or point of delivery, and argues that the upgrade costs that NV Energy is attempting to impose on Cargill are those that will be subject to the relevant generator’s interconnection agreement, and therefore will be responsibility of the relevant interconnecting generator. Second, Cargill objects to NV Energy’s attempt to directly assign to Cargill the cost of NV Energy’s re-rating of WECC Path 81. Cargill argues that NV Energy was already in the process of re-defining WECC Path 81 into the Southern Nevada Transmission Interface (SNTI) when it studied the Cargill transmission service requests; furthermore, in its SNTI Report,⁸⁰ NV Energy states that the SNTI is “routinely evaluated and annually updated by NV Energy” and that the need for consolidating WECC Path 81 and the SNTI arises from the ON Line’s creation of a “Combined [NV Energy balancing authority].” Cargill concludes that it should not be responsible for the costs of re-defining and/or re-rating WECC Path 81.⁸¹

65. With respect to the Cargill TSA, Ormat states that the system impact studies performed for Cargill’s transmission service requests, like the studies performed for Ormat’s transmission service request, propose to require that Cargill securitize, at the same cost levels, \$51.5 million for transformer upgrades at the Harry Allen substation and \$50,000 for upgrading WECC line Path 81. Ormat argues that, assuming those upgrades are necessary and that the associated costs are correctly calculated and supportable, the amount to be securitized by Cargill and Ormat must be adjusted to prevent NV Energy from achieving double securitization of those costs. Ormat proposes that the security for these upgrades should be adjusted proportionately to reflect Ormat’s and Cargill’s respective requested volumes of transmission service (i.e., 27 MW for Ormat and 300 MW for Cargill).⁸²

⁸⁰ The SNTI Report, which was prepared in connection with the re-definition of WECC Path 81, was provided to WECC on March 6, 2012.

⁸¹ *Id.* at 43-44.

⁸² Ormat Comments at 3-4.

c. Answers

(1) NV Energy

66. NV Energy states that, because Ormat is first in the transmission queue, and its requested service would begin before those requests for service queued after Ormat, Ormat is responsible for securitizing the costs for the Harry Allen transformer and the re-rating of WECC Path 81. Furthermore, NV Energy claims that, as it does not know whether Ormat and/or Cargill will take transmission service, it is responsible for informing each customer of the total amount for which it might have to provide security.⁸³

67. In response to Cargill's protest, NV Energy rejects Cargill's alternative study of its transmission service requests, arguing that Cargill's analysis was not conducted to determine if adequate system capacity exists to meet the obligations of a firm point-to-point request, but was instead based on flawed assumptions, including redispatch of NV Energy's system to accommodate Cargill's request (which analysis was not requested by Cargill). NV Energy argues that the Commission should dismiss Cargill's views regarding the reasonableness of NV Energy's studies, as Cargill does not point to a violation of an OATT requirement, Commission precedent, or other NERC reliability standards to discredit NV Energy's studies. Furthermore, NV Energy argues that Cargill's study finds that sufficient capacity is available to grant Cargill's transmission service requests based on the assumption that the upgraded Harry Allen transformer is in service, which NV Energy asserts is in error, as the upgrade was never included in NV Energy's plans as a certainty, given the lack of current customer commitment.⁸⁴

68. NV Energy also argues that Cargill's analysis fails to test the system to determine whether there is, in fact, available transmission capacity consistent with good utility practice. Rather, Cargill simply assumes that uncommitted facilities are in service and that generation can be freely moved on the system. However, NV Energy asserts that the purpose of a system impact study is to identify when, or if, the system will "break," given the requested service and assuming prior commitments and known limitations. NV Energy explains that, knowing the limitations in the northern and southern termini of the ON Line, NV Energy conducted an analysis to determine whether Cargill's requests could be accommodated, given the known uses. NV Energy defends its assumptions, arguing that the ones chosen were sufficient to test such limitations, and therefore that its transmittal letter was accurate, contrary to Cargill's assertions. NV Energy also argues

⁸³ *Id.* at 8-9.

⁸⁴ NV Energy Answer to Cargill Protest at 10-11.

that it was appropriate to conduct the system impact study assuming high stress conditions on the system and to modify generation and load data to reach that result. NV Energy also asserts that it used economic dispatch data to determine the hours when it would be economic to transfer at least 760 MW of designated network resources from northern Nevada to serve load in southern Nevada, but states that transmission providers must study and be able to manage generation dispatch in real-time in order to account for public policy requirements and reliability needs, in addition to the price per megawatt. NV Energy argues that it has a responsibility to ensure a reliable transmission grid, and that the Commission should grant deference to a transmission provider's study of its system which follows these requirements.⁸⁵

69. Finally, NV Energy rejects Cargill's assertion that NV Energy is attempting to impose generator interconnection-related costs. NV Energy notes that, in its transmittal letter, it explained that Cargill identified a generator interconnection customer's proposed generating resource for its point of receipt. However, NV Energy explains that the generator is still in the study stage and has not signed a generator interconnection agreement; as a result, NV Energy has merely informed Cargill that depending upon the generator it selects, it might be responsible for charges in accordance with the generator interconnection agreement and therefore nothing in the Cargill TSA should be interpreted as a comprehensive and exhaustive list of charges. NV Energy also defends its allocation of incremental costs for the WECC Path 81 re-rating to Cargill, arguing that the \$50,000 charge represents the estimated incremental charge attributable to Cargill, and is not the total cost of path re-rating.⁸⁶

(2) Ormat

70. Ormat asserts that NV Energy has not documented the method or assumptions underlying its ATC calculation, meaning that the ATC calculation is neither supported nor transparent as required by Order No. 890. Ormat explains that, in Order No. 890, the Commission set forth new rules governing transmission providers' calculation of ATC in order to "increase nondiscriminatory access to the grid by eliminating the wide discretion that transmission providers currently have in calculating [ATC]."⁸⁷ Ormat states that NV Energy's refusal to provide generation dispatch information conflicts with the Commission's requirements and is therefore a violation of Order No. 890.

⁸⁵ *Id.* at 11-13.

⁸⁶ *Id.* at 14-15.

⁸⁷ Ormat Answer to NV Energy Answer at 15 (quoting Order No. 890, FERC Stats. & Regs. ¶ 31,241 at n.3).

(3) **Cargill**

71. Cargill objects to Ormat's argument that cost responsibility for the Harry Allen transformer upgrade and rerating of WECC Path 81 should be assigned to Cargill and Ormat on a proportional basis. Cargill argues that longstanding Commission precedent assigns cost responsibility for transmission service-related upgrades for long-term firm point-to-point service on a first-in-time basis and that, because Ormat precedes Cargill in the transmission queue, cost responsibility for those upgrades, to the extent they are the responsibility of transmission customers rather than NV Energy, belongs to Ormat, not Cargill.⁸⁸

d. Commission Determination

72. Our preliminary analysis indicates that the Ormat and Cargill TSAs have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will conditionally accept the Ormat and Cargill TSAs for filing, suspend them, make them effective subject to refund, and set them for hearing and settlement judge procedures, as directed below. Specifically, we are concerned that the assumptions used in the studies upon which the Ormat and Cargill TSAs are based may be flawed, and we find that the issue of whether Ormat and Cargill's respective transmission service requests were properly studied is best addressed in the ordered hearing.

73. NV Energy's filings raise issues of material fact that cannot be resolved based on the record before us. As described above in section IV.B.1, we find that NV Energy failed to demonstrate that the amount of north-to-south transmission capacity it claimed on the ON Line is necessary to serve its native load. This failure does not mean that NV Energy may not claim *any* ON Line capacity to serve its native load, but NV Energy must establish at the hearing ordered herein the amount of capacity to which it is properly entitled as discussed above. In addition, NV Energy will need to address concerns raised by Ormat and Cargill about the assumptions used in the studies upon which the Ormat and Cargill TSAs are based. For example, it is unclear why NV Energy modified the WECC-area generation dispatch assumed in both the Northern and Southern cases to increase north-to-south unscheduled flow on the ON Line. It is also unclear whether NV Energy used an economic dispatch to study the transmission service requests in its power flow models, and how NV Energy's approach aligns with its assessment practices for ATC wheeling studies. To be clear, even though not specifically mentioned here, NV Energy must address the other concerns raised by Ormat and Cargill regarding the

⁸⁸ Cargill Answer to Ormat at 4.

assumptions NV Energy utilized in preparing the studies underpinning their TSAs. Similarly, the hearing should identify the system upgrades (if any) necessary to provide Ormat and Cargill's requested service, as well as the costs (if any) to be borne by Ormat and Cargill.

74. Accordingly, we will accept the Ormat and Cargill TSAs, as modified herein, suspend them for a nominal period, make Ormat's TSA effective January 1, 2014 and Cargill's TSA effective January 1, 2016, subject to refund, and set the TSAs for hearing and settlement judge procedures. In addition, in light of the common issues of law and fact presented in the two dockets, we will consolidate the instant filings for purposes of settlement, hearing, and decision.

75. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before the hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁸⁹ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding, otherwise the Chief Judge will select a judge for this purpose.⁹⁰ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

76. With respect to any network upgrades that the appropriately-conducted studies conclude are necessary for both Ormat and Cargill's respective service requests, we also affirm that the customer that seeks to commence service first will be responsible for providing the required security for those network upgrades. We therefore decline to direct, as Ormat requests, that the securitizing of any shared network upgrades be apportioned based on the proportionate size of the parties' transmission service requests.

⁸⁹ 18 C.F.R. § 385.603 (2013).

⁹⁰ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of the date of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

3. Phase 2 Termination Clause and Other TSA Provisions

a. Background

77. In the Ormat and Cargill TSA Filings, NV Energy explains that the ON Line is Phase 1 of a potential larger, two-phase transmission project that Great Basin may decide to construct. NV Energy explains that the ON Line was originally designed as a self-build project to interconnect the Sierra Pacific and Nevada Power systems, and that, as a self-build project, NV Energy's ability to reserve capacity would not be restricted by contractual limitations. However, NV Energy proceeded with the joint development of ON Line due to the additional potential benefits associated with the two phase project, and as part of the joint project, NV Energy sought to ensure that it would be able to receive at least the same or greater benefits to native load as with the self-build option. NV Energy states that, accordingly, NV Energy negotiated capacity ownership rights under the TUA to ensure that, in the event that Phase 2 is built, NV Energy will control 760 MW of ON Line capacity to preserve the benefits to native load that NV Energy would have obtained under the self-build option.⁹¹

78. NV Energy states that Ormat and Cargill's service under their respective TSAs will terminate upon the commercial operation of any segment of "Phase 2" of the project identified and defined in the TUA, dependent upon the capacity entitlement NV Energy ultimately receives under the TUA. NV Energy explains that, pursuant to the terms of the TUA, NV Energy's capacity entitlements to ON Line will be reallocated between the ON Line owners if Phase 2 is constructed. Consequently, NV Energy avers that it cannot contract to provide transmission service beyond the date at which Phase 2 becomes commercially operational without conditioning further service on NV Energy's actual capacity entitlement under the terms of the TUA, or on the construction of new facilities that may be required to provide such service if NV Energy's capacity is so limited. NV Energy states that it has put Ormat on notice of its potential capacity limitations and its inability to provide service should Great Basin proceed with construction of Phase 2.⁹²

79. NV Energy states that Cargill requests that Cargill be excused from the obligation to take transmission service under the Cargill TSA in the event that the Commission agrees with NV Energy's position that Cargill is required to securitize the costs

⁹¹ Ormat TSA Filing at 2-3; Cargill TSA Filing at 4.

⁹² Ormat TSA Filing at 8; Cargill TSA Filing at 9.

associated with the network upgrades set forth in the Cargill TSA and that Cargill's requested service should be conditioned on potential Phase 2 limitations.⁹³

(1) **Protests**

80. Ormat contends that there is no contractual basis for NV Energy to terminate the Ormat TSA if Phase 2 goes into service. Ormat argues that NV Energy cannot unsettle Ormat's transmission service rights based on the uncertain development of Phase 2, without NV Energy making a clear and substantiated demonstration of its anticipated native load needs (whether based on existing load needs or anticipated load growth). In addition, Ormat states that development of Phase 2 may actually make more capacity available than will be available for the ON Line. Ormat explains that, under the TUA, NV Energy is to be allocated between 600-800 MW of capacity of Phase 1 of ON Line. If Phase 2 is completed, Ormat reports, NV Energy will own 38 percent of the 2000 MW transmission line, or 760 MW of capacity. Thus, according to Ormat, if NV Energy is only allocated 600 MW of capacity for the ON Line during Phase 1, its portion will increase to 760 MW of capacity once Phase 2 is completed; if NV Energy is allocated closer to 800 MW of Phase 1 capacity, then its capacity would only slightly decrease if Phase 2 is constructed. Therefore, Ormat claims that it is unclear why NV Energy asserts that it will not have sufficient capacity on the ON Line to meet Ormat's requested transmission service should Phase 2 be built, or at least a substantial portion thereof should NV Energy need to *pro rata* reduce all transmission customers' capacity reservations.⁹⁴

81. Cargill asserts that NV Energy does not need to terminate Cargill's transmission service upon commercial operation of Phase 2 of the ON Line. First, Cargill states that NV Energy has failed to justify that it needs the entirety of the ON Line's north-to-south transmission capacity. It then asserts that its transmission service requests can be accommodated within NV Energy's 760 MW contractual capacity entitlement, and therefore that NV Energy does not need to terminate its service if Phase 2 goes into commercial operation.⁹⁵

82. Cargill also disputes a provision in its proposed TSA indicating that Cargill's transmission service will be governed by the NV Energy OATT filed on May 31, 2013, rather than NV Energy's OATT in effect at the time the studies were performed. Cargill

⁹³ Cargill TSA Filing at 9.

⁹⁴ Ormat Protest at 21-22.

⁹⁵ Cargill Protest at 42-43.

asserts that applying NV Energy's pending OATT to the Cargill transmission service requests, subject to the Commission's approval of NV Energy's proposed merger, would violate the Commission's holdings in the May 17 Order. Cargill requests that the Commission direct NV Energy to apply its current OATT to Cargill's transmission service requests, and clarify that Cargill's transmission service over the ON Line is not conditioned on the Commission's acceptance of the pending OATT for the combined NV Energy system.⁹⁶

(2) Answers

(a) NV Energy

83. In response to Ormat's protest, NV Energy reiterates that, should Phase 2 become operational, it may be necessary to terminate Ormat's service under the terms of the Ormat TSA because the capacity to which NV Energy is entitled may be reduced in accordance with the terms of the TUA, while NV Energy's capacity needs to serve its native load will remain the same.⁹⁷ With regard to Cargill's protest, NV Energy explains that its capacity entitlements are contractually limited by the TUA, and NV Energy has properly notified its transmission customers that NV Energy's capacity rights are limited if Phase 2 is developed and that their service will terminate upon the commercial operation of any segment of Phase 2 of the project, dependent upon the capacity entitlement NV Energy ultimately receives under the TUA. NV Energy states that it cannot grant transmission capacity it does not have, and has made transmission customers aware of this limitation. Furthermore, NV Energy states that it has offered to build additional facilities that may be required to satisfy a customer's request if Phase 2 is developed and NV Energy cannot provide the service under its capacity entitlement.⁹⁸

84. NV Energy explains that, contrary to Cargill's representation to the contrary, Cargill's transmission service requests were processed "pursuant to the procedures in the NV Energy OATT" as required by the May 17 Order. NV Energy disagrees with Cargill's interpretation that the May 17 Order requires the transmission service in question to be governed by the existing NV Energy OATT when a new OATT has been

⁹⁶ *Id.* at 44-45.

⁹⁷ NV Energy Answer to Ormat Protest at 9.

⁹⁸ NV Energy Answer to Cargill Protest at 13-14.

filed with the Commission and may be effective at the time Cargill's service commences (i.e., 2016).⁹⁹

(b) Ormat

85. Ormat avers that NV Energy has not justified its claimed authority to unilaterally terminate the Ormat TSA upon the completion of or in-service date of Phase 2 of the ON Line. Ormat reports that, in the original transmission service agreement that NV Energy offered to Ormat, NV Energy indicated that it may not be able to provide service should Phase 2 be implemented. However, Ormat states that NV Energy subsequently unilaterally modified the filed Ormat TSA to include the unilateral termination provision. According to Ormat, NV Energy's reason for including the termination provision is simply that, because NV Energy will use all of the ON Line capacity once Phase 2 is completed, NV Energy will not have capacity to provide Ormat with service and, therefore, the Ormat TSA should be terminated. Ormat alleges that NV Energy's OATT does not include a unilateral termination provision and that NV Energy has failed to support the proposed deviation from the *pro forma* OATT.¹⁰⁰ Furthermore, Ormat rejects NV Energy's assumption that once Phase 2 of the ON Line goes into service, NV Energy will flow electricity using the full 760 MW of transmission capacity to which it is entitled under the TUA (assuming the ON Line Phase 2 capacity totals 2,000 MW), generated by designated network resources in the north to serve load in the south, for the entire 8,760 hours per year. Again noting that NV Energy has failed to support its native load requirements with analysis and supportable assumptions, Ormat avers that NV Energy should have been willing to offer Ormat at least conditional firm transmission service or planning redispatch service after Phase 2 is constructed.¹⁰¹

86. Ormat requests that the Commission direct NV Energy to strike the unilateral termination provision as unsupported, unreasonable, and in violation of the NV Energy OATT. Ormat adds that, while it prefers to be able to obtain firm transmission service for the entire requested term of contract, the Commission should, at a minimum, direct NV Energy to offer to provide Ormat with conditional firm service or firm planning redispatch service for the period commencing with the in-service date of Phase 2 of the

⁹⁹ *Id.* at 15-16.

¹⁰⁰ Ormat Answer to NV Energy Answer at 18-19 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 14, 135, 960).

¹⁰¹ *Id.* at 10-11.

ON Line through the end of Ormat's requested transmission service term, with rollover rights included.¹⁰²

b. Commission Determination

87. We agree with Ormat and Cargill that NV Energy has failed to justify its alleged need to unilaterally terminate service to customers upon the completion of or in-service date of Phase 2, to the extent that NV Energy's ability to accommodate Ormat and Cargill's transmission service requests are dependent upon NV Energy's Phase 2 capacity entitlement under the TUA. As a result, we direct NV Energy to strike the unilateral termination provision from both the Ormat and Cargill TSAs. NV Energy may make this revision following completion of the settlement and hearing judge procedures, to allow the parties to account for any other changes to the TSAs that result from settlement or hearing.

88. We recognize that, under the terms of the TUA, the amount of capacity to which NV Energy is entitled may change should Phase 2 become operational. We also appreciate NV Energy's argument that, even though its capacity entitlement may decrease upon completion of Phase 2, the amount of capacity needed to serve its native load will remain unchanged. Nonetheless, as discussed below, we do not find that the completion of Phase 2 alone should enable NV Energy to terminate transmission service to Ormat and Cargill.¹⁰³ Additionally, we find that, to the extent that NV Energy cannot accommodate all of Ormat's and Cargill's requested firm transmission service due to a decrease in capacity entitlements resulting from the completion of Phase 2, NV Energy must offer to provide Ormat and Cargill with conditional firm service or firm planning redispatch service for the period commencing with the in-service date of Phase 2 of ON Line through the end of Ormat's and Cargill's requested transmission service terms, with rollover rights included.¹⁰⁴

¹⁰² *Id.* at 19.

¹⁰³ Our rejection of the proposed termination provision does not preclude NV Energy from proposing alternative language in a separate filing under section 205 of the FPA to address potential restudies to evaluate the impact of its changed capacity entitlement on third party customers. However, as with the proposed termination provision, NV Energy would be required to justify its proposal.

¹⁰⁴ We note that NV Energy may reassess the conditions for redispatch or curtailment every two years. Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 983.

89. Specifically, in the May 17 Order, we affirmed that NV Energy bears the burden of proof regarding any conditions that it seeks to impose upon its customers' transmission service over the ON Line.¹⁰⁵ Here, NV Energy proposes to terminate Ormat and Cargill's TSAs upon the completion of Phase 2, depending on NV Energy's ultimate allocation of Phase 2 capacity under the TUA, because NV Energy purportedly may be unable to provide service to those customers under its reallocated share of the Phase 2 capacity, approximately 760 MW of which NV Energy claims it will require to serve its native load. NV Energy repeatedly asserts that, upon the construction of Phase 2, it will control only 760 MW of capacity, leaving no capacity available for third party uses.

90. We find that NV Energy's proposed termination provision is flawed and must be rejected. The provision rests on three erroneous assumptions. First, NV Energy repeatedly asserts that the amount of Phase 2 capacity to which it will be entitled under the TUA is 760 MW. However, the TUA clearly provides for a wide range of capacity rights based upon the ultimate size of the expanded Phase 2 project.¹⁰⁶ Given this range, it is unreasonable for NV Energy to assume that its capacity entitlement will be fixed at that amount and that third party customers' firm service will be terminated as a result, particularly where an entitlement above 760 MW would create additional capacity for third party uses. Second, as discussed in section IV.B.1, NV Energy has not carried its burden in justifying the 760 MW of north-to-south transmission capacity it seeks to reserve on the ON Line to serve its native load. Accordingly, NV Energy cannot reasonably claim that its transmission rights reserved through the native load priority would prevent any firm service on the ON Line, even if NV Energy's Phase 2 capacity

¹⁰⁵ May 17 Order, 143 FERC ¶ 61,144 at P 115.

¹⁰⁶ Under the terms of the TUA, upon commercial operation of the entirety of Phase 2, NV Energy's capacity rights would be calculated as follows: (1) if the total capacity is equal to or less than 2,000 MW, then NV Energy will be entitled to 38 percent of the line's capacity (i.e., up to 760 MW); (2) if the line's capacity is greater than 2,000 MW but equal to or less than 2,080 MW, then NV Energy will be entitled to 38 percent of the first 2,000 MW of capacity and 100 percent of all capacity in excess of 2,000 MW (i.e., 760 MW plus any excess capacity between 2,000 MW and 2,080 MW); (3) if the total capacity is greater than 2,080 MW but equal to or less than 2,100 MW, then NV Energy will be entitled to 38 percent of the first 2,000 MW of capacity and 100 percent of the subsequent 80 MW of capacity (i.e., 840 MW); and (4) if the total capacity is greater than 2,100 MW, then NV Energy will be entitled to 38 percent of the first 2,000 MW of capacity, 100 percent of the subsequent 80 MW of capacity, and 38 percent of all capacity in excess of 2,100 MW (i.e., 840 MW plus 38 percent of capacity above 2,100 MW). TUA § 3.02(c).

entitlement was 760 MW, and NV Energy therefore has failed to justify the condition granting it the ability to terminate the Ormat TSA and Cargill TSA should Phase 2 be completed. Third, even if NV Energy was entitled only to 760 MW of Phase 2 transmission capacity, and NV Energy's native load priority justified reserving all of that capacity to serve its native load needs, we find that NV Energy failed to consider its obligation to offer conditional firm service to Ormat and Cargill. NV Energy does not argue that it will require 760 MW of firm service for its native load needs at all times, and both the Ormat and Cargill TSAs include estimates of the number of hours each year that they might be curtailed under conditional firm service. NV Energy may not simply terminate their service without first extending conditional firm service as an ongoing option.¹⁰⁷ Accordingly, as noted above, we direct NV Energy to remove from the Ormat and Cargill TSAs the provision authorizing NV Energy to terminate those agreements upon the commercial operation of any segment of Phase 2 of the ON Line.

91. With respect to Cargill's concern about references in its TSA to the NV Energy OATT filed with the Commission on May 31, 2013, rather than the OATT in effect at the time Cargill submitted its transmission service requests, we accept the language as proposed. We do not construe the language as written to authorize NV Energy to deny Cargill's requested service based on the outcome of NV Energy's pending corporate restructuring, but rather simply to reference the revised OATT submitted by NV Energy to be in effect once the ON Line enters service.¹⁰⁸

¹⁰⁷ See, e.g., NV Energy OATT § 15.4(c).

¹⁰⁸ The Commission accepted in part, rejected in part, and accepted and suspended in part the revised NV Energy OATT effective on the later of January 1, 2014 or the in-service date of the ON Line. *NV Energy, Inc.*, 144 FERC ¶ 61,105, *order on reh'g*, 145 FERC ¶ 61,080 (2013). Because NV Energy's request for approval of its internal corporate reorganization remains pending before the Nevada Commission, and will not be ruled on prior to the ON Line entering service, on October 21, 2013, NV Energy submitted further revisions to its OATT to reflect its actual corporate organization that is expected to be in place when the ON Line enters service. In a separate order issued concurrently with this order, the Commission accepts NV Energy's proposed revisions. Furthermore, as we held in the May 17 Order, when the ON Line enters service prior to consummation of the proposed internal reorganization (provided that it is ultimately approved), NV Energy must make the ON Line capacity available to third parties pursuant to its OATT. May 17 Order, 143 FERC ¶ 61,144 at P 117.

The Commission orders:

(A) The Ormat TSA is hereby conditionally accepted for filing and suspended for a nominal period, to become effective on January 1, 2014, subject to refund, as discussed in the body of this order.

(B) The Cargill TSA is hereby conditionally accepted for filing and suspended for a nominal period, to become effective on January 1, 2016, subject to refund, as discussed in the body of this order.

(C) NV Energy is hereby directed to make a compliance filing following completion of the settlement and hearing procedures, as directed in the body of this order.

(D) Docket Nos. ER13-1724-000 and ER13-1860-000 are hereby consolidated for the purpose settlement, hearing, and decision, as discussed in the body of this order.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 205 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held in Docket Nos. ER13-1724-000 and ER13-1860-000 concerning the justness and reasonableness of the Ormat and Cargill TSAs. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (F) and (G) below.

(F) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2013), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

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

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.