

153 FERC ¶ 61,306  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

Nevada Power Company

Docket No. ER15-1196-002

ORDER ON REHEARING AND CLARIFICATION

(Issued December 17, 2015)

1. On May 14, 2015, the Commission issued an order conditionally accepting, subject to modification, tariff revisions submitted by Nevada Power Company and Sierra Pacific Power Company (collectively, NV Energy) to its combined Open Access Transmission Tariff (OATT) in order for NV Energy to participate in the Energy Imbalance Market (EIM) established by the California Independent System Operator Corporation (CAISO).<sup>1</sup> On June 15, 2015, Powerex Corporation (Powerex) submitted a timely request for rehearing of the May 14 Order, and Truckee Donner Public Utility District (Truckee Donner) submitted a timely request for clarification or, in the alternative, rehearing of the May 14 Order. For the reasons discussed below, we deny the requests for rehearing and grant in part and dismiss as moot in part the requests for clarification.

**I. Background**

2. On March 6, 2015, NV Energy filed proposed OATT revisions to enable participation in the EIM.<sup>2</sup> These OATT amendments included a new Attachment P, which sets forth the roles and responsibilities of customers and NV Energy as an EIM

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<sup>1</sup> *Nevada Power Co.*, 151 FERC ¶ 61,131 (2015) (May 14 Order).

<sup>2</sup> NV Energy, Proposed OATT Amendments to Provide for Voluntary Participation in the Energy Imbalance Market, Docket No. ER15-1196-000 (filed Mar. 6, 2015) (EIM OATT Filing).

Entity,<sup>3</sup> including a new section 8 of Attachment P to recover EIM administrative costs and reflect the use of locational marginal price (LMP)-based pricing, revisions to Schedule 1 (Scheduling, System Control and Dispatch Service) to allocate EIM-related administrative costs charged by CAISO, revisions to imbalance service under OATT Schedule 4 (Energy Imbalance Service) and Schedule 9 (Generator Imbalance Service), clarifying revisions to OATT Schedule 10 (Loss Compensation Service), new definitions in Section 1, and targeted modifications to parts of the OATT.

3. In the May 14 Order, the Commission conditionally accepted, subject to modification, NV Energy's EIM OATT Filing, with various effective dates as requested by NV Energy. Relevant here, the Commission conditionally accepted as just and reasonable NV Energy's plan to use CAISO's EIM LMP-based pricing to settle imbalances for transmission customers who continue to take service under Schedules 4, 9, and 10 instead of participating in the EIM.<sup>4</sup> The May 14 Order also accepted NV Energy's proposal to use available transfer capability (ATC) to support EIM Transfers.<sup>5</sup>

## **II. Discussion**

4. As noted above, Powerex and Truckee Donner seek rehearing and/or clarification of the May 14 Order. We deny the requests for rehearing and grant in part and dismiss as moot in part the requests for clarification, as discussed more fully below.

### **A. OATT Schedules 4, 9, and 10**

#### **1. May 14 Order**

5. In the May 14 Order, the Commission generally found that NV Energy had met its burden of proof to demonstrate that the proposed OATT revisions are just and reasonable and not unduly discriminatory or preferential pursuant to section 205 of the Federal Power Act (FPA),<sup>6</sup> and that the proposed revisions to NV Energy's OATT are consistent

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<sup>3</sup> An EIM Entity is a balancing authority that opts to participate in the EIM. *See* CAISO Tariff, Appendix A (Master Definition Supplement).

<sup>4</sup> May 14 Order, 151 FERC ¶ 61,131 at P 174.

<sup>5</sup> *Id.* P 115. An EIM Transfer is a transfer of real-time energy resulting from an EIM dispatch instruction between the NV Energy balancing authority area (BAA) and the CAISO BAA, between the NV Energy BAA and another EIM Entity's BAA, or between the CAISO BAA and an EIM Entity BAA using transmission capacity available in the EIM. NV Energy OATT, § 1.13G.

<sup>6</sup> 16 U.S.C. § 824d (2012).

with or superior to the Commission's *pro forma* OATT.<sup>7</sup> The Commission conditionally accepted NV Energy's proposal to use EIM LMPs for charges under its OATT Schedules 4, 9, and 10. The Commission found that NV Energy's proposal to charge for Schedules 4 and 9 imbalance service using the EIM LMPs more accurately reflected the cost of providing that service to NV Energy's customers because the EIM LMPs reflect the actual cost that NV Energy pays for imbalance energy.<sup>8</sup> The Commission also found that NV Energy's proposal to use the EIM LMPs for Schedule 10 losses was consistent with the Commission's directive to PacifiCorp to use consistent pricing among Schedules 4, 9, and 10 of its OATT.<sup>9</sup>

6. The May 14 Order acknowledged that several commenters raised concerns that the rates produced by NV Energy's proposal would be unjust and unreasonable in light of the imbalance energy price spikes experienced in PacifiCorp's BAAs and the resulting proceeding instituted by the Commission<sup>10</sup> pursuant to FPA section 206<sup>11</sup> in Docket No. EL15-53-000.<sup>12</sup> The May 14 Order directed NV Energy to make a compliance filing within 30 days after the issuance of a Commission order in Docket Nos. ER15-861-000 and EL15-53-000, directing NV Energy to file any necessary revisions to NV Energy's OATT based on the outcome of that proceeding.<sup>13</sup> Additionally, the Commission noted that the March 16, 2015 order initiating the FPA section 206 proceeding in Docket No. EL15-53-000 established a refund effective date.<sup>14</sup> The Commission found that, in the event that the FPA section 206 investigation is still ongoing at the time that NV Energy commences financially binding participation in the EIM, rates charged to NV Energy's customers will be subject to refund if determined to be unjust and unreasonable.

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<sup>7</sup> May 14 Order, 151 FERC ¶ 61,131 at P 85.

<sup>8</sup> *Id.* P 174.

<sup>9</sup> *Id.* P 175.

<sup>10</sup> *Cal. Indep. Sys. Operator Corp.*, 150 FERC ¶ 61,191 (2015) (March 16 Order).

<sup>11</sup> 16 U.S.C. § 824e (2012).

<sup>12</sup> May 14 Order, 151 FERC ¶ 61,131 at P 176.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* P 177 (citing March 16 Order, 150 FERC ¶ 61,191 at P 33).

7. In addition, the May 14 Order did not require NV Energy to incorporate a 2 MW safe harbor from under- and over-scheduling, as requested by Truckee Donner. The Commission noted that NV Energy, as the EIM Entity BAA, will be assessed imbalances based on the total imbalance of its system. If NV Energy offered a 2 MW safe harbor, the Commission found that NV Energy would be shifting the costs of imbalances from its customers with less than 2 MW of imbalances to those customers with more than 2 MW of imbalances. The Commission stated that in the *pro forma* OATT, the 2 MW safe harbor allows transmission customers to purchase or sell their imbalance energy needs at 100 percent of the cost of imbalance energy, without facing the penalty tiers associated with greater imbalances. Similarly, the Commission reasoned, the EIM LMP represents 100 percent of the cost of imbalance energy without any additional penalties.<sup>15</sup>

## 2. Rehearing/Clarification Requests

8. Powerex states that the Commission erred in finding that NV Energy's proposal to use EIM LMPs for imbalance charges under OATT Schedules 4 and 9 satisfies section 205 of the FPA. Powerex argues that FPA section 205 requires a utility to demonstrate that its proposed deviations from the *pro forma* OATT are consistent with or superior to the service provided under the Commission's *pro forma* OATT. Powerex asserts that the May 14 Order erred in accepting NV Energy's EIM framework because NV Energy failed to make this demonstration.<sup>16</sup>

9. Powerex argues that NV Energy provided no reasonable basis to support a finding that the imposition of EIM-based Schedule 4 and 9 rates satisfies the requirements of FPA section 205 when the Commission itself has found that the rules used to calculate EIM prices are themselves unjust and unreasonable. According to Powerex, the theoretical result of an LMP design cannot provide a sound basis for accepting NV Energy's specific proposal when the existing LMP-based EIM structure has already resulted in unjust and unreasonable prices for imbalance energy.<sup>17</sup> Powerex further argues that the fact that NV Energy, as a BAA, has decided to use the EIM to provide imbalance service is not a reasonable basis to support the May 14 Order's finding,<sup>18</sup> and that NV Energy failed to show that the EIM LMP-based Schedule 4 and 9 rates are just and reasonable and not unduly discriminatory under FPA section 205. Moreover, Powerex does not find the statutory refund effective date imposed under the FPA section

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<sup>15</sup> *Id.* P 179.

<sup>16</sup> Powerex Rehearing Request at 4-8.

<sup>17</sup> *Id.* at 7 (citing March 16 Order, 150 FERC ¶ 61,191 at P 31).

<sup>18</sup> *Id.* at 8 (citing May 14 Order, 151 FERC ¶ 61,131 at P 174).

206 investigation instituted in the March 16 Order to be a permissible element of a compliance filing for purposes of satisfying a section 205 application. According to Powerex, requiring NV Energy to adopt future rules that are expected to be just and reasonable does not justify approving its adoption of current rules already found to not be just and reasonable. Powerex therefore contends that neither NV Energy nor the Commission identified any evidence supporting a conclusion that calculating prices for imbalance energy through the EIM will lead to just and reasonable results or that NV Energy's proposal is consistent with or superior to the *pro forma* OATT.<sup>19</sup>

10. Truckee Donner requests clarification as to the mechanism by which refund protection to NV Energy's customers will occur.<sup>20</sup> Truckee Donner points out that the May 14 Order accepts NV Energy's proposed OATT revisions with the effective dates requested by NV Energy, without expressly making the rates subject to suspension and refunds.<sup>21</sup> Truckee Donner notes that NV Energy's OATT provides that transmission customers will be charged or paid for Schedule 4 energy imbalance service based on deviations settled at the applicable energy imbalance price, "as determined by [CAISO] under section 29.11(b)(3)(C) of the [CAISO] Tariff." Truckee Donner requests that the Commission confirm that this language requires NV Energy to pass through any CAISO refunds of excessive EIM charges or, in the alternative, grant rehearing of its decision to accept NV Energy's proposed effective dates without expressly making them subject to suspension and refunds.<sup>22</sup>

11. In addition, Truckee Donner requests rehearing of the Commission's acceptance of NV Energy OATT, Attachment P, Sections 8.4.1 and 8.4.2 and requests that the Commission condition acceptance of those tariff provisions on NV Energy including a 2 MW safe harbor for over- and under-scheduling penalties.<sup>23</sup> Truckee Donner states that CAISO will impose a penalty on NV Energy if NV Energy submits a base schedule that differs from the CAISO load forecast by more than one percent or if the actual metered load in the NV Energy BAA diverges from NV Energy's base schedule by more than five percent.<sup>24</sup> Truckee Donner states that if CAISO imposes such a penalty on NV Energy,

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<sup>19</sup> *Id.*

<sup>20</sup> Truckee Donner Clarification/Rehearing Request at 10-12.

<sup>21</sup> *Id.* at 11.

<sup>22</sup> *Id.* at 12.

<sup>23</sup> *Id.* at 12-15.

<sup>24</sup> *Id.* at 12 (citing CAISO Tariff § 29.11(d)).

NV Energy will allocate those penalties to its transmission customers based on the degree to which their individual imbalances contributed to the aggregate imbalance that triggered the penalty. Truckee Donner claims that NV Energy has the ability to avoid any penalties because it knows CAISO's load forecast for each hour and is thus always able to submit a base schedule that matches that load forecast exactly. Truckee Donner argues that it is only if NV Energy chooses to submit a base schedule that deviates from CAISO's forecast by more than one percent that NV Energy's transmission customers will be exposed to over- or under-scheduling penalties.<sup>25</sup>

12. Truckee Donner asserts that NV Energy's tariff would allocate the penalty even to transmission customers whose metered demand closely matched their base schedules, contrary to the Commission's cost causation principles. Truckee Donner clarifies that under a proposed safe harbor, a transmission customer with less than 2 MW of imbalance would pay 100 percent of the LMP for its imbalance energy and that the safe harbor would only protect the customer from paying a share of the 125 percent or 200 percent penalty imposed by CAISO.<sup>26</sup> Truckee Donner states that the safe harbor would shift the allocation of penalties from some customers to others, but that shift is necessary to produce a just and reasonable cost allocation.

### **3. Commission Determination**

13. We deny Powerex's request for rehearing regarding NV Energy's use of EIM LMPs in its OATT Schedules 4 and 9. We disagree with the sentiment that use of LMPs for pricing imbalance service generally does not satisfy the requirements of FPA section 205. LMP is a form of pricing service not unlike incremental pricing previously employed by the Commission. For example, the Commission in Order No. 890 priced Schedule 4 (Energy Imbalance Service) on the basis of incremental and decremental cost for when the system is deficient or in surplus, respectively. LMP is a form of incremental pricing, where such charges are to reflect a pass through of the costs to provide the service. We appreciate that the EIM-related provisions of CAISO's tariff that were in effect when PacifiCorp commenced EIM operations led to price anomalies that did not reflect actual market conditions, resulting in rates that were not just and reasonable in PacifiCorp's BAAs. However, we find that the price anomalies experienced in the PacifiCorp BAAs do not render NV Energy's proposal to use EIM LMPs in OATT Schedules 4 and 9 unjust and unreasonable. Moreover, and as detailed below, the Commission instituted an investigation under section 206 of the FPA to address issues related to imbalance energy prices spikes in the PacifiCorp BAAs.

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<sup>25</sup> *Id.* at 12-13.

<sup>26</sup> *Id.* at 14.

14. CAISO has taken tangible steps to resolve the underlying problems that contributed to the price spikes in PacifiCorp's BAAs. Specifically, in response to the directives issued by the Commission in the March 16 Order, CAISO undertook analyses through which it identified two different causes of the infeasibilities that led to the price spikes: (1) "learning curve" issues associated with integrating a new EIM Entity, and (2) structural design limitations associated with the EIM's inability to recognize capacity available to an EIM Entity to ensure reliability in its own BAA. Based on these findings, CAISO has proposed three separate measures to address the price spike issues in the EIM and protect consumers from potential price anomalies that do not reflect actual market conditions: (1) requirements and criteria to assess a potential new EIM Entity's readiness prior to commencing EIM operations (in Docket No. ER15-861-004);<sup>27</sup> (2) proposed tariff revisions to enable the EIM to recognize and account for capacity available to EIM Entities to resolve power imbalance infeasibilities in their own BAAs (in Docket Nos. ER15-861-003 and -006);<sup>28</sup> and (3) a six-month transition period during which a new EIM Entity is not subject to the pricing parameters that normally apply when the market optimization relaxes a transmission constraint or the power balance constraint in clearing the real-time market (in Docket No. ER15-2565-000).<sup>29</sup> Moreover, in the months since CAISO identified the root causes of the price spikes and began addressing transitional learning curve issues, CAISO has reported a substantial reduction in the percentage of intervals in which the EIM arrived at an infeasible solution.<sup>30</sup> The Commission expects the tariff modifications accepted in those proceedings will address artificial infeasibilities in the EIM.

15. With the aforementioned CAISO efforts, the Commission continues to believe that, in competitive markets, prices set based on the locational price of serving the next increment of load (the LMP) are just and reasonable because among other things, LMPs

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<sup>27</sup> The Commission accepted CAISO's proposed tariff revisions establishing readiness requirements and criteria that must be satisfied prior to a prospective EIM Entity commencing EIM operations on November 19, 2015. *Cal. Indep. Sys. Operator Corp.*, 153 FERC ¶ 61,205 (2015).

<sup>28</sup> The Commission is issuing an order on CAISO's available balancing capacity filing in Docket No. ER15-861-006 concurrent with this order. *Cal. Indep. Sys. Operator Corp.*, 153 FERC ¶ 61,306 (2015).

<sup>29</sup> The Commission accepted CAISO's proposed tariff revisions implementing transition period pricing for the EIM on October 29, 2015. *Cal. Indep. Sys. Operator Corp.*, 153 FERC ¶ 61,104 (2015).

<sup>30</sup> See CAISO, Tariff Amendment in Compliance with July 20, 2015, Order, Docket No. ER15-861-003, at 23-24 (filed Aug. 19, 2015).

promote lowest-cost generation to be bid-in to the market.<sup>31</sup> The ongoing FPA section 206 investigation in Docket No. EL15-53-000 does not change this analysis. The Commission did not find that the use of EIM LMPs to recover the cost of providing imbalance service to PacifiCorp's, or any other potential EIM Entity's, Schedules 4 and 9 customers was unjust and unreasonable and, notably, did not institute a section 206 proceeding with respect to the imbalance service pricing provisions in PacifiCorp's OATT. Powerex has not persuaded the Commission to depart from this finding here.

16. Furthermore, we note that the Commission has instituted adequate safeguards for customers within EIM Entity BAAs while the issues in Docket No. EL15-53-000 are being resolved. The May 14 Order directed NV Energy to make any necessary changes to its OATT necessitated by the outcome of the FPA section 206 investigation via a compliance filing within 30 days after issuance of a Commission order in Docket No. EL15-53-000.

17. In addition, as requested by Truckee Donner, we clarify that the Commission expects NV Energy to pass through to its customers any refunds it receives from CAISO in the event that the Commission finds imbalance energy prices determined by CAISO under section 29.11 of CAISO's tariff<sup>32</sup> and charged by NV Energy to its customers to be unjust and unreasonable. We note that the refund effective date for the FPA section 206 proceeding established in the March 16 Order, established on August 24, 2015, is August 24, 2015.<sup>33</sup> Although the Commission has not yet issued an order addressing the issues raised in that proceeding and NV Energy commenced EIM operations on December 1, 2015, EIM LMPs charged to NV Energy's customers, whether those customers are participants or non-participants in the EIM, are subject to refund from the commencement of NV Energy's EIM participation.

18. We deny Truckee Donner's request for rehearing with regard to the 2 MW safe harbor proposal. The over- and under-scheduling penalties that CAISO assesses to NV Energy are the result of the total scheduling errors for all customers within the NV

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<sup>31</sup> See May 14 Order, 151 FERC ¶ 61,131 at P 174; *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at PP 62-64 (2006), *order on reh'g*, 119 FERC ¶ 61,076 (2007).

<sup>32</sup> CAISO Tariff § 29.11 (Settlements and Billing for EIM Market Participants).

<sup>33</sup> *Cal. Indep. Sys. Operator Corp.*, 151 FERC ¶ 61,247, at P 17 (2015) (granting CAISO's request to extend the June 22, 2015 refund effective date initially established in the March 16 Order to August 24, 2015). In accordance with section 206(b) of the FPA, refund protection will apply for 15 months after this date, i.e., until November 24, 2016. 16 U.S.C. § 824e (b) (2012).

Energy BAA. NV Energy proposed, and the Commission accepted as just and reasonable, that those penalties should be allocated to customers based on each customer's contribution to the total scheduling error.<sup>34</sup> Any other allocation would result in unjust cost shifting based on the degree of scheduling error, with customers who have greater scheduling errors paying a penalty for both their own scheduling errors and the errors of other customers with minimal scheduling errors. NV Energy's customers can mitigate their exposure to these penalties by accurately scheduling, and those customers with larger scheduling errors will pay a larger share of the total penalty assessed by CAISO. We conclude that NV Energy's proposal is consistent with cost causation principles in ensuring that costs are allocated to those customers that cause them, even if those costs are relatively small.

**B. Resource Sufficiency**

**1. May 14 Order**

19. In the May 14 Order the Commission was not persuaded by concerns raised by Powerex that participation in the EIM would jeopardize resource sufficiency in NV Energy's BAA.<sup>35</sup> The Commission noted that NV Energy retains its obligation as a balancing authority to maintain sufficient resources to meet North American Electric Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC) reliability criteria for its BAA, and found no evidence in the record that NV Energy will not fulfill this responsibility. The Commission found that requiring NV Energy to revise its proposal with respect to resource sufficiency based on the March 16 Order would be beyond the scope of the proceeding and would risk prejudging the outcome of the FPA section 206 investigation instituted in the March 16 Order. However, as previously noted, the Commission directed NV Energy, to the extent that the outcome of that proceeding would necessitate modification of its proposed EIM OATT revisions, to submit any such changes in a compliance filing within 30 days after the issuance of the order in Docket No. EL15-53-000.

20. The Commission further noted that NV Energy's ability to commence actual, financially binding operations in the EIM would be predicated on meeting the readiness requirements being developed on compliance in Docket No. EL15-53-000.<sup>36</sup>

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<sup>34</sup> May 14 Order, 151 FERC ¶ 61,131 at P 179.

<sup>35</sup> *Id.* P 195.

<sup>36</sup> *Id.* P 196.

## 2. Rehearing Request

21. Powerex asserts that the Commission erred in accepting NV Energy's proposal, asserting that evidence shows the existing EIM requirements failed to ensure EIM resource sufficiency.<sup>37</sup> Powerex maintains that the Commission has previously found that effective measures to ensure resource sufficiency are a precondition for a just and reasonable EIM. Powerex contends that the Commission rejected a proposal by Southwest Power Pool, Inc. (SPP) to implement an energy imbalance market where the Commission found the proposed market design did not leave adequate protections in place to ensure that there would be sufficient resources to meet system needs and to deter leaning by participants.<sup>38</sup> Powerex argues that in the May 14 Order, the Commission accepted NV Energy's proposal without requiring NV Energy to make any demonstration that the existing EIM framework and OATT modifications were adequate to ensure resource sufficiency.

22. Powerex states that the record reflects substantial evidence that the existing resource sufficiency mechanisms in CAISO's tariff have allowed the PacifiCorp BAAs to participate in the EIM without sufficient resources bid into the market to meet all of their intra-hour capacity and flexibility needs through the EIM.<sup>39</sup> Powerex states that the Commission has previously recognized that the lack of resources available through the EIM has played a role in driving the price spikes experienced in the PacifiCorp BAAs and expressed concern that CAISO's Tariff does not include measures to "ensure robust participation" in the EIM.<sup>40</sup> Powerex argues that neither NV Energy nor CAISO has provided evidence that the resource sufficiency issues experienced in the PacifiCorp BAAs would not be present in the NV Energy BAA.

23. Powerex further argues that the Commission's conclusion that participation in the EIM will not jeopardize resource sufficiency in NV Energy's BAA fails to meet the requirements of reasoned decision-making because the Commission failed to respond to arguments and evidence showing the existing EIM structure is insufficient to ensure resource sufficiency.<sup>41</sup> In addition, Powerex asserts that the Commission conflated

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<sup>37</sup> Powerex Rehearing Request at 8-12.

<sup>38</sup> *Id.* at 8-9 (citing *Sw. Power Pool, Inc.*, 112 FERC ¶ 61,303, at P 26, *order on reh'g and clarification*, 113 FERC ¶ 61,115 (2005) (*SPP*)).

<sup>39</sup> *Id.* at 9.

<sup>40</sup> *Id.* (citing March 16 Order, 150 FERC ¶ 61,191 at P 32).

<sup>41</sup> *Id.* at 10-11.

resource sufficiency with reliability standards compliance. Powerex contends that a lack of evidence that NV Energy will violate applicable reliability standards is irrelevant to the issue of whether existing EIM resource sufficiency mechanisms are sufficient to protect against unjust and unreasonable outcomes. According to Powerex, the purpose of resource sufficiency is to ensure that sufficient resources are bid into the market in advance of the operating hour to ensure that the market operator can meet load and resolve congestion through the economic dispatch of bids.<sup>42</sup> In contrast, Powerex argues that reliability standards only define acceptable levels of after-the-fact power balancing performance, and reflect all of the resources deployed in a BAA, whether they were procured in real-time through the EIM, through non-market interventions, or were scheduled in advance of real-time. Powerex contends that the Commission's conclusions in this regard conflict with its prior precedent such as *SPP*, in which the Commission rejected SPP's resource sufficiency proposal as inadequate under FPA section 205 without any evidence that either SPP or market participants would violate applicable reliability standards.<sup>43</sup>

24. Finally, Powerex argues transmission customers in the NV Energy BAA will be forced to bear the price consequences of the resource commitment decisions of NV Energy, which Powerex argues will enjoy unfettered discretion over both the quantity and selection of resources bid into the EIM.<sup>44</sup>

### **3. Commission Determination**

25. We deny Powerex's request for rehearing on the issue of resource sufficiency. With regard to whether there are sufficient resources bid into the market to meet all NV Energy's intra-hour capacity and flexibility, we reiterate that the Commission's June 19, 2014 order conditionally accepting CAISO's proposal to implement the EIM stated that "EIM participation is voluntary and the EIM Participating Resource has a great deal of flexibility in determining how much of its resource's capacity it is willing to offer into the EIM."<sup>45</sup> The Commission declines to make a finding here that would undermine the

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<sup>42</sup> *Id.* at 11 (citing *SPP*, 112 FERC ¶ 61,303 at P 26; *Sw. Power Pool, Inc.*, 118 FERC ¶ 61,120, at P 22 (2007)).

<sup>43</sup> *Id.* at 12.

<sup>44</sup> *Id.*

<sup>45</sup> *Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,231, at P 224 (CAISO EIM Order), *order on reh'g, clarification and compliance*, 149 FERC ¶ 61,058 (2014) (CAISO EIM Rehearing Order).

structure of the EIM as a voluntary market by mandating that additional capacity be bid into the EIM.

26. We disagree with Powerex's statement that neither NV Energy nor CAISO has provided evidence that the resource sufficiency issues experienced in the PacifiCorp BAAs would not be present in the NV Energy BAA. CAISO's extensive investigation into the root causes of the price spikes in the EIM did not identify resource insufficiency in the EIM as a cause. In fact, CAISO has repeatedly attested that the infeasibilities have not been caused by a lack of resources sufficient to meet PacifiCorp's balancing authority responsibilities.<sup>46</sup> We also note that, according to CAISO, there has been a significant decline in the number of infeasibilities observed in the EIM in recent months without any significant increase in participation of resources in the EIM, largely due to improvements in dealing with learning curve issues.<sup>47</sup>

27. Contrary to Powerex's arguments, NV Energy's participation in the EIM does not raise the same issues the Commission noted in *SPP*. In that order, the Commission expressed concern that SPP proposed a voluntary sellers' market and a mandatory buyers' market, with "no way"—aside from emergency procedures—"to bridge the gap if the offers are insufficient."<sup>48</sup> The Commission identified two concerns associated with this structure. First, the Commission explained that the lack of clear tariff provisions requiring each market participant to supply energy, through self-dispatched resources or energy bids, to meet its load's needs raised concerns that there might not be adequate local generation, thus creating a situation in which market participants might lean on the system and create reliability concerns.<sup>49</sup> Second, the Commission expressed concern that most generation in the voluntary bidder's market would be self-dispatched resulting in insufficient energy bids to allow SPP to resolve congestion through economic dispatch.<sup>50</sup> Participation in the EIM does not raise these same concerns. We continue to find no evidence that participation in the EIM will jeopardize resource sufficiency in NV Energy's BAA. NV Energy retains its obligation as a balancing authority to maintain sufficient resources to meet NERC and WECC reliability criteria for its BAA, and we have no reason to conclude that NV Energy will not fulfill this obligation. In addition,

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<sup>46</sup> See, e.g., CAISO August 19 Filing at 3, CAISO April 23 Comments on Technical Conference at 2.

<sup>47</sup> See August 19 Filing at 23-24; CAISO Answer at 11-12 & n.16.

<sup>48</sup> *SPP*, 112 FERC ¶ 61,303 at P 26.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

CAISO performs a resource sufficiency evaluation test to evaluate whether the EIM Entity has offered sufficient capacity to meet forecast load and its ramping requirements.<sup>51</sup> This resource sufficiency test limits an EIM Entity's ability to lean on the system. Furthermore, in an order being issued concurrently with this order in Docket No. ER15-861-006, we accept CAISO's proposed tariff revisions that will provide CAISO with increased visibility of the capacity an EIM Entity retains to resolve power balance infeasibilities within its own BAA (Available Balancing Capacity).<sup>52</sup> CAISO's Available Balancing Capacity solution will allow CAISO to see the most efficient resources available for deployment during times in which there is not enough participating capacity bid into the EIM to meet imbalance needs, and to incorporate these resources into the market optimization together with the capacity already bid into the market. As a result, when appropriate, CAISO will be able to take all Available Balancing Capacity resources into account to resolve congestion through CAISO's market optimization.

### **C. Benefits of EIM Participation**

#### **1. May 14 Order**

28. In the May 14 Order, the Commission found that NV Energy had adequately demonstrated that participation in the EIM can be expected to provide NV Energy's customers with economic benefits, in the form of interregional dispatch savings, reduced flexibility reserve requirements, and reduced renewable energy curtailment, as well as reliability benefits through improved situational awareness, responsiveness, and the ability to optimize transmission capacities previously left unused.<sup>53</sup> In addition to the economic assessment of NV Energy's EIM participation undertaken by CAISO and NV Energy (Economic Assessment),<sup>54</sup> the Commission stated that CAISO's February 2015 and April 2015 reports on EIM benefits found that actual net benefits of the EIM remained in line with pre-launch projections, that reports by the CAISO Department of Market Monitoring confirmed the competitiveness of EIM prices in most intervals, and that the Public Utilities Commission of Nevada (Nevada Commission) had also

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<sup>51</sup> CAISO Tariff § 29.34(m)(4).

<sup>52</sup> See *Cal. Indep. Sys. Operator Corp.*, 153 FERC ¶ 61,306 (2015).

<sup>53</sup> May 14 Order, 151 FERC ¶ 61,131 at P 85.

<sup>54</sup> See Energy and Environmental Economics, Inc., *NV Energy –ISO Energy Imbalance Economic Assessment* (Mar. 25, 2014) (Economic Assessment), [http://www.caiso.com/Documents/NV\\_Energy-ISO-EnergyImbalanceMarketEconomicAssessment.pdf](http://www.caiso.com/Documents/NV_Energy-ISO-EnergyImbalanceMarketEconomicAssessment.pdf).

recognized potential benefits to NV Energy from participating in the EIM.<sup>55</sup> The Commission noted that the potential benefits of joining the EIM can be expected to continue to increase with increased participation in the EIM, and concluded that, considering the totality of benefits, the record indicated expected net benefits to NV Energy and the EIM as a whole from NV Energy's participation.

## 2. Rehearing Request

29. Powerex argues that the Commission relied upon the Economic Assessment without considering or addressing any of the evidence or arguments provided by Powerex that the study was flawed.<sup>56</sup> Further, Powerex argues that none of the additional studies and statements, such as the CAISO and Department of Market Monitoring studies, cited by the Commission provided a sound basis for concluding that NV Energy's participation in the EIM, as currently designed, will confer net benefits on its customers.<sup>57</sup> Powerex argues that the Commission's conclusions regarding the benefits of NV Energy's participation in the EIM do not reflect a meaningful, rigorous analysis of the evidence and arguments contained in the record and are unsupported by record evidence.<sup>58</sup>

## 3. Commission Determination

30. We deny Powerex's request for rehearing on this matter. We affirm our finding that NV Energy has adequately demonstrated that its proposal to use the EIM to provide energy imbalance service under its OATT is consistent with or superior to the *pro forma* OATT. NV Energy's participation in the EIM can be expected to provide NV Energy's customers with economic benefits, in the form of interregional dispatch savings, reduced flexibility reserve, and reduced renewable energy curtailment, as well as reliability benefits through improved situational awareness, responsiveness, and ability to optimize transmission capacities previously left unused.<sup>59</sup> We find that, considering the totality of benefits, there continues to be record evidence regarding NV Energy's participation in the EIM and expected net benefits to the EIM as a whole and to NV Energy's customers.<sup>60</sup> Contrary to Powerex's contentions, we continue to find that this record

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<sup>55</sup> May 14 Order, 151 FERC ¶ 61,131 at P 86.

<sup>56</sup> Powerex Rehearing Request at 12-13.

<sup>57</sup> *Id.* at 14.

<sup>58</sup> *Id.* at 15.

<sup>59</sup> May 14 Order, 151 FERC ¶ 61,131 at P 85.

<sup>60</sup> *Id.* P 86.

evidence is sufficient to provide a reasonable basis on which to expect that NV Energy's customers will experience such economic benefits.

31. Powerex argues the Commission should not rely on certain statements as support, such as the Nevada Commission's finding that NV Energy's participation in the EIM would provide benefits including maximizing the reliability of supply over each company's respective energy plan and minimizing the cost of supply, because the statement was made prior to the commencement of EIM operations and conflicts, according to Powerex, with the Commission's findings that the EIM has produced unjust and unreasonable rates. We reject Powerex's argument. As we stated in the May 14 Order, and have reiterated above, the investigation examining the underlying issues causing the price spikes is being addressed in a separate proceeding in Docket No. EL15-53-000. The Commission also directed NV Energy to make a compliance filing within 30 days of issuance of an order in that docket including "any revisions to NV Energy's OATT that are appropriate based on the outcome of that proceeding or, in the alternative, explain why no such changes are necessary."<sup>61</sup> We continue to find that the record in this distinct proceeding adequately reflects a basis for expecting quantitative and qualitative benefits as a result of NV Energy's participation in the EIM, which supports our finding that NV Energy's proposal is consistent with or superior to the *pro forma* OATT.

#### **D. Scheduling Timelines**

##### **1. May 19 Order**

32. In the May 14 Order the Commission accepted NV Energy's proposal to require transmission customers to submit revised schedules 57 minutes prior to the top of the operating hour (T-57), which would then become financially binding at 55 minutes prior to the top of the operating hour (T-55), when NV Energy sends CAISO the base schedules. The Commission concluded that, in order to effectuate the EIM, it was necessary for NV Energy and its transmission customers to submit forecast data consistent with the timelines established by CAISO for its security-constrained economic dispatch to perform all the necessary complex calculations to accurately estimate operations for the operating hour.<sup>62</sup> The Commission found that submitting schedules 20 minutes before the top of the operating hour (T-20) would not give the market models sufficient time to function and that they are the same timelines that apply to supply resources in CAISO's real-time market.

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<sup>61</sup> *Id.* P 74.

<sup>62</sup> *Id.* P 161.

33. The Commission found that commenters had not demonstrated that alternative proposals would be workable for EIM operations or were necessary to maintain just and reasonable and not unduly discriminatory rates.<sup>63</sup> Rejecting contentions that NV Energy's proposed scheduling timeline raised new issues not before the Commission in the June 19, 2014 order accepting PacifiCorp's proposed EIM OATT revisions,<sup>64</sup> the Commission nevertheless clarified that NV Energy's proposal to apply imbalance energy charges at EIM LMPs to deviations from firm transmission customers' schedules after T-55 is just and reasonable and not unduly discriminatory, appropriately allocates the costs of imbalances to the customers causing such costs, and is necessary to implement the EIM in NV Energy's BAA.

34. With respect to Powerex's contention that submitting adjusted schedules after T-57 would increase customers' exposure to charges for imbalance energy contrary to Order Nos. 888<sup>65</sup> and 764,<sup>66</sup> the Commission noted that it has previously found CAISO's timeline to comply with Order No. 764, and to be reasonable in light of the need to complete the market run prior to the WECC e-Tag deadline of T-20 and the general complexity of the CAISO and western markets.<sup>67</sup>

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<sup>63</sup> *Id.* P 162.

<sup>64</sup> *PacifiCorp*, 147 FERC ¶ 61,227 (PacifiCorp EIM Order), *order on reh'g, clarification and compliance*, 149 FERC ¶ 61,057 (2014) (PacifiCorp EIM Rehearing Order).

<sup>65</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>66</sup> *Integration of Variable Energy Resources*, Order No. 764, FERC Stats. & Regs. ¶ 31,331, *order on reh'g and clarification*, Order No. 764-A, 141 FERC ¶ 61,232 (2012), *order on clarification and reh'g*, Order No. 764-B, 144 FERC ¶ 61,222 (2013).

<sup>67</sup> May 14 Order, 151 FERC ¶ 61,131 at P 163 (citing *Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,204, at P5 3 (2014)).

35. Finally, the Commission noted NV Energy's commitment to work with PacifiCorp, CAISO, and stakeholders on scheduling timeline issues, and encouraged NV Energy to continue to explore options that would address commenters' concerns.<sup>68</sup>

## 2. Rehearing Request

36. Powerex contends that the Commission's acceptance of NV Energy's proposed scheduling timeline is inconsistent with the requirements of section 205 of the FPA and Commission precedent that an entity proposing deviations from the *pro forma* OATT must demonstrate that its proposal meets the "consistent with or superior to" standard.<sup>69</sup> Powerex asserts that NV Energy's proposal to assess imbalance charges to firm rights holders for the submission or adjustment of schedules after T-57 conflicts with key aspects of the Commission's open access framework. According to Powerex, NV Energy's proposal results in the premature expiration of firm rights and improperly holds firm point-to-point transmission customers responsible for redispatch costs in a manner that is directly inconsistent with the *pro forma* OATT. Powerex states that the Commission's decision to accept NV Energy's proposal without requiring NV Energy to meet the "consistent with or superior to" standard is therefore inconsistent with the FPA and the requirements of long-standing OATT policy.<sup>70</sup>

37. Next, Powerex asserts that the Commission's conclusion that NV Energy's proposal is necessary to ensure consistency with cost causation ignores undisputed evidence that NV Energy's proposal will result in the assessment of imbalance charges where there is no deviation between the transmission customer's schedule and the energy delivered.<sup>71</sup> Powerex argues that there is no basis for finding that the transmission customer has caused costs to be incurred. Powerex states that the FPA requires a proponent of a tariff to bear the burden of advancing evidence sufficient to support a reasoned finding by the Commission that the revision is just and reasonable because it is consistent with or superior to the *pro forma* OATT, not merely assert the necessity of the proposal.<sup>72</sup>

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<sup>68</sup> *Id.* P 164.

<sup>69</sup> Powerex Rehearing Request at 15-22.

<sup>70</sup> *Id.* at 16.

<sup>71</sup> *Id.* at 18-19.

<sup>72</sup> *Id.* at 19.

38. Powerex argues that the Commission's reliance on prior precedent finding CAISO's proposed timeline to comply with Order No. 764 contains several flaws that render the Commission's determination arbitrary and capricious.<sup>73</sup> First, Powerex argues that the Commission's reasoning improperly conflates the scheduling deadline that will be applicable to the submission of EIM base schedules (T-57) with the deadlines that the Commission approved as part of CAISO's Order No. 764 compliance filing. Next, Powerex argues that in the order approving CAISO's Order No. 764 compliance filing, the Commission stated that CAISO's proposal would help resources reduce their exposure to imbalance energy charges by permitting them to submit updated forecast and outage information 37.5 minutes prior to each operating interval.<sup>74</sup> Powerex argues that NV Energy's proposal establishes a deadline of 57 minutes prior to each operating hour, and thus increases customers' exposure to imbalance charges for any changes after that deadline. Finally, Powerex contends that the Commission's reference to the complexity of western markets does not provide a sound basis for deviating from the *pro forma* OATT.<sup>75</sup>

### 3. Commission Determination

39. We deny Powerex's request for rehearing on this issue. We affirm our finding that NV Energy's proposed scheduling timelines are just and reasonable and not unduly discriminatory and are necessary for the operation of the EIM.<sup>76</sup> We disagree with Powerex's claim that the evidence it has provided is undisputed. Powerex merely reiterates its arguments against NV Energy's proposal that it raised in its initial protest of NV Energy's filing. Contrary to Powerex's assertion, if a transmission customer elects to modify its schedule after the T-55 deadline established by the EIM, there is by definition a deviation between the transmission customer's schedule and the energy delivered, and the customer will correctly be subject to imbalance charges.<sup>77</sup> We acknowledge that the T-55 deadline established by the EIM differs from the previously utilized scheduling deadline of T-20. However, the Commission's *pro forma* OATT provides that "[s]cheduling changes will be permitted up to twenty (20) minutes [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission

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<sup>73</sup> *Id.* at 20-21.

<sup>74</sup> *Id.* at 21 (citing *Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,204 at P 54).

<sup>75</sup> *Id.* at 22.

<sup>76</sup> May 14 Order, 151 FERC ¶ 61,131 at P 161.

<sup>77</sup> NV Energy OATT, § 4.2.4.5.2.

Provider] before the start of the next clock hour.”<sup>78</sup> The EIM requires schedules to be submitted at T-55 so that CAISO has sufficient time to run the market. We find that this scheduling deadline is consistent with the Commission’s *pro forma* OATT. We continue to find that the application of imbalance energy charges at the EIM LMPs to deviations from firm transmission customers’ schedules after T-55 is just and reasonable and not unduly discriminatory. We also continue to find that this aspect of NV Energy’s proposal appropriately allocates the cost of imbalances to the customers causing such costs and is necessary to implement the EIM in NV Energy’s BAA.<sup>79</sup>

40. The Commission has previously accepted the concept of revising scheduling timelines to support a new market design with respect to CAISO’s compliance with Order No. 764.<sup>80</sup> In the Commission’s order on CAISO’s Order No. 764 compliance filing, the Commission found that CAISO’s proposed timeline to comply with Order No. 764 offered numerous benefits and was reasonable given CAISO’s need to complete the market run prior to the WECC e-tag deadline of 20 minutes before the operating interval and the general complexity of the CAISO and western markets. As previously noted, in order to realize the numerous benefits from the EIM, participants must submit forecast data consistent with the timelines established by CAISO in order to run the security-constrained economic dispatch. Schedules submitted at T-20 would not give the market models sufficient time to function.

**E. Use of Available Transfer Capability for EIM Transfers and EIM Transmission Charges**

**1. May 14 Order**

41. The Commission accepted NV Energy’s proposal to use ATC, as calculated consistent with the approved methodology in Attachment C of its OATT, to support EIM Transfers.<sup>81</sup> The Commission also accepted NV Energy’s proposal not to assess incremental transmission charges for transfers related to the EIM as consistent with PacifiCorp’s EIM OATT provisions, previously accepted by the Commission in the PacifiCorp EIM Order.<sup>82</sup> The Commission further stated that, as noted in the June 19,

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<sup>78</sup> *Pro forma* OATT, § 13.8.

<sup>79</sup> May 14 Order, 151 FERC ¶ 61,131 at P 162.

<sup>80</sup> *See Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,204 at P 53.

<sup>81</sup> May 14 Order, 151 FERC ¶ 61,131 at P 116.

<sup>82</sup> *Id.* P 117.

2014 order accepting CAISO's proposed EIM tariff revisions, the Commission has required the elimination of pancaked transmission rates between regional transmission organizations as an incentive for participation.<sup>83</sup> The Commission explained that requiring NV Energy to impose a transmission charge at this time would be premature.<sup>84</sup>

## 2. Rehearing Request

42. Powerex contends that the Commission erred in determining that it is appropriate to exempt EIM Transfers from transmission charges.<sup>85</sup> Powerex argues that NV Energy's proposal will permit EIM participating resources to benefit from the use of NV Energy's transmission facilities without contributing to the costs of the underlying facilities and is therefore inconsistent with cost causation principles.<sup>86</sup> Powerex argues that NV Energy has not demonstrated that the customers that pay for NV Energy's transmission facilities will receive roughly commensurate benefits from the EIM Transfers that use those facilities.

43. Powerex further contends that the Commission's prior acceptance of PacifiCorp's transmission rate structure is legally insufficient to support its acceptance of NV Energy's proposal because there are key differences between NV Energy and PacifiCorp's proposals.<sup>87</sup> First, Powerex argues that PacifiCorp's framework uses only transmission facilities that have been reserved on a firm basis and donated to the EIM and therefore does not shift the costs of transmission facilities used to support EIM Transfers onto other customers. Second, Powerex claims that the majority of EIM Transfers have been from PacifiCorp to CAISO, belying the argument that the free export transmission provided by NV Energy will be offset by benefits from free import transmission from CAISO or other EIM Entities.<sup>88</sup> Powerex contends that NV Energy's proposal confers an undue competitive advantage on EIM participating resources (which are mostly owned by NV Energy itself) without identifying any factual basis for this preferential treatment.<sup>89</sup>

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<sup>83</sup> *Id.* (citing CAISO EIM Order, 147 FERC ¶ 61,231 at P 157).

<sup>84</sup> May 14 Order, 151 FERC ¶ 61,131 at P 117.

<sup>85</sup> Powerex Rehearing Request at 22-26.

<sup>86</sup> *Id.* at 23.

<sup>87</sup> *Id.* at 24.

<sup>88</sup> Powerex Rehearing Request at 24.

<sup>89</sup> *Id.* at 24-25.

Finally, Powerex states that the fact that CAISO and PacifiCorp may reevaluate the use of reciprocal transmission charges at some point in the future does not provide a sound basis for accepting NV Energy's proposal.

44. Powerex also argues that the Commission erred in finding that NV Energy's ATC proposal does not result in the confiscation of firm transmission rights.<sup>90</sup> Powerex states that, when NV Energy calculates the amount of ATC available for EIM Transfers at 40 minutes prior to the operating hour, transmission customers that have submitted an e-Tag in support of a bid into CAISO's 15-minute market will not have received market award information. Powerex argues that as a result, the energy profile of the transmission customer's e-Tag will not yet reflect the customer's market award. As a result, Powerex contends, the transmission reserved and scheduled by transmission customers to support bids into the CAISO real-time markets will be treated as available for EIM Transfers, allowing transmission customers to step-ahead of firm rights holders. Powerex states that the Commission's approval of NV Energy's proposal ignored record evidence and is inconsistent with the requirements of reasoned decision-making.<sup>91</sup>

### **3. Commission Determination**

45. We deny Powerex's request for rehearing on these issues. The Commission has previously accepted the reciprocity provision of the EIM whereby each EIM market participant pays the transmission rate of the transmission provider in whose service territory it is located. The Commission further found that given that the EIM is one market dispatched by CAISO, the elimination of the seam between CAISO and the EIM Entity BAAs promotes more efficient and competitive electricity markets, provides customers in the EIM and in CAISO access to additional energy supplies, decreases the number of transactions that must pay pancaked rates, and therefore enhances competitive electricity markets in the region.

46. In addition, the Commission found in the CAISO EIM Rehearing Order and the PacifiCorp EIM Rehearing Order that there is no mechanism for EIM participants to selectively incorporate a transmission charge into their bids depending on where the transaction sinks.<sup>92</sup> Were NV Energy to subject EIM Transfers to transmission charges, EIM participating resources would include transmission charges in their bid prices, to account for the uncertainty of where the EIM transaction would be dispatched. This

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<sup>90</sup> *Id.* at 26-27.

<sup>91</sup> *Id.* at 27.

<sup>92</sup> *See* CAISO EIM Rehearing Order, 149 FERC ¶ 61,058 at P 45; PacifiCorp EIM Rehearing Order, 149 FERC ¶ 61,057 at P 63.

could distort the EIM from dispatching the most economically efficient generation into the market and lead to a double charge of transmission costs to customers in NV Energy's BAA. We therefore find the removal of the transmission charge for EIM transactions to be consistent with cost causation principles.<sup>93</sup> This is true whether the EIM Entity uses transmission facilities that have been donated to the EIM or uses ATC to support EIM Transfers.

47. We are not persuaded by Powerex's argument that EIM Transfers that occur predominately from one EIM Entity to another call into question the reciprocity arrangement, under which each BAA mutually waives transmission charges for transfers between EIM Entities. The direction of flows in the EIM is not constant and may change with a number of factors, such as the introduction of new EIM Entities. In order for comparable treatment to exist for resources in NV Energy's BAA to those in CAISO and other EIM Entities' BAAs, and to address the concern that NV Energy load would be double charged for transmission service, the May 14 Order correctly accepted NV Energy's proposal not to assess incremental transmission charges for transfers related to the EIM.

48. Finally, we disagree with Powerex's argument that using ATC to support EIM Transfers confiscates the rights of NV Energy's firm transmission rights holders. EIM Transfers will not have priority over firm transmission rights.<sup>94</sup> The scheduling priority of each transmission customer will be maintained up to and including T-20. However, there is a possibility that the actual ATC will be different than transfer capacity reported in the NV Energy EIM Entity's final base schedule at T-40. If the base schedule exceeds the actual ATC that is available after all firm transmission use is scheduled and tagged at T-20, the difference will be resolved as an imbalance by the EIM. As previously noted in section II.D.3 above, in order to realize the numerous benefits from the EIM, participants must submit forecast data consistent with the timelines established by CAISO in order for CAISO to run the security-constrained economic dispatch. Schedules submitted at T-20 would not give the market models sufficient time to function. Therefore, as discussed above, the Commission also continues to find that the scheduling timelines proposed by NV Energy are just and reasonable, given the complexities of the EIM market, and are

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<sup>93</sup> See, e.g., *Black Oak Energy, LLC v. FERC*, 725 F.3d 230, 237 (D.C. Cir. 2013) (explaining that the cost causation principle requires that all approved rates reflect to some degree the costs actually caused by the customer who must pay them) (internal quotation omitted); *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992) (same).

<sup>94</sup> NV Energy OATT, § 14.2(b) ("Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have the lowest reservation priority under the Tariff.").

not prohibited by Order Nos. 764 and 888 for the reasons discussed in the May 14 Order.<sup>95</sup>

**F. Market-Based Rate Authority**

**1. May 14 Order**

49. In the May 14 Order the Commission noted that NV Energy currently does not have market-based rate authorization to sell any service(s) at market-based rates in the NV Energy BAA.<sup>96</sup> The Commission further stated that, because the EIM market will now include the NV Energy BAA, NV Energy may not make EIM sales at market-based rates until it receives approval from the Commission. To make sales in the EIM at market-based rates, the Commission thus directed NV Energy to submit a market power analysis demonstrating that it does not have market power in the EIM market—which includes the NV Energy BAA—prior to commencing financially binding participation in the EIM.<sup>97</sup> The Commission advised that the market power analysis should define the relevant product to be energy imbalance service and the relevant geographic market to be the combined geographic footprint of the CAISO market, the PacifiCorp BAAs, and the NV Energy BAA, and should include as suppliers in the market all generators located in the relevant geographic market that are capable of providing EIM service.<sup>98</sup>

50. The Commission also stated that CAISO will enforce all EIM transmission constraints in NV Energy's BAA on day one of NV Energy joining the EIM. The Commission stated that NV Energy could inform the Commission if it had any concerns with the enforcement of EIM transmission constraints.<sup>99</sup>

**2. Clarification/Rehearing Request**

51. Truckee Donner states that the Commission should clarify that it was simply providing preliminary guidance as to the study that NV Energy must submit, and did not prejudge any issue that might be raised in the proceeding on NV Energy's market-based

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<sup>95</sup> *Id.* P 163.

<sup>96</sup> *Id.* P 201.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* P 202.

<sup>99</sup> *Id.* P 203.

rate filing.<sup>100</sup> Truckee Donner expresses concern that the guidance in the May 14 Order regarding the market power analysis: (1) includes no assessment of how frequently transmission constraints into the NV Energy BAA may bind, or how frequently transmission constraints may prevent EIM Transfers to the NV Energy BAA; (2) seems to treat the NV Energy BAA differently from PacifiCorp, without reasoned explanation; (3) seems to anticipate separate market-share and pivotal-supplier analysis for NV Energy and PacifiCorp notwithstanding that the companies are under common ownership; and (4) provides no precedent for applying a native-load exclusion to EIM sales.<sup>101</sup> Should the Commission not grant its requested clarification, Truckee Donner requests that the Commission grant rehearing based on the foregoing concerns and remove the discussion in Paragraph 202 of the May 14 Order regarding the NV Energy market power study.<sup>102</sup>

52. Truckee Donner also seeks clarification that the Commission intends for CAISO to apply mitigation at the interties into NV Energy's BAA, and that it intends for CAISO to complete the necessary studies and make the necessary filings to do so prior to NV Energy's EIM start date.<sup>103</sup> Truckee Donner notes that CAISO's tariff requires Commission authorization, based on a structural competitiveness assessment by CAISO's Department of Market Monitoring, to apply local market power mitigation at interties between BAAs.<sup>104</sup> Truckee Donner states that the May 14 Order does not explicitly direct CAISO to take the procedural steps needed to implement that mitigation. Truckee Donner also requests that the Commission clarify that the May 14 Order does not prejudge whether the application of mitigation at the interties would sufficiently mitigate NV Energy's market power for purposes of its market-based rate filing.<sup>105</sup>

53. Alternatively, Truckee Donner states that if the Commission cannot issue such a directive to CAISO in this proceeding, then the Commission should grant rehearing and condition its acceptance of NV Energy's EIM OATT provisions on a CAISO filing and

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<sup>100</sup> Truckee Donner Clarification/Rehearing Request at 4-7.

<sup>101</sup> *Id.* at 6-7.

<sup>102</sup> *Id.* at 7.

<sup>103</sup> *Id.* at 8-10.

<sup>104</sup> *Id.* at 9.

<sup>105</sup> *Id.* at 10 n.10.

Commission authorization to apply mitigation at the interties into NV Energy's BAA, or a showing why mitigation is not needed.<sup>106</sup>

### 3. Commission Determination

54. Because the issues raised by Truckee Donner regarding NV Energy's market-based rate filing and the application of mitigation at the interties into NV Energy's BAA have been addressed by the Commission in orders issued on November 19, 2015 in Docket Nos. ER15-2281-000, *et al.*,<sup>107</sup> and November 19, 2015 in Docket No. ER15-2272-000,<sup>108</sup> respectively, the Commission dismisses Truckee Donner's request for clarification of these issues as moot.

#### The Commission orders:

The requests for rehearing are hereby denied and the requests for clarification are hereby granted in part and dismissed as moot in part, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>106</sup> *Id.* at 10.

<sup>107</sup> *Nevada Power Company*, 153 FERC ¶ 61,206 (2015).

<sup>108</sup> *Cal. Indep. Sys. Operator Corp.*, 153 FERC ¶ 61,207 (2015).