UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Nevada Power Company	)	**Docket No. ER10-2475-___**
Sierra Pacific Power Company	)	**Docket No. ER10-2474-___**
PacifiCorp	)	**Docket No. ER10-3246-___**
Agua Caliente Solar, LLC	)	**Docket No. ER12-21-___**
Pinyon Pines Wind I, LLC	)	**Docket No. ER12-1521-___**
Pinyon Pines Wind II, LLC	)	**Docket No. ER12-1522-___**
Solar Star California XIX, LLC	)	**Docket No. ER13-1441-___**
Solar Star California XX, LLC	)	**Docket No. ER13-1442-___**
Topaz Solar Farms LLC	)	**Docket No. ER12-1626-___**
CalEnergy, LLC	)	**Docket No. ER13-1266-___**
CE Leathers Company	)	**Docket No. ER13-1267-___**
Del Ranch Company	)	**Docket No. ER13-1268-___**
Elmore Company	)	**Docket No. ER13-1269-___**
Fish Lake Power LLC	)	**Docket No. ER13-1270-___**
Salton Sea Power Generation Company	)	**Docket No. ER13-1271-___**
Salton Sea Power L.L.C.	)	**Docket No. ER13-1272-___**
Vulcan/BN Geothermal Power Company	)	**Docket No. ER13-1273-___**
Yuma Cogeneration Associates	)	**Docket No. ER10-2605-___**

NOTIFICATION OF CHANGE IN STATUS OF THE MIDAMERICAN MBR SELLERS

Pursuant to Section 35.42 of the regulations of the Federal Energy Regulatory Commission (the "Commission,,),[1] the above-captioned wholly owned subsidiaries and partially owned affiliates of MidAmerican Energy Holdings Company ("MidAmerican,,) with market-based rate ("MBR,,) authority that own or control electric generation facilities in the Northwest and Southwest regions, as defined in Appendix D of Order No. 697 (the "MidAmerican MBR Sellers,,), hereby submit this notification of a change in status that occurred, on December 19, 2013, when MidAmerican completed its merger of NV Energy, Inc. ("NVE,,) and Silver Merger Sub, Inc. ("Merger Sub,,), a subsidiary of MidAmerican, following which NVE became an

[1] 18 C.F.R. Pt. 35.42 (2013).

indirect, wholly owned subsidiary of MidAmerican (the "NVE Merger,,). The NVE Merger was authorized by the Commission on December 19, 2013, and it was consummated on the same day, December 19, 2013.[2] NVE directly owns Nevada Power Company ("Nevada Power,,) and the Sierra Pacific Power Company ("Sierra Pacific,,, and together with Nevada Power, the "NVE Utilities,,), each of which is a public utility with a franchised service territory in the State of Nevada.

As discussed below, and in more detail in the attached affidavits of Rodney Frame of the Analysis Group (the "Frame Affidavit,,) and Julie Solomon of Navigant Consulting (the "Solomon Affidavit,,), included as Attachments 1 and 2 hereto, respectively, the MidAmerican MBR Sellers continue to satisfy the Commission's requirements for market-based rate authority in the relevant balancing authority areas ("BAAs,,), which are the PacifiCorp East ("PACE,,), and the PacifiCorp West ("PACW,,) BAAs and the relevant markets that are first-tier to the NVE, PACE, and PACW BAAs.[3] Nevada Power and Sierra Pacific have each previously relinquished their MBR authority in their respective BAAs, and their respective MBR tariffs each state that they are not authorized to make market-based rate sales in these two BAAs. As of the closing of the NVE Merger, each of the MidAmerican subsidiaries and affiliates with MBR

[2] *See Silver Merger Sub, Inc.*, 145 FERC ¶ 61,261 (2013) (the "NVE Merger Order,,). *See also* Notice of Consummation, Docket No. EC13-128-000 (filed Dec. 19, 2013).

[3] As discussed in greater detail below and in the Frame and Solomon Affidavits, Nevada Power and Sierra Pacific Power Company each currently operate a separate BAA (which are referred to herein as the NEVP and SPPC BAAs) that are not directly interconnected to each other. On or around January 1, 2014, the One Nevada Transmission Line ("ON Line,,) will be energized, and once energized it will directly interconnect the NEVP and SPPC BAAs, and the two BAAs will be consolidated into a single BAA (the "NVE BAA,,). Mr. Frame and Mr. Solomon have each performed their respective market power analyses using a single, consolidated NVE BAA subject to joint dispatch. *See Nevada Power Co.*, 145 FERC ¶ 61,238 (2013) ("*Nevada Power*,,) (accepting an Interim Joint Dispatch Agreement ("JDA,,) between Nevada Power and Sierra Pacific, effective January 1, 2014, and revisions to the NVE Open Access Transmission Tariff (the "NVE OATT,,), effective the later of January 1, 2014 or the in-service date of the ON Line, that will permit joint dispatch of the Nevada Power and Sierra Pacific systems).

authority became an affiliate of the NVE Utilities, and is subject to the same restrictions on MBR sales in the markets where the NVE Utilities are mitigated. Therefore, on December 20, 2013, each of the other wholly subsidiaries and partially owned affiliates of MidAmerican with MBR authority have filed amendments to their respective MBR tariffs to include the same restrictions on their ability to make MBR sales in the NEVP and SPPC BAAs.[4] Thus, because each of the MidAmerican MBR Sellers has included, or has proposed to include, a provision in its tariff prohibiting it from making market-based rate sales in the NEVP and SPPC BAAs, the MidAmerican MBR Sellers have not performed a market power analysis for these markets.

I. NOTICES AND COMMUNICATIONS

All correspondence and communications concerning the above-captioned proceeding should be addressed to the following persons:[5]

Jeffery B. Erb
Assistant General Counsel
Assistant Corporate Secretary
PacifiCorp Energy – Commercial & Trading Division
825 NE Multnomah, Suite 600
Portland, Oregon 97232
(503) 813-5029
(503) 813-6761 (facsimile)
jeff.erb@pacificorp.com

A. Robert Lasich
MidAmerican Renewables, LLC
1850 North Central Avenue, Suite 1025
Phoenix, AZ 85004
(602) 271-5656
(602) 271-5659 (facsimile)
arlasich@midamerican.com

---

4 *See MidAmerican Energy Co., et al.*, Revisions to Market-Based Rate Tariffs, Docket No. ER14-725, *et al.* (filed Dec. 20, 2013). In addition to the MidAmerican MBR Sellers, which are located in the Southwest and Northwest regions, the following wholly owned subsidiaries and partially owned affiliates of MidAmerican with MBR authority that are located in other regions have also submitted the same revisions to their respective MBR tariffs: MidAmerican Energy Company ("MidAmerican Energy„), Bishop Hill Energy II, LLC, Cordova Energy Company, Power Resources, Ltd., and Saranac Power Partners, L.P.

5 The MidAmerican MBR Sellers request waiver of Rule 203(b)(3) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.203(b)(3) (2013), to the extent necessary to permit more than two persons to be included on the official service list on their behalf in this proceeding.

Grace C. Wung
Associate General Counsel
NV Energy
6100 Neil Road
Reno, NV 89511
(775) 834-5793
(775) 834-3357 (facsimile)
gwung@nvenergy.com

Doug Kusyk
CalEnergy Generation Operating Company
1111 South 103rd Street
Omaha, NE 68124-1000
(503) 813-6270
doug.kusyk@calenergy.com

William R. Hollaway, Ph.D.
Brandon C. Johnson
Gibson, Dunn & Crutcher, LLP
1050 Connecticut Ave., NW
Washington, DC 20036
(202) 955-8500
bcjohnson@gibsondunn.com
whollaway@gibsondunn.com

II. MIDAMERICAN AND THE MIDAMERICAN MBR SELLERS

A. MidAmerican

MidAmerican is a holding company that owns subsidiaries principally engaged in energy businesses, and is itself a consolidated subsidiary of Berkshire Hathaway Inc. ("Berkshire Hathaway„). MidAmerican's domestic power generating assets are owned directly or indirectly by the following entities: MidAmerican Energy, NVE, PacifiCorp, and MidAmerican Renewables, LLC ("MidAmerican Renewables„).

MidAmerican Energy is an Iowa corporation that is a combination gas and electric company in the Midwest. MidAmerican Energy's utility service territory includes parts of Iowa, Illinois, Nebraska and South Dakota. MidAmerican Energy is a transmission-owning member of Midcontinent Independent System Operator, Inc. ("MISO„), and MidAmerican Energy has turned all of its transmission facilities over to the operational control of MISO. Transmission service over MidAmerican Energy's transmission facilities is provided pursuant to the MISO's

Open Access Transmission, Energy and Operating Reserve Markets Tariff (the "MISO Tariff,,), which is on file with the Commission.

NVE, formerly Sierra Pacific Resources, is a Nevada corporation and an investor-owned public utility holding company. In 1999, Sierra Pacific and Nevada Power requested authorization for the merger of Nevada Power into Sierra Pacific Resources, following which Sierra Pacific Resources would be the surviving parent, and Nevada Power would become a wholly owned public utility subsidiary of Sierra Pacific Resources.[6] Sierra Pacific Resources later changed its corporate name to "NV Energy, Inc.,, (*i.e.*, NVE), the public utility holding company that now owns Sierra Pacific and Nevada Power.

MidAmerican Renewables, through its subsidiaries, was formed to acquire, own, operate, and invest in renewable energy facilities. MidAmerican Renewables' wholly owned subsidiaries in the Southwest region include Pinyon Pines Wind I, LLC ("Pinyon Pines Wind I,,), Pinyon Pines Wind II, LLC ("Pinyon Pines Wind II,,), Solar Star California XIX, LLC ("Solar Star 1,,), Solar Star California XX, LLC ("Solar Star 2,,), and Topaz Solar Farms LLC ("Topaz,,). In addition, MidAmerican Renewables owns 49 percent of the membership interests in Agua Caliente Solar, LLC ("Agua Caliente,,), and 50 percent of the membership interests in CE Generation, LLC ("CE Generation,,).

B. The MidAmerican MBR Sellers

1. Nevada Power

Nevada Power is a Nevada corporation and a wholly owned subsidiary of NVE. Nevada Power is a regulated public utility offering retail and wholesale transmission service in southern Nevada, and is regulated by the PUCN and the Commission. Nevada Power operates the NEVP

6 *See Sierra Pacific Power Co.*, 87 FERC ¶ 61,077 (1999) (order approving transaction).

BAA in southern Nevada. Nevada Power's service territory covers approximately 4,500 square miles in southern Nevada, and includes the cities of Las Vegas, North Las Vegas and Henderson. Nevada Power provides open access transmission service under the terms of the NV Energy, Inc. Operating Companies' FERC Electric Tariff, Third Revised Volume No. 1 (the "NVE OATT„). The Commission has granted Nevada Power the authority to sell electric energy, capacity, and ancillary services at market-based rates outside of the NEVP and SPPC BAAs.[7]

2. Sierra Pacific

Sierra Pacific is a Nevada corporation and a wholly owned subsidiary of NVE. Sierra Pacific is a regulated public utility offering retail and wholesale transmission service predominately in northern Nevada, and is regulated by the PUCN and the Commission. Sierra Pacific operates the SPPC BAA in northern Nevada. Sierra Pacific's service territory covers approximately 42,000 square miles of western, central and northeastern Nevada, including the cities of Reno, Sparks, Carson City, and Elko. Sierra Pacific provides transmission service pursuant to the NVE OATT. The Commission has granted Nevada Power the authority to sell electric energy, capacity, and ancillary services at market-based rates outside of the NEVP and SPPC BAAs.[8]

3. PacifiCorp

PacifiCorp is an Oregon corporation and a direct, wholly owned subsidiary of MidAmerican. PacifiCorp is a vertically-integrated public utility primarily engaged in providing retail electric service to approximately 1.8 million residential, commercial, industrial and other customers in portions of the following states: California, Idaho, Oregon, Utah, Washington and

---

7 *See Sierra Pacific Power Co.*, 95 FERC ¶ 61,193, *reh'g denied*, 96 FERC ¶ 61,050 (2001).

8 *Id.*

Wyoming. PacifiCorp provides open access transmission service pursuant to its Open Access Transmission Tariff, which is on file with the Commission. PacifiCorp operates the PACE and PACW BAAs. The Commission has granted PacifiCorp authorization to sell energy, capacity and ancillary services at market-based rates.[9]

4. Agua Caliente

Agua Caliente is a Delaware limited liability company. MidAmerican Renewables indirectly owns 49 percent of the membership interests in Agua Caliente (the remaining 51 percent is indirectly owned by NRG Energy, Inc., which is not affiliated with MidAmerican). Agua Caliente is constructing a 290 MW solar photovoltaic electric generating facility in Yuma County, Arizona (the "Agua Caliente Facility„), which is directly interconnected to the transmission system owned by Pacific Gas & Electric Company ("PG&E„) and operated by the CAISO. A portion of the Agua Caliente Facility is presently in commercial operation, and the entire 290 MW facility is expected to be in commercial operation by the end of the first quarter of 2014. Agua Caliente has entered into a long-term power purchase agreement with PG&E pursuant to which the entire net electrical output of its generating facility is committed to PG&E. The Commission has granted Agua Caliente authorization to sell energy, capacity and ancillary services at market-based rates.[10]

5. Pinyon Pines Wind I

Pinyon Pines Wind I is a Delaware limited liability company and an indirect, wholly owned subsidiary of MidAmerican Renewables. Pinyon Pines Wind I owns and operates an approximately 168 MW (nameplate) wind-powered electric generation facility (the "Pinyon

---

9 *See PacifiCorp*, 79 FERC ¶ 61,383 (1997).

10 *See Agua Caliente Solar, LLC*, Docket No. ER12-21-000 (Dec. 1, 2011) (unreported).

Pines Wind I Facility„) located in Kern County, California. The Pinyon Pines Wind I Facility is interconnected with the transmission system owned by Southern California Edison ("SCE„) and operated by the CAISO. The entire output of the Pinyon Pines Wind I Facility is committed to SCE pursuant to a long-term power purchase agreement. The Commission has granted Pinyon Pines Wind I authorization to sell energy, capacity, and ancillary services at market-based rates.[11]

6. Pinyon Pines Wind II

Pinyon Pines Wind II is a Delaware limited liability company and an indirect, wholly owned subsidiary of MidAmerican Renewables. Pinyon Pines Wind II owns and operates an approximately 132 MW (nameplate) wind-powered electric generation facility (the "Pinyon Pines Wind II Facility„), located in Kern County, California. The Pinyon Pines Wind II Facility is interconnected with the transmission system owned by SCE and operated by the CAISO. The entire output of the Pinyon Pines Wind II Facility is committed to SCE pursuant to a long-term power purchase agreement. The Commission has granted Pinyon Pines Wind II authorization to sell energy, capacity, and ancillary services at market-based rates.[12]

7. Solar Star 1

Solar Star 1 is a Delaware limited liability company and an indirect, wholly owned subsidiary of MidAmerican Renewables. Solar Star 1 is developing and constructing a 310 MW solar photovoltaic electric generating facility located in Kern and Los Angeles Counties, California that is interconnected to the transmission system owned by SCE and operated by the CAISO. The entire output of Solar Star 1 is committed to SCE pursuant to a long-term power

---

[11] *See Alta Wind VII, LLC and Alta Wind IX, LLC*, Docket Nos. ER12-1521-000 and ER12-1522-000 (May 31, 2012) (unreported).

[12] *See id.*

purchase agreement. MidAmerican Renewables acquired the rights to Solar Star 1 from SunPower Corporation ("SunPower,,), which is constructing the facility. Construction of Solar Star 1 has started, and initial test operation began in the fourth quarter of 2013. The Commission has granted Solar Star 1 authorization to sell energy, capacity, and ancillary services at market-based rates.[13]

8. Solar Star 2

Solar Star 2 is a Delaware limited liability company and an indirect, wholly owned subsidiary of MidAmerican Renewables. Solar Star 2 is developing and constructing a 276 MW solar photovoltaic electric generating facility located in Kern County, California that is interconnected to the transmission system owned by SCE and operated by the CAISO. The entire output of Solar Star 2 is committed to SCE pursuant to a long-term power purchase agreement. MidAmerican Renewables acquired the rights to Solar Star 2 from SunPower, which is constructing the facility. Construction of Solar Star 2 has started, and initial test operation began in the fourth quarter of 2013. The Commission has granted Solar Star 2 authorization to sell energy, capacity, and ancillary services at market-based rates.[14]

9. Topaz

Topaz is a Delaware limited liability company and an indirect, wholly owned subsidiary of MidAmerican Renewables. Topaz is constructing a 550 MW solar photovoltaic generating facility (the "Topaz Facility,,) in San Luis Obispo County, California, which is interconnected to the transmission system owned by PG&E and operated by the CAISO. The Topaz Facility began trial operation during the first quarter of 2013. A portion of the Topaz Facility is presently in

---

13 *See Solar Star California XIX, LLC, Solar Star California XX, LLC*, Docket Nos. ER13-1441-000 and ER13-1442-000 (June 20, 2013) ("*Solar Star,,*).

14 *See id.*

commercial operation. The Topaz Facility is expected to be in full commercial operation by March 2015. Topaz has entered into a long-term power purchase agreement with PG&E pursuant to which the entire net electrical output of the Topaz Facility is committed to PG&E. The Commission has granted Topaz authorization to sell energy, capacity and ancillary services at market-based rates.[15]

10. CE Generation

Fifty percent of the membership interests in CE Generation are directly owned by MidAmerican Geothermal, LLC ("MidAmerican Geothermal„), a Delaware limited liability company. MidAmerican Geothermal is a direct, wholly owned subsidiary of MidAmerican Renewables. The remaining 50 percent of CE Generation is owned by a subsidiary of TransAlta USA, Inc., which is not affiliated with MidAmerican.

CE Generation indirectly owns a number of electric generation facilities, including ten geothermal units in the IID BAA, each of which has been certified as a qualifying facility ("QF„) under the Public Utility Regulatory Policies Act of 1978 ("PURPA„) (collectively, the "CE Generation Geothermal QFs„). In addition, CE Generation indirectly owns the natural-gas fired electric generation facilities owned by CE Generation subsidiary Yuma Cogeneration Associates ("Yuma Cogeneration„), as well as other natural-gas fired facilities outside the Southwest region.

a) CE Generation Geothermal QFs

The CE Generation Geothermal QFs are:

- CE Leathers Company, which owns and operates the 42.8 MW Leathers Project;
- CE Turbo LLC, which owns and operates the 11.2 MW CE Turbo Project;
- Del Ranch Company, which owns and operates the 42.8 MW Del Ranch Project;
- Elmore Company, which owns and operates the 42.8 MW Elmore Project;

[15] *See Topaz Solar Farms LLC*, Docket No. ER12-1626 (June 14, 2012) (unreported).

- Fish Lake Power LLC, which owns one percent of the approximately 42.8 MW Salton Sea IV Project;
- Salton Sea Power Generation Company, which owns and operates the 10.2 MW Salton Sea I Project, the 17.3 MW Salton Sea II Project, and the 51.0 MW Salton Sea III Project, and operates and owns 99 percent of the 42.8 MW Salton Sea IV Project;
- Salton Sea Power L.L.C., which owns and operates the 46.9 MW Salton Sea V Project; and
- Vulcan/BN Geothermal Power Company, which owns and operates the 38.8 MW Vulcan Project.

The CE Generation Geothermal QFs have a total generating capacity of 346.8 MW. Each of the CE Generation Geothermal QFs is located in Calipatria, California; is interconnected to the IID transmission system; and sells all of its output under a long-term contract. The Commission has granted each of the CE Generation Geothermal QFs, with the exception of CE Turbo, the authority to sell energy, capacity and ancillary services at market-based rates, which would be marketed by their affiliate, CalEnergy, LLC.[16]

b) Yuma Cogeneration

Yuma Cogeneration is a Utah partnership and indirect, wholly owned subsidiary of CE Generation. Yuma Cogeneration owns and operates a 52.3 MW natural gas-fired cogeneration facility located in Yuma, Arizona (the "Yuma Cogeneration Facility„), that has been certified as a QF. The Yuma Cogeneration Facility is interconnected with the transmission system owned and operated by APS. The entire output of the Yuma Cogeneration Facility is committed to San Diego Gas & Electric pursuant to a long-term power purchase agreement. The Commission has

[16] *See CalEnergy, LLC, et al.*, Docket No. ER13-1266-000, *et al.* (May 31, 2013). Consistent with the exemptions granted to QFs in Section 292.601 of the Commission's regulations, 18 C.F.R. § 292.601 (2013), the CE Turbo has not requested market-based rate authorization because the QF facility it operates has a capacity of less than 20 MW.

granted Yuma Cogeneration authorization to sell energy, capacity, and ancillary services at market-based rates.[17]

III. NOTIFICATION OF CHANGE IN STATUS

On July 12, 2013, as amended on August 27, 2013, Merger Sub, MidAmerican, Nevada Power, Sierra Pacific, and NVE submitted an application in Docket No. EC13-128, pursuant to Section 203 of the FPA, requesting Commission authorization for the NVE Merger.[18] The Commission approved the amended application on December 19, 2013.[19] On December 19, 2013, MidAmerican consummated the NVE Merger. The terms of the NVE Merger are set forth in the Agreement and Plan of Merger, dated May 29, 2013, by and among MidAmerican, Merger Sub, and NVE (the "Merger Agreement,,), which was provided as Exhibit I to the 203 Application. Following the completion of the merger, NVE became an indirect wholly owned subsidiary of MidAmerican.[20]

IV. UPDATED MARKET POWER ANALYSIS

As demonstrated below and in the Frame and Solomon Affidavits, the MidAmerican MBR Sellers continue to satisfy the Commission's requirements for market-based rate authority in the relevant geographic markets, which are PACE and PACW, and all of the markets that are first-tier to PACE, PACW and NVE.[21] As discussed above, no market power analysis has been

---

[17] *Yuma Cogeneration Assocs.*, Docket No. ER07-1236-000, *et al.* (Dec. 4, 2007) (unreported).

[18] *See Silver Merger Sub, Inc., et al.*, Joint Application for Authorization under Section 203 of the Federal Power Act, Docket No. EC13-128-000 (filed July 12, 2013) (the "203 Application,,). *See also Silver Merger Sub, Inc., et al.*, Supplemental Informational Filing, Docket No. EC13-128-000 (filed Aug. 27, 2013) ("Section 203 Supplement,,).

[19] *See* NVE Merger Order.

[20] *See also* Notice of Consummation, Docket No. EC13-128-000 (filed Dec. 19, 2013).

[21] *See* Order No. 697 at P 231 (directing that the "default,, geographic market is the balancing authority area in which the market-based rate seller owns or controls generation).

performed for the NEVP and SPPC BAAs because each of the MidAmerican MBR Seller has adopted, or has proposed to adopt, revisions to its MBR tariff that would prohibit it from making market-based rate sales in the NEVP and SPPC BAAs.[22]

A. Horizontal Market Power

The Commission employs two indicative screens for assessing horizontal market power in connection with requests to obtain or retain the authority to sell electricity at market-based rates: the Pivotal Supplier Screen and the Wholesale Market Share Screen. The Pivotal Supplier Screen evaluates the potential of a seller and its affiliates to exercise market power based on uncommitted capacity at the time of the market's peak demand. The Wholesale Market Share Screen measures whether a seller and its affiliates have a dominant position in the market, for each of the four seasons, based on the number of megawatts owned or controlled by the seller and its affiliates as compared to uncommitted capacity of the entire market.

As discussed below, the MidAmerican MBR Sellers pass all of the indicative screens, with the exception of certain failures of the Wholesale Market Share Screen in the PACE, PACW, and Idaho Power Company ("IPCO„) BAAs during certain seasons, and the NorthWestern Energy ("NWMT„) BAA in certain seasons in a low hydro and wind sensitivity. Under Section 35.37(c) of the Commission's regulations, the failure of an indicative screen creates a rebuttal presumption of horizontal market power, which can be rebutted by submitting a Delivered Price Test ("DPT„) that demonstrates that the seller satisfies the Commission's requirements for market-based rate authority.[23] Ms. Solomon has performed such a DPT analysis

[22] As discussed above, Nevada Power and Sierra Pacific will consolidate the NEVP and SPPC BAAs into the single NVE BAA. The MidAmerican MBR Sellers will file superseding tariff amendments to reflect that change after the North American Electric Reliability Corporation ("NERC„) has completed its review and has recertified the two BAAs as a single, consolidated BAA.

[23] 18 C.F.R. § 35.37(c) (2013).

of these markets, and concludes that the MidAmerican MBR Sellers have rebutted the presumption of horizontal market power in the PACE, PACW, IPCO, and NWMT BAAs.

1. Market Share Screen Results

As explained in the Frame Affidavit (which is included as Attachment 1 herein), Mr. Frame performed the Commission's indicative screens based on the data and assumptions used in PacifiCorp's June 28, 2013 triennial market power update, as supplemented on November 8, 2013,[24] which is currently pending before the Commission, and supplemented for the change in status filing, as discussed below and in his affidavit. In Mr. Frame's testimony supporting the PacifiCorp 2013 Triennial, Mr. Frame has provided a detailed description of the data and assumptions that he used, in particular, those relating to planned outages, the treatment of long-term purchases and sales by the PacifiCorp and the NVE Utilities, operating reserves, and simultaneous import limit ("SIL„) values.[25]

Mr. Frame has updated his analysis to reflect a number of changes that have occurred since the PacifiCorp 2013 Triennial was submitted, or that are expected to occur in the near future, in particular, the consolidation of the NEVP and SPPC BAAs into the single NVE BAA, which will occur on or about January 1, 2014. Mr. Frame's analysis uses as a base the same data on load and generation and the same study year, *i.e.*, December 1, 2010-November 30, 2011 (the "2010/2011 Study Year„), as the PacifiCorp 2013 Triennial, with updating to reflect a number of changes, including, principally,: (1) the consummation of the NVE Merger; (2) the consolidation of the Nevada Power and Sierra Pacific BAAs: (3) the addition of the 638 MW (summer rating)

24 *See PacifiCorp*, Triennial Market Power Update, Docket No. ER10-3246-002 (filed June 28, 2013) ("PacifiCorp 2013 Triennial„); *PacifiCorp and CalEnergy, LLC*, Docket No. ER10-3246-002 and ER13-1266-002 (filed Nov. 8, 2013).

25 *See* Frame Affidavit at ¶¶ 34-42.

of Phase II of the Lake Side Power Plant ("Lake Side 2„), which is expected to come on line in June 2014; (4) Nevada Power's acquisition of the California Department of Water Resources' ("CDWR„) interest in Reid Gardner Unit 4 in October 2013; (5) MidAmerican Renewables' addition of wind and solar photovoltaic generation in CAISO; and (6) the addition of new long-term purchases that began after the 2010/11 Study Year and the removal of long-term purchases that have terminated since the end of the 2010/2011 Study Year.[26]

Mr. Frame performed the indicative screens for the PACE and PACW BAAs and all of the markets that are first-tier to the PACE, PACW, and/or NVE BAAs, namely: the BAAs operated by Arizona Public Service Company ("APS„), Bonneville Power Administration ("BPA„), the California Independent System Operator, Inc. ("CAISO„), IPCO, the Los Angeles Department of Water and Power ("LADWP„), NWMT, Western Area Power Administration—Colorado Missouri ("WACM„), and Western Area Power Administration—Lower Colorado ("WALC„). For the reasons discussed above, Mr. Frame did not analyze the NVE BAA.[27] Mr. Frame's results are summarized below.[28]

---

[26] *See* Frame Affidavit at ¶ 29. In addition, Mr. Frame notes that, in the PacifiCorp 2013 Triennial, data developed by PacifiCorp documenting changes to its regulating margin reserve requirements was used to estimate this component of operating reserves for PACE and PACW. As discussed in his Affidavit, Mr. Frame assumed that other suppliers and BAAs held the same relative amounts (expressed a percent of load) of regulating margin reserves as did PacifiCorp for PACE and PACW. In the current analysis, Mr. Frame used the same procedure as in the PacifiCorp 2013 Triennial for PACE and PACW, and other BAAs with comparable amounts of connected wind generation, but used lower amounts for BAAs with relatively little connected wind generation capacity (such as the NV Energy BAA). *Id.*

[27] As well, Mr. Frame did not include an analysis of BAAs connected only to PACW but not to either PACE or the NVE BAA, namely, the BAAs operated by Avista, Grant County Public Utility District and Portland General Electric, since indicative screen results there are not affected by the triggers for this change-in-status filing.

[28] The following table is Attachment 5 to the Frame Affidavit.

Balancing Authority Area	Pivotal Supplier Screen	Market Share Screen Winter	Spring	Summer	Fall
PACE	**PASS**	32.9%	33.0%	16.5%	28.3%
PACW	**PASS**	0.0%	25.4%	5.4%	11.8%
APS	**PASS**	1.4%	0.1%	3.4%	3.6%
BPA	**PASS**	0.0%	0.0%	0.0%	0.0%
CAISO	**PASS**	12.0%	12.0%	10.5%	12.3%
IPCO	**PASS**	29.5%	20.5%	19.2%	29.2%
LADWP	**PASS**	0.2%	5.0%	4.5%	6.2%
NWMT	**PASS**	15.8%	14.2%	3.7%	13.1%
WACM	**PASS**	9.4%	6.5%	7.0%	3.4%
WALC	**PASS**	0.0%	0.0%	0.0%	0.0%

In addition, for applicants whose screen studies base hydroelectric and wind generating capacity on five-year average historical output levels, in accordance with Commission policy in Order No. 697, Mr. Frame also provide sensitivity analyses that derate hydro and wind generating capacity using the *lowest* and *highest* annual hydro and wind capacity factors during that period. Mr. Frame performed the sensitivity analyses and found that in the low hydro and wind sensitivity there is an additional screen failure in the IPCO BAA (in the summer season) and two screen failures in the NWMT BAA, where the MidAmerican MBR Sellers' shares are 20.3 percent and 23.3 percent in the Winter and Spring seasons, respectively.[29]

In Summary, the MidAmerican MBR Sellers pass the pivotal supplier screen in each of the BAAs examined by Mr. Frame and pass the market share screen and low and high hydro and wind sensitivities in all seasons in six of the 10 BAAs examined. Mr. Frame finds that the MidAmerican MBR Sellers fail the market share screen in one or more seasons in the PACE, PACW, and IPCO BAAs, and fail the market share screen for two seasons in the low hydro and wind sensitivity for the NWMT BAA. As discussed below, the results of Ms. Solomon's DPT analysis rebut any presumption of horizontal market power.

[29] *See* Frame Affidavit at ¶ 45& Attachments 16-17.

2. DPT Results

Under Order No. 697, the failure of either indicative screen creates a rebuttable presumption that the seller has generation market power. However, Order No. 697 states that the DPT can be used to rebut the presumption of market power.[30] The Commission considers three metrics under the DPT: (i) whether the seller is a pivotal supplier; (ii) a 20 percent market share threshold; and (iii) a 2500 HHI threshold for market concentration. The Commission has indicated that it will consider other relevant factors presented on a case-by-case basis. While an analysis of both AEC and EC is required, here, as in other non-restructured markets, the proper focus is on AEC (essentially, economic supply in excess of load-serving obligations) rather than on EC (which ignores load obligations).

As discussed in the Solomon Affidavit (which is included as Attachment 2 herein), for purposes of conducting the DPT, Ms. Solomon relied on the analysis and underlying data included in the affidavits and workpapers supporting the Section 203 Application and Supplement.[31] Ms. Solomon performed the DPT using the time period used in the 203 Application. As discussed below, Ms. Solomon finds that the MidAmerican MBR Sellers have rebutted the presumption of horizontal market power arising from the results of the indicative screens in the PACE, PACW, IPCO, and NWMT BAAs.

AEC Analysis

As noted above, in completing a market-based rate analysis, the Commission requires an analysis of both AEC and EC. In the non-restructured markets at issue here, Ms. Solomon

---

[30] Order No. 697 at P 13.

[31] With one exception (relating to the pivotal supplier metric), Ms. Solomon relied on the post-transaction DPT results taken directly from exhibits and workpapers underlying the DPT analysis in the section 203 application. *See* Solomon Affidavit at 6 & Table 1 ("Source of Data Underlying DPT Analysis,,).

concludes that the proper focus is on AEC (essentially, economic supply in excess of load-serving obligations) rather than on EC (which ignores load obligations). This is consistent with the Commission's policy and precedent in markets where there is limited or no retail access, and in which it is unlikely that these states will adopt retail access in the foreseeable future.[32] Moreover, the Commission has confirmed that AEC provides "the more accurate measure of effect on competition,, in the PacifiCorp service territory because there is limited retail access.[33]

2014 Test Year

Order No. 697 generally "require[s] the use of historical data in the market power analysis,, for market based rate applications and changes of status filings.[34] Consistent with that approach, as part of the instant filing, the indicative screens have been conducted using such historical data. However, as described in the Solomon Affidavit, significant changes to the topographical landscape have rendered all but irrelevant the use of historical data with respect to conducting the DPT and would not provide the Commission an accurate view of current facts and circumstances.[35] The 2014 period is far more relevant in assessing the competitive conditions in the relevant BAA's. As such, the MidAmerican MBR Sellers request that the Commission accept Ms. Solomon's use of a DPT based on the same period as that she used in her analysis of the competitive effects of the NVE Merger, which the Commission recently

---

[32] *See Duke Energy Corporation*, 136 FERC ¶ 61,245 at P 124 (2011) ("*Duke*,,) ("the AEC measure is more appropriate for markets where there is no retail competition and no indication that retail competition will be implemented in the near future,,). *See also Great Plains Energy, Inc.*, 121 FERC ¶ 61,069 at P 34 & n.44 (2007) ("*Great Plains*,,), *reh'g denied*, 122 FERC ¶ 61,177 (2008); *Nat'l Grid, plc.*, 117 FERC ¶ 61,080 at P 27-28 (2006), *reh'g denied*, 122 FERC ¶ 61,096 (2008); *Westar Energy, Inc.*, 115 FERC ¶ 61,228 at P 72, *reh'g denied*, 117 FERC ¶ 61,011 at P 39 (2006); *Nevada Power Co.*, 113 FERC ¶ 61,265 at P 15 (2005).

[33] *PacifiCorp*, 124 FERC ¶ 61,046 at PP 16, 18 (2008).

[34] Order No. 697 at P 301.

[35] *See* Solomon Affidavit at 7-8.

approved, which is a DPT that is forward-looking to 2014 (the "2014 Analysis„).[36] As set forth below, there are a number of significant and measurable changes from the historical conditions to find that the use of the 2014 Analysis is more probative of the competitive conditions sellers face in the relevant BAAs.

First, the ON Line was energized on January 1, 2014. With ON Line energized, it directly interconnects the NEVP and SPPC BAAs, which have historically been operated as separate BAAs. This changed topographical landscape will affect any DPT performed with historical data because, as a result of that first direct interconnection, resources from each BAA will now be able to serve loads in the other BAA that they were previously unable to reach directly. Thus, the historical data will no longer accurately reflect the topographical conditions.

Second, under the JDA and amendments to the NVE OATT approved by the Commission on December 19, 2013 in *Nevada Power*, Nevada Power and Sierra Pacific will engage in joint dispatch of their combined generation resources once ON Line is energized. This significant change will directly affect the DPT analysis of the IPCO market because, historically, only Sierra Pacific would have been a first-tier supplier to IPCO and now Nevada Power also will be a first-tier supplier. As such, the historical data is not relevant to determine whether Applicants have market power within the relevant market. Similarly, the PACE and PACW markets may also be affected because of the "pooling„ of Sierra Pacific's and Nevada Power's uncommitted capacity, which may create significant AEC changes to the extent one or the other party previously had zero AEC.

Third, there have also been significant changes in the MidAmerican MBR Sellers' ownership and control of generation relative to the historical period. In particular, PacifiCorp's

[36] *See* NVE Merger Order at PP 34-35.

approximately 638 MW Lake Side 2 that will come on line in June 2014, and Nevada Power's acquisition of interests in Reid Gardner Unit 4 in October 2013. These increases in generation owned and controlled by the MidAmerican MBR Sellers in the relevant market, all other things equal, will have the effect of increasing the MidAmerican MBR Sellers' AEC and their market share in relevant first-tier markets. This effect has been properly captured in the DPT 2014 Analysis.

The MidAmerican MBR Sellers submit that the NVE Merger, combined with these other significant changes to the relevant transmission and generation topology, and the lack of historical data with respect to those changes, demonstrate why the Commission should not require historical data in the DPT market power analysis and should instead consider the 2014 Analysis submitted with this application. The 2014 Analysis will provide the Commission a far more relevant measure of the competitive conditions sellers face in the relevant BAAs.

Summary of Results

As shown in the Solomon Affidavit, at base case prices, the MidAmerican MBR Sellers' market is below 20 percent in each seasonal/load period for AEC in the PACE, PACW, IPCO, and NWMT BAAs. Tables 2-5 from the Solomon Affidavit, which are reproduced below, reflect the results for each of the relevant markets at base case prices.

Table [illegible]: Available Economic Capacity ([illegible]) (Base Case Prices)

Period	Market Price	MidAmerican MW	Mkt Size	Pivotal Supplier Test: Rival Capacity	Pivotal Supplier Test: Wholesale Market Load	Pivotal Supplier Test: Pass Pivotal Supplier?	Market Share Test: Mkt Share	Market Share Test: Pass Market Share Test?	Market Concentration Test: HHI	Market Concentration Test: Pass HHI Test?
a	*b*	*c*	*d*	*e*	*f*	*g*	*h*	*i*	*j*	*k*
S_SP1	$ 100	20	5,865	5,845	670	Yes	0%	Yes	472	Yes
S_SP2	$ 59	134	5,797	5,663	638	Yes	2%	Yes	444	Yes
S_P	$ 42	806	6,237	5,431	543	Yes	13%	Yes	582	Yes
S_OP	$ 28	45	5,606	5,560	458	Yes	1%	Yes	882	Yes
W_SP	$ 46	886	6,004	5,117	508	Yes	15%	Yes	596	Yes
W_P	$ 39	1,175	6,304	5,129	471	Yes	19%	Yes	709	Yes
W_OP	$ 25	66	5,686	5,619	422	Yes	1%	Yes	495	Yes
SH_SP	$ 46	523	5,994	5,471	510	Yes	9%	Yes	526	Yes
SH_P	$ 36	1,019	6,296	5,277	443	Yes	16%	Yes	646	Yes
SH_OP	$ 21	0	3,526	3,526	393	Yes	0%	Yes	697	Yes

Table 3: Available Economic Capacity ([illegible]) (Base Case Prices)

Period	Market Price	MidAmerican MW	Mkt Size	Pivotal Supplier Test: Rival Capacity	Pivotal Supplier Test: Wholesale Market Load	Pivotal Supplier Test: Pass Pivotal Supplier?	Market Share Test: Mkt Share	Market Share Test: Pass Market Share Test?	Market Concentration Test: HHI	Market Concentration Test: Pass HHI Test?
a	*b*	*c*	*d*	*e*	*f*	*g*	*h*	*i*	*j*	*k*
S_SP1	$ 100	6	2,282	2,276	832	Yes	0%	Yes	858	Yes
S_SP2	$ 59	43	2,282	2,239	793	Yes	2%	Yes	829	Yes
S_P	$ 42	290	2,496	2,206	675	Yes	12%	Yes	892	Yes
S_OP	$ 28	0	2,556	2,556	569	Yes	0%	Yes	1,013	Yes
W_SP	$ 46	152	2,867	2,715	631	Yes	5%	Yes	733	Yes
W_P	$ 39	238	2,880	2,642	586	Yes	8%	Yes	684	Yes
W_OP	$ 25	0	3,182	3,182	525	Yes	0%	Yes	621	Yes
SH_SP	$ 46	18	2,309	2,290	634	Yes	1%	Yes	922	Yes
SH_P	$ 36	77	2,308	2,231	551	Yes	3%	Yes	770	Yes
SH_OP	$ 21	0	3,294	3,294	489	Yes	0%	Yes	749	Yes

[illegible]

Period	Market Price	MidAmerican MW	Mkt Size	Pivotal Supplier Test: Rival Capacity	Pivotal Supplier Test: Wholesale Market Load	Pivotal Supplier Test: Pass Pivotal Supplier?	Market Share Test: Mkt Share	Market Share Test: Pass Market Share Test?	Market Concentration Test: HHI	Market Concentration Test: Pass HHI Test?
a	*b*	*c*	*d*	*e*	*f*	*g*	*h*	*i*	*j*	*k*
S_SP1	$ 100	3	1,384	1,381	418	Yes	0%	Yes	926	Yes
S_SP2	$ 59	26	1,819	1,793	353	Yes	1%	Yes	1,095	Yes
S_P	$ 42	54	1,822	1,768	307	Yes	3%	Yes	1,170	Yes
S_OP	$ 28	0	2,041	2,041	277	Yes	0%	Yes	1,486	Yes
W_SP	$ 46	52	1,744	1,692	239	Yes	3%	Yes	2,033	Yes
W_P	$ 39	73	1,463	1,389	224	Yes	5%	Yes	1,316	Yes
W_OP	$ 25	0	1,200	1,200	199	Yes	0%	Yes	691	Yes
SH_SP	$ 46	11	1,623	1,612	256	Yes	1%	Yes	1,337	Yes
SH_P	$ 36	57	1,224	1,167	212	Yes	5%	Yes	838	Yes
SH_OP	$ 21	0	1,166	1,166	189	Yes	0%	Yes	633	Yes

[illegible]

Period	Market Price	MidAmerican MW	Mkt Size	Pivotal Supplier Test: Rival Capacity	Pivotal Supplier Test: Wholesale Market Load	Pivotal Supplier Test: Pass Pivotal Supplier?	Market Share Test: Mkt Share	Market Share Test: Pass Market Share Test?	Market Concentration Test: HHI	Market Concentration Test: Pass HHI Test?
a	*b*	*c*	*d*	*e*	*f*	*g*	*h*	*i*	*j*	*k*
S_SP1	$ 100	4	3,013	3,009	178	Yes	0%	Yes	2,042	Yes
S_SP2	$ 59	19	3,013	2,994	145	Yes	1%	Yes	2,033	Yes
S_P	$ 42	50	3,013	2,963	126	Yes	2%	Yes	2,061	Yes
S_OP	$ 28	0	2,962	2,962	108	Yes	0%	Yes	2,095	Yes
W_SP	$ 46	55	2,959	2,904	136	Yes	2%	Yes	1,830	Yes
W_P	$ 39	88	2,817	2,729	127	Yes	3%	Yes	1,699	Yes
W_OP	$ 25	0	2,258	2,258	112	Yes	0%	Yes	1,115	Yes
SH_SP	$ 46	12	2,633	2,622	118	Yes	0%	Yes	2,009	Yes
SH_P	$ 36	67	2,366	2,299	113	Yes	3%	Yes	1,604	Yes
SH_OP	$ 21	0	1,595	1,595	98	Yes	0%	Yes	819	Yes

The DPT analysis in Tables 2-5 demonstrates that (i) the MidAmerican MBR Sellers are not a pivotal supplier in any time period (column (g); (ii) the MidAmerican MBR Sellers' market share is below 20 percent in each time period (column h); and (iii) market concentration is well below 2500 in each time period (column j). In PACE, the MidAmerican MBR Sellers' market share ranges from zero to 19 percent, and market concentration is below 1000 in each time period (see Table 2 and Exhibit JRS-2). In PACW, the MidAmerican MBR Sellers' market share ranges from zero to 12 percent, and market concentration is below 1000 in all but one time period, when it is just slightly over 1,000. Finally, in IPCO, the MidAmerican MBR Sellers' market share ranges from zero to 5 percent, and market concentration is no more than about 2,000. In IPCO, the MidAmerican Companies' market share ranges from zero to 5 percent, and market concentration is no more than about 2,000 (see Table 4 and Exhibit JRS-4). Finally, in NWMT, the MidAmerican MBR Sellers' market share ranges from zero to 3 percent, and market concentration is mostly around 2,000 (see Table 5 and Exhibit JRS-5). Thus, the DPT is passed for AEC in each of these markets.

Ms. Solomon also examined these markets under the +10% and -10% price sensitivities, the results of which are presented in JRS-2 (PACE), JRS-3 (PACW), JRS-4 (IPCO), and JRS-5 (NWMT). The MidAmerican MBR Sellers are not a pivotal supplier in any of the seasonal/load period. The MidAmerican MBR Sellers have a single period with a market share above the 20 percent threshold in each of PACE and PACW (both in the summer off-peak period, with a market share of 22 percent and 26 percent, respectively). With that single exception, the remaining metrics are passed in each of the time periods for AEC in both the +10% and -10% price sensitivity in each of the PACE, PACW, and IPCO BAAs.

As discussed in the Solomon Affidavit, this single time period anomaly for the PACE and PACW markets is not problematic, for the following reasons.[37] One, the DPT, unlike the indicative screens, is not a "bright-line,, test. The market result is well within the tolerance levels previously accepted by the Commission (indeed, well below levels the Commission has

[37] *See* Solomon Affidavit at 11.

accepted).[38] Two, in the summer off-peak period, market concentration is well below 2500 (indeed, not more than about 1,000). Three, the market share greater than 20 percent occurs in an off-peak period, where there typically is sufficient excess supply in the market. The Commission has previously determined that baseload coal and nuclear units, which generally set the market prices in off-peak periods, are not suited to strategic economic withholding.[39] Finally, the Commission also has indicated that its concern is where there are systematic screen failures,[40] which certainly is not the case here.

On the basis of the foregoing DPT analysis, the MidAmerican MBR Sellers have rebutted the presumption of horizontal market power arising from the results of the indicative market-

---

38 *See, e.g., PacifiCorp, et al.*, 115 FERC ¶ 61,349 (2006) ("PacifiCorp's and PPM's market share using available economic capacity is below the 20 percent threshold for eight of the season/load periods under study (with a zero percent market share in three season/load periods), and is 28 percent in summer and winter off-peak periods.„); *PPL Montana, LLC, et al.*, 115 FERC ¶ 61,204 at P 16 (2006) ("PPL Companies' market shares in the economic capacity and available economic capacity measures range from 27 percent to 33 percent.„); *Wildcat Power Holdings, LLC*, Docket No. ER11-3366-000 (Letter Order, July 5, 2011) ("When the available economic capacity measure is used, Wildcat Power's market shares range from 22 to 24 percent in the three summer super peak and winter super peak season/load periods and zero percent in the remainder of the season/load periods.„); *Gila River Power, L.P.*, Second Supplement to Updated Market Power Analysis, filed January 12, 2011, Docket Nos. ER05-1178-015, *et al.* (accepted by Letter Order, April 5, 2011) (market shares for AEC ranging from 21 to 23 percent in certain of the relevant time periods); and *Kansas City Power & Light Company and KCP&L Greater Missouri Operation Company*, Supplement to Change in Status filing, filed February 4, 2013, Docket No. ER10-2074-001 et al. (accepted by Letter Order, November 22, 2013 (market shares for AEC ranging from 17 to 36 percent).

39 *See USGen New England, Inc.*, 109 FERC ¶ 61,361 at P 23 (2004); *Ohio Edison Co.*, 94 FERC ¶ 61,291 at 62,044 (2001); *Commonwealth Edison Co.*, 91 FERC ¶ 61,036 at 61,134 (2000); *FirstEnergy Corp.*, 133 FERC ¶ 61,222 at PP 49-50 (2010).

40 *See, e.g., Florida Power & Light Co.*, 145 FERC ¶ 61,018 at note 59 (2013) ("We find that the isolated screen failures in FPL's Available Economic Capacity analysis do not raise competitive concerns. The Commission is normally concerned with cases where there are systematic screen failures, that is, where screen failures 'present a consistent pattern across time periods and/or markets.' *CP&L Holdings, Inc.*, 92 FERC ¶ 61,023 at 61,054 (2000). *See also Arizona Pub. Serv. Co.*, 141 FERC ¶ 61,154 at PP 30, 35-36 (2012) (finding screen failures that were small in magnitude, short in duration, occurring during off-peak periods and not systematic did not indicated adverse impact on competition); *FirstEnergy Corp.*, 133 FERC ¶ 61,222 at P 49 (2010) (finding screen failures that did not involve systematic failures in a competitive market did not raise competitive concerns).

based rate screens in the PACE, PACW, IPCO, and NWMT BAAs. As demonstrated by the indicative screens and the DPT, the MidAmerican MBR Sellers continue to satisfy the Commission's horizontal market power tests for market-based rate authority in the PACE, PACW, IPCO, and NWMT BAAs.

B. Vertical Market Power

As discussed in the Frame Affidavit, the MidAmerican MBR Sellers lack vertical market power.[41] In their most recent triennial filings, each of the MidAmerican MBR Sellers informed the Commission of their respective transmission assets and that transmission service over these assets is provided pursuant to the terms of a Commission-approved OATT. In addition, each of the MidAmerican MBR Sellers has informed the Commission that it has not erected barriers to entry into the relevant markets and that it will not do so. Each of the MidAmerican MBR Sellers has also informed the Commission with respect to its ownership of or affiliation with (or lack thereof) entities owning intrastate natural gas transportation, storage or distribution facilities, coal transport facilities, coal reserves and sites for potential generation development. Likewise, the Commission has been informed that the MidAmerican MBR Sellers are affiliated with the BNSF Railway whose activities, which are regulated by the U.S. Surface Transportation Board, include the shipment of coal for power generation. With the obvious exception that the NVE Utilities now are affiliated with the pre-merger MidAmerican subsidiaries, and vice versa, none of these prior representations that the MidAmerican MBR Sellers have made are changed by the two change-in-status triggers.

In addition, none of the MidAmerican MBR Sellers or their affiliates own any sites for potential generation development, apart from the sites that have been reported in quarterly land

[41] *See* Frame Affidavit at ¶ 47.

acquisition reports and other Commission reporting requirements for market-based rate sellers. In the event any of the MidAmerican MBR Sellers or their affiliates acquire rights to sites for new generation development for which site control has been demonstrated in the interconnection process consistent with Section 35.42(d) of the Commission's regulations,[42] they will make any necessary quarterly land acquisition reports in accordance with the Commission's requirements for market-based rate sellers.

Further, as required by Section 35.37(e)(4) of the Commission's regulations,[43] the MidAmerican MBR Sellers affirmatively state that they have not, and will not, erect barriers to entry into the relevant markets.

Finally, in the NVE Merger Order, the Commission specifically addressed the issue of whether the applicants in that proceeding and the other MidAmerican MBR Sellers and their affiliates have vertical market power, and the Commission determined that they do not possess vertical market power in any of the relevant markets.[44] As such, the MidAmerican MBR Sellers have made the necessary showings that they lack vertical market power.

V. ASSET APPENDIX

Section 35.37 of the Commission's regulations[45] requires market-based rate sellers to include an appendix of assets in the form provided in Appendix B of Order No. 697[46] when submitting a market power analysis. Lists of the assets owned or controlled by the MidAmerican

[42] 18 C.F.R. § 35.42(d) (2013).

[43] 18 C.F.R. § 35.37(e)(4) (2013).

[44] *See* NVE Merger Order at PP 44-47.

[45] 18 C.F.R. § 35.37 (2013).

[46] Order No. 697, App. B.

MBR Sellers and their affiliates are provided in Attachment 3 to this filing in the form provided in Appendix B of Order No. 697.

VI. REQUEST FOR CONFIDENTIAL TREATMENT

In accordance with Section 388.112 of the Commission's regulations,[47] the MidAmerican MBR Sellers seek privileged treatment of the CD-ROM containing certain workpapers underlying the market power analysis in the Frame and Solomon Affidavits. The workpapers incorporate commercially sensitive data from a proprietary data set, the public disclosure of which could competitively harm the MidAmerican MBR Sellers or their affiliates. The MidAmerican MBR Sellers are concurrently submitting, under a separate cover letter, one (1) copy of the CD-ROM containing the confidential information and the legend "Contains Privileged Information – Do Not Release,, and one (1) copy of the CD-ROM with the information removed. Consistent with the provisions of Section 35.37(f) of the Commission's regulations,[48] the MidAmerican MBR Sellers have included herein a draft protective order for use in this proceeding in Attachment 4 hereto.

---

47 18 C.F.R. § 388.112 (2013).

48 18 C.F.R. § 35.37(f) (2013).

VII. CONCLUSION

Wherefore, for the foregoing reasons and as demonstrated in the Frame and Solomon Affidavits filed herein, the MidAmerican MBR Sellers continue to satisfy the Commission's requirements for market-based rate authority.

Respectfully submitted,

William R. Hollaway, Ph.D.
Brandon C. Johnson
GIBSON DUNN & CRUTCHER, LLC
1050 Connecticut Ave., NW
Washington, DC 20036-5306

Counsel for the MidAmerican MBR Sellers

Dated: January 2, 2014

ATTACHMENT 1

Frame Affidavit