UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PacifiCorp	)	
Nevada Power Company	)	**Docket No. ER21-___-000**
Sierra Pacific Power Company	)	

EMERGENCY PETITION OF PACIFICORP, NEVADA POWER COMPANY, AND SIERRA PACIFIC POWER COMPANY FOR TEMPORARY AUTHORITY TO MAKE CERTAIN SALES AT CAISO LOCATIONAL MARGINAL PRICE

Pursuant to 18 C.F.R. § 385.207, PacifiCorp, Nevada Power Company d/b/a NV Energy, and Sierra Pacific Power Company d/b/a NV Energy (together, the "BHE Entities") respectfully petition the Federal Energy Regulatory Commission ("Commission") for a limited and partial waiver[1] of a single restriction in their respective market-based rate tariffs to permit them to make short-term sales of energy between Nevada Power Company and Sierra Pacific Power Company on the one hand (together, "NV Energy")[2] and PacifiCorp on the other hand ***only during emergency conditions*** using California Independent System Operator ("CAISO") fifteen-minute market locational marginal price ("LMP"), averaged across the hour, at the Palo Verde pricing node.[3] The BHE Entities seek this waiver for a period of sixty-one (61) calendar days beginning ***Monday***, ***August 2, 2021***.

[1] This petition requests a prospective partial waiver of the three petitioners' respective market-based rate tariffs. The Limited Waiver will have no retroactive effect. As a result, this petition fully comports with the clarifications raised by the Commission in its recent *Proposed Policy Statement on Waiver of Tariff Requirements and Petitions or Complaints for Remedial Relief* (Docket No. PL20-7-000).

[2] Nevada Power and Sierra Pacific each have market-based rate tariffs on file with the Commission but, pursuant to a Joint Dispatch Agreement on file with the Commission, act as a single seller in the wholesale market as NV Energy.

[3] In particular the PALOVERDE_5_N101 CAISO pricing node.

The BHE Entities' market-based rate tariffs on file with the Commission prohibit them from making wholesale sales at market-based rates in certain balancing authority area ("BAA") markets, including the NV Energy BAA and both PacifiCorp's eastern and western BAAs. This requested waiver would permit PacifiCorp and NV Energy to transact at arms' length at prevailing market prices, to ensure that the selling utility's customers get the benefit of rate credits from sales at scarcity prices, and the purchasing utility's customers get the benefit of additional liquidity and reliability. Given the increasing frequency and severity of the extreme weather conditions in the West that have created EEA-3 conditions within the last two weeks and the expected continuing supply concerns during challenging conditions this summer, the BHE Entities respectfully urge the Commission to act with all due speed by ***establishing a shortened public comment period of seven days on this petition*** and ***granting the Limited Waiver by no later than Friday, July 30, 2021.***

I. EXECUTIVE SUMMARY

As the Commission is aware, extreme weather events have taken their toll on the West during the last two summer seasons, and the possibility for additional such events remain through September. Within the last month alone, NV Energy's Las Vegas load center has seen temperatures as high as 117 degrees and the Pacific Northwest, including PacifiCorp's territory, experienced the highest temperatures ever recorded in the region setting records during an historic and deadly "heat dome" event. During these and other events, which now occur with alarming frequency, due to the geographic limitations on their market-based rate authority, PacifiCorp and NV Energy can only transact with each other under their respective cost-based tariffs, even at times when wholesale prices rise significantly in response to supply shortage conditions. When the market price far exceeds a seller's production costs, this limitation creates an unnecessary tension between the interests of customers of PacifiCorp and NV Energy, respectively. If for example, PacifiCorp makes wholesale supply available to NV Energy in an emergency at cost-based rates that may reflect only a fraction of the prevailing market rates, NV Energy's customers will benefit from the increased reliability but PacifiCorp's customers experience a lost opportunity cost that reduces the credit to their retail rates from PacifiCorp's off-system sales.

This concern is particularly acute in the current environment for two reasons. First, PacifiCorp's eastern service territory is NV Energy's largest neighbor to the east, and may often be in a unique position to assist NV Energy in an emergency, but the two utilities' inability to transact at arms' length in the wholesale market creates an obstacle to efficiently matching demand with available supply. Second, in recent weeks, the CAISO has with increasing frequency curtailed exports to Nevada from California, often with as little notice as less than ***30 minutes before the operating hour***. These factors restrict NV Energy's supply from the east and the west at the worst possible times. Similarly, the Pacific Northwest heat dome event of late June and wildfires in early July are a stark reminder that extreme weather events are not confined to the Southwest, and PacifiCorp may find itself in a shortage situation as well.

The temporary Limited Waiver will increase wholesale liquidity and resolve the tension between the interests of PacifiCorp's and NV Energy's customers. Each utility's customers should expect to pay scarcity prices during emergency conditions, and to the extent either utility has available supply, its customers should expect to receive scarcity prices as a credit to the retail rates. Like the 2020 Waiver, by limiting this authority to EEA-1 conditions or higher and settling at the CAISO Palo Verde nodal price, ***the instant Limited Waiver presents zero risk of affiliate abuse or horizontal market powe***r. If, like in 2020, further emergency conditions do not arise while this waiver is in place, it will have no effect and all will breathe easier. The BHE Entities urge the Commission to act quickly and grant this Limited Waiver.

II. COMMUNICATIONS

PacifiCorp requests that all correspondence, pleadings, and other communications concerning this filing be served upon the following individuals who should be included on the official service list in this proceeding:

Ryan Flynn
Vice President and
Chief Legal Officer
PacifiCorp
825 N.E. Multnomah, Suite 2000
Portland, Oregon 97232
ryan.flynn@pacificorp.com

Christopher R. Jones
TROUTMAN PEPPER HAMILTON SANDERS LLP
401 9th Street, N.W., Suite 1000
Washington, DC 20004
(202) 662-2181
Chris.Jones@Troutman.com

David B. Rubin
Federal Energy Policy Director
NV Energy
6226 West Sahara Avenue
Las Vegas, Nevada 89146
(702) 609-5663
drubin@nvenergy.com

III. THE PETITIONERS

A. PacifiCorp

PacifiCorp is an Oregon corporation and an indirect, wholly owned subsidiary of Berkshire Hathaway Energy Company ("BHE").[4] PacifiCorp is a vertically-integrated public utility primarily engaged in providing retail electric service to approximately 1.9 million residential, commercial, industrial, and other customers in portions of the following states: California, Idaho, Oregon, Utah, Washington, and Wyoming. PacifiCorp provides electric

[4] *See Silver Merger Sub, Inc. et al.,* 145 FERC ¶ 61,261 (2013) (order authorizing merger of NV Energy, Inc. and a BHE subsidiary).

transmission service in ten Western states, and owns or has interests in approximately 16,500 miles of transmission lines and 71 thermal, hydroelectric, wind-powered generating, and geothermal facilities. PacifiCorp provides open access transmission service in accordance with its OATT, which is on file with the Commission. PacifiCorp operates two BAAs, PacifiCorp East ("PACE") and PacifiCorp West ("PACW").

B. NV Energy

NV Energy, Inc. is an indirect, wholly owned subsidiary of Berkshire Hathaway Energy Company ("BHE").[5] BHE is a consolidated subsidiary of Berkshire Hathaway, Inc., a publicly traded company. NV Energy has two direct, wholly-owned subsidiary utility companies: Nevada Power Company ("Nevada Power") and Sierra Pacific Power Company. Nevada Power is a vertically-integrated public utility offering retail and wholesale electric and transmission service in southern Nevada that is regulated by the Public Utilities Commission of Nevada ("PUCN") and this Commission. Nevada Power's retail service territory is located in southern Nevada, and includes the cities of Las Vegas, North Las Vegas, and Henderson. Nevada Power serves approximately 942,000 retail residential, commercial, and industrial customers. Sierra Pacific is a vertically-integrated public utility that serves retail and wholesale customers throughout northern Nevada that is regulated by the PUCN and this Commission. Sierra Pacific's retail service territory covers portions of western, central, and northeastern Nevada, and includes the cities of Reno, Sparks, Carson City, and Elko. Sierra Pacific serves approximately 350,000 retail residential, commercial, and industrial customers. Additionally, Sierra Pacific provides retail natural gas

[5] *See Silver Merger Sub, Inc. et al.,* 145 FERC ¶ 61,261 (2013) (order authorizing merger of NV Energy, Inc. and a BHE subsidiary).

service to approximately 169,000 customers in an 800-square mile service territory in Nevada's Reno/Sparks area.

Nevada Power operates the NV Energy Companies' Balancing Authority Area (the "NEVP BAA"), a consolidated Balancing Authority Area ("BAA") in Nevada consisting of what were formerly separate Nevada Power and Sierra Pacific BAAs.[6] Nevada Power operates both its own transmission facilities as well as those owned by Sierra Pacific and their entitlement in the 231-mile, 500 kV One Nevada Transmission Line ("ON Line"), which connects the Nevada Power and Sierra Pacific systems. Nevada Power provides open access transmission service on both systems under the terms of a single joint open access transmission tariff (the "NV Energy OATT"). Nevada Power and Sierra Pacific jointly dispatch their generating resources according to the terms of a Joint Dispatch Agreement ("JDA") on file with the Commission and thus act as a single seller in the wholesale market.[7] Under the JDA, Nevada Power's and Sierra Pacific's loads are served by the combined generating fleets of both companies, dispatched on a least cost basis to benefit both companies.

IV. BACKGROUND

A. Petitioners' Market-Based Rate Restrictions

PacifiCorp and NV Energy maintain MBR authority through their MBR tariffs on file with the Commission. Due to their corporate affiliation, PacifiCorp and NV Energy each lack MBR authority in certain markets, including the PACE, PACW, and NEVP BAAs, not merely

[6] On January 1, 2014, the Nevada Power and Sierra Pacific BAAs were consolidated into a single BAA.

[7] The JDA is on file with the Commission as Nevada Power Rate Schedule No. 139. *See Nev. Power Co.,* Docket No. ER15-2310-000, Delegated Letter Order (Sept. 3, 2015) (accepting changes to the JDA).

because they are affiliates,[8] but because under the Commission's regulations,[9] PacifiCorp and NV Energy (with their generation measured together) have not rebutted the presumption of horizontal market power in those respective markets.[10] The effect of these restrictions is that PacifiCorp may not sell power at market-based rates in the NEVP BAA and NV Energy may not sell in the PACE or PACW BAAs at market-based rates.

Under the Commission's market-based rate program, the Commission aggregates the generating capacity of the seller and its affiliates for purposes of conducting the market power screens and applying any geographic limitations resulting from the failure of those screens.[11] Under this rule, PacifiCorp and NV Energy are already treated as a single seller for market power and market-based rate purposes and, consequently, they share the same geographic restrictions. This means that NV Energy's capacity is attributed to PacifiCorp and vice versa when determining where they can sell at market-based rates. Because they are one seller under

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8 The Commission's affiliate transaction rules at 18 C.F.R. § 35.39 and 18 C.F.R. § 35.44 are not implicated by the proposed sales under the Limited Waiver because PacifiCorp and NV Energy are both franchised public utilities. *See* Order No. 707-A at P 42 ("First, we will consider whether pricing or other restrictions need to be imposed on transactions between two or more franchised public utilities on a case-by-case basis. Such transactions are not covered by this rule, which applies only to transactions between franchised public utilities and either a market-regulated power sales affiliate or a non-utility affiliate.") Even if such rules did apply, the Commission's regulations contain a carve-out for emergency conditions. *See* 18 C.F.R. § 35.39(c)(2)(iii) ("Notwithstanding any other restrictions in this section, in emergency circumstances affecting system reliability, a market-regulated power sales affiliate and a franchised public utility with captive customers may take steps necessary to keep the bulk power system in operation.")

9 *See generally* 18 C.F.R. Subpart H.

10 *See, e.g.,* PacifiCorp MBR tariff at section 8(a) ("Mitigated Markets: Seller does not have authority under this tariff to make sales within the Idaho Power Company, NEVP, NorthWestern Corporation, PacifiCorp-East, or PacifiCorp-West Balancing Authority Areas. *See Sierra Pacific Power Co*., 95 FERC ¶ 61,193, at 61,675, *reh'g dismissed*, 96 FERC ¶ 61,050 (2001); *see also Sierra Pacific Power Co.,* 111 FERC ¶ 61,259, at P 21 (2005); *Nevada Power Co., et al.*, 155 FERC ¶ 61,249 at P 3 (2016). This limitation does not apply to sales made in the California Independent System Operator Corporation ("CAISO") Energy Imbalance Market."). That provision exists at paragraph 9 in the MBR tariffs of Nevada Power and Sierra Pacific.

11 *See Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity, and Ancillary Services by Public Utilities*, Order No. 816, 153 FERC ¶ 61,065 at n.358 (2015) ("sellers must account for generation capacity owned or controlled by the seller and its affiliates for purposes of analyzing horizontal market power").

the market-based rate program, any concern about the market power implications resulting from the aggregate market share of PacifiCorp and its affiliates (including NV Energy) should not apply to sales from PacifiCorp *to* NV Energy, or vice versa.

B. The 2020 Waiver Granted by the Commission

During the week of August 17, 2020, the West experienced a record-breaking heat wave that resulted in a power supply emergency in the western United States and included several instances of rolling blackouts in the CAISO. During this initial heat wave, NV Energy (and in particular its Nevada Power Company service territory in and around Las Vegas, Nevada) experienced NERC alert level energy emergency alerts ("EEA")-1 conditions.

On September 3, 2020, PacifiCorp made a filing with the Commission in Docket No. ER20-2816 requesting a limited and partial waiver of section 8(a) of its MBR Tariff to authorize short-term sales of energy by PacifiCorp to NV Energy at prevailing market prices during designated emergency conditions (the "2020 Waiver").[12] PacifiCorp explained that record heat waves were forecasted for the upcoming weekend that would result in "an exceptional risk for heat illness and power outages" and the waiver would allow PacifiCorp and NV Energy to mitigate the risks associated with the forecasted weather event by increasing the power supply options available to NV Energy.[13] The request went on to explain that, during the record-breaking heatwave conditions that occurred during the week of August 17, 2020, NV Energy experienced multiple hours when market purchase opportunities were exhausted and energy shortages led to blackouts in CAISO. While PacifiCorp had capacity available in certain hours,

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[12] *PacifiCorp*, Emergency Petition of PacifiCorp for Temporary Authority to Make Certain Sales at CAISO Locational Marginal Price, Docket No. ER20-2816-000 (Sept 3, 2020).

[13] *Id.* at 2.

it was not authorized to make sales at market-based rates to NV Energy as a condition of its MBR authority.

PacifiCorp explained that during the August 2020 heatwave, PacifiCorp was able to make some sales to NV Energy pursuant to its cost-based tariff on file with the Commission, but that it has a responsibility to its retail customers to make off-system sales at prevailing market prices during periods of high demand because PacifiCorp's off-system sales are credited back to PacifiCorp's retail customers. Therefore, during NV Energy's time of pressing need, PacifiCorp was not authorized to sell to NV Energy at prevailing market-based rates, but would also need to justify any sales to NV Energy at significantly lower cost-based rates to its retail customers and state regulators.

Realizing that the forecasted weather conditions for the Summer of 2020 were likely to bring about the same dilemma, namely that system emergency conditions would again mean that NV Energy was going to need increased supply options to maintain its system reliability, PacifiCorp requested a limited waiver of section 8(a) of its MBR Tariff to permit it to make market sales to NV Energy should emergency conditions re-occur. Ryan Atkins of NV Energy explains these system conditions in the affidavit enclosed as Exhibit A.

PacifiCorp narrowly tailored its 2020 Waiver request in several ways. First, PacifiCorp proposed that the waiver would only permit it to make short-term (hourly or daily) sales to NV Energy as a counterparty over the following 21 calendar days. Next, sales would only be permitted during NERC energy emergency alerts ("EEA")-1 or higher conditions. Finally, sales would be priced at the published CAISO 15-minute market marginal locational price ("LMP"), averaged across the hour, at the Palo Verde pricing node. PacifiCorp explained that using the CAISO LMP as a proxy would ensure that PacifiCorp would not set the market price for transactions and that NV Energy's customers would pay no more than a reasonable proxy for the market price at that location.

To ensure that the CAISO Palo Verde node was an appropriate price proxy, PacifiCorp further committed not to simultaneously bid into the CAISO market at that pricing node in any hour in which it was relying on the CAISO price to make sales to NV Energy. This commitment sought to address any concerns that PacifiCorp might impact the market price it was using as a proxy.

On September 4, 2020, the Commission issued an order granting the 2020 Waiver in part, limited to only six calendar days, but stated that PacifiCorp could file to extend the waiver as needed.[14] The Commission found that that PacifiCorp acted in good faith to solve a concrete problem and held, *inter alia,* "…***that the waiver does not have undesirable consequences, such as harming third parties***."[15] The Commission also found relevant that "PacifiCorp will not set the market price for transactions with NV Energy and will instead accept the CAISO nodal price at Palo Verde for any such sales."[16] The Commission also accepted PacifiCorp's commitment not to simultaneously bid into the CAISO's hour-ahead process at the Palo Verde pricing node in any hour in which it is relying on the CAISO hourly price at Palo Verde as a proxy for sales made pursuant to the requested waiver.[17] Ultimately the 2020 Waiver provided PacifiCorp flexibility to act in good faith to help a neighboring utility during emergency conditions, while fulfilling its responsibility to its own retail customers to pursue off-system sales at prevailing

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14 *PacifiCorp,* 172 FERC ¶ 61,208, at P 18 (2020) (the "2020 Waiver Order").

15 *Id.* at P 23 (emphasis added).

16 *Id.*

17 *Id.*

market prices. Emergency conditions thankfully did not materialize during the waiver period and PacifiCorp thus did not end up making any market-based rate sales to NV Energy pursuant to the granted waiver.[18]

C. 2021 Conditions Deteriorate Again – Commission Denies 2021 Request for Permanent Authority to Transact During Emergencies

The system conditions that gave rise to the 2020 Waiver were multi-faceted. In a January 2021 Final Root Cause Analysis, the CAISO, California Public Utilities Commission, and California Energy Commission jointly identified three primary causes of the outages that resulted in August 2020. Those three factors were as follows:

1. The climate change-induced extreme heat wave across the western United States resulted in demand for electricity exceeding existing electricity resource adequacy ("RA") and planning targets.
2. In transitioning to a reliable, clean, and affordable resource mix, resource planning targets have not kept pace to ensure sufficient resources that can be relied upon to meet demand in the early evening hours. This made balancing demand and supply more challenging during the extreme heat wave.
3. Some practices in the day-ahead energy market exacerbated the supply challenges under highly stressed conditions.[19]

The Final Root Cause Analysis concluded that the Summer 2020 event was not merely an unfortunate confluence of rarely occurring events that is unlikely to repeat. Rather, it identified that California experiences blackout conditions due to systemic environmental and structural issues that rendered the bulk power system incapable of meeting the demands of that event. In

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18 PacifiCorp, Informational Report in Compliance with Order on Emergency Waiver Petition, Docket No. ER20-2816-000 (Nov. 19, 2020) ("Although the Limited Waiver was not ultimately required to ensure system reliability during the severe system conditions experienced in the West during the Waiver Period, PacifiCorp appreciates the Commission's efforts to respond to PacifiCorp's Limited Waiver request so expeditiously given the potential concerns raised.").

19 *See* Final Root Cause Analysis, available at: http://www.caiso.com/about/Pages/News/SummerReadiness.aspx.

particular, the Root Cause Analysis issued a prescient warning about the negative impact on neighboring utilities about the curtailment of exports without sufficient notice:

> In addition to potentially curtailing exports through the CAISO markets, the CAISO operators may curtail export or import schedules for purposes of reliable operations. However, there are significant operational matters that need careful consideration before curtailing cleared and tagged exports in real-time. … ***Furthermore, those relying on such exports need to be made aware of the potential risk of such exports being curtailed in advance so that they can take measures to avoid being put into an emergency condition upon loss of such exports.*** Absent such operator information or neighboring BAAs being aware of curtailments in a timely manner, curtailing cleared and tagged exports during quickly emergent real-time conditions would not be consistent with coordinated and good utility practices. Furthermore, the curtailment of the export may not be effective in addressing the reliability issue. In other cases, cutting the exports may further exacerbate conditions as curtailment of an export may result in the cutting of an import at the applicable intertie because the interchange was permissible only due to counterflow provided by the export. Finally, when the CAISO is in the position of relying on emergency energy from its neighbors, the threat of an export curtailment to another BAA when conditions are constrained throughout the system may prevent access to emergency energy either at that time or in the future.[20]

In light of the risks of repeating the events of Summer 2020, the BHE Entities filed in Docket Nos. ER21-1772-000, *et al.* proposed amendments to their respective MBR tariffs to make permanent the authority granted to PacifiCorp in the 2020 Waiver.[21] In that filing, the BHE Entities proposed extensive protections specifically designed to protect and benefit customers on both sides of the transactions that make it impossible that customers will pay an

[20] *Id.* at pp. 129-30 (emphasis added).

[21] The BHE Entities' 2021 MBR filing differed somewhat from the 2020 Waiver in that the 2021 filing would have permitted sales by either NV Energy or PacifiCorp, to the other. While the BHE Entities sought to expand the temporal scope of permitted sales, they offered to limit such authority to EEA-1 or higher emergencies if the Commission found that restriction necessary to ensure just and reasonable rates. 2021 MBR Filing at 11. The Commission did not reject the filing on the basis of any differences between the requested authority and that authority granted in the 2020 Waiver.

unjust and unreasonable rate. The BHE Entities also committed to file any reporting deemed necessary by the Commission to provide appropriate transparency.

On June 25, 2021, the Commission issued an order denying the BHE Parties' MBR tariff amendments and thus denying NV Energy and PacifiCorp the ability to transact prevailing market prices even during system emergencies.[22] The June 25 Order did not address the BHE Parties' multiple safeguards for ensuring that the requested waivers would not result in any ratepayer of NV Energy or PacifiCorp paying more than a just and reasonable rate. While the Commission rejected the requested permanent authority, the Commission specifically reserved the ability to act on a future waiver filing like the 2020 Waiver: "***[w]e note that our decision in this order does not preclude Sellers from submitting a waiver request in the future if and when emergency conditions arise***."[23]

D. Additional Events in the West Since Denial of the 2021 Permanent Request

Since the Commission denied the BHE Entities' 2021 MBR Filing, conditions in the CAISO and, as important here, the non-CAISO West have continued to deteriorate and threaten reliability. Several factors have contributed to these deteriorating conditions.

1. CAISO Curtailment of Exports

On April 28, 2021, the CAISO filed in Docket No. ER21-1790-000 certain proposed tariff modifications to modify load, export, and wheeling priorities in the day-ahead and real-time market optimization process and establish related market rules. Also on June 25, 2021, the Commission issued an order accepting the CAISO's proposed tariff changes.[24] Consequently, any short-term procurements that PacifiCorp or NV Energy will make for the remainder of the

22 *PacifiCorp*, *et al.*, 175 FERC ¶ 61,244 (2021) (the "June 25 BHE MBR Order").

23 *Id.* at n.36.

24 *California Indep. System Operator*, 175 FERC ¶ 61,245 (2021).

summer will not qualify as priority wheels under the temporary tariff provisions, rendering any such purchases essentially non-firm heading into real time. In the attached affidavit, Ryan Atkins of NV Energy explains the impact of losing 800 MW of day-ahead supply that had been adjusted to 0 MW in the CAISO Residual Unit Commitment process.

2. CAISO's Significant Capacity Procurement Event

On June 29, 2021, Marybel Batjer, President, California Public Utilities Commission, and David Hochschild, Chair, California Energy Commission, sent a letter to Elliot Mainzer, President of the CAISO.[25] The letter cites several significant changes in the assumptions underlying the resource adequacy program and in system conditions, including: (1) significantly reduced hydroelectric production due to worsening drought conditions; (2) unforeseen limitations on output of thermal resources; (3) extreme heat events that have begun unseasonably early; (4) planned online dates for several new resources have been delayed beyond the summer; (5) further development of demand-side resources in response to emergency procurement authorizations remains uncertain; (6) resources sufficient to meet peak demand are not always adequate to support peak demand net of wind and solar generation (*i.e.*, the net peak demand); and (7) the timeline of the resource adequacy compliance processes provide limited ability to address the changed conditions in the near term. On July 2, 2021, the CAISO used its authority under section 43A.4.2.1 of the CAISO tariff, to declare a Capacity Procurement Mechanism Significant Event and procure 2,000 megawatts of supply offers through October from resources outside the CAISO.[26] This procurement is relevant for two reasons. First, it signals a resource

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25 *See http://www.caiso.com/Documents/CapacityProcurementMechanismSignificantEvent-JointStatementandLetter.pdf*

26 http://www.caiso.com/Documents/Presentation-CapacityProcurementMechanismSignificantEvent-Jul2-2021.pdf

adequacy failure that will put pressure on the CAISO to curtail exports. ensuring that any exports from the CAISO that NV Energy or other western utilities rely on will likely be at higher than normal risk for curtailment and should effectively be considered non-firm. Second, it reduces wholesale liquidity in the West by the 2,000 MW of capacity procured directly by the CAISO.

3. July 2021 Southwest Heat Event and Resulting EEA-3 System Emergency

On July 9, 2021, as a result of another extreme heat event, the western system was placed again under extreme duress, with the Las Vegas area reaching 117 degrees.[27] In addition, the Bootleg Fire in Southern Oregon resulted in approximately 5,500 MW of forced real-time derates on the Pacific AC and Pacific DC Interties. Due to these derates, in certain critical operating hours, NV Energy had significant supply curtailments from a variety of sources. These curtailments placed the NV Energy BAA immediately into an EEA-3 shortage situation. In the enclosed affidavit of Ryan Atkins of NV Energy, Mr. Atkins describes the real-time curtailment of over 1400 MW of supply and an additional 800 MW of missing day-ahead energy from counterparties who had CAISO exports reduced to zero.

4. Pacific Northwest "Heat Dome" Event

In late June 2021, the Pacific Northwest (normally a winter-peaking region) experienced an historic heat event that resulted in some of the highest temperatures ever recorded in the region, including "numerous all-time temperature records falling throughout Washington and Oregon"[28] including PacifiCorp's service territory. This heat event is reported to have sparked

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[27] *See* Washington Post, July 14, 2021, *Yet another major heat wave is set to roast the western U.S. and Canada by the weekend*, available at https://www.washingtonpost.com/weather/2021/07/14/western-heat-wave-rockies/ (visited July 14, 2021).

[28] https://www.powermag.com/rolling-blackouts-triggered-as-historic-heatwave-grips-pacific-northwest/

numerous extensive wildfires.[29] During this time, the PacifiCorp west BAA experienced a record summer peak load.

V. REQUEST FOR TEMPORARY PARTIAL WAIVER

The BHE Entities respectfully request a limited and partial waiver of the above-referenced geographic restrictions in their respective MBR tariffs only to the extent necessary to permit NV Energy and PacifiCorp to sell to each other at prevailing market rates in emergency conditions – *i.e.*, at EEA-1 conditions or higher, like the 2020 Waiver. Also like the 2020 Waiver, to protect against allegations of self-dealing or horizontal market power, the BHE Entities will not set the price for these sales; rather, all sales permitted under this Limited Waiver would be priced at the CAISO-established fifteen-minute market locational marginal price, averaged across the hour, at the Palo Verde price node, subject to the following express limitations. <u>Notwithstanding that the NEVP, PACE, and PACW BAAs are mitigated markets under the MBR tariffs of the BHE Entities, if the requested waiver is granted, then for a period of sixty-one (61) calendar days beginning on August 2, 2021, PacifiCorp and NV Energy would be permitted to make short-term (hourly or daily) sales of energy only during emergency system conditions marked by NERC alert level EEA-1 or higher;[30] and (3) at the CAISO fifteen-minute locational marginal price, averaged across the hour, at the Palo Verde price node for the time</u>

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29 CNN, *Millions in the West are still under heat warnings as parched conditions threaten even more wildfires*, July 2, 2021, available at: https://www.cnn.com/2021/07/02/weather/pacific-northwest-extreme-heat-friday/index.html (visited July 16, 2021).

30 NERC has established three levels of EEAs. An EEA is an Emergency procedure, not a daily operating practice, and is not intended as an alternative to compliance with NERC Reliability Standards. Under "EEA 1", "The Balancing Authority is experiencing conditions where all available generation resources are committed to meet firm Load, firm transactions, and reserve commitments, and is concerned about sustaining its required Contingency Reserves. Non-firm wholesale energy sales (other than those that are recallable to meet reserve requirements) have been curtailed." Under "EEA 2, "The Balancing Authority is no longer able to provide its expected energy requirements and is an energy deficient Balancing Authority." Under "EEA 3", the energy deficient Balancing Authority is unable to meet minimum Contingency Reserve requirements and firm Load interruption is imminent or in progress. *See* EOP-011-001.

period at issue as published on the CAISO OASIS. Also like the 2020 Waiver, to address any concerns that the BHE Entities might somehow impact the Palo Verde LMP, they would be willing, if ordered by the Commission, to commit not to simultaneously bid into the CAISO's hour-ahead process at the Palo Verde pricing node in any hour in which they are relying on the CAISO hourly price at Palo Verde as a proxy for sales made pursuant to this Limited Waiver.

The emergency trigger and pricing terms of the waiver are exactly the same as what the Commission approved in the 2020 Waiver Order. The only difference in the instant filing is that NV Energy also seeks the ability to sell to PacifiCorp if either the PACE or PACW BAAs reach EEA-1 conditions or higher. In 2020, the focus of the requested waiver was on the power supply needs of NV Energy, but the 2021 heat dome event in the Pacific Northwest was a stark reminder that the PacifiCorp service territory is not immune to extreme climate events that could jeopardize its ability to reliably serve its customers.[31]

VI. ARGUMENT

A. The Commission's Standard For Wavier Is Satisfied For The Limited Waiver As It Was For The 2020 Waiver

Good cause exists for granting the Limited Waiver. As noted above, the Limited Waiver is the same as the 2020 Waiver, with the exception that NV Energy also seeks the ability to sell to PacifiCorp. The Commission found the waiver standards were satisfied for the 2020 Waiver Order and should do so again here.

The Commission has granted limited waivers where the following criteria are met: (i) the applicant acted in good faith; (ii) the waiver is of limited scope; (iii) a concrete problem will be remedied by granting the requisite waiver; and (iv) the waiver does not have undesirable

[31] This waiver is limited to sales of energy in the Western bilateral market. The BHE Entities do not seek blanket market-based rate authority or waiver or modification of any rules pertaining to the CAISO market or the Western Energy Imbalance Market ("EIM").

consequences, such as harming third parties.[32] The instant waiver request satisfies these criteria. First, the BHE Entities are acting in good faith to help each other provide reliable service to their customers during emergency circumstances, while fulfilling their responsibility to their own customers to make off-system sales at prevailing market prices. Second, the Limited Waiver is limited in scope to 61 calendar days and only applies to short-term sales in certain defined emergency system conditions. After September 2021, the Limited Waiver will have no effect. Thus, the waiver is not only limited in scope by the 61-day duration, but further limited in scope as the sales will only be undertaken during emergency condition hours during the 61 days. The requested 61-day period would cover any emergency events that occur during the August and September 2021 time periods, after which heat in the West generally abates.

Third, granting the Limited Waiver will solve a concrete problem. As noted earlier, both NV Energy and PacifiCorp have experienced extreme heat events in 2021, and NV Energy has already been placed into an EEA-3 emergency condition in recent weeks, during which times wholesale liquidity is extraordinarily limited or even exhausted. The Limited Waiver will allow PacifiCorp to sell supply to NV Energy, and vice versa, at the same prices that other parties in the West will pay which in turn will help ensure NV Energy's and PacifiCorp's customers retain reliable electric service.

Fourth, like the Commission found in the 2020 Waiver Order, no third party will be harmed by granting this Limited Waiver because the BHE Entities will not set the market price for these transactions. Therefore, their customers will pay no more than a reasonable proxy for the prevailing market price.

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[32] *See, e.g., Pacific Gas & Electric Co.,* 172 FERC ¶ 61,130 (2020); *Aragonne Wind, LLC*, 145 FERC ¶ 61,106 (2013); *Southeastern Power Admin*., 143 FERC ¶ 61,210 (2013); *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,069, at P 8 (2011).

B. The Limited Waiver Protects Customers of both PacifiCorp and NV Energy, and Both Companies are Answerable to their State Commissions as well as the FERC

The Limited Waiver is designed to protect and benefit customers on both sides of the transactions. The first and most pressing benefit to NV Energy's and PacifiCorp's customers is the ability access a critical source of supply that may be needed in emergency hours to ensure system reliability in extreme conditions. A second benefit is credits against the retail cost-of-service rates, as each utility, as described below, has a responsibility to its customers when selling into the wholesale market to pursue off-system sales at prevailing market prices because their respective customers receive the benefit of any such sales as a credit to rates. To ensure that the buyer does not pay the seller a price more than it would pay any other seller, neither PacifiCorp nor NV Energy will set the price for sales under the Limited Waiver; rather, they will be settled at the CAISO fifteen-minute LMP at the Palo Verde price node.

1. The BHE Entities' Off-System Sales Revenues are Credited to Retail Customers

Any time the BHE Entities have generating capacity in excess of their customers' needs, they have a responsibility to seek off-system sales opportunities to generate revenue from the resources funded in customers' retail rates. Those off-system sales revenues benefit PacifiCorp's and NV Energy's retail customers through credits against the retail cost-of-service rates.[33] This credit is relevant for two reasons. First, it means the BHE Entities have a responsibility to their

[33] In the case of NV Energy, the credit works through an accounting mechanism under which revenue associated with sales of energy not needed for company operations is picked up by the rates department for purposes of establishing "deferred energy" balances, which serve as a 100 percent dollar-for-dollar retail rate credit. In the case of PacifiCorp, which operates retail service areas in six states, each state commission and retail rate design is different. While the timing and mechanism of this credit varies from state to state, PacifiCorp estimates that approximately 95 percent of off-system sales revenues serves to reduce "net power costs" in retail rates across its service territory.

retail customers to maximize their off-system sales opportunities when market prices reflect significant demand, rather than sell into a mitigated market at cost-based rates far below prevailing market prices.[34] Second, because the BHE Entities credit these resulting revenues to customers, the selling utility has no shareholder motive to seek above-market payments from the purchasing utility if the Commission approves the proposed Limited Waiver. The Commission has long found such retail credits mitigate the incentive to exercise market power.[35] As the Commission has explained, "the requirement to credit retail customers with revenue from wholesale sales reduces the incentive to exercise market power because the seller will not receive the benefit from the additional revenue received from manipulating market prices."[36]

2. The BHE Entities Will Not Set the Market Price, but Will Rely Instead on the CAISO Nodal Price at Palo Verde

To further protect against any concern that the Limited Waiver will result in unjust and unreasonable prices for NV Energy's or PacifiCorp's customers, neither party will set the market price for any transactions under the Limited Waiver. Rather, each will act as a price-taker and any sales between PacifiCorp to NV Energy under the Limited Waiver will be settled at the CAISO fifteen-minute market locational marginal price, averaged across the hour, at Palo Verde price node as published by CAISO on the OASIS. The use of CAISO-published Palo Verde

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34 As the Commission has long recognized, a mitigated MBR seller may choose to sell in non-mitigated markets. *See* Order No. 697 at P 270 ("Under the Commission's current mitigation policy, a seller that loses market-based authority in its home control area is limited to charging cost-based rates in that control area; however, there is no requirement that the seller offer its available power to customers in that home control area. Instead, the seller is free to market all of its available power to purchase outside that control area if it chooses to do so.").

35 *Nevada Power Co.*, 145 FERC ¶ 61,022, at P 28 (2013) ("Second, Nevada Power is required to fully credit any profits from wholesale sales to retail customers through a fuel adjustment clause, removing any incentive for Nevada Power to raise prices. As the Commission determined in *Arizona Pub. Serv. Co*., the requirement to credit retail customers with revenue from wholesale sales reduces the incentive to exercise market power because the seller will not receive any benefit from the additional revenue received from manipulating market prices.") (*citing Arizona Pub. Serv. Co*., 141 FERC ¶ 61,154 at P 33 (2012).

36 *Id.*

nodal pricing for purposes of this Limited Waiver provides transparency and ensures that PacifiCorp cannot extract prices beyond those levels deemed competitive by the Commission.

3. NV Energy and PacifiCorp are Each Answerable to their Respective State Commissions for Their Purchases

As further evidence that the requested waiver will not harm NV Energy's or PacifiCorp's ratepayers, it is important to note that NV Energy and PacifiCorp must each answer to their respective state commissions for its short-term energy purchases. Both utilities would be at risk for a disallowance if, for example, a state commission determined that the purchasing utility had paid an above-market price from an affiliate. In particular, NV Energy files an annual electric Deferred Energy Accounting Adjustment filing with the PUCN, through which it seeks approval of fuel and purchased power expenses for prior the 12-month period. Any purchases that NV Energy makes from PacifiCorp pursuant to the instant waiver would be subject to the review of the PUCN for the reasonableness of entering into the transaction. Thus, to ensure recovery of fuel and purchased power expenses, NV Energy will not buy at a price above market. For PacifiCorp, annual filings are made in each of the six states in which it has retail load to include power costs in its retail rates. Power costs include both purchased power expense and a credit for wholesales sales revenues. PacifiCorp's annual power cost filings are reviewed by each public utility commission.

D. The 61-Day Waiver Period is Appropriate

The request for a 61-day Limited Waiver is narrowly tailored to avoid seeking a second emergency request to extend the relief sought here. It is entirely possible that the system conditions experienced so far in both the Northwest and the Southwest, thus necessitating the instant petition, will not persist through or even re-occur during the 61-day period. Because the Limited Waiver only applies during periods of emergency system conditions marked by NERC alert level EEA-1 or higher, PacifiCorp's and NV Energy's sales in each mitigated BAA market will remain mitigated to cost-based rates during non-emergency conditions, so ***the Limited Waiver will have no effect if emergency conditions do not materialize*** before the Limited Waiver expires in 61 days.

E. The BHE Entities will File a Post-Waiver Report with the Commission

To further ensure transparency, to the extent any sales are made under the Limited Waiver, the BHE Entities proposes to file a special report with the Commission in this docket within thirty (30) days of the expiration of the Limited Waiver. Such a report would detail each sale between PacifiCorp and NV Energy under the Limited Waiver and will include the NERC emergency condition level, quantity, term, and settlement price as dictated by the Palo Verde nodal prices.

VII. REQUEST FOR EMERGENCY ACTION AND SHORTENED COMMENT PERIOD

The BHE Entities respectfully urge the Commission to establish a shortened public comment period of seven days in order to grant this limited waiver request as soon as possible, but not later than the close of business on Friday, July 30, 2021. In addition to the 2020 Waiver, the Commission has granted similar requests for emergency relief when required to reduce potential reliability risks due to extreme weather events or other unforeseen circumstances.[37] In the wake of Hurricanes Gustav, Katrina, and Rita, the Commission granted

[37] *See, e.g., PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,041 (2014) (granting expedited request for temporary waiver of the PJM Operating Agreement and Tariff "in response to unprecedented spikes in fuel costs caused by the recurring extreme cold weather events" one day after filing of the petition and with no prior notice); *Powerex Corp*., 138 FERC ¶ 61,099, at P 6 (2012) (granting limited waiver of Section 1 of the Powerex market-based rate schedule because "NorthWestern's needs constitutes an extraordinary circumstance and that to assure reliability requirements are met, immediate provision of service by Powerex is necessary."); *Entergy Services, Inc*., 124 FERC ¶ 61,226, a P 7 (2008) (granting expedited request for waiver one day after filing and with no prior notice because "[t]he Commission intends to assist the Gulf Coast in recovering from damage caused by Hurricane Gustav and believes that granting the waivers is consistent with that goal."); *PJM Interconnection, LLC*, 146 FERC ¶ 61,003 (2014) (granting temporary Tariff waiver with no prior notice "in light of the immediacy of the extreme

several emergency petitions without notice periods for tariff waivers in as little as one day after filing in order to help alleviate the problems caused by "these extraordinary weather conditions."[38] Likewise, in the PJM region, the Commission granted temporary waiver of the PJM Tariff's cost-based offer rules one day after filing "to address the reliability concerns posed by the sustained extreme weather currently being experienced in the PJM region and maintain confident in market operations."[39] Similar treatment has been afforded with respect to limited waiver requests following unanticipated equipment failure or emergency shut downs.[40] In all such circumstances, the Commission determined that issuing the order without, or with very limited, prior notice was appropriate "because of the need to respond quickly to the emergency situation" and the opportunity for the Commission to evaluate additional evidence and arguments on rehearing.[41]

This approach has been reaffirmed by the Court of Appeals for the Ninth Circuit. Specifically, in *State of Cal. ex. rel. Lockyer v. FERC*, the court upheld the Commission's

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weather events."); *ISO New England, Inc.*, 142 FERC ¶ 61,058, at P 19 (2013) (accepting Tariff revisions on an interim basis in order to "address immediate reliability-related concerns for this winter, while providing further opportunity for review of the Information Policy . . . accepted on a temporary basis."); *California Indep. Sys. Operator Corp*., 93 FERC ¶ 61,239 (2000).

38 *See, e.g., Entergy Services, Inc.,* 124 FERC ¶ 61,226 (2008) (granting petition for temporary and limited waiver of Service Schedule MSS-4 of the Entergy System Agreement due to the risk of significant loss of load and other emergency conditions resulting from Hurricane Gustav two days after filing of the petition); Southern Natural Gas Co., 113 FERC ¶ 61,218 (2005) (granting petition for tariff waiver on expedited basis "to help alleviate the problems caused by Hurricane Katrina and Rita.").

39 *PJM Interconnection, L.L.C*., 146 FERC ¶ 61,041, at P 5 (2014) ("In light of the immediacy of the extreme weather conditions, the Commission finds good cause for expeditiously granting the requested waiver. . . . We find that the waiver is necessary to address the reliability concerns posed by the sustained extreme weather currently being experienced in the PJM region and maintain confidence in market operations.").

40 *See, e.g., Powerex Corp*., 138 FERC ¶ 61,099 (2012) (granting limited waiver of Section 1 of the Powerex market-based rate schedule one day after the filing of the petition because of "NorthWestern's immediate need to obtain Regulating Reserve Service" after "NorthWestern was unexpectedly required to completely shut down the Dave Gates Generating Station . . . due to significant equipment damage.")

41 *See, e.g., Entergy Services, Inc*., 124 FERC ¶ 61,226, at P 9 n.4 (2008) ("Because of the need to respond quickly to the emergency situation, we are issuing this order without prior notice, but it will be subject to rehearing.").

expedited approval of FPA Section 203 application for corporate reorganization in the midst of the California energy crisis, finding that the Commission "had a strong interest in reaching a conclusion at the earliest practicable time."[42] Moreover, the court explained that, even if the Commission's action had been found to be procedurally unsound, "the Commission cured any procedural defect by carefully considering all evidence and argument the petitioners offered in their petitions for rehearing."[43]

The BHE Entities respectfully maintain that expedited Commission action on this petition for the Limited Waiver is appropriate. As a result, PacifiCorp requests that the Commission issue an order granting the Limited Waiver by no later than Friday, July 30, 2021.[44]

VIII. DOCUMENTS SUBMITTED WITH THIS PETITION

The following documents are included as attachments to this petition:

Attachment A – Affidavit of Ryan Atkins

IX. SERVICE

The BHE Entities will serve this petition on their respective state commissions and on the service list for their MBR tariff dockets in which triennial updates and change in status filings are made.

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42 329 F.3d 700, 710-11 (9th Cir. 2003).

43 *Id*. at 704.

44 To the extent necessary, PacifiCorp also requests waiver of the Commission's 60-day notice period and any other requirements of 18 C.F.R. Part 35 that may be required to allow this filing to go into effect upon order of the Commission. The Commission will grant such waivers upon good cause shown. *See, e.g., Mirant America Energy Mktg., L.P. v. ISO New England Inc*., 112 FERC ¶ 61,056, at P 17, n.25. (2005) *aff'd sub nom. NSTAR Elec. & Gas Corp. v FERC*, 481 F.3d 794 (D.C. Cir. 2007), *order on remand, Mirant Americas Energy Mktg., L.P. v. ISO New England Inc*., 120 FERC ¶ 61,264 (2007). Given the emergency conditions described herein, the good cause standard is easily satisfied here.

X. CONCLUSION

WHEREFORE, for the reasons discussed herein, the BHE Entities respectfully urges the Commission to grant a shortened seven-day comment period, and grant the Limited Waiver as quickly as possible, but by no later than Friday, July 30, 2021 to be effective Monday, August 2, 2021.

Respectfully submitted,

s/ *Christopher R. Jones*
Christopher R. Jones
TROUTMAN PEPPER HAMILTON SANDERS LLP
401 9th Street, NW
Suite 1000
Washington, DC 20004
(202) 662-2181

Counsel to PacifiCorp and NV Energy

Dated: July 19, 2021
Washington, D.C.

ATTACHMENT A

Affidavit of Ryan Atkins of NV Energy

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

	)	
PacifiCorp	)	
Sierra Pacific Power Company	)	**Docket No. ER21-___-000**
Nevada Power Company	)	
	)	

AFFIDAVIT OF RYAN ATKINS

1. My name is Ryan Atkins. I am the Director of Trading, Analytics & Operation for Nevada Power Company ("Nevada Power") and Sierra Pacific Power Company ("Sierra Pacific") (together, "NV Energy" or the "Company"). In that capacity, I direct the development of trading analytics to support energy marketing and origination activities. Additionally, I oversee multi-discipline groups responsible for power and gas trading strategies, economic generation dispatch, transmission trading analysis, gas transport optimization, and transaction structuring. The area I oversee is responsible for the day-to-day and hour-to-hour scheduling of NV Energy's generation portfolio, including making third-party purchases and sales when market conditions dictate. I have been employed by NV Energy since August 2007 and have served in my current position since January 2021.

2. The purpose of this affidavit is to describe the recent Southwest heat event of July 9, 2021 and the power supply and reliability issues is created for NV Energy. The extreme heat events of early July are well-understood at this point. I would like to provide details of how that heat event disrupted supply and ultimately created NERC energy emergency alert (EEA)-3 level system emergency.

3. For hour ending 20 (“HE20”) on July 9, 2021, NV Energy experienced the loss of more than 1,400 MW of supply in real time. The majority of these real time curtailments occurred less than one hour before the beginning HE 20. The majority (if not all) of these curtailments stemmed from the de-rate on the Pacific AC and Pacific DC Interties due to the Bootleg Fire in Southern Oregon. With the short notice of these real time curtailments, and the significant transmission limitations, there were no counterparties willing or able to replace the loss of supply to NV Energy.

4. In addition, over 800 MW of day ahead supply had been adjusted to 0 MW in the CAISO Residual Unit Commitment process and was not resupplied by the associated counterparties which NV Energy had contracted with. This combined loss of supply placed NV Energy immediately into a NERC EEA-3 emergency event, signaling a lack of operating reserves to maintain reliability. Those conditions persisted through the majority of HE20 before additional real time supply became available and the volume of supply curtailments was reduced.

5. In the following hour, in its efforts to fill these gaps from the wholesale market, NV Energy had to turn to purchasing supply from PacifiCorp, who was able to provide 85 MW for hour-ending 21. PacifiCorp made that sale to NV Energy under its cost-based tariff on file with the Federal Energy Regulatory Commission (“Commission”). The close geographical proximity of the two utilities and the connected transmission systems make physical supply more reliable and less subject to curtailments that may be occurring elsewhere in the Western power markets.

6. I would emphasize, for the Commission’s consideration, that the circumstances that led to these curtailments were not anomalous. There appear to be systemic flaws in the way

the Western market is currently capable of responding to extreme heat events, and I would press upon the Commission to prioritize real-time wholesale liquidity at every turn to ensure that NV Energy, PacifiCorp and other western utilities outside the CAISO can freely transact as appropriate under this Commission's regulations, especially in light of the increasingly non-firm nature of exports from the CAISO. In particular, I understand that NV Energy and PacifiCorp have submitted a proposal that would assist with wholesale liquidity by opening up supply options between the two companies at prevailing market rates while ensuring that neither company's customers will pay more than is required to keep the lights on. I would urge the Commission's acceptance of that proposal.

7. This concludes my affidavit.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

	)	
PacifiCorp	)	
Sierra Pacific Power Company	)	**Docket No. ER21-___-000**
Nevada Power Company	)	

VERIFICATION[1]

Nevada	)
	)
Clark County	)

I, Ryan Atkins, state that the statements of fact in the enclosed affidavit are true and correct to the best of my knowledge, information, and belief.

/s/ Ryan Atkins

Ryan Atkins
NV Energy

Dated: July 19, 2021

[1] Given the ongoing emergency conditions caused by the COVID-19 pandemic, this Affidavit is electronically signed and has not been notarized, pursuant to the Commission's January 22, 2021 Supplemental Notice that waived, through July 30, 2021, the Commission's regulations that require that filings with the Commission be notarized. Extension of Non-Statutory Deadlines, Docket No. AD20-11-000 (Jan. 22, 2021) (Supplemental Notice Waiving Regulations).