

July 12, 2013

VIA eFILING

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: *Silver Merger Sub, Inc., NV Energy, Inc., Nevada Power Company, and Sierra Pacific Power Company*
Joint Application for Authorization under Section 203 of the Federal Power Act, Docket No. EC13-____ -000**

Dear Secretary Bose:

Enclosed for filing please find the joint application (the “Application”) under Section 203 of the Federal Power Act (the “FPA”)¹ and Part 33 of the regulations of the Federal Energy Regulatory Commission (the “Commission”)² of Silver Merger Sub, Inc., NV Energy, Inc., Nevada Power Company, and Sierra Pacific Power Company (collectively, “Applicants”) for authorization under Section 203 of the FPA in connection with the merger transaction described in the Application. Applicants respectfully request that the Commission issue an order authorizing the transaction, without hearing, on or before December 19, 2013 in order to allow the transaction to close in January 2014.

In accordance with Section 388.112 of the Commission regulations,³ Applicants seek confidential treatment of the schedules and exhibits to the merger agreement provided in Exhibit I to the Application. The schedules and exhibits contain highly sensitive commercial and financial information that is privileged and confidential and not publicly available. The non-public materials are marked “Contains Privileged Material” and “Do Not Release.” In accordance with Section 33.9 of the Commission’s regulations, Applicants have provided a

¹ 16 U.S.C. § 824b (2006).

² 18 C.F.R. Pt. 33 (2013).

³ 18 C.F.R. § 388.112 (2013).

proposed Protective Order, consistent with the Commission's Model Protective Order as Attachment 2.

In addition, Applicants also seek privileged treatment for certain of the workpapers of Julie Solomon of Navigant Consulting that underlie the analysis in her affidavit, which is included in Exhibit J. The workpapers include a proprietary model and confidential, commercially sensitive data, the public disclosure of which would competitively harm Applicants and their affiliates. In addition, Ms. Solomon's workpapers also include Critical Energy Infrastructure Information ("CEII"). Under separate cover letter, Applicants are concurrently submitting three CD-ROMs: (1) one CD-ROM with the public workpapers supporting Ms. Solomon's analysis; (2) one CD-ROM with the proprietary and confidential information supporting that analysis, which is marked "Contains Privileged Information – Do Not Release"; and (3) one CD-ROM with the CEII supporting Ms. Solomon's analysis, which is marked "CEII Materials – Do Not Release."

Thank you for your consideration of this matter. Please do not hesitate to contact me if you have any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William R. Hollaway" and "Brandon C. Johnson", followed by a long horizontal line extending to the right.

William R. Hollaway, Ph.D.
Brandon C. Johnson

Counsel for Silver Merger Sub, Inc.

Enclosures

cc: Steve P. Rodgers (FERC Staff, Room 91-01)
Andrew P. Mosier (FERC Staff, Room 92-29)

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Silver Merger Sub, Inc.)
NV Energy, Inc.)
Nevada Power Company)
Sierra Pacific Power Company)

Docket No. EC13-__-000

**JOINT APPLICATION FOR AUTHORIZATION UNDER
SECTION 203 OF THE FEDERAL POWER ACT**

Nevada Power Company d/b/a NV Energy (“Nevada Power”) and Sierra Pacific Power Company d/b/a NV Energy (“Sierra Pacific,” and together with Nevada Power, the “NV Energy Utilities”), NV Energy, Inc. (“NVE,” and together with the NV Energy Utilities, the “NV Energy Applicants”), and Silver Merger Sub, Inc. (“Merger Sub”) (collectively, “Applicants”) hereby submit this application (“Application”)¹ for the Commission’s approval of the transaction, described in detail below, in which Merger Sub will merge with and into NVE, which will be the surviving corporation, and NVE will then become an indirect, wholly owned subsidiary of MidAmerican Energy Holdings Company (“MidAmerican”), the parent of Merger Sub (the “Transaction”).²

As discussed below and explained in the Affidavits of Julie Solomon of Navigant Consulting (the “Solomon Affidavit”) and Dr. John R. Morris of Economists Incorporated (the

¹ This Application is being submitted pursuant to Section 203(a)(1) and 203(a)(2) of the Federal Power Act (“FPA”), 16 U.S.C. §§ 824b(a)(1), 824b(a)(2) (2006), and Part 33 of the regulations of the Federal Energy Regulatory Commission (the “Commission”). 18 C.F.R. Pt. 33 (2013).

² The Transaction requires approval under various subsections of Section 203(a)(1) of the FPA, 16 U.S.C. § 824b(a)(1)(2006). Specifically, Applicants require approval under FPA Sections 203(a)(1)(A) and 203(a)(1)(B), 16 U.S.C. §§ 824b(a)(1)(A), 824b(a)(1)(B) (2006), for the indirect disposition of jurisdictional facilities and merger that will result from the Transaction. Applicants also request approval under Section 203(a)(2) of the FPA, 16 U.S.C. § 824b(a)(2) (2006), for any holding company acquisition of securities that may be deemed to occur as part of the Transaction.

“Morris Affidavit”), each of which is included in Exhibit J hereto, the Transaction meets the Commission’s standards for determining when a transaction is consistent with the public interest. The Transaction also will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.

The Transaction, when completed, will provide multiple benefits for customers throughout the regions served by MidAmerican and the NV Energy Utilities. First, MidAmerican’s acquisition of NVE will provide the NV Energy Utilities and their customers with increased financial stability and reduced cost of debt. Second, the NV Energy Utilities’ customers will benefit from the shared best practices and expertise associated with being part of MidAmerican. This includes sharing best practices in safety, customer satisfaction, system reliability, and cost containment across all of the MidAmerican platforms. Third, the NV Energy Utilities’ customers will benefit from access to capital to reliably serve customers, including the potential new investments in generation and transmission. Fourth, it will permit MidAmerican to share with the NV Energy Utilities MidAmerican’s expertise from operations in both the Eastern and Western Interconnections, and in organized and non-organized markets.

Applicants therefore respectfully submit that the Transaction is in the public interest, and that it should be approved by the Commission, without conducting an evidentiary hearing. Applicants request that the Commission issue an order authorizing the Transaction on or before *December 19, 2013*.

I. DESCRIPTION OF APPLICANTS AND OTHER RELEVANT ENTITIES

A. The NV Energy Applicants

1. NV Energy, Inc.

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.³ Sierra Pacific Resources later changed its corporate name to “NV Energy, Inc.,” the publicly-traded public utility holding company that now owns Sierra Pacific and Nevada Power.

2. 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 Public Utilities Commission of Nevada (“PUCN”) and the Commission. Nevada Power operates the balancing authority area (“BAA”) in southern Nevada (the “Nevada Power BAA” or “NEVP”). The Commission has granted Nevada Power the authority to sell electric energy, capacity, and ancillary services at market-based rates outside of the Nevada Power BAA.⁴

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 serves about 827,000 retail residential, commercial and industrial customers, and it also makes a very limited amount of wholesale sales under agreements on file with the Commission or under terms of its Commission-granted market-based rate authority. Nevada Power’s peak load in 2012 was 5,761 MW. Nevada Power operates approximately 1,725 miles of high voltage transmission lines (60 kV to 500 kV). Nevada Power provides open access transmission service

³ See *Sierra Pac. Power Co.*, 87 FERC ¶ 61,077 (1999) (order approving transaction).

⁴ See *Sierra Pacific Power Co.*, 95 FERC ¶ 61,193, *reh’g denied*, 96 FERC ¶ 61,050 (2001) (“*Sierra Pacific*”). However, Nevada Power does not make sales in the Sierra Pacific BAA.

under the terms of the NV Energy, Inc. Operating Companies' FERC Electric Tariff, Third Revised Volume No. 1 (the "NV Energy OATT").

3. 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 BAA in northern Nevada (the "Sierra Pacific BAA" or "SPPC"). The Commission has granted Sierra Pacific the authority to sell electric energy, capacity, and ancillary services at market-based rates outside of the Sierra Pacific BAA.⁵

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 serves about 324,000 electric retail residential, commercial, and industrial customers, and it also serves various wholesale customers under agreements on file with the Commission. Additionally, Sierra Pacific provides natural gas service to 151,000 customers in an 800 square mile service territory in Nevada's Reno/Sparks area. Sierra Pacific's 2012 peak load was approximately 1,646 MW. Sierra Pacific operates approximately 2,050 miles of high voltage (55 kV to 345 kV) transmission lines. Transmission service over those lines is provided under the NV Energy OATT.

4. Merger of the NV Energy Utilities

On May 31, 2013, the NV Energy Applicants filed an application with the Commission requesting authorization under Section 203 of the FPA for approval of an internal corporate reorganization to merge Sierra Pacific into Nevada Power resulting in a single company (which

⁵ *See id.* However, Sierra Pacific does not make sales in the Nevada Power BAA.

will be called the NV Energy Operating Company) (the “NV Energy Reorganization”).⁶ In the NV Energy Reorganization Application, the NV Energy Applicants also indicated that they were coordinating with the Western Electricity Coordinating Council (“WECC”) and the North American Electric Reliability Corporation to consolidate the Sierra Pacific BAA and Nevada Power BAA into one BAA (the “NVE BAA”). On that same date, the NV Energy Utilities made two additional filings under Section 205 of the FPA⁷ to adopt a single system transmission rate to coincide with the in-service date of the new 235-mile 500 kV transmission line, called the One Nevada Transmission Line (“ON Line”), and to revise the existing NV Energy OATT to govern service over an interconnected system once ON Line is placed in-service.⁸ All three filings made by the NV Energy Applicants on May 31, 2013, are pending before the Commission.⁹ Applicants do not seek to modify or withdraw any pending filings as a result of the Transaction. The instant Transaction is not conditioned on either the Commission’s or the PUCN’s action on these pending filings.

⁶ See *NV Energy, Inc., et al.*, Application for Approval of Internal Reorganization under Section 203 of the Federal Power Act, Docket No. EC13-113-000 (filed May 31, 2013) (the “NV Energy Reorganization Application”).

⁷ 16 U.S.C. § 824d (2006).

⁸ See *NV Energy Operating Companies*, Transmission Rate Filing and Limited Request for Summary Disposition, Docket No. ER13-1607-000 (filed May 31, 2013); *Nevada Power Co. d/b/a NV Energy and Sierra Pacific Power Co. d/b/a NV Energy*, Docket No. ER13-1605-000 (filed May 31, 2013).

⁹ In addition, on May 31, 2013, NVE and the NV Energy Utilities submitted an application with the PUCN seeking authorization for the consolidation of the two utilities into one single jurisdictional utility. See Joint Application of Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy for approval to consolidate the utilities into a single jurisdictional utility, to transfer and modify Certificates of Public Convenience and Necessity to reflect the consolidated utility’s new legal name, NV Energy Operating Company, and to consolidate generation assets, Docket No. 13-05-056 (filed May 31, 2013), available at: http://pucweb1.state.nv.us/PDF/AxImages/DOCKETS_2010_THRU_PRESENT/2013-5/26897.pdf. The PUCN application for the NV Energy Reorganization and the related rate filings are pending before the PUCN.

The potential NV Energy Reorganization and the consolidation of the Nevada Power and Sierra Pacific BAAs are in coordination with the completion of the ON Line, which will provide the first direct interconnection between the two NV Energy Utilities' systems. The ON Line is expected to be completed and capable of transmitting power by December 31, 2013, and the NV Energy Applicants seek to complete the reorganization by January 1, 2014.

Beginning January 1, 2014, NV Energy Operating Company is planning (subject to obtaining necessary regulatory approvals) to provide transmission service across the merged, single-system BAA. By providing for joint dispatch of the two systems, a direct transmission interconnection will allow the NV Energy Operating Company to utilize the most economical mix of renewable and conventional resources without being constrained by geography or physical limitations. Additionally, combining the two systems will both facilitate further development of the full menu of renewable energy resources located within Nevada, which consist primarily of geothermal and wind in the North and solar in the South, and enhance the reliability of the interconnected transmission systems.

5. Retirement of Reid Gardner Units 1-4.

Nevada Power owns 100 percent of Reid Gardner Units 1, 2, and 3, each of which is a coal-fired electric generation facility, and the combined output of these units is 300 MW. Nevada Power currently owns 32.2 percent of Unit 4, which is the plant's newest, most efficient, and largest coal-fired generating unit with a net capacity of 257 MW. On April 22, 2013, Nevada Power filed an application, under Section 203 of the FPA, for Commission authorization for the reversion of the remaining 67.8 percent interest in Unit 4 as set forth under the terms of a

1979 Participation Agreement between Nevada Power and the California Department of Water Resources (“CDWR”).¹⁰

The NV Energy Utilities have spent considerable time evaluating the presence of coal-fired generation in the NV Energy Utilities’ generation fleet. As a result of this evaluation, the NV Energy Utilities proposed a plan and supported legislation that would facilitate the early retirement of Reid Gardner Units 1-3, as well as Unit 4, which was passed by the Nevada legislature and became effective on June 11, 2013. This legislation requires the NV Energy Utilities to file with the PUCN a plan for reducing emissions by retiring coal-fired generating units and replacing the capacity of those units. Any emission reduction and capacity replacement plan filed by the NV Energy Utilities will be subject to review and approval by the PUCN.

B. Merger Sub And Its Affiliates

1. Merger Sub

Merger Sub is a Nevada corporation and a direct, wholly owned subsidiary of NVE Holdings, LLC (“NVE Holdings”), a Delaware limited liability company, which is, in turn, a direct, wholly owned subsidiary of MidAmerican, an Iowa corporation. Merger Sub is a special purpose entity formed for the purpose of effectuating the Transaction. Merger Sub has not conducted any activities other than those incidental both to its formation and to the matters contemplated in the Transaction agreement.

¹⁰ See *Nevada Power Company*, Application for Approval pursuant to Section 203 of the Federal Power Act, Docket No. EC13-96-000 (filed Apr. 22, 2013). This application is pending before the Commission.

2. 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 electric power generating, transmission and natural gas transmission assets are owned directly or indirectly by the following entities: MidAmerican Energy Company (“MidAmerican Energy”), PacifiCorp, MidAmerican Renewables, LLC (“MidAmerican Renewables”), Kern River Gas Transmission Company (“Kern River”), Northern Natural Gas Company (“Northern Natural Gas”), and MidAmerican Transmission, LLC (“MidAmerican Transmission”).

a) MidAmerican Energy

MidAmerican Energy is an Iowa corporation that is a combination gas and electric company in the Midwest and a jurisdictional public utility under the FPA. MidAmerican Energy is primarily engaged in the business of generating, transmitting, distributing and selling electric energy and distributing, selling and transporting natural gas. MidAmerican Energy’s utility service territory includes parts of Iowa, Illinois, Nebraska and South Dakota. MidAmerican Energy also conducts unregulated retail sales of natural gas and electric power. The Commission has granted MidAmerican Energy authorization to sell energy, capacity and ancillary services at market-based rates.¹¹

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. MISO provides transmission service over the facilities owned by MidAmerican Energy and other MISO participating transmission owners

¹¹ See *MidAmerican Energy Co.*, 74 FERC ¶ 61,211 (1996).

pursuant to MISO’s Open Access Transmission, Energy and Operating Reserve Markets Tariff (the “MISO Tariff”), which is on file with the Commission. MidAmerican Energy’s generating assets are located primarily within the MISO market area, with a small portion in the PJM Interconnection, L.L.C. (“PJM”) BAA.

b) PacifiCorp

PacifiCorp is an Oregon corporation. 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 Wyoming. PacifiCorp provides electric transmission service in nine Western states, and owns or has interests in approximately 16,200 miles of transmission lines and 75 thermal, hydroelectric, wind-powered generating and geothermal facilities, with a plant net capacity of approximately 10,579 MW.¹² The Commission has granted PacifiCorp authorization to sell energy, capacity and ancillary services at market-based rates.¹³

PacifiCorp provides open access transmission service pursuant to its Open Access Transmission Tariff, which is on file with the Commission. PacifiCorp operates two BAAs, which are referred to as PacifiCorp East (“PACE”) and PacifiCorp West (“PACW”). PACE principally includes PacifiCorp’s load and generating capacity in the states of Idaho, Utah and Wyoming. PACW principally includes PacifiCorp’s load and generating capacity in the states of Washington, Oregon and California. In addition, some of PacifiCorp’s generating capacity is located in the BAAs operated by the Bonneville Power Administration, NorthWestern Energy,

¹² With the addition of Lake Side 2 generating facility (645 MW) in 2014, PacifiCorp’s total plant net capacity will be approximately 11,224 MW.

¹³ See *PacifiCorp*, 79 FERC ¶ 61,383 (1997).

Public Service Company of Colorado, and Western Area Power Administration-Colorado Missouri.

c) MidAmerican Renewables

MidAmerican Renewables, through its subsidiaries, was formed to acquire, own, operate, and invest in renewable energy facilities. MidAmerican Renewables wholly owned subsidiaries include Bishop Hill Energy II, LLC (“Bishop Hill II”), Cordova Energy Company (“Cordova”), Pinyon Pines Wind I, LLC (“Pinyon Pines I”), Pinyon Pines Wind II, LLC (“Pinyon Pines 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”).

(1) 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 will be directly interconnected to the transmission system owned by Pacific Gas & Electric Company (“PG&E”) and operated by the California Independent System Operator Corporation (“CAISO”). Approximately 253 MW 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.¹⁴

(2) 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 325 MW solar photovoltaic electric generating facility located in Kern and Los Angeles Counties, California that will be interconnected to the transmission system owned by Southern California Edison (“SCE”) and operated by the CAISO. The entire output of Solar Star 1 is committed to SCE pursuant to a long-term power purchase agreement. MidAmerican Renewables recently acquired the rights to Solar Star 1 from SunPower Corporation (“SunPower”), which is constructing the facility. Construction of Solar Star 1 recently started, and initial test operation is expected to occur in the fourth quarter of 2013.

(3) 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 will be 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 recently acquired the rights to Solar Star 2 from SunPower, which is constructing the facility. Construction of Solar Star 2 recently started, and initial test operation is expected to occur in the fourth quarter of 2013.

¹⁴ See *Agua Caliente Solar, LLC*, Docket No. ER12-21-000 (Dec. 1, 2011) (unreported).

(4) Bishop Hill II

Bishop Hill II is a Delaware limited liability company and an indirect, wholly owned subsidiary of MidAmerican Renewables. Bishop Hill II owns and operates an 81 MW (nameplate) wind-powered electric generation facility located in Henry County, Illinois (the “Bishop Hill II Facility”). The Bishop Hill II Facility interconnects to the transmission system owned by Illinois Power Company d/b/a AmerenIP and operated by MISO. The Commission has granted Bishop Hill II authorization to sell energy, capacity and ancillary services at market-based rates.¹⁵

(5) Cordova

Cordova is a Delaware limited liability company and an indirect, wholly owned subsidiary of MidAmerican Renewables. Cordova owns and operates the Cordova Energy Center, a 537 MW natural gas-fired generating facility located in Rock Island County, Illinois (the “Cordova Facility”). The Cordova Facility is interconnected with the transmission systems owned by MidAmerican Energy and Commonwealth Edison Company and operated by PJM. The Commission has granted Cordova authorization to sell energy, capacity, and ancillary services at market-based rates.¹⁶

(6) Pinyon Pines I

Pinyon Pines I is a Delaware limited liability company and an indirect, wholly owned subsidiary of MidAmerican Renewables. Pinyon Pines I owns and operates an approximately 168 MW (nameplate) wind-powered electric generation facility (the “Pinyon Pines I Facility”) located in Kern County, California. The Pinyon Pines I Facility is interconnected with the

¹⁵ See *Bishop Hill Energy LLC*, 137 FERC ¶ 61,211 (2011).

¹⁶ See *Cordova Energy Co. LLC*, 87 FERC ¶ 61,108 (1999).

transmission system owned by SCE and operated by the CAISO. The entire output of the Pinyon Pines I Facility is committed to SCE pursuant to a long-term power purchase agreement. The Commission has granted Pinyon Pines I authorization to sell energy, capacity and ancillary services at market-based rates.¹⁷

(7) Pinyon Pines II

Pinyon Pines II is a Delaware limited liability company and an indirect, wholly owned subsidiary of MidAmerican Renewables. Pinyon Pines II owns and operates an approximately 132 MW (nameplate) wind-powered electric generation facility (the “Pinyon Pines II Facility”), located in Kern County, California. The Pinyon Pines II Facility is interconnected with the transmission system owned by SCE and operated by the CAISO. The entire output of the Pinyon Pines II Facility is committed to SCE pursuant to a long-term power purchase agreement. The Commission has granted Pinyon Pines II authorization to sell energy, capacity and ancillary services at market-based rates.¹⁸

(8) 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 will be 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, and anticipates achieving commercial operation status for 190 MW during the third quarter of 2013. The Topaz Facility is

¹⁷ See *Alta Wind VII, LLC and Alta Wind IX, LLC*, Docket Nos. ER12-1521-000 and ER12-1522-000 (May 31, 2012) (unreported).

¹⁸ See *id.*

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.¹⁹

d) 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 indirectly owned by TransAlta Corporation, which is not affiliated with MidAmerican.

CE Generation indirectly owns a number of electric generation facilities, including ten geothermal units in the Imperial Irrigation District (“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 subsidiaries Power Resources, Ltd. (“Power Resources”), Saranac Power Partners, L.P. (“Saranac”), and Yuma Cogeneration Associates (“Yuma Cogeneration”).

(1) 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 (“CE Turbo”), 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;

¹⁹ See *Topaz Solar Farms LLC*, Docket No. ER12-1626-000 (June 14, 2012) (unreported).

- Elmore Company, which owns and operates the 42.8 MW Elmore Project;
- 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.²⁰

(2) Power Resources

Power Resources is a Texas limited partnership and an indirect, wholly owned subsidiary of CE Generation. Power Resources owns and operates a 212 MW natural gas-fired cogeneration facility located in Big Spring, Texas (the “Power Resources Facility”). The Power Resources Facility is interconnected with the transmission system owned and operated by Oncor Electric Delivery Company LLC in the Western Region of the Electric Reliability Council of Texas (“ERCOT”). The Commission has granted Power Resources authorization to sell energy, capacity, and ancillary services at market-based rates.²¹

²⁰ See *CalEnergy, LLC*, Docket No. ER13-1266-000, *et al.* (May 31, 2013).

²¹ See *Power Resources, Ltd.*, Docket No. ER09-762-000 (May 7, 2009) (unreported).

(3) Saranac

Saranac is a Delaware limited partnership that is owned 75 percent by CE Generation. Saranac owns and operates a 255 MW natural gas-fired cogeneration facility located in Plattsburg, New York (the “Saranac Facility”). The Saranac Facility is interconnected with the transmission system operated by the New York Independent System Operator, Inc. Saranac also owns North Country Gas Pipeline Corporation, which owns and operates an intrastate pipeline in upstate New York with a capacity of about 100 dekatherms per day. The pipeline runs approximately 22 miles from an interconnection with TransCanada PipeLines Limited in Napierville, Quebec, Canada, to Plattsburgh, New York, where it interconnects with the Saranac Facility. The Commission has granted Saranac authorization to sell energy, capacity and ancillary services at market-based rates.²²

(4) 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 Arizona Public Service Company (“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 granted Yuma Cogeneration authorization to sell energy, capacity, and ancillary services at market-based rates.²³

²² See *Saranac Power Partners, L.P.*, Docket No. ER09-768-000 (Apr. 30, 2009) (unreported).

²³ See *Yuma Cogeneration Assocs.*, Docket No. ER07-1236-000 (Dec. 4, 2007) (unreported).

e) Kern River

Kern River is a Texas general partnership and an indirect wholly owned subsidiary of MidAmerican. Kern River operates an interstate natural gas pipeline extending from the oil and gas producing fields of southwestern Wyoming through Utah and Nevada to the San Joaquin Valley near Bakersfield, California. Kern River's system totals 1,717 miles of 36- and 42-inch diameter steel pipe, and currently has a design capacity of 2.17 billion cubic feet per day ("Bcf/d").

f) Northern Natural Gas

Northern Natural Gas is a Delaware corporation and an indirect wholly owned subsidiary of MidAmerican. Northern Natural Gas operates an interstate natural gas pipeline extending from the Permian Basin in Texas to the Upper Midwest. The system includes 14,900 miles of natural gas pipeline and has 5.5 Bcf/d of Market Area design capacity, plus 2.0 Bcf/d of Field Area capacity. In addition, Northern Natural Gas operates five natural gas storage facilities with a total firm and operational capacity of 73 Bcf, including 4 Bcf of liquefied natural gas.

g) MidAmerican Transmission

MidAmerican Transmission is a Delaware limited liability company and a direct, wholly owned subsidiary of MidAmerican. MidAmerican Transmission indirectly owns a 50 percent interest in Electric Transmission Texas, LLC ("Electric Transmission Texas"), which is a joint venture, located entirely within ERCOT, between MidAmerican Transmission and American Electric Power Company, Inc. ("AEP"), which owns the remaining 50 percent. Electric Transmission Texas owns and operates electric transmission assets in ERCOT and is regulated by the Public Utility Commission of Texas.

MidAmerican Transmission also indirectly owns a 50 percent interest in Electric Transmission America, LLC ("Electric Transmission America"), which is a joint venture, located

entirely within the Southwest Power Pool Electric Energy Network, between MidAmerican Transmission and AEP, which owns the remaining 50 percent. Electric Transmission America has formed a joint venture with Westar Energy, Inc. (“Westar”) to build transmission assets in Kansas. Electric Transmission America and Westar each own a 50 percent interest in Prairie Wind Transmission, LLC, which is developing and constructing an approximately 108-mile, double-circuit, extra-high-voltage 345-kV transmission line linking Westar’s 345 kV substation near Wichita, Kansas, to a new 345-kV substation northeast of Medicine Lodge, Kansas, and then south to the Kansas/Oklahoma border (the “Prairie Wind Transmission Project”). The Prairie Wind Transmission Project is expected to enter service by the end of 2014.

II. DESCRIPTION OF TRANSACTION

The terms of the Transaction 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”). A copy of the Merger Agreement is provided in Exhibit I to this Application.

Under the Merger Agreement, MidAmerican will purchase all outstanding shares of NVE’s common stock for \$23.75 per share in cash. The Transaction, which has been unanimously approved by both companies’ boards of directors, has an enterprise value of approximately \$10 billion. The Transaction is currently expected to be completed in the first quarter of 2014. Following consummation of the Transaction, NVE will be a direct, wholly owned subsidiary of NVE Holdings, and an indirect, wholly owned subsidiary of MidAmerican.

The Transaction, when completed, will provide multiple benefits for customers throughout the regions served by the NV Energy Utilities. First, MidAmerican’s acquisition of NVE will provide the NV Energy Utilities and their customers with increased financial stability and reduced cost of debt. Second, the NV Energy Utilities’ customers will benefit from the shared best practices and expertise associated with being part of MidAmerican. This includes

sharing best practices in safety, customer satisfaction, system reliability, and cost containment across all of the MidAmerican platforms. Third, the NV Energy Utilities' customers will benefit from access to capital to reliably serve customers, including the potential new investments in generation and transmission. Fourth, it will permit MidAmerican to share with the NV Energy Utilities MidAmerican's expertise from operations in both the Eastern and Western Interconnections, and in organized and non-organized markets.

III. THE TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST

Section 203(a)(4) of the FPA provides that the Commission "shall approve [a] proposed disposition, consolidation, acquisition, or change in control, if it finds that the proposed transaction will be consistent with the public interest, and will not result in the cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. . . ."24

Proposed mergers are subject to the analysis set forth in the Commission's Merger Policy Statement. In determining whether a proposed transaction is in the public interest, the Commission considers whether it will have any adverse impact on (i) competition, (ii) rates, or (iii) regulation.²⁵ In evaluating whether a proposed transaction will result in cross-subsidization,

²⁴ 16 U.S.C. § 824b(a)(4) (2006).

²⁵ *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000) ("Order No. 642"), *on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). *See also Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act; Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 at 30,111 (1996) ("Merger Policy Statement"), *recons. denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997).

the Commission considers the standards set forth in Order Nos. 669, 669-A and 669-B²⁶ as clarified in the Commission's Supplemental Merger Policy Statement.

As demonstrated below, the Transaction satisfies each of these standards because it will have no adverse impact on competition, rates or regulation and will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of any associate company. Therefore, the Transaction is in the public interest and should be approved.

A. The Transaction Will Not Have an Adverse Effect on Competition.

1. The Transaction Presents No Horizontal Market Power Concerns.

As discussed briefly below and in more detail in the Solomon Affidavit, the Transaction presents no horizontal market power concerns. Ms. Solomon's forward looking "Base Case" analysis for 2014 reflects the fact that, pursuant to the NV Energy Reorganization, NVE intends to consolidate its two existing BAAs (the Nevada Power BAA (which Ms. Solomon refers to as "NEVP") and the Sierra Pacific BAA (which Ms. Solomon refers to as "SPPC")) into a single BAA (*i.e.*, the NVE BAA). The BAAs will combine after the completion of the ON Line, which will be the first direct interconnection between the Nevada Power and Sierra Pacific BAAs, and is expected to occur by December 31, 2013.

In the event the NV Energy Reorganization is not completed, because it is not approved either by the Commission or the PUCN before the instant Transaction is consummated, then the NV Energy Applicants intend to make the necessary filings with the Commission under Section 205 of the FPA to govern the joint dispatch of resources and/or allocation of transmission as between the NV Energy Applicants. In any event, the NV Energy Utilities anticipate

²⁶ *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 ("Order No. 669"), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214 ("Order No. 669-A"), *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 ("Order No. 669-B").

consolidating their two separate BAAs into a single BAA following the in-service date of the ON Line. Because operation as a single BAA requires the ON Line to be completed and in operation, in the event that the ON Line project is delayed, and the instant Transaction is ready to close a short time (*e.g.*, a few months) in advance of completion of the ON Line, the Applicants address herein the impact of such a scenario. Ms. Solomon has conducted a sensitivity analysis that treats NEVP and SPPC as two separate stand-alone BAAs. Ms. Solomon has analyzed this potential scenario of temporarily separate Nevada BAAs as an “Interim Case” that would be relevant only during a transition period following consummation of the Transaction and until completion of the ON Line. The Applicants are also submitting this Interim Case for Commission consideration to the extent there is a transition period as described above.

Based upon Ms. Solomon’s analysis of the relevant markets, she concludes that the proposed Transaction raises no competitive concerns in the Base Case analysis, including price sensitivities of plus and minus 10 percent. There are no screen failures in NVE, PACE, PACW, or any first-tier market under the Available Economic Capacity (“AEC”) measure that is most relevant in the context of non-restructured markets. Likewise, there are no screen failures under the AEC measure in NEVP or SPPC in the Interim Case analysis, including price sensitivities. Consequently, Applicants have not proposed any mitigation measures.

Relevant Geographic Markets

The first step in the analysis is to define those geographic markets in which the Applicants have overlapping generation, and, as a consequence, in which horizontal market power could be an issue. Traditionally, the Commission has defined the relevant geographic markets as centered on the areas where applicants own generation and on the BAAs directly interconnected with the applicants’ generation. In both the Merger Policy Statement and Order

No. 642, the Commission instructed merger applicants to define the relevant geographic market in terms of destination markets.²⁷ Destination markets typically are defined as individual BAAs (previously, control areas). The following table shows the destination markets where Applicants or their affiliates own generation.

Table 1: Summary of Generation Owned by Affiliates of MidAmerican and NVE (MW)²⁸

Market	MidAmerican	NV Energy
WECC Region		
PACE	7,241	0
PACW	4,037	0
NVE	0	6,090
CAISO and other	2,216	0
Eastern Interconnection and ERCOT		
MISO	7,204	0
Other	1,450	0
Total	22,068	6,090
For purposes of this table, PacifiCorp's and NV Energy's remote generation is treated as within PACE/PACW and NVE, respectively. Includes new generation expected to come on line in 2013.		

As this table shows, there is no geographic market in which both the NV Energy Applicants or their affiliates and Merger Sub and its affiliates own generation; that is, there are no direct generation overlaps between Merger Sub and its affiliates and the NV Energy Applicants and their affiliates.

Consistent with the Commission's guidance in the Merger Policy Statement and Order No. 642, Ms. Solomon has performed the Commission's forward looking competitive analysis for the destination markets that could be affected by the Transaction: the markets where the NV Energy Applicants and PacifiCorp own generation, namely, the PACE, PACW, and NVE BAAs,

²⁷ See 18 C.F.R. 33.3(c)(2) (2013).

²⁸ The following tables are reproduced from Tables 1-6 of the Solomon Affidavit.

and the “first-tier” markets that are directly interconnected to these three BAAs.²⁹ Ms. Solomon also considered the effect of the Transaction in the other markets in which Applicants own generation or historically have sold energy (including, *e.g.*, MISO) and concluded that, under the Commission’s merger regulations, a Competitive Analysis Screen is not required in these markets.³⁰

Relevant Product Markets

The Commission generally has been concerned with three relevant product markets: non-firm energy, short-term capacity (firm energy) and long-term capacity.³¹ Both the Economic Capacity (“EC”) and AEC are used as measures of energy. Depending on the markets being analyzed, one or the other of these measures can be deemed more important. Here, as in other non-restructured markets, Ms. Solomon 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 in markets in states where there is

²⁹ See *id.* at 20-21, Table 7 & Exh. J-5.

³⁰ Ms. Solomon did not analyze any markets outside the WECC region because NVE does not own any capacity outside of the WECC region, so the acquisition will not result in any increased concentration in those markets. That is, outside of the WECC region, applicants do not sell products in the same geographic markets or the extent of their business transactions in the same geographic markets is *de minimis*. See *id.* at 21.

³¹ The market for long-term capacity generally does not need to be analyzed since the Commission has concluded as a generic matter that the potential for entry ensures that the long-term capacity market is competitive. See *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. & Transmitting Utils.*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,657 (1996). The presumption that long-term capacity markets are competitive can be overcome if the applicants have dominant control over power plant sites or fuel supplies and delivery systems. As discussed in Ms. Solomon’s affidavit, this exception does not apply to the Applicants because there has been significant new generation entry in Nevada and elsewhere in the WECC region. See Solomon Affidavit at 36-37.

limited or no retail access,³² and in which it is unlikely that these states will adopt retail access in the foreseeable future.³³ AEC is comprised of both internal generation that is economic and “excess” after meeting native load obligations and of external supply that both meets the economics of the Delivered Price Test and can be imported into the market.

Order No. 642 directs applicants to analyze relevant ancillary services markets (specifically, reserves and imbalance energy) “when the necessary data are available.” In the markets that are the focus of the competition analysis, there are no formalized ancillary services or capacity markets.³⁴

Concentration Analysis

Once the relevant product and geographic markets have been identified, the Commission requires the determination of pre- and post-transaction market shares in each such market, from which a Herfindahl-Hirschman Index (“HHI”) can be derived. As the Commission concluded in

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 Nevada has “limited retail access” in that certain customers have power supplies provided by the Colorado River Commission and the Southern Nevada Water Authority, and large commercial and industrial customers (with an annual average consumption greater than one MW) are eligible pursuant to various statutes in Nevada to procure energy from parties other than the NV Energy Utilities as long as they also have a new generating resource and obtain necessary approvals from the PUCN. In Ms. Solomon’s view, this limited retail access does not alter the determination that Nevada is essentially as a non-restructured/non-retail access market. See Solomon Affidavit at 17 n.18.

³⁴ Ms. Solomon notes that an Energy Imbalance Market (“EIM”) market has been proposed that will include CAISO, PacifiCorp, and perhaps others, to become a formalized market for energy imbalance services. The market is not yet in effect, and it should not raise any issues relating to the competitive impact of the Transaction. According to Ms. Solomon, the development of a formalized market subject to CAISO market monitoring and mitigation should be viewed as a pro-competitive. See *id.* at 18 n.21 (citing *California Independent System Operator Corp.*, 143 FERC ¶ 61,298 (2013) (order accepting implementation agreement for the proposed EIM market)).

its Merger Policy Statement and Order No. 642, an increase in the post-transaction HHI of more than 100 in a moderately concentrated market (HHI from 1000 to 1800) or of more than 50 in a highly concentrated market (HHI above 1800) is a “screen failure” that requires further analysis and potential mitigation.³⁵ To the extent that HHI increases are lower than the levels described above, or if the post-Transaction HHI indicates that the market is unconcentrated (HHI below 1000), then no further analysis is required to determine that the transaction does not raise any competitive issues.

Ms. Solomon calculated the market shares for each of 10 different load conditions, representing expected load levels in the summer, winter, and shoulder time periods. For each of these 10 load conditions, she determined the amount of generation capacity that could be delivered to the market at 105 percent of the expected market price. The market shares used to derive the HHIs are then based on each owner’s share of this calculation of delivered capacity.

Import Assumptions

In order to perform the required market share calculations, it is necessary to consider not only all generation located inside of the BAA being analyzed, but also generation located outside of the BAA that can be imported into the market at the applicable price level. In order to perform this calculation, the Applicants performed studies of the simultaneous import limits (“SILs”) for each of the Applicants’ BAAs and for their First-Tier Markets, based on projected conditions for 2014.

The SIL studies were performed by the transmission planning groups at PacifiCorp and NVE, which calculated the seasonal SILs for their respective BAAs.³⁶ For first-tier markets, Ms.

³⁵ See Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044, at 30,134.

³⁶ See Solomon Affidavit at 26-27.

Solomon used the SILs that the transmission owners in the Southwest and Northwest regions filed in connection with the most recent round of triennial filings.³⁷

Ms. Solomon notes that the SILs calculated by both PacifiCorp and by the NV Energy Utilities are different than the SILs included in their triennial filings (which are based on an historical 2010-2011 test year) because the SILs that must be used for the purposes of the Section 203 analysis are based on a forward-looking 2014 study year.³⁸ Both sets of analyses follow the Commission's prescriptive approach to calculating SILs in the market-based rate context.³⁹ The approach used by NVE personnel for purposes of the instant analysis was to more realistically maintain certain internal generation on-line for reliability, and select first-tier generation to increase, while overall still respecting simultaneous import limits. The approach implemented by NVE here is consistent with the approach used by PacifiCorp and accepted by the Commission. Ms. Solomon reviewed the methodology and analysis, and she states that she understands that the current studies are consistent with the Commission's methodology for calculating SILs, the WECC reliability requirements and NV Energy's available transmission capability and total transfer capability processes posted on PacifiCorp's and the NV Energy Utilities' Open Access Same Time Information System sites.⁴⁰

In Appendix A of the Merger Policy Statement, the Commission notes that there are various methods for allocating transmission and that applicants should support the method

³⁷ *See id.*

³⁸ PacifiCorp's SILs were recently filed in connection with its market-based rate triennial filings. The NV Energy Utilities' SILs were previously filed primarily in connection with market-based rate triennial filings but also in connection with other Section 203 applications (*i.e.*, in the Section 203 application for the acquisition of CDWR's share of Reid Gardner Unit 4 in Docket No. EC13-96 and for the NV Energy Reorganization in Docket No. EC13-113).

³⁹ *See Puget Sound Energy, Inc.*, 135 FERC ¶ 61,254 (2011).

⁴⁰ *See Solomon Affidavit at 27.*

used.⁴¹ Ms. Solomon allocated transmission on a *pro rata* basis, based on relative ownership shares of capacity, such that imports consist of the *pro rata* shares of EC (or AEC) that are economically and physically feasible to deliver to the destination market. Consistent with recent Commission’s guidance,⁴² Ms. Solomon aggregated potential first-tier supply from all sources and assigned a *pro rata* share to that supply.

Price Levels

For the Base Case prices, consistent with Commission guidance, Ms. Solomon relied on the average of two years of historical price data reported in the Electric Quarterly Reports (“EQRs”), segmented into the ten time periods, and adjusted to reflect forecasted fuel prices for 2014.⁴³ Ms. Solomon concludes that the “coverage” of the EQR data is adequate for establishing

⁴¹ See Merger Policy Statement, FERC Stats. & Regs., ¶ 31,044, at 30,133 (“In many cases, multiple suppliers could be subject to the same transmission path limitation to reach the same destination market and the sum of their economic generation capacity could exceed the transmission capability available to them. In these cases, the ATC must be allocated among the potential suppliers for analytic purposes. There are various methods for accomplishing this allocation. Applicants should support the method used.”).

⁴² See *NRG Energy, Inc.*, 141 FERC ¶ 61,207 at P 63 (2012) (“*NRG*”) (stating that applicants should allocate “...uncommitted capacity from an aggregated first tier” consistent with the approach used in studies for market-based rates); *id.* P 63 n.112 (“In Order No. 697, the Commission clarified that *pro rata* allocation is used to assign shares of simultaneous transmission import capability to uncommitted generation capacity in aggregated first-tier BAAs to determine how much uncommitted generation capacity can enter the study area. See also *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 375 & n.361, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh’g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh’g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh’g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff’d sub nom. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011).)

⁴³ See Solomon Affidavit at 23 & n.29 (*citing NRG*, 141 FERC ¶ 61,207, at P 63) & Table 8 (“Base Case Destination Market Prices”).

base case prices.⁴⁴ In addition, Ms. Solomon conducted sensitivity analyses using higher and lower prices⁴⁵ (increasing and decreasing prices by 10 percent).

Year of Analysis

Ms. Solomon performed the market concentration analysis using 2014 market conditions, consistent with the Order No. 642 requirement that the analysis be forward looking.⁴⁶ With respect to new generation, Ms. Solomon only included generation already under construction and expected to be on-line by 2014. With respect to retirements, she excluded units expected to retire during 2014.⁴⁷

Summary of Results

The AEC results for NVE are shown in Table 2 below. As shown, Ms. Solomon calculates that NVE's AEC ranges from zero to about 2,100 MW (in the winter peak season) pre-Transaction, and its market share ranges from zero to 31.5 percent, depending on the season/load period. However, the amount of AEC that PacifiCorp is allocated into the NVE market is relatively small, ranging from zero to 276 MW. MidAmerican's post-Transaction market share ranges from zero to 33 percent, and the HHI changes range from zero to 78 points in an unconcentrated or moderately concentrated market. Thus, the Competitive Analysis Screen is passed, and there is no indication of a horizontal market power concern.

⁴⁴ See Solomon Affidavit at 23 & n.30 (*citing Duke*, 136 FERC ¶ 61,245, at P 126).

⁴⁵ See Solomon Affidavit at 23 & n.31 (*citing Duke*, 136 FERC ¶ 61,245, at P 118).

⁴⁶ Ms. Solomon adjusted relevant data to approximate expected 2014 conditions, including expected load and generation dispatch (*i.e.*, fuel and other variable) costs. See Solomon Affidavit at 24 & Exh. J-5.

⁴⁷ There were no such retirements for Applicants, although as explained above Nevada legislation requires NVE to retire Reid Gardner Units 1-3 by the end of 2014. In addition, PacifiCorp intends to retire Carbon (172 MW) by early 2015, and PacifiCorp's new Lakeside 2 plant (645 MW) is under construction in PACE and expected to be on-line in the summer 2014. Ms. Solomon's analysis also assumes that NVE controls 100 percent of Reid Gardner Unit 4, which it currently owns jointly with CDWR. See *id.* at 24-25.

Table 2: Available Economic Capacity, NVE

Period	Price	Pre-Transaction						Post-Transaction				
		NV Energy		MidAmerican		Market Size	HHI	MidAmerican		Market Size	HHI	HHI Chg
		MW	Mkt Share	MW	Mkt Share			MW	Mkt Share			
S_SP1	\$ 100	85	1.4%	2	0.0%	5,966	535	88	1.5%	5,966	536	0
S_SP2	\$ 60	807	12.1%	39	0.6%	6,687	571	846	12.6%	6,687	585	14
S_P	\$ 43	1,222	17.7%	143	2.1%	6,921	749	1,365	19.7%	6,921	822	73
S_OP	\$ 26	-	0.0%	276	5.0%	5,550	812	276	5.0%	5,550	812	-
W_SP	\$ 47	1,629	26.1%	50	0.8%	6,253	992	1,680	26.9%	6,253	1,034	42
W_P	\$ 43	2,131	31.5%	83	1.2%	6,754	1,222	2,214	32.8%	6,754	1,300	78
W_OP	\$ 27	-	0.0%	24	0.6%	3,877	551	24	0.6%	3,877	551	-
SH_SP	\$ 51	146	2.3%	72	1.1%	6,479	600	218	3.4%	6,479	605	5
SH_P	\$ 38	1,132	15.2%	174	2.3%	7,466	575	1,306	17.5%	7,466	646	71
SH_OP	\$ 23	-	0.0%	-	0.0%	3,815	629	-	0.0%	3,815	629	-

The results for PACE and PACW are shown below. In PACE, PacifiCorp has relatively limited AEC (market share ranging from zero to 16 percent). NVE is allocated zero to 203 MW of supply into PACE. MidAmerican's post-Transaction market share ranges from zero to 19 percent, and the HHI changes are all below 100 points in an unconcentrated market.

Table 3: Available Economic Capacity, PACE

Period	Price	Pre-Transaction						Post-Transaction				
		NV Energy		MidAmerican		Market Size	HHI	MidAmerican		Market Size	HHI	HHI Chg
		MW	Mkt Share	MW	Mkt Share			MW	Mkt Share			
S_SP1	\$ 100	12	0.2%	8	0.1%	5,865	472	20	0.3%	5,865	472	0
S_SP2	\$ 59	126	2.2%	8	0.1%	5,797	443	134	2.3%	5,797	444	1
S_P	\$ 42	140	2.2%	666	10.7%	6,237	534	806	12.9%	6,237	582	48
S_OP	\$ 28	-	0.0%	45	0.8%	5,606	882	45	0.8%	5,606	882	-
W_SP	\$ 46	203	3.4%	683	11.4%	6,004	519	886	14.8%	6,004	596	77
W_P	\$ 39	183	2.9%	992	15.7%	6,304	618	1,175	18.6%	6,304	709	91
W_OP	\$ 25	-	0.0%	66	1.2%	5,686	495	66	1.2%	5,686	495	-
SH_SP	\$ 46	-	0.0%	523	8.7%	5,994	526	523	8.7%	5,994	526	-
SH_P	\$ 36	-	0.0%	1,019	16.2%	6,296	646	1,019	16.2%	6,296	646	-
SH_OP	\$ 21	-	0.0%	-	0.0%	3,526	697	-	0.0%	3,526	697	-

In PACW, PacifiCorp has even less AEC (market share ranging from zero to 5 percent), and NVE is allocated zero to 230 MW of supply into PACW. MidAmerican's post-Transaction market share ranges from zero to 13 percent, and the HHI changes are all below 50 points in an unconcentrated to moderately concentrated market.

Table 4: Available Economic Capacity, PACW

Period	Price	Pre-Transaction						Post-Transaction				
		NV Energy		MidAmerican		Market Size	HHI	MidAmerican		Market Size	HHI	HHI Chg
		MW	Mkt Share	MW	Mkt Share			MW	Mkt Share			
S_SP1	\$ 100	6	0.3%	-	0.0%	2,282	858	6	0.3%	2,282	858	-
S_SP2	\$ 59	43	1.9%	0	0.0%	2,282	829	43	1.9%	2,282	829	0
S_P	\$ 42	55	2.2%	235	9.4%	2,496	850	290	11.6%	2,496	892	42
S_OP	\$ 28	-	0.0%	-	0.0%	2,556	1,013	-	0.0%	2,556	1,013	-
W_SP	\$ 46	98	3.4%	54	1.9%	2,867	720	152	5.3%	2,867	733	13
W_P	\$ 39	138	4.8%	100	3.5%	2,880	650	238	8.3%	2,880	684	33
W_OP	\$ 25	-	0.0%	-	0.0%	3,182	621	-	0.0%	3,182	621	-
SH_SP	\$ 46	-	0.0%	18	0.8%	2,309	922	18	0.8%	2,309	922	-
SH_P	\$ 36	-	0.0%	77	3.3%	2,308	770	77	3.3%	2,308	770	-
SH_OP	\$ 21	-	0.0%	-	0.0%	3,294	749	-	0.0%	3,294	749	-

The results for these three BAAs are similar in the price sensitivity cases (plus 10 percent and minus 10 percent). There are no screen failures. With respect to the Interim Case (stand-alone NEVP and SPPC BAAs), the Competitive Analysis Screen also evidences no screen failures, as demonstrated in the tables below.

Table 5: Available Economic Capacity, NEVP

Period	Price	Pre-Transaction						Post-Transaction				
		NV Energy		MidAmerican		Market Size	HHI	MidAmerican		Market Size	HHI	HHI Chg
		MW	Mkt Share	MW	Mkt Share			MW	Mkt Share			
S_SP1	\$ 100	28	0.6%	2	0.0%	4,892	585	29	0.6%	4,892	585	0
S_SP2	\$ 60	568	10.5%	30	0.5%	5,415	591	597	11.0%	5,415	602	11
S_P	\$ 43	1,040	17.7%	83	1.4%	5,863	773	1,123	19.2%	5,863	824	50
S_OP	\$ 26	-	0.0%	96	2.0%	4,754	1,890	96	2.0%	4,754	1,890	-
W_SP	\$ 47	1,161	25.0%	44	1.0%	4,649	986	1,205	25.9%	4,649	1,034	48
W_P	\$ 43	1,565	31.1%	64	1.3%	5,038	1,272	1,629	32.3%	5,038	1,351	79
W_OP	\$ 27	15	0.5%	14	0.5%	2,813	849	29	1.0%	2,813	850	1
SH_SP	\$ 51	57	1.0%	78	1.4%	5,518	616	136	2.5%	5,518	619	3
SH_P	\$ 38	865	13.8%	140	2.2%	6,249	560	1,005	16.1%	6,249	623	62
SH_OP	\$ 23	-	0.0%	-	0.0%	3,503	1,176	-	0.0%	3,503	1,176	-

Table 6: Available Economic Capacity, SPPC

Period	Price	Pre-Transaction						Post-Transaction				
		NV Energy		MidAmerican		Market Size	HHI	MidAmerican		Market Size	HHI	HHI Chg
		MW	Mkt Share	MW	Mkt Share			MW	Mkt Share			
S_SP1	\$ 100	60	3.3%	-	0.0%	1,815	1,325	60	3.3%	1,815	1,325	-
S_SP2	\$ 60	255	11.1%	7	0.3%	2,291	1,223	262	11.4%	2,291	1,229	6
S_P	\$ 43	243	10.9%	23	1.0%	2,223	1,246	266	12.0%	2,223	1,269	22
S_OP	\$ 26	-	0.0%	45	4.8%	955	875	45	4.8%	955	875	-
W_SP	\$ 47	517	15.7%	9	0.3%	3,294	1,405	526	16.0%	3,294	1,414	8
W_P	\$ 43	655	24.8%	14	0.5%	2,641	1,572	670	25.4%	2,641	1,599	27
W_OP	\$ 27	20	2.2%	-	0.0%	893	765	20	2.2%	893	765	-
SH_SP	\$ 51	150	6.6%	9	0.4%	2,279	1,169	159	7.0%	2,279	1,174	5
SH_P	\$ 38	406	18.0%	21	0.9%	2,256	1,434	427	18.9%	2,256	1,467	33
SH_OP	\$ 23	-	0.0%	-	0.0%	662	1,196	-	0.0%	662	1,196	-

The foregoing results indicate that the NV Energy Utilities’ markets as stand-alone BAAs are relatively more concentrated, with Applicants having relatively higher post-Transaction market shares in NEVP. The Delivered Price Test screens still are readily passed. It also is worth noting that there are a number of reasons that indicate NVE has neither the ability nor incentive to raise market prices in its own market.

Other Evidence Indicating Lack of Market Power

Ms. Solomon also examined other factors that demonstrate the lack of market power concerns and data that confirm the reasonableness of the results of the AEC analysis discussed above.

First, neither Nevada Power nor Sierra Pacific is authorized to sell energy, capacity or ancillary services at market-based rates in their current BAAs, and, after the consolidation of these two BAAs into a single BAA, the two companies (or the NV Energy Operating Company) would not have market-based rate authority in the single BAA.⁴⁸ Likewise, MidAmerican affiliates also will be limited to cost-based sales in NVE’s market or markets post-Transaction.

⁴⁸ The NV Energy Applicants anticipate making necessary filings with the Commission to address the NV Energy Applicants’ current cost-based and market-based rate authority.

Correspondingly, all wholesale and retail sales in the NVE BAA or BAAs would have to be made at cost-based rates regulated by the Commission and/or the PUCN, respectively.⁴⁹

Second, any “profits” from the NV Energy Utilities’ wholesale sales are credited fully to the NV Energy Utilities’ retail and wholesale cost-based customers through a fuel adjustment clause (*i.e.*, the Base Tariff Energy Rate (“BTER”)) such that shareholders do not profit from sales at higher prices (which, in any event, cannot be induced by any theoretical exercise of market power because of the NV Energy Utilities’ lack of market-based rate authority in Nevada).⁵⁰

Third, Ms. Solomon concludes that NVE lacks the incentives for higher market prices because it is a significant net buyer of energy. Ms. Solomon calculates that 35 to 50 percent of Nevada Power’s and Sierra Pacific’s energy was derived from purchased power (both long- and short-term purchases) in 2011-2012. By comparison, PacifiCorp’s purchased power represented only about 20 percent of its energy supply.⁵¹

Ms. Solomon’s analysis of historical sales indicates that the overwhelming share of power sold from generation controlled by both PacifiCorp and the NV Energy Utilities is used to serve their retail and wholesale requirements customers. Retail sales alone accounted for 75-90

⁴⁹ See Solomon Affidavit at 34.

⁵⁰ Under the Nevada Administrative Code, the BTER is determined based on the cost of fuel for electric generation and purchased power, reduced by any revenue from off-system sales at cost-based rates for the test period (the prior twelve-month calendar period). Revenues from off-system sales thus provide a credit that offsets fuel and purchased power expenditures paid by the NV Energy Utilities’ retail and wholesale cost-based customers. When one of the NV Energy Utilities makes an off-system sale, any margin associated with the sale reduces the cost of fuel and purchased power, which in turn, reduces electric rates. This ensures that the NV Energy Utilities’ cost-based customers receive any financial benefit associated with off-system sales. The treatment of off-system sales is governed by Nev. Rev. Stat. § 704.187(1) and Nev. Admin. Code § 704.035. See Solomon Affidavit at 34 & n.52.

⁵¹ See *id.* at 34 & Exh. J-12.

percent of each utility's total sales in 2011 and 2012.⁵² Moreover, there is little competition between PacifiCorp and the NV Energy Utilities for sales to third parties in any geographic market. Nevada Power has no wholesale requirements customers in Nevada, and Sierra Pacific has only one full requirements customer, Liberty Electric (formerly known as California Pacific Electric Company), which is the retail distribution company that purchased Sierra Pacific's California retail distribution system in 2011.⁵³

In addition, Ms. Solomon finds that there is little competitive overlap between PacifiCorp and the NV Energy Utilities for sales to third parties in any geographic market.⁵⁴ For the 2011-12 period, EQR data indicate that there was only one additional point of delivery into which both PacifiCorp and NVE each had more than a *de minimis* level of short-term sales, namely Mead. Mead is a liquid trading point for the Southwest area of WECC, and Applicants' share of sales at Mead is small relative to total sales. There also was only one customer, a marketer (Citigroup), for which both PacifiCorp (the equivalent of 121 MW round-the-clock) and NVE (the equivalent of 11 MW around-the-clock) each had more than a *de minimis* level of short-term sales.⁵⁵

2. The Transaction Presents No Vertical Market Power Concerns.

In Order No. 642, the Commission set out several vertical market power issues potentially arising from mergers with input suppliers. The principal issue identified is whether the merger may create or enhance the ability of the merged firm to exercise market power in downstream electricity markets by control over the supply of inputs used by rival producers of

⁵² See *id.* at 34-35 & Exh. J-12.

⁵³ See *id.* See also *Sierra Pacific Power Co.*, Docket No. ER10-1719-000 (Aug. 24, 2010) (unreported) (letter order accepting power purchase agreement with California Pacific Electric Company).

⁵⁴ See Solomon Affidavit at 35.

⁵⁵ See *id.*

electricity. Three potential abuses have been identified: the upstream entity acts to raise rivals' costs or foreclose them from the market in order to increase prices received by the downstream affiliate; the upstream entity acts to facilitate collusion among downstream entities; or transactions between vertical affiliates are used to frustrate regulatory oversight of the cost/price relationship of prices charged by the downstream electricity supplier.⁵⁶

The Commission has expressed its concern regarding vertical market power in three primary contexts: (1) “convergence mergers” between electric utilities and natural gas pipelines that “may create or enhance the incentive and/or ability for the merged firm to adversely affect prices and output in the downstream electricity market and to discourage entry by new generators;”⁵⁷ (2) mergers involving owners of electric transmission facilities that may use those facilities to benefit their electric generation facilities; and (3) mergers involving the ownership of other inputs to the generation of electricity. None of those concerns are raised here, as Ms. Solomon and Dr. Morris explain in detail.

a) No Potential for Abuse of Market Power in the Market for Delivered Fossil Fuel.

Similar to the screening methodology of the Delivered Price Test for the horizontal effects of a merger, the Commission has articulated a screening methodology to identify when a particular transaction might present vertical market power issues, which is set forth in Section 33.4 of its regulations.⁵⁸ As discussed briefly below and in more detail in the Morris Affidavit, the Transaction presents no vertical market power concerns with regard to fuel inputs. The Commission requires applicants to consider both the “downstream” market for electric

⁵⁶ See Order No. 642, FERC Stats. & Regs. ¶ 31,111, at 31,904.

⁵⁷ *Id.*

⁵⁸ 18 C.F.R. § 33.4 (2013).

generation and the “upstream” market for fuel supply or transportation. Under the Commission’s methodology, for a merger to raise vertical market power issues, it is necessary for both the upstream fuel supply/transportation and downstream electric generation markets to be highly concentrated.⁵⁹ As is the case for the Commission’s horizontal market power analysis, the HHI must be 1,800 or above for the Commission to conclude that the market is highly concentrated.

Downstream Product and Geographic Markets

The downstream market for electric generation is defined in the same way for the Commission’s vertical market power analysis as it is for the Commission’s horizontal market power analysis. Thus, the downstream product market is the market for electric generation.

The Commission defines the relevant geographic market for electric generation in the same way for both the horizontal and vertical market power analysis. Thus, the relevant geographic markets for the downstream electric generation markets are each of the Applicants’ three BAAs and other BAAs in the WECC region.

Upstream Product and Geographic Markets

With respect to the upstream market, Dr. Morris notes that the Commission’s primary concern in mergers of electric utilities with upstream suppliers is that “the merged firm would be able to adversely affect competition in downstream [wholesale electric power] markets.”⁶⁰ Hence, he concludes that it is necessary to consider fuel supplies that would affect downstream electricity prices and competition in the electric power markets that the merged entity might control after the acquisition.

⁵⁹ See Order No. 642, FERC Stats. & Regs. ¶ 31,311, at 31,911; *Energy East Corp.*, 96 FERC ¶ 61,322, at 62,227 (2001).

⁶⁰ *Dominion Resources, Inc. and Consol. Natural Gas Co.*, 89 FERC ¶ 61,162, at 61,477 (1999).

Because MidAmerican and its affiliates own both natural gas (*i.e.*, Kern River) and coal delivery (*i.e.*, BNSF) infrastructure, Dr. Morris has defined the upstream product market to be the market for “delivered fossil fuel,” which includes all fuel sources (*i.e.*, natural gas and oil delivered by pipelines and coal delivered by rail).⁶¹ In addition to the fact Applicants’ affiliates supply more than one type of fuel, Dr. Morris highlights two additional factors that indicate that fossil fuels should be considered the relevant upstream product market.

First, based on his analysis of recent changes in relative prices and changes in fuel consumption, Dr. Morris concludes that coal and natural gas compete for electric power generation during almost all load conditions. This analysis indicates that, as coal becomes less expensive relative to natural gas, its consumption increases substantially.⁶²

Second, raising the cost of coal by itself would be unlikely to have any appreciable effect on downstream electric power prices.⁶³ The vast majority of the year a combination of coal and gas-fired generation would be on the margin competing to supply additional electricity. Hence, Dr. Morris concludes that coal suppliers would have little ability to raise electric power prices apart from an increase in natural gas prices.⁶⁴

⁶¹ See Morris Affidavit at 13. Because oil accounts for less than 0.5 percent of the fossil fuel used in WECC for electric generation, Dr. Morris has concluded that oil is not of competitive significance and does not discuss it further. See *id.*

⁶² See *id.* at 14-16 & Figure 1.

⁶³ See *id.* at 15-16.

⁶⁴ According to Dr. Morris, this is because coal-fired generation is either low-cost infra-marginal generation or it competes with gas-fired generation with similar costs. Where coal-fired generation is infra-marginal, raising delivered coal costs would not affect downstream electric power prices because the coal-fired generation is not setting electric power prices. Where higher-cost coal-fired generation competes directly with natural gas, raising coal-fired generation cost would simply result in gas-fired generation replacing the coal-fired generation. Thus, once again, coal suppliers would not have the ability to raise electric power prices independently of those controlling gas-fired generation. See *id.* at 16.

With respect to the upstream geographic market, Dr. Morris acknowledges that defining the relevant geographic market is difficult, and notes certain facts suggesting that the upstream geographic markets for delivered fossil fuel may be substantially larger than one might expect. First, capacity rights holders to downstream delivery zones on interstate natural gas pipelines may use their capacity rights to deliver gas within a broad upstream zone, which limits potential price discrimination over very large areas because capacity right holders shift deliveries to locations that place the highest value on that gas.⁶⁵ Second, fuel suppliers that also own electric generation face competition from generators in other markets that can compete with the supplier “over the wires.”⁶⁶

Based on these considerations, Dr. Morris performed a competitive analysis in which he assumed that each of the Applicants’ BAAs and each first-tier BAA (for a total of 13 BAAs) is a relevant upstream geographic market.⁶⁷ In addition, he performed an analysis assuming that the upstream geographic market is WECC as a whole.

Concentration Analysis

The Commission requires merger applicants to provide a market concentration analysis of both the upstream fuel supply/transportation and downstream electric generation markets. In

⁶⁵ See *id.* at 18-19.

⁶⁶ For example, if fuel prices rose at location A, generators at location B, unaffected by the fuel price increase, would seek to displace sales of fuel at A by consuming more fuel at B and transmitting the electric energy to A. See *id.* at 19.

⁶⁷ One first-tier BAA, Grant County Public Utility District, has neither coal-fired nor gas-fired generation supplying wholesale markets. Accordingly, Dr. Morris did not calculate the concentration of fossil fuel suppliers for this BAA.

the upstream market analysis, Applicants identify the relevant products, relevant geographic markets, suppliers, the size of the suppliers, market shares, and the HHI.⁶⁸

With respect to the upstream market concentration analysis, the Commission has accepted analyses in which firm shippers on interstate pipelines with long-term contracts are treated as suppliers in the upstream markets.⁶⁹ Dr. Morris explains that this is appropriate for four reasons. First, the Commission's regulations give firm shippers the flexibility to change receipt or delivery points so that firm shippers can receive and deliver gas at any point within the firm capacity rights of its contract path.⁷⁰ Second, the Commission's regulations allow firm shippers to segment their capacity, which allows shippers to deliver to any location along their contract path.⁷¹ Third, the Commission's regulations permit firm shippers to release their capacity to third parties, which permits firm shippers to compete with the pipeline in offering new capacity to prospective new shippers in the short-run.⁷² Fourth, firm shippers typically have rights to maintain their capacity on the pipeline when they are willing to sign long-term contracts, and therefore may keep their capacity for the indefinite future.⁷³

⁶⁸ In the downstream market analysis, applicants are to identify the relevant electric power products, relevant geographic markets, suppliers, the capacities of the suppliers, market shares, and the HHI. This downstream analysis is done similarly to the Delivered Price Test horizontal analysis with two major differences. First, in the downstream vertical analysis the ownership of capacities of generation units supplied with the relevant products is attributed to the upstream supplier rather than the actual owner of the capacity. Second, the downstream analysis only considers the post-transaction HHI and not the HHI changes. As discussed below, Dr. Morris's analysis indicated that the upstream market was not highly concentrated. Consequently, Dr. Morris did not conduct an analysis of the downstream market.

⁶⁹ See, e.g., *Exelon Corp., Constellation Energy Group, Inc.*, 138 FERC ¶ 61,167 at PP 109-113 (2012) ("*Exelon*"); *MidAmerican Energy Holdings Co.*, 113 FERC ¶ 61,298 at PP 35, 39 (2005); *El Paso Energy Corp., Coastal Corp.*, 92 FERC ¶ 61,076, at 61,331-32 (2000).

⁷⁰ See Morris Affidavit at 20.

⁷¹ See *id.*

⁷² See *id.* at 20-21.

⁷³ See *id.* at 21.

The Commission has accepted a different approach with respect to coal suppliers. Dr. Morris explains that, for fossil fuel supplies delivered by railroads, the railroad, rather than the coal supplier, is treated as the “supplier” of the fossil fuel for the purposes of the Commission’s vertical market power analysis. This is because railroads, unlike Commission-regulated interstate pipelines, are not subject to the Commission’s regulations regarding flexible delivery and receipt points, segmentation and capacity release. Dr. Morris notes that about one-third of the capacity of coal-fired plants in WECC is near coal mines and receives coal supplies via conveyor, truck, or proprietary short-line railroads. For these coal supplies, the mine owner (or operator) is considered the supplier for the coal supplies.⁷⁴

Summary of Results

Dr. Morris’s preliminary analysis indicates that the upstream market for delivered fossil fuel is generally not highly concentrated. HHI is below 1,800 in all potential geographic markets save one, in particular the NVE, PACE, and PACW BAAs. The one exception is the NorthWestern Energy BAA. This market is not affected by the Transaction. The high concentration in the NorthWestern Energy BAA represents a pre-Transaction condition that is unrelated to the Applicants.

⁷⁴ According to Dr. Morris, although the plant owners likely have long-term supply contracts with the mines, the plant owners likely do not have the ability to resell the coal supplies to other electric generators when railroad service is not close to either the plant or the mine. In addition, with reimbursable cost-based contracts the mine owners may have the ability to raise fossil fuel costs, despite the presence of the long-term contracts, by artificially inflating costs. *See id.* 21.

**Summary of Upstream Fossil Fuel Supply HHIs in WECC:
Applicants' BAAs, First-Tier BAAs, and the WECC Region⁷⁵**

Area	HHI
Arizona Public Service	841
Avista	1,257
Bonneville Power Administration	745
California ISO	597
Idaho Power	1,174
Los Angeles Dept. of Water and Power	1,157
NorthWestern Energy	5,537
NVE	1,038
PacifiCorp East	467
PacifiCorp West	632
Portland General Electric	1,190
WAPA - Rocky Mountain	391
WAPA - Lower Colorado River	619
WECC	282

As noted above, under the Commission's standards, both the upstream and downstream market must be highly concentrated to give rise to vertical market power concerns. Because his analysis indicates that the upstream market is not highly concentrated, Dr. Morris concludes that the combined firm would not have the ability to exercise vertical market power.⁷⁶

In addition, Dr. Morris analyzes long-run competition and entry conditions in the upstream market. Dr. Morris concludes that Applicants do not have market power in this market

⁷⁵ See *id.* at 6 and Table 1.

⁷⁶ Dr. Morris calculates that the NorthWestern Energy BAA is highly concentrated, with an HHI of 5,537. As Dr. Morris explains, this high level of concentrations is not due to any assets owned by the Applicants. Instead, the high level of concentration is primarily due to the Rosebud mine that is owned by Westmoreland Coal Company and that supplies the Colstrip generation facility, which is owned by six different owners stretching from western Washington and Oregon to Wyoming. Hence, coal supplies to the facility are comparatively large for this BAA. The MidAmerican share of upstream fossil fuel supplies to the NorthWestern Energy area is only 6.4 percent. All of the market shares in this BAA will be the same both pre- and post-Transaction. According to Dr. Morris, this indicates that the highly concentrated market has nothing to do with the proposed Transaction; rather, it is a pre-existing condition unrelated to the Applicants and would be unaffected by the Transaction. See *id.* at 25-26.

either because: natural gas pipelines and railroads each have strong incentives to compete to supply new and existing gas- and coal-fired generating facilities, respectively;⁷⁷ regulations in place give interstate pipelines and railroads the incentive to expand capacity whenever it is efficient to do so;⁷⁸ and new entry, or the threat of new entry, is sufficiently timely and likely to prevent or eliminate any potential competitive harm that might result from the Transaction.⁷⁹

But even assuming hypothetically that the combined firm did have the ability to exercise vertical market power, which it does not, the Transaction itself provides no incentive to exercise vertical market power, for two reasons. First, Nevada state law provides that net benefits from off-system sales accrue to the NV Energy Utilities' retail and wholesale cost-based customers, and not to NVE shareholders.⁸⁰ Therefore, if the combined entity attempted to exercise vertical market power, there would be no additional gains to the combined firm.⁸¹ Second, even if such state law requirement did not exist, the Transaction actually decreases the incentive for an exercise of market power because the NV Energy Utilities are typically significant net buyers of

⁷⁷ *See id.* at 26-27.

⁷⁸ *See id.* at 27-28.

⁷⁹ *See id.* at 29-31.

⁸⁰ *See id.* at 32-33. *See also* Nevada Administrative Code § 704.032.1 (“For an electric utility, the rate [is] determined by dividing the cost of fuel for electric generation and purchased power, reduced by any revenue from off-system sales for the test period, by the total megawatt-hours that have been sold, exclusive of off-system sales, for the test period...”).

⁸¹ Dr. Morris further explains that MidAmerican currently has little incentive to exercise vertical market power prior to the Transaction because each of the six states in which PacifiCorp provides retail service requires that retail customers receive the majority of the benefits from off-system sales (ranging from 70 percent in Utah and Wyoming to 100 percent in California). As a result of this state rate regulation, MidAmerican would keep only a fraction the theoretical gains from raising fossil fuel supply costs. Because all the benefits of the NV Energy Utilities' off-system sales are transferred to the NV Energy Utilities' cost-based customers, Dr. Morris concludes that the Transaction would have no impact on the incentives of PacifiCorp, Kern River, or BNSF to exercise vertical market power. *See* Morris Affidavit at 35-36.

electric power and not net sellers.⁸² As a result, the combined entity would actually have less incentive to exercise market power than MidAmerican might theoretically have prior to the Transaction.⁸³

b) No Potential for Abuse of Transmission Market Power.

As discussed in the Solomon Affidavit, the Transaction presents no vertical market power concerns with regard to transmission, because all of the merger parties' transmission assets and transmission service thereunder is pursuant to Commission-approved OATTs. All of MidAmerican Energy's transmission assets are under the operational control of MISO. Moreover, PacifiCorp and the NV Energy Utilities provide transmission service pursuant to the Commission-approved PacifiCorp and NV Energy OATTs, respectively. As a result, Ms. Solomon concludes that the Transaction does not increase in any respect the ability of the Applicants to use their ownership or control of transmission facilities to give themselves a competitive advantage in energy markets.⁸⁴

c) No Potential for Abuse of Market Power with Respect to Other Inputs to the Generation of Electricity.

With respect to other inputs to electricity, Applicants and their affiliates do not own any sites for generation development or any other inputs to electricity production that would allow them to erect barriers to entry to new generation.⁸⁵ The Transaction therefore does not raise any vertical market power issues with respect to such other inputs to the generation of electricity.

⁸² See *id.* at 33-35 & Table 2 ("NVE Net Sales, 2008-2012 (MWh)") & Table 3 ("NVE Net Short-Term Sales, 2008-2012 (MWh)").

⁸³ See *id.* at 33.

⁸⁴ See Solomon Affidavit at 36.

⁸⁵ See *id.* at 37.

B. The Transaction Will Not Have an Adverse Effect on Rates.

In considering the impacts of a merger on rates, the Commission looks primarily at impacts on transmission rates and on rates for captive long-term wholesale requirements customers. The Applicants are willing to make commitments to ensure that the Transaction will not have an adverse effect on wholesale rates. Specifically, the Applicants commit for a period of five years to hold harmless wholesale requirements and transmission customers from the costs of the Transaction. For that five-year period, the Applicants will not seek to include merger-related costs in their transmission revenue requirements or in their wholesale requirements rates, except to the extent they can demonstrate that merger-related savings are equal to or in excess of the transaction-related costs included in the rate filing. The Commission has approved this type of commitment in its Merger Policy Statement and in a number of subsequent cases.⁸⁶

The Commission has full authority to monitor the Applicants' hold harmless commitment.⁸⁷ If the Applicants seek to recover transaction-related costs through their wholesale power or transmission rates, they will submit a compliance filing that details how they are satisfying the hold harmless commitment. Moreover, the Applicants will comply with the Commission's directive in other proceedings involving a similar hold harmless commitment:

⁸⁶ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044, at 30,124. *See also Ameren Corp.*, 108 FERC ¶ 61,094 at PP 62-68 (2004); *Great Plains*, 121 FERC ¶ 61,069, at P 48 & n.63 (citing cases).

⁸⁷ *See, e.g., ITC Midwest LLC*, 133 FERC ¶ 61,169 at P 24 (2010).

If Applicants seek to recover transaction-related costs in an existing formula rate that allows for such recovery, then that compliance filing must be filed in the section 205 docket in which the formula rate was approved by the Commission, as well as the instant section 203 docket.* We also note that, if Applicants seek to recover transaction-related costs in a filing whereby they are proposing a *new* rate (either a new formula rate or a new stated rate), then that filing must be made in a *new* section 205 docket as well as in the instant section 203 docket.** The Commission will [] notice such filings for public comment. In such a filing, Applicants must: (1) specifically identify the transaction-related costs they are seeking to recover, and (2) demonstrate that those costs are exceeded by the savings produced by the transaction, in addition to any requirements associated with filings made under section 205. Such a hold harmless commitment will protect customers' wholesale power and transmission rates from being adversely affected by the proposed transaction.⁸⁸

* In this case the filing would be a compliance filing in both the section 203 and 205 dockets.

** In this case the filing would be a compliance filing in the section 203 docket, but a rate application in the section 205 docket.

C. The Transaction Will Not Impair the Effectiveness of Regulation.

Although the Commission requires merger applicants to evaluate the effect of a proposed transaction on regulation, both at the federal and state level, the Commission indicated in Order No. 642 that it would not ordinarily set a merger application for hearing with respect to the impact on regulation unless: (a) the proposed transaction involves public utility subsidiaries of a registered holding company under the Public Utility Holding Company Act of 1935 (“PUHCA 1935”) and the relevant applicants do not commit to abide by the Commission’s policies on pricing of non-power goods and services between affiliates, or (b) the affected state commissions lack authority over the proposed transaction and raise concerns about the effect on state regulation.⁸⁹ Neither of these concerns is raised by this Application.

⁸⁸ *Id.* at P 25. See also *Exelon*, 138 FERC ¶ 61,167, at P 120; *Duke*, 136 FERC ¶ 61,245, at P 170; *FirstEnergy Corp.*, *Allegheny Energy, Inc.*, 133 FERC ¶ 61,222 at P 63 (2010).

⁸⁹ See Order No. 642, FERC Stats. & Regs. ¶ 31,111, at 31,914-15.

The first requirement in the Merger Policy Statement no longer is applicable since the repeal of PUHCA 1935. Moreover, each of the public utility subsidiaries of MidAmerican and NVE will remain jurisdictional public utilities subject to regulation by the Commission after the Transaction closes to the same extent each was regulated before the closing of the Transaction. As a result, there will be no impact on the Commission’s jurisdiction due to the Transaction.

Nor does the Transaction have effects on state regulation that need to be addressed by the Commission. The PUCN has the authority and will review the effect of the Transaction on its jurisdiction and thus, under the Merger Policy Statement, the Commission does not consider the effect of the Transaction on the PUCN.⁹⁰

D. The Transaction Will Not Result in Cross-Subsidization or the Pledge or Encumbrance of Utility Assets as to Any Associate Company.

Pursuant to Section 203(a)(4) of the FPA,⁹¹ the Commission “shall approve” a proposed transaction “if it finds that the proposed transaction ... will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless ... the cross-subsidization, pledge, or encumbrance will be consistent with the public interest.”

In Order Nos. 669, 669-A and 669-B, the Commission identified a four-factor test that applicants must satisfy in order to address the concerns identified in Section 203 regarding any possible cross-subsidization, pledge or encumbrance of utility assets associated with the

⁹⁰ See Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044, at 30,125.

⁹¹ 16 U.S.C. § 824b(a)(4) (2006).

proposed transaction.⁹² Under this test, the Commission examines whether a proposed transaction, at the time of the transaction or in the future, results in:

- (1) transfers of facilities between a traditional utility associate company with wholesale or retail customers served under cost-based regulation and an associate company;
- (2) new issuances of securities by traditional utility associate companies with wholesale or retail customers served under cost-based regulation for the benefit of an associate company;
- (3) new pledges or encumbrances of assets of a traditional utility associate company with wholesale or retail customers served under cost-based regulation for the benefit of an associate company; and
- (4) new affiliate contracts between non-utility associate companies and traditional utility associate companies with wholesale or retail customers served under cost-based regulation, other than non-power goods and services agreements subject to review under Sections 205 and 206 of the FPA.⁹³

In Exhibit M the Applicants demonstrate, based on facts and circumstances known to them or that are reasonably foreseeable, that the Transaction will not result in any of the above-outlined transfers of facilities, issuances or securities, pledges or encumbrance of assets or other agreements. Exhibit M also contains, as required by Section 33.2(j)(1)(i) of the Commission's regulations,⁹⁴ a listing of the existing pledges and encumbrances of the Applicants' regulated utilities (the "Regulated Companies").

IV. INFORMATION REQUIRED BY THE COMMISSION'S REGULATIONS

In support of this Application, the following information is provided as required by Section 33.2 of the Commission's regulations.⁹⁵ In addition, because this Application includes a

⁹² Order No. 669, FERC Stats. & Regs. ¶ 31,200, at P 169; Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, at P 144.

⁹³ 18 C.F.R. § 33.2(j)(1)(ii) (2013).

⁹⁴ 18 C.F.R. § 33.2(j)(1)(i) (2013).

⁹⁵ 18 C.F.R. § 33.2 (2013).

Competitive Analysis Screen, Applicants are submitting, as part of Ms. Solomon's workpapers, the information required under Section 33.3 of the Commission's regulations.⁹⁶

A. Section 33.2(a) – The Exact Name of the Applicants and Their Principal Business Addresses

The exact legal names of the NV Energy Applicants are NV Energy, Inc., Nevada Power Company and Sierra Pacific Power Company. The address of the principal business office for each is:

NV Energy, Inc.
6100 Neil Road
Reno, NV 89511

Nevada Power Company d/b/a/ NV Energy
6226 West Sahara Avenue
Las Vegas, NV 89146

Sierra Pacific Power Company d/b/a NV Energy
6100 Neil Road
Reno, NV 89511

The exact legal name and address of Silver Merger Sub, Inc. is:

Silver Merger Sub, Inc.
666 Grand Avenue, Suite 500
Des Moines, IA 50309-2580

B. Section 33.2(b) – Names and Addresses of Persons Authorized to Receive Notices and Communications Regarding the Application

Applicants request that the names of the following persons be placed on the official service list compiled by the Secretary in this proceeding:

⁹⁶ 18 C.F.R. § 33.3(d) (2013).

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C. Section 33.2(c) – Description of the Applicants

1. Exhibit A – Description of the Applicants’ Business Activities

Descriptions of Applicants’ business activities are provided above in Section I and in Exhibits A-F of this Application.

2. Exhibit B – List of Energy Subsidiaries and Affiliates

Descriptions of Applicants’ energy subsidiaries and affiliates are provided in Section I and in Exhibit B to this Application.

3. Exhibit C – Organizational Charts

Organizational charts depicting Applicants’ current and post-Transaction structures are included as Exhibit C.⁹⁷

4. Exhibit D – Description of Joint Ventures, Strategic Alliances, Tolling Arrangements or Other Business Arrangements

Descriptions of Applicants’ joint ventures, strategic alliances, tolling agreements or other business arrangements of Applicants in the United States are provided in Exhibit D. Applicants have not provided descriptions of their joint ventures, strategic alliances, tolling agreements or other business arrangements outside of the United States because these business arrangements are not relevant to the Transaction.

5. Exhibit E – Identity of Common Officers

There are currently no common officers or directors shared between Merger Sub and its affiliates, on the one hand, and the NV Energy Applicants and their affiliates, on the other hand. Following the consummation of the Transaction, there may be common officers or directors shared between MidAmerican and the NV Energy Applicants and certain of their parents and

⁹⁷ The organizational chart in Exhibit C-1 reflects the NV Energy Applicants’ current structure in which Nevada Power and Sierra Pacific are separate companies. As discussed above, the NV Energy Applicants have submitted an application, in Docket No. EC13-113, for Commission approval of the NV Energy Reorganization, which is an internal corporate reorganization to merge Sierra Pacific into Nevada Power resulting in a single company that will be called the NV Energy Operating Company. In the NV Energy Reorganization Application, the NV Energy Applicants have submitted a chart that presents what the organizational structure of the NV Energy Applicants will be after consummation of that transaction. *See* NV Energy Reorganization Application, Exh. C. If the NV Energy Reorganization is consummated before the instant Transaction, then that chart will represent the pre-Transaction organizational structure of the NV Energy Applicants.

affiliates. To the extent this results in individuals holding covered interlocking positions with public utilities, appropriate filings will be made as necessary pursuant to Parts 45 and Part 46 of the Commission's regulations.⁹⁸

6. Exhibit F – Wholesale Power Sales and Transmission Customers

Lists of Applicants' wholesale power sales, including sales at cost-based rates, and unbundled transmission customers in the United States are provided in Exhibit F and Ms. Solomon's workpapers. A complete list of the customers to whom Applicants make wholesale power sales is provided in the EQR data that is included as part of Ms. Solomon's workpapers. Applicants have not provided information regarding their wholesale power sales and unbundled transmission customers outside of the United States because these customers are not relevant to the Transaction.

D. Section 33.2(d) – Description of Jurisdictional Facilities

A description of Applicants' jurisdictional facilities is provided in Section I above and in the Solomon Affidavit included as Exhibit J.

E. Section 33.2(e) – Description of the Transaction

A description of the Transaction has been provided above in Section II and in Exhibit H.

F. Section 33.2(f) – All Contracts Related to the Transaction

A copy of the Merger Agreement is provided in Exhibit I. In accordance with Section 388.112 of the Commission's regulations,⁹⁹ Applicants seek privileged treatment of the exhibits and schedules to the Merger Agreement.

⁹⁸ 18 C.F.R. Pts. 45 and 46 (2013).

⁹⁹ 18 C.F.R. § 388.112 (2013).

G. Section 33.2(g) – Facts Relied upon to Show that the Transaction is Consistent with the Public Interest

The facts relied upon by Applicants to show that the Transaction is consistent with the public interest are set forth above in Section III and in the Solomon and Morris Affidavits included in Exhibit J. Applicants will supplement this Application promptly to reflect in its analysis any material changes that may occur after the date this filing is made with the Commission, but before final Commission action.

H. Section 33.2(h) – Map of Physical Property

Applicants have provided in Exhibit K maps of the service territories, jurisdictional assets and properties of the NV Energy Applicants, PacifiCorp, and MidAmerican Renewables.

I. Section 33.2(i) – Licenses, Orders, or Other Approvals Required from Other Regulatory Bodies in Connection with the Proposed Transaction and the Status of Other Regulatory Actions

Applicants identify all licenses, orders, and other approvals required in connection with the Transaction in Exhibit L. In accordance with Section 33.2(i) of the Commission’s regulations,¹⁰⁰ Applicants will supplement this Application with copies of any orders pertaining to the Transaction that may issue while this Application is pending.

J. Section 33.2(j) – Explanation that the Transaction Will Not Result in Cross-Subsidization or the Pledge or Encumbrance of Utility Assets as to any Associate Company

Applicants provide the required verification in Exhibit M.

V. PROPOSED ACCOUNTING ENTRIES

Applicants do not intend to reflect any aspect of the Transaction on the books of any Applicant that is required to keep its books in accordance with the Commission’s Uniform

¹⁰⁰ 18 C.F.R. § 33.2(i) (2013).

System of Accounts and therefore there are no *pro forma* accounting entries to provide. If, however, the Transaction were to impact the books of any such entity, Applicants will submit the required accounting entries within six months of the consummation of the Transaction.

VI. VERIFICATIONS

Pursuant to Section 33.7 of the Commission’s regulations,¹⁰¹ signed verifications by Applicants’ authorized representatives are included as Attachment 1.

VII. REQUEST FOR CONFIDENTIAL AND CEII TREATMENT

In accordance with Section 388.112 of the Commission’s regulations,¹⁰² Applicants seek privileged treatment for the exhibits and schedules to the Merger Agreement and for certain workpapers underlying the market power analysis in the Solomon Affidavit, which contain confidential information and Critical Energy Infrastructure Information (“CEII”). Consistent with the provisions of Section 33.9 of the Commission’s regulations,¹⁰³ Applicants have included herein a draft protective order for use in this proceeding in Attachment 2 hereto.

The exhibits and schedules to the Merger Agreement contain highly sensitive commercial and financial information that is privileged and confidential and not publicly available. Applicants are submitting public and non-public versions of this Application in which the non-public materials are marked “Contains Privileged Material” and “Do Not Release.”

Applicants also seek privileged treatment for certain of the workpapers underlying the market power analysis in the Solomon Affidavit. The workpapers incorporate a proprietary model and confidential, commercially sensitive data, the public disclosure of which could

¹⁰¹ 18 C.F.R. § 33.7 (2013).

¹⁰² 18 C.F.R. § 388.112 (2013).

¹⁰³ 18 C.F.R. § 33.9 (2013).

competitively harm Applicants or their affiliates. In addition, Ms. Solomon's workpapers include CEII data supporting the SIL studies used in Ms. Solomon's market power analysis. Applicants are concurrently submitting, under a separate cover letter, three CD-ROMs: (1) one CD-ROM with the public workpapers used to support Ms. Solomon's analysis; (2) one CD-ROM containing the confidential information underlying that analysis, which is marked "Contains Privileged Information – Do Not Release"; and (3) one CD-ROM with the CEII used in the analysis, which is marked "CEII Materials – Do Not Release."

VIII. CONCLUSION

For the reasons set forth in this Application, Applicants respectfully request that the Commission issue an order approving this Application by no later than ***December 19, 2013***.

Respectfully submitted,

By: /s/
John R. Lilyestrom
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Columbia Square
555 Thirteenth Street, NW
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Power Company and Sierra Pacific
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Washington, DC 20036

Counsel for Silver Merger Sub, Inc.

Dated: July 12, 2013

Exhibit A: Business Activities of Applicants

The business activities of Applicants are further described in Section I of this Application and in the Solomon Affidavit included as Exhibit J.

Exhibit B: List of Energy Subsidiaries and Affiliates

NV Energy Applicants

A list of the NV Energy Applicants energy subsidiaries and affiliates is provided in Exhibit B-1.

MidAmerican

A list of the energy subsidiaries and affiliates of Merger Sub is provided in Exhibit B-2.

EXHIBIT B-1: NV Energy Applicants Energy Affiliates and Subsidiaries

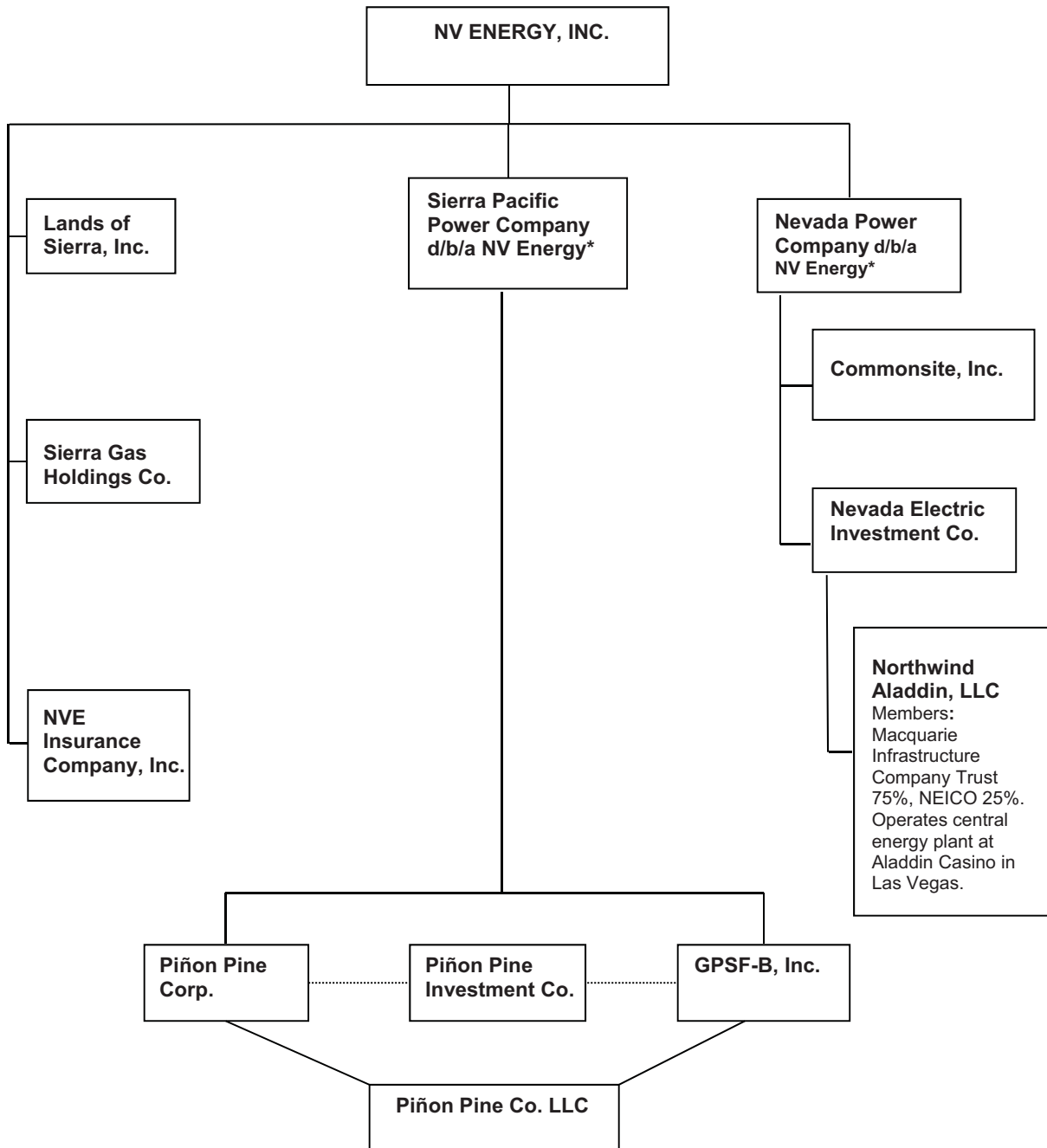
NV Energy, Inc. has three wholly-owned non-energy subsidiaries, Lands of Sierra, Inc., Sierra Gas Holdings Co., and NVE Insurance Company, Inc. Lands of Sierra is engaged in land development and sales. Sierra Gas Holdings Company is an inactive corporation that holds several minor passive interests in a few oil and gas operating leaseholds. NVE Insurance Company, Inc. is a captive insurance company.

Nevada Power has two wholly-owned non-energy subsidiaries, Commonsite, Inc., and Nevada Electric Investment Company (“NEICO”). Commonsite owns the land upon which Reid Gardner Unit 4 is built. NEICO is a 25% member of Northwind Aladdin, LLC, a special purpose entity formed to develop district heating and cooling systems in downtown Las Vegas.

Sierra has three wholly-owned, inactive, special purpose subsidiaries: GPSF-B, Inc., Piñon Pine Corporation, and Piñon Pine Investment Company. Collectively these entities own the Piñon Pine Company, LLC, which was formed to utilize federal income tax credits associated with the alternative fuel (syngas) that was to have been produced by the coal gasifier located at the Piñon Pine facility.

An organizational chart depicting the above-described ownership structures is below.

NV ENERGY, INC. ORGANIZATION CHART



*does business as NV Energy in its Nevada service territory

Exhibit B-2: MidAmerican Energy Affiliates and Subsidiaries

Entity Name	Ownership	
	Interest	Business Purpose
AC Solar Holdings LLC	49%	Holding Company
Agua Caliente Solar Holdings LLC	100%	Holding Company
Agua Caliente Solar, LLC	49%	Own and operate solar generation facility
Alaska Gas Pipeline Company, LLC	48%	Own and operate natural gas pipeline
Alaska Gas Transmission Company, LLC	100%	Holding company
Alaska Storage Holding Company, LLC	27%	Holding company
Solar Star Funding, LLC	100%	Funding Company
SSC XIX, LLC	100%	Own and operate solar generation facility
SSC XX, LLC	100%	Own and operate solar generation facility
Solar Star 3, LLC	100%	Own and operate solar generation facility
Solar Star Projects Holding, LLC	100%	Holding Company
Big Spring Pipeline Company	50%	Own and operate natural gas pipeline
Bishop Hill Energy II LLC	100%	Own and operate wind generation facility
Bishop Hill II Holdings, LLC	100%	Holding Company
Bishop Hill Interconnection LLC	50%	Own and operate electric interconnection and transmission facilities
Bridger Coal Company	67%	Own and operate coal mine
CalEnergy Generation Operating Company	100%	Provide services to CalEnergy affiliates
CalEnergy Geothermal Holding, LLC	100%	Holding Company
CalEnergy International Services, Inc.	100%	Provide services to CalEnergy international affiliates
CalEnergy Operating Corporation	50%	Service Company
CalEnergy Pacific Holdings Corp.	100%	Holding Company
CalEnergy U.K. Inc.	100%	Holding Company
CalEnergy, LLC	50%	Power Marketer
California Energy Development Corporation	50%	Holding Company
California Energy Management Company	50%	Provide services to California Energy affiliates
California Energy Yuma Corporation	50%	Holding company
CE Black Rock Holdings LLC	100%	Holding Company
CE Electric (NY), Inc.	100%	Holding Company
CE Electric, Inc.	100%	Holding Company
CE Gen Oil Company	50%	Holding Company
CE Gen Pipeline Corporation	50%	Develop, own and operate intrastate pipeline
CE Gen Power Corporation	50%	Holding Company
CE Generation, LLC	50%	Holding Company
CE Geothermal, Inc.	50%	Own royalty rights
CE International Investments, Inc.	50%	Holding Company
CE Leathers Company	50%	Own and operate geothermal generation facility

Entity Name	Ownership Interest	Business Purpose
CE Power, Inc.	50%	Holding Company
CE Resource, LLC	50%	Holding Company
CE Salton Sea Inc.	50%	Holding Company
CE Texas Pipeline, L.L.C.	50%	Develop, own and operate intrastate pipeline facility
CE Texas Power, L.L.C.	50%	Holding Company
CE Texas Resources, L.L.C.	50%	Holding Company
CE Turbo LLC	50%	Own and operate geothermal generation facility (QF)
Centralia Mining Company	100%	develop and mine coal
Conejo Energy Company	100%	Holding company
Cook Inlet Natural Gas Storage Alaska, LLC	27%	Develop, own and operate natural gas storage facilities
Cordova Energy Company LLC	100%	Own and operate a cogeneration facility
Cordova Funding Corporation	100%	Financing Entity
DCCO Inc.	100%	Holding Company
Del Ranch Company	50%	Holding Company
Desert Valley Company	50%	Operates monofill operations
Electric Transmission America, LLC	50%	Develop, own and operate transmission facilities
Electric Transmission Texas, LLC	50%	Develop, own and operate transmission facilities
Elmore Company	50%	Own and operate geothermal generating facility (QF)
Energy West Mining Company	100%	Develop and mine coal
Falcon Power Operating Company	50%	Provide services to CalEnergy affiliates
Fish Lake Power LLC	50%	Holding Company
FOSSIL ROCK FUELS, LLC	100%	Develop, own and operate coal mine
FSRI Holdings, Inc.	50%	Holding Company
Kern River Funding Corporation	100%	Financing Entity
Kern River Gas Transmission Company	100%	Own and operate interstate natural gas pipeline
KR Acquisition 1, LLC	100%	Holding Company
KR Acquisition 2, LLC	100%	Holding Company
KR Holding, LLC	100%	Holding Company
Magma Land Company I	50%	Owens mineral rights
Magma Power Company	50%	Holding Company
Magma/Geo-83 JV	50%	Holding Company
MEC Construction Services Company	100%	Provide nonregulated utility construction services
MEHC America Transco, LLC	100%	Holding Company
MEHC Canada GenCo GP Corporation	100%	Develop generation projects in Canada
MEHC Canada GenCo Limited Partnership	100%	Develop generation projects in Canada

Entity Name	Ownership Interest	Business Purpose
MEHC Canada Transmission GP Corporation	100%	Develop transmission project in Canada
MEHC Canada, LLC	100%	Holding Company
MEHC Investment, Inc.	100%	Holding Company
MEHC Texas Transco, LLC	100%	Holding Company
MEHC Transmission Canada Limited Partnership	100%	Holding Company
MHC Inc.	100%	Holding Company
MidAmerican AC Holding, LLC	100%	Holding Company
MidAmerican Canada Holdings Corporation	100%	Holding Company
MidAmerican Energy Company	100%	Franchised Public Utility
MidAmerican Energy Holdings Company	100%	Holding Company
MidAmerican Funding, LLC	100%	Holding Company
MidAmerican Geothermal, LLC	100%	Holding company
MidAmerican Hydro, LLC	100%	Holding Company
MidAmerican Renewables, LLC	100%	Holding company
MidAmerican Solar, LLC	100%	Holding Company
MidAmerican Transmission, LLC	100%	Holding Company
MidAmerican Wind, LLC	100%	Holding Company
Midwest Capital Group, Inc.	100%	Holding Company
Niguel Energy Company	50%	Holding Company
NNGC Acquisition, LLC	100%	Holding Company
NorCon Holdings, Inc.	50%	Holding Company
North Country Gas Pipeline Corporation	38%	Develop, own and operate natural gas pipeline
Northern Consolidated Power, Inc.	50%	Holding Company
Northern Natural Gas Company	100%	Own and operate interstate natural gas pipeline
Pacific Minerals, Inc.	100%	Holding Company
PacifiCorp	100%	Franchised Public Utility
Pinyon Pines I Holding Company, LLC	100%	Holding Company
Pinyon Pines II Holding Company, LLC	100%	Holding Company
Pinyon Pines Wind I, LLC	100%	Own and operate wind generation facility
Pinyon Pines Wind II, LLC	100%	Own and operate wind generation facility
Power Resources, Ltd.	50%	Own and operate a cogeneration facility
PPW Holdings LLC	100%	Holding Company
Prairie Wind Transmission, LLC	25%	Develop, own and operate transmission facilities
Quad Cities Energy Company	100%	Holding Company
RES Canada Transmission GP Inc.	50%	Develop, own and operate transmission facilities in Canada
RES Canada Transmission LP	50%	Develop, own and operate transmission facilities in Canada

Entity Name	Ownership Interest	Business Purpose
S.W. Hydro, Inc.	50%	Holding Company
Salton Sea Brine Processing Company	50%	Holding Company
Salton Sea Funding Corporation	50%	Financing Entity
Salton Sea Minerals Corp.	50%	Holding Company
Salton Sea Power Company	50%	Holding Company
Salton Sea Power Generation Company	50%	Own and operate geothermal generating facility (QF)
Salton Sea Power L.L.C.	50%	Own and operate geothermal generating facility (QF)
Salton Sea Royalty Company	50%	Own royalty rights
San Felipe Energy Company	50%	Holding Company
Saranac Energy Company, Inc.	50%	Holding Company
Saranac Power Partners, L.P.	38%	Own and operate cogeneration facility
SECI Holdings, Inc.	50%	Holding Company
Silver Merger Sub, Inc.	100%	Special Purpose Acquisition Vehicle
Solar Star California XIX, LLC	100%	Own and operate solar generation facility
Solar Star California XX, LLC	100%	Own and operate solar generation facility
Tallgrass Transmission, LLC	25%	Develop, own, and operate transmission facilities
TAMA Transmission LP	50%	Develop, own and operate a transmission project
Topaz Solar Farms LLC	100%	Own and operate solar generation electricity
TPZ Holding, LLC	100%	Holding Company
TransAlta MidAmerican Fort McMurray West Ltd.	50%	Develop transmission projects in Canada
TransAlta MidAmerican Partnership	50%	Develop generation projects in Canada
TransAlta MidAmerican Transmission LP	50%	Develop, own and operate transmission facilities in Canada
Trapper Mining Inc.	21.4%	Operate coal mine
VPC Geothermal LLC	50%	Holding Company
Vulcan Power Company	50%	Holding Company
Vulcan/BN Geothermal Power Company	50%	Own and operate geothermal generating facility (QF)
Wailuku Holding Company, LLC	50%	Holding Company
Wailuku Investment, LLC	100%	Holding Company
Wailuku River Hydroelectric Limited Partnership	50%	Own and operate hydroelectric facility
Wailuku River Hydroelectric Power Company, Inc.	50%	Holding Company
Yuma Cogeneration Associates	50%	Own and operate cogeneration facility

Exhibit C: Organizational Charts Depicting Applicants' Current and Proposed Post-Transaction Corporate Structures

NV Energy Applicants

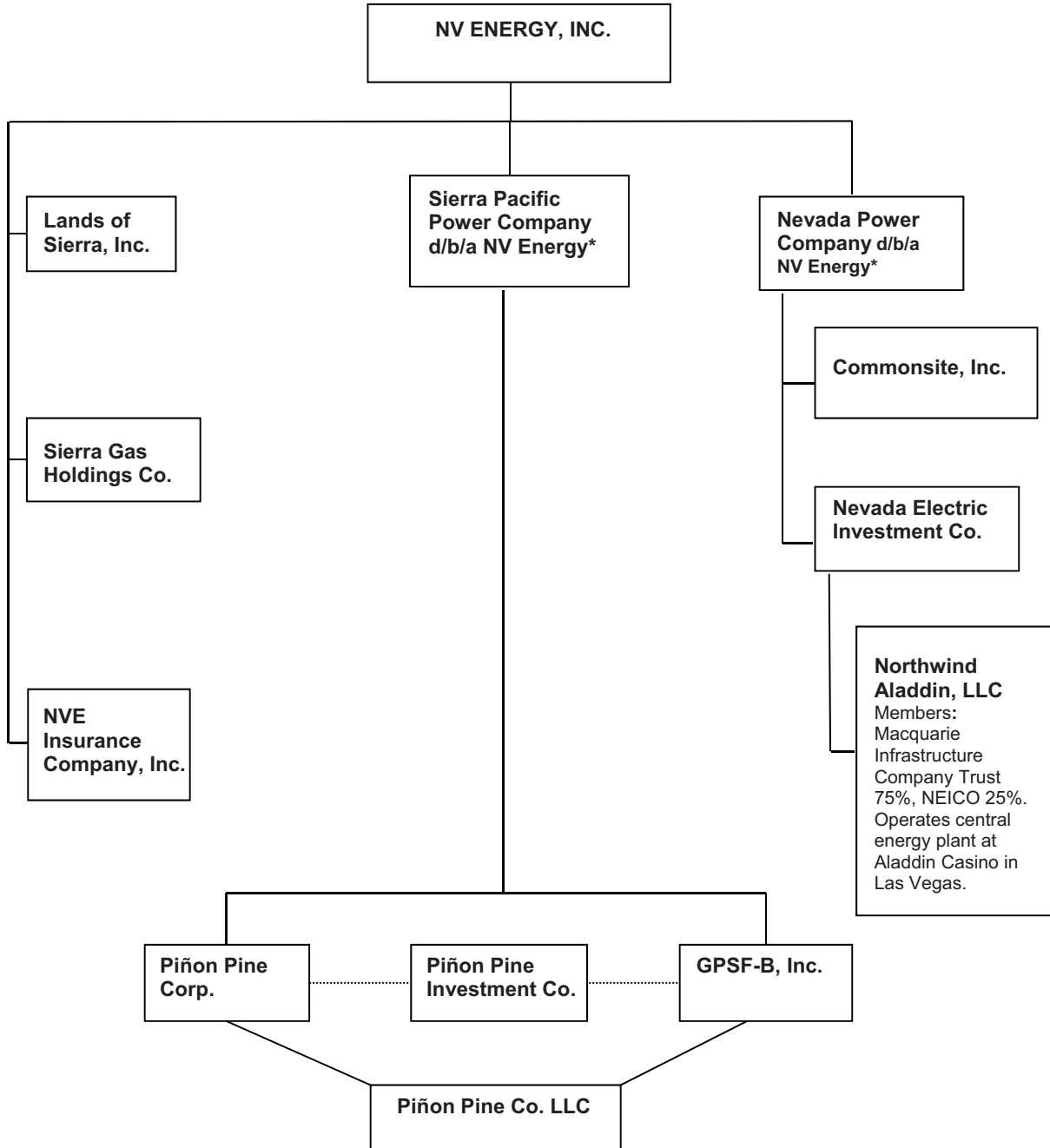
A copy of the pre-Transaction organizational chart for the NV Energy Applicants and their affiliates is provided in Exhibit C-1.

MidAmerican

Applicants have provided in Exhibits C-2 and C-3 streamlined versions of the pre-Transaction and Post-Transaction organizational charts for MidAmerican and its affiliates that include only those parent companies, energy subsidiaries and energy affiliates that are relevant to the Transaction. In addition, a more detailed and comprehensive organizational chart for MidAmerican and its affiliates is provided in Exhibit C-4.

EXHIBIT C-1: NV Energy Applicants' Pre-Transaction Organization Chart

**NV ENERGY, INC.
ORGANIZATION CHART**



*does business as NV Energy in its Nevada service territory

Exhibit C-2: MEHC Pre-Transaction Organizational Chart

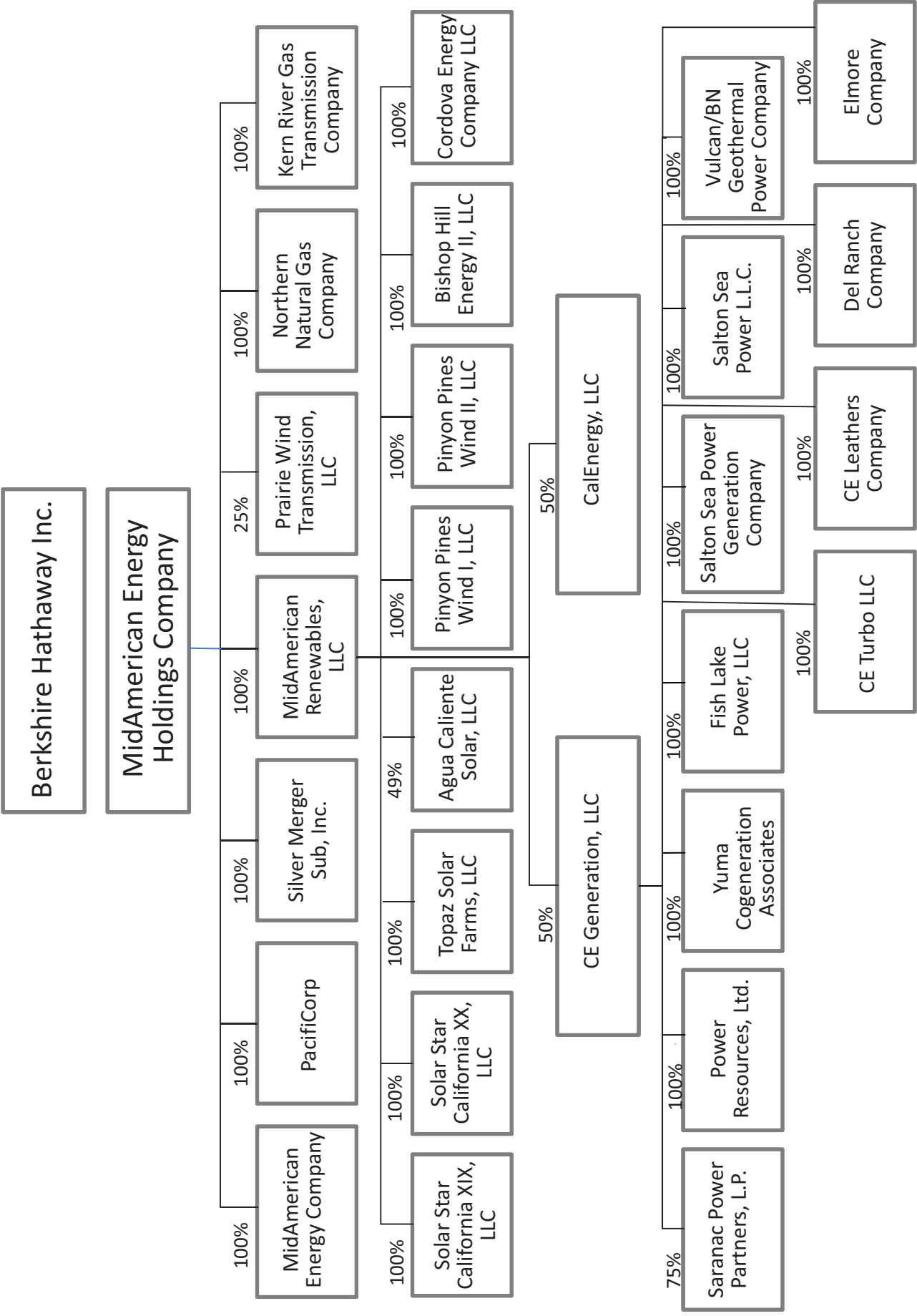
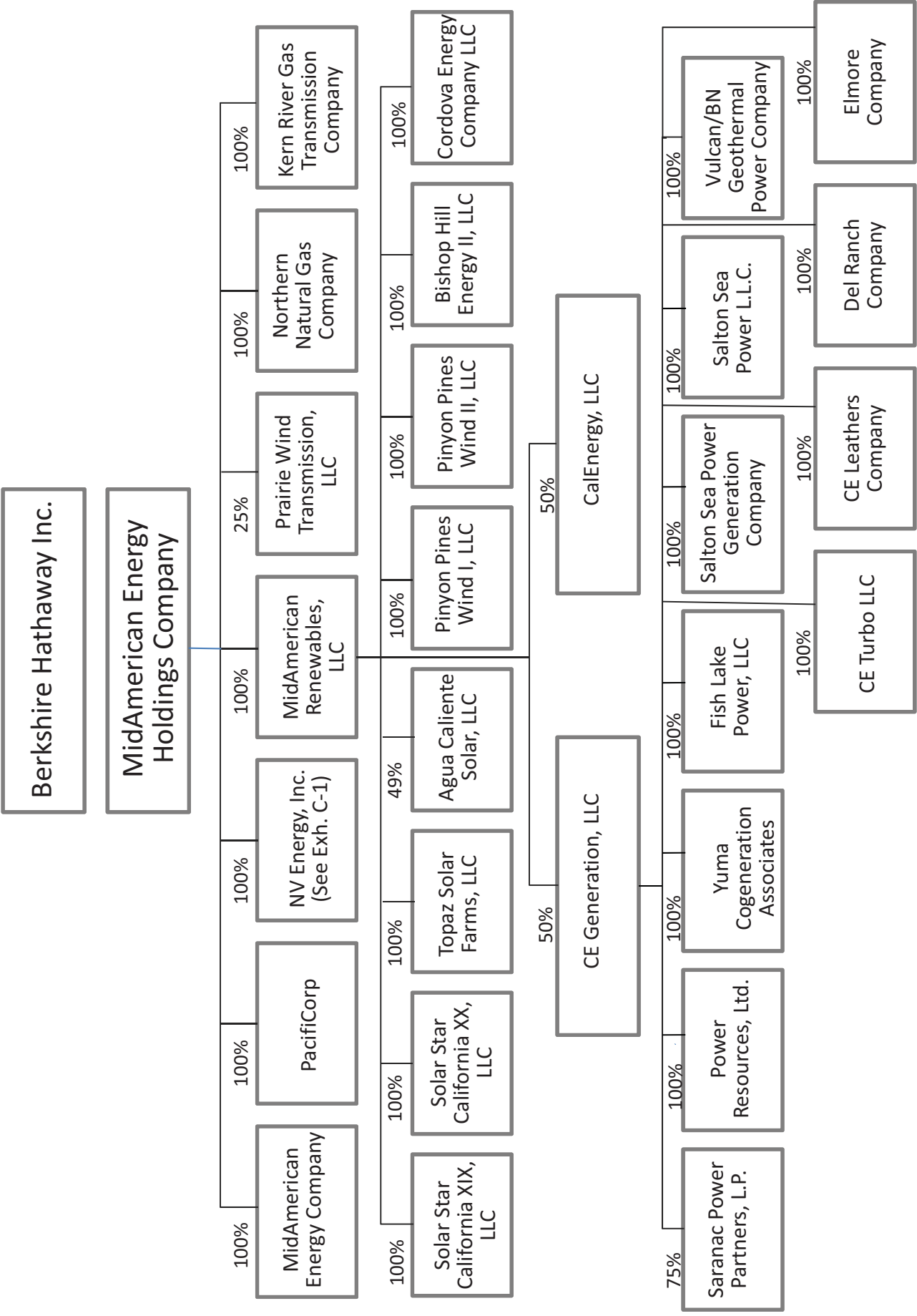
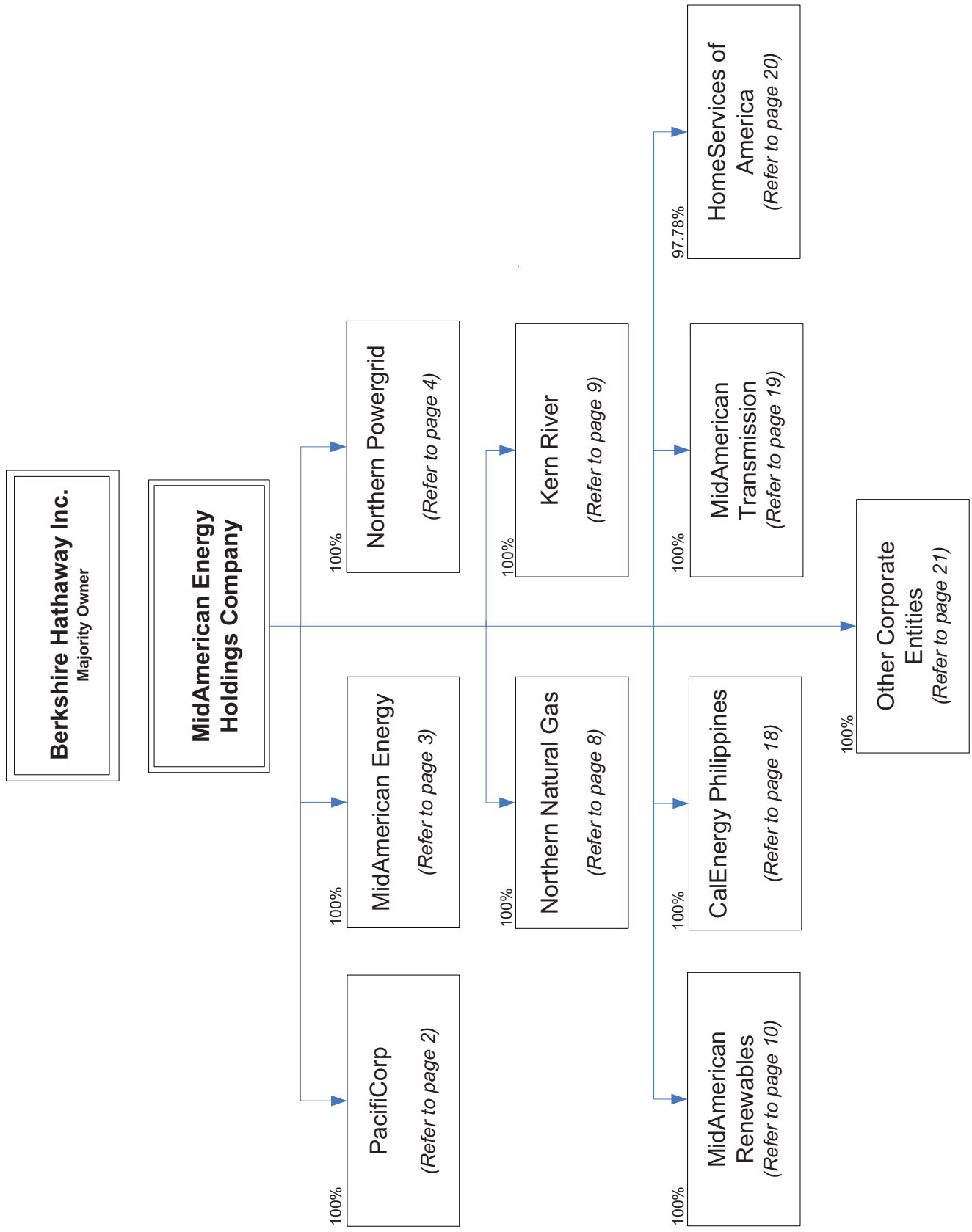


Exhibit C-3: MEHC Post-Transaction Organizational Chart

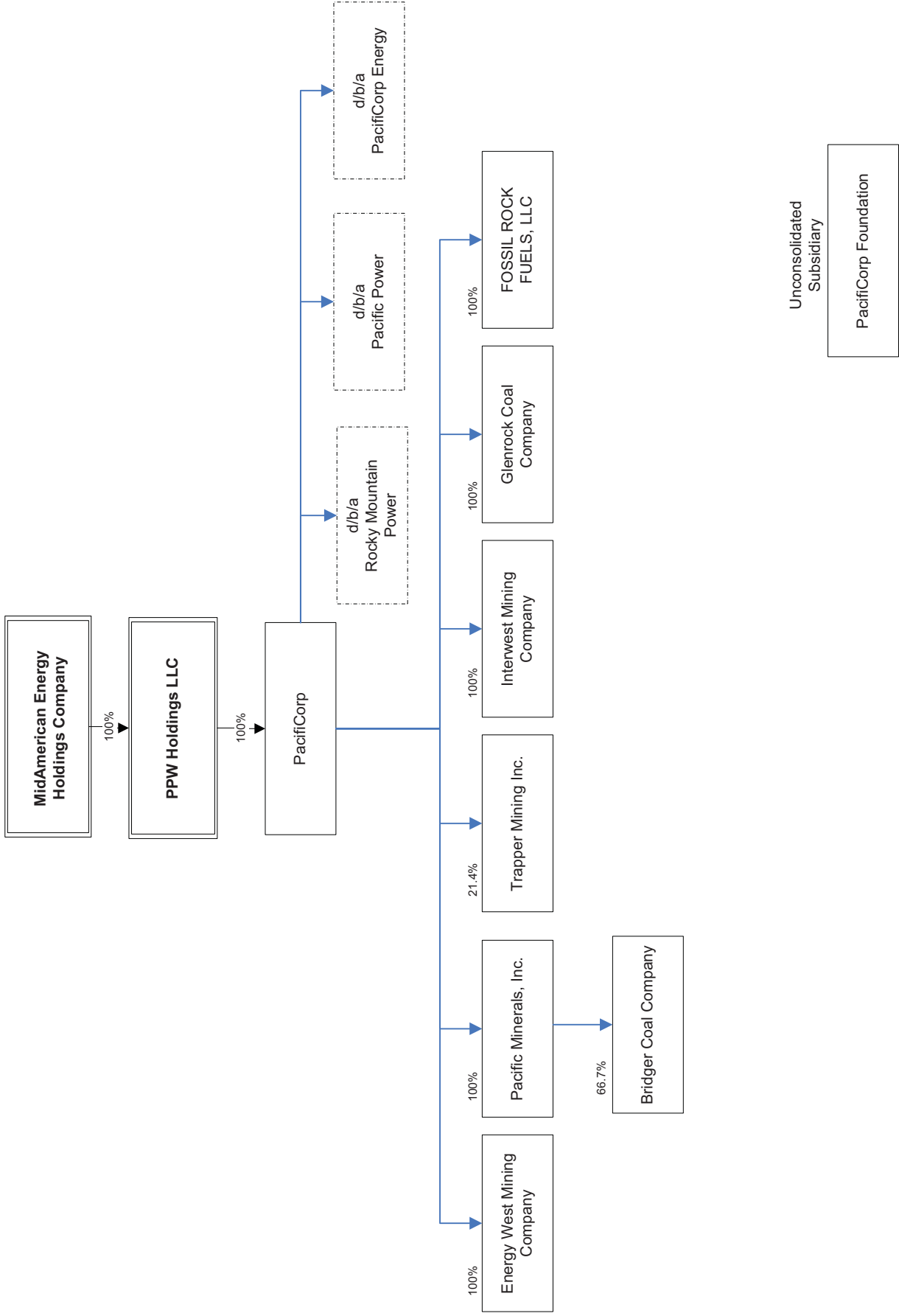


MEHC Pre-Merger Organization Chart

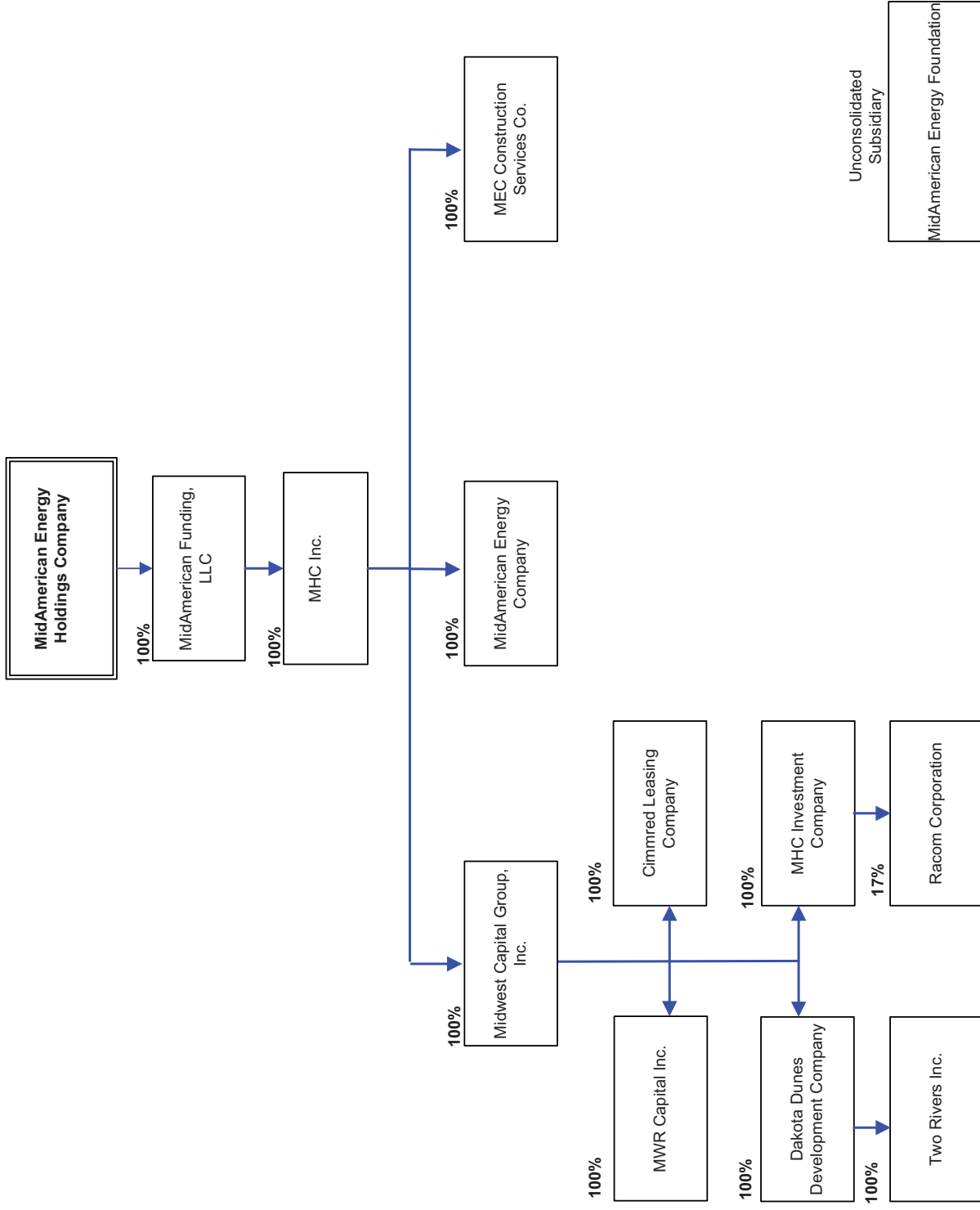


Note: Charts do not include inactive entities

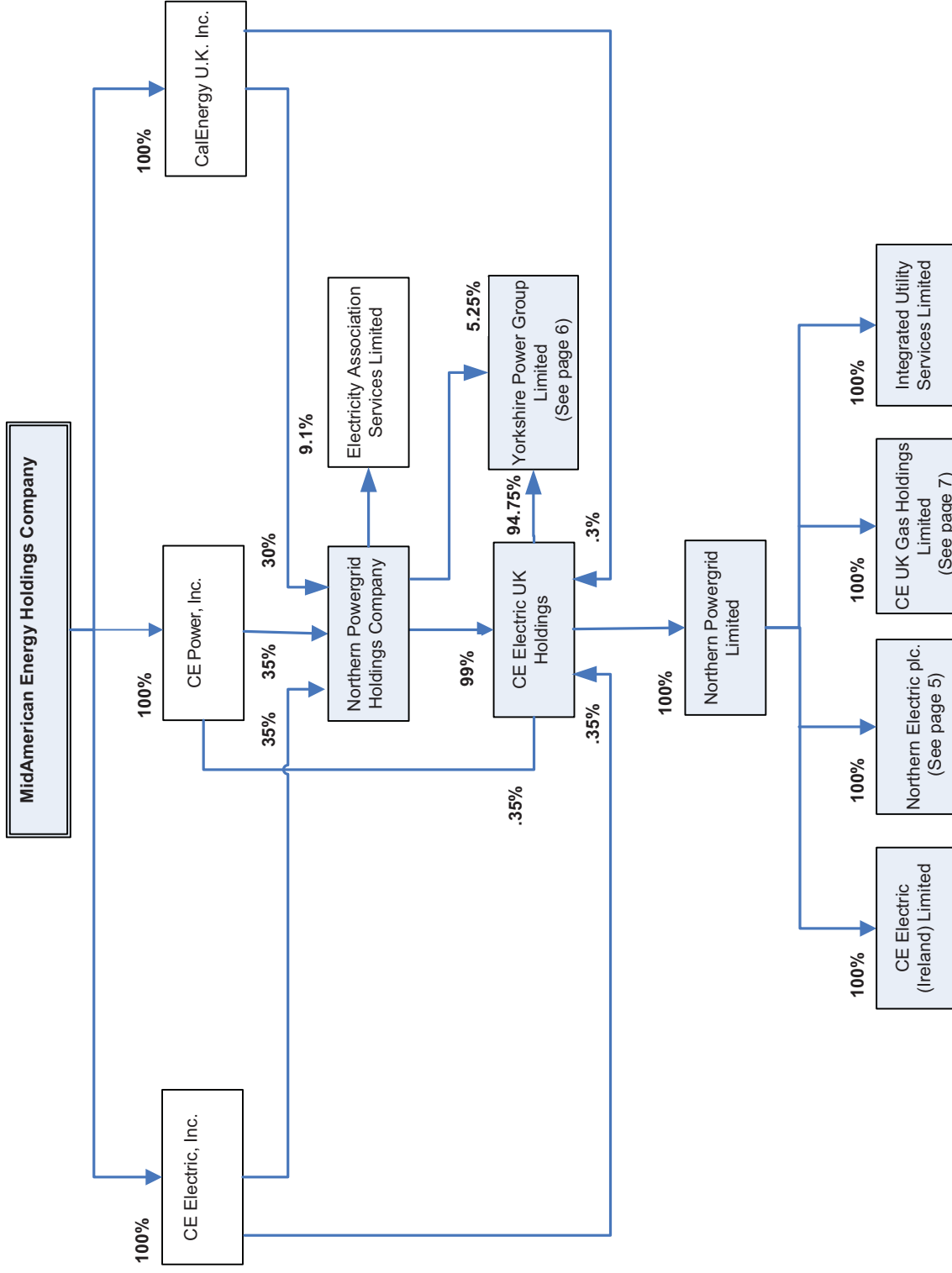
MEHC Pre-Merger Organization Chart - PacifiCorp



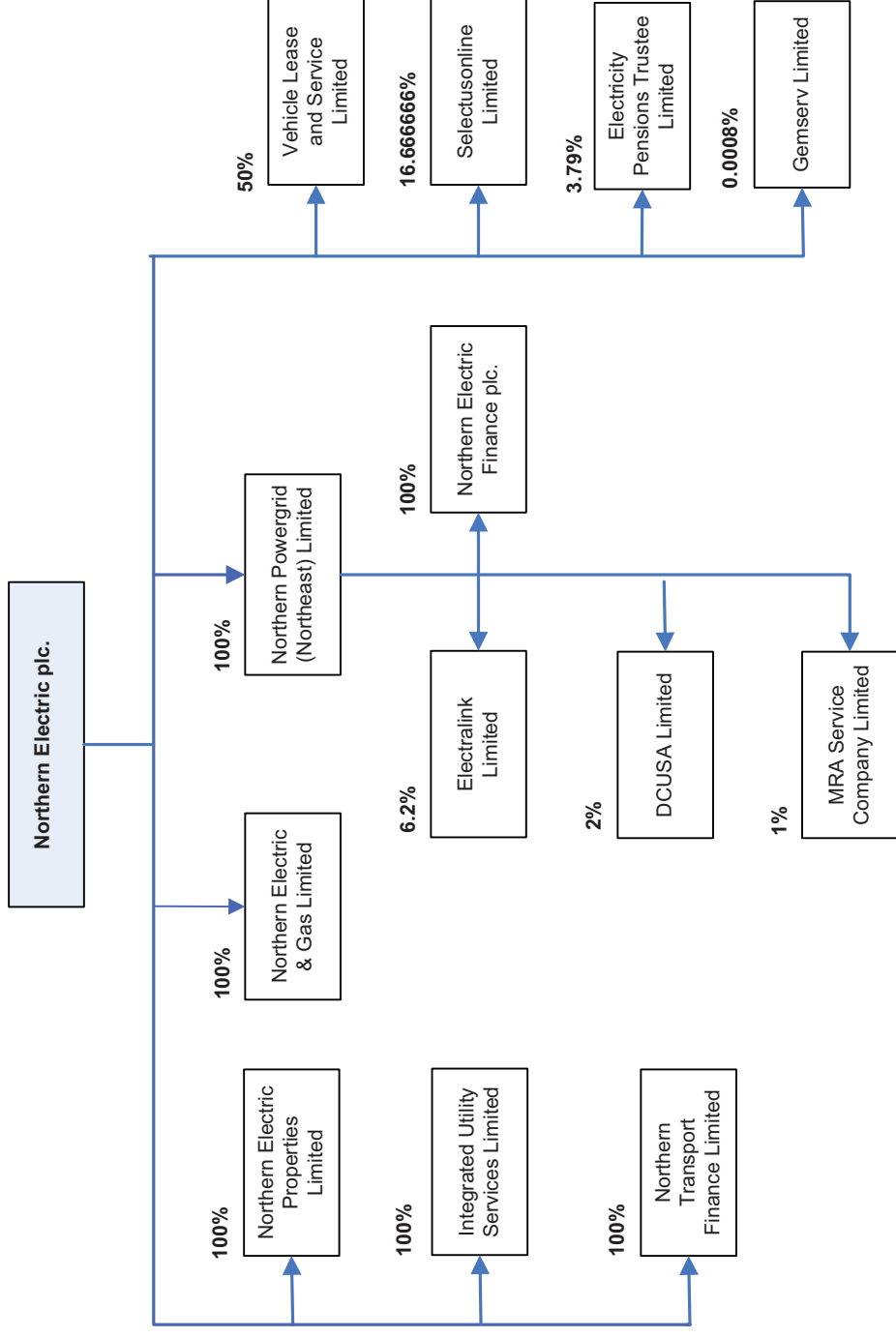
MEHC Pre-Merger Organization Chart - MidAmerican Energy



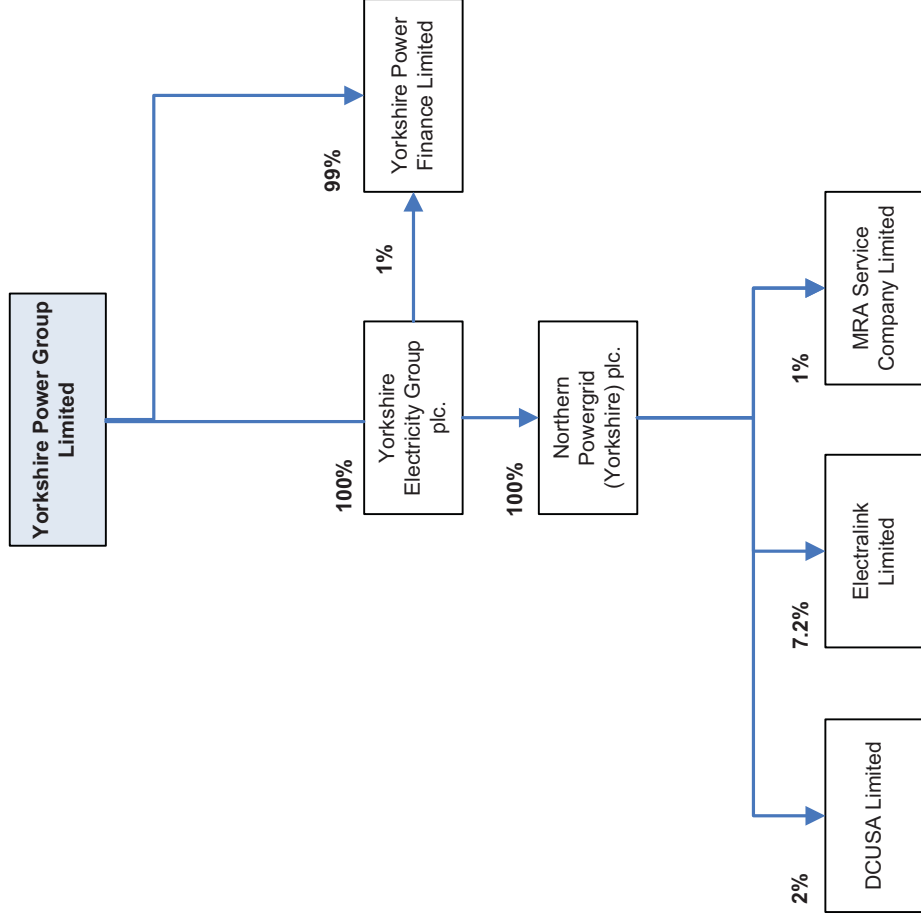
MEHC Pre-Merger Organization Chart – Northern Powergrid



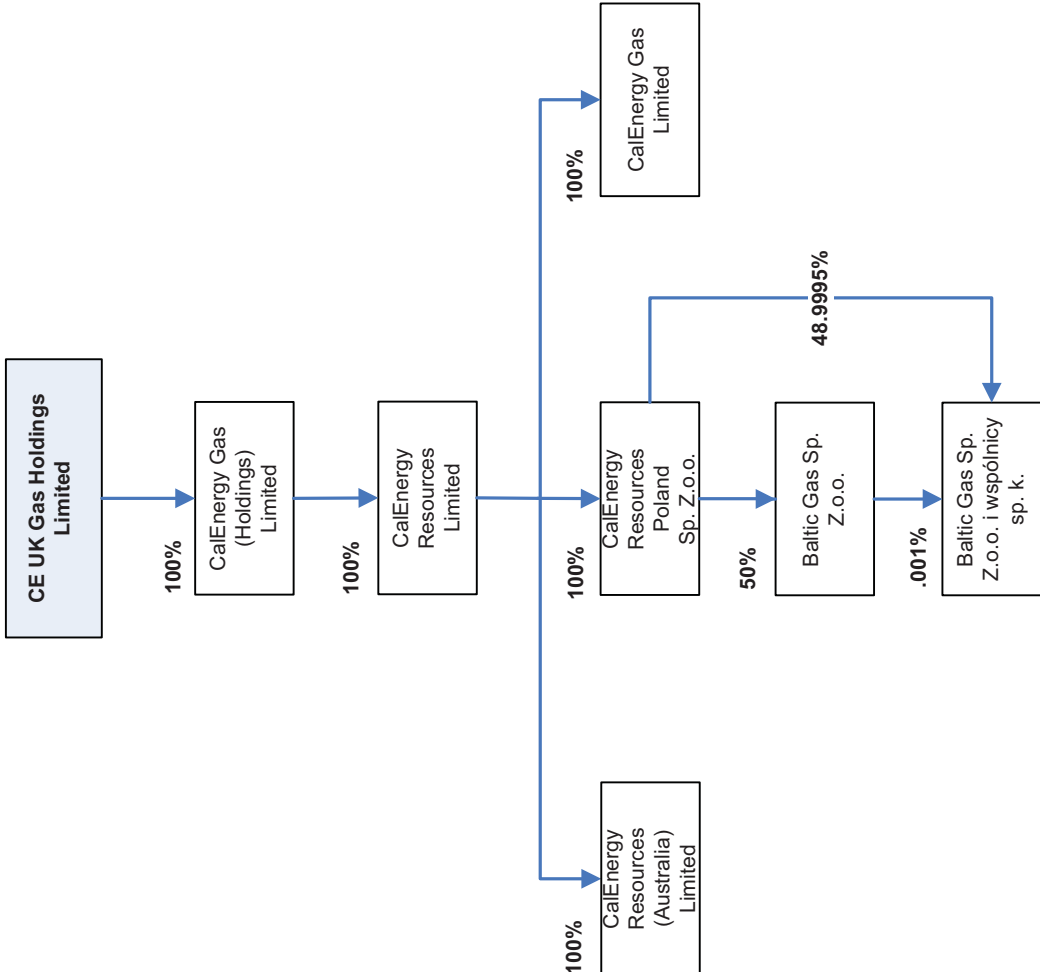
MEHC Pre-Merger Organization Chart – Northern Powergrid (Continued)



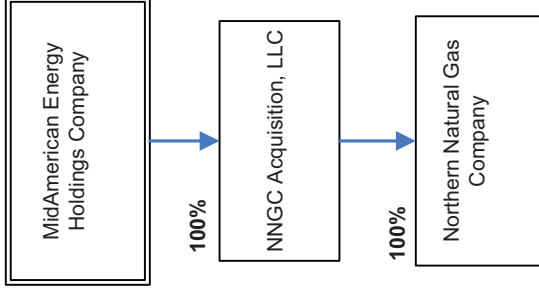
MEHC Pre-Merger Organization Chart – Northern Powergrid (Continued)



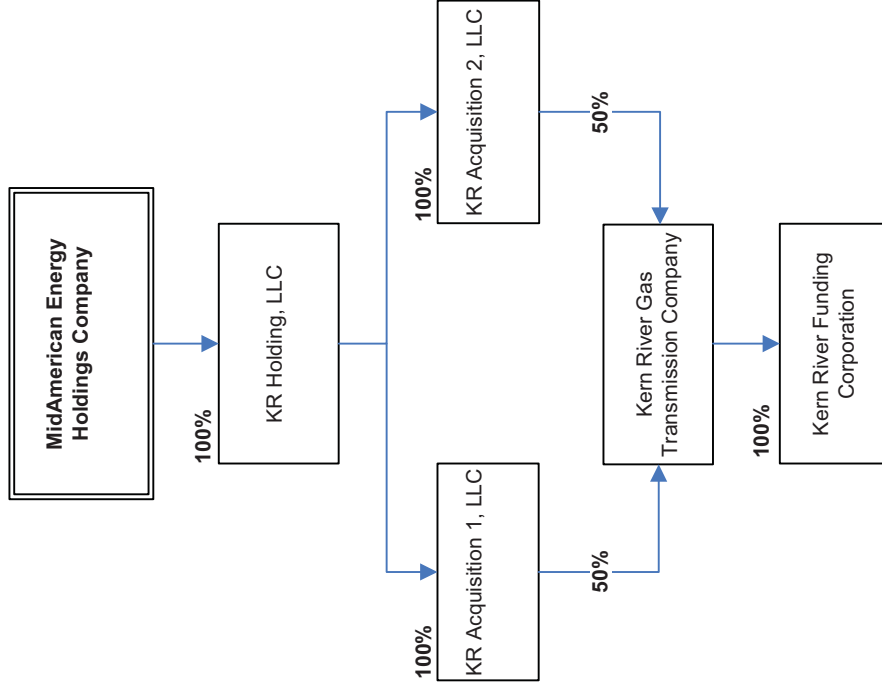
MEHC Pre-Merger Organization Chart – Northern Powergrid (Continued)



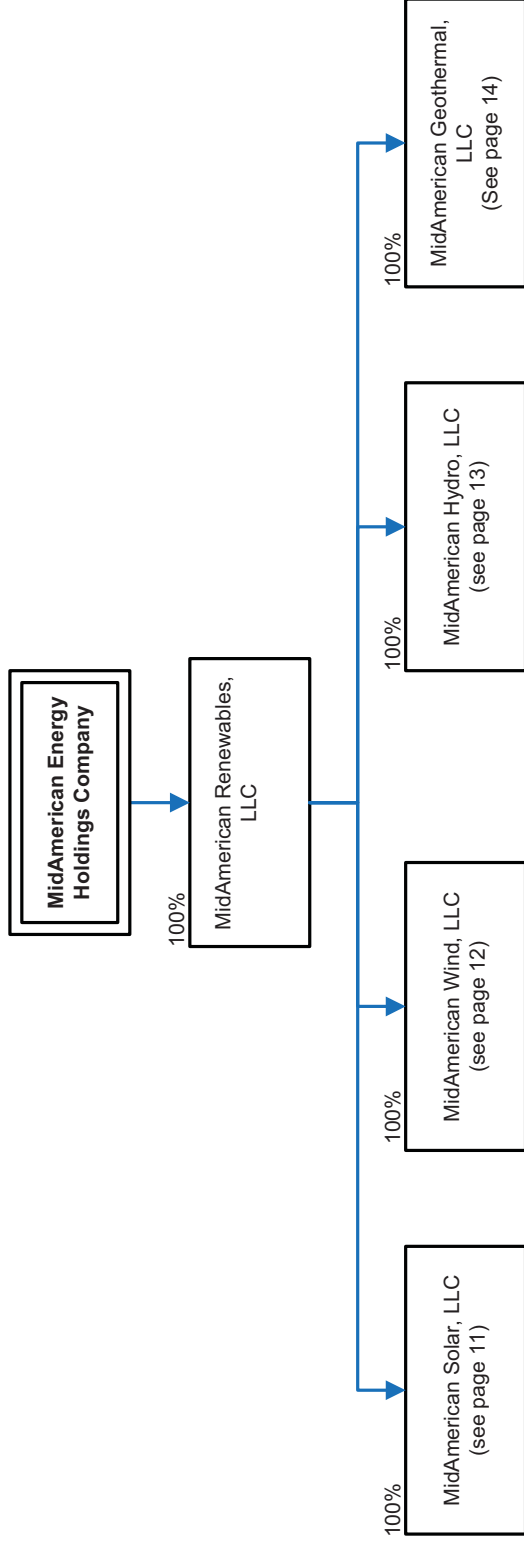
MEHC Pre-Merger Organization Chart - Northern Natural Gas



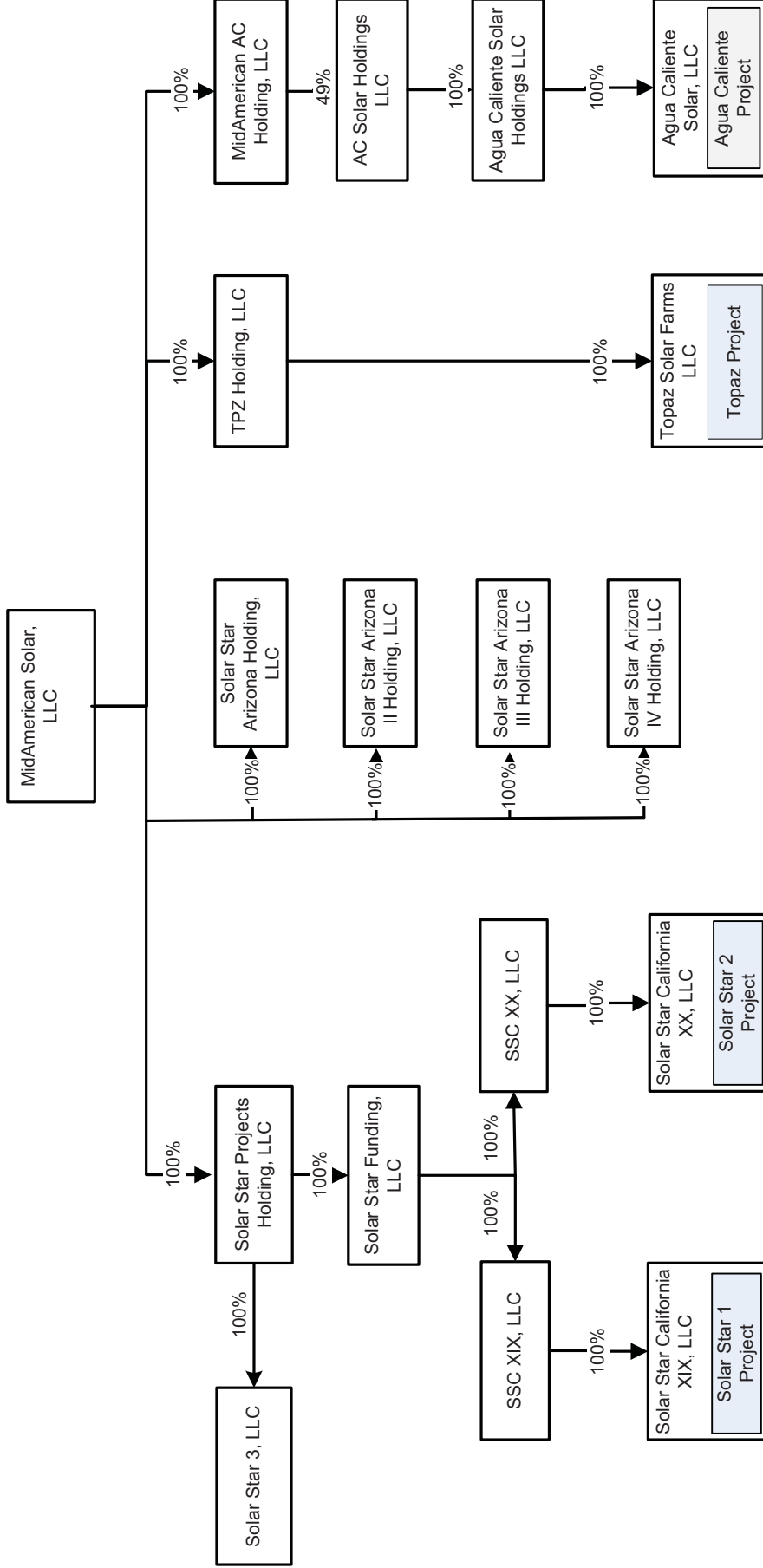
MEHC Pre-Merger Organization Chart - Kern River



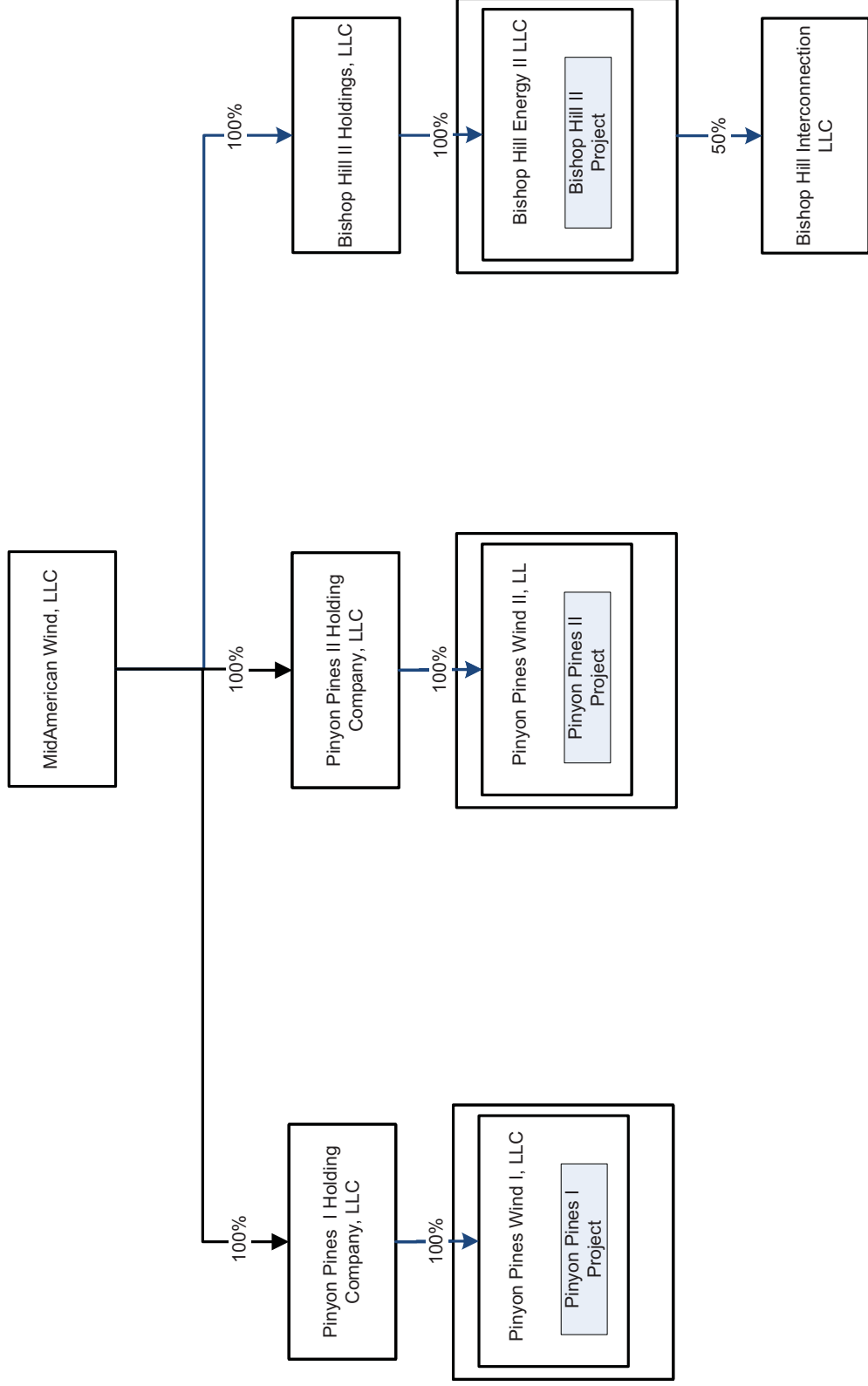
MEHC Pre-Merger Organization Chart - MidAmerican Renewables



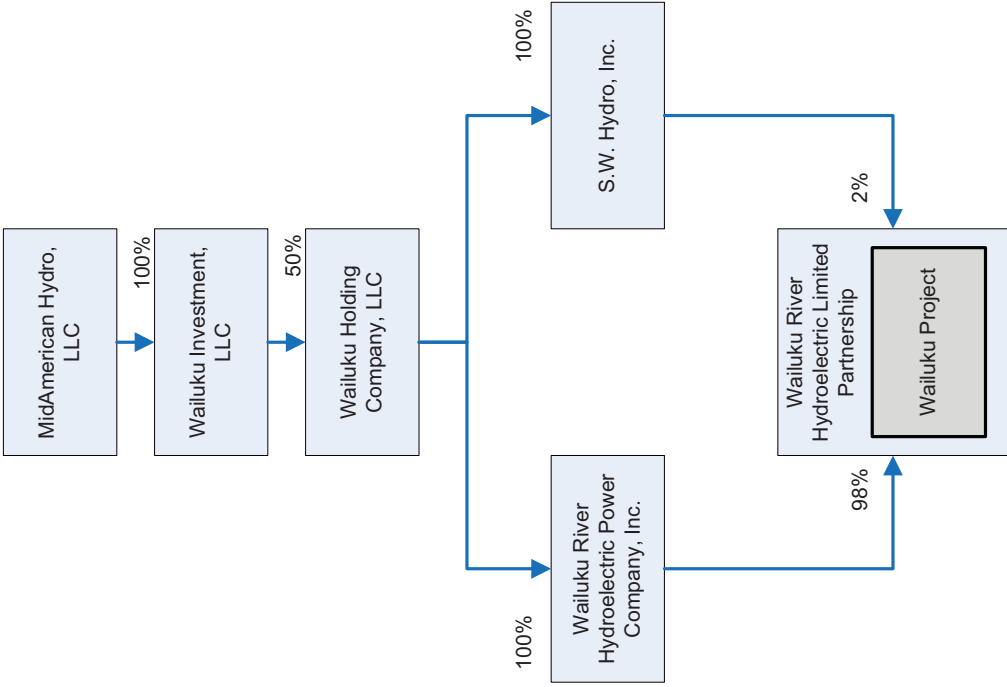
MEHC Pre-Merger Organization Chart – MidAmerican Renewables (continued)



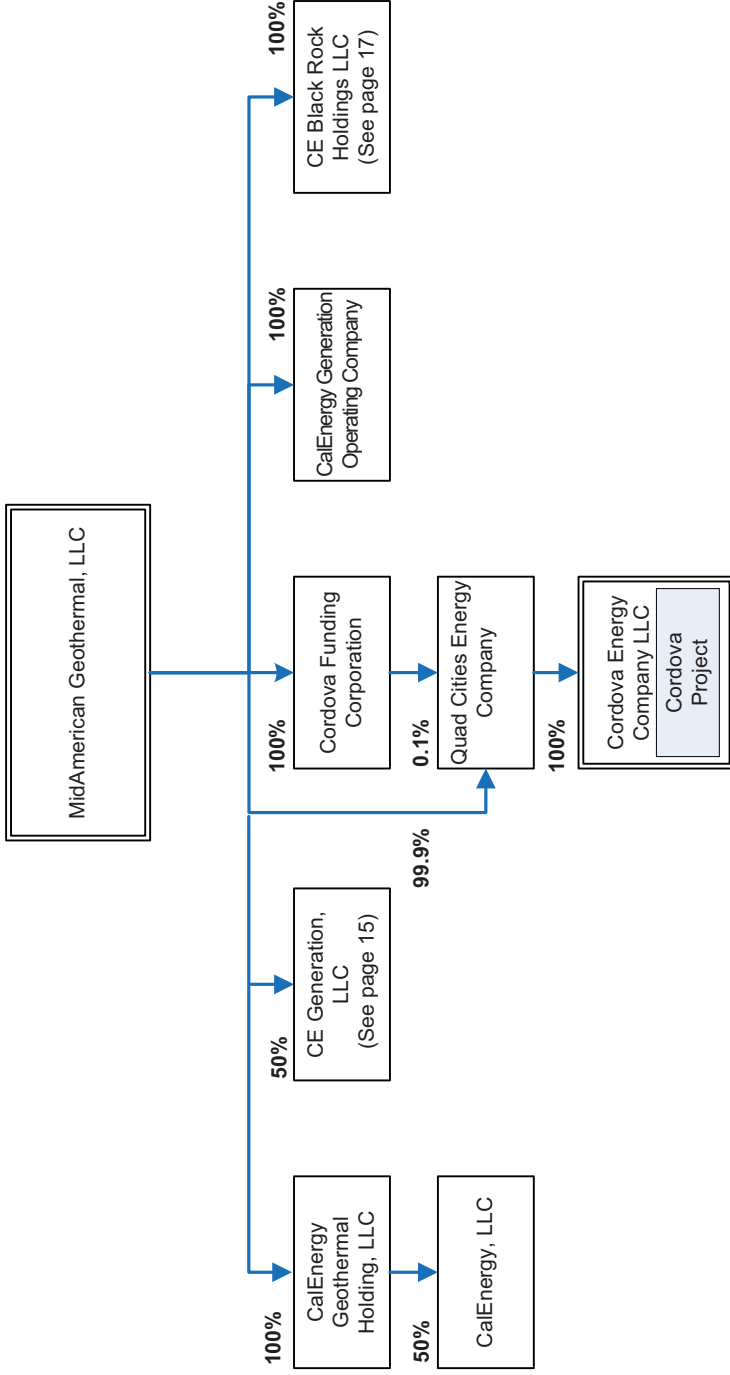
MEHC Pre-Merger Organization Chart - MidAmerican Renewables (continued)



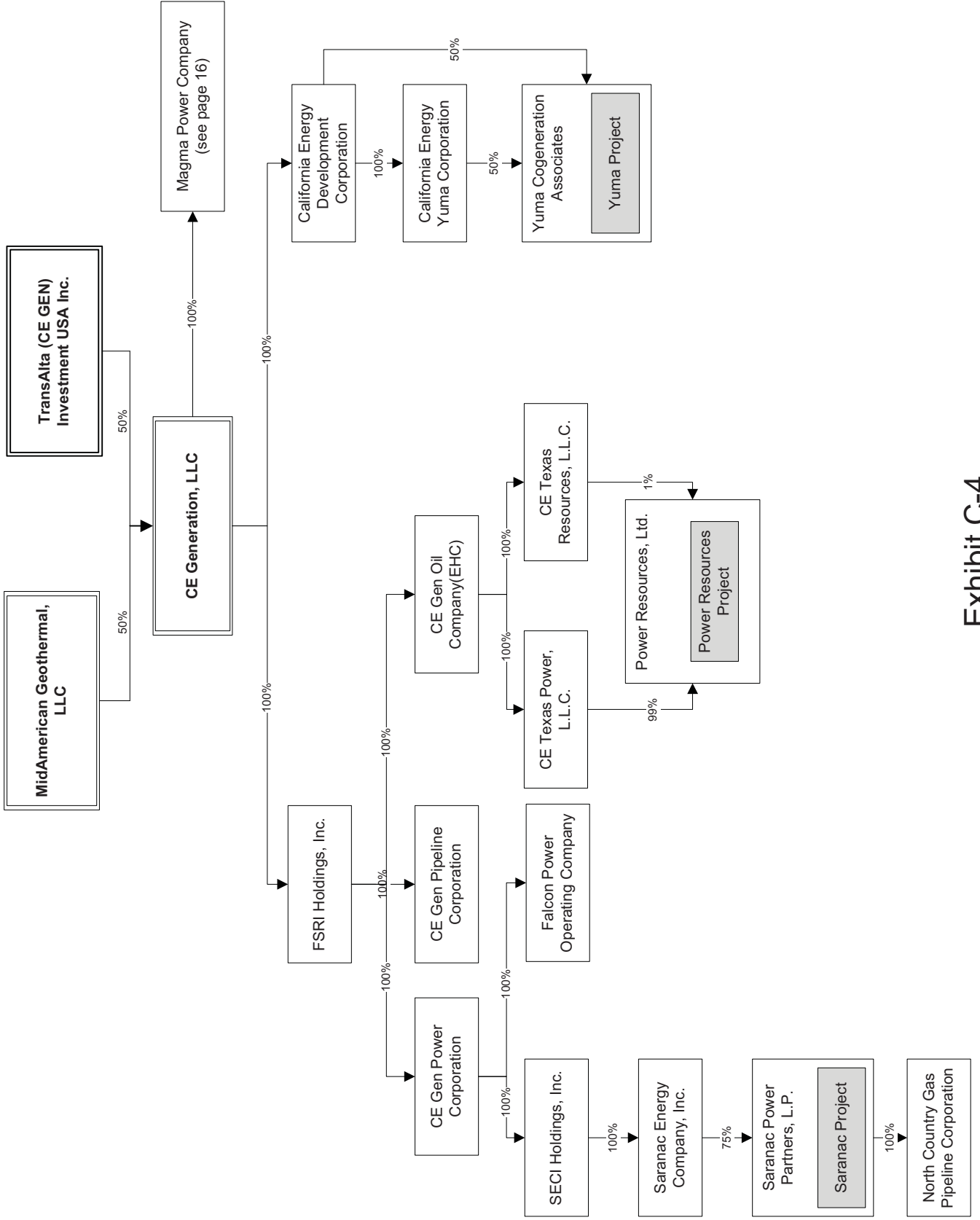
MEHC Pre-Merger Organization Chart – MidAmerican Renewables (Continued)



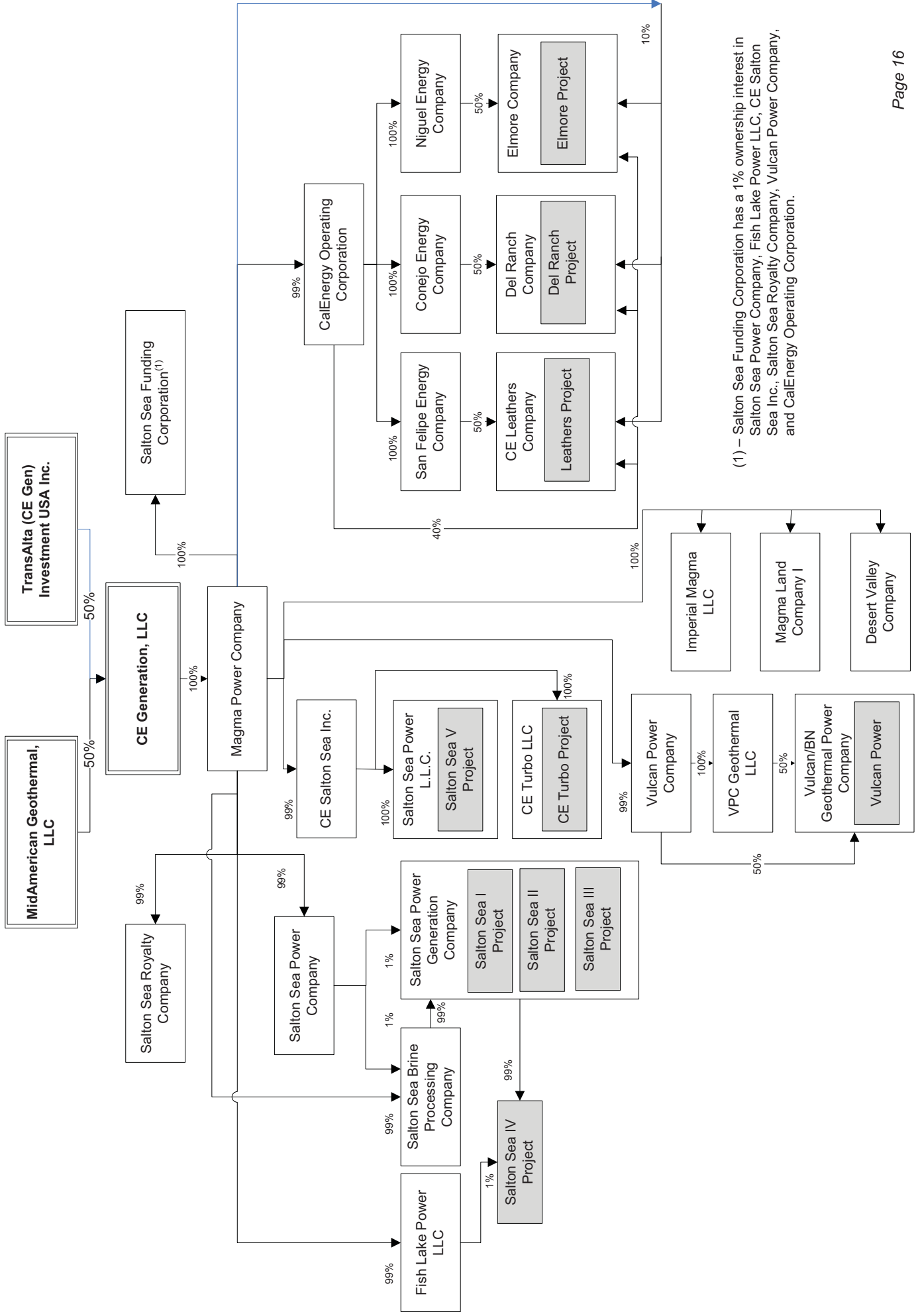
MEHC Pre-Merger Organization Chart – MidAmerican Renewables (continued)



MEHC Pre-Merger Organization Chart – MidAmerican Renewables (Continued)

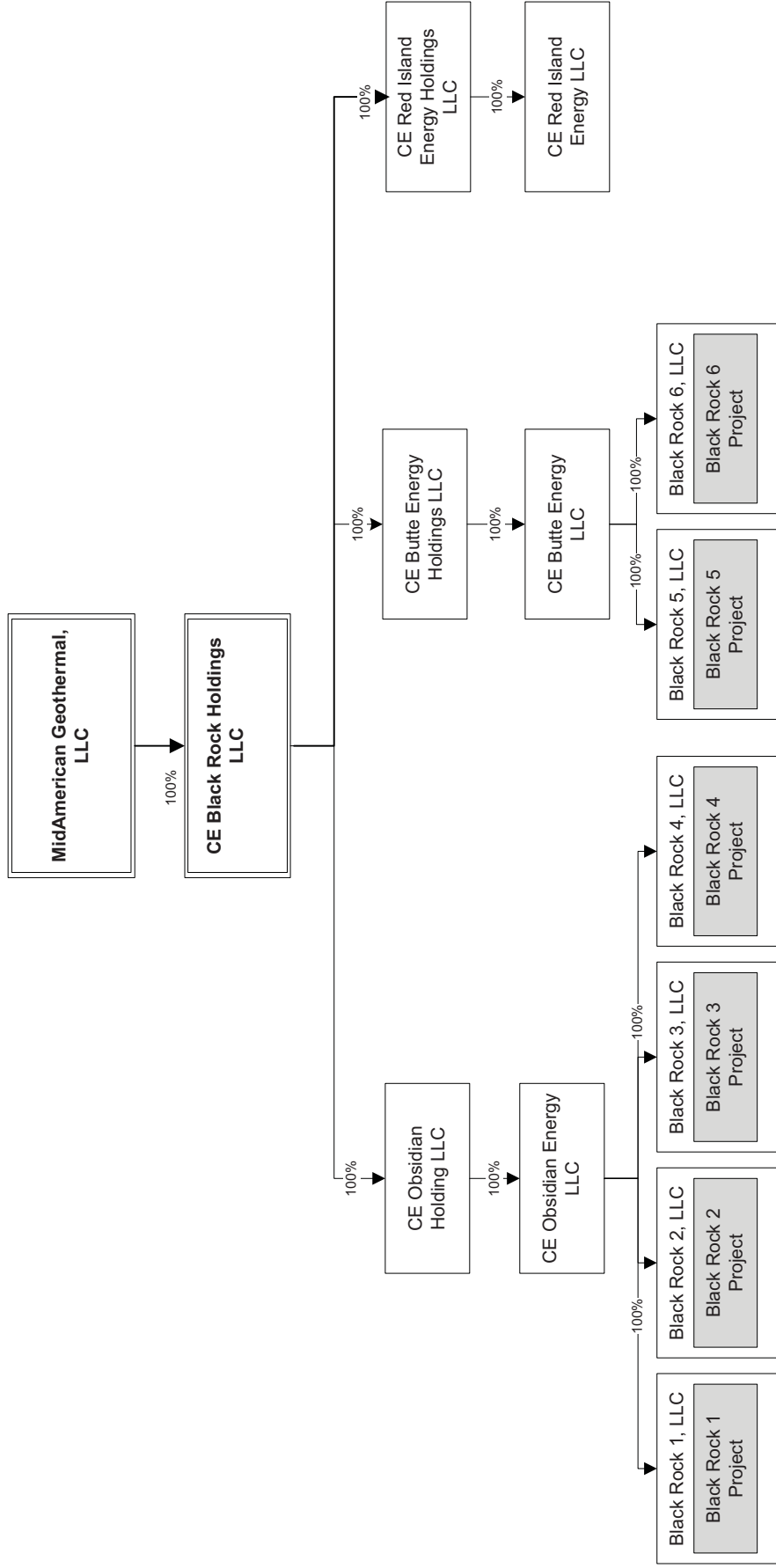


MEHC Pre-Merger Organization Chart – MidAmerican Renewables (Continued)

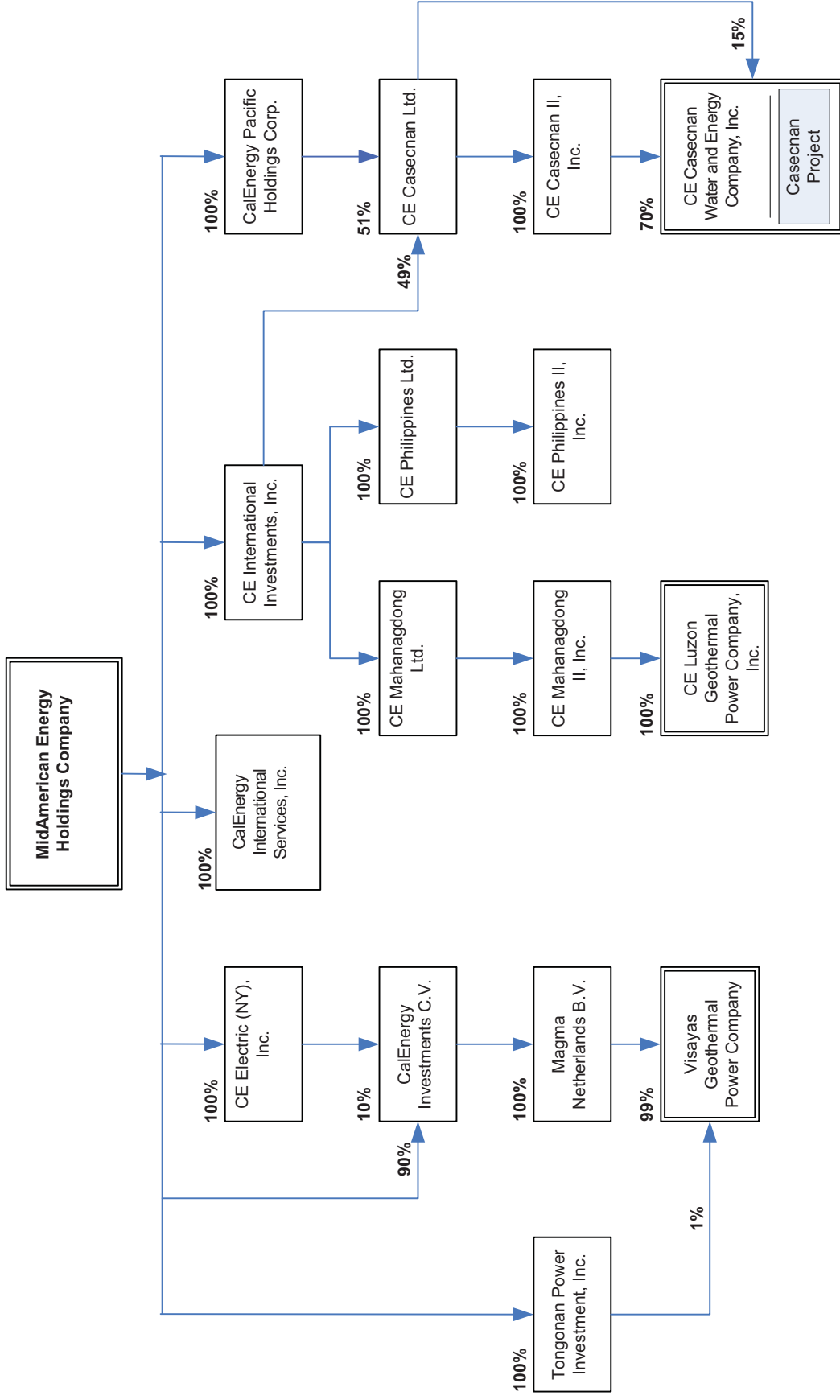


(1) – Salton Sea Funding Corporation has a 1% ownership interest in Salton Sea Power Company, Fish Lake Power LLC, CE Salton Sea Inc., Salton Sea Royalty Company, Vulcan Power Company, and CalEnergy Operating Corporation.

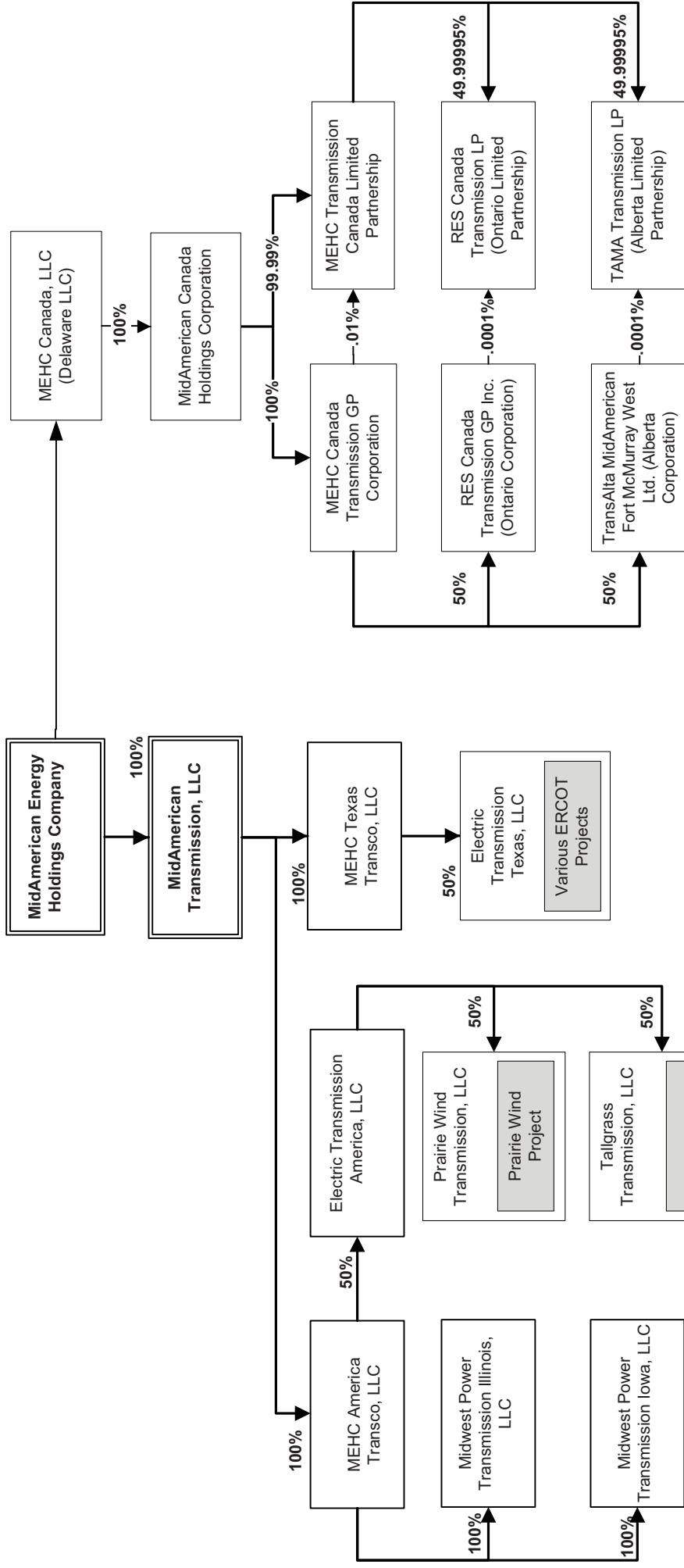
MEHC Pre-Merger Organization Chart – MidAmerican Renewables (Continued)



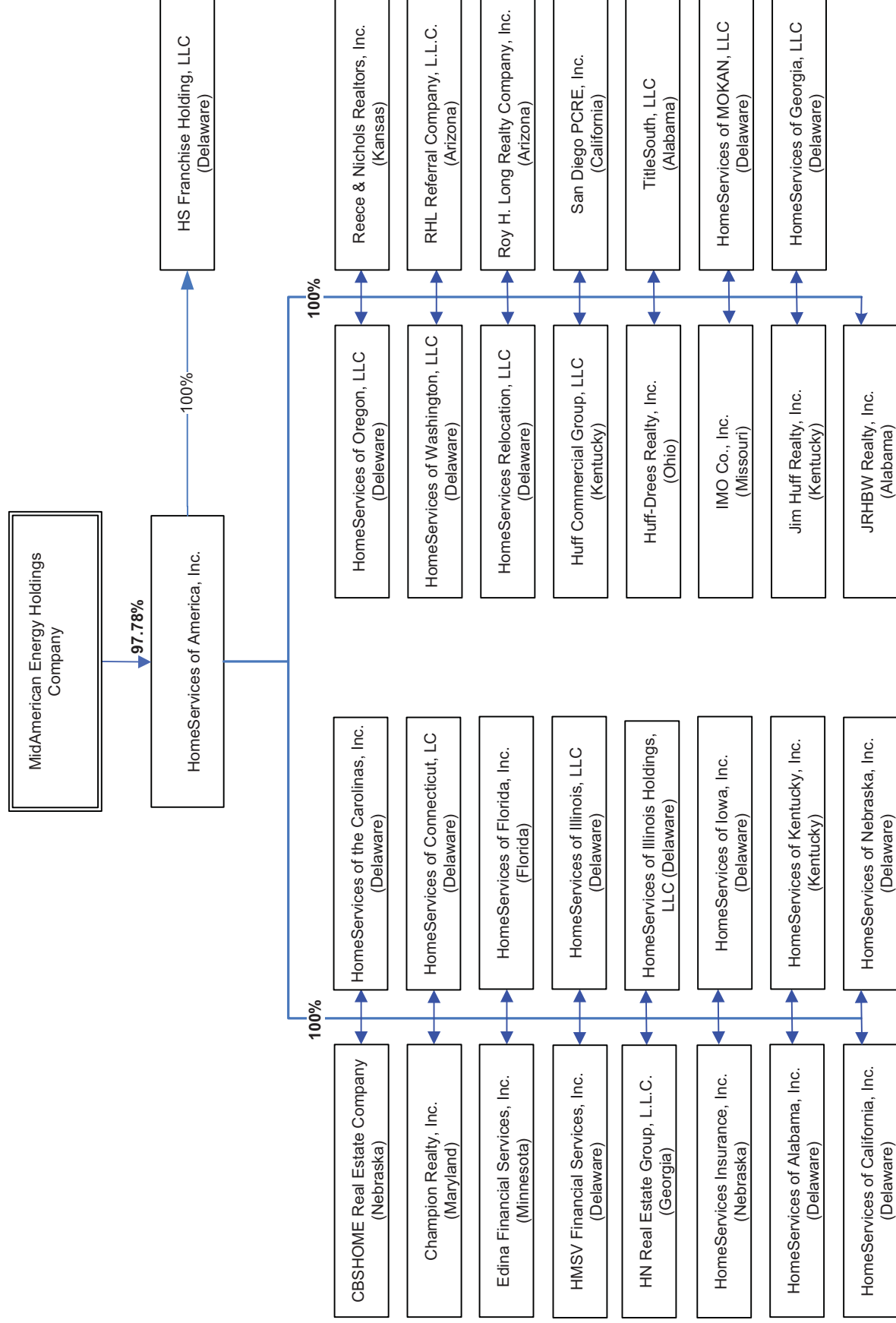
MEHC Pre-Merger Organization Chart – CalEnergy Philippines



MEHC Pre-Merger Organization Chart – MidAmerican Transmission



MEHC Pre-Merger Organization Chart – HomeServices of America, Inc.



MEHC Pre-Merger Organization Chart – Other Corporate Entities

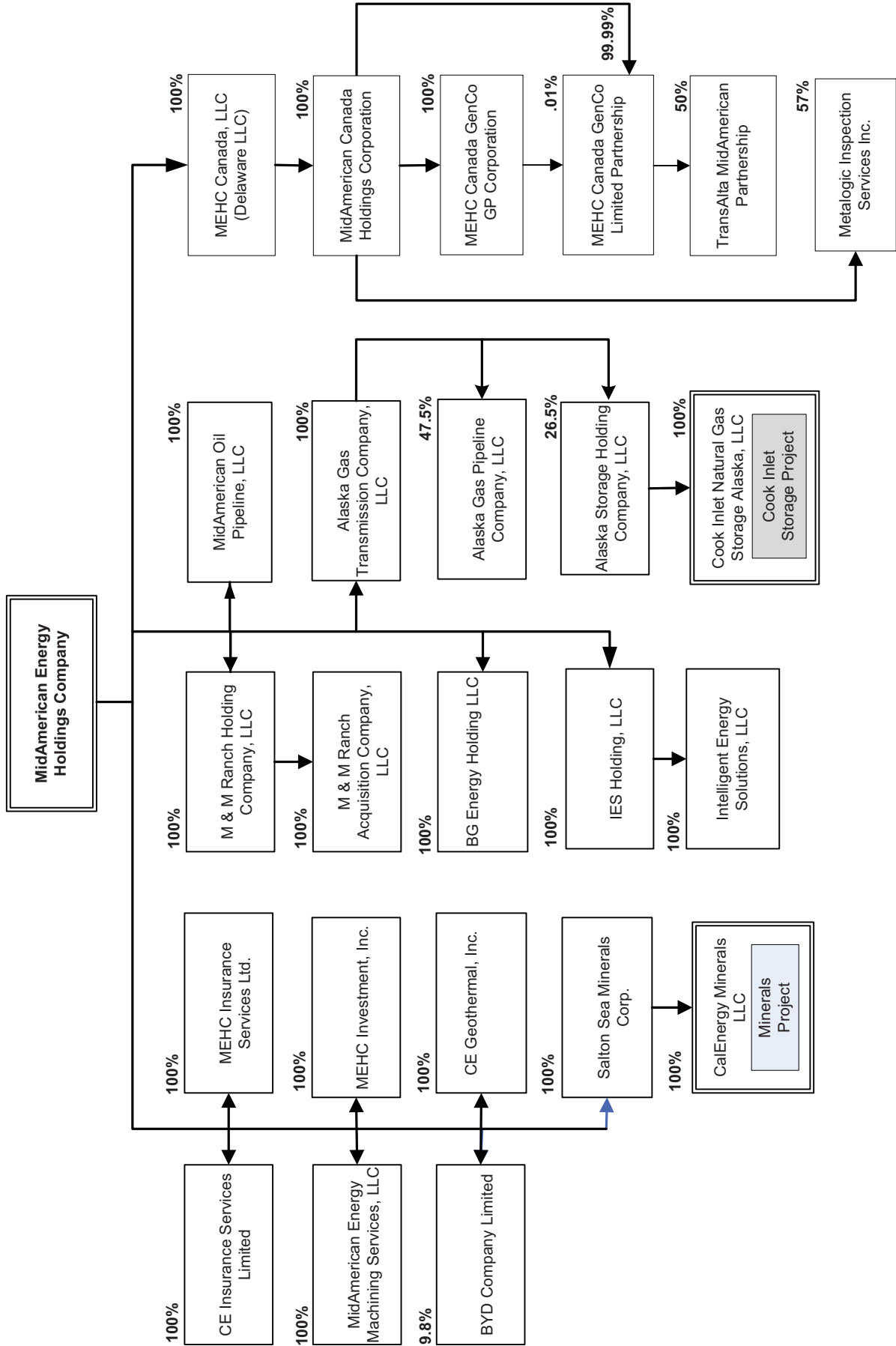


EXHIBIT D: Description of All Joint Ventures, Strategic Alliances, Tolling Arrangements or other Business Arrangements

NV Energy Applicants

The NV Energy Applicants have no joint ventures, strategic alliances, tolling arrangements that will affect its business interests. However, the NV Energy Utilities do have on file agreements with other entities addressing jointly owned transmission facilities, including the One Nevada Transmission Line (“ON Line”) Project. The ON Line is a new 230-mile 500 kV transmission line currently under construction in Nevada. The ON Line Project is jointly owned and developed with Great Basin Transmission South, LLC, a subsidiary of LS Power Development, LLC. The terms of the joint ownership and development of the ON Line Project are governed under the terms of a Transmission Use and Capacity Exchange Agreement (“TUA”), which was filed and approved by the Commission on November 19, 2010, in *Nev. Power Co.*, 133 FERC ¶ 61,166 (2010).

MidAmerican

Joint Ventures

MidAmerican Renewables and TransAlta Corporation each indirectly own 50 percent of the interests in CE Generation, which is a joint venture that owns and operates geothermal and natural-gas fired electric generation units in Arizona, California, New York, and Texas, and in CalEnergy, LLC, which is a power marketer that markets the output from the CE Generation geothermal units located in California.

MidAmerican Renewables and NRG Energy, Inc. own 49 percent and 51 percent, respectively, of the interests in Agua Caliente, which is joint venture that owns and operates a solar generation facility located in Yuma County, Arizona.

MidAmerican Renewables and Clark Power, LLC (“Clark Power”) have agreed to form a joint venture to bid on United States Department of Defense renewable energy facilities throughout the United States. No bids are outstanding and no projects have been awarded. MidAmerican Renewables and Clark Power each directly own 50 percent of the joint venture.

MidAmerican Transmission and AEP each own 50 percent interests in Electric Transmission Texas, which is a joint venture that owns and operates electric transmission assets in ERCOT and is regulated by the Public Utility Commission of Texas.

MidAmerican Transmission and AEP also each indirectly own 50 percent interests in Electric Transmission America, which is a joint venture, located entirely within the Southwest Power Pool Electric Energy Network. Electric Transmission America has formed a joint venture with Westar to build transmission assets in Kansas, including Prairie Wind Transmission, LLC.

Transfer of Operational Control over Transmission Facilities

MidAmerican Energy has transferred operational control over its transmission system to MISO. *See MidAmerican Energy Co. and Midwest Independent Transmission System Operator, Inc.*, 128 FERC ¶ 61,046 (2009); *MidAmerican Energy Co. and Midwest Independent Transmission System Operator, Inc.*, 128 FERC ¶ 61,047 (2009); *MidAmerican Energy Co.*, Docket No. ER09-1260-000 (July 16, 2009) (unreported).

Other Business Arrangements

PacifiCorp and the CAISO have proposed to form an Energy Imbalance Market (“EIM”) that will include CAISO, PacifiCorp and perhaps other entities. The Commission has approved the implementation agreement for the proposed EIM market. *See California Independent System Operator Corp.*, 143 FERC ¶ 61,298 (2013).

Exhibit E: Common Officers or Directors of the Parties to the Transaction

There are no common officers or directors between Merger Sub and its affiliates and the NV Energy Applicants and their affiliates.

Exhibit F: Description and Location of Wholesale Power Customers and Unbundled Transmission Service Customers Served by Applicants or Their Affiliates

Lists of Applicants' wholesale power sales, including sales at cost-based rates, and unbundled transmission customers in the United States are provided below in this Exhibit F and in Ms. Solomon's workpapers. A complete list of the customers to whom Applicants make wholesale power sales is provided in the EQR data that is included as part of Ms. Solomon's workpapers. Applicants have not provided information regarding their wholesale power sales and unbundled transmission customers outside of the United States because these customers are not relevant to the Transaction.

EXHIBIT F-1: NV Energy Applicants Wholesale Power Sales and Transmission Service Customers

LONG-TERM WHOLSALE POWER SALES CUSTOMERS

<u>CUSTOMER</u>	<u>CITY/STATE</u>
California Pacific Electric Company, LLC	South Lake Tahoe, CA
Southern Nevada Water Authority	Las Vegas, NV

LONG-TERM TRANSMISSION SERVICE CUSTOMERS

<u>CUSTOMER</u>	<u>CITY/STATE</u>
Barrick Goldstrike Mines, Inc.	Elko, NV
Colorado River Commission of Nevada	Las Vegas, NV
Enel Green Power	La Jolla, CA
Fallon, City of	Fallon, NV
Las Vegas Power Company, LLC (Apex Generating)	Las Vegas, NV
Mt. Wheeler Power, Inc.	Ely, NV
Patua Project LLC	Reno, NV
RAM Power	Reno, NV
Southern Nevada Water Authority	Las Vegas, NV
Truckee Donner Public Utility District	Truckee, CA

SHORT-TERM TRANSMISSION CUSTOMERS

<u>CUSTOMER</u>	<u>CITY/STATE</u>
Arizona Electric Power Cooperative	Benson, AZ
BPA, Power Business Line	Portland, OR
British Columbia Power	Vancouver BC Canada
Cargill-Alliant, LLC	Minnetonka, MN
Coral Power, LLC	Houston, TX
Deseret G & T Cooperative Marketing	South Jordan, UT
Eagle Energy Partners I, LP	Houston, TX
Fortis Energy Marketing and Trading, GP	Houston, TX
Panda Gila River	Tampa, FL
Iberdrola Renewables	Portland, OR

Idaho Power Company	Boise, ID
JPMorgan Ventures Energy Corporation	New York, NY
Los Angeles Wholesale Marketing	Los Angeles, CA
Macquarie Cook Power, Inc.	Houston, TX
Macquarie Energy LLC	Houston, TX
Morgan Stanley Capital Group Inc.	Purchase, NY
Noble Americas Gas & Power	Stanford, CT
Northern California Power Agency	Roseville, CA
Pacific Gas & Electric	San Francisco, CA
PacifiCorp Energy	Portland, OR
Portland General Electric	Portland, OR
Powerex Corp.	Vancouver, BC Canada
Reliant Energy Services, Inc	Houston, TX
San Diego Gas & Electric	San Diego, CA
Southern California Edison	Rosemead, CA
Tenaska Power Services	Arlington, TX
TransAlta Energy Marketing US, Inc.	Calgary AB Canada
UAMPS	Salt Lake City, UT
Western Area Power Administration	Montrose, CO

OTHER TRANSMISSION SERVICE CUSTOMERS

<u>CUSTOMER</u>	<u>CITY/STATE</u>
Basic Management Inc. & Affiliates	Henderson, NV
Bonneville Power Administration	Portland, OR
California Dept. of Water Resources	Sacramento, CA
Harney Electric	Burns, OR
Lincoln County Power District No.1	Pioche, NV
Overton Power District No. 5	Las Vegas, NV
Wells Rural Electric	Wells, NV

INTERCONNECTION CUSTOMERS

American Capital Energy	North Chelmsford, MA
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Barrick Goldstrike Mines, Inc.	Elko, NV
Beowawe Power, LLC	Reno, NV
BrightSource Energy, Inc.	Oakland, CA
CC Landfill Energy, LLC	Las Vegas, NV
China Mountain Wind, LLC	Broomfield, CO
City of Las Vegas	Las Vegas, NV
El Dorado Energy, LLC	Boulder City, NV
Enel North America/Salt Wells	Reno, NV
Esmeralda Energy Company	Agoura Hills, CA
Fotowatio Nevada Solar, LLC	San Francisco, CA
FRV Spectrum Solar, LLC	San Francisco, CA
Las Vegas Power Company (APEX Generating Station)	Las Vegas, NV
Black Hills Power & Light (LV Cogen II)	N. Las Vegas, NV
Department of Water & Power – LA	Los Angeles, CA
Las Vegas Valley Water District	Las Vegas, NV
LS Power	St Louis, MO
Mountain View Solar, LLC	Juno Beach, FL
NGP Blue Mountain, LLC	Reno, NV
Nevada Solar One, LLC	Henderson, NV
Ormat	Reno, NV
Pacific Gas & Electric Company-Utility	San Francisco, CA
PacifiCorp Electric Operations	Portland, OR
Patua Project, LLC	Reno, NV
Plumas-Sierra Rural Electric Cooperative	Portola, CA
Presco Energy, LLC	Englewood, CO
Ridgeline Nevada Energy, LLC	Seattle, WA
Sempra Generation	San Diego, CA
Silver State Solar Power North LLC	San Francisco, CA
Spring Valley Wind LLC	San Francisco, CA
Southern California Edison Co	Rosemead, CA
TG Power	Trussville, AL
Tonopah Solar Energy, LLC	Santa Monica, CA

USG Nevada LLC

Valley Electric Association

Virginia Peak Wind Company

WM Renewable Energy, LLC

Boise, ID

Pahrump, NV

Las Vegas, NV

Houston, TX

Exhibit F-2: MidAmerican Wholesale Power Sales and Transmission Service Customers

MIDAMERICAN RENEWABLES LONG-TERM POWER SALES CUSTOMERS

<u>SELLER</u>	<u>CUSTOMER</u>	<u>CITY</u>	<u>STATE</u>
Agua Caliente	Pacific Gas & Electric Company ("PGE")	SAN FRANCISCO	CA
Cordova	Exelon Generation Company, LLC	CHICAGO	IL
Pinyon Pines I	Southern California Edison ("SCE")	ROSEMEAD	CA
Pinyon Pines II	SCE	ROSEMEAD	CA
Solar Star 1	SCE	ROSEMEAD	CA
Solar Star 2	SCE	ROSEMEAD	CA
Topaz	PG&E	SAN FRANCISCO	CA

CE GENERATION LONG-TERM WHOLESALE POWER SALES CUSTOMERS

<u>SELLER</u>	<u>CUSTOMER</u>	<u>CITY</u>	<u>STATE</u>
CE Leathers	SCE	ROSEMEAD	CA
CE Turbo	Arizona Public Service Company	PHOENIX	AZ
Del Ranch	SCE	ROSEMEAD	CA
Elmore	SCE	ROSEMEAD	CA
Fish Lake	SCE	ROSEMEAD	CA
SSPG	SCE	ROSEMEAD	CA
Salton Sea Power	City of Riverside	RIVERSIDE	CA
Vulcan	SCE	ROSEMEAD	CA
Power Resources	EDF Trading North America ("EMA")	HOUSTON	TX
Saranac	EMA	HOUSTON	TX
Yuma	San Diego Gas & Electric Company	SAN DIEGO	CA
Wailuku	Hawaii Electric Light Company	HONOLULU	HI

MIDAMERICAN LONG-TERM WHOLESALE POWER SALES CUSTOMERS

<u>CUSTOMER</u>	<u>CITY</u>	<u>STATE</u>
AEP Energy Partners Inc.	COLUMBUS	OH
Central Iowa Power Cooperative	CEDAR RAPIDS	IA
Central Minnesota Municipal Power Agency	BLUE EARTH	MN

City of Lakeview	LAKEVIEW	IA
Lincoln Electric System	LINCOLN	NE
The Energy Authority	JACKSONVILLE	FL

PACIFICORP LONG-TERM WHOLESALE POWER SALES CUSTOMERS

<u>CUSTOMER</u>	<u>CITY</u>	<u>STATE</u>
Black Hills Power, Inc.	RAPID CITY	SD
Bonneville Power Administration	PORTLAND	OR
Brigham City Corporation	BRIGHAM CITY	UT
City of Deaver	DEAVER	WY
City of Helper & Helper Annex	HELPER	UT
Los Angeles Department of Water & Power	LOS ANGELES	CA
Navajo Tribal Authority	FORT DEFIANCE	AZ
Price City Corporation	PRICE	UT
Sacramento Municipal Utility District	SACRAMENTO	CA
Utah Municipal Power Agency	SPANISH FORK	UT

**MIDAMERICAN LONG-TERM TRANSMISSION SERVICE AND
WHOLESALE DISTRIBUTION SERVICE CUSTOMERS**

<u>CUSTOMER</u>	<u>CITY</u>	<u>STATE</u>
Algona Municipal Utilities	ALGONA	IA
Bancroft Municipal Utilities	BANCROFT	IA
Central Iowa Power Cooperative	CEDAR RAPIDS	IA
City of Eldridge	ELDRIDGE	IA
City of Geneseo	GENESEO	IA
City of Lake View	LAKE VIEW	IA
Coon Rapids Municipal Utilities	COON RAPIDS	IA
Corn Belt Power Cooperative	HUMBOLDT	IA
Graetinger Municipal Light Plant	GRAETINGER	IA
ITC Midwest	NOVI	MI
Laurens Municipal Light and Power	LAURENS	IA
Milford Municipal Utilities	MILFORD	IA
Municipal Energy Agency of Nebraska	LINCOLN	NE

Spencer Municipal Utilities	SPENCER	IA
Webster City Municipal Utilities	WEBSTER CITY	IA

PACIFICORP LONG-TERM TRANSMISSION SERVICE CUSTOMERS

<u>CUSTOMER</u>	<u>CITY</u>	<u>STATE</u>
Avista	SPOKANE	WA
Basin Electric Power Corporation	BISMARCK	ND
Black Hills Power Corporation	RAPID CITY	SD
Bonneville Power Administration	PORTLAND	OR
Deseret Generation & Transmission	SOUTH JORDAN	UT
Enel Cove Fort	COVE FORT	UT
Iberdrola Renewables	PORTLAND	OR
Idaho Power Company	BOISE	ID
Intermountain Renewables	PROVO	UT
Nextera	JUNO BEACH	FL
Noble Americas	STAMFORD	CT
PacifiCorp	PORTLAND	OR
Portland General Electric	PORTLAND	OR
Powerex Corporation	VANCOUVER	BC
Sacramento Municipal Utility District	SACRAMENTO	CA
State of South Dakota	PIERRE	SD
Tri-State Generation & Transmission	WESTMINSTER	CO
United States Bureau of Reclamation	BOISE	ID
Utah Associated Municipal Power Systems	SALT LAKE CITY	UT
Utah Municipal Power Association	SPANISH FORK	UT
Western Area Power Administration	LAKWOOD	CO

MIDAMERICAN INTERCONNECTION CUSTOMERS

<u>CUSTOMER</u>	<u>CITY</u>	<u>STATE</u>
Clipper Wind Power Development	CARPINTERIA	CA
Farmers Wind LLC	PORTLAND	OR
Highland Wind Energy LLC	CHICAGO	IL

Iberdrola Renewable Energies, USA, Ltd.	PORTLAND	OR
MidAmerican Energy Company Electric Trading	URBANDALE	IA
New Harvest Wind Farm	PORTLAND	OR
Pocahontas Prairie Wind Farm	MINNEAPOLIS	MN
PPM Energy	PORTLAND	OR

PACIFICORP INTERCONNECTION CUSTOMERS

<u>CUSTOMER</u>	<u>CITY</u>	<u>STATE</u>
AG Hydro, LLC	LOGAN	UT
AntiCline Disposal, LLC	PINEDALE	WY
Athena-Weston Wind Power Project, LLC	SALEM	OR
ATK Space Systems	WEST VALLEY	UT
Aurora Solar, LLC	SCOTTS VALLEY	CA
Bell Mountain Hydro, LLC	IDAHO FALLS	ID
Biomass One, LP	WHITE CITY	OR
Black Canyon, LLC	LOS ANGELES	CA
Blue Mountain Biogas, LLC	PROVO	UT
BP America Production Company NA, Inc.	HOUSTON	TX
Bureau of Land Management - Rawlins Office	RAWLINS	WY
Cameron A. Curtiss	KLAMATH FALLS	OR
Cargill Environmental Finance	HANSEN	ID
Carlisle SynTec, Inc.	CARLISLE	PA
Cedar Solar Energy, LLC (fka SolarReserve, LLC)	SANTA MONICA	CA
Central Oregon Irrigation District	REDMOND	OR
Chevron Global Generation	HOUSTON	TX
City of Astoria	ASTORIA	OR
City of Portland Water Bureau	PORTLAND	OR
Clipper Windpower Development Company, Inc	CARPINTERIA	CA
Cottonwood Hydro	COTTONWOOD HEIGHTS	UT
Cottonwood Hydro, LLC	COTTONWOOD HEIGHTS	UT
DEGS Wind I, LLC	CINCINNATI	OH

Del Rio Vineyards, LLC	GOLD HILL	OR
Dorena Lake, LLC	DELRAY BEACH	FL
Douglas County Forest Products	ROSEBURG	OR
Draper Irrigation Co.	DRAPER	UT
Duane Wiggins Hydro	JOSEPH	OR
eBay, Inc	SOUTH JORDAN	UT
EBD Hydro, LLC	BEND	OR
EDF Renewable Development, Inc	SAN DIEGO	CA
ENEL Cove Fort, LLC	BEAVER	UT
Eurus Combine Hills I, LLC	SAN DIEGO	CA
Eurus Dry Creek Wind LLC	SAN DIEGO	CA
Eurus Middlewood Wind, LLC	SAN RAMON	CA
Evergreen BioPower LLC	LYONS	OR
Evergreen Wind Power Partner, LLC	SALT LAKE CITY	UT
Exelon Wind, LLC	JOHNSON	IA
Exxon Mobil Production Company	HOUSTON	TX
Farmers Irrigation District	HOOD RIVER	OR
FPL Energy Vansycle, LLC	WALLULA	WA
FPL Energy Wyoming, LLC	EVANSTON	WY
Granger Electric of South Jordan LLC	SOUTH JORDAN	UT
GreenWing Energy, Ltd.	VANCOUVER	BC
Growpro, Incorporated	ETNA	CA
Iberdrola Renewables, Inc.	PORTLAND	OR
Intermountain Renewable Power, LLC	SALT LAKE CITY	UT
J Bar 9 Ranch, Inc.	CODY	WY
Klamath Falls Bioenergy, LLC	BELLEVUE	WA
Klamath Geothermal No. 1 KL-01, LLC	PROVO	UT
Lakeview Cogeneration, LLC	PORTLAND	OR
Laramie County Community College	CHEYENNE	WY
Loyd Fery	AUMSVILLE	OR
Meadow Creek Project Company, LLC	BOISE	ID
Meduri Farms, Inc.	DALLAS	OR

Monroe Hydro, LLC	ALAMEDA	CA
Mountain Energy Inc.	GRANTS PASS	OR
Mountain Wind Power II, LLC	BOSTON	MA
Mountain Wind Power, LLC	BOSTON	MA
NEXtera Energy Resources, LLC	JUNO BEACH	FL
Odell Creek Hydro	HOOD RIVER	OR
Oregon Institute of Technology	KLAMATH FALLS	OR
Oregon State University	CORVALLIS	OR
PacifiCorp Commercial & Trading	PORTLAND	OR
PacifiCorp Energy	PORTLAND	OR
PacifiCorp Power Marketing, Inc.	PORTLAND	OR
Parowan Solar Energy, LLC	SANTA MONICA	CA
Pioneer Wind Park I, LLC	SALT LAKE CITY	UT
Power County Wind Park North, LLC	WILMINGTON	DE
Power County Wind Park South, LLC	WILMINGTON	DE
PPM Energy, Inc.	PORTLAND	OR
RES Agriculture, LLC	WASHINGTON	DC
Ridgeline Energy, LLC	SEATTLE	WA
Rock River I, LLC	SAN DIEGO	CA
Roseburg Forest Products Inc.	ROSEBURG	OR
Roseburg LFG Energy, LLC	WOODLAND	WA
Rough & Ready Lumber	CAVE JUNCTION	OR
Roush Hydro, Inc.	STAYTON	OR
S. F. Phosphates Limited Company	ROCK SPRINGS	WY
Salt Lake Energy Systems LLC	SALT LAKE CITY	UT
Shamrock Wind, LLC	CHEYENNE	WY
Simpson Ridge Wind Farm, LLC	PORTLAND	OR
SolarReserve, LLC	SANTA MONICA	CA
Southern California Public Power Authority	SACRAMENTO	CA
Southern California Public Power Authority	SACRAMENTO	CA
Spanish Fork Wind Park 2, LLC	SPANISH FORK	UT
Stahlbush Island Farms, Inc.	CORVALLIS	OR

Swalley Irrigation District	BEND	OR
Sweeney Park Wind Farm	SALT LAKE CITY	UT
Tasco Energy, LLC	LEHI	UT
TDY Industries, Inc	ALBANY	OR
Tesoro Refining & Marketing Company	SAN ANTONIO	TX
Thayn Hydro LLC	PRICE	UT
Thermo No. 1 BE-01, LLC	SALT LAKE CITY	UT
Third Planet Windpower, LLC	SAN RAMON	CA
Three Buttes Windpower	CINCINNATI	OH
Three Peaks Solar Energy, LLC	SANTA MONICA	CA
Threemile Canyon Wind, LLC	WEST DES MOINES	IA
TMF Biofuels, LLC	BOARDMAN	OR
Tooele Army Depot	TOOELE	UT
Top of the World Wind Energy, LLC	CINCINNATI	OH
Two Elk Generation Partners, LP	GREENWOOD	CO
University of Utah	SALT LAKE CITY	UT
University of Wyoming Research Corporation	CHEYENNE	WY
Utah Red Hills Renewable Park, LLC	SAUSALITO	CA
Vansycle III, LLC	JUNO BEACH	FL
WKN Chopin, LLC	SAN DIEGO	CA
Wolverine Creek Goshen Interconnection, LLC	CHICAGO	IL

Exhibit G: Description of Jurisdictional Facilities of Applicants and Their Affiliates

The Applicants' and their affiliates' jurisdictional facilities are described above in Section I and in the Solomon Affidavit included as Exhibit J.

Exhibit H: Jurisdictional Facilities and Securities Associated with or Affected by the Transaction

The jurisdictional facilities and securities associated with or affected by the Transaction are described in Sections I and I of this Application and in the Solomon Affidavit included as Exhibit J.

Exhibit I: Contracts Related to the Proposed Transaction

PUBLIC VERSION

PRIVILEGED INFORMATION
HAS BEEN REMOVED

AGREEMENT AND PLAN OF MERGER

among

MIDAMERICAN ENERGY HOLDINGS COMPANY,

SILVER MERGER SUB, INC.

and

NV ENERGY, INC.

Dated as of May 29, 2013

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Annex I Defined Terms

AGREEMENT AND PLAN OF MERGER, dated as of May 29, 2013 (this “Agreement”), by and among MidAmerican Energy Holdings Company, an Iowa corporation (“Parent”), Silver Merger Sub, Inc., a Nevada corporation and a wholly owned Subsidiary of Parent (“Sub”), and NV Energy, Inc., a Nevada corporation (the “Company”). Certain capitalized terms used in this Agreement are defined in Annex I and other capitalized terms used in this Agreement are defined elsewhere in this Agreement.

RECITALS

WHEREAS, the respective boards of directors of Parent, Sub and the Company have each approved the merger of Sub with and into the Company (the “Merger”) upon the terms and subject to the conditions set forth in this Agreement and in accordance with the Nevada Revised Statutes (the “NRS”), whereby each issued and outstanding share of Common Stock, par value \$1.00 per share, of the Company (the “Company Common Stock”), other than shares of Company Common Stock owned by Parent, Sub, the Company or any of their respective Subsidiaries will be converted into the right to receive the Merger Consideration;

WHEREAS, the board of directors of each of Sub and the Company has (i) determined that this Agreement and the Merger are advisable and in the best interests of such corporation and its stockholders, (ii) adopted this Agreement and the Merger and (iii) recommended that its stockholders approve this Agreement; and

WHEREAS, each of Parent, Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the Merger.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties and covenants and subject to the conditions set forth herein, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

ARTICLE I THE MERGER

SECTION 1.01 The Merger. Upon the terms and subject to the conditions of this Agreement, and in accordance with the NRS, at the Effective Time, Sub shall be merged with and into the Company, whereupon the separate existence of Sub shall cease, and the Company shall continue as the surviving corporation (the “Surviving Corporation”).

SECTION 1.02 Closing. The closing of the Merger (the “Closing”) will take place at 10:00 a.m. (Las Vegas time) on a date to be agreed by Parent and the Company, but no later than the third Business Day after the satisfaction or waiver of the conditions set forth in Article VI (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or, if permissible, waiver of such conditions) at the offices of Sidley Austin LLP, One South Dearborn Street, Chicago, Illinois 60603, unless another time, date or place is agreed to in writing by the parties hereto. The date on which the Closing actually occurs is referred to as the “Closing Date.”

SECTION 1.03 Effective Time. Concurrently with the Closing, the Company shall file the articles of merger with respect to the Merger (the “Articles of Merger”) with the Secretary of State of the State of Nevada in such form as required by, and executed in accordance with, the applicable provisions of the NRS. The Merger shall become effective on the date and time at which the Articles of Merger have been duly filed with the Secretary of State of the State of Nevada or at such other date and time as is agreed between the parties and specified in the Articles of Merger (such date and time, the “Effective Time”).

SECTION 1.04 Organizational Documents, Directors and Officers of the Surviving Corporation.

(a) Organizational Documents. At the Effective Time (i) the articles of incorporation of the Surviving Corporation, as in effect immediately prior to the Effective Time, shall be amended and restated in a form mutually agreed by Parent and the Company, and (ii) the bylaws of Sub, as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Corporation (except that references therein to the name of Sub shall be replaced by references to the name of the Surviving Corporation) until thereafter amended in accordance with the NRS and the applicable provisions of the articles of incorporation and bylaws of the Surviving Corporation.

(b) Directors. Subject to applicable Law, at the Effective Time, the members of the board of directors of Sub immediately prior to the Effective Time shall be the members of the board of directors of the Surviving Corporation, each to hold office in accordance with the articles of incorporation and bylaws of the Surviving Corporation.

(c) Officers. From and after the Effective Time, the officers of the Company at the Effective Time shall be the officers of the Surviving Corporation, each to hold office in accordance with the articles of incorporation and bylaws of the Surviving Corporation.

ARTICLE II EFFECT OF THE MERGER ON CAPITAL STOCK

SECTION 2.01 Conversion of Securities.

(a) At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Sub, the Company or the holders of any capital stock of the Company or Sub:

(i) Conversion of Company Common Stock. Each share of Company Common Stock (each, a “Share” and collectively, the “Shares”) issued and outstanding immediately prior to the Effective Time, other than Shares to be cancelled in accordance with Section 2.01(a)(ii) shall automatically be converted into the right to receive \$23.75 in cash, without interest (the “Merger Consideration”), and all of such Shares shall cease to be outstanding, shall be cancelled and shall cease to exist, and each certificate (a “Certificate”) or non-certificated Share represented by book-entry (“Book Entry Shares”) that formerly represented any of the Shares (other than Shares to be cancelled in accordance with Section 2.01(a)(ii)) shall thereafter represent only the right to receive the Merger Consideration, subject to Section 2.04.

(ii) Cancellation of Company-Owned Shares and Parent-Owned Shares. All Shares that are held in the treasury of the Company or owned of record by any Company Subsidiary and all Shares owned of record by Parent, Sub or any of their respective wholly owned Subsidiaries shall be cancelled and shall cease to exist, with no payment being made with respect thereto.

(iii) Capital Stock of Sub. Each issued and outstanding share of capital stock of Sub shall be automatically converted into and become one validly issued, fully paid and nonassessable share of Common Stock, par value \$0.01 per share, of the Surviving Corporation.

(b) Merger Consideration Adjustment. Notwithstanding anything in this Agreement to the contrary, if, from the date of this Agreement until the Effective Time, the outstanding shares of Company Common Stock shall have been changed into a different number of shares or a different class by reason of any reclassification, stock split (including a reverse stock split), recapitalization, split-up, combination, exchange of shares, readjustment or other similar transaction, or a stock dividend or stock distribution thereon shall be declared with a record date within said period, the Merger Consideration shall be appropriately adjusted to provide the holders of Shares the same economic effect as contemplated by this Agreement prior to such event.

SECTION 2.02 Exchange of Certificates; Payment for Shares.

(a) Paying Agent. Prior to the Effective Time, Parent shall deposit with a United States-based nationally recognized financial institution designated by Parent and reasonably acceptable to the Company (the "Paying Agent"), for the benefit of the holders of Shares, a cash amount in immediately available funds equal to the Aggregate Common Stock Consideration (the "Exchange Fund"). In the event the Exchange Fund shall be insufficient to make the payments contemplated by Section 2.01(a)(i), Parent shall promptly deposit, or cause to be deposited, additional funds with the Paying Agent in an amount sufficient to make such payments. Funds made available to the Paying Agent shall be invested by the Paying Agent, as directed by Parent, in short-term obligations of, or short-term obligations fully guaranteed as to principal and interest by, the United States of America with maturities of no more than 30 days, pending payment thereof by the Paying Agent to the holders of Shares pursuant to this Article II; provided that, no investment of such deposited funds shall relieve Parent, the Surviving Corporation or the Paying Agent from promptly making the payments required by this Article II, and following any losses from any such investment, Parent shall promptly provide additional funds to the Paying Agent, for the benefit of the holders of Shares, in the amount of such losses, which additional funds will be held and disbursed in the same manner as funds initially deposited with the Paying Agent for payment of the Aggregate Common Stock Consideration to holders of Shares. Parent shall direct the Paying Agent to hold the Exchange Fund for the benefit of the former holders of Company Common Stock and to make payments from the Exchange Fund in accordance with Section 2.02(b). The Exchange Fund shall not be used for any purpose other than to fund payments pursuant to Section 2.02(b), except as expressly provided for in this Agreement.

(b) Procedures for Surrender. As promptly as practicable after the Effective Time and in any event not later than the third Business Day thereafter, Parent shall cause the Paying

Agent to mail to each holder of record of a Certificate or Book-Entry Shares, in each case whose Shares were converted into the right to receive the Merger Consideration at the Effective Time pursuant to this Agreement: (i) a letter of transmittal, which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates (or affidavits of loss in lieu thereof in accordance with Section 2.02(e)) to the Paying Agent, and shall otherwise be in such form and have such other provisions as Parent may reasonably specify after consultation with the Company; and (ii) instructions for effecting the surrender of the Certificates or Book-Entry Shares in exchange for payment of the Merger Consideration. Upon surrender of Certificates (or affidavits of loss in lieu thereof in accordance with Section 2.02(e)) for cancellation to the Paying Agent, and upon delivery of a letter of transmittal, duly executed and in proper form, with respect to such Certificates or Book-Entry Shares, the holder of such Certificates or Book-Entry Shares shall be entitled to receive in exchange therefor the portion of the Aggregate Common Stock Consideration into which the Shares formerly represented by such Certificates or such Book-Entry Shares were converted pursuant to Section 2.01(a)(i) (less any required Tax withholdings as provided in Section 2.04), and the Certificates so surrendered shall forthwith be cancelled. In the event of a transfer of ownership of Company Common Stock that is not registered in the transfer records of the Company, payment may be made and Merger Consideration may be issued to a person other than the person in whose name the Certificate so surrendered is registered, if such Certificate shall be properly endorsed or shall otherwise be in proper form for transfer and the person requesting such payment shall pay to the Paying Agent any transfer and other similar Taxes required by reason of the payment of the Merger Consideration to a person other than the registered holder of the Certificate so surrendered or shall establish to the satisfaction of the Paying Agent that such Taxes either have been paid or are not required to be paid. Payment of the Merger Consideration with respect to Book-Entry Shares shall only be made to the person in whose name such Book-Entry Shares are registered. No interest shall be paid or accrue on any cash payable upon surrender of any Certificate or Book-Entry Share (or affidavits of loss in lieu thereof in accordance with Section 2.02(e)).

(c) Transfer Books; No Further Ownership Rights in Shares. As of the Effective Time, the stock transfer books of the Company shall be closed and thereafter there shall be no further registration of transfers of Shares on the records of the Company. The Merger Consideration paid in accordance with the terms of this Article II upon surrender of any Shares shall be deemed to have been paid in full satisfaction of all rights pertaining to such Shares. From and after the Effective Time, the holders of Shares outstanding immediately prior to the Effective Time shall cease to have any rights with respect to such Shares except as otherwise provided for herein or by applicable Law. If, after the Effective Time, Certificates are presented to the Surviving Corporation for any reason, they shall be cancelled and exchanged as provided in this Agreement.

(d) Termination of Exchange Fund; Abandoned Property; No Liability. At any time following the first anniversary of the Effective Time, the Surviving Corporation shall be entitled to require the Paying Agent to deliver to it any portion of the Exchange Fund (including any interest received with respect thereto) not disbursed to holders of Shares, and thereafter such holders shall be entitled to look only to the Surviving Corporation (subject to abandoned property, escheat or other similar Laws) as general creditors thereof with respect to the Merger Consideration payable upon due surrender of their Shares and compliance with the procedures

set forth in Section 2.02(b), without interest. Notwithstanding the foregoing, none of Parent, the Surviving Corporation or the Paying Agent shall be liable to any holder of a Share for Merger Consideration delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(e) Lost, Stolen or Destroyed Certificates. If any Certificate shall have been lost, stolen or destroyed, the Paying Agent or the Surviving Corporation, as applicable, shall issue in exchange for such lost, stolen or destroyed Certificates upon the making of an affidavit of that fact by the holder thereof, the portion of the Aggregate Common Stock Consideration into which the Shares formerly represented by such Certificate were converted pursuant to Section 2.01(a)(i); provided, however, that Parent may, in its reasonable discretion and as a condition precedent to the payment of such Merger Consideration, require the owner of such lost, stolen or destroyed Certificate to provide a bond in a customary amount.

SECTION 2.03 Treatment of Company Options, RSU Awards, Performance Awards, DSU Awards and Equity Plans.

(a) Treatment of Company Options. Prior to the Effective Time, the Company's board of directors (or, if appropriate, any committee thereof) shall adopt appropriate resolutions to provide that, immediately prior to the Effective Time, each outstanding option to purchase Shares granted under a Company Stock Plan (the "Company Options") shall be fully vested and cancelled and, in exchange therefor, each holder of any such cancelled Company Option shall be entitled to receive, in consideration of the cancellation of such Company Option and in settlement therefor, a payment in cash of an amount equal to the product of (i) the total number of Shares subject to such cancelled Company Option and (ii) the excess, if any, of the Merger Consideration over the exercise price per Share subject to such cancelled Company Option, without interest (such amounts payable hereunder, the "Option Payments"); provided, however, that (i) any such Company Option with respect to which the exercise price per Share subject thereto is greater than the Merger Consideration shall be cancelled in exchange for no consideration and (ii) such Option Payments may be reduced by the amount of any required Tax withholdings as provided in Section 2.04. From and after the Effective Time, no Company Option shall be exercisable, and shall only entitle the holder thereof to the payment of the Option Payment, if any.

(b) Treatment of Restricted Stock Units. Prior to the Effective Time, the Company's board of directors (or, if appropriate, any committee thereof) shall adopt appropriate resolutions to provide that immediately prior to the Effective Time, each outstanding award of restricted stock units with respect to Shares, excluding any award of units to acquire Shares addressed under Section 2.03(c) below (each, an "RSU Award") granted pursuant to a Company Stock Plan, shall be fully vested and cancelled and, in exchange therefor, each holder of any such cancelled RSU Award shall be entitled to receive, in consideration of the cancellation of such RSU Award and in settlement therefor, an amount in cash equal to the product of (i) the Merger Consideration and (ii) the number of restricted stock units subject to such RSU Award, without interest (such amounts payable hereunder, the "RSU Payments") (less any required Tax withholdings as provided in Section 2.04).

(c) Treatment of Performance Units and Performance Shares. Prior to the Effective Time, the Company's board of directors (or, if appropriate, any committee thereof) shall adopt appropriate resolutions to provide that immediately prior to the Effective Time, each outstanding award of performance units and performance shares with respect to Shares (each, a "Performance Award") granted pursuant to a Company Stock Plan, shall be vested and paid out assuming satisfaction of the applicable performance goal(s) at 100% of the target level (provided, that if actual measured performance, determined as of the Effective Time, would result in the vesting and payout of a Performance Award at a level greater than 100% of the target level, a pro rata portion, based on the fraction of the applicable performance period that has been completed as of the Effective Time, of the Performance Award shall be vested and paid out at such greater level and the balance of the Performance Award shall be vested and paid out at 100% of the target level) and cancelled and, in exchange therefor, each holder of any such cancelled Performance Award shall be entitled to receive, in consideration of the cancellation of such Performance Award and in settlement therefor, an amount in cash equal to the product of (i) the Merger Consideration and (ii) the number of performance units or performance shares, as the case may be, subject to such Performance Award, without interest (such amounts payable hereunder, the "Performance Award Payments") (less any required Tax withholdings as provided in Section 2.04).

(d) Treatment of Deferred Stock Units. Prior to the Effective Time, the Company's board of directors (or, if appropriate, any committee thereof) shall adopt appropriate resolutions to provide that immediately prior to the Effective Time, all outstanding deferred stock units (each, a "DSU Award") granted pursuant to a Company Stock Plan, shall be cancelled and, in exchange therefor, each holder of any such cancelled DSU Award shall be entitled to receive, in consideration of the cancellation of such DSU Award and in settlement therefor, an amount in cash equal to the product of (i) the Merger Consideration and (ii) the number of deferred stock units subject to such DSU Award, without interest (such amounts payable hereunder, the "DSU Payments") (less any required Tax withholdings as provided in Section 2.04).

(e) Termination of Company Stock Plans. After the Effective Time, all Company Stock Plans shall be terminated and no further Company Options, RSU Awards, Performance Awards, DSU Awards or other rights with respect to Shares shall be granted thereunder.

(f) Parent Funding. At the Effective Time, Parent shall deposit with the Surviving Corporation cash in the amount necessary to make the payments required under this Section 2.03, and Parent shall cause the Surviving Corporation to make the payments required under this Section 2.03 as promptly as practicable after the Effective Time. Parent shall cause the Surviving Corporation to pay the applicable Option Payments, RSU Payments, Performance Award Payments and DSU Payments, if any, to the holders of Company Options, RSU Awards, Performance Awards and DSU Awards, subject to Section 2.04.

SECTION 2.04 Withholding Rights.

(a) Each of Parent, the Surviving Corporation and the Paying Agent shall be entitled to deduct and withhold from the consideration otherwise payable in respect of the Shares, Company Options, RSU Awards, Performance Awards and the DSU Awards cancelled in the Merger such amounts as it is required to deduct and withhold with respect to the making of such

payment under the Internal Revenue Code of 1986, as amended (the “Code”), any regulation promulgated thereunder by the United States Department of Treasury (a “Treasury Regulation”) or any other applicable state, local or foreign Tax Law. To the extent that amounts are so withheld by the Surviving Corporation, Parent or the Paying Agent, as the case may be, such withheld amounts (i) shall be remitted by the Surviving Corporation, Parent or the Paying Agent, as applicable, to the applicable Governmental Entity, and (ii) shall be treated for all purposes of this Agreement as having been paid to the holder of Shares, Company Options or RSU Awards, Performance Awards and the DSU Awards in respect of which such deduction and withholding was made by the Surviving Corporation, Parent or the Paying Agent, as the case may be.

(b) On or before (but not more than twenty (20) days prior to) the Closing Date, the Company shall deliver or cause to be delivered to Parent a statement in accordance with Treasury Regulation Section 1.1445-2(c)(3) certifying that the Company is not a United States real property holding corporation for purposes of Sections 897 and 1445 of the Code.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except (a) as disclosed in the Company SEC Documents filed prior to the date hereof and on or after January 1, 2011, to the extent the relevance of such disclosure is reasonably apparent on the face of such disclosure, other than disclosures in the “Risk Factors” sections of any such filings and any disclosure of risks included in any “forward-looking statements” disclaimer or any other forward-looking disclosures set forth in any such Company SEC Documents that are non-specific and cautionary in nature, or (b) as disclosed in the separate disclosure letter which has been delivered by the Company to Parent prior to the execution of this Agreement, including the documents attached to or incorporated by reference in such disclosure letter (the “Company Disclosure Letter”) (it being agreed that disclosure of any item in any section or subsection of the Company Disclosure Letter shall also be deemed to be disclosed with respect to any other section or subsection in this Agreement to which the relevance of such item is reasonably apparent on the face of such disclosure), the Company hereby represents and warrants to Parent and Sub as follows:

SECTION 3.01 Organization and Qualification; Subsidiaries.

(a) The Company and each Company Subsidiary is a corporation or other legal entity duly incorporated or organized, validly existing and in good standing, as applicable, under the Laws of the jurisdiction of its incorporation or organization. The Company and each Company Subsidiary has requisite corporate or other legal entity, as the case may be, power and authority to own, lease and operate its properties and assets and to carry on its business as it is now being conducted. The Company and each Company Subsidiary is duly qualified to do business and is in good standing in each jurisdiction where the ownership, leasing or operation of its properties or assets or the conduct of its business requires such qualification, except where the failure to be so qualified or in good standing would not reasonably be expected to have a Company Material Adverse Effect.

(b) The Company has made available to Parent true and complete copies of (i) the Amended and Restated Articles of Incorporation, as amended, of the Company (the “Company Charter”), (ii) the By-Laws, as amended, of the Company (the “Company By-Laws”), and (iii) the articles of incorporation and bylaws, or equivalent organizational documents, of each Company Subsidiary, each as in effect as of the date hereof. Each of the Company Charter, Company By-Laws and the articles of incorporation and bylaws, or equivalent organizational documents, of each Company Subsidiary is in full force and effect, and none of the Company, any Company Subsidiary is in violation of any of the provisions of such documents.

(c) Section 3.01(c) of the Company Disclosure Letter sets forth a complete list, as of the date hereof, of each of the Subsidiaries of the Company (each a “Company Subsidiary”), together with its jurisdiction of organization or incorporation and the ownership interest of the Company or a Company Subsidiary, as applicable, in such Company Subsidiary.

SECTION 3.02 Capitalization.

(a) The authorized capital stock of the Company consists of 350,000,000 shares of Company Common Stock. As of the close of business on May 28, 2013, (i) 235,419,799 shares of Company Common Stock were issued and outstanding, all of which were duly authorized, validly issued, fully paid and nonassessable, and free of preemptive rights and (ii) 579,951 shares of Company Common Stock were held in treasury.

(b) As of the close of business on May 28, 2013, the Company had no shares of Company Common Stock reserved for issuance, except for 11,992,128 shares of Company Common Stock reserved for issuance pursuant to the Company Stock Plans (including 301,501 shares for outstanding Company Options and 2,446,024 shares for outstanding RSU Awards, Performance Awards and DSU Awards (including shares related to the phantom equity award set forth on Section 3.02(c) of the Company Disclosure Letter)), 605,306 shares of Company Common Stock reserved for issuance pursuant to the Company Stock Purchase Plan and 1,446,955 shares of Company Common Stock reserved for issuance under the Company’s Dividend Reinvestment Plan (formerly known as the Common Stock Investment Plan).

(c) Section 3.02(c) of the Company Disclosure Letter contains a complete list, as of the date of this Agreement, of outstanding Company Options, RSU Awards, Performance Awards and DSU Awards, including for each award (as applicable) the holder (the specific identity of whom may be redacted to the extent required by applicable Law), type of award, number of Shares subject to such award, the applicable Company Stock Plan, grant date, and the number of shares vested and exercise price, if applicable.

(d) As of the date hereof, except as provided in Sections 3.02(a), (b) and (c), there are no (i) outstanding shares of capital stock of, or other equity or voting interest in, the Company, (ii) outstanding securities of the Company or any Company Subsidiary convertible into or exchangeable for one or more shares of capital stock of, or other equity or voting interests in, the Company or any Company Subsidiary, (iii) options, warrants or other rights relating to or based on the value of the equity securities of the Company or any Company Subsidiary, (iv) agreements, commitments or arrangements of any character that are binding on the Company or any Company Subsidiary that obligate the Company or any Company Subsidiary to issue,

acquire or sell any capital stock of, or other equity interests in, the Company or any Company Subsidiary, (v) obligations of the Company or any Company Subsidiary to grant, extend or enter into a subscription, warrant, right, convertible or exchangeable security or other similar Contract relating to any capital stock of, or other equity or voting interest (including any Company Voting Debt) in, the Company or any Company Subsidiary, or (vi) outstanding restricted shares, restricted share units, stock appreciation rights, performance shares, performance units, deferred stock units, contingent value rights, “phantom” stock or similar rights issued or granted by the Company or any Company Subsidiary that are linked to the value the Company Common Stock (the items in clauses (i)-(vi), together with the capital stock of, or other equity interest in, the Company or any Company Subsidiary, being referred to collectively as “Company Securities”). Since the close of business on May 28, 2013 through the date hereof, the Company has not issued any shares of Company Common Stock or other class of equity security (other than shares in respect of Company Options, RSU Awards, Performance Awards and DSU Awards). As of the date of this Agreement, there are no outstanding contractual obligations of the Company or any of the Company Subsidiaries to repurchase, redeem or otherwise acquire any shares of capital stock of the Company or any of the Company Subsidiaries.

(e) As of the date hereof, except with respect to the Company Options, RSU Awards, Performance Awards and DSU Awards and options under the Company Stock Purchase Plan referred to in Sections 3.02(a), (b) and (c) and the related award agreements, there are no outstanding obligations of the Company or any Company Subsidiary (i) requiring the repurchase, redemption, acquisition or disposition of, or containing any right of first refusal with respect to, (ii) requiring the registration for sale of or (iii) granting any preemptive or antidilutive rights or other similar rights with respect to any Company Securities.

(f) There are no outstanding bonds, debentures, notes or other indebtedness of the Company or any of the Company Subsidiaries having the right to vote on any matters on which holders of capital stock or other equity interests of the Company or any of the Company Subsidiaries may vote (“Company Voting Debt”).

(g) The Company or another Company Subsidiary owns, directly or indirectly, all of the issued and outstanding shares of capital stock or other equity securities of each of the Company Subsidiaries, free and clear of any Liens (other than transfer and other restrictions under applicable federal and state securities Laws), and all of such outstanding shares of capital stock or other equity securities have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights. Except for (i) equity securities in the Company Subsidiaries, (ii) securities in a publicly traded company held for investment by the Company or any of the Company Subsidiaries and consisting of less than 1% of the outstanding capital stock of such company and (iii) as set forth in Section 3.02(g) of the Company Disclosure Letter, neither the Company nor any Company Subsidiary owns, directly or indirectly, any equity security in any person, or has any obligation to acquire any such equity security, or to provide funds to or make any investment (in the form of a loan, capital contribution or otherwise) in, any Company Subsidiary or any other person.

(h) Neither the Company nor any of the Company Subsidiaries is a party to any voting agreement with respect to the voting of any shares of capital stock or other voting securities or equity interests of the Company or any of the Company Subsidiaries.

SECTION 3.03 Authority.

(a) The Company has the requisite corporate power and authority to execute and deliver this Agreement and, subject to the receipt of the Company Stockholder Approval and the Company Required Governmental Approvals, to consummate the transactions contemplated hereby (including the Merger). The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company's board of directors and, other than the Company Stockholder Approval, no additional corporate proceedings on the part of the Company are necessary to authorize the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Company and (assuming the valid authorization, execution and delivery of this Agreement by Parent and Sub), except as set forth in Section 3.03 of the Company Disclosure Letter, constitutes the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except that (i) such enforcement may be subject to applicable bankruptcy, insolvency or other similar Laws, now or hereafter in effect, affecting creditors' rights generally and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

(b) The Company's board of directors has (i) determined that the Merger in the best interests of the Company, adopted and declared advisable this Agreement and the Merger and the other transactions contemplated hereby and resolved to recommend adoption of this Agreement to the holders of the Company Common Stock, (ii) directed that the Merger contemplated by this Agreement be submitted to the holders of the Company Common Stock for their approval and (iii) resolved to recommend that the shareholders of the Company approve this Agreement.

SECTION 3.04 No Conflict; Required Filings and Consents.

(a) None of the execution, delivery or performance of this Agreement by the Company or the consummation by the Company of the transactions contemplated by this Agreement (including the Merger) will: (i) subject to obtaining the Company Stockholder Approval, conflict with or violate any provision of the Company Charter or Company By-Laws or any equivalent organizational or governing documents of any Company Subsidiary; (ii) assuming that all consents, approvals and authorizations described in Section 3.04(b) have been obtained and all filings and notifications described in Section 3.04(b) have been made and any waiting periods thereunder have terminated or expired, conflict with or violate any Law applicable to the Company or any Company Subsidiary or any of their respective properties or assets; or (iii) require any consent or approval under, violate, conflict with, result in any breach of or any loss of any benefit under, or constitute a default under (with or without notice or lapse of time, or both), or result in termination or give to others any right of termination, vesting, amendment, acceleration or cancellation of, or result in the creation of a Lien (other than a Permitted Lien) upon any of the respective properties or assets of the Company or any Company Subsidiary pursuant to, any Company Material Contract to which the Company or any Company Subsidiary is a party (or by which any of their respective properties or assets are bound) or any Company Permit, except, with respect to clauses (ii) and (iii), as contemplated by Section 2.03 or for any such conflicts, violations, consents, breaches, losses, changes of control, defaults, other

occurrences or Liens that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect or to prevent or materially delay the ability of the Company to consummate the Merger.

(b) None of the execution, delivery or performance of this Agreement by the Company or the consummation by the Company of the transactions contemplated by this Agreement (including the Merger) will require (with or without notice or lapse of time, or both) any consent, approval, authorization or permit of, or filing or registration with or notification to, any Governmental Entity with respect to the Company or any Company Subsidiary or any of their respective assets, other than (i) the filing of the Articles of Merger with the Secretary of State of the State of Nevada, (ii) the filing of a premerger notification and report form under the HSR Act and the receipt, termination or expiration, as applicable, of waivers, consents, clearances, approvals, waiting periods or agreements required under the HSR Act or any other applicable U.S. or foreign competition, antitrust, merger control or investment Laws (together with the HSR Act, "Antitrust Laws"), (iii) the approval of each of the PUCN and the FERC (the clearances and approvals described in clauses (ii) and (iii), being referred to herein as the "Company Required Governmental Approvals"), (iv) compliance with, and such filings as may be required under, Environmental Laws, (v) required pre-approvals of license transfers with the Federal Communications Commission, (vi) compliance with the applicable requirements of the Exchange Act, (vii) filings as may be required under the rules and regulations of the New York Stock Exchange, and (viii) where the failure to obtain such consents, approvals, authorizations or permits of, or to make such filings, registrations with or notifications to, any Governmental Entity would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect or to prevent or materially delay the ability of the Company to consummate the Merger.

SECTION 3.05 Permits; Compliance with Laws.

(a) The Company and each Company Subsidiary is in possession of all authorizations, licenses, permits, certificates, variances, exemptions, approvals, orders, registrations and clearances of any Governmental Entity (each, a "Permit") necessary for the Company and each Company Subsidiary to own, lease and operate its properties and assets, and to carry on and operate its businesses as currently conducted (the "Company Permits"), and all such Company Permits are in full force and effect, except where the failure to have, or the failure to be in full force and effect of, any Company Permits would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(b) None of the Company or any Company Subsidiary is in violation of any Law applicable to the Company or any Company Subsidiary or by which any property or asset of the Company or any Company Subsidiary is bound or affected, except for any violations that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. To the knowledge of the Company, no investigation by any Governmental Entity with respect to the Company or any Company Subsidiary is pending, nor has any Governmental Entity indicated to the Company or any Company Subsidiary an intention to conduct any such investigation, except for such investigations the outcomes of which would not reasonably be expected to have a Company Material Adverse Effect.

SECTION 3.06 Company SEC Documents; Financial Statements. Since January 1, 2010, the Company has filed with or otherwise furnished to (as applicable) the SEC all registration statements, prospectuses, forms, reports, definitive proxy statements, schedules and documents required to be filed or furnished by it under the Securities Act or the Exchange Act, as the case may be, together with all certifications required pursuant to the Sarbanes-Oxley Act of 2002, as amended (the “Sarbanes-Oxley Act”) (such documents and any other documents filed by the Company with the SEC, as have been supplemented, modified or amended since the time of filing, collectively, the “Company SEC Documents”). As of their respective filing dates or, if supplemented, modified or amended since the time of filing, as of the date of the most recent supplement, modification or amendment, the Company SEC Documents (i) did not at the time each such document was filed contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading and (ii) complied in all material respects with all applicable requirements of the Exchange Act or the Securities Act, as the case may be, and the Sarbanes-Oxley Act, and the rules and regulations promulgated thereunder, in each case as in effect on the date each such document was filed. Except for Sierra Pacific Power Company d/b/a NV Energy (“SPPC”) and Nevada Power Company d/b/a NV Energy (“NPC”), none of the Company Subsidiaries is currently required to file any forms or reports with the SEC. As of the date hereof, there are no material outstanding or unresolved comments received from the SEC with respect to any of the reports filed by the Company with the SEC. Since January 1, 2010, the Company has been and is in compliance in all material respects with the applicable provisions of the Sarbanes-Oxley Act and the applicable listing and corporate governance rules and regulations of the New York Stock Exchange. The audited consolidated financial statements and unaudited consolidated interim financial statements of the Company (including, in each case, any notes thereto) and the consolidated Company Subsidiaries included in or incorporated by reference into the Company SEC Documents (collectively, the “Company Financial Statements”) (x) complied as of their respective dates of filing in all material respects with the then applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, (y) were prepared in conformity with GAAP (as in effect in the United States on the date of such Company Financial Statement) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto or, in the case of interim financial statements, for normal and recurring year-end adjustments that were not (or will not be) material in amount or effect) and (z) present fairly, in all material respects, the financial position of the Company and the consolidated Company Subsidiaries and the results of their operations and their cash flows as of the dates and for the periods referred to therein (except as may be indicated in the notes thereto or, in the case of interim financial statements, for normal and recurring year-end adjustments that were not (or will not be) material in amount or effect). Neither the Company nor any Company Subsidiary is a party to, or has any commitment to become a party to any “off-balance sheet arrangements” (as defined in Item 303(a) of Regulation S-K of the SEC)), where the result, purpose or effect of such contract is to avoid disclosure of any material transaction involving, or material liabilities of, the Company or any of the Company Subsidiaries, in the Company Financial Statements or the Company SEC Documents.

SECTION 3.07 Information Supplied. The proxy statement to be sent to the Company’s stockholders in connection with the Company Stockholder Meeting (together with any amendments or supplements thereto, the “Proxy Statement”) will not, at the time the Proxy

Statement is first mailed to the Company's stockholders or at the time of the Company Stockholder Meeting, as applicable, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Proxy Statement, insofar as it relates to the Company or the Company Subsidiaries or other information supplied by the Company for inclusion or incorporation by reference therein, will comply as to form in all material respects with the provisions of the Exchange Act and the rules and regulations thereunder and other applicable Law. Notwithstanding the foregoing, no representation or warranty is made by the Company with respect to statements made or incorporated by reference therein based on information supplied by Parent or Sub or any of their representatives specifically for inclusion (or incorporation by reference therein) in the Proxy Statement.

SECTION 3.08 Internal Controls and Disclosure Controls. The Company has designed and maintains a system of internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) intended to provide reasonable assurances regarding the reliability of financial reporting for the Company and the Company Subsidiaries. The Company (a) has designed disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) to ensure that material information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure and (b) based on its most recent evaluation of internal control prior to the date hereof, has disclosed to the Company's auditors and the audit committee of the Company's board of directors (i) any significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting that are reasonably likely to adversely affect in any material respect the Company's ability to report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting. The Company has established and maintains "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Exchange Act) that are reasonably designed (but without making any representation or warranty as to the effectiveness of any such controls or procedures so designed) to ensure that material information (both financial and non-financial) relating to the Company and the Company Subsidiaries required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that such information is accumulated and communicated to the Company's principal executive officer and principal financial officer, or persons performing similar functions, as appropriate, to allow timely decisions regarding required disclosure and to make the certifications of the "principal executive officer" and the "principal financial officer" of the Company required by Section 302 of the Sarbanes-Oxley Act with respect to such reports. Each of the principal executive officer of the Company and the principal financial officer of the Company (or each former principal executive officer of the Company and each former principal financial officer of the Company, as applicable) has made all certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act and the rules and regulations promulgated thereunder with respect to the Company SEC Documents and the statements contained in such certifications are true and accurate in all material respects as of the date hereof. Except as would not,

individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, there are no “significant deficiencies” or “material weaknesses” (as defined by the Sarbanes-Oxley Act) in the design or operation of the Company’s internal controls and procedures which could adversely affect the Company’s ability to record, process, summarize and report financial data.

SECTION 3.09 Absence of Certain Changes. Except as expressly contemplated or permitted by this Agreement, since December 31, 2012, (a) the Company and each of the Company Subsidiaries have conducted in all material respects their respective businesses only in the ordinary course of business consistent with past practice and (b) there has not been any changes, events or development affecting the Company or any Company Subsidiary, that would, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect.

SECTION 3.10 Undisclosed Liabilities. Neither the Company nor any of the Company Subsidiaries has, or is subject to, any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise), other than liabilities and obligations (a) disclosed, reserved against or provided for in the audited consolidated balance sheet of the Company as of December 31, 2012 or in the notes thereto, (b) incurred in the ordinary course of business consistent with past practice since December 31, 2012, (c) incurred under this Agreement or in connection with the transactions contemplated hereby or otherwise disclosed in the Company Disclosure Letter, or (d) that otherwise would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

SECTION 3.11 Litigation. As of the date hereof, there is no suit, claim, action or proceeding to which the Company or any Company Subsidiary is a party pending or, to the knowledge of the Company, threatened that, individually or in the aggregate, would reasonably be expected to have a Company Material Adverse Effect. Neither the Company nor any Company Subsidiary is subject to any outstanding orders, writs, injunctions, judgments or decrees of any Governmental Entity or arbitrator that, individually or in the aggregate, would reasonably be expected to have a Company Material Adverse Effect.

SECTION 3.12 Employee Benefits.

(a) With respect to each material “employee benefit plan” as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and each other material employee benefit plan, policy, program, agreement or arrangement or employment, change in control, severance or similar arrangement or agreement providing compensation or benefits to any current or former director, officer or employee, in each case, maintained by the Company or any Company Subsidiary, or with respect to which the Company or any Company Subsidiary has any direct or contingent liability, other than any plan, policy, program, or arrangement which is required to be maintained by applicable Law (each a “Company Benefit Plan”), the Company has made available to Parent a true and correct copy of: (i) each such Company Benefit Plan that has been reduced to writing and all amendments thereto; (ii) each trust, insurance or administrative agreement relating to each such Company Benefit Plan; (iii) the most recent summary plan description or other written explanation of each Company Benefit Plan provided to participants; (iv) the most recent annual report (Form 5500)

filed with the IRS; and (v) the most recent determination letter, if any, issued by the IRS with respect to any Company Benefit Plan intended to be qualified under Section 401(a) of the Code.

(b) Except as would not reasonably be expected to have a Company Material Adverse Effect, (i) each Company Benefit Plan has been administered in compliance with its terms and all applicable Laws, including ERISA and the Code, and (ii) there are no claims, actions, suits, proceedings, investigations, arbitrations, audits or hearings (other than for routine claims for benefits) pending or, to the knowledge of the Company, threatened with respect to any Company Benefit Plan. Each Company Benefit Plan which is intended to qualify under Section 401(a) of the Code has either received a favorable determination letter from the IRS as to its qualified status or has timely filed an application for a favorable determination letter, or may rely upon an opinion letter for a prototype or volume submitter plan.

(c) Section 3.12(c) of the Company Disclosure Letter lists each Company Benefit Plan that provides health benefits after retirement or other termination of employment (other than (i) as required by Law, (ii) coverage or benefits the full cost of which is borne by the employee or former employee (or any beneficiary of the employee or former employee) or (iii) benefits provided for a period of less than eighteen (18) months following termination of employment or during any period during which the former employee is receiving severance pay).

(d) Section 3.12(d) of the Company Disclosure Letter lists each Company Benefit Plan subject to Section 302 or Title IV of ERISA or Section 412 of the Code.

(e) At no time during the six-year period prior to the date of this Agreement has the Company, any Company Subsidiary or any of their respective ERISA Affiliates maintained, contributed to or had any obligations or liabilities under any multiemployer pension plan (as defined in Section 3(37) of ERISA).

(f) Except as provided in Section 2.03 or as set forth in Section 3.12(f) of the Company Disclosure Letter, neither the execution of this Agreement nor the consummation of the transactions contemplated hereby (either alone or in conjunction with any other event) could (i) entitle any employee, officer, director or individual consultant of the Company or any Company Subsidiary to severance pay or any increase in severance pay upon any termination of employment, (B) result in, cause the vesting, exercisability or delivery of, or increase in the amount or value of, any payment, right or benefit to any employee, officer, director or individual consultant of the Company or any Company Subsidiary or result in any limitation on the right of the Company or any Company Subsidiary to amend, merge, terminate or receive a reversion of assets from any Company Benefit Plan, or (C) accelerate the time of payment or vesting or exercisability, or result in any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, increase the amount payable or result in any other material obligation pursuant to, any of the Company Benefit Plans.

(g) Neither the Company nor any Company Subsidiary has any obligation to “gross-up” any tax imposed pursuant to Section 409A or 4999 of the Code.

(h) All Company Benefit Plans that are intended to be qualified under Section 401(a) of the Code have been determined by the IRS to be so qualified or may rely on an opinion letter

with respect to a prototype plan, or a timely application for such determination is now pending or there is time remaining for such an application, and the Company has no knowledge of any reason why any such Company Benefit Plan is not so qualified in operation.

(i) Except in the ordinary course of business consistent with past practice, there has been no amendment to, announcement by the Company or any Company Subsidiary relating to, change in employee participation or coverage under, or (except as required by applicable Law) increase in the benefits (whether retroactively or prospectively) payable under, any Company Benefit Plan which would materially increase the expense of maintaining such plan above the level of the expense incurred therefor for the most recently completed fiscal year of the Company.

SECTION 3.13 Labor.

(a) As of the date of this Agreement, (i) except for employees represented by the International Brotherhood of Electrical Workers Union, Locals 396 and 1245, no employee of the Company or any of the Company Subsidiaries is represented by any union or covered by any collective bargaining agreement and (ii) no labor organization or group of employees of the Company or any of the Company Subsidiaries has made a pending demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or, to the knowledge of the Company, threatened to be brought or filed, with the National Labor Relations Board or any other labor relations Governmental Entity, nor has there been any material demand, proceeding or petition in the three years prior to the date of this Agreement.

(b) There are no pending or, to the knowledge of the Company, threatened employee strikes, work stoppages, slowdowns, picketing or material labor disputes with respect to any employees of the Company or the Company Subsidiaries which, individually or in the aggregate, would reasonably be expected to result in a Company Material Adverse Effect.

(c) Each of the Company and the Company Subsidiaries is, and during the 90-day period prior to the date of this Agreement, has been in compliance in all material respects with the Worker Adjustment Retraining Notification Act of 1988, as amended, or any similar state or local Law.

SECTION 3.14 Tax Matters. Except as would not reasonably be expected individually or in the aggregate to have a Company Material Adverse Effect:

(a) The Company and each Company Subsidiary has timely filed (taking into account any extension of time within which to file) all Tax Returns required to be filed by it on or prior to the date hereof and all such filed Tax Returns are correct, complete and accurate, and has paid all Taxes that are shown as due on such filed Tax Returns. All Taxes which the Company or any Company Subsidiary has been required by law to withhold or to collect for payment on or prior to the date hereof from amounts owing to any employee, creditor or third person have been duly withheld and collected and have been paid to the appropriate Governmental Entity, to the extent due and payable. There are no material Liens upon any property or assets of the Company or any Company Subsidiary related to Taxes, except for Permitted Liens. The Company and each

Company Subsidiary that has participated in a “reportable transaction” as defined in Treasury Regulation Section 1.6011-4(b) has, to the extent and in the manner required by Treasury Regulation Section 1.6011-4, properly disclosed such participation.

(b) Neither the Company nor any Company Subsidiary has on or before the date hereof granted in writing a waiver to extend the statutory period of limitations applicable to the assessment or collection of any Taxes or deficiencies against the Company or any of the Company Subsidiaries. As of the date hereof there is no action, suit, investigation, audit, claim or assessment pending or, to the knowledge of the Company, threatened with respect to Taxes imposed on the Company or any Company Subsidiary. No deficiency with respect to Taxes has been assessed in writing against the Company or any Company Subsidiary which has not been fully paid, otherwise resolved or adequately reserved in the Company Financial Statements. Since January 1, 2011, no written claim has been made by any taxing authority in a jurisdiction where neither the Company nor any Company Subsidiary has filed Tax Returns asserting that the Company or any Company Subsidiary is or may be subject to Taxes imposed by that jurisdiction.

(c) Neither the Company nor any Company Subsidiary has any liability for Taxes of another person (other than the Company or a Company Subsidiary) under Treasury Regulation § 1.1502-6 (or any similar provision of state, local or foreign law) as a result of filing Tax Returns on a consolidated, combined, or unitary basis with such person. Neither the Company nor any Company Subsidiary is a party to or bound by any Tax Sharing Agreement (other than a Tax Sharing Agreement among the Company and its Subsidiaries). Since January 1, 2011, neither the Company or any Company Subsidiary constituted either a “distributing corporation” or a “controlled corporation” within the meaning of Section 355(a)(1)(A) of the Code.

(d) To the extent requested by Parent, the Company has made available to the Parent correct and complete copies of all income and all other material Tax Returns, material examination reports and material statements of deficiencies assessed against or agreed to by the Company or any Company Subsidiary for taxable periods beginning after December 31, 2009.

SECTION 3.15 Real Property.

(a) Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, (i) the Company or a Company Subsidiary has good and marketable title to any real property (other than real property in the nature of transmission or distribution lines) owned by the Company or any Company Subsidiary in fee (the “Owned Real Property”), in each case free and clear of all Liens except for Permitted Liens, and (ii) neither the Company nor any Company Subsidiary is obligated or bound by any option, obligation or right of first refusal or contractual right to purchase or acquire any real property or interest therein.

(b) Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, the Company or a Company Subsidiary has a valid leasehold estate in all real property leased, subleased, licensed or otherwise occupied by the Company or any Company Subsidiary (the “Leased Real Property”), in each case free and clear of all Liens except for Permitted Liens. Each Contract of the Company or the Company Subsidiaries for any material Leased Real Property (a “Material Lease”) is valid and binding on the Company and each Company Subsidiary that is a party thereto and, to the knowledge of the

Company, each other party thereto and is in full force and effect, except for such failures to be valid and binding or to be in full force and effect that, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect.

(c) Section 3.15(c) of the Company Disclosure Letter lists material real property owned by the Company as a tenant in common or similar co-ownership with one or more third persons in which the Company or a Company Subsidiary invested capital in excess of \$100,000,000 (“Co-Owned Property”).

SECTION 3.16 Environmental Matters. Except as would not reasonably be expected to have a Company Material Adverse Effect:

(a) The Company and each Company Subsidiary is in compliance with those Environmental Laws applicable to their respective operations as currently conducted (including possessing and complying with any required Environmental Permits), and there are no administrative or judicial proceedings pending, or to the knowledge of the Company, threatened against the Company or any Company Subsidiary and neither the Company nor any Company Subsidiary has received any written notice, demand, letter or claim, in either case, alleging that the Company or such Company Subsidiary is in violation of, or liable under, any Environmental Law, or challenging the validity of, or alleging failure to comply with, any Environmental Permit and, to the knowledge of the Company, no such notice, demand or claim has been threatened. Each required Environmental Permit is valid and in effect or has been timely re-applied for.

(b) The Company and each Company Subsidiary, as applicable, holds those energy credits, emission allowances, offsets or other credits, benefits or allowances required or available under Environmental Laws as are necessary to maintain compliance with Environmental Laws for its operations as currently conducted.

(c) Neither the Company nor any Company Subsidiary has entered into any consent decree or to the knowledge of the Company, assumed, by contract or otherwise, any liability of any other person under any Environmental Law or is subject to any order or judgment relating to compliance with, or remedial action under, Environmental Laws which has not been fulfilled in all material respects or for which the remaining obligations on the part of the Company or such Company Subsidiary are material. To the knowledge of the Company, no investigation by any Governmental Entity with respect to the Company or any Company Subsidiary pursuant to Environmental Laws is pending, nor has any Governmental Entity indicated to the Company an intention to conduct any such investigation.

(d) Neither the Company nor any Company Subsidiary has received any written notice, demand or claim alleging liability on the part of the Company or any Company as a result of a Release of Hazardous Substances and, to the knowledge of the Company, Hazardous Substances are not present in, at, on or under any of the Owned Real Property, Leased Real Property or Co-Owned Property, either as a result of the operations of the Company or any Company Subsidiary or otherwise, that, in either case, would reasonably be expected to result in a liability under Environmental Laws on the part of the Company or any Company Subsidiary.

SECTION 3.17 Intellectual Property.

(a) Except as would not have a Company Material Adverse Effect, the Company and the Company Subsidiaries own or have the right to use in the manner currently used all Patents, Trademarks, Copyrights, Internet domain names and Trade Secrets (the “Intellectual Property Rights”) used in the business of the Company and the Company Subsidiaries as presently conducted (the “Company Intellectual Property Rights”).

(b) To the Company’s knowledge, the conduct of the business of the Company and the Company Subsidiaries does not and has not in the past twelve (12) months infringed or otherwise violated the Intellectual Property rights of any third person, except for any such infringement that would not have a Company Material Adverse Effect. To the Company’s knowledge, no other person has infringed any Company Intellectual Property Rights during the twelve (12) months preceding the date hereof, except for any such infringement as would not have a Company Material Adverse Effect.

(c) Except as would not have a Company Material Adverse Effect, the Company and the Company Subsidiaries have implemented reasonable backup, security and disaster recovery technology that is consistent with industry practices.

SECTION 3.18 Contracts.

(a) All Contracts, including amendments thereto, required to be filed as an exhibit to any report of the Company filed pursuant to the Exchange Act of the type described in Item 601(b)(10) of Regulation S-K promulgated by the SEC have been filed, and no such Contract has been amended or modified, except as set forth in Section 3.18(a) of the Company Disclosure Letter. All such filed Contracts shall be deemed to have been made available to Parent.

(b) Other than the Contracts described in Section 3.18(a), Section 3.18(b) of the Company Disclosure Letter sets forth a complete list, and the Company has made available to Parent correct and complete copies, of any Contract to which the Company or any of the Company Subsidiaries is a party to or bound by, as of the date hereof:

(i) that is any non-competition Contract or other Contract that (A) purports to limit in any material respect either the type of business in which the Company or the Company Subsidiaries (or, after the Effective Time, Parent or its Subsidiaries) or any of their affiliates may engage or the manner or geographic area in which any of them may so engage in any business, except for franchise agreements between the Company or one of the Company Subsidiaries and the applicable jurisdictions or (B) is a material Contract that grants “most favored nation” status that, following the Merger, would apply to Parent and its Subsidiaries (including the Surviving Corporation and the Company Subsidiaries); or

(ii) under which the Company or any Company Subsidiary has created, incurred, assumed or guaranteed (or may create, incur, assume or guarantee) indebtedness for borrowed money in excess of \$50,000,000 (except for such indebtedness between the Company and its Subsidiaries or between such Subsidiaries or guaranties by the Company of indebtedness of the Company and of its Subsidiaries or by any Company Subsidiary of indebtedness of the Company or of another Subsidiary).

Each Contract of a type described in clauses (i) and (ii) of this Section 3.18(b); each Contract set forth in Section 3.18(b)(iii) of the Company Disclosure Letter; and each Contract that is required to be filed by the Company as a “material contract” pursuant to Item 601(b)(10) of Regulation S-K promulgated by the SEC, in each case that is not terminable by the Company or the applicable Company Subsidiary without penalty or continuing obligations on 90 days’ or less notice are each referred to herein as a “Company Material Contract.”

(c) Each such Company Material Contract is a valid and binding agreement of the Company and, to the knowledge of the Company, all other parties thereto, and is in full force and effect, and none of the Company or the Company Subsidiaries or, to the knowledge of the Company, any other party thereto is in default or breach in any respect under the terms of any such agreement, contract, plan, lease, arrangement or commitment, except for such default or breach as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

SECTION 3.19 Insurance. Except for failures to maintain insurance or self-insurance that, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect, (i) since January 1, 2013 each of the Company and the Company Subsidiaries and their respective properties and assets has been continuously insured with financially responsible insurers or has self-insured, in each case in such amounts and with respect to such risks and losses as (A) are required by applicable Law or by the Company’s Material Contracts and (B) are customary for companies in the United States of America conducting the business conducted by the Company and the Company Subsidiaries, and (ii) all material insurance policies of the Company and each Company Subsidiary are in full force and effect.

SECTION 3.20 Opinion of Financial Advisor. The Company’s board of directors has received the opinion of Lazard Frères & Co. LLC on or prior to the date of this Agreement, to the effect that, as of the date of such opinion and subject to the assumptions and limitations set forth therein, the Merger Consideration is fair, from a financial point of view, to the holders of Company Common Stock. An executed copy of such opinion will be delivered to Parent solely for informational purposes promptly after execution of this Agreement and it is agreed and understood that such opinion may not be relied on by Parent or Sub.

SECTION 3.21 Regulatory Proceedings. Except as identified in Section 3.21 of the Company Disclosure Letter, neither the Company nor any of the Company Subsidiaries, all or part of whose rates or services are regulated by a Governmental Entity, (i) has rates which have been or are being collected subject to refund, pending final resolution of any proceeding pending before a Governmental Authority or on appeal to the courts, or (ii) is a party to any proceeding before a Governmental Authority or on appeal from orders of a Governmental Authority, in each case which individually or in the aggregate, have resulted in or would reasonably be expected to result in a Company Material Adverse Effect.

SECTION 3.22 Takeover Statutes. Assuming the accuracy of the representation contained in Section 4.06(b), no “fair price”, “moratorium”, “control share acquisition”, “business combination” or other similar antitakeover statutes or regulations enacted under state or federal laws in the United States applicable to the Company, including NRS 78-378–78.3793

and NRS 78.411–78.444, inclusive (a “Takeover Statute”) is applicable to the Merger or the other transactions contemplated by this Agreement.

SECTION 3.23 Vote Required. The affirmative vote of the holders of shares representing a majority of the voting power of the outstanding shares of the Company Common Stock entitled to vote at the Company Stockholder Meeting is the only vote required (under applicable Law, the Company Charter, the Company By-Laws, or otherwise) of the holders of any class or series of capital stock or other equity securities of the Company to approve this Agreement and the transactions contemplated hereby (including the Merger) (the “Company Stockholder Approval”).

SECTION 3.24 Dissenter's Rights. Pursuant to NRS 92A.390, no holder of any shares of Company Common Stock will have or be entitled to assert dissenter's rights or any other rights of appraisal as a result of or in connection with this Agreement and the transactions contemplated hereby, including the Merger.

SECTION 3.25 Brokers. Neither the Company nor any Company Subsidiary has entered into any agreement or arrangement entitling any broker, finder, investment banker or financial advisor other than Lazard Frères & Co. LLC to any broker’s or finder’s fee or commission in connection with the transactions contemplated by this Agreement.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PARENT AND SUB

Except as disclosed in the separate disclosure letter which has been delivered by Parent to the Company prior to the execution of this Agreement, including the documents attached to or incorporated by reference in such disclosure letter (the “Parent Disclosure Letter”) (it being agreed that disclosure of any item in any section or subsection of the Parent Disclosure Letter shall also be deemed to be disclosed with respect to any other section or subsection in this Agreement to which the relevance of such item is reasonably apparent on the face of such disclosure), Parent and Sub hereby jointly and severally represent and warrant to the Company as follows:

SECTION 4.01 Organization. Each of Parent and Sub is a corporation or other legal entity duly incorporated, validly existing and in good standing under the Laws of the jurisdiction of its incorporation, and has requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as it is now being conducted, except where any such failure to be so organized, validly existing, in good standing or to have such power or authority would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Parent and Sub to consummate the Merger.

SECTION 4.02 Authority. Each of Parent and Sub has the requisite corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Parent and Sub and the consummation by them of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Parent and Sub. This Agreement has been duly executed and delivered by Parent and Sub and (assuming the valid authorization,

execution and delivery of this Agreement by the Company), except as set forth in Section 4.02 of the Parent Disclosure Letter, constitutes the valid and binding obligation of Parent and Sub enforceable against each of them in accordance with its terms, except that (i) such enforcement may be subject to applicable bankruptcy, insolvency or other similar Laws, now or hereafter in effect, affecting creditors' rights generally and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

SECTION 4.03 No Conflict; Required Filings and Consents.

(a) None of the execution, delivery or performance of this Agreement by Parent and Sub or the consummation by Parent and Sub of the transactions contemplated by this Agreement will: (i) conflict with or violate any provision of the articles of incorporation, bylaws or any equivalent organizational or governing documents of Parent or Sub; (ii) assuming that all consents, approvals and authorizations described in Section 4.03(b) have been obtained and all filings and notifications described in Section 4.03(b) have been made and any waiting periods thereunder have terminated or expired, conflict with or violate any Law applicable to Parent or Sub or any of their respective properties or assets; or (iii) require any consent or approval under, violate, conflict with, result in any breach of or any loss of any benefit under, or constitute a change of control or default under (with or without notice or lapse of time, or both), or result in termination or give to others any right of termination, vesting, amendment, acceleration or cancellation of, or result in the creation of a Lien (other than a Permitted Lien) upon any of the respective properties or assets of Parent or any of its Subsidiaries pursuant to, any Contract to which Parent or any of its Subsidiaries is a party or any Permit held by it or them, except, with respect to clauses (ii) and (iii), for any such conflicts, violations, consents, breaches, losses, changes of control, defaults, other occurrences or Liens that would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Parent and Sub to consummate the Merger.

(b) None of the execution, delivery or performance of this Agreement by Parent or Sub or the consummation by Parent or Sub of the transactions contemplated by this Agreement will require (with or without notice or lapse of time, or both) any consent, approval, authorization or permit of, or filing or registration with or notification to, any Governmental Entity, other than (i) the filing of the Articles of Merger with the Secretary of State of the State of Nevada, (ii) those approvals comprising the Company Required Governmental Approvals as such approvals relate to Parent (the "Parent Required Governmental Approvals"), (iii) compliance with, and such filings as may be required under, Environmental Laws, (iv) compliance with the applicable requirements of the Exchange Act, and (iv) where the failure to obtain such consents, approvals, authorizations or permits of, or to make such filings, registrations with or notifications to, any Governmental Entity would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Parent and Sub to consummate the Merger.

SECTION 4.04 Information Supplied. None of the information supplied by Parent or Sub or any of their representatives specifically for inclusion or incorporation by reference in the Proxy Statement will, at the time the Proxy Statement is first mailed to the Company's stockholders or at the time of the Company Stockholder Meeting, as applicable, contain any

untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

SECTION 4.05 Litigation. As of the date hereof, there is no suit, claim, action or proceeding to which Parent or any of its Subsidiaries is a party pending or, to the knowledge of Parent, threatened against Parent or any of its Subsidiaries that would reasonably be expected to prevent or materially delay the consummation of the transactions contemplated hereby. As of the date hereof, none of Parent or any of its Subsidiaries is subject to any outstanding order, writ, injunction, judgment or decree that would reasonably be expected to prevent or materially delay the consummation of the transactions contemplated hereby.

SECTION 4.06 Capitalization and Operations of Sub; No Ownership of Company Common Stock.

(a) As of the date of this Agreement, the authorized share capital of Sub consists of 1,000 shares, par value \$0.01 per share, of which 100 shares are validly issued and outstanding. All of the issued and outstanding share capital of Sub is, and at the Effective Time will be, owned by Parent or a direct or indirect wholly owned Subsidiary of Parent. Sub was formed solely for the purpose of engaging in the transactions contemplated hereby, and it has not conducted any business prior to the date hereof and has no, and prior to the Effective Time will have no, assets, liabilities or obligations of any nature other than those incident to its formation and pursuant to this Agreement and the transactions contemplated by this Agreement.

(b) As of the date of this Agreement, none of Parent or any of its Subsidiaries beneficially owns (as defined by Rule 13d-3 under the Exchange Act) any Shares or any securities that are convertible into or exchangeable or exercisable for Shares, or holds any rights to acquire or vote any Shares, other than pursuant to this Agreement. As of the date hereof, none of Parent, Sub, any of their respective Subsidiaries, or the “affiliates” or “associates” of any such person is, and at no time during the last two (2) years has been, an “interested stockholder” of the Company, in each case as such term is defined in the NRS.

SECTION 4.07 Financing. Parent, after taking into account its access to financing, has, and at the Closing will have, sufficient available funds to pay the Aggregate Merger Consideration and any other cash amounts payable pursuant to, or in connection with the transactions contemplated by, this Agreement, including any Indebtedness and other obligations of the Surviving Corporation or its Subsidiaries that become due or payable by the Surviving Corporation and the Company Subsidiaries in connection with, or as a result of, the Merger and payment of all related fees and expenses. Parent and Sub acknowledge and agree that their obligations hereunder, including their obligations to consummate the Merger, are not subject to, or conditioned on, receipt of financing.

SECTION 4.08 Brokers. Neither Parent nor Sub has entered into any agreement or arrangement entitling any broker, finder, investment banker or financial advisor to any broker’s or finder’s fee or commission in connection with the transactions contemplated by this Agreement.

SECTION 4.09 Absence of Certain Arrangements. Other than this Agreement, as of the date hereof, there are no Contracts or any commitments to enter into any Contract between Parent, Sub or any of their respective controlled affiliates, on the one hand, and any director, officer, employee or stockholder of the Company, on the other hand, relating to the transactions contemplated by this Agreement or the operations of the Surviving Corporation after the Effective Time.

SECTION 4.10 Acknowledgement of No Other Representations or Warranties. Except for the representations and warranties contained in Article III, each of Parent and Sub acknowledges and agrees that none of the Company, the Company Subsidiaries or any of their respective affiliates or the Company Representatives makes or has made any representation or warranty, either express or implied, concerning the Company or the Company Subsidiaries or any of their respective assets or properties or the transactions contemplated by this Agreement. To the fullest extent permitted by applicable Law, except with respect to the representations and warranties contained in Article III or any breach of any covenant or other agreement of the Company contained herein, none of the Company, the Company Subsidiaries or any of their respective affiliates or the Company Representatives shall have any liability to Parent or Sub or their respective affiliates or representatives on any basis (including in contract or tort, under federal or state securities laws or otherwise) based upon any information or statements (or any omissions therefrom) provided or made available by the Company, the Company Subsidiaries or their respective affiliates or the Company Representatives to Parent, Sub or their respective affiliates and representatives in connection with the transactions contemplated hereby.

ARTICLE V COVENANTS

SECTION 5.01 Conduct of Business by the Company Pending the Merger. The Company agrees that between the date of this Agreement and the Effective Time, except as set forth in Section 5.01 of the Company Disclosure Letter, as expressly contemplated or required by any other provision of this Agreement or as required by applicable Law, any Governmental Entity with competent jurisdiction or by the rules or regulations of the New York Stock Exchange, unless Parent shall otherwise agree in writing (which agreement shall not be unreasonably withheld, delayed or conditioned), the Company will, and will cause each Company Subsidiary to, (a) conduct its operations in the ordinary course of business, substantially consistent with past practice and (b) use commercially reasonable efforts to (i) preserve substantially intact its business organization and maintain existing relations and goodwill with Governmental Entities, customers, suppliers, regulators and key employees and (ii) maintain in effect all material governmental permits, franchises and authorizations pursuant to which the Company or any Company Subsidiary operates. Without limiting the foregoing, except as set forth in Section 5.01 of the Company Disclosure Letter, as expressly contemplated or required by any other provision of this Agreement or as required by applicable Law, any Governmental Entity with competent jurisdiction or by the rules and regulations of The New York Stock Exchange, the Company shall not, and shall not permit any Company Subsidiary to, between the date of this Agreement and the Effective Time, do any of the following without the prior written consent of Parent (which consent shall not be unreasonably withheld, delayed or conditioned):

(a) issue or authorize the issuance of any equity securities in the Company or any Company Subsidiary, or securities convertible into, or exchangeable or exercisable for, any such equity securities, or any rights of any kind to acquire any such equity securities or such convertible or exchangeable securities (including not making any new grants or awards of equity based compensation other than as expressly set forth herein), other than the issuance of Shares upon the exercise of Company Options or options under the Company Stock Purchase Plan and the vesting of RSU Awards, or settlement of Performance Awards and DSU Awards, in each case outstanding as of the date hereof or otherwise permitted to be granted hereunder;

(b) other than in the ordinary course of business, sell, pledge, dispose of, transfer, lease, license or encumber any material property or material assets of the Company or any Company Subsidiary, except pursuant to existing Contracts;

(c) (i) declare, set aside, make or pay any dividend or other distribution, whether payable in cash, stock, property or a combination thereof, with respect to any Company Securities or the capital stock of any Company Subsidiary, other than (A) the Company's ordinary course quarterly dividends to holders of Shares in a per Share amount no greater than the Company's most recently declared quarterly dividend, with record and payment dates in accordance with the Company's customary dividend schedule and (B) dividends paid by a wholly owned Company Subsidiary to the Company or another wholly owned Company Subsidiary, or (ii) enter into any agreement with respect to the voting or registration of any Company Securities;

(d) other than (i) in the case of Company Subsidiaries or (ii) in connection with exercise of any options under the Company Stock Purchase Plan or outstanding Company Options permitted by the terms of such Company Option, or the payment of related withholding Taxes, by net exercise or by the tendering of shares, or Tax withholdings on the vesting or payment of RSU Awards, Performance Awards and DSU Awards, reclassify, combine, split, subdivide or amend the terms of, or redeem, purchase or otherwise acquire, directly or indirectly, any of its equity securities or any options, warrants, securities or other rights exercisable for or convertible into any such equity securities;

(e) adopt a plan of complete or partial liquidation or resolutions providing for a complete or partial liquidation, dissolution, restructuring, recapitalization or other reorganization of the Company, other than a merger of one or more Company Subsidiaries with or into one or more other Company Subsidiaries;

(f) make or offer to make any acquisition of a material business (including by merger, consolidation or acquisition of stock or assets), other than any acquisition for consideration that is individually not in excess of \$10,000,000 or in the aggregate not in excess of \$50,000,000;

(g) incur any Indebtedness for borrowed money or assume or guarantee the obligations of any person (other than a wholly owned Company Subsidiary) for borrowed money, except (i) in connection with refinancings of existing Indebtedness, so long as the principal amount of such existing Indebtedness is not increased thereby, (ii) for borrowings in

the ordinary course of business, consistent with past practice, or (iii) in connection with transactions permitted pursuant to Section 5.01(f);

(h) make any loans, advances or capital contributions to, or investments in, any other person (other than any wholly owned Company Subsidiary) in excess of \$10,000,000 other than loans made in the ordinary course of business;

(i) except to the extent required by Law or the terms of any Company Benefit Plan or as specifically contemplated by Section 2.03 or Section 5.10: (A) other than annual increases in salary in the ordinary course of business, and changes to broad-based Company Benefit Plans in the ordinary course of business, increase the compensation or benefits payable or to become payable to its directors, officers or employees; (B) other than in the ordinary course of business, in connection with the hiring of new employees, grant or provide any rights to severance or termination pay or other termination benefit, or enter into any employment or severance agreement or arrangement, or increase the amounts payable under any such agreement or arrangement, (C) establish, adopt, enter into or amend any bonus, profit sharing, thrift, pension, retirement, deferred compensation, employment, termination, severance or other similar plan or agreement; (D) take any action to amend or waive any performance or vesting criteria or accelerate vesting, exercisability or funding under any Company Benefit Plan;

(j) except in each case to the extent required by Law, file any Tax Return materially inconsistent with past practice, make any material Tax election inconsistent with past practice, settle or compromise any material Tax claim or assessment by any Governmental Entity, change any annual Tax accounting period, materially change any method of Tax accounting for Tax purposes, materially amend any Tax Return, surrender any right to claim a material Tax refund, or consent to any extension or waiver of the statute of limitations period applicable to any material Tax claim or assessment;

(k) make any material change in accounting policies or procedures, other than as required by GAAP, applicable Law or Governmental Entity with competent jurisdiction;

(l) make any capital expenditures, other than (i) capital expenditures that are not, in the aggregate, in excess of 5% above the capital expenditures provided for in the Company's existing capital forecast, a copy of which has been made available to Parent, (ii) in the ordinary course of business or (ii) emergency capital expenditures in any amount that the Company determines is necessary in its reasonable judgment to maintain its ability to operate its businesses in the ordinary course;

(m) settle or compromise any suit or proceeding in an amount in excess of \$10,000,000 (net of any amount covered by insurance or indemnification);

(n) enter into any Contract that would have been required to have been listed in Section 3.18(b)(i) of the Company Disclosure Letter if it were in effect on the date of this Agreement; or

(o) authorize or enter into any Contract to do any of the foregoing.

Notwithstanding the foregoing, if the Closing has not occurred prior to the meeting of the Company's board of directors in February 2014, the Company's board of directors may put in place short-term and long-term incentive plans (none of which shall include the issuance of grants or awards of equity based compensation) in the ordinary course of business. If Closing occurs in 2014 after such plans and any awards granted pursuant thereto have been put in place, such plans will be (i) terminated in their entirety without any payments by, or continuing obligations of, the Surviving Corporation and (ii) replaced by plans to be established by Parent pursuant to Section 5.10(a).

Nothing contained in this Agreement shall give Parent or Sub, directly or indirectly, the right to control or direct the operations of the Company prior to the Effective Time. Prior to the Effective Time, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete unilateral control and supervision over its business operations.

SECTION 5.02 Agreements Concerning Parent and Sub.

(a) During the period from the date of this Agreement through the Effective Time, Sub shall not engage in any activity of any nature except for activities related to or in furtherance of the transactions contemplated by this Agreement (including enforcement of its rights under this Agreement) or as provided in or expressly contemplated by this Agreement.

(b) Parent hereby guarantees the due, prompt and faithful payment, performance and discharge by Sub of, and the compliance by Sub with, all of the covenants, agreements, obligations and undertakings of Sub under this Agreement in accordance with the terms of this Agreement, and covenants and agrees to take all actions necessary or advisable to ensure such payment, performance and discharge by Sub hereunder. Parent shall, immediately following execution of this Agreement, approve this Agreement in its capacity as sole stockholder of Sub in accordance with applicable Law and the articles of incorporation and bylaws of Sub.

SECTION 5.03 No Solicitation; Change of Company Recommendation.

(a) Subject to Section 5.03(b), (i) immediately following the execution of this Agreement, the Company shall, and shall cause its Subsidiaries to, and shall use its reasonable best efforts to cause its directors, officers, investment bankers, financial advisors and counsel (collectively, the "Company Representatives") to, cease any solicitations, discussions or negotiations with any persons that may be ongoing with respect to any Competing Proposal and request promptly that such persons return or destroy all confidential information concerning the Company and its Subsidiaries provided by or on behalf of the Company or its Subsidiaries and (ii) from the execution of this Agreement until the Effective Time, the Company shall not, shall cause the Company Subsidiaries to not, and shall use its reasonable best efforts to cause any Company Representative not to, (A) initiate, solicit or knowingly encourage the submission of, or any inquiries with respect to, any Competing Proposal, (B) furnish any non-public information regarding the Company or any Company Subsidiary to any third person in connection with or in response to a Competing Proposal or (C) participate in any discussions or negotiations, furnish to any person any information, or otherwise knowingly cooperate or knowingly assist any Person, with respect to any Competing Proposal.

(b) Notwithstanding anything to the contrary contained in Section 5.03(a), if, at any time following the execution of this Agreement and prior to the Company obtaining the Company Stockholder Approval, (i) the Company has received a bona fide written Competing Proposal from a person that did not result from a breach of this Section 5.03, and (ii) the Company's board of directors determines in good faith, after consultation with its financial advisors and outside counsel, that such Competing Proposal constitutes or is reasonably likely to lead to a Superior Proposal and that the failure to furnish information to or participate in discussions or negotiations with respect to such Competing Proposal would be reasonably likely to be inconsistent with its fiduciary duties under applicable Laws, then the Company may, subject to compliance with this Section 5.03, (A) furnish information with respect to the Company and the Company Subsidiaries to the person making such Competing Proposal and its representatives and (B) participate in discussions or negotiations with the person making such Competing Proposal and its representatives regarding such Competing Proposal; provided, however, that the Company (x) will not, will not permit or authorize the Company Subsidiaries to and will use its reasonable best efforts to cause the Company Representatives not to, disclose any such information to such person without first entering into an Acceptable Confidentiality Agreement with such person, (y) will notify Parent in writing prior to furnishing such information or participating in such discussions or negotiations, provide to Parent a copy of such Competing Proposal or, if oral, a detailed summary of the material terms and conditions of such Competing Proposal (including the identity of the person making the Competing Proposal) as promptly as practicable and keep Parent reasonably informed of any material change to such material terms or conditions as promptly as practicable and (z) will concurrently provide to Parent any written information and any other material information concerning the Company or the Company Subsidiaries provided or made available to such other person (or its representatives) that was not previously provided or made available to Parent.

(c) Except as set forth in Section 5.03(d) or Section 5.03(e), neither the Company's board of directors nor any committee thereof shall (i) authorize, approve or recommend any Competing Proposal, (ii) withhold, modify or amend, in a manner adverse to Parent, the Company Recommendation (any action set forth in the foregoing clauses (i) or (ii), a "Change of Company Recommendation") or (iii) allow the Company or any of the Company Subsidiaries to enter into any letter of intent, memorandum of understanding, agreement in principle, merger agreement, acquisition agreement or other similar agreement relating to any Competing Proposal (other than an Acceptable Confidentiality Agreement) or requiring the Company to abandon, terminate or fail to consummate the transactions contemplated by this Agreement.

(d) Notwithstanding anything to the contrary contained in Section 5.03(c), at any time prior to obtaining the Company Stockholder Approval, the board of directors of the Company may make a Change of Company Recommendation, if (i) (A) a Competing Proposal (that did not result from a breach of Section 5.03(a) or a material breach of the remainder of Section 5.03) is made to the Company by a third person, and such Competing Proposal is not withdrawn, and (B) the Company's board of directors determines in good faith, after consultation with its financial advisors and outside legal counsel, that such Competing Proposal constitutes a Superior Proposal and that the failure to make a Change of Company Recommendation would be reasonably likely to be inconsistent with its fiduciary duties under applicable Laws, and (ii) (A) the Company provides Parent a four (4) day prior written notice of its intention to take such action (a "Notice of Change of Recommendation"), which notice shall include the identity of the person making

such Superior Proposal and include the material terms and conditions of such Superior Proposal (it being agreed that neither the delivery of such notice by the Company nor any public announcement required by applicable Laws that the Company's board of directors is considering a Change of Company Recommendation shall constitute a Change of Company Recommendation), (B) the Company has negotiated in good faith with Parent with respect to any changes to the terms of this Agreement proposed by Parent for at least four (4) days following receipt by Parent of such Notice of Change of Recommendation (it being understood and agreed that any amendment to any material term of such Superior Proposal shall require a new Notice of Change of Recommendation and an additional two (2) day period from the date of such notice) and (C) taking into account any changes to the terms of this Agreement proposed by Parent to the Company, the Company's board of directors has determined in good faith, after consultation with its outside financial advisors and outside legal counsel, that such Competing Proposal would continue to constitute a Superior Proposal if such changes offered in writing by Parent were to be given effect and that the failure to make a Change of Company Recommendation would be reasonably likely to be inconsistent with its fiduciary duties under applicable Laws.

(e) Other than in connection with a Superior Proposal (which shall be subject to Section 5.03(d) and shall not be subject to this Section 5.03(e)), nothing in this Agreement shall prohibit or restrict the Company's board of directors from effecting a Change of Company Recommendation at any time prior to obtaining the Company Stockholder Approval in response to an Intervening Event if the Company's board of directors determines in good faith, after consultation with the Company's outside legal counsel, that the failure of the Company's board of directors to effect a Change of Company Recommendation would be reasonably likely to be inconsistent with its fiduciary duties under applicable Laws; provided that, prior to effecting such Change of Company Recommendation, (i) the Company shall have provided written notice to Parent advising Parent that the board of directors of the Company is contemplating making such a Change of Company Recommendation and specifying the material facts and information constituting the basis for such contemplated determination (it being agreed that neither the delivery of such notice by the Company nor any public announcement required by applicable Laws that the Company's board of directors is considering a Change of Company Recommendation shall constitute a Change of Company Recommendation), (ii) the Company shall have given Parent four (4) days after delivery of such notice to propose revisions to the terms of this Agreement (or make another proposal) and shall have negotiated in good faith with Parent with respect to such proposed revisions or other proposal, if any, and (iii) the board of directors of the Company shall have determined in good faith, after taking into account any change to the terms of this Agreement or other proposals made by the Parent, if any, and after consultation with outside legal counsel, that the failure to effect such Change of Company Recommendation would be reasonably likely to be inconsistent with its fiduciary duties under applicable Laws.

(f) Nothing contained in this Section 5.03 shall prohibit the Company's board of directors from (i) disclosing to the stockholders of the Company a position contemplated by Rule 14e-2(a), Rule 14d-9 or Item 1012(a) of Regulation M-A promulgated under the Exchange Act or (ii) subject to Section 5.03(d) and 5.03(e), making any disclosure to the stockholders of the Company if the Company's board of directors determines in good faith, after consultation with outside counsel, that the failure to make such disclosure would be inconsistent with its fiduciary duties under applicable Laws (for the avoidance of doubt, it being agreed that the issuance by the

Company or the Company's board of directors of a "stop, look and listen" statement pending disclosure of its position, as contemplated by Rules 14d-9 and 14e-2(a) promulgated under the Exchange Act, shall not constitute a Change of Company Recommendation).

SECTION 5.04 Proxy Statement; Stockholder Meeting.

(a) As promptly as reasonably practicable following the date of this Agreement (but in any event no later than forty-five (45) days after the date hereof), the Company shall prepare and file a preliminary Proxy Statement with the SEC. Subject to Section 5.03, the Proxy Statement shall include the Company Recommendation. Parent shall cooperate with the Company in the preparation of the Proxy Statement, and shall furnish all information concerning it and Sub that is necessary or appropriate in connection with the preparation of the Proxy Statement. The parties shall use their respective reasonable best efforts to have the Proxy Statement cleared by the SEC as promptly as reasonably practicable after such filing. Prior to filing or mailing the Proxy Statement or any related documents (or in each case, any amendment or supplement thereto) or responding to any comments of the SEC with respect thereto, to the extent reasonably practicable, the Company shall provide Parent with an opportunity to review and comment on such document or response and shall consider in good faith any comments on such document or response reasonably proposed by Parent. The Company shall notify Parent promptly of the receipt of any comments to the Proxy Statement from the SEC or its staff and of any request by the SEC or its staff for amendments or supplements to the Proxy Statement or for additional information and will supply Parent with copies of all correspondence between the Company and the SEC or its staff with respect to the Proxy Statement or the transactions contemplated by this Agreement.

(b) If, at any time prior to the Effective Time, any information relating to the Company or Parent, or any of their respective affiliates, is discovered by the Company or Parent that should be set forth in an amendment or supplement to the Proxy Statement so that such document would not include any misstatement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading, the party that discovers such information shall as promptly as practicable notify the other party and an appropriate amendment or supplement describing such information shall be filed with the SEC as promptly as practicable after the other party has had a reasonable opportunity to review and comment thereon, and, to the extent required by applicable Law, disseminated to the stockholders of the Company.

(c) The Company shall, as promptly as reasonably practicable after the Proxy Statement is cleared by the SEC for mailing to the Company's stockholders in accordance with Section 5.04(a) (but in any event no later than forty-five (45) days after such clearance with the SEC or, if the SEC does not review the Proxy Statement, forty-five days after the earliest date on which the Company could mail the Proxy Statement pursuant to the Exchange Act), duly call, give notice of, convene and hold a meeting of its stockholders (the "Company Stockholder Meeting"), provided that (i) the Company may postpone or adjourn the Company Stockholder Meeting in connection with the settlement of litigation relating to the Merger (to which settlement Parent has provided its consent (such consent not to be unreasonably withheld, conditioned or delayed)) in order to amend or supplement the Proxy Statement to the extent required by applicable Law; provided that the Company will hold the Company Stockholder

Meeting as promptly as practicable thereafter, (ii) the Company may postpone or adjourn the Company Stockholder Meeting if required by applicable Law, including to amend or supplement the Proxy Statement so that such document would not include any misstatement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading; provided that the Company will hold the Company Stockholder Meeting as promptly as practicable thereafter, and (iii) the Company may postpone or adjourn the Company Stockholder Meeting to a date no more than ten (10) days after its originally noticed date only to the extent reasonably required in order to solicit additional proxies so as to establish a quorum or to obtain the Company Stockholder Approval. Subject to Section 5.03, the Company's board of directors shall recommend that the Company's stockholders approve this Agreement (the "Company Recommendation"), and the Company shall, unless there has been a Change of Company Recommendation or this Agreement has been terminated in accordance with its terms, use its reasonable best efforts to solicit from its stockholders proxies in favor of the approval of this Agreement, and to take all other action reasonably necessary or advisable to secure the Company Stockholder Approval. Unless this Agreement is terminated in accordance with its terms, the Company shall not submit to the vote of its stockholders any Competing Proposal. Notwithstanding the foregoing, if the Company's board of directors makes a Change of Company Recommendation, or upon the termination of this Agreement in accordance with Section 7.01(e), Section 7.01(f) or Section 7.01(g), the Company shall not be obligated to take any action otherwise required pursuant to Section 5.03 or this Section 5.04, and the Company may cancel any scheduled Company Stockholder Meeting.

SECTION 5.05 Access to Information; Notice of Certain Events. (a) From the date of this Agreement to the Effective Time, the Company shall, and shall cause each Company Subsidiary to: (i) provide to Parent and Sub and their respective representatives reasonable access during normal business hours in such a manner as not to interfere with the operation of any business conducted by the Company or any Company Subsidiary, upon prior written notice to the Company, to the officers, employees, properties, offices and other facilities of the Company and the Company Subsidiaries and to the books and records thereof; and (ii) furnish promptly such information concerning the business, properties, contracts, assets and liabilities of the Company and Company Subsidiaries as Parent or its representatives may reasonably request; provided, however, that the Company shall not be required to (or to cause any Company Subsidiary to) afford such access or furnish such information to the extent that the Company believes in good faith that doing so would: (A) result in the loss of attorney-client privilege (provided that the Company shall use its reasonable best efforts to allow for such access or disclosure in a manner that does not result in a loss of attorney-client privilege); (B) violate any confidentiality obligations of the Company or any Company Subsidiary to any third person or otherwise breach, contravene or violate any then effective Contract to which the Company or any Company Subsidiary is party; or (C) breach, contravene or violate any applicable Law (including the HSR Act or any other antitrust or competition Law). Parent shall, and shall cause each of its Subsidiaries and its and their respective representatives, to hold all information provided or furnished pursuant to this Section 5.05 confidential in accordance with the terms of the Confidentiality Agreement. During any visit to the business or property sites of the Company or any of the Company Subsidiaries, each of Parent and Sub shall, and shall cause their respective representatives accessing such properties to, comply with all applicable Laws and all of the Company's and the Company Subsidiaries' safety and security procedures. Notwithstanding

anything to the contrary in this Section 5.05, from the date of this Agreement to the Effective Time, none of Parent, Sub or any of their respective affiliates shall conduct, without the prior written consent of the Company, any environmental investigation at any Owned Real Property, Leased Real Property or Co-Owned Property, and in no event may any environmental investigation include any sampling or other intrusive investigation of air, surface water, groundwater, soil or anything else at or in connection with any Owned Real Property, Leased Real Property or Co-Owned Property.

(b) Each party shall promptly notify the other party of any written communication from any person that is a party to a Material Contract alleging that the consent of such person (or another person) is required in connection with the transactions contemplated by this Agreement. Subject to applicable Law, (i) the Company shall notify Parent of any event, change, occurrence, development or set of circumstances or facts between the date of this Agreement and the Effective Time which, to the knowledge of the Company, causes or is reasonably likely to cause the conditions set forth in Sections 6.02(a) or 6.02(b) of this Agreement not to be satisfied as of the Closing Date and (ii) Parent shall notify the Company of any event, change, occurrence, development or set of circumstances or facts between the date of this Agreement and the Effective Time which, to the knowledge of Parent, causes or is reasonably likely to cause the conditions set forth in Sections 6.03(a) or 6.03(b) of this Agreement not to be satisfied as of the Closing Date. Notwithstanding the foregoing, (A) the delivery of any notice pursuant to this Section 5.05(b) shall not, and shall not be deemed to, cure any breach of any representation or warranty requiring disclosure of such matter at or prior to the date of this Agreement or affect any of the closing conditions or otherwise limit or affect the remedies available, and (B) the failure to comply with this Section 5.05(b) shall not itself cause the condition set forth in Section 6.02(b) or Section 6.03(b), as applicable, not to be satisfied.

SECTION 5.06 Appropriate Action; Consents; Filings.

(a) Subject to Section 5.03, each of Parent and the Company shall (and Parent shall cause each of its affiliates to) use its reasonable best efforts to cause the conditions set forth in Article VI to be satisfied. Without limiting the generality of the foregoing, each of Parent and the Company shall (and Parent shall cause each of its affiliates to) use its reasonable best efforts to (i) promptly obtain all actions or non-actions, consents, licenses, permits (including Environmental Permits), waivers, approvals, authorizations and orders from Governmental Entities or other persons necessary in connection with the consummation of the transactions contemplated hereby, including the Company Required Governmental Approvals and Parent Required Governmental Approvals, (ii) as promptly as practicable, and in any event within fifteen (15) Business Days after the date hereof, make the filings required of them or their “ultimate parent entities” under the HSR Act, (iii) as promptly as practicable, make all registrations and filings, and thereafter make any other required submissions, and pay any fees due in connection therewith, with any other Governmental Entity or other persons necessary in connection with the consummation of the transactions contemplated by this Agreement, (iv) defend all lawsuits or other legal, regulatory or other proceedings to which it is a party challenging or affecting this Agreement or the consummation of the transactions contemplated by this Agreement, in each case until the issuance of a final, non-appealable order with respect to each such lawsuit or other proceeding, (v) seek to have lifted or rescinded any injunction or restraining order which may adversely affect the ability of the parties to consummate the

transactions contemplated hereby, in each case until the issuance of a final, non-appealable order with respect thereto, and (vi) execute and deliver any additional instruments necessary to consummate the transactions contemplated hereby.

(b) In furtherance of the obligations set forth in Section 5.06(a), (i) Parent agrees to use its reasonable best efforts to take (and to cause its affiliates to take) promptly any and all steps or promptly make any and all undertakings necessary to obtain the Company Required Governmental Approvals and the Parent Required Governmental Approvals, so as to enable the parties to close the transactions contemplated by this Agreement as promptly as practicable (including accepting operational restrictions or limitations and committing to or effecting the sale, license, disposition or holding separate of such assets or businesses as are required (and the entry into agreements with, and submission to decrees, judgments, injunctions or orders of the relevant Governmental Entity)) and (ii) the Company shall use its reasonable best efforts to make, subject to the condition that the transactions contemplated herein actually occur, any undertakings (including undertakings to make sales or other dispositions, provided that such sales or other dispositions are conditioned upon the closing of the transactions contemplated hereby) as are required in order to obtain the Company Required Governmental Approvals and the Parent Required Governmental Approvals. Notwithstanding the obligations set forth in this Section 5.06(b), Parent shall not be required to, and the Company shall not, in connection with obtaining any the Company Required Governmental Approvals and the Parent Required Governmental Approvals, consent to or take any action of the types described above, including accepting or entering into any operational restriction, consent decree or hold separate order or making any divestiture or other undertaking, in each case, that, individually or in the aggregate, would reasonably be expected to (A) have a material adverse effect on the business, assets, liabilities, financial condition or results of operations of the Company and the Company Subsidiaries, taken as a whole, or (B) have a material adverse effect on the business, assets, liabilities, financial condition or results of operations of Parent and its Subsidiaries, taken as a whole, after giving effect to the Merger and the terms and conditions of the Company Required Governmental Approvals and the Parent Required Governmental Approvals (provided that for the purpose of determining whether a potential adverse effect on Parent and its Subsidiaries, taken as a whole, after giving effect to the Merger and the terms and conditions of the Company Required Governmental Approvals and the Parent Required Governmental Approvals would constitute a material adverse effect for the purposes of this Section 5.06(b)(B), Parent and its Subsidiaries, taken as a whole, after giving effect to the Merger, shall be deemed to be a consolidated group of entities of the size and scale of a hypothetical company that is 100% of the size and scale of the Company and its Subsidiaries, taken as a whole) (each of the effects described in clauses (A) and (B) of this sentence being referred to herein as a “Burdensome Effect”). Neither Parent nor Sub, directly or indirectly through one or more of their respective affiliates, shall take any action, including acquiring or making any investment in any person or any division or assets thereof, that would reasonably be expected to cause a material delay in the satisfaction of the conditions contained in Article VI or the consummation of the Merger.

(c) Without limiting the generality of anything contained in this Section 5.06, each party hereto shall: (i) give the other parties prompt notice of any material communication from any Governmental Entity in connection with the transactions contemplated by this Agreement and of the making or commencement of any request, inquiry, investigation, action or legal proceeding by or before any Governmental Entity with respect to the transactions contemplated

by this Agreement; (ii) keep the other parties informed as to the status of any such request, inquiry, investigation, action or legal proceeding; and (iii) promptly inform the other parties of any communication to or from the Antitrust Division, the FTC, the FERC, the PUCN or any other Governmental Entity regarding the Merger. Each party hereto will consult and cooperate with the other parties and will consider in good faith the views of the other parties in connection with any filing, analysis, appearance, presentation, memorandum, brief, argument, opinion or proposal made or submitted in connection with the transactions contemplated by this Agreement. In addition, except as may be prohibited by any Governmental Entity or by any Law, in connection with any such request, inquiry, investigation, action or legal proceeding, each party hereto will permit authorized representatives of the other parties to be present at each meeting or conference relating to such request, inquiry, investigation, action or legal proceeding and to have access to and be consulted in connection with any document, opinion or proposal made or submitted to any Governmental Entity in connection with such request, inquiry, investigation, action or legal proceeding.

(d) The Company agrees to use its reasonable best efforts to take (and to cause the Company Subsidiaries to take) (which shall not include the expenditure of funds), at Parent's sole cost and expense, such actions as Parent shall reasonably request to obtain consents, waivers, or approvals under Material Contracts with respect to the transactions contemplated by this Agreement; provided, however, that (i) the Company and each Company Subsidiary shall not be required to incur any Indebtedness pursuant to this Section 5.06(d) and (ii) the Company and each Company Subsidiary shall only be required to enter into an obligation or commitment if such obligation or commitment is conditioned upon the closing of the transactions contemplated by this Agreement and will be effective with respect to the Company and the Company Subsidiaries only on or after the Effective Time.

SECTION 5.07 Public Announcements. The initial press release issued by Parent and the Company concerning this Agreement and the transactions contemplated hereby shall be a joint press release and thereafter Parent and the Company shall consult with each other before issuing any press release or otherwise making any public statements with respect to the transactions contemplated by this Agreement, except (subject to Section 5.03) as may be required by applicable Law, in connection with the exercise of the Company's board of directors' fiduciary duties or by obligations pursuant to any listing agreement with, or the rules of, any applicable national securities exchange.

SECTION 5.08 Directors & Officers Indemnification and Insurance.

(a) Indemnification. From and after the Effective Time, Parent shall, and shall cause the Surviving Corporation to, to the fullest extent that the Company or any Subsidiary of the Company is permitted by applicable Law to indemnify its own directors and officers, indemnify, defend and hold harmless each current or former director, officer, employee or fiduciary under benefit plans of the Company and its Subsidiaries (each an "Indemnified Party" and collectively, the "Indemnified Parties") against (i) all losses, expenses (including reasonable attorney's fees and expenses), judgments, claims, damages or liabilities or, subject to the proviso of the next succeeding sentence, amounts paid in settlement, arising out of actions or omissions occurring at or prior to the Effective Time (and whether asserted or claimed prior to, at or after the Effective Time) to the extent that they are based on or arising out of the fact that such Person is or was a

director, officer, employee or fiduciary under benefit plans or performed services at the request of the Company or any of its Subsidiaries (the “Indemnified Liabilities”), and (ii) all Indemnified Liabilities to the extent they are based on or arise out of or pertain to the transactions contemplated by this Agreement, whether asserted or claimed prior to, at or after the Effective Time, and including any expenses incurred in enforcing such person’s rights under this Section 5.08. In the event of any such loss, expense, claim, damage or liability (whether or not asserted before the Effective Time), (i) the Surviving Corporation shall pay the reasonable fees and expenses of counsel selected by the Indemnified Parties, which counsel shall be reasonably satisfactory to the Surviving Corporation, promptly after statements therefor are received and otherwise advance to such Indemnified Party upon request, reimbursement of documented expenses reasonably incurred (provided, however, that the person to whom expenses are advanced provides an undertaking to repay such advance if it is determined by a final and non-appealable judgment of a court of competent jurisdiction that such person is not legally entitled to indemnification under Law).

(b) Insurance. The Parent shall cause the Surviving Corporation either (i) to maintain in effect for the six-year period commencing immediately after the Effective Time (and for so long thereafter as any claims brought before the end of such six-year period thereunder are being adjudicated) the Company’s current directors’ and officers’ liability insurance (the “Existing D&O Coverage”) covering acts or omissions occurring at or prior to the Effective Time with respect to those individuals who are as of the date hereof (and any additional individuals who prior to the Effective Time become) covered by the Company’s directors’ and officers’ liability insurance policy on terms with respect to such coverage, and in amount, no less advantageous to the intended beneficiaries thereof than those of such policy in effect on the date hereof (or such other insurance that is no less favorable than the Existing D&O Coverage)) or (ii) to purchase a six-year extended reporting period endorsement (“reporting tail coverage”) under the Existing D&O Coverage, provided that such reporting tail coverage shall extend the director and officer liability coverage in force as of the date hereof from the Effective Time with policy limits, terms and conditions at least as favorable to the intended beneficiaries thereof as the existing directors’ and officers’ liability insurance.

(c) Successors. In the event the Surviving Corporation, Parent or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then and in either such case, proper provisions shall be made so that the successors, assigns and/or transferees of the Surviving Corporation or Parent shall assume the obligations set forth in this Section 5.08.

(d) Survival of Indemnification. For a period of not less than six (6) years from the Effective Time, Parent and the Surviving Corporation shall maintain in effect in the certificate of incorporation and bylaws or similar organizational documents of the Surviving Corporation and its Subsidiaries, the exculpation, indemnification and advancement of expenses provisions of the Company’s and its Subsidiaries’ certificate of incorporation, bylaws or similar organizational documents as in effect immediately prior to the Effective Time or in any indemnification contracts of the Company or its Subsidiaries with any Indemnified Party as in effect immediately prior to the Effective Time, and shall not amend, repeal or otherwise modify any such provisions in any manner that would adversely affect the rights thereunder of any Indemnified Party;

provided that, in the event any claim or claims are asserted or made within such survival period, all such rights to indemnification in respect to any claim or claims shall continue until final disposition of such claim or claims.

(e) Benefit. The provisions of this Section 5.08 are intended to be for the benefit of, and shall be enforceable by, each Indemnified Party, his or her heirs, executors or administrators and his or her representatives and are in addition to, and not in substitution for, any other rights to indemnification or contribution that any such person may have by contract or otherwise. Nothing in this Agreement, including this Section 5.08, is intended to, shall be construed to or shall release, waive or impair any rights to directors' and officers' insurance claims under any policy that is or has been in existence with respect to the Company, any of its Subsidiaries or the Indemnified Parties, it being understood and agreed that the indemnification provided for in this Section 5.08 is not prior to, or in substitution for, any such claims under any such policies.

SECTION 5.09 Takeover Statutes. If any Takeover Statute is or may become applicable to the Merger or the other transactions contemplated by this Agreement, each of Parent and the Company and the board of directors of the Company shall grant such approvals and take such actions as are reasonably necessary so that such transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise act to eliminate or minimize (to the greatest extent practicable) the effects of such Takeover Statute on such transactions.

SECTION 5.10 Employee Benefit Matters.

(a) From and after the Effective Time and for a period ending on the first anniversary of the Effective Time (the "Benefit Protection Period"), Parent shall provide or cause its Subsidiaries, including the Surviving Corporation, to provide (i) base salary, wages and commission opportunities to each individual who is an employee of the Company or a Company Subsidiary immediately prior to the Effective Time who is neither represented by a union or labor organization with respect to the terms and conditions of their employment nor employed pursuant to the terms of a collective bargaining agreement (each, a "Company Employee") at a rate that is no less favorable than the rate of base salary, wages or commission opportunities provided to such Company Employee immediately prior to the Effective Time, (ii) an annual cash bonus opportunity to each Company Employee that is not less favorable than the annual cash bonus opportunity provided to such Company Employee immediately prior to the Effective Time, and (iii) other compensation and benefits (including severance benefits, paid-time off and retirement benefits, but excluding equity compensation) to Company Employees that are substantially comparable, in the aggregate, to the other compensation and benefits provided to Company Employees immediately prior to the Effective Time. Parent shall provide or cause its Subsidiaries, including the Surviving Corporation, to provide long-term incentive compensation opportunities to each Company Employee that are competitive with the opportunities provided by the industry generally to employees performing in a comparable role (and, if the Effective Time occurs in calendar year 2014, participation of the Company Employees in the applicable long-term incentive plan (and any short-term/annual incentive plan) shall be retroactive to January 1, 2014).

(b) Without limiting the generality of Section 5.10(a), from and after the Effective Time, Parent shall, or shall cause Parent's Subsidiaries, including the Surviving Corporation, to, assume, honor and continue all of the Company's and the Company Subsidiaries' employment, severance, retention and termination plans, policies, programs, agreements and arrangements (including any change in control or severance agreement between the Company or any Company Subsidiary and any Company Employee) disclosed or made available to Parent, in each case, in accordance with their terms as in effect immediately prior to the Effective Time, including with respect to any payments, benefits or rights arising as a result of the transactions contemplated by this Agreement (either alone or in combination with any other event) and, for the duration of the Benefit Protection Period, shall do so without any amendment or modification, other than any amendment or modification required to comply with applicable Law or as consented to by the parties thereto.

(c) For all purposes (including for purposes of determining eligibility to participate, level of benefits and vesting) under any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA, but without regard to whether the applicable plan is subject to ERISA) and any other employee benefit plan, program, policy or arrangement maintained by Parent or any of its Subsidiaries, including the Surviving Corporation, including any vacation, paid time off and severance plans, but excluding benefit accruals under any defined benefit pension plan, each Company Employee's service with or otherwise credited by the Company or any Company Subsidiary shall be treated as service with Parent or any of its Subsidiaries, including the Surviving Corporation; provided, however, that such service need not be recognized to the extent that such recognition would result in any duplication of benefits.

(d) Parent shall use commercially reasonable efforts, or shall cause its Subsidiaries, including the Surviving Corporation, to use commercially reasonable efforts to waive, or cause to be waived, any pre-existing condition limitations, exclusions, actively at work requirements and waiting periods under any welfare benefit plan maintained by Parent or any of its Subsidiaries, including the Surviving Corporation, in which Company Employees (and their eligible dependents) will be eligible to participate from and after the Effective Time, except to the extent that such pre-existing condition limitations, exclusions, actively-at-work requirements and waiting periods would not have been satisfied or waived under the comparable Company Benefit Plan immediately prior to the Effective Time. Parent shall use commercially reasonable efforts, or shall cause its Subsidiaries, including the Surviving Corporation, to use commercially reasonable efforts to recognize, or cause to be recognized, the dollar amount of all co-payments, deductibles and similar expenses incurred by each Company Employee (and his or her eligible dependents) during the calendar year in which the Effective Time occurs for purposes of satisfying such year's deductible and co-payment limitations under the relevant welfare benefit plans in which such Company Employee (and dependents) will be eligible to participate from and after the Effective Time.

(e) At or prior to the Effective Time, the Company shall take all necessary actions to (i) provide for the termination of the Company Stock Purchase Plan as of no later than immediately prior to the Effective Time, (ii) ensure that no offering period under the Company Stock Purchase Plan shall be commenced on or after the date of this Agreement, other than an offering period that is reasonably expected to end on or before the Effective Time, (iii) if the Effective Time shall occur prior to the end of an offering period under the Company Stock

Purchase Plan, cause a new exercise date to be set under the Company Stock Purchase Plan, which date shall be the end of the payroll period that is at least ten (10) Business Days prior to the anticipated Effective Time, (iv) prohibit participants in the Company Stock Purchase Plan from altering their payroll deductions from those in effect on the date of this Agreement (or for an offering period that commences after the date of this Agreement in accordance with (ii) above, as in effect at the beginning of such offering period), other than to discontinue their participation in the Company Stock Purchase Plan in accordance with the terms and conditions of the Company Stock Purchase Plan or to decrease their level of contributions, (v) provide that the amount of the accumulated contributions of each participant under the Company Stock Purchase Plan as of immediately prior to the Effective Time shall, to the extent not used to purchase shares of Company Common Stock in accordance with the terms and conditions of the Company Stock Purchase Plan (as amended pursuant to this Section 5.10(e)), be refunded to such participant as promptly as practicable following the Effective Time (without interest); and (vi) ensure that no current or former employees, officers, directors or other service providers of the Company and its Subsidiaries or affiliates, or their beneficiaries, have any right to receive any securities of Parent or its affiliates under the Company Stock Purchase Plan.

(f) Prior to the Effective Time, the Company may implement a retention plan for critical employees not covered by the Company's change in control policy, with such terms and conditions mutually agreed with Parent.

(g) Notwithstanding the foregoing, nothing contained herein shall (i) be treated as an amendment of any Company Benefit Plan or any employee benefit plan of Parent, the Surviving Corporation or their affiliates, (ii) give any employee or former employee or any other individual associated therewith or any employee benefit plan or trustee thereof or any other third person any right to enforce the provisions of this Section 5.10 or (iii) obligate Parent, the Surviving Corporation or any of their affiliates to (A) maintain any particular benefit plan or (B) retain the employment of any particular employee.

SECTION 5.11 Expenses. Except as otherwise provided in this Agreement, all costs and expenses incurred in connection with this Agreement and the Merger and the other transactions contemplated by this Agreement shall be paid by the party incurring such expense. Parent shall, or shall cause the Surviving Corporation to, pay all charges and expenses, including those of the Paying Agent, in connection with the transactions contemplated in Article II. All transfer, documentary, sales, use, stamp, registration and other similar Taxes incurred in connection with the Merger shall be paid when due by Parent, Sub or, after the Closing, the Surviving Corporation. Parent, Sub, the Company and the Surviving Corporation shall take all reasonable actions to minimize the amount of any such transfer, documentary, sales, use, stamp, registration and other similar Taxes.

SECTION 5.12 Rule 16b-3 Matters. Prior to the Effective Time, the Company may take such further actions, if any, as may be necessary or appropriate to ensure that the dispositions of equity securities of the Company (including derivative securities) pursuant to the transactions contemplated by this Agreement by any officer or director of the Company who is subject to Section 16 of the Exchange Act are exempt under Rule 16b-3 promulgated under the Exchange Act.

SECTION 5.13 Stockholder Litigation. The Company shall promptly notify Parent of any litigation commenced against it or any of its directors, officers or affiliates, relating to this Agreement or the transactions contemplated hereby (including the Merger) and shall keep Parent reasonably informed regarding any such litigation. The Company shall give Parent and Merger Sub the opportunity to participate in the defense or settlement of any shareholder litigation against the Company and its directors relating to this Agreement and the transactions contemplated herein.

SECTION 5.14 Post-Merger Operations.

(a) Corporate Office. The Surviving Corporation shall maintain its headquarters in Las Vegas, Nevada.

(b) Community Involvement. After the Effective Time, the Surviving Corporation shall make annual charitable contributions within the communities served by the Surviving Corporation consistent with the level of charitable contributions made by the Company as of the effective date hereof, and otherwise maintain a level of involvement in community activities in the State of Nevada consistent with the level of community involvement and related activities carried on by the Company as of the date of this Agreement. Section 5.14(b) of the Company Disclosure Letter sets forth the aggregate dollar amount of charitable contributions made by the Company during the fiscal year ended December 31, 2012.

(c) Labor Contracts. After the Effective Time, the Surviving Corporation shall continue to perform all of the Company's obligations under and in accordance with the terms of the Company's collective bargaining agreements, subject to any amendments or waivers to such contracts as may be agreed by all of the parties thereto.

(d) Assumption of Obligations. In the event the Surviving Corporation (i) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any person, then proper provision shall be made so that such continuing or surviving corporation or entity or transferee of such assets, as the case may be, shall assume the obligations set forth in this Section 5.14.

SECTION 5.15 Transition Planning. As promptly as practicable after the date hereof, Parent and the Company shall establish a transition committee (the "Transition Committee") consisting of two (2) representatives designated by each of the Company and Parent. The activities of the Transition Committee shall include transition planning and implementation relating to the Merger and obtaining the Company Required Governmental Approvals, the Parent Required Governmental Approvals and any other consents or approvals from any person with respect to the transactions contemplated hereby. At all times after the date of this Agreement until the Effective Time (or the earlier termination of this Agreement), there shall be one representative of Parent on the Transition Committee that shall be designated by Parent as the primary contact person for the Company at Parent (the "Parent Contact"). In the event that the Company elects to request that Parent consent to any action or matter involving the Company or any of the Company Subsidiaries as is contemplated by Section 5.01, the Company shall make all such requests to the Parent Contact, and Parent agrees that it will use its

reasonable best efforts to cause the Parent Contact to respond as promptly as practicable to any such request, taking into account the nature of the request, the circumstances under which the request is made and the timing indicated in the request. The Parent Contact shall initially be William J. Fehrman, and may be changed by Parent from time to time by written notice from Parent to the Company.

SECTION 5.16 Changes to Rates or Charges. The Company shall, and shall cause the Company Subsidiaries to, consult with Parent prior to (a) initiating any general rate case or (b) making any material changes in the Company's or the Company Subsidiaries' rates or charges, standards of service or accounting from those in effect on the effective date of this Agreement or executing any agreement, commitment, arrangement or consent, whether written or oral, formal or informal, with respect thereto, except in each case (i) with respect to routine filings made in the ordinary course of business consistent with past practice, (ii) as may be related to the publically disclosed merger of Nevada Power Company and Sierra Pacific Power Company, (iii) as required by a Governmental Entity of competent jurisdiction or (iv) as set forth on Section 5.16 of the Company Disclosure Letter.

ARTICLE VI CONDITIONS TO THE MERGER

SECTION 6.01 Conditions to Obligations of Each Party to Effect the Merger. The respective obligations of each party to effect the Merger shall be subject to the satisfaction or waiver (where permitted) at or prior to the Effective Time of each of the following conditions:

(a) Company Stockholder Approval. The Company shall have obtained the Company Stockholder Approval.

(b) Governmental Approvals. The Company Required Governmental Approvals and the Parent Required Governmental Approvals shall have been obtained (including the expiration or termination of any applicable waiting period, together with any extensions thereof, under the HSR Act), and shall have become Final Regulatory Orders and no such Final Regulatory Order shall impose terms or conditions that, individually or in the aggregate, would reasonably be expected to have a Burdensome Effect. For purposes of this Section 6.01(b), a "Final Regulatory Order" means a final order by the relevant Governmental Entity which has not been reversed, stayed, enjoined, set aside, annulled or suspended, and as to which the conditions required by such Final Regulatory Order to be satisfied in order to consummate the Merger have been satisfied.

(c) No Injunction. No Governmental Entity of competent jurisdiction shall have issued, enacted, entered, promulgated or enforced any Law that is in effect and renders the Merger illegal, or prohibits, enjoins or otherwise prevents the Merger.

SECTION 6.02 Additional Conditions to Obligations of Parent and Sub. The obligations of Parent and Sub to effect the Merger are also subject to the satisfaction or waiver by Parent at or prior to the Effective Time of each of the following additional conditions:

(a) Representations and Warranties. (i) Each of the representations and warranties of the Company contained in this Agreement (other than the representations and warranties of the

Company set forth in Section 3.02), without regard to materiality or Company Material Adverse Effect qualifiers contained within such representations and warranties, shall be true and correct except for any failure of such representations and warranties to be true and correct that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect; and (ii) the representations and warranties of the Company set forth in Sections 3.02(a) and 3.02(b) shall be true and correct in all respects (except for *de minimis* errors) and the representations and warranties of the Company set forth in the remainder of Section 3.02 shall be true and correct in all material respects; in the case of each of clauses (i) and (ii) of this Section 6.02(a) as of the Effective Time as though made on and as of the Effective Time (except to the extent expressly made as of a specific date, in which case as of such specific date).

(b) Agreements and Covenants. The Company shall have performed or complied in all material respects with all agreements and covenants (other than Section 5.05(b)) required by this Agreement to be performed or complied with by it on or prior to the Effective Time.

(c) Material Adverse Effect. Since the date of this Agreement, no Company Material Adverse Effect shall have occurred that is continuing, and no event, change, occurrence, development or set of circumstances or facts shall have occurred which, individually or in the aggregate, would reasonably be expected to result in a Company Material Adverse Effect.

(d) Officer's Certificate. Parent shall have received a certificate signed on behalf of the Company by an executive officer of the Company as to the satisfaction of the conditions in Sections 6.02(a) and 6.02(b).

SECTION 6.03 Additional Conditions to Obligations of the Company. The obligations of the Company to effect the Merger are also subject to the satisfaction or waiver by the Company at or prior to the Effective Time of each of the following additional conditions:

(a) Representations and Warranties. Each of the representations and warranties of Parent and Sub contained in this Agreement shall be true and correct as of the Effective Time as though made on and as of the Effective Time (except to the extent expressly made as of a specific date, in which case as of such specific date), in each case except for any failure of such representations and warranties to be true and correct that would not, individually or in the aggregate, reasonably be expected to prevent or have a material adverse effect on the ability of Parent or Sub to consummate the Merger or observe or perform its material obligations hereunder to be performed on or after the Effective Time.

(b) Agreements and Covenants. Each of Parent and Sub shall have performed or complied in all material respects with all agreements and covenants (other than Section 5.05(b)) required by this Agreement to be performed or complied with by it on or prior to the Effective Time.

(c) Officers' Certificate. The Company shall have received a certificate signed on behalf of Parent and Sub by an executive officer of each of Parent and Sub as to the satisfaction of the conditions in Sections 6.03(a) and 6.03(b).

ARTICLE VII
TERMINATION, AMENDMENT AND WAIVER

SECTION 7.01 Termination. This Agreement may be terminated at any time prior to the Effective Time, whether before or after receipt of the Company Stockholder Approval:

- (a) by mutual written consent of Parent and the Company;
- (b) by either the Company or Parent, if the Effective Time shall not have occurred on or before May 29, 2014 (the “Outside Date”); provided, however, that (i) if all of the conditions to Closing, other than the condition set forth in Section 6.01(b), shall have been satisfied or shall be capable of being satisfied at such time, the Outside Date may be extended by either the Company or Parent from time to time by written notice to the other party up to a date not beyond July 29, 2014, the latest of any of which dates shall thereafter be deemed to be the Outside Date; provided, further, that the right to terminate this Agreement under this Section 7.01(b) shall not be available to any party if the failure of the Effective Time to occur on or before the Outside Date is the result of such party having materially breached or failed to perform any of its covenants or agreements set forth in this Agreement;
- (c) by either the Company or Parent, if the Company Stockholder Approval shall not have been obtained upon a vote taken thereon at the Company Stockholder Meeting, including any adjournment or postponement thereof;
- (d) by either the Company or Parent, if any Governmental Entity of competent jurisdiction shall have issued, enacted, entered, promulgated or enforced any Law permanently enjoining, restraining or prohibiting the Merger, and such Law shall have become final and non-appealable, if applicable; provided, that the right to terminate this Agreement under this Section 7.01(d) shall not be available to any party that has failed to comply with Section 5.06;
- (e) by Parent, at any time prior to the receipt of the Company Stockholder Approval, if (i) the Company’s board of directors shall have effected a Change of Company Recommendation, (ii) the Company shall have failed to recommend against any Competing Proposal subject to Regulation 14D under the Exchange Act in any solicitation or recommendation statement made on Schedule 14D-9 within ten (10) Business Days after the commencement of such Competing Proposal or (iii) the Company shall have breached in any material respect any of its obligations under Section 5.03 and such breach shall not have been remedied within ten (10) Business Days after receipt by the Company of notice in writing from Parent, specifying the nature of such breach and requesting that it be remedied;
- (f) by the Company if, at any time prior to the receipt of the Company Stockholder Approval, the Company’s board of directors shall have effected a Change of Company Recommendation in material compliance with the provisions of Section 5.03(d) in order to enter into a definitive acquisition agreement with respect to a Superior Proposal;
- (g) by the Company if, at any time prior to the receipt of the Company Stockholder Approval, the Board of Directors shall have effected a Change of Company Recommendation pursuant to Section 5.03(e);

(h) by Parent, if: (i) the Company has breached or failed to perform any of its representations, warranties, covenants or agreements contained in this Agreement, in any case, such that a condition contained in Section 6.02(a) or 6.02(b) would not be satisfied; (ii) Parent shall have delivered to the Company written notice of such breach or failure to perform; and (iii) either such breach or failure to perform is not capable of cure or at least thirty (30) days shall have elapsed since the date of delivery of such written notice to the Company and such breach or failure to perform shall not have been cured; provided, however, that Parent shall not be permitted to terminate this Agreement pursuant to this Section 7.01(h) if Parent or Sub has breached or failed to perform any of its representations, warranties, covenants or agreements contained in this Agreement, in any case, such that a condition contained in Section 6.03(a) or 6.03(b) would not be satisfied; or

(i) by the Company, if (i) Parent or Sub has breached or failed to perform any of its representations, warranties, covenants or agreements contained in this Agreement, in any case, such that a condition contained in Section 6.03(a) or 6.03(b) would not be satisfied; (ii) the Company shall have delivered to Parent written notice of such breach or failure to perform; and (iii) either such breach or failure to perform is not capable of cure or at least thirty (30) days shall have elapsed since the date of delivery of such written notice to Parent and such breach or failure to perform shall not have been cured; provided, however, that the Company shall not be permitted to terminate this Agreement pursuant to this Section 7.01(i) if the Company has breached or failed to perform any of its representations, warranties, covenants or agreements contained in this Agreement, in any case, such that a condition contained in Section 6.02(a) or 6.02(b) would not be satisfied.

SECTION 7.02 Effect of Termination.

(a) In the event of termination of this Agreement by either the Company or Parent as provided in Section 7.01, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Parent, Sub or the Company or their respective Subsidiaries, officers or directors, in either case, except (i) with respect to Section 5.11, this Section 7.02 and Article VIII and (ii) with respect to any liabilities or damages incurred or suffered by a party as a result of the willful and material breach by another party of any of its representations, warranties, covenants or agreements set forth in this Agreement.

(b) In the event that this Agreement is terminated:

(i) by (A) Parent pursuant to Section 7.01(e) or (B) the Company pursuant to Section 7.01(f) or Section 7.01(g), then the Company shall pay to Parent or its designee, within two (2) Business Days following the date of such termination by Parent pursuant to clause (A), or prior to or concurrently with such termination by the Company pursuant to clause (B), the Company Termination Fee; or

(ii) (A) by either Parent or the Company pursuant to Section 7.01(b) (other than following the failure to obtain a Company Required Governmental Approval or a Parent Required Governmental Approval), or (B) by either Parent or the Company pursuant to Section 7.01(c), and (C) (1) (x) any person or group of persons shall (as of the date this Agreement is terminated pursuant to Section 7.01(b) (other than following the failure to obtain a Company

Required Governmental Approval or a Parent Required Governmental Approval), in the case of the foregoing clause (A), or as of the Company Stockholder Meeting at which the Company Stockholder Approval shall not have been obtained upon a vote taken thereon, in the case of the foregoing clause (B)) have publicly announced or disclosed or disclosed privately to the Company's management or board of directors, and not withdrawn, a Competing Proposal, and (y) within nine (9) months after the termination of this Agreement, the Company shall have entered into a definitive acquisition agreement with respect to a Competing Proposal and such Competing Proposal is subsequently consummated (which such Competing Proposal need not be the same Competing Proposal, or be made by the same person or group, as the Competing Proposal described in clause (C)(1)(x)), then the Company shall pay to Parent or its designee, concurrently with the consummation of such Competing Proposal, the Company Termination Fee, or (2) (x) any person or group of persons shall (as of the date this Agreement is terminated pursuant to Section 7.01(b) (other than following the failure to obtain a Company Required Governmental Approval or a Parent Required Governmental Approval), in the case of the foregoing clause (A), or as of the Company Stockholder Meeting at which the Company Stockholder Approval shall not have been obtained upon a vote taken thereon, in the case of the foregoing clause (B)) have publicly announced or disclosed or disclosed privately to the Company's management or board of directors, and subsequently withdrawn, a Competing Proposal, and (y) within nine (9) months after the termination of this Agreement, the Company shall have entered into a definitive acquisition agreement with respect to such Competing Proposal and such Competing Proposal is subsequently consummated (it being understood and agreed that for purposes of this Section 7.02(b)(ii), any group of persons making a Competing Proposal shall be deemed the same as any other group so long as the members of one group constitute at least 50% of the equity financing of the other group), then the Company shall pay to Parent or its designee, concurrently with the consummation of such Competing Proposal, the Company Termination Fee; provided that for purposes of this Section 7.02(b)(ii), the term "Competing Proposal" shall have the meaning assigned to such term, except that all percentages therein shall be changed to "50%".

(c) Each of the Company, Parent and Sub acknowledges that (i) the agreements contained in this Section 7.02 are an integral part of the transactions contemplated by this Agreement and (ii) without these agreements, Parent, Sub and the Company would not enter into this Agreement. It is acknowledged and agreed that, except in the case of fraud or a willful and material breach by the Company of this Agreement, the Company Termination Fee is not a penalty, but rather is liquidated damages in a reasonable amount that will compensate Parent and Sub in the circumstances in which the Company Termination Fee is payable. In no event shall the Company be required to pay to Parent more than one Company Termination Fee pursuant to Section 7.02(b).

SECTION 7.03 Amendment. This Agreement may be amended by the Company, Parent and Sub by action taken by or on behalf of their respective boards of directors at any time prior to the Effective Time; provided, however, that, after receipt of the Company Stockholder Approval, no amendment may be made which, by Law or in accordance with the rules of any relevant stock exchange, requires further approval by the Company's stockholders without obtaining such further approval. This Agreement may not be amended except by an instrument in writing signed by each of the parties hereto.

SECTION 7.04 Waiver. At any time prior to the Effective Time, Parent and Sub, on the one hand, and the Company, on the other hand, may (a) extend the time for the performance of any of the obligations or other acts of the other, (b) waive any breach of the representations and warranties of the other contained herein or in any document delivered pursuant hereto and (c) waive compliance by the other with any of the covenants or conditions contained herein; provided, however, that after receipt of the Company Stockholder Approval, there may not be any extension or waiver of this Agreement which decreases the Merger Consideration or which adversely affects the rights of the Company's stockholders hereunder without the approval of the Company's stockholders at a duly convened meeting of the Company's stockholders called to obtain approval of such extension or waiver. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party or parties to be bound thereby, but such extension or waiver or failure to insist on strict compliance with an obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

ARTICLE VIII GENERAL PROVISIONS

SECTION 8.01 Non-Survival of Representations and Warranties. None of the representations and warranties contained in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time. Except for any covenant or agreement that by its terms contemplates performance after the Effective Time, none of the covenants and agreements of the parties contained this Agreement shall survive the Effective Time.

SECTION 8.02 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given (a) when delivered personally, (b) when sent by reputable overnight courier service or (c) when faxed or emailed (which is confirmed by copy sent within one business day by a reputable overnight courier service) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to Parent or Sub:

MidAmerican Energy Holdings Company
1111 South 103rd Street
Omaha, NE 68124
Fax: (402) 231-1658
Email: danderson@midamerican.com
Attention: Douglas L. Anderson

with a copy to (for information purposes only):

Gibson, Dunn & Crutcher LLP
200 Park Avenue, New York
New York, New York 10166
Fax: (212) 351-6215
Email: PHanlon@gibsondunn.com
Attention: Peter J. Hanlon

Gibson, Dunn & Crutcher LLP
2100 McKinney Avenue, Suite 1100
Dallas, Texas 75201
Fax: (214) 571-2924
Email: RLittle@gibsondunn.com
Attention: Robert Little

If to the Company:

NV Energy, Inc.
6226 West Sahara Avenue
Las Vegas, Nevada 89146
Fax: (702) 402-5699
Email: PKaleta@nvenergy.com
Attention: General Counsel

with copies to (for information purposes only):

Sidley Austin LLP
One South Dearborn Street
Chicago, Illinois 60603
Fax: (312) 853-7036
Email: tcole@sidley.com
mmcqueen@sidley.com
iqasim@sidley.com
Attention: Thomas A. Cole
Matthew G. McQueen
Imad I. Qasim

SECTION 8.03 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as

possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

SECTION 8.04 Entire Agreement. This Agreement (together with the Annexes, Exhibits, Company Disclosure Letter and the other documents delivered pursuant hereto) and the Confidentiality Agreement constitute the entire agreement of the parties and supersede all prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof and, except as otherwise expressly provided herein, are not intended to confer upon any other person any rights or remedies hereunder.

SECTION 8.05 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned or transferred, in whole or in part, by operation of Law or otherwise by any of the parties hereto without the prior written consent of the other parties. Any assignment or transfer in violation of the preceding sentence shall be void.

SECTION 8.06 Parties in Interest. Except for (a) Article II, which shall be for the benefit of any person entitled to payment thereunder, and (b) Section 5.08, which shall be for the benefit of each Indemnified Party, his or her heirs, executors or administrators and his or her representatives, each of whom shall be entitled to enforce their rights under this Agreement as third-party beneficiaries, Parent, Merger Sub and the Company hereby agree that their respective representations, warranties and covenants set forth herein are solely for the benefit of the other party hereto, in accordance with and subject to the terms of this Agreement, and this Agreement is not intended to, and does not, confer upon any Person other than the parties hereto any rights or remedies hereunder, including, the right to rely upon the representations and warranties set forth herein. The parties hereto further agree that the rights of third party beneficiaries under Article II and Section 5.08 shall not arise unless and until the Effective Time occurs. The representations and warranties in this Agreement are the product of negotiations among the parties hereto and are for the sole benefit of the parties hereto. Any inaccuracies in such representations and warranties may be subject to waiver by the parties hereto in accordance with Section 7.04 without notice or liability to any other Person. In some instances, the representations and warranties in this Agreement may represent an allocation among the parties hereto of risks associated with particular matters regardless of the knowledge of any of the parties hereto. Consequently, Persons other than the parties hereto may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

SECTION 8.07 Interpretation. When a reference is made in this Agreement to Sections or Exhibits, such reference shall be to a Section or Exhibit of this Agreement, respectively, unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation,” if they are not already followed by such words. For purposes of this Agreement, the singular number shall include the plural, and vice versa. All references in this Agreement to “\$” are intended to refer to U.S. dollars. Unless otherwise specifically provided for herein, the term “or” shall not be deemed to be exclusive. The words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to

any particular provision of this Agreement. References herein to “as of the date hereof,” “as of the date of this Agreement” or words of similar import shall be deemed to mean “as of immediately prior to the execution and delivery of this Agreement.”

SECTION 8.08 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware, without giving effect to the principles of conflicts of Law thereof (other than with respect to issues relating to the Merger, fiduciary duties, general corporation law and any other provisions set forth herein that are required to be governed by the NRS).

SECTION 8.09 Venue. Each of the parties irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement brought by any other party or its successors or assigns shall be brought and determined in any Delaware state or federal court, and each of the parties hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the parties agrees not to commence any action, suit or proceeding relating thereto except in the courts described above in Delaware, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in Delaware as described herein. Each of the parties further agrees that notice as provided herein shall constitute sufficient service of process and the parties further waive any argument that such service is insufficient. Each of the parties hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, (a) any claim that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason, (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) that (i) the suit, action or proceeding in any such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

SECTION 8.10 Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

SECTION 8.11 Counterparts. This Agreement may be executed in two or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile or by electronic delivery in .pdf format shall be sufficient to bind the parties to the terms and conditions of this Agreement.

SECTION 8.12 Specific Performance.

(a) The parties agree that irreparable damage would occur in the event that the parties hereto do not perform the provisions of this Agreement in accordance with its terms or otherwise breach such provisions. Accordingly, subject to Section 8.12(b), the parties acknowledge and agree that the parties shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled at law or in equity.

(b) Each of the parties agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief as provided herein on the basis that (i) it has an adequate remedy at law or (ii) an award of specific performance is not an appropriate remedy for any reason at law or equity. Any party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction.

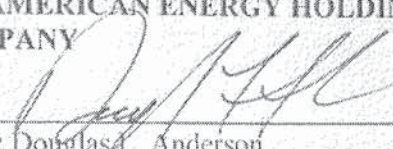
(c) The parties further agree (i) the seeking of remedies pursuant to this Section 8.12 shall not in any respect constitute a waiver by any party seeking such remedies of its respective right to seek any other form of relief that may be available to it under this Agreement, including under Section 7.02, in the event that this Agreement has been terminated or in the event that the remedies provided for in this Section 8.12 are not available or otherwise are not granted, and (ii) nothing set forth in this Agreement shall require a party to institute any proceeding for (or limit a party's right to institute any proceeding for) specific performance under this Section 8.12 prior or as a condition to exercising any termination right under Article VII (and pursuing damages after such termination), nor shall the commencement of any legal proceeding seeking of remedies pursuant to this Section 8.12 or anything set forth in this Section 8.12 restrict or limit a party's right to terminate this Agreement in accordance with the terms of Article VII or pursue any other remedies under this Agreement that may be available then or thereafter.

SECTION 8.13 Obligations of Parent and of the Company. Whenever this Agreement requires a Subsidiary of the Company to take any action, such requirement shall be deemed to include an undertaking on the part of the Company to cause such Subsidiary to take such action and, after the Effective Time, on the part of the Surviving Corporation to cause such Subsidiary to take such action. Whenever this Agreement requires Sub to take any action, such requirements shall be deemed to include an undertaking on the part of Parent to cause Sub to take such action. Parent hereby guarantees the due, prompt and faithful payment, performance and discharge by Sub of, and the compliance by Sub with, all of the covenants, agreements, obligations and undertakings of Sub under this Agreement in accordance with the terms of this. Parent shall, immediately following execution of this Agreement, approve this Agreement in its capacity as sole stockholder of Sub in accordance with applicable Law and the articles of incorporation and bylaws of Sub.

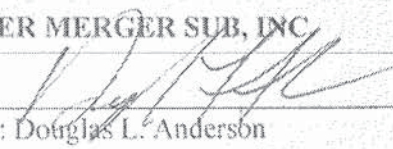
* * * * *

IN WITNESS WHEREOF, Parent, Sub and the Company have caused this Agreement to be signed by their respective officers thereunto duly authorized all as of the date first written above.

**MIDAMERICAN ENERGY HOLDINGS
COMPANY**

By: 
Name: Douglas L. Anderson
Title: Executive Vice President

SILVER MERGER SUB, INC

By: 
Name: Douglas L. Anderson
Title: Executive Vice President

NV ENERGY, INC.

By: _____
Name:
Title:

IN WITNESS WHEREOF, Parent, Sub and the Company have caused this Agreement to be signed by their respective officers thereunto duly authorized all as of the date first written above.

**MIDAMERICAN ENERGY HOLDINGS
COMPANY**

By: _____
Name: Douglas L. Anderson
Title: Executive Vice President

SILVER MERGER SUB, INC.

By: _____
Name: Douglas L. Anderson
Title: Executive Vice President

NV ENERGY, INC.

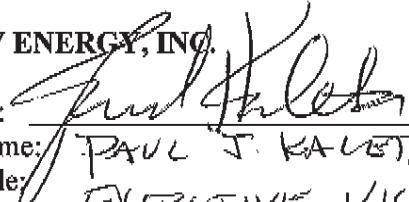
By:  _____
Name: PAUL J. KALETA
Title: EXECUTIVE VICE PRESIDENT

Exhibit J: Facts Relied upon to Show that the Transaction Is Consistent with the Public Interest

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Silver Merger Sub, Inc.)
NV Energy, Inc.)
Nevada Power Company)
Sierra Pacific Power Company)

Docket No. EC13-__-000

AFFIDAVIT OF
JULIE R. SOLOMON

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I. PURPOSE, SUMMARY OF ANALYSIS, AND CONCLUSIONS

Introduction

My name is Julie R. Solomon. I am a Managing Director of Navigant Consulting (“Navigant”). My business address is 1200 19th Street, NW, Suite 700, Washington, DC 20036. A large portion of my consulting activities involves electric utility industry restructuring and the transition from regulation to competition. I have been involved extensively in consulting on market power issues concerning mergers, other asset transactions and market rate applications for the past 15 years. I frequently file testimony and affidavits before the Federal Energy Regulatory Commission (“FERC” or “Commission”) in connection with electric utility mergers, the purchase and sale of jurisdictional assets, applications for market-based rates, and triennial updates. My resume is included as Exhibit J-2.

I have been asked by counsel to evaluate the potential competitive impact on relevant electricity markets of a transaction under which NV Energy, Inc. and its public utility subsidiaries, Nevada Power Company (“Nevada Power”) and Sierra Pacific Power (“Sierra Pacific”) (Nevada Power and Sierra Pacific collectively “NV Energy”) (all collectively, the “NV Energy Applicants”) will merge with Silver Merger Sub, Inc. (“Merger Sub”). NV Energy, Inc. will be the surviving corporation and will become an indirect, wholly-owned subsidiary of MidAmerican Energy Holdings Company (“MidAmerican”), the parent of Merger Sub (the “Transaction”). The NV Energy Applicants and Merger Sub collectively are “Applicants”. I performed the Competitive Analysis Screen described in Appendix A to the Commission’s Merger Policy Statement (“Order No. 592”),¹ as modified in the Revised Filing Requirements Under Part 33 of the Commission’s Regulations.² The Competitive Analysis Screen is intended to comport with the 1992 Department of Justice and Federal Trade Commission (“DOJ/FTC”) Horizontal Merger Guidelines (“Merger Guidelines”).

¹ *Inquiry Concerning the Comm’n’s Merger Policy Under the Fed. Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997).

² *Revised Filing Requirements Under Part 33 of the Comm’n’s Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh’g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001) (“Revised Filing Requirements” or “Order No. 642”).

The focus of my analysis is on the horizontal market power effects arising from the combination of assets owned by MidAmerican and NV Energy, Inc. that theoretically could create or enhance the merged firm's ability to increase prices in relevant wholesale electricity markets. The relevant subset of generation owned by affiliates of Merger Sub consists of that owned or controlled by PacifiCorp, a subsidiary of MidAmerican, which generation is proximate to NV Energy's affiliated generation. The focus of the horizontal analysis is on wholesale markets where there is a potential for overlap.

The relevant vertical market power issues are those potentially arising from the ability to use control over fuel supply, fuel transportation facilities, or electric transmission to exert vertical market power by increasing rivals' costs or otherwise creating barriers to entry that might undercut the presumption that long-run generation markets are competitive. I address any potential electric transmission issues below. Other potential vertical market power issues are addressed in the testimony of Dr. John Morris.

Summary of Analysis and Conclusions

As I demonstrate below, the proposed Transaction will not have an adverse effect on horizontal competition in any relevant wholesale electricity market. There also are no vertical market power concerns with respect to ownership of electric transmission.

The analysis of the competitive implications of the proposed Transaction appropriately focuses on those wholesale markets in which there is a potential for material overlap. As reflected in Table 1 below (and detailed in Exhibits J-3 and J-4), the potential for horizontal competition arises in relevant destination markets within the Western Electricity Coordinating Council ("WECC") region, and more specifically, in the balancing authority areas ("BAAs") operated by PacifiCorp (PacifiCorp-East ("PACE") and PacifiCorp-West ("PACW")) and by NV Energy ("NVE"). Other MidAmerican affiliates own generation in the WECC region (primarily in the California Independent System Operator Corporation ("CAISO") market); however, all such generation is committed under long-term contracts with unaffiliated third-parties. In any event, because I also analyze wholesale markets that are first-tier to PACE, PACW and NVE, I also analyze the CAISO market.

Table 1: Summary of Generation Owned by Affiliates of MidAmerican and NV Energy (MW)

Market	MidAmerican	NV Energy
WECC Region		
PACE	7,226	0
PACW	3,972	0
NVE	0	6,090
CAISO and other	2,216	0
Eastern Interconnection and ERCOT		
MISO	7,204	0
Other	1,450	0
Total	22,068	6,090
For purposes of this table, PacifiCorp’s and NV Energy’s remote generation is treated as within PACE/PACW and NVE, respectively. This table also does not reflect any long-term purchases by affiliates of MidAmerican or NV Energy. Includes new generation expected on line in 2013.		

Because NV Energy owns no generation (and has not sold energy) outside of the WECC region, applicants do not sell products in the same geographic markets outside of the WECC region, and no further analysis is required in those markets.³

My forward looking base case analysis reflects the fact that NV Energy Applicants intend to operate a single BAA, combining their two existing BAAs (Nevada Power Company (“NEVP”) and Sierra Pacific Power Company (“SPPC”)).⁴ This change is unrelated to the Transaction. The existing BAAs will combine after the completion of the One Nevada Transmission Line (known as “ON Line”) transmission project, which will interconnect northern and southern Nevada. I refer to this single BAA as “NVE”. The creation of a single interconnected system will occur as part of completion of the ON Line project and proposed internal reorganization of Nevada Power and Sierra Pacific,⁵ or, if such merger has not yet been

³ A Competitive Analysis Screen need not be filed if the applicant “[a]ffirmatively demonstrates that the merging entities do not currently conduct business in the same geographic markets or that the extent of the business transactions in the same geographic markets is *de minimis*.” 18 C.F.R. § 33.3(a)(2)(i). See also, for example, *Duke Energy Corporation*, 136 FERC ¶ 61,245 at P 151 (2011).

⁴ NV Energy (both NEVP and SPPC) is directly interconnected to PacifiCorp’s PACE BAA. NV Energy is not interconnected to PACW.

⁵ See *Application for Approval of Internal Reorganization Under Section 203 of the Federal Power Act of NV Energy, Inc., et al.*, Docket No. EC13-113, May 31, 2013.

approved by the Commission and/or the Public Utilities Commission of Nevada (“PUCN”), through other operational and commercial agreements, including a joint dispatch agreement (“JDA”) to govern the dispatch of generation and allocation of transmission (as appropriate) following the in-service date of ON Line, which will be filed with the Commission for approval prior to the Transaction closing. This is the primary case the Applicants are putting before the Commission for approval (the “Base Case”).

I also conduct a sensitivity analysis that treats NEVP and SPPC as stand-alone BAAs. This would be relevant only if, by the expected consummation date of this Transaction, ON Line has not gone into service. If this potential scenario occurs, my analysis of separate Nevada BAAs is an “Interim Case”, relevant only during a transition period following consummation of the Transaction. The Applicants also are seeking Commission approval for the Interim Case to the extent there is a transition period as described above.

Based upon the Competitive Analysis Screen (or Delivered Price Test (“DPT”)) of the relevant markets, the proposed Transaction raises no competitive concerns in the Base Case analysis. There are no screen failures in NVE, PACE, PACW, or any first-tier market under the Available Economic Capacity (“AEC”) measure that is most relevant in the context of non-restructured markets. A key driver of this result is that PacifiCorp has relatively limited amounts of AEC during any time period (ranging from zero to about 1,000 MW). While NV Energy has relatively more AEC than does PacifiCorp (even though it is a significant net purchaser of energy), its AEC is in large part driven by the seasonal load profile that is typical of the Southwest, namely relatively low loads in non-summer periods. For example, NV Energy’s average winter peak load is less than half of its needle peak load that occurs in the summer. In comparison, PacifiCorp’s average winter peak load is more on the order of 70 percent of its needle peak load. This has the effect of creating relatively more AEC for NV Energy in non-summer seasons.

Further, because only a share of PacifiCorp’s AEC is imported into NVE under the DPT, the combination with NV Energy’s own AEC does not have a significant enough effect on market concentration to cause any screen failures. The situation is similar in the PACE and PACW markets, namely that the relatively small amount of NV Energy “excess” economic

supply that is imported into the PACE or PACW BAAs under the DPT, when combined with PacifiCorp’s AEC, is too small to have a significant effect on market concentration. Further, both the PacifiCorp and the NV Energy BAAs are relatively well interconnected with other BAAs. These facts underlay the AEC results discussed below.

The AEC results for NVE are shown in Table 3 below.⁶ As shown, NV Energy’s AEC ranges from zero to about 2,100 MW (in the winter peak season that I described above) pre-Transaction, and its market share ranges from zero to 31.5 percent, depending on the season/load period. However, the amount of AEC that PacifiCorp is allocated into the NVE market is relatively small, ranging from zero to 276 MW. MidAmerican’s post-Transaction market share ranges from zero to 33 percent, and the HHI changes range from zero to 78 points in an unconcentrated or moderately concentrated market. Thus, the Competitive Analysis Screen is passed, and there is no indication of a horizontal market power concern.

Table 2: Available Economic Capacity, NVE

Period	Price	Pre-Transaction						Post-Transaction				
		NV Energy		MidAmerican		Market Size	HHI	MidAmerican			HHI Chg	
		MW	Mkt Share	MW	Mkt Share			MW	Mkt Share	Market Size		HHI
S_SP1	\$ 100	85	1.4%	2	0.0%	5,966	535	88	1.5%	5,966	536	0
S_SP2	\$ 60	807	12.1%	39	0.6%	6,687	571	846	12.6%	6,687	585	14
S_P	\$ 43	1,222	17.7%	143	2.1%	6,921	749	1,365	19.7%	6,921	822	73
S_OP	\$ 26	-	0.0%	276	5.0%	5,550	812	276	5.0%	5,550	812	-
W_SP	\$ 47	1,629	26.1%	50	0.8%	6,253	992	1,680	26.9%	6,253	1,034	42
W_P	\$ 43	2,131	31.5%	83	1.2%	6,754	1,222	2,214	32.8%	6,754	1,300	78
W_OP	\$ 27	-	0.0%	24	0.6%	3,877	551	24	0.6%	3,877	551	-
SH_SP	\$ 51	146	2.3%	72	1.1%	6,479	600	218	3.4%	6,479	605	5
SH_P	\$ 38	1,132	15.2%	174	2.3%	7,466	575	1,306	17.5%	7,466	646	71
SH_OP	\$ 23	-	0.0%	-	0.0%	3,815	629	-	0.0%	3,815	629	-

The results for PACE and PACW are shown in Table 3 and Table 4 below, respectively. In PACE, PacifiCorp has relatively limited AEC (market share ranging from zero to 16 percent). NV Energy is allocated zero to 203 MW of supply into PACE. MidAmerican’s post-Transaction market share ranges from zero to 19 percent, and the HHI changes are all below 100 points in an unconcentrated market.

⁶ See page 22 for a description of the period designations.

Table 3: Available Economic Capacity, PACE

Period	Price	Pre-Transaction						Post-Transaction				
		NV Energy		MidAmerican		Market Size	HHI	MidAmerican		Market Size	HHI	HHI Chg
		MW	Mkt Share	MW	Mkt Share			MW	Mkt Share			
S_SP1	\$ 100	12	0.2%	8	0.1%	5,865	472	20	0.3%	5,865	472	0
S_SP2	\$ 59	126	2.2%	8	0.1%	5,797	443	134	2.3%	5,797	444	1
S_P	\$ 42	140	2.2%	666	10.7%	6,237	534	806	12.9%	6,237	582	48
S_OP	\$ 28	-	0.0%	45	0.8%	5,606	882	45	0.8%	5,606	882	-
W_SP	\$ 46	203	3.4%	683	11.4%	6,004	519	886	14.8%	6,004	596	77
W_P	\$ 39	183	2.9%	992	15.7%	6,304	618	1,175	18.6%	6,304	709	91
W_OP	\$ 25	-	0.0%	66	1.2%	5,686	495	66	1.2%	5,686	495	-
SH_SP	\$ 46	-	0.0%	523	8.7%	5,994	526	523	8.7%	5,994	526	-
SH_P	\$ 36	-	0.0%	1,019	16.2%	6,296	646	1,019	16.2%	6,296	646	-
SH_OP	\$ 21	-	0.0%	-	0.0%	3,526	697	-	0.0%	3,526	697	-

In PACW, PacifiCorp has even less AEC (market share ranging from zero to 5 percent), and NVE is allocated zero to 230 MW of supply into PACW. MidAmerican's post-Transaction market share ranges from zero to 13 percent, and the HHI changes are all below 50 points in an unconcentrated to moderately concentrated market.

Table 4: Available Economic Capacity, PACW

Period	Price	Pre-Transaction						Post-Transaction				
		NV Energy		MidAmerican		Market Size	HHI	MidAmerican		Market Size	HHI	HHI Chg
		MW	Mkt Share	MW	Mkt Share			MW	Mkt Share			
S_SP1	\$ 100	6	0.3%	-	0.0%	2,282	858	6	0.3%	2,282	858	-
S_SP2	\$ 59	43	1.9%	0	0.0%	2,282	829	43	1.9%	2,282	829	0
S_P	\$ 42	55	2.2%	235	9.4%	2,496	850	290	11.6%	2,496	892	42
S_OP	\$ 28	-	0.0%	-	0.0%	2,556	1,013	-	0.0%	2,556	1,013	-
W_SP	\$ 46	98	3.4%	54	1.9%	2,867	720	152	5.3%	2,867	733	13
W_P	\$ 39	138	4.8%	100	3.5%	2,880	650	238	8.3%	2,880	684	33
W_OP	\$ 25	-	0.0%	-	0.0%	3,182	621	-	0.0%	3,182	621	-
SH_SP	\$ 46	-	0.0%	18	0.8%	2,309	922	18	0.8%	2,309	922	-
SH_P	\$ 36	-	0.0%	77	3.3%	2,308	770	77	3.3%	2,308	770	-
SH_OP	\$ 21	-	0.0%	-	0.0%	3,294	749	-	0.0%	3,294	749	-

The results for these three BAAs are similar in the price sensitivity cases (plus 10 percent and minus 10 percent). There are no screen failures.

With respect to the Interim Case (stand-alone NEVP and SPPC BAAs), the Competitive Analysis Screen also evidences no screen failures, as demonstrated in Table 5 and Table 6, respectively, below.

Table 5: Available Economic Capacity, NEVP

Period	Price	Pre-Transaction						Post-Transaction				
		NV Energy		MidAmerican		Market Size	HHI	MidAmerican		Market Size	HHI	HHI Chg
		MW	Mkt Share	MW	Mkt Share			MW	Mkt Share			
S_SP1	\$ 100	28	0.6%	2	0.0%	4,892	585	29	0.6%	4,892	585	0
S_SP2	\$ 60	568	10.5%	30	0.5%	5,415	591	597	11.0%	5,415	602	11
S_P	\$ 43	1,040	17.7%	83	1.4%	5,863	773	1,123	19.2%	5,863	824	50
S_OP	\$ 26	-	0.0%	96	2.0%	4,754	1,890	96	2.0%	4,754	1,890	-
W_SP	\$ 47	1,161	25.0%	44	1.0%	4,649	986	1,205	25.9%	4,649	1,034	48
W_P	\$ 43	1,565	31.1%	64	1.3%	5,038	1,272	1,629	32.3%	5,038	1,351	79
W_OP	\$ 27	15	0.5%	14	0.5%	2,813	849	29	1.0%	2,813	850	1
SH_SP	\$ 51	57	1.0%	78	1.4%	5,518	616	136	2.5%	5,518	619	3
SH_P	\$ 38	865	13.8%	140	2.2%	6,249	560	1,005	16.1%	6,249	623	62
SH_OP	\$ 23	-	0.0%	-	0.0%	3,503	1,176	-	0.0%	3,503	1,176	-

Table 6: Available Economic Capacity, SPPC

Period	Price	Pre-Transaction						Post-Transaction				
		NV Energy		MidAmerican		Market Size	HHI	MidAmerican		Market Size	HHI	HHI Chg
		MW	Mkt Share	MW	Mkt Share			MW	Mkt Share			
S_SP1	\$ 100	60	3.3%	-	0.0%	1,815	1,325	60	3.3%	1,815	1,325	-
S_SP2	\$ 60	255	11.1%	7	0.3%	2,291	1,223	262	11.4%	2,291	1,229	6
S_P	\$ 43	243	10.9%	23	1.0%	2,223	1,246	266	12.0%	2,223	1,269	22
S_OP	\$ 26	-	0.0%	45	4.8%	955	875	45	4.8%	955	875	-
W_SP	\$ 47	517	15.7%	9	0.3%	3,294	1,405	526	16.0%	3,294	1,414	8
W_P	\$ 43	655	24.8%	14	0.5%	2,641	1,572	670	25.4%	2,641	1,599	27
W_OP	\$ 27	20	2.2%	-	0.0%	893	765	20	2.2%	893	765	-
SH_SP	\$ 51	150	6.6%	9	0.4%	2,279	1,169	159	7.0%	2,279	1,174	5
SH_P	\$ 38	406	18.0%	21	0.9%	2,256	1,434	427	18.9%	2,256	1,467	33
SH_OP	\$ 23	-	0.0%	-	0.0%	662	1,196	-	0.0%	662	1,196	-

The foregoing results indicate that the NV Energy markets as stand-alone BAAs are relatively more concentrated, with Applicants having relatively higher post-Transaction market shares in NEVP. The DPT screens still are readily passed. It also is worth noting that there are a number of reasons that indicate NV Energy has neither the ability nor incentives to raise market prices in its own market. As discussed in more detail later in my testimony, the following factors, such as those the Commission contemplated in Order No. 642,⁷ demonstrate the lack of market power concerns. First, NV Energy is not authorized to sell at market-based rates in their

⁷ Order No. 642 at page 62 (“The facts of each case (e.g., market conditions, such as demand and supply elasticity, ease of entry and market rules, as well as technical conditions, such as the types of generation involved) determine whether the merger would harm competition. When there is a screen failure, applicants must provide evidence of relevant market conditions that indicate a lack of a competitive problem or they should propose mitigation.”).

current BAAs, NEVP and SPPC, and will not have authority to sell at market-based rates in the single BAA when that occurs.⁸ Likewise, MidAmerican affiliates will be limited to cost-based sales in the NVE market post-Transaction. Thus, all wholesale and retail sales by Applicants in the NVE BAA must be made at cost-based rates regulated by the Commission and/or the PUCN, respectively. Second, any “profits” from NV Energy’s wholesale sales are credited fully to customers through a fuel adjustment clause (*i.e.*, the Base Tariff Energy Rate or “BTER”) such that shareholders do not profit from sales at higher prices. In any event, higher prices cannot be induced by any theoretical exercise of market power because of NV Energy’s lack of market-based rate authority in Nevada. Finally, because the NV Energy Applicants are significant net buyers of energy, they lack the incentives for higher market prices in Nevada.

PacifiCorp and NV Energy have not been significant competitors, nor have they made significant sales into each other’s markets, further corroborating the DPT results. In the 2011-2012 period, Nevada Power’s and Sierra Pacific’s combined short-term sales to customers in PACE (excluding sales to PacifiCorp itself) totaled less than 15,000 MWh (the equivalent of one MW round-the-clock). Nevada Power’s and Sierra Pacific’s combined short-term sales to PacifiCorp in PACE totaled less than 200,000 MWh (the equivalent of 11 MW round-the-clock). NV Energy did not make any sales into PACW. PacifiCorp’s short-term sales to customers in NEVP and SPPC totaled about 500,000 MWhs (the equivalent of 30 MW round-the-clock), but this, too, is small relative PacifiCorp’s total sales and about 3 percent of its wholesale non-requirements sales. During this period, PacifiCorp had only 53 MWh of short-term sales to NV Energy (to Sierra Pacific).⁹ Because the participation of each of PacifiCorp and NV Energy in wholesale markets in which the other controls substantial generation is trivial at best, the Transaction will not have a material effect on competition in any of Applicants’ BAAs.

As I noted earlier, there also are no screen failures in any relevant first-tier market. Again, this is corroborated by the fact that the participation of each of PacifiCorp and the NV

⁸ The NV Energy Applicants note that they will make the necessary filings in advance of the completion of ON Line with the Commission to address their market-based rate authority following the in-service date of ON Line.

⁹ Nevada Power previously had a 200 MW long-term purchase agreement with PacifiCorp, but this agreement terminated December 31, 2012.

Energy Applicants in common third-party wholesale markets also is not material, as discussed in more detail later.

For all these reasons, the Transaction as proposed will not have an adverse effect on horizontal competition in any relevant wholesale electricity market.

II. DESCRIPTION OF THE PARTIES

MidAmerican and Subsidiaries

MidAmerican Energy Holdings Company's subsidiaries produce, transport and deliver energy in the U.S. from a variety of fuel sources, including coal, natural gas, wind, hydro, solar, nuclear, geothermal and biomass. Its principal U.S. energy subsidiaries include PacifiCorp, MidAmerican Energy Company ("MEC"), MidAmerican Renewables, MidAmerican Transmission, Kern River Gas Transmission Company ("Kern River") and Northern Natural Gas ("Northern Natural").

PacifiCorp operates as Pacific Power in Oregon, Washington and California; and as Rocky Mountain Power in Wyoming, Utah and Idaho. PacifiCorp owns or controls approximately 11,000 MW of generation capacity, including the 645 MW Lake Side 2 natural gas-fired plant currently under construction.

MEC provides regulated electric and natural gas service to customers in Iowa, Illinois, South Dakota and Nebraska. MEC owns and operates a diverse portfolio of power-generating assets within the market operated by the Midcontinent Independent System Operator, Inc. ("MISO"). MEC owns or controls approximately 7,500 MW of generation capacity.

MidAmerican Renewables owns solar, wind, geothermal and hydro energy projects that largely sell their output to regulated utilities. The company's portfolio includes renewables projects in California, Arizona, Illinois and Hawaii.

MidAmerican Transmission is engaged in various joint ventures to develop, own and operate transmission assets in several regions in the U.S.

Kern River Gas operates a pipeline extending from Wyoming to California, and delivers natural gas into Utah, Nevada and California.

Northern Natural operates an interstate natural gas pipeline system extending from southern Texas to Michigan's Upper Peninsula, delivering natural gas and providing storage to utilities and end-use customers in the Upper Midwest.

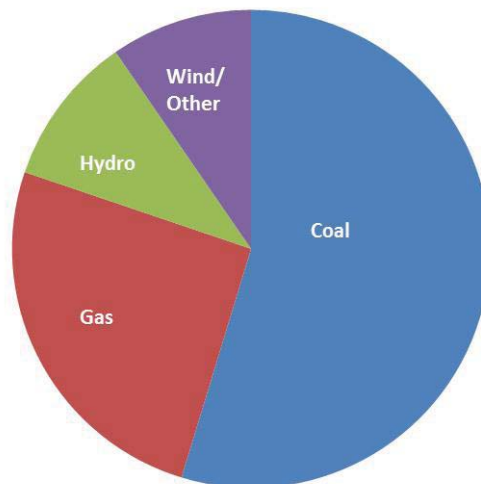
CE Generation, LLC (“CE Generation”) is equally owned by MidAmerican and an affiliate of TransAlta Corporation. CE Generation owns some generation located in California and Arizona, all of which is committed under long-term contract to third-parties.

Burlington Northern Santa Fe (“BNSF”), an affiliate of MidAmerican, operates a railroad system throughout the western states.

PacifiCorp

As noted above, PacifiCorp owns or controls approximately 11,000 MW of generating capacity, including hydroelectric facilities, gas and coal-fired plants, and geothermal and wind projects. Exhibit J-3 provides a list of these facilities, and Figure 1 below shows the distribution of PacifiCorp’s owned capacity, by type.

Figure 1: PacifiCorp Generation, by Type



PacifiCorp’s transmission is provided pursuant to PacifiCorp’s Open Access Transmission Tariff (“OATT”) on file with the Commission. PacifiCorp operates two BAAs: (i) PACE, which includes portions of the states of Idaho, Utah, Arizona and Wyoming; and (ii) PACW, which includes portions of the states of California, Montana, Oregon, Washington, and Wyoming. PACE and PACW are interconnected.

NV Energy, Inc.

NV Energy, Inc. is an investor-owned public utility holding company with two operating subsidiaries, Nevada Power and Sierra Pacific. Nevada Power provides electric service to Las Vegas and surrounding Clark County, and Sierra Pacific provides electric service to northern Nevada. Sierra Pacific also provides natural gas service in the Reno-Sparks area of Nevada. The Nevada Power and Sierra Pacific transmission systems currently are not directly interconnected, and they currently operate separate BAAs in southern Nevada (NEVP) and northern Nevada (SPPC), respectively. Transmission is provided pursuant to Nevada Power's and Sierra Pacific's OATTs on file with the Commission.

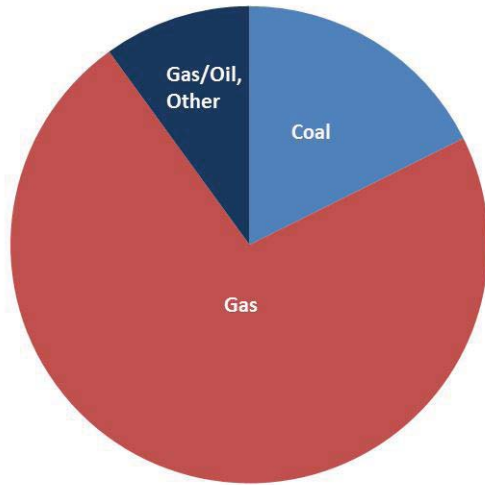
With the completion of the One Nevada Transmission Line (ON Line)¹⁰ that will interconnect northern and southern Nevada, the two BAAs can be combined into a single BAA. NV Energy has requested Commission authorization for an internal corporate reorganization under which Sierra Pacific will merge into Nevada Power, the surviving entity, which will be renamed "NV Energy Operating Company," doing business as "NV Energy." The requested effective date of this reorganization is the latter of December 31, 2013, or the in-service date of the ON Line (currently anticipated by December 31, 2013).¹¹ Should such authorization not be obtained prior to the in-service date of ON Line, NV Energy will seek Commission approval of appropriate agreements between Nevada Power and Sierra Pacific to allow joint dispatch and other operations within the interconnected system.

Nevada Power owns or controls approximately 4,500 MW of generation, and has long-term contracts to purchase approximately 1,900 MW of supply. Sierra Pacific owns approximately 1,600 MW of generation, and has long-term contracts to purchase about 600 MW of supply. The relevant generation is detailed in Exhibit J-4, and Figure 2 below shows the distribution of NV Energy's owned capacity, by type.

¹⁰ ON Line is being jointly developed by Sierra Pacific, Nevada Power, and Great Basin Transmission, South, LLC, an affiliate of LS Power.

¹¹ See *Application for Approval of Internal Reorganization Under Section 203 of the Federal Power Act of NV Energy, Inc., et al.*, Docket No. EC13-113, May 31, 2013.

Figure 2: NV Energy Generation, by Type



III. FRAMEWORK FOR THE ANALYSIS

Market power is the ability of a firm profitably to maintain prices above competitive levels for a significant period of time. Market power analysis of a merger or transaction proposal examines whether the merger/transaction would cause a material increase in the relevant firm's or firms' market power or a significant reduction in the competitiveness of relevant markets. The focus is on the effects of the merger or transaction, which means that the analysis examines those business areas in which the merging or transacting firms are competitors. This is referred to as horizontal market power assessment. In most instances, a merger or transaction will not affect competition in markets in which the relevant firms do not compete. In the context of the proposed transaction, therefore, the focus is properly on those markets in which MidAmerican and NV Energy, Inc. overlap or are actual or (under some circumstances) potential competitors. The analysis is intended to measure the adverse impact, if any, of the elimination of a competitor as a result of the combination.

Potential vertical market effects of the merger relate to the firm's or firms' ability and incentives to use their market position over a product or service to affect competition in a related business or market. For example, vertical effects could result if the merger of two electric utilities created an opportunity and incentive to operate transmission in a manner that created market power for the generation activity of the merged company that did not exist previously. The Commission has identified market power as also arising from dominant control over potential generation sites or over fuel supplies and delivery systems. Such dominant control could undercut the presumption that long-run generation markets are competitive.¹²

Understanding the competitive impact of a merger or transaction requires defining the relevant market (or markets) in which the merging or transacting firms participate. Participants in a relevant market include all suppliers, and in some instances potential suppliers, who can compete to supply the products produced by the merging or transacting parties and whose ability to do so diminishes the ability of the merging parties to increase prices. Hence, determining the scope of a market is fundamentally an analysis of the potential for competitors to respond to an

¹² As noted earlier, vertical market power effects relating to fuel supplies and delivery systems are addressed by Dr. Morris.

attempted price increase. Typically, markets are defined in two dimensions: geographic and product. Thus, the relevant market is composed of companies that can supply a given product (or its close substitute) to customers in a given geographic area.

Horizontal Market Power Issues

In December 1996, the Commission issued Order No. 592,¹³ the “Merger Policy Statement,” which provides a detailed analytic framework for assessing the horizontal market power arising from electric utility mergers. This analytic framework is organized around a market concentration analysis. The Commission adopted the DOJ/FTC 1992 *Horizontal Merger Guidelines* methodology of measuring market concentration levels by the HHI as its principal screen for merger-related market power. To determine whether a proposed merger requires further investigation because of a potential for a significant anti-competitive impact, the DOJ and FTC consider the level of the HHI after the merger (the post-merger HHI) and the change in the HHI that results from the combination of the market shares of the merging entities. The Commission adopted the then-current *Merger Guidelines*’ standards for market classification. Markets with a post-merger HHI of less than 1000 are considered “unconcentrated.” The DOJ and FTC generally consider mergers in such markets to have no anti-competitive impact. Markets with post-merger HHIs of 1000 to 1800 are considered “moderately concentrated.” In those markets, mergers that result in an HHI change of 100 points or fewer are considered unlikely to have anti-competitive effects. Finally, post-merger HHIs of more than 1800 are considered to indicate “highly concentrated” markets. The *Merger Guidelines* suggest that in these markets, mergers that increase the HHI by 50 points or fewer are unlikely to have a significant anti-competitive impact, while mergers that increase the HHI by more than 100 points are considered likely to reduce market competitiveness. On November 15, 2000, the Commission issued its Revised Filing Requirements Under Part 33 of the Commission’s Regulations,¹⁴ which affirmed the screening approach to mergers consistent with the Appendix A analysis set forth in the Merger Policy Statement, and codified the need to file a screen analysis

¹³ Order No. 592, FERC Stats and Regs. ¶ 31,044 (1996).

¹⁴ Order No. 642, Final Rule in Docket No. RM98-4-000, 18 CFR Part 33, 93 FERC ¶ 61,164 (2000) (“Revised Filing Requirements”).

and the exceptions therefrom. In 2010, the DOJ/FTC *Merger Guidelines* were revised, incorporating changes in the market concentration standards based on HHIs. The Commission's policy relying on the 1992 *Merger Guidelines* with respect to market concentration was reaffirmed on February 16, 2012.¹⁵

Appendix A of the Merger Policy Statement, the Competitive Analysis Screen, specifies a "delivered price" screening test, referred to as the DPT herein, to measure EC, defined as energy that can be delivered into a destination market at a delivered cost less than 105 percent of the destination market price. The DPT screening test also provides for an analysis of AEC, defined as EC over and above that required to meet native load and other long-term obligations that meets the delivered price test.

If a proposed merger raises no market power concerns (*i.e.*, passes the Appendix A screen), the inquiry generally is terminated. Both the Merger Policy Statement and the Revised Filing Requirements accept that merger applications involving no overlap in relevant geographic markets do not require a screen analysis or filing of the data needed for the screen analysis.¹⁶

The DPT is intended to be a conservative screen to determine whether further analysis of market power is necessary. If the Appendix A analysis shows that a company will not be able to exercise market power in the destination markets where their generation resides, it generally follows that the applicants will not have market power in more broadly defined and more geographically remote markets. The screen is the first step in determining whether there is a need for further investigation. If the screening test is not passed, leaving open the issue of whether the merger will create market power, the Commission invites applicants to propose mitigation remedies targeted to reduce potential anti-competitive effects to safe harbor levels. In the alternative, the Commission will undertake a proceeding to determine whether unmitigated market power concerns mean that the merger is contrary to the public interest.

¹⁵ *Analysis of Horizontal Market Power under the Federal Power Act*, 138 FERC ¶ 61,109 (2012).

¹⁶ 18 C.F.R. ¶ 33.3(a)(2)(i).

Relevant Product Markets

The Commission generally has been concerned with three relevant product markets: non-firm energy, short-term capacity (firm energy) and long-term capacity. Both EC and AEC are used as measures of energy. Depending on the markets being analyzed, one or the other of these measures can be deemed more important. 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). This is consistent with the Commission's policy in markets, such as almost virtually all of the western states other than California where there essentially is limited or no retail access,¹⁷ and it is unlikely that the states will adopt retail access in the foreseeable future.¹⁸ AEC is comprised of internal generation that is economic and "excess" after meeting native load obligations and external supply that also meets the economics of the DPT and can be imported into the market.

Under the EC and AEC measures, energy production capability that is attributed to a market participant is that capacity controlled by it that can reach the destination market, taking transmission constraints and costs into account, at a variable cost no higher than 105 percent of the destination market price.¹⁹ As described above, the two measures differ as to the treatment of capacity used to meet native load requirements.

The Commission has determined that long-term capacity markets are presumed to be competitive, unless special factors exist that limit the ability of new generation to be sited or receive fuel.²⁰

¹⁷ See note 44.

¹⁸ Nevada has "limited retail access" in that certain government entities (customers served by the Colorado River Commission and Southern Nevada Water Authority ("SNWA") and its members) and large commercial and industrial customers (annual average consumption greater than 1 MW) are eligible pursuant to various statutes in Nevada to procure energy from parties other than Nevada utilities as long as they also have a new generating resource. This limited retail access does not alter the determination that Nevada is essentially as a non-restructured/non-retail access market.

¹⁹ As discussed below, I assigned relevant long-term power purchases to the Applicants, irrespective of whether such contracts conveyed "control". This treatment is conservative in the context of the DPT. See page 25.

²⁰ The market for long-term capacity generally does not need to be analyzed since the Commission has concluded as a generic matter that the potential for entry ensures that the long-term capacity market is competitive. See

Order No. 642 directs applicants to analyze relevant ancillary services markets (specifically, reserves and imbalance energy) “when the necessary data are available.” In the markets that are the focus of the competition analysis, there are no formalized ancillary services or capacity markets.²¹

Relevant Geographic Markets

Traditionally, the Commission has defined the relevant geographic markets as centered on the areas where applicants own generation and on the BAAs directly interconnected with the applicants’ BAAs. Both Order No. 592 and the Revised Filing Requirements continue to define the relevant geographic market in terms of destination markets.²² Further, in a merger context, the Commission considers as potential additional destination markets other utilities that historically have been customers of the applicants.

Destination markets typically are defined as individual BAAs (previously, control areas). However, the Commission’s practice has been to aggregate customers that have the same supply alternatives into a single destination market, and Regional Transmission Organizations (“RTOs”) and Independent System Operators (“ISOs”) generally are default markets where applicable.²³

Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. & Transmitting Utils., Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,657 (1996). The presumption that long-term capacity markets are competitive can be overcome if the applicants have dominant control over power plant sites or fuel supplies and delivery systems. This exception is addressed below.

²¹ As proposed, the Energy Imbalance Market (“EIM”) market that will include CAISO, PacifiCorp, and perhaps others, will become a formalized market for energy imbalance services. The market is not yet in effect, and should not raise any issues relating to the competitive impact of the Transaction. In any event, the development of a formalized market subject to CAISO market monitoring and mitigation should be viewed as pro-competitive. See *California Independent System Operator Corporation*, 143 FERC ¶ 61,298 (2013), accepting proposed implementation agreement.

²² 18 C.F.R. 33.3(c)(2). “Identify each wholesale power sales customer or set of customers (destination market) affected by the proposed transaction. Affected customers are, at a minimum, those entities directly interconnected to any of the merging entities and entities that have purchased electricity at wholesale from any of the merging entities during the two years prior to the date of the application.” *Id.*

²³ Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,890-1 (2000), citing *Atlantic City Elec. Co.*, 80 FERC ¶ 61,126 (1997); *Consolidated Edison, Inc.*, 91 FERC ¶ 61,225 (2000). To the extent there are internal transmission constraints within these markets, the Commission has considered smaller markets within these single BAAs as potentially relevant. Likewise, the Commission’s indicative screens for purposes of determining eligibility to obtain authority to sell at market-based rates also use BAAs or RTOs/ISOs as default geographic markets. *Order No. 697* at P 231.

Where transmission constraints exist within an RTO/ISO, the Commission also has considered submarkets as separate geographic markets.²⁴

In the context of the instant transaction, as discussed above, the appropriate focus of the forward looking competitive analysis is on the NV Energy and PacifiCorp BAAs, and the BAAs that are directly interconnected with them.

With respect to ownership of electric transmission facilities, the Commission in the past has focused on the extent to which the transmission owner provides open-access transmission or has transferred operational control over its transmission facilities to an ISO or an RTO. NV Energy's and PacifiCorp's transmission systems are subject to Commission-approved OATTs.

²⁴ *Id.* at P 246 (citing to a number of Commission decisions involving electric utility mergers).

IV. DESCRIPTION OF METHODOLOGY

I evaluated the competitive effects of the merger using the DPT outlined in Appendix A and the Revised Filing Requirements. The source and methodology for the data required to conduct the DPT are described in additional detail in Exhibit J-5.

Destination Markets

Consistent with the instructions in the Revised Filing Requirements, I identified the relevant geographic markets (i.e., destination markets) that could potentially be impacted by the acquisition. The first step in determining the potentially relevant markets is to identify where PacifiCorp and NV Energy own or control generation, namely the NVE, PACE and PACW BAAs. The NEVP and SPPC BAAs also are relevant to the extent ON Line has not been completed (my “Interim Case”). As demonstrated below, the conclusions do not change whether a single NVE BAA or separate NEVP and SPPC BAAs are considered.

My focus is on the potential horizontal impact of the Transaction, primarily on the NVE BAA (where NV Energy owns generation) and the PACE and PACW BAAs (where PacifiCorp owns generation). I also examine potential impacts on markets directly interconnected to the these BAAs (i.e., first-tier markets). Based on the Electric Quarterly Reports (“EQRs”) for 2011 through the first quarter of 2013, all short-term sales by PacifiCorp and NV Energy in common markets occurred in markets already being analyzed.²⁵ Therefore no other markets need to be analyzed.

The relevant BAAs analyzed are detailed in Table 7 below, which identifies the BAAs that are directly interconnected to PACE, PACW and NVE.

²⁵ See workpapers.

Table 7: First-Tier Interconnections of PACE, PACW and NVE

	PacifiCorp East	PacifiCorp West	NV Energy
PacifiCorp West (PACW)	X		
PacifiCorp East (PACE)		X	X
NV Energy (NVE)	X		
Arizona Public Service (AZPS)	X		
Avista Corp. (AVA)		X	
Bonneville Power Administration (BPAT)		X	X
California ISO (CAISO)		X	X
Grant County P.U.D. No. 2 (GCPD)		X	
Idaho Power Company (IPCO)	X	X	X
Los Angeles Dept of Water & Power (LDWP)	X		X
NorthWestern Energy (NWMT)	X	X	
Portland General Electric Company (PGE)		X	
WAPA-Colorado, Missouri (WACM)	X		
WAPA-Lower Colorado (WALC)	X		X

PacifiCorp and NV Energy own or control only limited amounts of capacity outside of their respective BAAs,²⁶ and to the extent they do, I took into account transmission rights that effectively move that supply into their respective BAAs.

All of the capacity owned by CE Generation in the WECC region is committed under long-term contracts with third-parties. There is no other affiliated generation in the WECC region. I did not analyze any markets outside of the WECC region: NV Energy does not own any capacity outside of the WECC region, so the Transaction will not result in any increased concentration in those markets. That is, outside of the WECC region, Applicants do not sell products in the same geographic markets or the extent of their business transactions in the same geographic markets is *de minimis*.²⁷

²⁶ With the exception of a small amount of generating capacity located in the Public Service Company of Colorado (“PSCo”), all of the generating capacity owned or controlled by PacifiCorp is electrically located in PACE or PACW, or in BAAs directly interconnected to PACE or PACW. I did not analyze the PSCo BAA because neither PacifiCorp nor NV Energy makes material sales in PSCo.

²⁷ Order No. 592 at 30,113 provides: “[I]t will not be necessary for the merger applicants to perform the screen analysis or file the data needed for the screen analysis in cases where the merging firms do not have facilities or sell relevant products in common geographic markets. In these cases, the proposed merger will not have an adverse competitive impact (*i.e.*, there can be no increase in the applicants’ market power unless they are selling

Time Periods

I examined ten time periods/load conditions for both the EC and AEC analyses. The DPT time periods are intended to provide snapshots that reflect a broad range of system conditions. I evaluated hourly load data to aggregate similar hours. I defined periods within three seasons (Summer, Winter and Shoulder) to reflect the differences in unit availability, load and transmission capacity. Hours were first separated into seasons to reflect differences in generating availability and then further differentiated by load levels during each season.²⁸ For each season, hours were segmented into peak- and off-peak periods. The periods evaluated (and the designations used to refer to these periods in exhibits) are:

SUMMER (June-July-August)

Super Peak 1 (S_SP1):	Top load hour
Super Peak 2 (S_SP2):	Top 10% of peak load hours
Peak (S_P):	Remaining peak hours
Off-peak (S_OP):	All off-peak hours

WINTER (December-January-February)

Super Peak (W_SP):	Top 10% of peak load hours
Peak (W_P):	Remaining peak hours
Off-peak (W_OP):	All off-peak hours

SHOULDER (March-April-May-September-October-November)

Super Peak (SH_SP):	Top 10% of peak load hours
Peak (SH_P):	Remaining peak hours
Off-peak (SH_OP):	All off-peak hours

relevant products in the same geographic markets) so there is no need for a detailed data analysis.” See, also, note 3.

²⁸ Appendix A requires applicants to evaluate the merger’s impact on competition under different system conditions. For example, aggregating summer peak and shoulder peak conditions may mask important differences in unit availability and, therefore, a merger could potentially affect competition differently in these seasons. Thus, applicants are directed to evaluate enough sufficiently different conditions to show the merger’s impact across a range of system conditions. On the other hand, the DOJ/FTC *Horizontal Merger Guidelines* discuss the ability to “sustain” a price increase, and a finding that a structural test (like the HHI statistic) violates the safe harbor for some small subset of hours during the year may not be indicative of any market power problems.

Price Levels

I evaluated conditions assuming destination market prices ranging from prices in the Off-Peak periods in which only baseload generation is economic to high prices in the highest Summer Super Peak period during which all but the least economic generation is in merit. In Order No. 642, the Commission indicated that sub-periods within a season should be determined by load levels rather than by time periods. For my base case prices, consistent with Commission guidance, I rely on the average of two years of historical price data reported in the EQRs, segmented into the ten time periods, and adjusted to reflect forecasted fuel prices for 2014.²⁹ For this purpose, the “coverage” of the EQR data was adequate.³⁰

Also consistent with Commission guidance, I conducted sensitivity analyses using higher and lower prices³¹ (changing prices by 10 percent).

I developed a separate series of prices for the NV Energy and PacifiCorp BAAs. For the NVE market, I used EQR-reported price data for sales in both NEVP and SPPC. I used that same price series for destination market prices in the Interim Case where I analyzed the NEVP and SPPC markets separately. For the PacifiCorp markets, I used EQR-reported price data for sales in both PACE and PACW, and used the same price series for both PACE and PACW.³² I found that destination market prices, based on the historical EQR data and consistent assumptions to adjust prices to a 2014 forward-looking study period, were materially different in NVE and in PACE in some periods, as shown in Table 8 below.

²⁹ *NRG Energy, Inc.*, 141 FERC ¶ 61,207 at P 63 (2012) (“Moreover, we expect applicants performing DPTs to conduct their studies using two years of market data in the DPT model for each relevant geographic market when determining the destination market price for each season/load period”).

³⁰ *Duke Energy Corporation*, 136 FERC ¶ 61,245 at P 126 (2011). In *Duke Energy*, the volume of transactions reported in the EQRs were deemed “sufficiently large to be statistically reliable” and the Commission concluded that “there are a sufficient number of EQR transactions in *every season/load period* to calculate an EQR price that is sufficiently robust.”

³¹ *Id.* at P 118 (2011) ([E]very Delivered Price Test should address three scenarios: the Base Case, in which applicants should use appropriate forecasted market prices to model post-merger competition in the study area, and sensitivity analyses of the Base Case that measure the effect of increasing or decreasing the market prices relative to the Base Case.”).

³² The one departure from EQR prices was to assume a \$100/MWh price for the S_SP1 period, the needle peak hour. The \$100/MWh price is higher than the EQR-reported price in either the NVE or PacifiCorp BAAs for that time period and, hence, is a conservative assumption.

Table 8: Base Case Destination Market Prices (\$/MWh, 2014)

Period	NVE (NEVP/SPPC)	PACE/ PACW
S_SP1	\$ 100.0	\$ 100.0
S_SP2	\$ 59.9	\$ 58.7
S_P	\$ 43.5	\$ 41.6
S_OP	\$ 26.4	\$ 28.4
W_SP	\$ 46.6	\$ 46.2
W_P	\$ 42.8	\$ 38.7
W_OP	\$ 27.0	\$ 24.8
SH_SP	\$ 50.9	\$ 45.6
SH_P	\$ 38.4	\$ 36.2
SH_OP	\$ 22.7	\$ 20.8

This means that, when PacifiCorp is competing to supply the NVE BAA, it theoretically has more “economic” generation at the higher prices in some periods in the NVE destination market than when it is supplying its own markets, where prices are lower. The converse is true for NV Energy; when NV Energy is competing to supply PACE/PACW, it has less “economic” generation at the lower prices in the PACE/PACW destination markets in some periods than when it is supplying its own market, where the prices are higher. Testing of the effect of these price differentials, however, is largely captured in the price sensitivity cases. The relative economics of supply also is affected by transmission costs between BAAs.

Year of Analysis

I analyzed 2014 market conditions, consistent with the Order No. 642 requirement that the analysis be forward looking. Even though my analysis approximates 2014 market conditions, the primary source of data on generation and transmission is current and recent historical data. Where appropriate, I adjusted relevant data to approximate expected 2014 conditions. As described in Exhibit J-5, this includes load and generation dispatch (*i.e.*, fuel and other variable) costs.

With respect to new generation, I only included generation already under construction and expected to be on-line by summer 2014. I generally eliminated units expected to retire during 2014. I reflected no such retirements for Applicants, although NV Energy intends to retire Reid Gardner Units 1-3 (300 MW) (“RG1-3”) by the end of 2014, and PacifiCorp intends

to retire Carbon (172 MW) by early 2015. Additionally, PacifiCorp's new Lakeside 2 plant (645 MW), which is under construction in PACE and expected to be on-line in the summer 2014, is reflected in the base case as on-line in the summer and shoulder seasons. I assume that NV Energy controls 100 percent of the Reid Gardner 4 ("RG4") unit, which it currently owns jointly with California Department of Water Resources ("CDWR").³³

Nevada, in the recently-passed Senate Bill 123, directed NV Energy to eliminate 800 megawatts of coal-fired power generation from its portfolio, to develop 350 megawatts of renewable energy development and to construct or acquire a 550 megawatt power plant. Most of the generation changes will occur outside of the 2014 study period, and thus none of the changes related to Senate Bill 123 are reflected in my analysis.

Treatment of Jointly Owned and Remote Generation and Long-Term Purchases and Sales

Jointly-owned plants are attributed based on ownership shares, consistent with Commission guidance.³⁴

To the extent Applicants own generation remote from their own BAAs, I treated such capacity as if located in their BAAs. A corresponding adjustment to import capability also is reflected in the analysis. For NV Energy, this treatment is relevant for its share of the Navajo plant, located in the Salt River Project BAA ("SRP"), and for some of its long-term purchases (e.g., from Hoover and Griffith, both in WALC). PacifiCorp's remote plants include shares of Hayden (in PSCo), Craig (in WACM), and Colstrip (in NWMT); and its Chehalis plant (in BPAT).³⁵ PacifiCorp's Jim Bridger plant also is treated as a remote resource moved into PACW.

³³ On April 22, 2013, Nevada Power Company filed a section 203 application in Docket No. EC13-96. The application concerned the transfer of the 68 percent share of RG4 currently owned by the CDWR to Nevada Power Company.

³⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 188 ("there may be situations where a jointly-owned generation facility is operated by one of the joint-owners for the benefit of and on behalf of all of the joint-owners. Under these circumstances, it may be reasonable to allocate capacity based on ownership percentages"). See also *Kansas Energy LLC*, 138 FERC ¶ 61,107 at P 29 (2012).

³⁵ There are a few other, small purchases from remote resources, as reflected in Exhibits J-3 and J-4.

I assigned relevant long-term power purchases to the Applicants. This treatment is conservative inasmuch as these contracts do not necessarily provide the Applicants with operational control over these units. Likewise, I reflected relevant long-term sales commitments to third-parties.³⁶ I followed this same approach for other, non-applicant generation included in my analysis.

Analytical Approach

I performed the DPT analysis using a model that includes each potential supplier as a distinct “node” or area that is connected via a transportation (or “pipes”) representation of the transmission network. Each link in the network has its own non-simultaneous limit and cost, and a SIL is imposed across these individual limits. Potential suppliers may use economically and physically feasible links or paths to reach markets first-tier to the destination market. This generally is a conservative approach as it limits import supply to a smaller group of potential market participants to the destination market. To the extent more generation meets the economic element of the DPT (*e.g.*, 105 percent of the market price)³⁷ than can actually be delivered on the transmission network, scarce transmission capacity is allocated based on the relative amount of economic generation that each party controls at the interfaces first-tier with the destination market.

SIL and Allocation of Transmission Capacity

The transmission planning groups at PacifiCorp and NV Energy calculated the seasonal SILs for their respective BAAs for a forward-looking 2014 year (winter 2013/14, summer 2014 and autumn 2014, the latter of which I used for the shoulder periods). For first-tier markets, I

³⁶ See 33.3(c)(4)(i)(A) (“Prior to applying the delivered price test, the generating capacity meeting this definition must be adjusted by subtracting capacity committed under long-term firm sales contracts and adding capacity acquired under long-term firm purchase contracts (*i.e.*, contracts with a remaining commitment of more than one year). The capacity associated with any such adjustments must be attributed to the party that has authority to decide when generating resources are available for operation. Other generating capacity may also be attributed to another supplier based on operational control criteria as deemed necessary, but the applicant must explain the reasons for doing so.”).

³⁷ See 18 C.F.R. 33.3(c)(4).

used the SILs that the transmission owners in the Southwest and Northwest Regions filed in connection with the most recent round of market-based triennial filings.³⁸

I note that the SILs calculated by both companies used in my analysis are different than their previously-filed SILs because the SILs are based on a forward-looking 2014 study year.³⁹ Both sets of analyses follow FERC’s prescriptive approach to calculating SILs in the market-based rate context.⁴⁰ The approach used by NV Energy personnel for purposes of the instant analysis was to more realistically maintain certain internal generation on-line for reliability, and select first-tier generation to increase, while overall still respecting simultaneous import limits.⁴¹ The approach implemented by NV Energy here is consistent with the approach used by PacifiCorp and accepted by the Commission. I have reviewed the methodology/analysis and understand that the current studies are consistent with the required methodology, including, significantly, consistent with both WECC and OASIS practices.

Appendix A notes that there are various methods for allocating transmission and that applicants should support the method used.⁴² I allocated transmission on a pro rata basis, based on relative ownership shares of capacity, such that imports consist of the pro rata shares of EC (or AEC) that are economically and physically feasible to deliver to the destination market.

³⁸ The Southwest Region transmission owners filed their triennial market-based rate updates in December 2012, and the Northwest Region transmission owners filed in June 2013, both covering a study period of December 2010-November 2011. While these studies are pending Commission approval, the last set of approved studies is quite outdated at this point (filed in 2009 and 2010, and covering a study period of December 2007-November 2008). While the SIL is a key input into the analysis, the analytical results for the first-tier markets are not overly sensitive to the precise levels of the SIL.

³⁹ PacifiCorp SILs were recently filed in connection with its market-based rate triennial filings. NV Energy SILs were previously filed primarily in connection with market-based rate triennial filings but also in connection with other section 203 filings (acquisition of CDWR’s share of RG4 and the corporate reorganization).

⁴⁰ *Order On Simultaneous Transmission Import Limit Values For The Northwest Region And Providing Direction On Submitting Studies*, 135 FERC ¶ 61,254 (2011).

⁴¹ Additional details on the SIL calculations are provided in workpapers.

⁴² *See* Order No. 592, FERC Stats. and Regs., ¶ 31,044 at 30,133. “In many cases, multiple suppliers could be subject to the same transmission path limitation to reach the same destination market and the sum of their economic generation capacity could exceed the transmission capability available to them. In these cases, the ATC must be allocated among the potential suppliers for analytic purposes. There are various methods for accomplishing this allocation. Applicants should support the method used.” *Id.*

Consistent with recent Commission’s guidance, I aggregated potential first-tier supply from all sources and assigned a pro rata share to that supply into the destination market.⁴³

⁴³ *NRG Energy, Inc.*, 141 FERC ¶ 61,207 at P 63 (2012) stating that applicants should allocate “...uncommitted capacity from an aggregated first tier” consistent with the approach used in studies for market-based rates. *Id.*, note 112 (“In Order No. 697, the Commission clarified that *pro rata* allocation is used to assign shares of simultaneous transmission import capability to uncommitted generation capacity in aggregated first-tier BAAs to determine how much uncommitted generation capacity can enter the study area. See *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252 at n.361 & P 375, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh’g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh’g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh’g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff’d sub nom. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011).)

V. IMPACT OF THE TRANSACTION ON COMPETITION

Horizontal Market Power

DPT

Consistent with the guidance in the *Merger Policy Statement*, I conducted a DPT and analyzed EC and AEC. Based on Commission precedent, the focus is on the results of the AEC analyses. This is consistent with the Commission's primary reliance on the results of AEC analyses in non-restructured markets (*i.e.*, where traditional vertically integrated suppliers maintain load-serving responsibility).⁴⁴ I also considered whether there were any other relevant product markets (e.g., ancillary services and capacity) and determined there were no such other relevant markets, as described below.

In the sections below, I first examine AEC for each of the relevant markets, with particular emphasis on Applicants' three home BAAs (NVE, PACE and PACW). The Base Case results for AEC are included in Exhibit J-6 (base case prices) and Exhibits J-7 and J-8 (price sensitivities). Exhibit J-9 includes the Base Case results for EC, which do not reflect native load obligations and hence are not indicative of the competitive situation currently or in the foreseeable future.⁴⁵ Exhibit J-10 contains the Interim Case results for AEC for the NEVP and SPPC BAAs.⁴⁶ Exhibit J-11 contains the AEC and EC results for all the first-tier markets at base case prices.⁴⁷ I also address below why there are no other relevant geographic markets to consider.

As I discussed previously, there are no screen failures in NVE, PACE, PACW, or any first-tier market under the AEC measure that is most relevant in the context of non-restructured

⁴⁴ See *Duke Energy Corporation*, 136 FERC ¶ 61,245 at P 124 (2011) ("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), *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); and *Nev. Power Co.*, 113 FERC ¶ 61,265 at P 15 (2005)).

⁴⁵ The exception is for the CAISO market, which is a restructured market and, hence, EC is arguably the more relevant metric.

⁴⁶ EC results for the NEVP and SPPC BAAs are contained in workpapers.

⁴⁷ Price sensitivity results are included in workpapers.

markets. A key driver of this result is that PacifiCorp has relatively limited amounts of AEC during any time period (ranging from zero to about 1,000 MW). This is shown in Table 9 and Table 10 below.⁴⁸

Table 9: Determination of Available Economic Capacity, PACE

PACE	S_SP1	S_SP2	S_P	S_OP	W_SP	W_P	W_OP	SH_SP	SH_P	SH_OP
Price	\$ 100.00	\$ 58.69	\$ 41.64	\$ 28.36	\$ 46.22	\$ 38.73	\$ 24.85	\$ 45.60	\$ 36.16	\$ 20.78
EC	6,384	6,403	6,120	4,437	5,808	5,744	2,466	5,550	5,487	670
AEC	0	0	631	0	673	979	0	391	1,007	0

Table 10: Determination of Available Economic Capacity, PACW

PACW	S_SP1	S_SP2	S_P	S_OP	W_SP	W_P	W_OP	SH_SP	SH_P	SH_OP
Price	\$ 100.00	\$ 58.69	\$ 41.64	\$ 28.36	\$ 46.22	\$ 38.73	\$ 24.85	\$ 45.60	\$ 36.16	\$ 20.78
EC	3,136	3,136	3,136	2,407	2,758	2,575	1,168	2,467	2,227	492
AEC	0	0	215	0	25	39	0	0	0	0

While NV Energy has relatively more AEC than does PacifiCorp (even though it is a significant net purchaser of economic energy), its AEC is in large part driven by the seasonal load profile that is typical of the Southwest. For example, NV Energy’s average winter peak load (3,184 MW in W_P) is only 43 percent of its needle peak load (7,428 MW in S_SP1). In comparison, PacifiCorp’s average winter peak load is 70 percent of its needle peak load (5,135 MW relative to 6,768 for PACE and 2,733 MW relative to 3,602 MW for PACW). This has the effect of creating relatively more AEC for NV Energy in non-peak seasons.

Table 11: Determination of Available Economic Capacity, NVE

NVE	S_SP1	S_SP2	S_P	S_OP	W_SP	W_P	W_OP	SH_SP	SH_P	SH_OP
Price	\$ 100.00	\$ 59.86	\$ 43.47	\$ 26.44	\$ 46.61	\$ 42.84	\$ 27.04	\$ 50.92	\$ 38.45	\$ 22.72
EC	7,513		6,148	1,737	5,317	5,315	1,636	5,376	4,574	945
AEC	85	807	1,222	0	1,629	2,131	0	146	1,132	0

Further, because only a share of PacifiCorp’s AEC is imported into NVE under the DPT, the combination with NV Energy’s own AEC does not have a significant enough effect on market concentration to cause any screen failures. The situation is similar in the PACE and

⁴⁸ The calculations shown here reflect the amount of AEC based on destination market prices for the respective BAAs. However, as discussed earlier, when NV Energy is competing to supply PACE or PACW, the determination of AEC is based on the PACE/PACW prices and load profile, not NV Energy market prices and load profile (and vice versa).

PACW markets, namely that the relatively small amount of NV Energy “excess” economic supply that is imported into the PACE or PACW BAAs under the DPT, when combined with PacifiCorp’s AEC, is too small to have a significant effect on market concentration. Both the PacifiCorp and NV Energy BAAs are relatively well interconnected with other BAAs.⁴⁹ All of these facts underlay the AEC results discussed below.

The AEC results for NVE are shown in Table 12 below (which is the same as Table 2 in my summary). Table 12 shows that NV Energy’s AEC ranges from zero to about 2,100 MW (in the W_P), and its market share ranges from zero to 31.5 percent (also in the W_P). However, the amount of AEC that PacifiCorp is allocated into the NVE market is relatively small, ranging from zero to 276 MW (in the S_OP). MidAmerican’s post-Transaction market share ranges from zero to 33 percent (in the W_P), and the HHI changes range from zero to 78 points (in an unconcentrated or moderately concentrated market. Thus, the Competitive Analysis Screen is passed, and there is no indication of a horizontal market power concern. See Exhibit J-6.

Table 12: Available Economic Capacity, NVE

Period	Price	Pre-Transaction						Post-Transaction				
		NV Energy		MidAmerican		Market Size	HHI	MidAmerican		Market Size	HHI	HHI Chg
		MW	Mkt Share	MW	Mkt Share			MW	Share			
S_SP1	\$ 100	85	1.4%	2	0.0%	5,966	535	88	1.5%	5,966	536	0
S_SP2	\$ 60	807	12.1%	39	0.6%	6,687	571	846	12.6%	6,687	585	14
S_P	\$ 43	1,222	17.7%	143	2.1%	6,921	749	1,365	19.7%	6,921	822	73
S_OP	\$ 26	-	0.0%	276	5.0%	5,550	812	276	5.0%	5,550	812	-
W_SP	\$ 47	1,629	26.1%	50	0.8%	6,253	992	1,680	26.9%	6,253	1,034	42
W_P	\$ 43	2,131	31.5%	83	1.2%	6,754	1,222	2,214	32.8%	6,754	1,300	78
W_OP	\$ 27	-	0.0%	24	0.6%	3,877	551	24	0.6%	3,877	551	-
SH_SP	\$ 51	146	2.3%	72	1.1%	6,479	600	218	3.4%	6,479	605	5
SH_P	\$ 38	1,132	15.2%	174	2.3%	7,466	575	1,306	17.5%	7,466	646	71
SH_OP	\$ 23	-	0.0%	-	0.0%	3,815	629	-	0.0%	3,815	629	-

The results for PACE and PACW are shown in Table 13 and Table 14 (which are the same as Table 3 and Table 4, respectively, in my summary). In PACE, PacifiCorp has relatively limited AEC (market share ranging from zero to 16 percent (in SH_P)). NV Energy is allocated zero to 203 MW (in W_SP) of supply into PACE. MidAmerican’s post-Transaction market

⁴⁹ Details are shown in workpapers.

share ranges from zero to 19 percent (in W_P), and the HHI changes are all below 100 points in an unconcentrated market. See Exhibit J-6.

Table 13: Available Economic Capacity, PACE

Period	Price	Pre-Transaction						Post-Transaction				
		NV Energy		MidAmerican		Market Size	HHI	MidAmerican		Market Size	HHI	HHI Chg
		MW	Mkt Share	MW	Mkt Share			MW	Mkt Share			
S_SP1	\$ 100	12	0.2%	8	0.1%	5,865	472	20	0.3%	5,865	472	0
S_SP2	\$ 59	126	2.2%	8	0.1%	5,797	443	134	2.3%	5,797	444	1
S_P	\$ 42	140	2.2%	666	10.7%	6,237	534	806	12.9%	6,237	582	48
S_OP	\$ 28	-	0.0%	45	0.8%	5,606	882	45	0.8%	5,606	882	-
W_SP	\$ 46	203	3.4%	683	11.4%	6,004	519	886	14.8%	6,004	596	77
W_P	\$ 39	183	2.9%	992	15.7%	6,304	618	1,175	18.6%	6,304	709	91
W_OP	\$ 25	-	0.0%	66	1.2%	5,686	495	66	1.2%	5,686	495	-
SH_SP	\$ 46	-	0.0%	523	8.7%	5,994	526	523	8.7%	5,994	526	-
SH_P	\$ 36	-	0.0%	1,019	16.2%	6,296	646	1,019	16.2%	6,296	646	-
SH_OP	\$ 21	-	0.0%	-	0.0%	3,526	697	-	0.0%	3,526	697	-

In PACW, PacifiCorp has even less AEC (market share ranging from zero to 5 percent), and NVE is allocated zero to 126 MW of supply (in W_P) into PACW. MidAmerican’s post-Transaction market share ranges from zero to 13 percent (in S_P), and the HHI changes are all below 50 points in an unconcentrated to moderately concentrated market. See Exhibit J-6.

Table 14: Available Economic Capacity, PACW

Period	Price	Pre-Transaction						Post-Transaction				
		NV Energy		MidAmerican		Market Size	HHI	MidAmerican		Market Size	HHI	HHI Chg
		MW	Mkt Share	MW	Mkt Share			MW	Mkt Share			
S_SP1	\$ 100	6	0.3%	-	0.0%	2,282	858	6	0.3%	2,282	858	-
S_SP2	\$ 59	43	1.9%	0	0.0%	2,282	829	43	1.9%	2,282	829	0
S_P	\$ 42	55	2.2%	235	9.4%	2,496	850	290	11.6%	2,496	892	42
S_OP	\$ 28	-	0.0%	-	0.0%	2,556	1,013	-	0.0%	2,556	1,013	-
W_SP	\$ 46	98	3.4%	54	1.9%	2,867	720	152	5.3%	2,867	733	13
W_P	\$ 39	138	4.8%	100	3.5%	2,880	650	238	8.3%	2,880	684	33
W_OP	\$ 25	-	0.0%	-	0.0%	3,182	621	-	0.0%	3,182	621	-
SH_SP	\$ 46	-	0.0%	18	0.8%	2,309	922	18	0.8%	2,309	922	-
SH_P	\$ 36	-	0.0%	77	3.3%	2,308	770	77	3.3%	2,308	770	-
SH_OP	\$ 21	-	0.0%	-	0.0%	3,294	749	-	0.0%	3,294	749	-

The results for these three BAAs are similar in the price sensitivity cases (plus 10 percent and minus 10 percent). There are no screen failures. See Exhibit J-7 and Exhibit J-8.

With respect to the Interim Case (stand-alone NEVP and SPPC BAAs), the Competitive Analysis Screen also evidences no screen failures, as demonstrated in Table 15 and Table 16 (same as Table 5 and Table 6, respectively, in the summary). See Exhibit J-10.

Table 15: Available Economic Capacity, NEVP

Period	Price	Pre-Transaction						Post-Transaction				
		NV Energy		MidAmerican		Market Size	HHI	MidAmerican			HHI Chg	
		MW	Mkt Share	MW	Mkt Share			MW	Mkt Share	Market Size		HHI
S_SP1	\$ 100	28	0.6%	2	0.0%	4,892	585	29	0.6%	4,892	585	0
S_SP2	\$ 60	568	10.5%	30	0.5%	5,415	591	597	11.0%	5,415	602	11
S_P	\$ 43	1,040	17.7%	83	1.4%	5,863	773	1,123	19.2%	5,863	824	50
S_OP	\$ 26	-	0.0%	96	2.0%	4,754	1,890	96	2.0%	4,754	1,890	-
W_SP	\$ 47	1,161	25.0%	44	1.0%	4,649	986	1,205	25.9%	4,649	1,034	48
W_P	\$ 43	1,565	31.1%	64	1.3%	5,038	1,272	1,629	32.3%	5,038	1,351	79
W_OP	\$ 27	15	0.5%	14	0.5%	2,813	849	29	1.0%	2,813	850	1
SH_SP	\$ 51	57	1.0%	78	1.4%	5,518	616	136	2.5%	5,518	619	3
SH_P	\$ 38	865	13.8%	140	2.2%	6,249	560	1,005	16.1%	6,249	623	62
SH_OP	\$ 23	-	0.0%	-	0.0%	3,503	1,176	-	0.0%	3,503	1,176	-

Table 16: Available Economic Capacity, SPPC

Period	Price	Pre-Transaction						Post-Transaction				
		NV Energy		MidAmerican		Market Size	HHI	MidAmerican			HHI Chg	
		MW	Mkt Share	MW	Mkt Share			MW	Mkt Share	Market Size		HHI
S_SP1	\$ 100	60	3.3%	-	0.0%	1,815	1,325	60	3.3%	1,815	1,325	-
S_SP2	\$ 60	255	11.1%	7	0.3%	2,291	1,223	262	11.4%	2,291	1,229	6
S_P	\$ 43	243	10.9%	23	1.0%	2,223	1,246	266	12.0%	2,223	1,269	22
S_OP	\$ 26	-	0.0%	45	4.8%	955	875	45	4.8%	955	875	-
W_SP	\$ 47	517	15.7%	9	0.3%	3,294	1,405	526	16.0%	3,294	1,414	8
W_P	\$ 43	655	24.8%	14	0.5%	2,641	1,572	670	25.4%	2,641	1,599	27
W_OP	\$ 27	20	2.2%	-	0.0%	893	765	20	2.2%	893	765	-
SH_SP	\$ 51	150	6.6%	9	0.4%	2,279	1,169	159	7.0%	2,279	1,174	5
SH_P	\$ 38	406	18.0%	21	0.9%	2,256	1,434	427	18.9%	2,256	1,467	33
SH_OP	\$ 23	-	0.0%	-	0.0%	662	1,196	-	0.0%	662	1,196	-

The foregoing results indicate that the NV Energy markets are relatively more concentrated, with Applicants having relatively higher post-Transaction market share. However, there are a number of reasons that NV Energy has neither the ability nor incentives to raise market prices in its own market. The following factors, such as those the Commission contemplated in Order No. 642,⁵⁰ demonstrate the lack of market power concerns.

⁵⁰ Order No. 642 at page 62 (“The facts of each case (e.g., market conditions, such as demand and supply elasticity, ease of entry and market rules, as well as technical conditions, such as the types of generation

First, NV Energy is not authorized to sell at market-based rates in its current BAAs, NEVP and SPPC, and will not have authority to sell at market-based rates in the single BAA when that occurs. Likewise, MidAmerican affiliates will be limited to cost-based sales in the NV Energy markets post-Transaction. Correspondingly, all wholesale and retail sales in the NV Energy BAAs by Applicants must be made at cost-based rates regulated by the Commission and/or the PUCN, respectively.⁵¹

Second, any “profits” from NV Energy’s wholesale sales are credited fully to retail customers through a fuel adjustment clause (*i.e.*, the BTER) such that shareholders do not profit from sales at higher prices (which, in any event, cannot be induced by any theoretical exercise of market power because of NV Energy’s lack of market-based rate authority in Nevada).⁵²

Third, because NV Energy is a significant net buyer of energy, it lacks the incentives for higher market prices. As shown in Exhibit J-12, 35 to 50 percent of Nevada Power’s and Sierra Pacific Power’s energy was derived from purchased power (both long- and short-term purchases) in 2011-2012. By comparison, PacifiCorp’s purchased power represented only about 20 percent of its energy supply.⁵³

The results of my AEC analysis also are confirmed by actual sales data. As shown in Exhibit J-12, the overwhelming share of electricity sold from generation controlled by both PacifiCorp and NV Energy is used to serve their retail and wholesale requirements customers. Retail sales alone account for 75-90 percent of each utility’s total sales in 2011 and 2012.

involved) determine whether the merger would harm competition. When there is a screen failure, applicants must provide evidence of relevant market conditions that indicate a lack of a competitive problem or they should propose mitigation.”).

⁵¹ See *Nevada Power Co. and Sierra Pacific Power Co.*, 133 FERC ¶ 61,005 (2010); *Nevada Power Co.*, ER11-1832-000 (Nov. 23, 2010) (unreported), *Sierra Pacific Power Co.*, ER11-1186 (Nov. 23, 2010) (unreported).

⁵² Under the Nevada Administrative Code (NAC 704.032), the Base Tariff Energy Rate is determined based on the cost of fuel for electric generation and purchased power, reduced by any revenue from off-system sales for the test period (the prior twelve-month calendar period). Revenues from off-system sales thus provide a credit that offsets fuel and purchased power expenditures. When NV Energy makes an off-system sale, any margin associated with the sale reduces the cost of fuel and purchased power, which in turn, reduces electric rates. This ensure that NV Energy’s customers receive any financial benefit associated with off-system sales. The relevant treatment of off-system sales is detailed in Nev. Rev. Stat. § 704.187(1) and Nev. Admin. Code § 704.035.

⁵³ These data are from FERC Form 1 filings.

Nevada Power does not have any wholesale requirements customers in Nevada, and Sierra Pacific has only one limited full requirements customer, which is located outside of Nevada.⁵⁴

There also is little competitive overlap between PacifiCorp and NV Energy for sales in each other's markets or to third parties in any geographic market. In the 2011-2012 period, NV Energy's sales to customers in PACE (excluding sales to PacifiCorp itself) totaled less than 15,000 MWh, which is miniscule (only 0.02 percent) relative to NV Energy's total sales as well as relative to NV Energy's wholesale sales (only 0.2 percent). NV Energy did not make any sales into PACW. PacifiCorp's sales to customers in NEVP and SPPC totaled about 500,000 MWhs, but this, too, is small (less than 0.5 percent of PacifiCorp's total sales and about 3 percent of its wholesale non-requirements sales). PacifiCorp had a *de minimis* level of short-term sales to NV Energy. See Exhibit J-13.

With respect to overlap in third-party markets or for particular customers, again, there is little competition. For the 2011-12 period, EQR data indicate that there was only one additional point of delivery into which both PacifiCorp and NV Energy each had more than a *de minimis* level of short-term sales, namely Mead. Mead is a liquid trading point for the Southwest area of WECC, and Applicants' share of sales at Mead is small relative to total sales. There also was only one customer, a marketer (Citigroup), for which both PacifiCorp (the equivalent of 121 MW round-the-clock) and NV Energy (the equivalent of 11 MW round-the-clock) each had more than a *de minimis* level of short-term sales.⁵⁵

Thus, the participation of the each of PacifiCorp and NV Energy in wholesale markets in which the other controls substantial generation is trivial at best, as is their participation in common markets. Consequently, the combination of NV Energy and PacifiCorp cannot have a material effect on competition in either any of Applicants' BAAs or in proximate markets. This means that there is no material reduction in competition caused by the Transaction

⁵⁴ Sierra Pacific provides requirements service to Liberty Electric (formerly CalPeco) in California under a long-term power purchase agreement. Liberty Electric purchased Sierra Pacific's California Distribution system in 2010, and became the retail electricity provider to Sierra Pacific's former California retail customers. These sales are reported as requirement sales in the FERC Form 714.

⁵⁵ These data are included in my workpapers.

Vertical Market Power

The remaining potential market power issue that I address is vertical market power with respect to control over electric transmission or generating sites. Dr. Morris addresses vertical issues as they relate to fuel supplies.

Transmission

There are no transmission market power issues raised by this acquisition. The acquisition does not increase either PacifiCorp's or NV Energy's ability or incentive to use control over their respective transmission facilities to gain a competitive advantage in wholesale electricity markets. As noted earlier, none of NV Energy generation assets is located within PacifiCorp's transmission system, and none of PacifiCorp's generation assets is located within NV Energy's transmission system. NV Energy and PacifiCorp transmission is subject to a Commission-approved OATT, or grandfathered, legacy transmission agreements. MEC's transmission facilities, located in the Eastern Interconnection, are too remote from those of NV Energy to have any relevance to the effect of the Merger.

Long-Term Markets

Earlier, I stated that the Commission has found long-term markets to be presumptively competitive. In Order No. 888, the Commission, in referring to a decision in *Entergy Services, Inc.*, noted that "after examining generation dominance in many different cases over the years, we have yet to find an instance of generation dominance in long-run bulk power markets."⁵⁶ In the Merger NOPR, the Commission stated that "[a]s restructuring in the wholesale and retail electricity markets progresses, short-term markets appear to be growing in importance. The role of long-term capacity markets appears to be diminishing."⁵⁷ While the Commission has indicated its intent to review the presumption that long-term markets are competitive, there is no evidence to overcome that presumption. Certainly, the entry of new generation into the relevant geographic markets and its ownership by numerous independent entities shows that entry is not

⁵⁶ Order No. 888 at 31,649 n.86 (citation omitted).

⁵⁷ Revised Filing Requirements Under Part 33 of the Commission's Regulations, Notice of Proposed Rulemaking, 63 Fed. Reg. 20340 (1998), FERC Statutes and Regulations ¶ 32,528 (1998) (NOPR) at 20.

constrained. For the 2012-2017 period, the PUCN identified about 1,500 MW of new and proposed capacity being built in Nevada.⁵⁸ A roughly equivalent amount of new generation owned by parties other than NV Energy came on-line in Nevada in the 2002-2011 period.⁵⁹ Significant new entry has occurred elsewhere in WECC.

NV Energy, PacifiCorp and their respective affiliates do not exercise control over the available generation sites. I was unable to identify any special barriers to entry in this regard.

⁵⁸ PUCN *New & Proposed Generation Plants in Nevada*, Updated December 2012.
<http://puc.nv.gov/Utilities/Electric/Generation/>.

⁵⁹ Based on EIA data (<http://www.eia.gov/electricity/data/eia860/index.html>).

VI. CONCLUSION

Based on the foregoing analysis, I recommend that the Commission determine that this Transaction will not have an adverse effect on horizontal competition in markets subject to its jurisdiction.

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Professional History

- Managing Director, Navigant Consulting - 2010-Present
- Vice President, Charles River Associates - 2001-2010
- Senior Vice President, Putnam, Hayes and Bartlett, Inc. and PHB Hagler Bailly, Inc., Washington, DC - 1986-2000
- Economist, Economic Consulting Services, Inc., Washington, DC - 1979-1986
- Economist, U.S. Department of Labor, Washington, DC - 1976-1979

Education

- M.B.A. Finance, The Wharton School University of Pennsylvania
- B.A. Economics, Connecticut College

Testimony

- Written testimony provided in more than 150 regulatory proceedings

Julie Solomon is a Managing Director at Navigant Consulting, Inc. in the Energy Practice's Power Systems, Markets & Pricing group. She has more than 20 years of consulting experience, specializing in the areas of regulatory and utility economics, financial analysis and business valuation. Ms. Solomon has participated in analysis of proposed regulatory reforms, supply options and utility industry restructuring in the gas and electric industries. She also has advised utility clients in corporate strategy and corporate restructuring, and consulted to legal counsel on a variety of litigation and regulatory matters, including antitrust litigation and contract disputes. She has filed testimony in numerous proceedings before the Federal Energy Regulatory Commission. Much of her current practice focuses on regulatory and market power issues concerning mergers and acquisitions and compliance filings in the electricity market.

» Advised clients in the electric and gas utility industry on competition issues, including the impact of mergers on competition. Directed a large number of analytic studies relating to obtaining merger approval from regulatory authorities.

» Advised clients in the electric utility industry on restructuring strategies, including potential mergers and acquisitions, functional unbundling and cost savings.

» Consulted in the electric and gas utility industries in a variety of regulatory and competition matters, including rate proceedings, prudence reviews, proposed regulatory reforms, analysis of supply options, privatization and restructuring.

- » Advised utility and non-utility clients on many aspects of the competitive independent power industry, including strategic and financial consulting assignments.
- » Consulted legal counsel on a variety of litigation matters, including the development of expert testimony on liability issues and the calculation of damages in a variety of industries.
- » Provided strategic and economic analyses for clients in trade regulatory proceedings such as dumping and subsidies.
- » Provided financial and business valuation analyses in a number of transactions, including fair market value for taxation purposes and valuation of family-owned businesses.

Professional Experience

Electric and Gas Utilities

Mergers and Acquisitions (Market Power and Competition Issues)

- » Advised clients and conducted analytic studies in connection with a large number of major electric and electric-gas mergers and asset transactions of regulated companies. Provided testimony to FERC for a number of these types of transactions.
- » Advised clients and provided confidential pre-screening analyses for potential mergers and acquisitions.
- » Conducted numerous analytic studies in connection with FERC market-based rate applications and compliance filings for electricity sellers. Provided testimony to FERC for a number of these types of transactions.
- » Conducted numerous analytic studies in connection with FERC market-based rate applications and compliance filings for gas storage facilities. Provided testimony to FERC for a number of these types of transactions.

Utility Restructuring and Stranded Cost

- » Conducted analytic studies and provided litigation support in connection with state stranded cost proceedings in Ohio (Cincinnati Gas & Electric and Dayton Power & Light); West Virginia (Monongahela Power and Potomac Edison); Maryland (Potomac Edison) and Pennsylvania (West Penn Power).
- » Provided analytic support evaluating the benefits of Public Service of Colorado's proposed DC transmission line between Colorado and Kansas in support of a regulatory proceeding.
- » Assisted in studies relating to privatization of the electricity industry in the United Kingdom, including development of a computer model to simulate electricity dispatch and project future prices, capacity needs and utility revenues under various scenarios. During temporary assignment to London office.
- » Participated in antitrust litigation involving a utility and a cogenerator, including preparation of an expert report on liability and damage issues, preparation of expert witnesses for deposition, and assistance in preparation for depositions of opposing expert and in-house witnesses.
- » Assisted in the valuation of the interests of several firms in various cogeneration projects for the purpose of combining these interests into a new entity or selling interests to third parties.
- » Analyzed the financial feasibility and viability of a large number of cogeneration projects, assisted in the preparation of presentations and filings and presented testimony to the relevant public utility commission. Ms. Solomon also assisted in the development of a PC-based financial model to analyze various cogeneration projects.

- » Participated in a study to analyze the financial effects of a variety of restructuring options for a utility, including transfer and/or sale of assets and subsequent sale-leasebacks, and debt restructuring alternatives. In addition, she developed a PC-based financial model with applications to utility restructuring plans.
- » Provided litigation support in major utility rate proceedings, including assisting in the preparation of responses to interrogatories and data requests, preparation of company and outside expert witnesses for deposition and hearings, and assistance in the deposition and cross-examination of intervenor witnesses.
- » Participated in proceedings involving regulation of an oil pipeline, which included evaluating the business risks faced by the company.

Business Valuation

- » Participated in a valuation study involving the fair market value of a privately held company for purposes of an IRS proceeding.
- » Participated in a valuation study in a divorce proceeding, where the assets being valued included a privately held business.
- » Participated in two strategic engagements that developed business plans and identified potential acquisition candidates for the client.
- » Provided advice to a client concerning the benefits and potential risks of developing a partnership with a competitor.

Testimony or Expert Report Experience

- » Affidavit on behalf of Calpine Southwest MBR Sellers, Docket No. ER10-1942, market-based rate triennial filing, July 1, 2013.
- » Affidavit on behalf of NextEra Companies, Docket No. ER10-1847, market-based rate triennial filing, July 1, 2013.
- » Affidavit on behalf of Wayzata Entities, Docket No. ER10-1777, market-based rate triennial filing, July 1, 2013.
- » Affidavit on behalf of AES MBR Affiliates, Docket No. ER10-3415, market-based rate triennial filing, July 1, 2013.
- » Affidavit on behalf of Sierra Pacific Power Company, *et al.* under ER10-2474, Docket No. ER10-24744, market-based rate triennial filing, July 1, 2013.
- » Affidavit on behalf of SGOC Southwest MBR Sellers, Docket No. ER10-2864, market-based rate triennial filing, June 28, 2013.
- » Affidavit on behalf of NorthWestern Corporation, Docket No. ER11-1858, market-based rate triennial filing, June 28, 2013.
- » Affidavit on behalf of GWF Energy LLC, et al. Docket No. ER10-3301, market-based rate triennial filing, June 28, 2013.
- » Affidavit on behalf of NV Energy, Inc., application for approval of internal reorganization, Docket No. EC13-113, May 31, 2013.
- » Affidavit on behalf of Midwest Generation, LLC, Docket No. EC13-103., application for authorization of disposition of jurisdictional facilities, May 6, 2013.
- » Affidavit of behalf of Nevada Power Company (with Matthew E. Arenchild), Docket No. EC13-96, application for authorization of disposition of jurisdictional facilities, April 17, 2013.
- » Affidavit of behalf of Dynegy Inc., Docket No. EC13-93, application for authorization of disposition of jurisdictional facilities, April 16, 2013.
- » Application on behalf of Florida Power & Light Company, Docket No. EC13-91, application for authorization of disposition of jurisdictional facilities, April 12, 2013.
- » Affidavit on behalf of Blythe Energy LLC, et al., Docket No. EC13-89, application for authorization of disposition of jurisdictional facilities, April 2, 2013.
- » Affidavit on behalf of New Harquahala Generating Company, LLC, Docket No. ER10-3310, market-based rate triennial filing, March 29, 2013.
- » Affidavit on behalf of Dominion Energy Brayton Point, et al., Docket No. EC13-82, application for authorization of disposition of jurisdictional facilities, March 21, 2013.
- » Affidavit on behalf of Duke Energy Carolinas, LLC et al., Docket No. ER10-2566, et al., notice of change in status, January 29, 2013.

- » Affidavit on behalf of CCI Roseton LLC, Docket No. ER13-773, market-based rate application, January 17, 2013.
- » Affidavit on behalf of CCI Roseton LLC, Docket No. EC13-63, application for authorization of disposition of jurisdictional facilities, January 16, 2013.
- » Affidavit on behalf of Calpine Oneta Power, LLC, Docket No. ER11-3777, et al., market-based rate triennial filing, December 31, 2012.
- » Affidavit on behalf of NextEra Energy Companies, Docket No. ER12-569, et al., market-based rate triennial filing, December 27, 2012.
- » Affidavit on behalf of Nevada Power Company, Docket No. ER10-2474, market-based rate triennial filing, December 26, 2012.
- » Testimony on behalf of Powerex Corp re Puget Sound Energy, Inc v. All Jurisdictional Sellers of Energy & Capacity, Docket No. EL01-10, December 17, 2012.
- » Affidavit on behalf of AES Beaver Valley, LLC, Docket No. ER13-442, market-based rate application, November 21, 2012.
- » Affidavit on behalf of Broad River Energy LLC, et al., Docket No. EC13-42, application for authorization of disposition of jurisdictional facilities, November 16, 2012.
- » Affidavit on behalf of Westar Energy, Inc., Docket No. ER10-2507, notice of change in status, October 29, 2012.
- » Affidavit on behalf of Homer City Generation, L.P., Docket No. ER13-55, market-based rate application, October 9, 2012.
- » Affidavit on behalf of Homer City Generation, L.P., et al., Docket No. EC13-9, application for authorization of disposition of jurisdictional facilities, October 9, 2012.
- » Affidavit on behalf of GenOn Marsh Landing, LLC, Docket No. ER12-2545, market-based rate application, August 29, 2012.
- » Affidavit on behalf of High Mesa Energy, LLC, Docket No. ER12-2528, market-based rate application, August 27, 2012.
- » Affidavit on behalf of Brandon Shores LLC, et al., Docket No. EC12-137, application for authorization of disposition of jurisdictional facilities, August 23, 2012.
- » Affidavit on behalf of North Sky River Energy, LLC, Docket No. ER12-2444, market-based rate application, August 14, 2012.
- » Affidavit on behalf of Duke Energy Carolinas, LLC et al., Docket No. ER10-2566, et al., notice of change in status, August 1, 2012.
- » Affidavit on behalf of Canandaigua Power Partners, LLC et al., Docket No. ER10-2460, notice of change in status, July 16, 2012.
- » Affidavit on behalf of Limon Wind I and Limon Wind II, LLC, Docket Nos. ER12-2225 and -2226, market-based rate application, July 10, 2012.

- » Affidavit on behalf of Ensign Wind, LLC, Docket No. ER12-2227, market-based rate application, July 10, 2012.
- » Affidavit on behalf of NextEra Energy Companies, Docket No. ER10-1836, et al., market-based rate triennial filing, July 2, 2012.
- » Affidavit on behalf of Iberdrola Renewables, LLC, et al., Docket No. ER10-2994, et al., market-based rate triennial filing, June 29, 2012.
- » Affidavit on behalf of The Empire District Electric Company, Docket No. ER10-2738, market-based rate triennial filing, June 29, 2012.
- » Affidavit on behalf of Wisconsin Electric Power Company, Docket No. ER10-2563, market-based rate triennial filing, June 29, 2012.
- » Affidavit on behalf of Baltimore Gas and Electric Company, et al., Docket No. ER10-2172, et al., market-based rate triennial filing, June 29, 2012.
- » Affidavit on behalf of Westar Energy, Inc., Docket No. ER12-2124, market-based rate triennial filing, June 28, 2012.
- » Affidavit on behalf of Duke Energy Beckjord, LLC, et al., Docket No. ER12-1946 et al., market-based rate application, June 5, 2012.
- » Affidavit on behalf of Minco Wind III, LLC, Docket No. ER12-1880, market-based rate application, May 31, 2012.
- » Affidavit on behalf of Tuscola Bay Wind, LLC, Docket No. ER12-1660, market-based rate application, April 30, 2012.
- » Affidavit on behalf of Powerex Corp., Docket No. ER11-2664, notice of change in status, April 13, 2012.
- » Affidavit on behalf of Safe Harbor Water Power Corporation, Docket No. ER11-2780, notice of change in status, April 11, 2012.
- » Affidavit on behalf of Hot Spring Power Company, LLC, Docket No. EC12-87, application for authorization of disposition of jurisdictional facilities, March 28, 2012.
- » Affidavit on behalf of High Majestic Wind II, LLC, Docket No. ER12-1228, market-based rate application, March 8, 2012.
- » Affidavit on behalf of Duke Energy Indiana, Inc. et al., Docket No. ER10-2034 et al., notice of change in status, January 31, 2012.
- » Affidavit on behalf of CPV Cimarron Renewable Energy Company, LLC, Docket No. ER12-775, market-based rate application, January 6, 2012.
- » Affidavit on behalf of LS Power Marketing, LLC, et al., Docket No. ER10-2739, et al., market-based rate triennial filing, January 3, 2012.
- » Affidavit on behalf of Auburndale Peaker Energy Center, LLC, et al., Docket No. ER10-1945, et al., market-based rate triennial filing, January 3, 2012.

- » Affidavit on behalf of Duke Energy Indiana, Inc., et al., Docket No. ER10-2034, et al., market-based rate triennial filing, December 28, 2011.
- » Affidavit on behalf of Northern Indiana Public Service Company, Docket No. ER10-1781, market-based rate triennial filing, December 28, 2011.
- » Affidavit on behalf of Baltimore Gas and Electric Company, et al., Docket No. ER10-2172, et al., market-based rate triennial filing, December 28, 2011.
- » Affidavit on behalf of Duke Energy Carolinas, LLC Docket No. ER10-2566, notice of change in status, December 27, 2011.
- » Affidavit on behalf of AEE2, L.L.C., et al., Docket No. ER10-3142, et al., market-based rate triennial filing, December 23, 2011.
- » Affidavit on behalf of Exelon Generation Company, LLC, et al., Docket No. ER10-1144, et al., market-based rate triennial filing, December 23, 2011.
- » Affidavit on behalf of AEE2, L.L.C., et al., Docket No. ER10-3142, et al., notice of change in status, December 23, 2011.
- » Affidavit on behalf of Perrin Ranch, LLC, Docket No. ER12-676, market-based rate application, December 22, 2011.
- » Affidavit on behalf of GenOn Energy Management, LLC, et al., Docket No. ER10-1869, et al., market-based rate triennial filing, December 16, 2011.
- » Affidavit on behalf of Blackwell Wind, LLC, Docket No. ER12-569, market-based rate application, December 7, 2011.
- » Affidavit on behalf of Bluegrass Generation Company, L.L.C. et al., Docket No. EC12-29, application for authorization of disposition of jurisdictional facilities, November 14, 2011.
- » Affidavit on behalf of Dynegy Danskammer, L.L.C., et al., Docket No. EC12-27, application for authorization of disposition of jurisdictional facilities, November 8, 2011.
- » Affidavit on behalf of LSP Energy Limited Partnership, et al., Docket No. EC12-19, application for authorization of disposition of jurisdictional facilities, November 1, 2011.
- » Affidavit on behalf of Tenaska Power Management, LLC, Docket No. ER12-60, market-based rate application, October 11, 2011.
- » Testimony on behalf of Florida Power & Light Company, Docket No. ER12-46, October 7, 2011.
- » Affidavit on behalf of Montezuma Wind II, LLC and Vasco Winds, LLC, Docket No. ER11-4677 and ER11-4678, market-based rate applications, September 28, 2011.
- » Affidavit of Amsterdam Generating Company, LLC, et al. under Docket No. EC11-118, application for authorization of disposition of jurisdictional facilities, September 9, 2011.
- » Affidavit on behalf of Minco Wind II, LLC, Docket No. ER11-4428, market-based rate application, September 2, 2011.
- » Affidavit on behalf of Osage Wind, LLC, Docket No. ER11-4363, market-based rate application, August 24, 2011.

- » Affidavit on behalf of Baltimore Gas and Electric Company, et al., Docket No. ER10-2172, et al. and Calvert Cliffs Nuclear Power Plant, LLC, et al. Docket No. ER10-2179, et al. Notice of Change in Status, August 19, 2011.
- » Affidavit on behalf of Michigan Wind II, LLC, Docket No. ER11-3989, market-based rate application, August 17, 2011.
- » Affidavit on behalf of Morgan Stanley Capital Group, Docket No. EC11-97, application for authorization of disposition of jurisdictional facilities, July 22, 2011.
- » Affidavit on behalf of Calpine Energy Services, L.P., et al., Docket No. ER10-2042, et al., Supplemental market-based rate filing, July 22, 2011.
- » Affidavit on behalf of South Carolina Electric & Gas Co, Docket No. ER10-2498, market-based rate triennial filing, July 14, 2011.
- » Affidavit on behalf of Duke Energy Carolinas, LLC, Docket No. ER10-2566, market-based rate triennial filing, June 30, 2011.
- » Affidavit on behalf of North Allegheny Wind, LLC, Docket No. ER10-1330, et al., market-based rate triennial filing, June 30, 2011.
- » Affidavit on behalf of NextEra Energy Companies, Docket No. ER10-1838, market-based rate triennial filing, June 30, 2011.
- » Affidavit on behalf of NextEra Energy Companies, Docket No. ER10-1852, market-based rate triennial filing, June 30, 2011.
- » Affidavit on behalf of AES MBR Affiliates, Docket No. ER10-3142 et al., market-based rate triennial filing, June 30, 2011.
- » Affidavit on behalf of MATEP Limited Partnership, Docket No. ER10-3194, market-based rate triennial filing, June 30, 2011.
- » Affidavit on behalf of Morgan Stanley Capital Group Inc., Docket No. ER94-1384 et al., market-based rate triennial filing, June 30, 2011.
- » Affidavit on behalf of Louisville Gas and Electric Company et al., Docket No. ER10-1511 et al., market-based rate triennial filing, June 30, 2011.
- » Affidavit on behalf of Progress Companies, Docket No. ER10-1760 et al., market-based rate triennial filing, June 30, 2011.
- » Affidavit on behalf of Mojave Solar, LLC, Docket No. ER11-3917, market-based rate application, June 29, 2011.
- » Affidavit on behalf of GDF SUEZ Northeast MBR Sellers, Docket No. ER10-2670 et al., market-based rate triennial filing, June 24, 2011.
- » Affidavit on behalf of Alcoa Companies, Docket No. ER10-3069 et al., market-based rate triennial filing, June 23, 2011.
- » Affidavit on behalf of Northwestern Corporation, Docket No. EC11-88, application for authorization of disposition of jurisdictional facilities, June 6, 2011.

- » Testimony, with Joe D. Pace, on behalf of Exelon Corporation and Constellation Energy Group, Inc., Docket No. EC11-83, merger application, May 20, 2011.
- » Affidavit on behalf of The AES Corporation and DPL Inc., Docket No. EC11-81, application for authorization of disposition of jurisdictional facilities, May 18, 2011.
- » Affidavit on behalf of Wildcat Power Holdings, LLC, Docket No. ER11-3336, market-based rate application, April 15, 2011.
- » Affidavit on behalf of TPF Generation Holdings, LLC, University Park Energy, LLC, and LSP Park Generating, LLC, Docket No. EC11-61, application for authorization of disposition of jurisdictional facilities, April 4, 2011.
- » Affidavit on behalf of Entegra Power Group LLC, Gila River Power, L.P., and Wildcat Power Holdings, LLC, Docket No. EC11-54, application for authorization of disposition of jurisdictional facilities, May 22, 2011.
- » Affidavit on behalf of Safe Harbor Water Power Corporation, Docket No. ER11-2780, market-based rate triennial filing, January 28, 2011.
- » Supplemental Affidavit on behalf of NorthWestern Corp et al., Docket No. ER03-329-010 et al., triennial market-based rate update, January 21, 2011.
- » Affidavit on behalf of Mountain View Power Partners IV, LLC, Docket No. ER11-2701, market-based rate application, January 19, 2011.
- » Affidavit on behalf of Calpine Energy Services, L.P., et al., Docket No. ER10-2042, et al., market-based rate triennial filing, January 3, 2011.
- » Affidavit on behalf of J.P. Morgan Ventures Energy Corporation, Docket No. ER05-1232, market-based rate triennial filing, December 31, 2010.
- » Affidavit on behalf of the Exelon MBR Companies, Docket No. ER10-1048, et al., market-based rate triennial filing, December 30, 2010.
- » Affidavit on behalf of First Wind Energy Marketing, LLC, et al., Docket No. ER09-1549, et al., market-based rate application, December 30, 2010.
- » Affidavit on behalf of the IRI MBR Companies, Docket No. ER11-2462, et al., market-based rate triennial filing, December 29, 2010.
- » Affidavit on behalf of Green Mountain Power Corporation, Docket No. ER01-989, market-based rate triennial filing, December 29, 2010.
- » Affidavit on behalf of Baltimore Gas and Electric Company et al., Docket Nos. ER10-2172 et al., market-based rate triennial filing, December 29, 2010.
- » Affidavit on behalf of Dominion Resources Services, Inc., on behalf of Virginia Electric and Power Company and affiliates, Docket No. ER01-468, et al., market-based rate triennial filing, December 27, 2010.
- » Affidavit on behalf of NextEra Companies, Docket No. ER98-2494, et al., market-based rate triennial filing, December 27, 2010.

- » Affidavit on behalf of Atlantic City Electric Company et al., Docket No. ER96-1351 et al., market-based rate triennial filing, December 27, 2010.
- » Affidavit on behalf of Allegheny Companies, Docket No. ER11-2481 et al., market-based rate triennial filing, December 27, 2010.
- » Affidavit on behalf of Red Mesa Wind, LLC, Docket No. ER11-2192, market-based rate application, November 25, 2010.
- » Affidavit on behalf of Duke Energy Vermillion II, LLC; Duke Energy Hanging Rock II, LLC; Duke Energy Lee II, LLC; Duke Energy Washington II, LLC; Duke Energy Fayette II, LLC; Docket Nos. ER11- 2063-6 and 2069, market-based rate application, November 10, 2010.
- » Affidavit on behalf of Elk City II Wind, LLC, Docket No. ER11-2037, market-based rate application, November 5, 2010.
- » Affidavit on behalf of AES Laurel Mountain, LLC, Docket No. ER11-2036, market-based rate application, November 5, 2010.
- » Supplemental Affidavit on behalf of GDF SUEZ S.A. and International Power Plc, Docket No. EC10-98, application for authorization of disposition of jurisdictional facilities, October 29, 2010.
- » Supplemental Affidavit on behalf of NorthWestern Corp et al., Docket No. ER03-329-010 et al., triennial market-based rate update, October 18, 2010.
- » Supplemental Affidavit on behalf of Fore River Development, LLC, et al., Docket No. EC10-85, application for authorization of disposition of jurisdictional facilities, October 8, 2010.
- » Affidavit on behalf of Harbor Gen Holdings, LLC, et al., Docket No. EC11-3, application for authorization of disposition of jurisdictional facilities, October 6, 2010.
- » Affidavit on behalf of Ashtabula Wind III, LLC, Docket No. ER11-26, market-based rate application, October 5, 2010.
- » Affidavit on behalf of LSP Safe Harbor Holdings, LLC, Docket No. ER11-27, market-based rate application, October 5, 2010.
- » Affidavit on behalf of Exelon Corporation, et al., Docket No. EC10-105, application for authorization of disposition of jurisdictional facilities, September 30, 2010.
- » Supplemental Affidavit on behalf of Constellation Mystic Power, LLC, Docket No. ER10-2281, September 23, 2010.
- » Affidavit on behalf of GDF SUEZ S.A. and International Power Plc, Docket No. EC10-98, application for authorization of disposition of jurisdictional facilities, September 23, 2010.
- » Affidavit on behalf of Minco Wind, LLC, Docket No. ER10-2720, market-based rate application, September 17, 2010.
- » Affidavit on behalf of Baldwin Wind, LLC, Docket No. ER10-2551, market-based rate application, September 7, 2010.
- » Affidavit on behalf of Fore River Development, LLC, et al., Docket No. EC10-85, application for authorization of disposition of jurisdictional facilities, August 18, 2010.

- » Affidavit on behalf of Constellation Mystic Power, LLC, Docket No. ER10-2281, market-based rate application, August 18, 2010.
- » Affidavit on behalf of Calpine Mid-Atlantic Marketing, LLC, Docket No. ER10-2029, market-based rate application, July 29, 2010.
- » Affidavit on behalf of Sundevil Power Holdings, LLC, Docket No. ER10-1777, market-based rate application, July 14, 2010.
- » Supplemental affidavit on behalf of Shell Energy North America (US), Docket No. ER08-656, triennial market-based rate update, July 9, 2010.
- » Affidavit on behalf of NextEra Companies, Docket No. ER02-2018 et al., triennial market-based rate update, June 30, 2010.
- » Affidavit on behalf of NorthWestern Corp et al., Docket No. ER03-329 et al., triennial market-based rate update, June 30, 2010.
- » Affidavit on behalf of Mirant, Docket No. ER01-1270 et al., triennial market-based rate update, June 30, 2010.
- » Affidavit on behalf of CalPeak Entities and Tyr Energy, LLC, Docket No. ER06-1331, et al., triennial market-based rate update, June 30, 2010.
- » Affidavit on behalf of Starwood Power-Midway, Docket No. LLC under ER08-110, triennial market-based rate update, June 30, 2010.
- » Affidavit on behalf of J.P. Morgan Ventures Energy Corporation and BE CA LLC in ER05-1232, et al., triennial market-based rate update, June 30, 2010.
- » Affidavit on behalf of AES 2, L.L.C., et al. Docket No. ER99-2284, et al., triennial market-based rate update, June 29, 2010.
- » Affidavit on behalf of Sierra Pacific Power Company and Nevada Power Company, Docket No. ER01-1527 et al., triennial market-based rate update, June 28, 2010.
- » Affidavit on behalf of Dynegy Marketing and Trade, LLC, et al., Docket No. ER09-629, et al., triennial market power update, June 23, 2010.
- » Affidavit on behalf of Mirant Corporation and RRI Energy, Inc., application for authorization to transfer jurisdictional facilities, Docket No. EC10-70, May 14, 2010.
- » Affidavit on behalf of New Development Holdings, LLC et al., application for authorization to transfer jurisdictional facilities, Docket No. EC10-64, May 6, 2010.
- » Supplemental affidavit on behalf of JPMorgan Chase, Docket No. ER07-1358 et al., notice of change in status regarding market-based rate authorization, April 16, 2010.
- » Supplemental affidavit on behalf of Shell Energy North America (US), Docket No. ER08-656, triennial market-based rate update, April 12, 2010.
- » Supplemental affidavit on behalf of Dogwood Energy LLC, Docket No. ER07-312, triennial market-based rate update, April 9, 2010.

- » Affidavit on behalf of Big Horn Wind Project LLC and Juniper Canyon Wind Power LLC, Docket Nos. ER10-974 and 975, market-based rate application, March 31, 2010.
- » Affidavit on behalf of CER Generation, LLC Docket No. ER10-662, market-based rate application, March 19, 2010.
- » Affidavit on behalf of Calpine Corporation, Docket No. ER00-3562 et al., triennial market-based rate update, March 16, 2010.
- » Affidavit on behalf of NV Energy, Docket No. ER01-1529 et al., triennial market-based rate update, March 8, 2010.
- » Affidavit on behalf of Day County Wind, LLC, Docket No. ER10-825, market-based rate application, March 4, 2010.
- » Affidavit on behalf of Dogwood Energy LLC, Docket No. ER07-312, triennial market-based rate update, March 1, 2010.
- » Affidavit on behalf of NextEra Companies, Docket No. ER10-149 et al., triennial market-based rate update, March 1, 2010.
- » Supplemental affidavit on behalf of The Empire District Company, Docket No. ER99-1757, triennial market-based rate update, February 22, 2010.
- » Supplemental affidavit on behalf of Oklahoma Gas and Electric Company & OGE Energy Resources, Inc., Docket No. ER98-511 and ER97-4345, triennial market-based rate update, February 19, 2010.
- » Supplemental affidavit on behalf of Westar Energy, Inc., ER98-2157 et al., triennial market-based rate update, February 18, 2010.
- » Affidavit on behalf of AES ES Westover, LLC, Docket No. ER10-712, market-based rate application, February 5, 2010.
- » Affidavit on behalf of RRI Florida MBR Companies, Docket No ER09-1110 et al. notice of change in status regarding market-based rate authorization, February 1, 2010.
- » Affidavit on behalf of Wolverine Power Supply Cooperative, Inc. and FirstEnergy Generation Corp., Docket No. EC10-41, January 21, 2010.
- » Affidavit on behalf of FPL Energy Illinois Wind, LLC, Docket No. ER10-402, market-based rate application, December 10, 2009.
- » Affidavit on behalf of NextEra Companies, Docket No. ER09-832, et al., notice of change in status regarding market-based rate authorization, December 7, 2009.
- » Affidavit on behalf of Garden Wind, LLC, Docket No. ER10-296 and Crystal Lake Wind III, LLC, Docket No. ER10-297, market-based rate application, November 23, 2009.
- » Affidavit on behalf of Stateline II, LLC, Docket No. ER10-256, market-based rate application, November 16, 2009.
- » Affidavit on behalf of Elk City Wind, LLC, Docket No. ER10-149, market-based rate application, November 2, 2009.

- » Affidavit on behalf of Alcoa Power Generating, Inc. et al., Docket No. ER07-496 et al., triennial market-based rate update, October 30, 2009.
- » Affidavit on behalf of CPV Keenan II Renewable Energy Co, LLC, Docket No. ER10-64, market-based rate application, October 16, 2009.
- » Supplemental Affidavit on behalf of Florida Power & Light Co et al., Docket No. ER97-3359 et al., triennial market-based rate update, October 7, 2009.
- » Affidavit on behalf of High Majestic Wind Energy Center, LLC, Butler Ridge Wind Energy Center, LLC, and Wessington Wind Energy Center, LLC, Docket Nos. ER10-1-3, market-based rate applications, October 6, 2009.
- » Affidavit on behalf of Powerex Corp. in State of California, ex rel. Lockyer v. British Columbia Power Exchange Corp., et al., Docket No. EL02-71, September 17, 2009.
- » Affidavit on behalf of Alcoa Power Generating, Inc. et al., Docket No. ER07-496 et al., triennial market-based rate update, September 14, 2009.
- » Affidavit on behalf of Powerex Corp. in State of California, ex rel. Edmund G. Brown, Attorney General for the State of California v. Powerex Corp. (f/k/a British Columbia Power Exchange Corp.), et al., Docket No. EL09-56, September 3, 2009.
- » Affidavit on behalf of Ashtabula Wind II, LLC, Docket No. ER09-1656, market-based rate application, September 1, 2009.
- » Affidavit on behalf of Oklahoma Gas and Electric Company et al., Docket No. ER98-511 et al., triennial market power update, July 30, 2009.
- » Affidavit on behalf of Westar Energy, Inc & Kansas Gas and Electric Company, Docket No. ER98-2157 et al., triennial market power update, July 30, 2009.
- » Affidavit on behalf of The Empire District Electric Company, Docket No. ER99-1757, triennial market power update, July 30, 2009.
- » Affidavit on behalf of NextEra Companies, Docket No. ER08-1297, et al., triennial market power update, June 30, 2009.
- » Affidavit on behalf of Calpine Energy Services, L.P., et al., Docket No. ER00-3562, et al. triennial market power update, June 30, 2009.
- » Affidavit on behalf of Dominion Energy Kewaunee, Inc., Docket No. ER04-318, triennial market power update, June 30, 2009.
- » Affidavit on behalf of CinCap IV, LLC, Docket No. ER05-1372 et al., triennial market power update, June 30, 2009.
- » Affidavit on behalf of Wisconsin Electric Power Company, Docket No. ER98-855, triennial market power update, June 30, 2009.
- » Affidavit on behalf of J.P. Morgan Ventures Energy Corporation, et al., Docket No. ER05-1232, et al., triennial market power update, June 30, 2009.

- » Affidavit on behalf of Iberdrola Renewables, Inc et al., Docket No. ER08-912 et al., triennial market power update, June 30, 2009.
- » Affidavit on behalf of Exelon Generation Co, LLC et al., Docket No. ER00-3251 et al., triennial market power update, June 30, 2009.
- » Affidavit on behalf of Dynegy Marketing and Trade, LLC, et al., Docket No. ER09-629, et al., triennial market power update, June 26, 2009.
- » Affidavit on behalf of GenConn Middletown, LLC and GenConn Devon, LLC, Docket Nos. ER09-1300-1301, market-based rate application, June 15, 2009.
- » Affidavit on behalf of Northern Colorado Wind Energy, Docket No. ER09-1297, market-based rate application, June 12, 2009.
- » Affidavit on behalf of Fox Energy Company LLC, Docket No. ER03-983, triennial market power update, June 3, 2009.
- » Affidavit on behalf of the KGen Companies, Docket No .ER04-1181 et al., market-based rate change in status filing, April 2, 2009.
- » Affidavit on behalf of Victory Garden Phase IV, LLC, Sky River LLC, FPL Energy Cabazon Wind LLC, Docket Nos. ER09-900-902, market-based rate application, April 1, 2009.
- » Affidavit on behalf of the KGen Companies, Docket No. EC07-30 et al., March 31, 2009.
- » Affidavit on behalf of TransAlta Energy Marketing Corporation, Docket No. ER09-884, market-based rate application, March 25, 2009.
- » Affidavit on behalf of NorthWestern Energy, Docket No. ER03-329, triennial market-based rate update, December 30, 2008.
- » Affidavit on behalf of Calpine Corporation re Broad River Energy LLC et al., Docket No. ER00-38 et al., triennial market-based rate update, December 30, 2008.
- » Affidavit on behalf of Constellation MBR Entities, Docket No. ER99-2948 et al., triennial market-based rate update, December 30, 2008.
- » Affidavit on behalf of LS Power Marketing, LLC, Docket No. ER96-1947 et al., triennial market-based rate update, December 29, 2008.
- » Affidavit on behalf of Tenaska Alabama Partners, L.P., et al., Docket No. ER00-840 et al., triennial market-based rate update, December 24, 2008.
- » Affidavit on behalf of Bluegrass Generation Company, LLC., et al., Docket No. ER02-506 et al., triennial market-based rate update, December 24, 2008
- » Affidavit on behalf of KGen Hinds, LLC, et al., Docket No. ER04-1181 et al., triennial market-based rate update, December 23, 2008
- » Affidavit on behalf of Reliant SE MBR Entities, FERC Docket No. ER05-143 et al., triennial market-based rate update, December 23, 2008.
- » Affidavit on behalf of Exelon Generation Company, LLC, Docket No. ER00-3251 triennial market-based rate update, December 18, 2008.

- » Affidavit on behalf of Northern Indiana Public Service Co. et al., Docket No. ER00-2173 et al., triennial market-based rate update, December 18, 2008.
- » Affidavit on behalf of Duke Energy Indiana, Inc., et al., Docket No. ER07-189 et al., triennial market-based rate update, December 17, 2008.
- » Affidavit on behalf of Shady Hills Power Company, LLC, Docket No. ER02-527, triennial market-based rate update, December 4, 2008.
- » Affidavit on behalf of Farmers City Wind, LLC, Docket No. ER09-31, market-based rate application, October 6, 2008.
- » Affidavit on behalf of Elm Creek Wind, LLC, Docket No. ER09-30, market-based rate application, October 6, 2008.
- » Affidavit on behalf of Dynegy Marketing and Trade, Docket No. ER09-20, market-based rate application, October 6, 2008.
- » Affidavit on behalf of LS Power Development, LLC and Luminus Management, LLC, Docket No. EC08-126, September 24, 2008.
- » Affidavit on behalf of Public Utility District 2 of Grant County, WA, in NorthWestern Corporation, in connection with market-based rates for ancillary services, Docket No. ER08-1529, September 12, 2008.
- » Affidavit on behalf of LG&E Energy Marketing Inc. et al., Docket No. ER94-1188 et al., triennial market-based rate update, September 2, 2008.
- » Affidavit on behalf of Alcoa Power Generating, Inc. et al., Docket No. ER07-496 et al., triennial market-based rate update, September 2, 2008.
- » Affidavit on behalf of Calpine Corporation re Bethpage Energy Center 3, LLC et al., Docket No. ER04-1099 et al., September 2, 2008.
- » Supplemental Affidavit on behalf of Virginia Electric and Power Co. et al., Docket No. ER01-468 et al., triennial market-based rate update, September 2, 2008.
- » Affidavit on behalf of South Carolina Electric & Gas Company, Docket No. ER96-1085, triennial market-based rate update, September 2, 2008.
- » Affidavit on behalf of Florida Power & Light Co et al., Docket No. ER97-3359 et al., triennial market-based rate update, September 2, 2008.
- » Affidavit on behalf of Progress Energy Inc. et al., Docket No. ER99-2311 et al., triennial market-based rate update, September 2, 2008.
- » Affidavit on behalf of the EME Companies, Docket No. ER96-2652 et al., triennial market-based rate update, August 29, 2008.
- » Affidavit on behalf of Bridgeport Energy, LLC et al., Docket No. ER98-2783, triennial market-based rate update, August 29, 2008.
- » Affidavit on behalf of Duke Energy Carolinas, LLC, Docket No. ER07-188, triennial market-based rate update, August 29, 2008.

- » Supplemental Affidavit on behalf of PHI Entities, Docket No. ER96-1361 et al., triennial market-based rate update, August 21, 2008.
- » Supplemental Affidavit on behalf of Constellation MBR Entities, Docket No. ER99-2948 et al., triennial market-based rate update, August 18, 2008.
- » Supplemental Affidavit on behalf of Exelon MBR Companies, Docket No. ER00-3251 et al., triennial market-based rate update, August 15, 2008.
- » Affidavit on behalf of Fowler Ridge Wind Farm, LLC, Docket No. ER08-1323, application for market-based rates, August 1, 2008.
- » Affidavit on behalf of FPL Energy, LLC, Docket No. ER08-1300 et al., application for market-based rates, July 24, 2008.
- » Affidavit on behalf of Naturener Montana Wind Energy, LLC, Docket No. ER08-1261, application for market-based rates, July 15, 2008.
- » Affidavit on behalf of FPLE Companies, FERC Docket No. ER02-2559 et al., triennial market-based rate update, June 30, 2008.
- » Affidavit on behalf of Duke Energy MBR Companies, FERC Docket No. ER07-189 et al., triennial market-based rate update, June 30, 2008.
- » Affidavit on behalf of Bear Energy LP et al., FERC Docket No. ER06-864 et al., triennial market-based rate update, June 30, 2008.
- » Affidavit on behalf of Reliant NE MBR Entities, FERC Docket No. ER00-2129 et al., triennial market-based rate update, June 30, 2008.
- » Affidavit on behalf of Noble Altona Windpark, LLC et al., FERC Docket No. ER06-1409 et al., triennial market-based rate update, June 30, 2008.
- » Affidavit on behalf of NRG Companies, FERC Docket No. ER97-4281 et al., triennial market-based rate update, June 30, 2008.
- » Affidavit on behalf of BG Dighton Power, LLC et al., FERC Docket No. ER06-1367 et al., triennial market-based rate update, June 30, 2008.
- » Affidavit on behalf of Mirant Canal, LLC et al., FERC Docket No. ER01-1268 et al., triennial market-based rate update, June 30, 2008.
- » Affidavit on behalf of CPV Liberty, LLC, FERC Docket No. ER07-1193, triennial market-based rate update, June 30, 2008.
- » Affidavit on behalf of Tenaska Energy, Inc. et al., FERC Docket No. ER02-24 et al., triennial market-based rate update, June 30, 2008.
- » Affidavit on behalf of Birchwood Power Partners LP et al., FERC Docket No. ER07-501 et al., triennial market-based rate update, June 27, 2008.
- » Affidavit on behalf of Wisconsin Electric Power Company, FERC Docket No. ER08-1176, application for market-based rates, June 27, 2008.

- » Affidavit on behalf of New Athens Generating Co., LLC and Millennium Power Partners, LP, triennial market-based rate update, FERC Docket No. ER98-830 et al., June 27, 2008.
- » Affidavit on behalf of Granite Ridge Energy, LLC, FERC Docket No. ER05-287, triennial market-based rate update, June 27, 2008.
- » Affidavit on behalf of Astoria Generating Co. LP et al., FERC Docket No. ER99-3168 et al., triennial market-based rate update, June 24, 2008.
- » Affidavit on behalf of Duke Energy Carolinas, LLC, FERC Docket No. EC08-94, application for sale of jurisdictional assets, May 30, 2008.
- » Supplemental Affidavit on behalf of Allegheny Energy Supply Company, LLC et al., triennial market-based rate update, FERC Docket No. ER98-1466, April 21, 2008.
- » Supplemental Affidavit on behalf of Baltimore Gas and Electric Company et al., triennial market-based rate update, FERC Docket No. ER99-2948, April 21, 2008.
- » Affidavit on behalf of JPMorgan Chase & Co. and The Bear Stearns Companies Inc., application for sale of jurisdictional assets, FERC Docket No. EC08-66, March 31, 2008.
- » Affidavit on behalf of Oklahoma Gas & Electric Company, et al., application for sale of jurisdictional assets, FERC Docket No. EC08-58, March 20, 2008.
- » Affidavit on behalf of NRG Southaven, LLC et al., FERC Docket No. EC08-57, March 20, 2008.
- » Affidavit on behalf of Shell Energy North America (US), LP, application for market-based rates, FERC Docket No. ER08-656, March 11, 2008.
- » Affidavit on behalf of EFS Parlin Holdings, LLC, application for market-based rates, FERC Docket No. ER08-649, March 10, 2008.
- » Affidavit on behalf of Safe Harbor Power Corporation, application for market-based rates, FERC Docket No. ER08-537, February 5, 2008.
- » Affidavit on behalf of Auburndale Peaker Energy Center, LLC et al., FERC Docket No. ER02-1633, change in status, January 31, 2008.
- » Affidavit on behalf of Calpine Corp. and LS Power Development, LLC et al., FERC Docket No. EC08-39-000, January 22, 2008.
- » Supplemental Affidavit on behalf of Langdon Wind, LLC, application for market-based rate authority, FERC Docket No. ER08-250-000, January 15, 2008.
- » Affidavit on behalf of AES Western Wind MV Acquisition, Docket No. EC08-37, January 15, 2008.
- » Affidavit on behalf of Dominion Energy Marketing, Inc. et al., application for market-based rate authority, FERC Docket No. ER01-468, January 14, 2008.
- » Affidavit on behalf of Baltimore Gas and Electric Company et al., updated market-based rate filing, FERC Docket No. ER99-2948, January 14, 2008.
- » Affidavit on behalf of Allegheny Energy Supply Company, LLC et al., updated market-based rate filing, FERC Docket No. ER98-1466, January 14, 2008.

- » Affidavit on behalf of Exelon Generation Company, LLC et al., updated market-based rate filing, FERC Docket No. ER00-3251, January 14, 2008.
- » Affidavit on behalf of Pepco Holdings, Inc., et al., updated market-based rate filing, FERC Docket No. ER96-1361, January 14, 2008.
- » Affidavit on behalf of Green Mountain Power Corporation, updated market-based rate filing, FERC Docket No. ER01-0989, January 14, 2008.
- » Affidavit on behalf of Duquesne Light Company et al., updated market-based rate filing, FERC Docket No. ER98-4159 et al., January 11, 2008.
- » Affidavit on behalf of Central Hudson Gas and Electric Corporation, updated market-based rate filing, FERC Docket No. Docket No. ER97-2872 et al., January 11, 2008.
- » Affidavit on behalf of Bicent (California) Malburg, LLC, application for market-based rate authority, FERC Docket No. ER08-314-000, December 7, 2007.
- » Affidavit on behalf of Northern Indiana Public Service Co. and Broadway Gen Funding, LLC, application and related exhibits requesting authorization for a transaction to transfer a generating facility, FERC Docket No. EC08-21-000, December 6, 2007.
- » Affidavit on behalf of Langdon Wind, LLC, application for market-based rate authority, FERC Docket No. ER08-250-000, November 21, 2007.
- » Affidavit on behalf of Calpine Corp. and Harbinger Capital Partners Master Fund I, Ltd. et al., joint application for approval of the proposed distribution of common stock of a reorganized Calpine to Acquirors, FERC Docket No. EC08-15-000, November 16, 2007.
- » Affidavit on behalf of Waterbury Generation, LLC, application for market-based rate authority, FERC Docket No. ER08-200-000, November 9, 2007.
- » Affidavit on behalf of FPL Energy Oliver Wind II, LLC, application for market-based rate authority, FERC Docket No. ER08-197-000, November 8, 2007.
- » Affidavit on behalf of Central Power & Lime, Inc., application for market-based rate authority, FERC Docket No. ER08-148-000, November 1, 2007.
- » Affidavit on behalf of Gilberton Power Company, application for market-based rate authority, FERC Docket No. ER08-83-000, October 23, 2007.
- » Affidavit on behalf of Black Bayou Storage, LLC, application for market-based rate authority for a natural gas storage facility, FERC Docket No. CP07-451, September 25, 2007.
- » Affidavit on behalf of NedPower Mount Storm, LLC, application for market-based rate authority, FERC Docket No. ER07-1306-000, August 23, 2007.
- » Affidavit on behalf of Sempra Energy Trading Corp. in connection with market-based rate authority, FERC Docket No. ER03-1413-005, July 25, 2007.
- » Affidavit on behalf of KGen Acquisition I, LLC et al., application for disposition of jurisdictional facilities, FERC Docket No. EC07-116-000, July 13, 2007.

- » Supplemental Affidavit on behalf of Williams Power Company, Inc., application for market-based rate authority, FERC Docket No. EC07-106-000, June 28, 2007.
- » Affidavit on behalf of Williams Power Co, Inc and Bear Energy LP, joint application for authorization of the disposition of jurisdictional facilities, FERC Docket No. EC07-106-000, June 14, 2007.
- » Affidavit on behalf of Bluegrass Generation Company, LLC et al., notice of non-material change in status, FERC Docket No. ER02-506-008 et al., May 31, 2007.
- » Affidavit on behalf of BG Dighton Power, LLC et al., notice of non-material change in status, FERC Docket Nos. ER06-1367-003 et al., May 30, 2007.
- » Affidavit on behalf of FPL Energy Point Beach, LLC, application for market-based rate authority, FERC Docket No. ER07-904-000, May 16, 2007.
- » Affidavit on behalf of Copiah Storage, LLC, application for market-based rate authority for a natural gas storage facility, FERC Docket No, CP02-24, March 29, 2007.
- » Affidavit on behalf of NRG Power Marketing, Inc. and thirty-one affiliates most of which own generating facilities, triennial market power update and notice of change in status, FERC Docket Nos. ER97-4281-016 et al., March 26, 2007.
- » Affidavit on behalf of Egan Hub Storage, application for market-based rate authority for a natural gas storage facility, FERC Docket No. CP07-88, February 20, 2007.
- » Affidavit on behalf of Wisconsin Electric Power Co. and FPL Energy Point Beach, LLC, joint application for authorization to dispose of jurisdictional facilities, FERC Docket No. EC07-57-000, February 1, 2007.
- » Affidavit on behalf of Lake Road Generating Company, LP et al., joint application for authorization of the disposition of jurisdictional facilities pursuant to Section 203 of the Federal Power Act, FERC Docket No. EC07-50-000, January 22, 2007.
- » Affidavit on behalf of Exelon Generation Company, LLC et al., notice of non-material change in status, FERC Docket Nos. ER00-3251-013 et al., December 15, 2006.
- » Revised Affidavit on behalf of Calpine Energy Services, LP, triennial market analysis, FERC Docket No. ER00-3562-004, December 13, 2006.
- » Affidavit on behalf of Dynegy Entities and LSP Entities, notice of non-material change in status, FERC Docket Nos. ER02-506-007 et al., November 2, 2006.
- » Affidavit on behalf of Wisconsin Energy Corp.'s, Wisconsin Electric Power Co. et al. for authorization to dispose of jurisdictional facilities, FERC Docket No. ER07-14-000, November 2, 2006.
- » Affidavit on behalf of Calpine Energy Services, LP, updated triennial market power analysis, FERC Docket No. ER00-3562-004, October 30, 2006.
- » Affidavit on behalf of Dynegy, application for authorization of transactions pursuant to Section 203 of the Federal Power Act, FERC Docket No. EC07-9-000, October 26, 2006.

- » Affidavit on behalf of Coral Power, LLC et al., triennial updated market analysis, FERC Docket Nos. ER96-25-028 et al., October 23, 2006.
- » Affidavit on behalf of Westar Energy, Inc. and Kansas Gas and Electric, request for rehearing, FERC Docket Nos. ER03-9-007 et al., October 6, 2006.
- » Affidavit on behalf of The Empire District Electric, request for rehearing, FERC Docket Nos. ER99-1757-011 et al., September 14, 2006.
- » Joint Affidavit (with William H. Hieronymus) on behalf of Powerex Corp., errata to its 7/31/06 triennial market power update, FERC Docket No. ER01-48-007, September 11, 2006.
- » Affidavit on behalf of FPLE Companies, joint triennial market power update, FERC Docket Nos. ER02-2559-007 et al., August 28, 2006.
- » Affidavit on behalf of FPL Energy Oliver Wind, LLC application for market-based rates, FERC Docket No. ER06-1392-000, August 23, 2006.
- » Affidavit on behalf of The Constellation MBR Entities, errata to their joint triennial market power update submitted on 8/14/06, FERC Docket Nos. ER99-2948-009 et al., August 16, 2006.
- » Affidavit on behalf of Constellation MBR Entities, joint triennial market power update, FERC Docket Nos. ER99-2948-009 et al., August 14, 2006.
- » Affidavit on behalf of Sempra Energy Trading Corp., updated market analysis, FERC Docket No. ER03-1413-005, August 1, 2006.
- » Joint Affidavit (with William H. Hieronymus) on behalf of Powerex Corp, triennial market power analysis in support of its continued authority to sell power at market-based rates, FERC Docket No. ER01-48-007, July 31, 2006.
- » Affidavit on behalf of Reliant Energy Power Supply, LLC, application for market-based rates, FERC Docket No. ER06-1272-000, July 20-21, 2006.
- » Affidavit on behalf of Lincoln Generating Facility, LLC, fka Allegheny Energy Supply, updated generation market power study, FERC Docket No. ER05-524-001, June 19, 2006.
- » Affidavit on behalf of Alcoa Power Generating, Inc & Alcoa Power Marketing, Inc., amendment to triennial, updated market analysis under ER02-2074 et al., FERC Docket Nos. ER02-2074-002 et al., May 17, 2006.
- » Affidavit on behalf of Alcoa Power Generating, Inc. and Alcoa Power Marketing, Inc., updated market analysis of the triennial review of market-based rate authority, FERC Docket Nos. ER02-2074-002 et al., April 13, 2006.
- » Affidavit on behalf of Morgan Energy Center, LLC et al., Calpine Gilroy Cogen, LP, Los Medanos Energy Center, LLC, and KIAC Partners et al., market-based rate filings, FERC Docket Nos. ER06-741-000 et al., March 16, 2006.
- » Affidavit on behalf of Midland Cogeneration Venture Limited Partnership, market-based rate application, FERC Docket No. ER06-733-000, March 15, 2006.
- » Affidavit on behalf of Duke Power Co, LLC et al., notice of change in status filing, FERC Docket Nos. ER96-110-020 et al., March 1, 2006.

- » Affidavit on behalf of Westar Energy Inc & ONEOK Energy Services Co, LP, answer to protests filed by Oklahoma Municipal Power Authority et al., FERC Docket No. ER06-48-000, February 21, 2006.
- » Affidavit on behalf of Edgecombe Genco, LLC and Spruance Genco, LLC, market-based rate application, FERC Docket No. ER06-635-000 and ER06-634-000, February 13, 2006.
- » Affidavit on behalf of NRG Energy, Inc. et al., joint application for authorization under Section 203 of the Federal Power Act to transfer jurisdictional facilities, FERC Docket No. EC06-66-000, January 20, 2006.
- » Affidavit on behalf of Westar Energy, Inc. et al. joint application for authorization under Section 203 of the Federal Power Act for the disposition of jurisdictional facilities, FERC Docket No. EC06-48-000, December 21, 2005.
- » Affidavit on behalf of Calpine Energy Center, LLC, joint updated market power analysis, FERC Docket Nos. ER02-2227-003 et al., August 30, 2005.
- » Affidavit on behalf of Allegheny Power, Allegheny Energy Supply Co., LLC, Allegheny Energy Supply Gleason Generating Facility, Inc et al., combined triennial market power report, FERC Docket Nos. ER98-1466-003 et al., August 11, 2005.
- » Affidavit on behalf of Hermiston Power Partnership et al., joint updated market power analysis, filed on 5/3/05, FERC Docket Nos. ER02-1257-003 et al., August 5, 2005.
- » Affidavit on behalf of MidAmerican Energy Co., in connection with market-based rate update, FERC Docket No. ER96-719-006, August 1, 2005.
- » Affidavit on behalf of Occidental Power Services Inc., updated market power analysis, FERC Docket No. ER02-1947-006, August 1, 2005.
- » Affidavit on behalf of FPL Energy Duane Arnold LLC, joint application for approval of disposition of jurisdictional facilities, FERC Docket Nos. EC05-114-000 et al., July 29, 2005.
- » Affidavit on behalf of FPL Energy Duane Arnold, LLC, authorization to sell at market-based rates, FERC Docket No. ER05-1281-000, July 29, 2005.
- » Affidavit on behalf of MidAmerican Energy Holdings Co. et al., application for approval of disposition of jurisdictional facilities under Section 203 of the Federal Power Act, FERC Docket No. EC05-110-000, July 22, 2005.
- » Affidavit on behalf of Calpine Entities, joint updated market power analysis, FERC Docket Nos. EC02-1367-003 et al., July 18, 2005.
- » Affidavit on behalf of Bayonne Plant Holding, LLC, as successor in interest of Cogen Technologies NJ Venture et al., as successor in interest to Camden Cogen et al., triennial updated market analysis, FERC Docket Nos. EC02-1486-003 et al., July 15, 2005.
- » Affidavit on behalf of Cabazon Wind Partners, LLC & Whitewater Hill Wind Partners, consolidated triennial updated market analysis, FERC Docket Nos. ER02-1695-003 et al., June 24, 2005.

- » Affidavit on behalf of TransAlta Energy Marketing (U.S.) Inc. et al., in connection with market-based rate authority, FERC Docket Nos. ER05-1014-000 et al., May 24, 2005.
- » Affidavit on behalf of Minergy Neenah, LLC, updated triennial market power analysis, FERC Docket No. ER99-3125-001, May 16, 2005.
- » Affidavit on behalf of Hermiston Power Partnership et al., joint updated market power analysis, FERC Docket Nos. ER02-1257-002 et al., May 3, 2005.
- » Affidavit on behalf of CES Marketing VI, LLC et al., market-based rate application, FERC Docket Nos. ER05-816-000 et al., April 13, 2005.
- » Affidavit on behalf of Onondaga Cogeneration Limited Partnership, triennial updated market analysis, FERC Docket No. ER00-895-006, March 24, 2005.
- » Affidavit on behalf of The Williams Entities' (Williams Power Co. Inc. et al.), joint triennial market power update, FERC Docket Nos. ER03-1331-004 et al., March 24, 2005.
- » Affidavit on behalf of J Aron & Co and Power Receivable Finance LLC, errata to triennial updated market analysis submitted on 12/30/04, FERC Docket Nos. ER02-237-003 et al., February 25, 2005.
- » Affidavit on behalf of Delta Energy Center, LLC, updated power analysis, FERC Docket No. ER02-600-003, February 14, 2005.
- » Affidavit on behalf of Wisconsin Electric Power Company, market-based rate filing, FERC Docket No. ER05-540-000, February 4, 2005.
- » Affidavit on behalf of J Aron & Co. and Power Receivable Finance, LLC, consolidated triennial updated market analysis, December 30, 2004.
- » Affidavit on behalf MidAmerican Energy Co., supplement to 10/29/04 market-power update filing, FERC Docket No. ER96-719-004, November 23, 2004.
- » Affidavit in connection with Comments of Cinergy Services, Inc. re Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority under RM04-14, FERC Docket No. RM04-14-000, November 15, 2004.
- » Affidavit on behalf of Metcalf Energy Center, LLC and Pastoria Energy Center, LLC, market-based rate application, FERC Docket No. ER05-68-000 and ER05-67-000, October 25, 2004.
- » Affidavit on behalf Calpine Bethpage 3, LLC and TBG Cogen Partners, market-based rate filing, FERC Docket No. ER05-48-000 and ER04-1100-000, August 4, 2004.
- » Affidavit on behalf of The Empire District Electric Co., updated market power analysis, FERC Docket No. ER99-1757-005, September 27, 2004.
- » Affidavit on behalf of Wisconsin Electric Power Co, revised generation market power portion of its pending three-year market power update, FERC Docket No. ER98-855-004, September 27, 2004.
- » Affidavit on behalf of Duke Power, a Division of Duke Energy Corp., market power analysis, FERC Docket No. ER96-110-010, August 11, 2004.

- » Affidavit on behalf of Virginia Electric & Power Co et al., application for the proposed transfer of substantially all of the assets of Multitrade to Dominion Power, FERC Docket No. EC04-139-000, July 30, 2004.
- » Affidavit on behalf of Goldendale Energy Center, market-based rate application, FERC Docket No. ER04-1038-000, July 23, 2004.
- » Affidavit on behalf of Calumet Energy Team, LLC, updated triennial market power analysis, FERC Docket No. ER01-389-001, July 20, 2004.
- » Affidavit on behalf of Calpine Parlin, LLC, market-based rate filing, FERC Docket No. ER04-832-000, May 11, 2004.
- » Affidavit on behalf of Calpine Newark, LLC, market-based rate filing, FERC Docket No. ER04-831-000, May 11, 2004.
- » Affidavit on behalf of Virginia Electric & Power Co, application for market-based rates, FERC Docket No. ER04-834-000, May 11, 2004.
- » Affidavit on behalf of Virginia Electric and Power Co., UAE Mecklenburg Cogeneration, LP et al., authorization for the proposed transfer of 100% of the ownership interests of Cogenco etc., FERC Docket No. EC04-104-000, May 6, 2004.
- » Affidavit on behalf of Occidental Power Marketing, LP, triennial market power analysis, FERC Docket No. ER99-3665-004, April 14-15, 2004.
- » Affidavit on behalf of The Williams Entities, joint triennial market power update, FERC Docket Nos. ER03-1331-003 et al., March 12, 2004.
- » Affidavit on behalf of Wisconsin Electric Power Co., updated triennial market-power analysis, FERC Docket No. ER98-855-003, January 29, 2004.
- » Affidavit on behalf of GEN~SYS Energy, triennial update market power analysis, FERC Docket No. ER97-4335-006, October 17, 2003.
- » Affidavit on behalf of Calpine Energy Services LP, updated market power analysis, FERC Docket No. ER00-3562-001, September 22, 2003.
- » Affidavit on behalf of Rocky Mountain Energy Center, LLC, application for market-based rates, FERC Docket No. ER03-1288-000, September 3, 2003.
- » Affidavit on behalf of Fox Energy Co, LLC, application for market-based rates, FERC Docket No. ER03-983-000, June 24, 2003.
- » Affidavit on behalf of Chehalis Power Generating Limited Partnership, application for market-based rates etc., FERC Docket No. ER03-717-000, April 7, 2003.
- » Affidavit on behalf of Calpine Northbrook Energy Marketing, LLC, triennial updated market power analysis, FERC Docket No. ER03-717-000, October 23, 2002.
- » Affidavit on behalf of Choctaw Generation Limited Partnership, updated triennial market power analysis, FERC Docket No. ER98-3774-001, October 17, 2002.

- » Affidavit on behalf of Riverside Energy Center, LLC, market-based rate filing, FERC Docket No. ER03-49-000, October 16, 2002.
- » Affidavit on behalf of Blue Spruce Energy Center, LLC, market-based rate filing, FERC Docket No. ER03-25-000, October 8, 2002.
- » Prepared Responsive Testimony on behalf of Calpine Energy Services, LP et al. re: San Diego Gas & Electric Co. v. Sellers of Energy & Ancillary Services etc. under EL00-95 et al., FERC Docket Nos. EL00-95-045 et al., September 27, 2002.
- » Affidavit on behalf of Duke Power Co., a division of Duke Energy Corp., market-based rate filing, FERC Docket No. ER96-110-007, December 17, 2001.

MidAmerican Generation and Purchases

Balancing Authority	Area	Plant Name	Capacity (MW)		Ownership Share	Owned or Purchased (MW)	
			Summer	Winter		Summer	Winter
PacifiCorp Generation in PACE							
PACE		Ashton	7	7	100.0%	7	7
PACE		Big Fork	5	5	100.0%	5	5
PACE		Blundell	34	32	100.0%	34	32
PACE		Carbon	172	172	100.0%	172	172
PACE		Cholla 4	380	380	100.0%	380	380
PACE		Currant Creek	540	573	100.0%	540	573
PACE		Cutler	29	29	100.0%	29	29
PACE		Dave Johnson	762	762	100.0%	762	762
PACE		Dunlap	111	111	100.0%	111	111
PACE		Foots Creek	41	41	79.0%	33	33
PACE		Gadsby	348	351	100.0%	348	351
PACE		Glenrock	138	138	100.0%	138	138
PACE		Grace	33	33	100.0%	33	33
PACE		Granite	1	1	100.0%	1	1
PACE		Gunlock	1	1	100.0%	1	1
PACE		High Plains	99	99	100.0%	99	99
PACE		Hunter 1	446	446	94.0%	419	419
PACE		Hunter 2	430	430	60.0%	258	258
PACE		Hunter 3	460	460	100.0%	460	460
PACE		Huntington	911	911	100.0%	911	911
PACE		Lake Side	557	574	100.0%	557	574
PACE		Lake Side 2 (Under Construction)	645	645	100.0%	645	645
PACE		Last Chance	1	1	100.0%	1	1
PACE		McFadden Ridge	29	29	100.0%	29	29
PACE		Naughton	700	700	100.0%	700	700
PACE		Olmstead	10	10	100.0%	10	10
PACE		Oneida	28	28	100.0%	28	28
PACE		Paris	1	1	100.0%	1	1
PACE		Pioneer	4	4	100.0%	4	4
PACE		Rolling Hills	99	99	100.0%	99	99
PACE		Sand Cove	1	1	100.0%	1	1
PACE		Seven Mile Hill	124	124	100.0%	124	124
PACE		Soda	15	15	100.0%	15	15
PACE		Stairs	1	1	100.0%	1	1
PACE		Veyo	1	1	100.0%	1	1
PACE		Viva Naughton	1	1	100.0%	1	1
PACE		Weber	2	2	100.0%	2	2
PACE		Wyodak	335	335	80.0%	268	268
		Subtotal				7,226	7,277

Balancing Authority	Area	Plant Name	Capacity (MW)		Ownership Share	Owned or Purchased (MW)	
			Summer	Winter		Summer	Winter
			<u>PacifiCorp Purchases and Sales in PACE</u>				
PACE		Three Buttes Wind				99	99
PACE		Top of the World Wind				200	200
PACE		Wolverine Creek Wind				65	65
PACE		Chevron Wind (QF)				17	17
PACE		DCFP (QF)				1	1
PACE		Five Pine Wind (QF)				40	40
PACE		Mountain Wind 1 (QF)				61	61
PACE		Mountain Wind 2 (QF)				80	80
PACE		North Point Wind (QF)				80	80
PACE		Power County North Wind (QF)				23	23
PACE		Power County South Wind (QF)				23	23
PACE		SF Phosphates				12	12
PACE		Spanish Fork Wind 2 (QF)				19	19
PACE		Sunnyside (QF)				51	51
PACE		Tesoro QF				22	25
PACE		US Magnesium (QF)				-	-
PACE		Deseret				85	85
PACE		Tri-State				16	16
PACE		Black Hills				(41)	(41)
PACE		UMPA				(58)	(25)
PACE		APS Exchange				(280)	-
PACE		PACE Exchange				(150)	-
PACE		Goshen				62	62
		Subtotal				425	891

PacifiCorp Generation in PACW

PACW	Bend	1	1	100.0%	1	1
PACW	Black Cap	2	2	100.0%	2	2
PACW	Camas Cogen	19	21	100.0%	19	21
PACW	Clearwater	49	49	100.0%	49	49
PACW	Copco	62	62	100.0%	62	62
PACW	Eagle Point	3	3	100.0%	3	3
PACW	East Side	3	3	100.0%	3	3
PACW	Fall Creek	2	2	100.0%	2	2
PACW	Fish Creek	10	10	100.0%	10	10
BPAT	Goodnoe Hills	94	94	100.0%	94	94
PACW	Hermiston	464	486	50.0%	232	243
PACW	Iron Gate	19	19	100.0%	19	19
PACW	Jim Bridger	2,118	2,118	66.7%	1,412	1,412
PACW	John C. Boyle	84	84	100.0%	84	84
PACW	Leaning Juniper	101	101	100.0%	101	101
PACW	Lemolo	66	63	100.0%	66	63
PACW	Marengo	211	211	100.0%	211	211
PACW	Merwin	151	145	100.0%	151	145

Balancing Authority	Plant Name	Capacity (MW)		Ownership Share	Owned or Purchased (MW)	
		Summer	Winter		Summer	Winter
		Area				
PACW	Prospect	49	50	100.0%	49	50
PACW	Slide Creek	18	18	100.0%	18	18
PACW	Soda Springs	12	11	100.0%	12	11
PACW	Swift I	263	263	100.0%	263	263
PACW	Toketee	45	45	100.0%	45	45
PACW	Wallowa Falls	1	1	100.0%	1	1
PACW	West Side ^{1/}	0.6	0.6	100.0%	1	1
PACW	Yale	164	164	100.0%	164	164
Subtotal					3,072	3,076

Other PacifiCorp Generation in WECC

NWMT	Colstrip 3+4	1,480	1,480	10.0%	148	148
PSCo	Hayden 1	184	184	25.0%	46	46
PSCo	Hayden 2	262	262	13.0%	34	34
WACM	Craig 1+2	856	856	19.0%	163	163
BPAT	Chehalis	509	526	100.0%	509	526
Subtotal					900	917

PacifiCorp Purchases and Sales in PACW

PACW	Biomass One				23	23
PACW	Evergreen BioPower				10	10
PACW	Oregon Wind Farm				65	65
PACW	OM Power I Geothermal				10	10
PACW	Roseburg Dillard				2	2
PACW	Threemile Canyon Wind				10	10
DOPD	Douglas (Wells)	840	840	6.6%	55	55
GCPD	Grant (Priest Rapids; Wanapum)	1,849	1,849	1.1%	21	21
PACW	SMUD				(40)	(40)
PACW	Hermiston				232	243
					232	243

PacifiCorp Total Owned and Purchased					11,854	12,403
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CE Generation/MidAmerican Renewables Generation in WECC (all committed under LT contract)

IID	Salton Sea I	10	10	100.0%	10	10
IID	Salton Sea II	15	15	100.0%	15	15
IID	Salton Sea III	48	48	100.0%	48	48
IID	Salton Sea IV	34	34	100.0%	34	34
IID	Salton Sea V	49	49	100.0%	49	49
IID	Vulcan	30	30	100.0%	30	30
IID	Elmore	34	34	100.0%	34	34
IID	Leathers	34	34	100.0%	34	34
IID	AW Hoch / Del Ranch	34	34	100.0%	34	34
IID	CE Turbo	11	11	100.0%	11	11
AZPS	Yuma	52	54	100.0%	52	54

Balancing Authority	Area	Plant Name	Capacity (MW)		Ownership Share	Owned or Purchased (MW)		
			Summer	Winter		Summer	Winter	
			CAISO		Pinyon Pines I and II	300	300	100.0%
CAISO		Topaz Solar Farm	190	190	100.0%	190	190	
CAISO		Antelope Valley Solar Project	586	586	100.0%	586	586	
CAISO		Agua Caliente	385	385	49.0%	189	189	
CAISO		Solar Star 1	325	325	100.0%	325	325	
CAISO		Solar Star 2	276	276	100.0%	276	276	
Subtotal, CAISO and Other							2,216	2,218

Generation in the Eastern Interconnection and ERCOT

CE Generation/MidAmerican Renewables Generation in WECC (all committed under LT contract)

NYISO	Saranac	248	279	100.0%	248	279	
ERCOT	Power Resources Project	227	235	100.0%	227	235	
						475	514

MidAmerican Energy Generation

MISO	Adair	175	175	100.0%	175	175
MISO	Carroll	150	150	100.0%	150	150
MISO	Century	185	185	100.0%	185	185
MISO	Century Expansion	15	15	100.0%	15	15
MISO	Charles City	75	75	100.0%	75	75
MISO	Coralville	65	80	100.0%	65	80
MISO	Electrifarm	189	244	100.0%	189	244
MISO	Greater Des Moines	495	570	100.0%	495	570
MISO	Intrepid	176	176	100.0%	176	176
MISO	Louisa	750	750	88.0%	660	660
MISO	Merle Parr	33	36	100.0%	33	36
MISO	Miscellaneous Diesel Oil ^{1/}	54	54	100.0%	54	54
MISO	Moline	58	80	100.0%	58	80
MISO	Moline Hydro	2	2	100.0%	2	2
MISO	George Neal North	956	956	84.7%	810	810
MISO	George Neal South	645	645	40.6%	262	262
MISO	Ottumwa	697	703	52.0%	363	365
MISO	Pleasant Hill	158	194	100.0%	158	194
MISO	Pomeroy I	123	123	100.0%	123	123
MISO	Pomeroy II	75	75	100.0%	75	75
MISO	Pomeroy III	59	59	100.0%	59	59
MISO	Pomeroy IV	30	30	100.0%	30	30
PJM	Quad Cities	1,819	1,819	25.0%	455	455
MISO	River Hills	121	150	100.0%	121	150
MISO	Riverside 5	133	133	100.0%	133	133
MISO	Riverside 3	4	4	100.0%	4	4
MISO	Sycamore	149	190	100.0%	149	190
MISO	Victory	99	99	100.0%	99	99
MISO	Walnut	153	153	100.0%	153	153

Balancing Authority	Plant Name	Capacity (MW)		Ownership Share	Owned or Purchased (MW)		
		Summer	Winter		Summer	Winter	
MISO	Walter Scott, Jr. Energy Center	1,642	1,648	71.1%	1,167	1,172	
MISO	Laurel	120	120	100.0%	120	120	
MISO	Rolling Hills	444	444	100.0%	444	444	
MISO	Eclipse	200	200	100.0%	200	200	
MISO	Vienna	103	103	100.0%	103	103	
MISO	Morning Light	101	101	100.0%	101	101	
Subtotal						7,459	7,744

Cordova Energy Co. LLC

PJM	Cordova Energy Center	521	601	100.0%	521	601
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Other Affiliated Generation

MISO	Bishop Hill	200	200	100.0%	200	200
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NV Energy Generation and Purchases

Balancing Authority Area	Plant Name	Capacity (MW)		Ownership Share	Owned or Purchased (MW)		
		Summer	Winter		Summer	Winter	
<u>NV Energy Generation in Southern Nevada</u>							
NEVP	Bighorn/Higgins	570	570	100.0%	570	570	
NEVP	Chuck Lenzie	1,128	1,170	100.0%	1,128	1,170	
NEVP	Clark	1,138	1,243	100.0%	1,138	1,243	
NEVP	Harry Allen	144	152	100.0%	144	152	
NEVP	Harry Allen CC	484	484	100.0%	484	484	
NEVP	Reid Gardner 1-3	300	300	100.0%	300	300	
NEVP	Reid Gardner 4 ^{1/}	257	257	100.0%	257	257	
NEVP	Silverhawk	560	590	75.0%	420	443	
SRP	Navajo	2,250	2,250	11.3%	254	254	
NEVP	Goodsprings	7	7	100.0%	7	7	
Subtotal						4,702	4,880
<u>NV Energy Generation in Northern Nevada</u>							
SPPC	Fort Churchill (1-2)	226	226	100.0%	226	226	
SPPC	Tracy	901	930	100.0%	901	930	
SPPC	North Valmy	522	522	50.0%	261	261	
Subtotal						1,388	1,417
<u>Purchases and Sales</u>							
WALC	Hoover ^{2/}				231	231	
WALC	Griffith ^{3/}				570	-	
NEVP	Apex Solar				10	10	
NEVP	Apex Landfill Renewable Energy Generating Facility				9	9	
NEVP	Sun Peak				222	222	
NEVP	Saguaro				101	105	
NEVP	Nevada Cogen Assoc 1 Garnet Valley				85	85	
NEVP	Nevada Cogen Assoc 2 Black Mtn				85	85	
NEVP	Silverhawk				140	147	
NEVP	Silverhawk-SNWA Sale ^{4/}				(125)	(125)	
NEVP	Las Vegas Cogeneration Facility I ^{3/}				50	-	
NEVP	Nevada Solar One				64	40	
NEVP	Searchlight Solar (COD 3/15/14)				6	6	
NEVP	Spectrum Solar (COD 7/2/13)				10	10	
NEVP	Mountain View Solar (COD 2/2/2014)				20	20	
NEVP	Crescent Dunes (COD 12/31/13)				110	110	
SPPC	Lockwood Landfill				3	3	
PACE	Silver State North Solar Project				50	50	
SPPC	F Hooper				1	1	
SPPC	Homestretch				6	6	
SPPC	Soda Lake I Geothermal No I II				11	14	

Exhibit J-4

Balancing Authority	Plant Name	Capacity (MW)		Ownership Share	Owned or Purchased (MW)		
		Summer	Winter		Summer	Winter	
SPPC	Steamboat Hills				8	10	
SPPC	Steamboat IA,II,III				23	35	
SPPC	Brady Hot Springs				6	6	
SPPC	Desert Peak 2				10	10	
SPPC	Galena 2				9	10	
SPPC	Galena 3				16	22	
SPPC	San Emidio				9	9	
SPPC	Richard Burdette Geothermal				10	10	
SPPC	Beowawe				13	13	
CAISO	Loyalton				10	10	
SPPC	Lahontan				2	2	
SPPC	Fleish				2	2	
SPPC	Verdi				2	2	
SPPC	Washoe				2	1	
SPPC	Salt Wells				5	5	
SPPC	Stillwater				60	77	
SPPC	TS Power Plant				203	203	
NEVP	Blue Mountain Geothermal Project				30	30	
SPPC	Jersey Valley Geothermal				6	6	
SPPC	Tuscarora Geothermal Power Plant				18	18	
SPPC	McGinness Hills				15	15	
SPPC	Spring Valley Wind Project				152	152	
	Subtotal				2,269	1,677	
NV Energy Total Owned and Purchased						8,359	7,974

MODELING AND DATA INPUTS

The model includes each potential supplier as a distinct “node” or area that is connected via a transportation (or “pipes”) representation of the transmission network. Each link in the network has its own non-simultaneous limit and cost. Potential suppliers are allowed to use all economically and physically feasible links or paths to reach the destination market. In instances where more generation meets the economic facet of the delivered price test than can actually be delivered on the transmission network, scarce transmission capacity is allocated based on the relative amount of economic generation that each party controls in first-tier markets. The model incorporates Simultaneous Import Limits (“SILs”).

I conducted the competitive analysis screen using the existing market structure of the Western Electricity Coordination Council (“WECC”). My analysis relies primarily on publicly available data on generating resources, loads and transmission capacity, including Integrated Resource Plans where available. The data inputs were adjusted to reflect 2014 conditions.

I included as potential suppliers all entities in WECC, although the actual potential suppliers into each destination market were limited to a subset of the WECC region depending on the potential supplier’s distance (in wheels) from the destination market. The model includes all significant generation sources, including traditional utilities, merchant generators, municipal utilities and cooperatives. Each entity is generally modeled as an individual “node.”¹

A. Generating Resources

The data on generating plant capability is mainly from Ventyx, The Velocity Suite’s databases (“Ventyx”),² which also are largely based on public reports such as the EIA-860 and the EIA-411 reports. These data sources provide information on capacity (nameplate and seasonal (summer and winter) net dependable capacity (“NDC”) ratings),

¹ The term “nodes” is used to denote a region or bubble where load, generation, or transmission assets are aggregated.

² Ventyx is a set of databases, analytical tools and forecasts that is widely used in the industry.

planned retirements and additions, operating status, primary and secondary fuel, and ownership, including jointly-owned units. Seasonal NDC ratings were used for the analyses, with the summer ratings used for the shoulder time periods. All units with operating status listed as “Operating” or planned to be online by the second quarter of 2014 were included in the analysis. For jointly-owned plants, shares were assigned to each of the respective owners.

Each supplier’s generating resources were adjusted to reflect long-term (one year or more) capacity purchases and sales where they could be identified from publicly available data.³ Generation ownership was adjusted to reflect a presumed transfer of control by assuming that the sale resulted in a decrease in capacity for the seller and a corresponding increase in capacity for the buyer.⁴ Consistent with guidance provided in Appendix A, it was assumed that system power sales were comprised of the lowest-cost supply for the seller unless a more representative price could be identified.⁵ Public data on purchases and sales, however, are not entirely complete or consistent across sources.

Because the delivered price test is intended to evaluate energy products, seasonal capacity was de-rated to approximate the actual availability of the units in each period. That is, it was assumed that generation capacity would be unavailable during some hours of the year for either (planned) maintenance or forced (unplanned) outages. Data reported in the NERC “Generating Availability Data System” (“GADS”) was used to calculate the

³ Sources for such information include FERC Form 1 and EIA Forms 411 and 412, utility resource plans and NERC’s Electricity Supply and Demand database (as compiled by Ventyx). Requirements contracts are treated as the equivalent of native load and potential supplier’s Economic Capacity was not adjusted to reflect them.

⁴ The Revised Filing Requirements direct applicants to consider whether operational control of a unit is transferred to the buyer. Such information generally is not readily available for non-applicants. In addition, this treatment of “moving” generation or external purchases is consistent with the presumption that there are corresponding transmission reservations from the location of the generation to the owner/buyer. To the extent there are other long-term transmission reservations for which we cannot identify an external firm resource, such reservations are not reflected in the analysis.

⁵ “[T]he lowest running cost units are used to serve native load and other firm contractual obligations” (Order No. 592 at 30,132). The lowest-cost supply that was available year-round (i.e., excluding hydro) was used. To the extent that long-term sales could be identified specifically as unit sales, the capacity of the specific generating unit was adjusted to reflect the sale, and the variable element of the purchase price attributed to the sale was the variable cost of the unit. The dispatch price for system purchases was based on the energy price reported for long-term purchases in FERC Form 1 where such purchases could be identified and a variable cost price determined. In instances where the purchases could not be matched with FERC Form 1 data, the dispatch price was estimated.

“average equivalent availability factor” to estimate total outages, and the “average equivalent forced outage rate” to estimate forced outages for fossil and nuclear plants.⁶ Based on a review of historical planned outages (as reported in Applicants’ FERC Form 714), scheduled maintenance was assumed to occur mostly in the shoulder season (80 percent), with the remainder scheduled during the winter season. Forced outages were assumed to occur uniformly throughout the year.

Supply curves were developed for each potential supplier, based on estimates of each unit’s incremental costs. The incremental cost is calculated by multiplying the fuel cost for the unit by the unit’s efficiency (heat rate) and adding any additional variable costs that may apply, such as costs for variable operations and maintenance (“VO&M”) and costs for environmental controls.

Data used to derive incremental cost estimates for each unit were taken from the following sources:

- Heat Rates – Heat rates were generally taken from Ventyx, which provides information on heat rates and their sources.
- Fuel Costs - Regional dispatch costs for fossil fuel units were from projected fuel prices. For gas-fired units, I relied on Ventyx’s natural gas prices forecast in the WECC. For oil fired units I used 2012 EIA daily fuel prices, for the relevant fuel type used at each unit, escalated to 2014 based on NYMEX ClearPort and Future crude oil prices. For coal-fired units, I used plant specific coal spot prices from the detailed coal transactions reported in FERC Form 423 supplemented by Ventyx’s Spot prices. In instances where no spot price was available for a given unit, I used regional average price estimate as a default.
- Variable O&M – VO&M were generally assigned to each unit based on the unit’s characteristics. These generic estimates are based on information in Ventyx and other trade and industry sources. These VO&M costs are generic estimates by plant type and do not necessarily match actual individual unit VO&M costs. Notably, VO&M accounts for a minor portion of the dispatch costs used in the analysis, and,

⁶ GADS data covering 2007 to 2011 was used in most instances. In addition to thermal unit availability, hydro unit availability and generation are specified for each time period. Hydro capacity factors have been assigned to each unit based on historical operation. Capacity factors for hydro units were based on five years of Form 923 monthly generation data, reported maximum capacities and, where necessary, assumptions regarding minimum capacity (assumed to be 15 percent of maximum if no data is available). Solar and Wind facilities were rated at a 30 percent capacity factor, based on information from Ventyx and other public documents.

importantly, the specific VO&M assumption tends not to alter the merit order of the generic types of generation.

- Environmental Costs – All units are assessed a variable dispatch adder to cover costs associated with SO₂ emissions. This unit-specific cost is calculated using the SO₂ content of fuel burned at the unit as reported in FERC Form 423 and supplemented by Ventyx’s unit specific data and an SO₂ allowance cost of \$16.59/ton.

B. Transmission

The Commission’s Appendix A analysis specifies that the transmission system be modeled on the basis of inter-balancing authority area transmission capability using transmission prices based on transmission providers’ maximum non-firm OATT rates, except where lower rates can be clearly documented.

The database was set up to account for how transmission capacity is calculated and reported in the WECC. Unlike many NERC regions in the Eastern Interconnection, the WECC calculates and reports transmission capacity based on key interfaces, rather than on a strict BAA-to-BAA basis. In addition, many of the transmission lines within the WECC are jointly-owned and used to deliver power from remote generation facilities to load areas.

The Total Transfer Capabilities (“TTC”) values used for specifying the transmission network in the WECC model are provided in the work papers. The principal source for the TTC data is the WECC Path Rating guide, company information and OASIS. In addition, data from the WECC OTC report was used to verify the data for interfaces where the OTC data was available. The TTC values were adjusted to incorporate any firm, long-term flows across the limits (*e.g.*, if a remote, jointly-owned unit has a long-term commitment to serve load in another area of the network, the TTC values were adjusted to reflect the energy from the remote generating unit using the transmission path(s)). The model includes some non-supplier nodes to represent key interfaces and are included in the analysis to properly model generation and transmission capability.⁷

⁷ In workpapers, I provide a number of maps showing the actual posted paths in the WECC, which highlight the interconnectedness of various entities in the WECC in terms of jointly-owned lines and posted paths that are not strictly BAA-to-BAA.

I have assumed transmission rates of \$2/MWh on-peak and \$1/MWh off-peak and have not incorporated losses. These assumptions have a *de minimis* impact on the results of the analyses, particularly given the structure of the WECC region and the Commission's guidance terms of how to allocate external economic supply into the destination market. In addition, in the WECC there are a number of different structures for short-term energy sales either currently in place (*e.g.*, WestConnect, which the Commission recently re-approved)⁸ or expected to be in place in the near future (*e.g.*, Energy Imbalance Market)⁹ that significantly reduce transmission costs in most areas of the WECC.

As discussed in Exhibit J-1, the transmission planning groups at PacifiCorp and NV Energy calculated the seasonal SILs for their respective BAAs for a forward-looking 2014 year (winter 2013/14, summer 2014 and autumn 2014, the latter of which I used for the shoulder periods). For first-tier markets, I used the SILs that the transmission owners in the Southwest and Northwest Regions filed in connection with the most recent round of market-based triennial filings. The SILs for each of Applicants' markets consistent with the Commission's Table 1 and Table 2 are provided in workpapers.¹⁰ The SILs directly used in the DPT analysis differ slightly, because the Table 2 deductions in the DPT can reflect adjustments for moving capacity into the BAA for the 10 time periods based on both economics and for de-rating the capacity. For example, NV Energy has a long-term contract for the output of the Griffith facility (located in WALC) during the summer season. This requires a transmission reservation to move the power from WALC into NEVP. In Table 2, this is reflected as a 570 MW "Purchased Power Agreement where the energy is imported into the study area with long-term firm reservations", which is then reflected on Row 6 of Table 1 as "long-term firm transmission reservations from Table 2". The 570 MW is properly reflected in Tables 1 and 2 based on the facility's capacity rating, but in the DPT analysis, I adjust that amount to reflect the facts that (1) planned and forced outages are taken into account; and (2) the output of the facility is only assumed to "move" into NEVP during time periods when it meets the economic facet of the DPT.

⁸ See *WestConnect*, 143 FERC ¶ 61,291 (2013).

⁹ See *California Independent System Operator Corporation*, 143 FERC ¶ 61,298 (2013), accepting proposed implementation agreement.

¹⁰ <http://www.ferc.gov/industries/electric/gen-info/mbr/other-type/submittals-1-and-2-calculation.xls>.

C. Load

Hourly load data from 2012 FERC Form 714 were used as the basis for most entities' obligations. These loads were escalated to reflect 2014 based on forecasts within these same forms or from more specific company information, including Integrated Resource Plans.¹¹ For PacifiCorp, I used information provided by the company on its 2014 peak load and energy forecasts for PACE and PACW (taking into account that the FERC Form 714 does not report separate hourly load data for PACE and PACW).

When analyzing the NVE, NEVP, SPPC and other markets first-tier to these NV Energy, I cut all loads in the model based on the load shape reflected in NV Energy's 2012 hourly load data.¹² (For example, the Winter Super Peak period is defined to include the top 10 percent of peak load hours in December through February. The hourly load data was sorted into peak versus off-peak hours in December through February and then the peak hours were sorted from highest to lowest based on NV Energy's hourly load. Next, the top 10 percent of the hours were designated as Winter Super Peak. The remaining time periods were aggregated in the same way.) When analyzing the PACE, PACW and other markets first-tier to PacifiCorp, I cut all loads in the model based on PACE's 2012 hours.¹³

I have not included other obligations that commit a portion of some entities' generating capacity over and above load obligations and not made available for energy sales. For example, operating reserve requirements or ancillary services needs may result in a reduction of energy supply. In its market-based rate indicative screens, the Commission recognizes operating reserves as a deduction to generation available to the market. Because NV Energy and PacifiCorp would be disproportionately affected by the

¹¹ I modeled Energy Northwest, a Washington joint operating agency whose primary resource is the Columbia nuclear power station, as part of BPA and included an additional 1,500 MW to BPA's loads in each time period to conservatively exclude Energy Northwest as a potential supplier in the AEC measure.

¹² In my analysis, on-peak hours include Hour Ending (HE) 0700–HE 2200 Monday through Friday.

¹³ Specifically, I used load values (and prices) cut on NV Energy for CAISO, LDWP and WALC, and used load values (and prices) cut on PACE for AZPS, AVA, BPAT, GCPD, IPCO, NWMT, PGE and WACM.

inclusion of operating reserves (because there generally is more than sufficient energy supply to maximize imports), my treatment is conservative.

D. EQR Data - Prices

As required by the Commission, EQR data was used to estimate destination market prices. Specifically, the EQR database was queried (using Ventyx, a third-party provider of the EQR data) to retrieve the following transaction data: (1) short-term energy and booked-out power transactions; and (2) any transactions for which the Point of Delivery Balancing Authority (“PODBA”) was NEVP, SPPC, PACE or PACW.¹⁴ To determine prices for the NV Energy markets, I included transactions with PODBA of NEVP and SPPC and used time periods defined for each hour based on NVE’s hourly load data in 2011 and 2012. Similarly, to determine prices for the PacifiCorp markets, I included transactions with PODBA of PACE and PACW and used time periods defined for each hour based on PACE’s hourly load data in 2011 and 2012 (the latter of which was provided by PacifiCorp). Using this data, I calculated a set of hourly prices for 2011 and 2012 that was then averaged into the 10 time DPT periods. These historical prices were then adjusted to reflect the forward-looking 2014 analysis using the change in gas prices from 2011 or 2012 to 2014, and an analysis of the type of generation operating during each time period (*e.g.*, gas-fired peakers in S_SP1 versus gas-fired combined-cycle plants in S_P). I made one adjustment to the EQR-derived prices; because the S_SP1 time period represents only a single highest peak hour, I used a \$100/MWh price for the S_SP1 time period instead of the somewhat lower prices derived strictly from the EQR data. This adjustment is conservative (*i.e.*, adverse to the results of the DPT for Applicants).

Generally, the coverage of hours in each time period from the historical EQR data is reasonable, and the number of hours where EQR data were available during each time period is shown in workpapers. I used a simple average of the hourly data to determine prices; using a weighted-average would not materially impact the estimated historical prices.¹⁵

¹⁴ Other specific EQR-categories that were applied such as excluding affiliated-transactions, are shown in workpapers.

¹⁵ A few additional price sensitivity analyses are included in workpapers.

E. EQR Data – Historical Purchases and Sales

EQR data was also used to review historical purchases and sales. Specifically, the EQR database was queried to retrieve information on both long-term and short-term energy purchases and sales for Applicants throughout the WECC. The information is discussed in Exhibit J-1 and provided in workpapers.

Delivered Price Test Results - Available Economic Capacity (Base Case)

Scenario: Base Case Prices

Market	Period	Price	Pre-Transaction						Post-Transaction					
			NV Energy			MidAmerican			MidAmerican			Market		
			MW	Share	Mkt Share	MW	Share	Mkt Share	MW	Share	Mkt Share	Size	HHI	HHI Chg
NVE	S_SP1	\$ 100	85	1.4%	0.0%	2	0.0%	5,966	535	88	1.5%	5,966	536	0
NVE	S_SP2	\$ 60	807	12.1%	0.6%	39	0.6%	6,687	571	846	12.6%	6,687	585	14
NVE	S_P	\$ 43	1,222	17.7%	2.1%	143	2.1%	6,921	749	1,365	19.7%	6,921	822	73
NVE	S_OP	\$ 26	-	0.0%	5.0%	276	5.0%	5,550	812	276	5.0%	5,550	812	-
NVE	W_SP	\$ 47	1,629	26.1%	0.8%	50	0.8%	6,253	992	1,680	26.9%	6,253	1,034	42
NVE	W_P	\$ 43	2,131	31.5%	1.2%	83	1.2%	6,754	1,222	2,214	32.8%	6,754	1,300	78
NVE	W_OP	\$ 27	-	0.0%	0.6%	24	0.6%	3,877	551	24	0.6%	3,877	551	-
NVE	SH_SP	\$ 51	146	2.3%	1.1%	72	1.1%	6,479	600	218	3.4%	6,479	605	5
NVE	SH_P	\$ 38	1,132	15.2%	2.3%	174	2.3%	7,466	575	1,306	17.5%	7,466	646	71
NVE	SH_OP	\$ 23	-	0.0%	0.0%	-	0.0%	3,815	629	-	0.0%	3,815	629	-

Market	Period	Price	Pre-Transaction						Post-Transaction					
			NV Energy			MidAmerican			MidAmerican			Market		
			MW	Share	Mkt Share	MW	Share	Mkt Share	MW	Share	Mkt Share	Size	HHI	HHI Chg
PACE	S_SP1	\$ 100	12	0.2%	0.1%	8	0.1%	5,865	472	20	0.3%	5,865	472	0
PACE	S_SP2	\$ 59	126	2.2%	0.1%	8	0.1%	5,797	443	134	2.3%	5,797	444	1
PACE	S_P	\$ 42	140	2.2%	10.7%	666	10.7%	6,237	534	806	12.9%	6,237	582	48
PACE	S_OP	\$ 28	-	0.0%	0.8%	45	0.8%	5,606	882	45	0.8%	5,606	882	-
PACE	W_SP	\$ 46	203	3.4%	11.4%	683	11.4%	6,004	519	886	14.8%	6,004	596	77
PACE	W_P	\$ 39	183	2.9%	15.7%	992	15.7%	6,304	618	1,175	18.6%	6,304	709	91
PACE	W_OP	\$ 25	-	0.0%	1.2%	66	1.2%	5,686	495	66	1.2%	5,686	495	-
PACE	SH_SP	\$ 46	-	0.0%	8.7%	523	8.7%	5,994	526	523	8.7%	5,994	526	-
PACE	SH_P	\$ 36	-	0.0%	16.2%	1,019	16.2%	6,296	646	1,019	16.2%	6,296	646	-
PACE	SH_OP	\$ 21	-	0.0%	0.0%	-	0.0%	3,526	697	-	0.0%	3,526	697	-

Delivered Price Test Results - Available Economic Capacity (Base Case)

Scenario: Base Case Prices

Market	Period	Price	Pre-Transaction						Post-Transaction						
			NV Energy			MidAmerican			MidAmerican			Market			
			MW	Share	Mkt	MW	Share	Mkt	MW	Share	Mkt	MW	Share	Mkt	Size
PACW	S_SP1	\$ 100	6	0.3%	-	0.0%	2,282	858	6	0.3%	2,282	858	-	-	-
PACW	S_SP2	\$ 59	43	1.9%	0	0.0%	2,282	829	43	1.9%	2,282	829	0	0	0
PACW	S_P	\$ 42	55	2.2%	235	9.4%	2,496	850	290	11.6%	2,496	892	42	42	42
PACW	S_OP	\$ 28	-	0.0%	-	0.0%	2,556	1,013	-	0.0%	2,556	1,013	-	-	-
PACW	W_SP	\$ 46	98	3.4%	54	1.9%	2,867	720	152	5.3%	2,867	733	13	13	13
PACW	W_P	\$ 39	138	4.8%	100	3.5%	2,880	650	238	8.3%	2,880	684	33	33	33
PACW	W_OP	\$ 25	-	0.0%	-	0.0%	3,182	621	-	0.0%	3,182	621	-	-	-
PACW	SH_SP	\$ 46	-	0.0%	18	0.8%	2,309	922	18	0.8%	2,309	922	-	-	-
PACW	SH_P	\$ 36	-	0.0%	77	3.3%	2,308	770	77	3.3%	2,308	770	-	-	-
PACW	SH_OP	\$ 21	-	0.0%	-	0.0%	3,294	749	-	0.0%	3,294	749	-	-	-

Delivered Price Test Results - Available Economic Capacity

Scenario: Price Sensitivity (+10%)

Market	Period	Price	Pre-Transaction						Post-Transaction					
			NV Energy			MidAmerican			MidAmerican			Market		
			MW	Share	Mkt Share	MW	Share	Mkt Share	MW	Share	Mkt Share	Size	HHI	HHI Chg
NVE	S_SP1	\$ 110	85	1.4%	0.0%	2	0.0%	5,966	535	88	1.5%	5,966	536	0
NVE	S_SP2	\$ 66	852	12.7%	0.6%	39	0.6%	6,733	580	890	13.2%	6,733	594	14
NVE	S_P	\$ 48	1,222	17.7%	2.0%	136	2.0%	6,921	702	1,358	19.6%	6,921	772	70
NVE	S_OP	\$ 29	-	0.0%	4.7%	262	4.7%	5,552	734	262	4.7%	5,552	734	-
NVE	W_SP	\$ 51	1,730	27.2%	0.8%	52	0.8%	6,354	1,024	1,782	28.1%	6,354	1,068	45
NVE	W_P	\$ 47	2,131	31.5%	1.1%	77	1.1%	6,754	1,214	2,207	32.7%	6,754	1,285	71
NVE	W_OP	\$ 30	-	0.0%	3.4%	131	3.4%	3,882	686	131	3.4%	3,882	686	-
NVE	SH_SP	\$ 56	472	6.8%	1.0%	71	1.0%	6,983	559	543	7.8%	6,983	573	14
NVE	SH_P	\$ 42	1,270	16.7%	2.2%	170	2.2%	7,604	615	1,441	18.9%	7,604	690	75
NVE	SH_OP	\$ 25	-	0.0%	1.1%	55	1.1%	5,104	509	55	1.1%	5,104	509	-

Market	Period	Price	Pre-Transaction						Post-Transaction					
			NV Energy			MidAmerican			MidAmerican			Market		
			MW	Share	Mkt Share	MW	Share	Mkt Share	MW	Share	Mkt Share	Size	HHI	HHI Chg
PACE	S_SP1	\$ 110	12	0.2%	0.1%	8	0.1%	5,865	472	20	0.3%	5,865	472	0
PACE	S_SP2	\$ 65	167	2.9%	0.1%	8	0.1%	5,797	444	175	3.0%	5,797	445	1
PACE	S_P	\$ 46	155	2.4%	12.1%	790	12.1%	6,550	509	945	14.4%	6,550	566	57
PACE	S_OP	\$ 31	-	0.0%	22.5%	1,589	22.5%	7,064	836	1,589	22.5%	7,064	836	-
PACE	W_SP	\$ 51	184	2.9%	12.8%	810	12.8%	6,324	514	995	15.7%	6,324	589	75
PACE	W_P	\$ 43	241	3.8%	15.7%	991	15.7%	6,304	594	1,233	19.6%	6,304	715	120
PACE	W_OP	\$ 27	-	0.0%	8.7%	501	8.7%	5,781	590	501	8.7%	5,781	590	-
PACE	SH_SP	\$ 50	-	0.0%	10.1%	613	10.1%	6,087	508	613	10.1%	6,087	508	-
PACE	SH_P	\$ 40	160	2.5%	16.2%	1,017	16.2%	6,296	614	1,177	18.7%	6,296	696	82
PACE	SH_OP	\$ 23	-	0.0%	0.0%	-	0.0%	3,526	697	-	0.0%	3,526	697	-

Delivered Price Test Results - Available Economic Capacity

Scenario: Price Sensitivity (+10%)

Market	Period	Price	Pre-Transaction						Post-Transaction					
			NV Energy			MidAmerican			MidAmerican			Market		
			MW	Share	Mkt	MW	Share	Mkt	MW	Share	Mkt	MW	Share	Mkt
PACW	S_SP1	\$ 110	6	0.3%	-	0.0%	2,282	858	0.3%	6	0.3%	2,282	858	-
PACW	S_SP2	\$ 65	50	2.2%	0	0.0%	2,282	829	2.2%	50	2.2%	2,282	829	0
PACW	S_P	\$ 46	55	2.2%	236	9.5%	2,496	795	11.7%	291	11.7%	2,496	837	42
PACW	S_OP	\$ 31	-	0.0%	761	25.8%	2,943	1,119	25.8%	761	25.8%	2,943	1,119	-
PACW	W_SP	\$ 51	84	2.9%	55	1.9%	2,867	684	4.8%	139	4.8%	2,867	695	11
PACW	W_P	\$ 43	140	4.9%	96	3.3%	2,880	623	8.2%	236	8.2%	2,880	655	32
PACW	W_OP	\$ 27	-	0.0%	157	5.0%	3,119	659	5.0%	157	5.0%	3,119	659	-
PACW	SH_SP	\$ 50	-	0.0%	19	0.8%	2,309	845	0.8%	19	0.8%	2,309	845	-
PACW	SH_P	\$ 40	128	5.6%	66	2.9%	2,308	733	8.4%	194	8.4%	2,308	765	32
PACW	SH_OP	\$ 23	-	0.0%	-	0.0%	3,294	749	0.0%	-	0.0%	3,294	749	-

Delivered Price Test Results - Available Economic Capacity

Scenario: Price Sensitivity (-10%)

Market	Period	Price	Pre-Transaction						Post-Transaction					
			NV Energy			MidAmerican			MidAmerican			Market		
			MW	Share	Mkt Share	MW	Share	Mkt Share	MW	Share	Mkt Share	Size	HHI	HHI Chg
NVE	S_SP1	\$ 90	85	1.4%	0.0%	2	0.0%	5,966	535	88	1.5%	5,966	536	0
NVE	S_SP2	\$ 54	493	7.7%	0.5%	32	0.5%	6,373	530	525	8.2%	6,373	538	8
NVE	S_P	\$ 39	1,059	15.7%	2.2%	148	2.2%	6,759	719	1,207	17.9%	6,759	788	68
NVE	S_OP	\$ 24	-	0.0%	0.0%	-	0.0%	5,417	1,141	-	0.0%	5,417	1,141	-
NVE	W_SP	\$ 42	1,479	24.2%	0.9%	53	0.9%	6,102	931	1,532	25.1%	6,102	973	42
NVE	W_P	\$ 39	1,537	25.1%	1.4%	88	1.4%	6,114	917	1,625	26.6%	6,114	990	72
NVE	W_OP	\$ 24	-	0.0%	0.0%	-	0.0%	3,755	526	-	0.0%	3,755	526	-
NVE	SH_SP	\$ 46	-	0.0%	0.9%	60	0.9%	6,334	720	60	0.9%	6,334	720	-
NVE	SH_P	\$ 35	231	3.5%	2.9%	192	2.9%	6,524	510	423	6.5%	6,524	531	21
NVE	SH_OP	\$ 20	-	0.0%	0.0%	-	0.0%	3,823	627	-	0.0%	3,823	627	-

Market	Period	Price	Pre-Transaction						Post-Transaction					
			NV Energy			MidAmerican			MidAmerican			Market		
			MW	Share	Mkt Share	MW	Share	Mkt Share	MW	Share	Mkt Share	Size	HHI	HHI Chg
PACE	S_SP1	\$ 90	12	0.2%	0.1%	8	0.1%	5,865	472	20	0.3%	5,865	472	0
PACE	S_SP2	\$ 53	99	1.7%	0.1%	6	0.1%	5,793	456	105	1.8%	5,793	456	0
PACE	S_P	\$ 37	62	1.0%	10.7%	668	10.7%	6,237	571	730	11.7%	6,237	592	21
PACE	S_OP	\$ 26	-	0.0%	0.9%	51	0.9%	5,653	1,095	51	0.9%	5,653	1,095	-
PACE	W_SP	\$ 42	191	3.2%	11.4%	684	11.4%	6,004	524	875	14.6%	6,004	597	73
PACE	W_P	\$ 35	-	0.0%	16.0%	1,006	16.0%	6,304	686	1,006	16.0%	6,304	686	-
PACE	W_OP	\$ 22	-	0.0%	0.0%	-	0.0%	4,136	644	-	0.0%	4,136	644	-
PACE	SH_SP	\$ 41	-	0.0%	7.0%	401	7.0%	5,686	573	401	7.0%	5,686	573	-
PACE	SH_P	\$ 33	-	0.0%	16.5%	1,041	16.5%	6,296	632	1,041	16.5%	6,296	632	-
PACE	SH_OP	\$ 19	-	0.0%	0.0%	-	0.0%	3,526	697	-	0.0%	3,526	697	-

Delivered Price Test Results - Available Economic Capacity

Scenario: Price Sensitivity (-10%)

Market	Period	Price	Pre-Transaction						Post-Transaction					
			NV Energy			MidAmerican			MidAmerican			Market		
			MW	Share	Mkt	MW	Share	Mkt	MW	Share	Mkt	Market Size	HHI	HHI Chg
PACW	S_SP1	\$ 90	6	0.3%	-	0.0%	2,282	858	6	0.3%	2,282	858	-	
PACW	S_SP2	\$ 53	37	1.6%	-	0.0%	2,282	836	37	1.6%	2,282	836	-	
PACW	S_P	\$ 37	30	1.2%	236	9.4%	2,496	882	266	10.6%	2,496	905	23	
PACW	S_OP	\$ 26	-	0.0%	-	0.0%	2,556	1,089	-	0.0%	2,556	1,089	-	
PACW	W_SP	\$ 42	102	3.5%	55	1.9%	2,867	741	157	5.5%	2,867	754	14	
PACW	W_P	\$ 35	-	0.0%	129	4.5%	2,880	751	129	4.5%	2,880	751	-	
PACW	W_OP	\$ 22	-	0.0%	-	0.0%	3,961	631	-	0.0%	3,961	631	-	
PACW	SH_SP	\$ 41	-	0.0%	15	0.7%	2,309	993	15	0.7%	2,309	993	-	
PACW	SH_P	\$ 33	-	0.0%	147	6.4%	2,308	713	147	6.4%	2,308	713	-	
PACW	SH_OP	\$ 19	-	0.0%	-	0.0%	3,294	749	-	0.0%	3,294	749	-	

Delivered Price Test Results - Economic Capacity

Scenario: Base Case Prices

Market	Period	Price	Pre-Transaction						Post-Transaction					
			NV Energy			MidAmerican			MidAmerican			Market		
			MW	Share	Mkt Share	MW	Share	Mkt Share	MW	Share	Mkt Share	Size	HHI	HHI Chg
NVE	S_SP1	\$ 100	7,513	54.0%	2.1%	287	7,800	56.1%	13,905	3,013	3,236	223		
NVE	S_SP2	\$ 60	7,468	53.9%	2.1%	292	7,760	56.0%	13,859	2,998	3,225	227		
NVE	S_P	\$ 43	6,148	49.7%	2.7%	335	6,483	52.5%	12,358	2,596	2,866	270		
NVE	S_OP	\$ 26	1,737	22.9%	5.7%	434	2,171	28.7%	7,575	854	1,116	263		
NVE	W_SP	\$ 47	5,317	51.0%	2.4%	246	5,563	53.3%	10,435	2,712	2,952	240		
NVE	W_P	\$ 43	5,315	51.5%	2.8%	286	5,601	54.2%	10,328	2,754	3,039	285		
NVE	W_OP	\$ 27	1,636	28.3%	6.0%	348	1,984	34.3%	5,782	1,073	1,414	341		
NVE	SH_SP	\$ 51	5,376	44.2%	2.8%	345	5,722	47.1%	12,159	2,099	2,350	251		
NVE	SH_P	\$ 38	4,574	40.6%	4.4%	500	5,074	45.1%	11,258	1,780	2,141	361		
NVE	SH_OP	\$ 23	945	14.2%	3.2%	213	1,157	17.3%	6,675	684	774	90		

Market	Period	Price	Pre-Transaction						Post-Transaction					
			NV Energy			MidAmerican			MidAmerican			Market		
			MW	Share	Mkt Share	MW	Share	Mkt Share	MW	Share	Mkt Share	Size	HHI	HHI Chg
PACE	S_SP1	\$ 100	470	3.4%	47.0%	6,580	7,050	50.4%	13,991	2,318	2,633	316		
PACE	S_SP2	\$ 59	448	3.2%	47.5%	6,650	7,098	50.7%	13,991	2,362	2,667	304		
PACE	S_P	\$ 42	422	3.2%	47.6%	6,342	6,764	50.7%	13,331	2,364	2,666	301		
PACE	S_OP	\$ 28	169	1.5%	40.6%	4,671	4,839	42.0%	11,514	1,786	1,905	119		
PACE	W_SP	\$ 46	356	2.8%	47.6%	5,993	6,349	50.4%	12,595	2,361	2,630	269		
PACE	W_P	\$ 39	341	2.8%	48.1%	5,933	6,275	50.8%	12,340	2,408	2,674	266		
PACE	W_OP	\$ 25	158	1.6%	33.4%	3,267	3,425	35.0%	9,778	1,324	1,432	108		
PACE	SH_SP	\$ 46	334	2.6%	46.3%	5,848	6,182	49.0%	12,622	2,243	2,488	245		
PACE	SH_P	\$ 36	218	1.8%	47.4%	5,669	5,887	49.2%	11,956	2,343	2,515	173		
PACE	SH_OP	\$ 21	83	1.3%	11.7%	754	838	12.9%	6,471	720	750	30		

Delivered Price Test Results - Economic Capacity

Scenario: Base Case Prices

Market	Period	Price	Pre-Transaction						Post-Transaction							
			NV Energy			MidAmerican			MidAmerican			Market				
			Mkt Share	MW	Price	Mkt Share	MW	Price	Mkt Share	MW	Price	Mkt Share	MW	Price		
PACW	S_SP1	\$ 100	26	0.5%	3,194	60.0%	5,325	3,728	3,728	3,728	3,728	3,728	3,728	3,728	3,787	59
PACW	S_SP2	\$ 59	26	0.5%	3,196	60.0%	5,325	3,732	3,732	3,732	3,732	3,732	3,732	3,732	3,791	59
PACW	S_P	\$ 42	31	0.6%	3,203	60.4%	5,300	3,783	3,783	3,783	3,783	3,783	3,783	3,783	3,854	71
PACW	S_OP	\$ 28	63	1.3%	2,507	51.8%	4,840	2,850	2,850	2,850	2,850	2,850	2,850	2,850	2,986	135
PACW	W_SP	\$ 46	48	0.9%	2,859	51.0%	5,601	2,765	2,765	2,765	2,765	2,765	2,765	2,765	2,852	87
PACW	W_P	\$ 39	57	1.1%	2,694	49.9%	5,394	2,650	2,650	2,650	2,650	2,650	2,650	2,650	2,755	105
PACW	W_OP	\$ 25	110	2.2%	1,899	38.9%	4,886	1,757	1,757	1,757	1,757	1,757	1,757	1,931	174	
PACW	SH_SP	\$ 46	43	0.9%	2,555	51.3%	4,983	2,799	2,799	2,799	2,799	2,799	2,799	2,887	88	
PACW	SH_P	\$ 36	56	1.2%	2,350	49.8%	4,719	2,636	2,636	2,636	2,636	2,636	2,636	2,753	117	
PACW	SH_OP	\$ 21	114	2.6%	553	12.8%	4,315	703	703	703	703	703	703	771	68	

Delivered Price Test Results - Economic Capacity

Scenario: Price Sensitivity (+10%)

Market	Period	Price	Pre-Transaction						Post-Transaction					
			NV Energy			MidAmerican			MidAmerican			Market		
			MW	Share	Mkt Share	MW	Share	Mkt Share	MW	Share	Mkt Share	Size	HHI	HHI Chg
NVE	S_SP1	\$ 110	7,513	54.0%	287	2.1%	13,905	3,013	7,800	56.1%	13,905	3,236	223	
NVE	S_SP2	\$ 66	7,513	54.0%	291	2.1%	13,905	3,013	7,805	56.1%	13,905	3,240	226	
NVE	S_P	\$ 48	6,148	49.7%	318	2.6%	12,358	2,591	6,466	52.3%	12,358	2,847	256	
NVE	S_OP	\$ 29	1,737	22.9%	449	5.9%	7,575	853	2,186	28.9%	7,575	1,125	272	
NVE	W_SP	\$ 51	5,418	51.4%	234	2.2%	10,536	2,754	5,652	53.6%	10,536	2,983	229	
NVE	W_P	\$ 47	5,315	50.9%	273	2.6%	10,433	2,697	5,588	53.6%	10,433	2,963	266	
NVE	W_OP	\$ 30	1,636	28.3%	384	6.6%	5,782	1,076	2,020	34.9%	5,782	1,452	376	
NVE	SH_SP	\$ 56	5,702	45.0%	335	2.6%	12,662	2,162	6,038	47.7%	12,662	2,401	239	
NVE	SH_P	\$ 42	4,712	41.0%	494	4.3%	11,495	1,806	5,206	45.3%	11,495	2,158	352	
NVE	SH_OP	\$ 25	1,322	18.2%	460	6.3%	7,252	704	1,783	24.6%	7,252	935	231	

Market	Period	Price	Pre-Transaction						Post-Transaction					
			NV Energy			MidAmerican			MidAmerican			Market		
			MW	Share	Mkt Share	MW	Share	Mkt Share	MW	Share	Mkt Share	Size	HHI	HHI Chg
PACE	S_SP1	\$ 110	470	3.4%	6,580	47.0%	13,991	2,318	7,050	50.4%	13,991	2,633	316	
PACE	S_SP2	\$ 65	467	3.3%	6,649	47.5%	13,991	2,362	7,116	50.9%	13,991	2,679	317	
PACE	S_P	\$ 46	422	3.1%	6,461	47.0%	13,740	2,311	6,883	50.1%	13,740	2,600	289	
PACE	S_OP	\$ 31	199	1.5%	6,361	48.3%	13,165	2,434	6,560	49.8%	13,165	2,581	146	
PACE	W_SP	\$ 51	339	2.6%	6,114	47.0%	13,015	2,305	6,453	49.6%	13,015	2,550	245	
PACE	W_P	\$ 43	373	3.0%	5,930	48.1%	12,340	2,405	6,303	51.1%	12,340	2,695	291	
PACE	W_OP	\$ 27	164	1.5%	4,909	43.8%	11,206	2,048	5,073	45.3%	11,206	2,176	128	
PACE	SH_SP	\$ 50	320	2.5%	5,934	46.7%	12,719	2,274	6,254	49.2%	12,719	2,509	235	
PACE	SH_P	\$ 40	359	3.0%	5,662	47.4%	11,956	2,337	6,021	50.4%	11,956	2,622	284	
PACE	SH_OP	\$ 23	75	1.0%	1,435	20.0%	7,161	832	1,510	21.1%	7,161	874	42	

Delivered Price Test Results - Economic Capacity

Scenario: Price Sensitivity (+10%)

Market	Period	Price	Pre-Transaction						Post-Transaction					
			NV Energy			MidAmerican			MidAmerican			Market		
			MW	Share	Mkt Share	MW	Share	Mkt Share	MW	Share	Mkt Share	Size	HHI	HHI Chg
PACW	S_SP1	\$ 90	33	0.6%	3,211	56.6%	5,672	3,336	3,336	5,672	3,403	67		
PACW	S_SP2	\$ 53	35	0.6%	3,213	56.6%	5,672	3,340	3,340	5,672	3,410	70		
PACW	S_P	\$ 37	40	0.7%	3,224	57.1%	5,647	3,396	3,396	5,647	3,477	81		
PACW	S_OP	\$ 26	72	1.4%	2,524	48.9%	5,160	2,570	2,570	5,160	2,706	136		
PACW	W_SP	\$ 42	55	0.9%	2,872	49.6%	5,791	2,624	2,624	5,791	2,718	94		
PACW	W_P	\$ 35	73	1.3%	2,728	48.9%	5,584	2,559	2,559	5,584	2,687	129		
PACW	W_OP	\$ 22	126	2.5%	678	13.4%	5,076	753	753	5,076	820	66		
PACW	SH_SP	\$ 41	45	0.9%	2,556	51.7%	4,942	2,848	2,848	4,942	2,941	93		
PACW	SH_P	\$ 33	70	1.5%	2,375	50.8%	4,678	2,742	2,742	4,678	2,895	153		
PACW	SH_OP	\$ 19	113	2.6%	552	12.9%	4,274	705	705	4,274	773	68		

Delivered Price Test Results - Economic Capacity

Scenario: Price Sensitivity (-10%)

Market	Period	Price	Pre-Transaction						Post-Transaction					
			NV Energy			MidAmerican			MidAmerican			Market		
			MW	Share	Mkt Share	MW	Share	Mkt Share	MW	Share	Mkt Share	Size	HHI	HHI Chg
NVE	S_SP1	\$ 90	7,513	54.0%	2.1%	287	2.1%	13,905	3.013	7,800	56.1%	13,905	3,236	223
NVE	S_SP2	\$ 54	7,155	52.8%	2.2%	297	2.2%	13,545	2,887	7,451	55.0%	13,545	3,119	231
NVE	S_P	\$ 39	5,985	49.5%	2.8%	342	2.8%	12,095	2,577	6,327	52.3%	12,095	2,857	280
NVE	S_OP	\$ 24	1,456	20.3%	3.4%	247	3.4%	7,170	804	1,703	23.8%	7,170	944	140
NVE	W_SP	\$ 42	5,166	50.8%	2.5%	254	2.5%	10,179	2,699	5,420	53.2%	10,179	2,952	253
NVE	W_P	\$ 39	4,722	48.7%	3.1%	299	3.1%	9,688	2,496	5,020	51.8%	9,688	2,797	300
NVE	W_OP	\$ 24	1,377	25.5%	4.0%	215	4.0%	5,409	961	1,592	29.4%	5,409	1,163	202
NVE	SH_SP	\$ 46	4,714	41.0%	3.2%	367	3.2%	11,497	1,849	5,081	44.2%	11,497	2,110	262
NVE	SH_P	\$ 35	3,673	35.6%	5.3%	542	5.3%	10,317	1,429	4,215	40.9%	10,317	1,803	374
NVE	SH_OP	\$ 20	489	7.6%	3.6%	230	3.6%	6,423	635	719	11.2%	6,423	689	55

Market	Period	Price	Pre-Transaction						Post-Transaction					
			NV Energy			MidAmerican			MidAmerican			Market		
			MW	Share	Mkt Share	MW	Share	Mkt Share	MW	Share	Mkt Share	Size	HHI	HHI Chg
PACE	S_SP1	\$ 90	470	3.4%	47.0%	6,580	47.0%	13,991	2,318	7,050	50.4%	13,991	2,633	316
PACE	S_SP2	\$ 53	438	3.2%	47.1%	6,539	47.1%	13,870	2,327	6,976	50.3%	13,870	2,625	298
PACE	S_P	\$ 37	391	2.9%	47.7%	6,347	47.7%	13,316	2,372	6,738	50.6%	13,316	2,652	280
PACE	S_OP	\$ 26	150	1.3%	39.3%	4,365	39.3%	11,108	1,701	4,515	40.6%	11,108	1,807	106
PACE	W_SP	\$ 42	353	2.8%	47.7%	5,996	47.7%	12,580	2,368	6,349	50.5%	12,580	2,635	267
PACE	W_P	\$ 35	139	1.1%	48.8%	5,962	48.8%	12,224	2,474	6,101	49.9%	12,224	2,585	111
PACE	W_OP	\$ 22	86	1.3%	11.9%	781	11.9%	6,573	666	867	13.2%	6,573	698	31
PACE	SH_SP	\$ 41	334	2.7%	46.9%	5,730	46.9%	12,210	2,300	6,064	49.7%	12,210	2,556	257
PACE	SH_P	\$ 33	138	1.2%	48.0%	5,694	48.0%	11,858	2,406	5,832	49.2%	11,858	2,518	112
PACE	SH_OP	\$ 19	85	1.3%	11.7%	756	11.7%	6,471	736	841	13.0%	6,471	766	31

Delivered Price Test Results - Economic Capacity

Scenario: Price Sensitivity (-10%)

Market	Period	Price	Pre-Transaction						Post-Transaction						
			NV Energy			MidAmerican			MidAmerican			Market			
			Mkt Share	MW	Price	Mkt Share	MW	Price	Mkt Share	MW	Price	Mkt Share	MW	Price	
PACW	S_SP1	\$ 90	0.5%	26	3,194	60.0%	0.5%	26	3,194	60.0%	3,221	60.5%	5,325	3,728	59
PACW	S_SP2	\$ 53	0.5%	27	3,196	60.0%	0.5%	27	3,196	60.0%	3,224	60.5%	5,325	3,732	62
PACW	S_P	\$ 37	0.6%	31	3,205	60.5%	0.6%	31	3,205	60.5%	3,236	61.1%	5,300	3,789	72
PACW	S_OP	\$ 26	1.2%	60	2,504	52.0%	1.2%	60	2,504	52.0%	2,564	53.3%	4,813	2,878	129
PACW	W_SP	\$ 42	0.9%	50	2,862	51.1%	0.9%	50	2,862	51.1%	2,912	52.0%	5,601	2,771	91
PACW	W_P	\$ 35	1.2%	67	2,715	50.3%	1.2%	67	2,715	50.3%	2,782	51.6%	5,394	2,700	125
PACW	W_OP	\$ 22	2.5%	120	675	13.8%	2.5%	120	675	13.8%	795	16.3%	4,886	759	68
PACW	SH_SP	\$ 41	0.9%	46	2,558	51.3%	0.9%	46	2,558	51.3%	2,604	52.3%	4,983	2,809	94
PACW	SH_P	\$ 33	1.5%	72	2,379	50.4%	1.5%	72	2,379	50.4%	2,451	51.9%	4,719	2,705	154
PACW	SH_OP	\$ 19	2.6%	114	553	12.8%	2.6%	114	553	12.8%	667	15.5%	4,315	703	68

Delivered Price Test Results - Available Economic Capacity (Interim Case)

Scenario: Base Case Prices

Market	Period	Price	Pre-Transaction					Post-Transaction					
			NV Energy		MidAmerican			MidAmerican		Market			
			MW	Share	MW	Share	Market Size	MW	Share	Market Size	HHI	HHI Chg	
NEVP	S_SP1	\$ 100	28	0.6%	2	0.0%	4,892	585	29	0.6%	4,892	585	0
NEVP	S_SP2	\$ 60	568	10.5%	30	0.5%	5,415	591	597	11.0%	5,415	602	11
NEVP	S_P	\$ 43	1,040	17.7%	83	1.4%	5,863	773	1,123	19.2%	5,863	824	50
NEVP	S_OP	\$ 26	-	0.0%	96	2.0%	4,754	1,890	96	2.0%	4,754	1,890	-
NEVP	W_SP	\$ 47	1,161	25.0%	44	1.0%	4,649	986	1,205	25.9%	4,649	1,034	48
NEVP	W_P	\$ 43	1,565	31.1%	64	1.3%	5,038	1,272	1,629	32.3%	5,038	1,351	79
NEVP	W_OP	\$ 27	15	0.5%	14	0.5%	2,813	849	29	1.0%	2,813	850	1
NEVP	SH_SP	\$ 51	57	1.0%	78	1.4%	5,518	616	136	2.5%	5,518	619	3
NEVP	SH_P	\$ 38	865	13.8%	140	2.2%	6,249	560	1,005	16.1%	6,249	623	62
NEVP	SH_OP	\$ 23	-	0.0%	-	0.0%	3,503	1,176	-	0.0%	3,503	1,176	-

Market	Period	Price	Pre-Transaction					Post-Transaction					
			NV Energy		MidAmerican			MidAmerican		Market			
			MW	Share	MW	Share	Market Size	MW	Share	Market Size	HHI	HHI Chg	
SPPC	S_SP1	\$ 100	60	3.3%	-	0.0%	1,815	1,325	60	3.3%	1,815	1,325	-
SPPC	S_SP2	\$ 60	255	11.1%	7	0.3%	2,291	1,223	262	11.4%	2,291	1,229	6
SPPC	S_P	\$ 43	243	10.9%	23	1.0%	2,223	1,246	266	12.0%	2,223	1,269	22
SPPC	S_OP	\$ 26	-	0.0%	45	4.8%	955	875	45	4.8%	955	875	-
SPPC	W_SP	\$ 47	517	15.7%	9	0.3%	3,294	1,405	526	16.0%	3,294	1,414	8
SPPC	W_P	\$ 43	655	24.8%	14	0.5%	2,641	1,572	670	25.4%	2,641	1,599	27
SPPC	W_OP	\$ 27	20	2.2%	-	0.0%	893	765	20	2.2%	893	765	-
SPPC	SH_SP	\$ 51	150	6.6%	9	0.4%	2,279	1,169	159	7.0%	2,279	1,174	5
SPPC	SH_P	\$ 38	406	18.0%	21	0.9%	2,256	1,434	427	18.9%	2,256	1,467	33
SPPC	SH_OP	\$ 23	-	0.0%	-	0.0%	662	1,196	-	0.0%	662	1,196	-

Delivered Price Test Results - Available Economic Capacity (Interim Case)

Scenario: Price Sensitivity (+10%)

Market	Period	Price	Pre-Transaction						Post-Transaction							
			NV Energy			MidAmerican			MidAmerican			Market				
			MW	Share	Mkt	MW	Share	Mkt	MW	Share	Mkt	MW	Share	Mkt	Size	HHI
NEVP	S_SP1	\$ 110	28	0.6%	2	0.0%	4,892	585	29	0.6%	4,892	585	0			
NEVP	S_SP2	\$ 66	612	11.2%	29	0.5%	5,461	601	642	11.8%	5,461	613	12			
NEVP	S_P	\$ 48	1,029	17.6%	82	1.4%	5,863	719	1,111	18.9%	5,863	768	49			
NEVP	S_OP	\$ 29	-	0.0%	90	1.9%	4,754	1,655	90	1.9%	4,754	1,655	-			
NEVP	W_SP	\$ 51	1,158	24.9%	45	1.0%	4,649	966	1,202	25.9%	4,649	1,014	48			
NEVP	W_P	\$ 47	1,558	30.9%	59	1.2%	5,038	1,251	1,617	32.1%	5,038	1,323	72			
NEVP	W_OP	\$ 30	13	0.5%	81	2.9%	2,813	849	95	3.4%	2,813	852	3			
NEVP	SH_SP	\$ 56	173	3.1%	76	1.3%	5,622	587	248	4.4%	5,622	596	8			
NEVP	SH_P	\$ 42	1,001	15.7%	138	2.2%	6,387	601	1,139	17.8%	6,387	669	68			
NEVP	SH_OP	\$ 25	-	0.0%	42	1.0%	4,134	917	42	1.0%	4,134	917	-			

Market	Period	Price	Pre-Transaction						Post-Transaction							
			NV Energy			MidAmerican			MidAmerican			Market				
			MW	Share	Mkt	MW	Share	Mkt	MW	Share	Mkt	MW	Share	Mkt	Size	HHI
SPPC	S_SP1	\$ 110	60	3.3%	-	0.0%	1,815	1,325	60	3.3%	1,815	1,325	-			
SPPC	S_SP2	\$ 66	257	11.2%	7	0.3%	2,291	1,222	264	11.5%	2,291	1,229	6			
SPPC	S_P	\$ 48	239	10.7%	22	1.0%	2,223	1,214	261	11.7%	2,223	1,235	21			
SPPC	S_OP	\$ 29	-	0.0%	43	4.4%	978	794	43	4.4%	978	794	-			
SPPC	W_SP	\$ 51	614	18.1%	9	0.3%	3,395	1,405	623	18.3%	3,395	1,415	10			
SPPC	W_P	\$ 47	650	24.6%	13	0.5%	2,641	1,549	663	25.1%	2,641	1,574	25			
SPPC	W_OP	\$ 30	20	1.9%	27	2.6%	1,051	819	47	4.4%	1,051	828	10			
SPPC	SH_SP	\$ 56	324	13.2%	9	0.4%	2,448	1,147	333	13.6%	2,448	1,157	9			
SPPC	SH_P	\$ 42	413	18.3%	20	0.9%	2,256	1,437	434	19.2%	2,256	1,470	33			
SPPC	SH_OP	\$ 25	-	0.0%	-	0.0%	862	1,017	-	0.0%	862	1,017	-			

Delivered Price Test Results - Available Economic Capacity (Interim Case)

Scenario: Price Sensitivity (-10%)

Market	Period	Price	Pre-Transaction						Post-Transaction							
			NV Energy			MidAmerican			MidAmerican			Market				
			MW	Share	Mkt	MW	Share	Mkt	MW	Share	Mkt	MW	Share	Mkt	Size	HHI
NEVP	S_SP1	\$ 90	28	0.6%	2	0.0%	4,892	585	29	0.6%	4,892	585	0			
NEVP	S_SP2	\$ 54	296	5.7%	21	0.4%	5,150	568	317	6.2%	5,150	573	5			
NEVP	S_P	\$ 39	880	15.4%	87	1.5%	5,700	740	967	17.0%	5,700	787	47			
NEVP	S_OP	\$ 24	-	0.0%	-	0.0%	4,754	2,662	-	0.0%	4,754	2,662	-			
NEVP	W_SP	\$ 42	1,014	22.5%	47	1.0%	4,498	911	1,061	23.6%	4,498	958	47			
NEVP	W_P	\$ 39	975	22.2%	67	1.5%	4,398	901	1,042	23.7%	4,398	968	67			
NEVP	W_OP	\$ 24	19	0.7%	-	0.0%	2,813	1,018	19	0.7%	2,813	1,018	-			
NEVP	SH_SP	\$ 46	-	0.0%	68	1.2%	5,518	733	68	1.2%	5,518	733	-			
NEVP	SH_P	\$ 35	271	4.7%	157	2.7%	5,748	509	428	7.4%	5,748	535	26			
NEVP	SH_OP	\$ 20	-	0.0%	-	0.0%	3,553	1,157	-	0.0%	3,553	1,157	-			

Market	Period	Price	Pre-Transaction						Post-Transaction							
			NV Energy			MidAmerican			MidAmerican			Market				
			MW	Share	Mkt	MW	Share	Mkt	MW	Share	Mkt	MW	Share	Mkt	Size	HHI
SPPC	S_SP1	\$ 90	60	3.3%	-	0.0%	1,815	1,325	60	3.3%	1,815	1,325	-			
SPPC	S_SP2	\$ 54	197	8.8%	5	0.2%	2,243	1,229	203	9.0%	2,243	1,233	4			
SPPC	S_P	\$ 39	238	10.7%	24	1.1%	2,223	1,253	262	11.8%	2,223	1,276	23			
SPPC	S_OP	\$ 24	-	0.0%	-	0.0%	830	1,085	-	0.0%	830	1,085	-			
SPPC	W_SP	\$ 42	514	15.6%	9	0.3%	3,294	1,410	523	15.9%	3,294	1,419	9			
SPPC	W_P	\$ 39	635	24.1%	16	0.6%	2,641	1,543	651	24.6%	2,641	1,572	28			
SPPC	W_OP	\$ 24	20	2.5%	-	0.0%	779	882	20	2.5%	779	882	-			
SPPC	SH_SP	\$ 46	-	0.0%	7	0.3%	2,129	1,319	7	0.3%	2,129	1,319	-			
SPPC	SH_P	\$ 35	24	1.3%	24	1.3%	1,903	1,611	48	2.5%	1,903	1,614	3			
SPPC	SH_OP	\$ 20	-	0.0%	-	0.0%	662	1,196	-	0.0%	662	1,196	-			

First-Tier Market Results - Available Economic Capacity and Economic Capacity

Scenario: Base Case Prices

Available Economic Capacity

Market	Period	Price	Pre-Transaction					Post-Transaction				
			NV Energy		MidAmerican		Market		MidAmerican		Market	
			MW	Mkt Share	MW	Mkt Share	MW	Mkt Share	Size	HHI	MW	Mkt Share
AZPS	S_SP1	\$ 100	7	0.2%	1	0.0%	3,927	1,819	8	0.2%	1,556	0
AZPS	S_SP2	\$ 59	71	1.5%	1	0.0%	4,712	2,452	71	1.7%	2,045	0
AZPS	S_P	\$ 42	93	2.4%	22	0.6%	3,916	1,914	114	3.4%	1,635	3
AZPS	S_OP	\$ 28	-	0.0%	6	0.5%	1,105	1,782	6	0.5%	1,782	-
AZPS	W_SP	\$ 46	76	1.9%	11	0.3%	4,018	2,621	84	2.4%	2,240	1
AZPS	W_P	\$ 39	80	2.1%	18	0.5%	3,746	2,480	98	3.0%	2,135	3
AZPS	W_OP	\$ 25	-	0.0%	8	1.0%	726	655	8	1.0%	655	-
AZPS	SH_SP	\$ 46	-	0.0%	10	0.3%	3,101	1,654	10	0.4%	1,535	-
AZPS	SH_P	\$ 36	-	0.0%	36	1.1%	3,298	1,834	36	1.3%	1,574	-
AZPS	SH_OP	\$ 21	-	0.0%	-	0.0%	967	1,101	-	0.0%	1,101	-

Economic Capacity

Market	Period	Price	Pre-Transaction					Post-Transaction				
			NV Energy		MidAmerican		Market		MidAmerican		Market	
			MW	Mkt Share	MW	Mkt Share	MW	Mkt Share	Size	HHI	MW	Mkt Share
AZPS	S_SP1	\$ 100	73	0.7%	61	0.6%	11,071	5,761	134	1.3%	5,589	1
AZPS	S_SP2	\$ 59	74	0.7%	63	0.6%	10,622	5,667	137	1.4%	5,485	1
AZPS	S_P	\$ 42	97	1.1%	78	0.9%	8,852	5,061	174	2.1%	4,824	2
AZPS	S_OP	\$ 28	104	2.4%	89	2.0%	4,418	5,658	193	5.0%	5,190	12
AZPS	W_SP	\$ 46	58	0.8%	46	0.6%	7,289	4,873	104	1.5%	4,607	1
AZPS	W_P	\$ 39	68	1.0%	54	0.8%	6,860	4,741	122	1.9%	4,457	2
AZPS	W_OP	\$ 25	67	2.2%	41	1.4%	2,976	5,729	108	4.3%	5,066	9
AZPS	SH_SP	\$ 46	81	1.1%	62	0.8%	7,700	5,012	143	2.0%	4,782	2
AZPS	SH_P	\$ 36	82	1.2%	75	1.1%	6,671	4,545	157	2.5%	4,268	3
AZPS	SH_OP	\$ 21	52	2.3%	26	1.2%	2,215	3,390	77	3.5%	3,395	5

Available Economic Capacity

		Pre-Transaction				Post-Transaction			
		NV Energy		MidAmerican		MidAmerican		MidAmerican	
Market	Period	Price	MW	Mkt Share	MW	Mkt Share	Market Size	HHI	HHI Chg
AVA	S_SP1	\$ 100	2	0.1%	-	0.0%	1,661	1,396	-
AVA	S_SP2	\$ 59	8	0.4%	-	0.0%	1,998	1,971	-
AVA	S_P	\$ 42	10	0.5%	32	1.5%	2,136	2,278	1
AVA	S_OP	\$ 28	-	0.0%	-	0.0%	1,438	1,005	-
AVA	W_SP	\$ 46	14	0.7%	32	1.6%	2,028	1,908	2
AVA	W_P	\$ 39	18	1.1%	60	3.6%	1,664	1,085	8
AVA	W_OP	\$ 25	-	0.0%	-	0.0%	1,259	528	-
AVA	SH_SP	\$ 46	-	0.0%	18	0.9%	1,955	2,213	-
AVA	SH_P	\$ 36	-	0.0%	92	8.0%	1,151	958	-
AVA	SH_OP	\$ 21	-	0.0%	-	0.0%	1,113	603	-

Economic Capacity

		Pre-Transaction				Post-Transaction			
		NV Energy		MidAmerican		MidAmerican		MidAmerican	
Market	Period	Price	MW	Mkt Share	MW	Mkt Share	Market Size	HHI	HHI Chg
AVA	S_SP1	\$ 100	8	0.2%	71	2.1%	3,342	3,909	1
AVA	S_SP2	\$ 59	8	0.2%	72	2.1%	3,342	3,907	1
AVA	S_P	\$ 42	8	0.2%	73	2.2%	3,342	3,909	1
AVA	S_OP	\$ 28	10	0.4%	80	3.2%	2,469	2,473	3
AVA	W_SP	\$ 46	8	0.2%	71	2.0%	3,472	3,956	1
AVA	W_P	\$ 39	9	0.3%	77	2.6%	2,960	3,376	2
AVA	W_OP	\$ 25	14	0.8%	69	3.8%	1,828	1,316	6
AVA	SH_SP	\$ 46	8	0.2%	62	2.0%	3,147	3,901	1
AVA	SH_P	\$ 36	10	0.5%	85	3.9%	2,196	2,357	4
AVA	SH_OP	\$ 21	14	0.9%	54	3.4%	1,587	1,359	6

Available Economic Capacity

		Pre-Transaction					Post-Transaction				
		NV Energy			MidAmerican		MidAmerican			Post-Transaction	
Market	Period	Price	MW	Mkt Share	MW	Mkt Share	Market Size	MW	Mkt Share	HHI	HHI Chg
BPAT	S_SP1	\$ 100	-	0.0%	-	0.0%	13,454	-	0.0%	5,743	-
BPAT	S_SP2	\$ 59	-	0.0%	-	0.0%	16,039	-	0.0%	6,322	-
BPAT	S_P	\$ 42	-	0.0%	-	0.0%	16,396	-	0.0%	6,390	-
BPAT	S_OP	\$ 28	-	0.0%	-	0.0%	5,717	-	0.0%	5,098	-
BPAT	W_SP	\$ 46	-	0.0%	-	0.0%	14,119	-	0.0%	6,086	-
BPAT	W_P	\$ 39	-	0.0%	-	0.0%	8,379	-	0.0%	4,150	-
BPAT	W_OP	\$ 25	-	0.0%	-	0.0%	1,531	-	0.0%	2,870	-
BPAT	SH_SP	\$ 46	-	0.0%	-	0.0%	15,402	-	0.0%	6,635	-
BPAT	SH_P	\$ 36	-	0.0%	-	0.0%	2,729	-	0.0%	2,162	-
BPAT	SH_OP	\$ 21	-	0.0%	-	0.0%	674	-	0.0%	4,538	-

Economic Capacity

		Pre-Transaction					Post-Transaction				
		NV Energy			MidAmerican		MidAmerican			Post-Transaction	
Market	Period	Price	MW	Mkt Share	MW	Mkt Share	Market Size	MW	Mkt Share	HHI	HHI Chg
BPAT	S_SP1	\$ 100	-	0.0%	-	0.0%	25,958	-	0.0%	7,550	-
BPAT	S_SP2	\$ 59	-	0.0%	-	0.0%	25,649	-	0.0%	7,523	-
BPAT	S_P	\$ 42	-	0.0%	-	0.0%	25,624	-	0.0%	7,521	-
BPAT	S_OP	\$ 28	-	0.0%	-	0.0%	13,869	-	0.0%	7,535	-
BPAT	W_SP	\$ 46	-	0.0%	-	0.0%	25,118	-	0.0%	7,599	-
BPAT	W_P	\$ 39	-	0.0%	-	0.0%	18,721	-	0.0%	6,876	-
BPAT	W_OP	\$ 25	-	0.0%	-	0.0%	10,811	-	0.0%	7,685	-
BPAT	SH_SP	\$ 46	-	0.0%	-	0.0%	24,534	-	0.0%	7,742	-
BPAT	SH_P	\$ 36	-	0.0%	-	0.0%	9,933	-	0.0%	5,342	-
BPAT	SH_OP	\$ 21	-	0.0%	-	0.0%	7,651	-	0.0%	8,323	-

Available Economic Capacity

		Pre-Transaction					Post-Transaction				
		NV Energy		MidAmerican			MidAmerican		MidAmerican		
Market	Period	Price	MW	Mkt Share	MW	Mkt Share	Market Size	MW	Mkt Share	HHI	HHI Chg
CAISO	S_SP1	\$ 100	33	0.1%	9	0.0%	28,457	42	0.1%	936	0
CAISO	S_SP2	\$ 60	197	0.7%	211	0.8%	27,982	411	1.5%	893	1
CAISO	S_P	\$ 43	303	1.3%	451	1.9%	23,746	761	3.2%	793	5
CAISO	S_OP	\$ 26	-	0.0%	485	4.3%	11,372	485	4.3%	781	-
CAISO	W_SP	\$ 47	403	1.6%	399	1.6%	24,504	808	3.3%	762	5
CAISO	W_P	\$ 43	621	3.1%	482	2.4%	20,071	1,119	5.6%	730	15
CAISO	W_OP	\$ 27	-	0.0%	67	0.8%	8,594	67	0.8%	538	-
CAISO	SH_SP	\$ 51	-	0.0%	407	1.6%	26,249	410	1.6%	892	-
CAISO	SH_P	\$ 38	354	1.9%	896	4.7%	19,045	1,277	6.7%	689	18
CAISO	SH_OP	\$ 23	-	0.0%	-	0.0%	3,790	-	0.0%	649	-

Economic Capacity

		Pre-Transaction					Post-Transaction				
		NV Energy		MidAmerican			MidAmerican		MidAmerican		
Market	Period	Price	MW	Mkt Share	MW	Mkt Share	Market Size	MW	Mkt Share	HHI	HHI Chg
CAISO	S_SP1	\$ 100	739	1.2%	462	0.7%	63,956	1,207	1.9%	1,103	2
CAISO	S_SP2	\$ 60	738	1.2%	469	0.7%	63,078	1,212	1.9%	1,104	2
CAISO	S_P	\$ 43	672	1.4%	507	1.1%	47,764	1,185	2.5%	919	3
CAISO	S_OP	\$ 26	304	1.1%	693	2.6%	26,998	1,006	3.7%	1,249	6
CAISO	W_SP	\$ 47	592	1.2%	487	1.0%	48,501	1,084	2.2%	911	2
CAISO	W_P	\$ 43	667	1.7%	543	1.4%	38,749	1,217	3.1%	851	5
CAISO	W_OP	\$ 27	339	1.5%	748	3.3%	22,883	1,098	4.8%	967	10
CAISO	SH_SP	\$ 51	553	1.0%	465	0.9%	53,261	1,023	1.9%	960	2
CAISO	SH_P	\$ 38	685	1.9%	660	1.9%	35,278	1,354	3.8%	785	7
CAISO	SH_OP	\$ 23	176	0.8%	668	3.1%	21,329	844	4.0%	1,026	5

Available Economic Capacity

		Pre-Transaction					Post-Transaction					
		NV Energy			MidAmerican		MidAmerican			Post-Transaction		
Market	Period	Price	MW	Mkt Share	MW	Mkt Share	Market Size	HHI	MW	Mkt Share	HHI	HHI Chg
IPCO	S_SP1	\$ 100	3	0.2%	-	0.0%	1,384	930	3	0.2%	926	-
IPCO	S_SP2	\$ 59	26	1.5%	-	0.0%	1,819	1,097	26	1.4%	1,095	-
IPCO	S_P	\$ 42	30	1.6%	24	1.3%	1,822	1,166	54	3.0%	1,170	4
IPCO	S_OP	\$ 28	-	0.0%	-	0.0%	2,041	1,486	-	0.0%	1,486	-
IPCO	W_SP	\$ 46	37	2.1%	15	0.8%	1,744	2,031	52	3.0%	2,033	4
IPCO	W_P	\$ 39	43	3.0%	30	2.1%	1,463	1,304	73	5.0%	1,316	12
IPCO	W_OP	\$ 25	-	0.0%	-	0.0%	1,200	691	-	0.0%	691	-
IPCO	SH_SP	\$ 46	-	0.0%	11	0.7%	1,623	1,340	11	0.7%	1,337	-
IPCO	SH_P	\$ 36	-	0.0%	57	4.7%	1,224	838	57	4.7%	838	-
IPCO	SH_OP	\$ 21	-	0.0%	-	0.0%	1,166	633	-	0.0%	633	-

Economic Capacity

		Pre-Transaction					Post-Transaction					
		NV Energy			MidAmerican		MidAmerican			Post-Transaction		
Market	Period	Price	MW	Mkt Share	MW	Mkt Share	Market Size	HHI	MW	Mkt Share	HHI	HHI Chg
IPCO	S_SP1	\$ 100	103	2.1%	130	2.6%	4,929	4,583	234	4.7%	4,594	11
IPCO	S_SP2	\$ 59	99	2.0%	132	2.7%	4,929	4,583	231	4.7%	4,594	11
IPCO	S_P	\$ 42	85	1.9%	131	2.9%	4,557	4,245	217	4.8%	4,255	11
IPCO	S_OP	\$ 28	36	0.8%	139	3.1%	4,531	4,240	174	3.8%	4,245	5
IPCO	W_SP	\$ 46	56	1.4%	89	2.3%	3,866	4,847	145	3.8%	4,854	7
IPCO	W_P	\$ 39	55	1.6%	99	2.9%	3,406	4,543	154	4.5%	4,553	9
IPCO	W_OP	\$ 25	27	0.9%	70	2.4%	2,938	3,931	97	3.3%	3,935	4
IPCO	SH_SP	\$ 46	60	1.6%	102	2.6%	3,881	4,314	163	4.2%	4,322	8
IPCO	SH_P	\$ 36	49	1.6%	140	4.6%	3,070	3,442	189	6.1%	3,456	14
IPCO	SH_OP	\$ 21	17	0.8%	40	2.0%	2,033	1,657	57	2.8%	1,661	3

Available Economic Capacity

		Pre-Transaction					Post-Transaction				
		NV Energy		MidAmerican			MidAmerican		Post-Transaction		
Market	Period	Price	MW	Mkt Share	MW	Mkt Share	Market Size	MW	Mkt Share	HHI	HHI Chg
LDWP	S_SP1	\$ 100	2	0.1%	1	0.0%	3,204	3	0.1%	3,059	0
LDWP	S_SP2	\$ 60	17	0.4%	18	0.5%	3,985	35	0.9%	3,911	0
LDWP	S_P	\$ 43	29	1.8%	45	2.7%	1,638	74	4.5%	769	10
LDWP	S_OP	\$ 26	-	0.0%	47	3.4%	1,402	47	3.4%	767	-
LDWP	W_SP	\$ 47	1	0.0%	1	0.0%	2,171	2	0.1%	9,677	0
LDWP	W_P	\$ 43	1	0.6%	1	0.5%	247	3	1.1%	6,954	1
LDWP	W_OP	\$ 27	-	0.0%	0	0.6%	35	0	0.6%	595	-
LDWP	SH_SP	\$ 51	-	0.0%	30	1.3%	2,213	30	1.3%	2,281	-
LDWP	SH_P	\$ 38	24	2.0%	56	4.7%	1,194	82	6.8%	594	20
LDWP	SH_OP	\$ 23	-	0.0%	-	0.0%	1,194	-	0.0%	678	-

Economic Capacity

		Pre-Transaction					Post-Transaction				
		NV Energy		MidAmerican			MidAmerican		Post-Transaction		
Market	Period	Price	MW	Mkt Share	MW	Mkt Share	Market Size	MW	Mkt Share	HHI	HHI Chg
LDWP	S_SP1	\$ 100	66	0.7%	65	0.7%	9,535	132	1.4%	6,054	1
LDWP	S_SP2	\$ 60	66	0.7%	80	0.9%	9,393	146	1.6%	6,003	1
LDWP	S_P	\$ 43	64	1.1%	90	1.6%	5,797	155	2.7%	4,778	3
LDWP	S_OP	\$ 26	29	0.8%	116	3.1%	3,752	146	3.9%	3,569	5
LDWP	W_SP	\$ 47	1	0.0%	2	0.0%	6,002	4	0.1%	8,664	0
LDWP	W_P	\$ 43	2	0.0%	3	0.1%	3,712	4	0.1%	7,909	0
LDWP	W_OP	\$ 27	1	0.0%	3	0.2%	2,040	4	0.2%	8,501	0
LDWP	SH_SP	\$ 51	43	0.6%	72	1.0%	6,968	115	1.6%	5,988	1
LDWP	SH_P	\$ 38	53	1.3%	103	2.5%	4,125	157	3.8%	4,004	6
LDWP	SH_OP	\$ 23	14	0.6%	63	2.8%	2,237	77	3.4%	2,287	4

Available Economic Capacity

Market	Period	Price	Pre-Transaction				Post-Transaction					
			NV Energy		MidAmerican		MidAmerican		Post-Transaction			
			MW	Mkt Share	MW	Mkt Share	MW	Mkt Share	HHI	HHI Chg		
NWMT	S_SP1	\$ 100	4	0.1%	-	0.0%	3,013	2,042	4	0.1%	2,042	-
NWMT	S_SP2	\$ 59	20	0.7%	-	0.0%	3,013	2,033	19	0.6%	2,033	-
NWMT	S_P	\$ 42	24	0.8%	26	0.9%	3,013	2,060	50	1.6%	2,061	1
NWMT	S_OP	\$ 28	-	0.0%	-	0.0%	2,962	2,095	-	0.0%	2,095	-
NWMT	W_SP	\$ 46	32	1.1%	24	0.8%	2,959	1,829	55	1.9%	1,830	2
NWMT	W_P	\$ 39	41	1.5%	47	1.7%	2,817	1,694	88	3.1%	1,699	5
NWMT	W_OP	\$ 25	-	0.0%	-	0.0%	2,258	1,115	-	0.0%	1,115	-
NWMT	SH_SP	\$ 46	-	0.0%	12	0.4%	2,633	2,010	12	0.4%	2,009	-
NWMT	SH_P	\$ 36	-	0.0%	67	2.8%	2,366	1,604	67	2.8%	1,604	-
NWMT	SH_OP	\$ 21	-	0.0%	-	0.0%	1,595	819	-	0.0%	819	-

Economic Capacity

Market	Period	Price	Pre-Transaction				Post-Transaction					
			NV Energy		MidAmerican		MidAmerican		Post-Transaction			
			MW	Mkt Share	MW	Mkt Share	MW	Mkt Share	HHI	HHI Chg		
NWMT	S_SP1	\$ 100	18	0.5%	147	4.3%	3,383	1,726	165	4.9%	1,730	5
NWMT	S_SP2	\$ 59	18	0.5%	148	4.4%	3,383	1,724	166	4.9%	1,728	5
NWMT	S_P	\$ 42	18	0.5%	146	4.4%	3,303	1,762	164	5.0%	1,767	5
NWMT	S_OP	\$ 28	24	0.7%	145	4.5%	3,251	1,767	169	5.2%	1,773	7
NWMT	W_SP	\$ 46	19	0.6%	145	4.5%	3,231	1,600	164	5.1%	1,605	5
NWMT	W_P	\$ 39	21	0.7%	159	5.2%	3,076	1,490	180	5.8%	1,498	7
NWMT	W_OP	\$ 25	32	1.4%	107	4.6%	2,328	1,034	139	6.0%	1,047	13
NWMT	SH_SP	\$ 46	16	0.6%	116	4.0%	2,880	1,710	132	4.6%	1,714	4
NWMT	SH_P	\$ 36	21	0.8%	161	6.2%	2,599	1,366	182	7.0%	1,376	10
NWMT	SH_OP	\$ 21	29	1.8%	41	2.5%	1,629	785	71	4.3%	794	9

Available Economic Capacity

		Pre-Transaction					Post-Transaction				
		NV Energy		MidAmerican			MidAmerican		Post-Transaction		
Market	Period	Price	MW	Mkt Share	MW	Mkt Share	Market Size	MW	Mkt Share	HHI	HHI Chg
PGE	S_SP1	\$ 100	1	0.1%	-	0.0%	1,549	1	0.1%	1,414	-
PGE	S_SP2	\$ 59	6	0.4%	-	0.0%	1,648	6	0.4%	1,267	-
PGE	S_P	\$ 42	7	0.4%	13	0.7%	1,771	20	1.2%	1,388	1
PGE	S_OP	\$ 28	-	0.0%	-	0.0%	1,549	-	0.0%	1,115	-
PGE	W_SP	\$ 46	11	0.6%	7	0.4%	1,727	17	1.0%	1,397	0
PGE	W_P	\$ 39	14	0.8%	12	0.7%	1,727	26	1.5%	1,007	1
PGE	W_OP	\$ 25	-	0.0%	-	0.0%	1,727	-	0.0%	632	-
PGE	SH_SP	\$ 46	-	0.0%	5	0.3%	1,430	5	0.3%	1,695	-
PGE	SH_P	\$ 36	-	0.0%	17	1.2%	1,430	17	1.2%	1,127	-
PGE	SH_OP	\$ 21	-	0.0%	-	0.0%	1,430	-	0.0%	649	-

Economic Capacity

		Pre-Transaction					Post-Transaction				
		NV Energy		MidAmerican			MidAmerican		Post-Transaction		
Market	Period	Price	MW	Mkt Share	MW	Mkt Share	Market Size	MW	Mkt Share	HHI	HHI Chg
PGE	S_SP1	\$ 100	6	0.2%	65	1.6%	4,154	71	1.7%	4,143	0
PGE	S_SP2	\$ 59	6	0.1%	65	1.6%	4,154	72	1.7%	4,140	0
PGE	S_P	\$ 42	6	0.2%	66	1.6%	4,126	72	1.7%	4,111	0
PGE	S_OP	\$ 28	9	0.3%	67	2.4%	2,857	76	2.7%	2,395	1
PGE	W_SP	\$ 46	7	0.2%	65	1.6%	4,178	72	1.7%	3,701	1
PGE	W_P	\$ 39	8	0.2%	70	1.7%	4,044	78	1.9%	3,488	1
PGE	W_OP	\$ 25	12	0.5%	59	2.3%	2,527	71	2.8%	1,521	2
PGE	SH_SP	\$ 46	6	0.2%	50	1.4%	3,647	56	1.5%	3,934	0
PGE	SH_P	\$ 36	8	0.3%	70	2.2%	3,204	78	2.4%	3,202	1
PGE	SH_OP	\$ 21	11	0.6%	37	2.1%	1,785	48	2.7%	1,196	2

Available Economic Capacity

Market	Period	Price	Pre-Transaction				Post-Transaction					
			NV Energy		MidAmerican		MidAmerican		MidAmerican			
			MW	Mkt Share	MW	Mkt Share	MW	Mkt Share	MW	Mkt Share	HHI	HHI Chg
WALC	S_SP1	\$ 100	-	0.0%	-	0.0%	968	3,253	-	0.0%	3,253	-
WALC	S_SP2	\$ 60	-	0.0%	-	0.0%	1,271	2,824	-	0.0%	2,824	-
WALC	S_P	\$ 43	-	0.0%	-	0.0%	1,235	2,810	-	0.0%	2,810	-
WALC	S_OP	\$ 26	-	0.0%	-	0.0%	191	4,249	-	0.0%	4,249	-
WALC	W_SP	\$ 47	-	0.0%	-	0.0%	2,114	2,496	-	0.0%	2,496	-
WALC	W_P	\$ 43	-	0.0%	-	0.0%	1,349	2,956	-	0.0%	2,956	-
WALC	W_OP	\$ 27	-	0.0%	-	0.0%	178	4,757	-	0.0%	4,757	-
WALC	SH_SP	\$ 51	-	0.0%	-	0.0%	1,435	2,318	-	0.0%	2,318	-
WALC	SH_P	\$ 38	-	0.0%	-	0.0%	1,209	2,908	-	0.0%	2,908	-
WALC	SH_OP	\$ 23	-	0.0%	-	0.0%	168	5,307	-	0.0%	5,307	-

Economic Capacity

Market	Period	Price	Pre-Transaction				Post-Transaction					
			NV Energy		MidAmerican		MidAmerican		MidAmerican			
			MW	Mkt Share	MW	Mkt Share	MW	Mkt Share	MW	Mkt Share	HHI	HHI Chg
WALC	S_SP1	\$ 100	-	0.0%	-	0.0%	3,180	3,866	-	0.0%	3,866	-
WALC	S_SP2	\$ 60	-	0.0%	-	0.0%	3,070	4,135	-	0.0%	4,135	-
WALC	S_P	\$ 43	-	0.0%	-	0.0%	2,932	4,095	-	0.0%	4,095	-
WALC	S_OP	\$ 26	-	0.0%	-	0.0%	963	5,055	-	0.0%	5,055	-
WALC	W_SP	\$ 47	-	0.0%	-	0.0%	3,461	3,400	-	0.0%	3,400	-
WALC	W_P	\$ 43	-	0.0%	-	0.0%	2,296	2,251	-	0.0%	2,251	-
WALC	W_OP	\$ 27	-	0.0%	-	0.0%	868	5,198	-	0.0%	5,198	-
WALC	SH_SP	\$ 51	-	0.0%	-	0.0%	3,311	3,616	-	0.0%	3,616	-
WALC	SH_P	\$ 38	-	0.0%	-	0.0%	1,710	1,968	-	0.0%	1,968	-
WALC	SH_OP	\$ 23	-	0.0%	-	0.0%	525	5,015	-	0.0%	5,015	-

Sources and Disposition of Energy, PacifiCorp and NV Energy, 2011-2012

	2011			2012		
	Nevada Power	Sierra Pacific	PacifiCorp	Nevada Power	Sierra Pacific	PacifiCorp
<u>In GWhs:</u>						
Generation	15,071	4,454	55,433	16,508	5,022	57,269
Purchases	8,606	4,474	14,094	8,887	4,168	13,717
Net Exchanges	-	-	219	-	-	472
Net Transmission for Others and Losses	-	11	(272)	-	47	(293)
Sum, SOURCES OF ENERGY	23,677	8,938	69,475	25,395	9,237	71,165
Retail Sales	20,755	7,664	54,307	21,481	7,937	54,549
Wholesale Requirements Sales	-	632	202	5	622	224
Other Wholesale Sales	2,079	378	10,564	3,137	500	11,646
Internal Use, Losses	843	264	4,401	773	178	4,746
Sum, DISPOSITION OF ENERGY	23,677	8,938	69,475	25,395	9,237	71,165

Source: FERC Form 1, page 401a.

As a Percent of Total:

Generation	63.7%	49.8%	79.8%	65.0%	54.4%	80.5%
Purchases	36.3%	50.0%	20.3%	35.0%	45.1%	19.3%
Retail Sales	87.7%	85.7%	78.2%	84.6%	85.9%	76.7%
Wholesale Requirement Sales	0.0%	7.1%	0.3%	0.0%	6.7%	0.3%
Other Wholesale Sales	8.8%	4.2%	15.2%	12.4%	5.4%	16.4%

NV Energy and PacifiCorp's Short-Term Sales into Each Other's BAAs

	<u>2011</u>	<u>2012</u>
<u>NV Energy's Short-Term Sales into PACE (MWh):</u>		
Sales to PacifiCorp	58,425	128,565
Sales to Others	7,296	7,688
<u>As a Percent of NV Energy's Total Sales:</u>		
Sales to PacifiCorp		
All Sales	0.179%	0.371%
Other Wholesale Sales	2.378%	3.535%
Sales to Others		
All Sales	0.022%	0.022%
Other Wholesale Sales	0.297%	0.211%
<u>PacifiCorp's Short-Term Sales into NEVP and SPPC (MWh):</u>		
Sales to NV Energy	-	-
Sales to Others	329,125	201,619
<u>As a Percent of PacifiCorp's Total Sales:</u>		
Sales to NV Energy		
All Sales	-	-
Other Wholesale Sales	-	-
Sales to Others		
All Sales	0.474%	0.283%
Other Wholesale Sales	3.115%	1.731%

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Silver Merger Sub, Inc.)
NV Energy, Inc.)
Nevada Power Company)
Sierra Pacific Power Company)

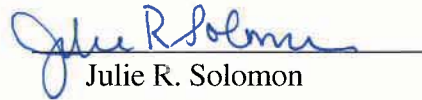
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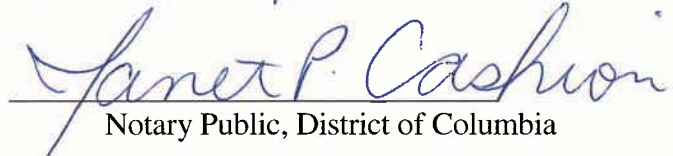
District of Columbia

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JULIE R. SOLOMON being duly sworn, deposes and states: that she prepared the Affidavit and Exhibits of Julie R. Solomon and that the statements contained therein and the Exhibits attached hereto are true and correct to the best of her knowledge and belief.

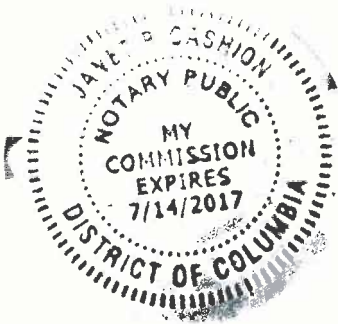

Julie R. Solomon

SUBSCRIBED AND SWORN TO BEFORE ME, this the 11th day of July 2013.


Notary Public, District of Columbia

Printed Name: Janet P. Cashion

My Commission Expires: July 14, 2017



UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Silver Merger Sub, Inc.)
NV Energy, Inc.)
Nevada Power Company)
Sierra Pacific Power Company)

Docket No. EC13-__-000

Affidavit of
Dr. John R. Morris

July 12, 2013

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Section 1. Summary and Conclusions

MidAmerican Energy Holdings Company (MidAmerican) proposes to acquire NV Energy, Inc. (NVE). MidAmerican is an integrated energy company that owns and operates electric utilities in the Midwest and in the Western Electric Coordinating Council (WECC) region of the western United States. In the WECC region, MidAmerican owns PacifiCorp, which owns fully integrated electric utilities in California, Idaho, Oregon, Utah, Washington, and Wyoming, and owns interests in coal mines in Colorado, Utah, and Wyoming. MidAmerican also owns Kern River Gas Transmission Company, an interstate pipeline that runs from Opal, Wyoming to Kern County in California. MidAmerican is owned by Berkshire Hathaway Inc. (Berkshire Hathaway), which also indirectly owns the BNSF Railway Company (BNSF). BNSF delivers coal for electricity generation in most states west of the Mississippi river and as far east as Alabama. BNSF, however, does not currently deliver any coal to Nevada, where NVE operates. NVE owns two electric utilities in Nevada: Sierra Pacific Power Company d/b/a NV Energy and Nevada Power Company d/b/a NV Energy. On May 31, 2013, NV Energy filed applications with the Federal Energy Regulatory Commission (Commission, or FERC) and the Public Utilities Commission of Nevada (PUCN) to merge the utility operations into Nevada Power Company and operate a single, integrated balancing authority area. NV Energy owns no upstream fuel supply assets.

A merger of an entity with a downstream electric wholesale business that sells at market-based rates with an entity that owns upstream fuel supply and transportation operations could, in theory, raise a competitive concern that upstream control over inputs vital to the downstream market may allow the integrated company to raise input costs to rival electric power generators. Under some specific fact situations, not present here, raising the fuel costs of rival generation companies would raise wholesale electric energy prices so that the integrated company would receive higher prices and profits from wholesale electric energy sales than it would earn otherwise. This theory is often called either vertical foreclosure or raising rivals' costs, and it is the primary competitive

concern addressed by the Commission in mergers of electric power generators and fuel supply companies.

My study shows that the proposed merger of MidAmerican and NVE (Applicants) will not result in higher input costs for generation companies because it will not adversely affect supplies of fuel for electric generation. In order for the raising rivals' costs theory to be valid in fact, it is necessary that (1) the combined firm have the incentive and ability to exercise vertical market power and (2) the merger either creates or enhances the incentive or ability to exercise vertical market power. In the instant case, neither condition is met.

Similar to the screening methodology of the Delivered Price Test for the horizontal effects of a merger, the Commission has articulated a screening methodology to identify when a particular transaction might present vertical market power issues. The Commission has correctly recognized that it is necessary for both the upstream (fuel supply) and downstream (electric energy) markets be highly concentrated.¹ Concentration is measured by the Herfindahl-Hirschman Index (HHI), which is the sum of the squared market shares. For example, if four firms have shares of 40, 30, 20, and 10 percent, the HHI is 3,000 ($=40^2 + 30^2 + 20^2 + 10^2 = 1,600 + 900 + 400 + 100$). The HHI must be 1,800 or higher for the Commission to conclude that the market is highly concentrated.² Table 1 shows that in this case, the upstream HHI is below 1,800 in all potential market areas except for the NorthWestern Energy balancing area. But that area has high concentration because of a large coal mine that is not affiliated with MidAmerican or NVE. The high concentration represents a pre-merger condition that is

¹ *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 492, FERC Stat. & Regs. ¶ 31,111, at 31,911 (2000), 65 FR 70983 (“...highly concentrated upstream and downstream markets are necessary, but not sufficient, conditions for a vertical foreclosure strategy to be effective.”).

² Order No. 492, at 31,910 (“As a general matter, markets that are ‘highly concentrated’ under the Guidelines standard (*i.e.*, an HHI of 1800 or above) are considered to be conducive to the exercise of market power and, therefore, warrant additional analysis.”).

unrelated to the Applicants. Therefore, the combined firm would not have the ability to exercise vertical market power.

Table 1 — Summary of Upstream Fossil Fuel Supply HHIs: Applicants’ BAAs, First-Tier BAAs, and the WECC Region

Area	HHI
Arizona Public Service	841
Avista	1,257
Bonneville Power Administration	745
California ISO	597
Idaho Power	1,174
Los Angeles Dept. of Water and Power	1,157
NorthWestern Energy	5,537
NV Energy	1,038
PacifiCorp East	467
PacifiCorp West	632
Portland General Electric	1,190
WAPA - Rocky Mountain	391
WAPA - Lower Colorado River	619
WECC Region	282

But even if the combined firm did have the ability to exercise vertical market power, the transaction provides no incentive to exercise vertical market power for two reasons. First, regulation by the PUCN specifies that the net benefits from off-system electricity sales are transferred to the Nevada cost-based customers and *not* to NVE shareholders.³ If the combined entity attempted to exercise vertical market power, there would be no additional gains to the combined firm.⁴ Hence, the profit-maximizing

³ NAC 704.032.1 (“For an electric utility, the rate [is] determined by dividing the cost of fuel for electric generation and purchased power, reduced by any revenue from off-system sales for the test period, by the total megawatt-hours that have been sold, exclusive of off-system sales, for the test period...”). *Also see* NAC 704.035.1, 704.037, 704.039.1, 704.045.1, 704.120.

⁴ As discussed in more detail below, state regulation of retail sales also means that PacifiCorp would also receive few benefits from increases in rival fuel supply costs.

profits and quantities would be the same after the merger as before. Second, even if such regulation did not exist, the merger actually *decreases* the incentive for an exercise of market power because NVE is typically a net buyer and not a net seller. As a result, the combined entity would actually have less incentive to exercise market power than MidAmerican might theoretically have prior to the transaction.

For these reasons I conclude that the proposed transaction would not have any anticompetitive effects from the exercise of vertical market power.

The remainder of the testimony is outlined as follows. Section 2 discusses the scope of the testimony and my qualifications. Section 3 provides a description of the companies and lists the upstream facilities of MidAmerican. Section 4 discusses the economics of vertical market power and the Commission's screening methodology to identify circumstances in which additional investigation of vertical market power is warranted. Section 5 discusses relevant product and geographic markets. Section 6 discusses the methodology of calculating the upstream market concentration, and Section 7 discusses the results. Section 8 discusses long-run competition. Finally, Section 9 discusses the other factors that are important to consider in assessing the potential for vertical market power as a result of the MidAmerican/NVE merger. For the reasons summarized above and discussed in more detail below, the MidAmerican/NVE merger will not create or enhance vertical market power.

Section 2. Scope of Testimony and Qualifications

2.1. Scope of Testimony

I examine competition and Applicants' market positions in upstream fossil fuel markets. This affidavit describes the relevant upstream product market and relevant upstream geographic markets for evaluating the potential exercise of vertical market power, identifies suppliers of the relevant upstream markets, measures the size of suppliers, calculates Applicants' and rivals' market shares for delivered fossil fuel to each area, measures supplier concentration, and describes long-run competitive conditions. In

addition, it discusses conditions for a downstream incentive to raise fuel supply costs and demonstrates that the merger will not create or increase any potential downstream incentives for vertical market power.

2.2. Qualifications

I am a Principal at Economists Incorporated, an economic consulting firm located at 2121 K Street, NW, Washington, DC 20037. I have been studying and consulting in the energy industries since joining the Federal Trade Commission (FTC) in 1985. Since joining Economists Incorporated in 1992, I have consulted on many mergers involving electric and gas companies, testified concerning a merger of coal companies, studied and testified concerning the affiliate relations of regulated utilities, and examined competitive issues relating to rates. I have published articles on competition and energy matters, including potential rate effects of vertically integrated utilities. I have spoken on numerous occasions concerning competition in natural gas, electric power, and other industries. I previously served as Chair of the Antitrust Committee of the Energy Bar Association. I have previously been accepted as an expert witness before this Commission, state commissions, and in federal court. A more detailed description of my qualifications is included as Attachment 1.

Section 3. Description of Companies and Major Upstream Facilities

MidAmerican is an integrated energy company that owns and operates electric utilities and Kern River. MidAmerican's operations and assets are presented in the Application. MidAmerican is owned by Berkshire Hathaway, which indirectly owns Burlington Northern Santa Fe, LLC that in turn owns BNSF. For my study of vertical market power issues, I focus on the following assets: (1) PacifiCorp, an electric utility that owns coal mines in the WECC region; (2) Kern River; and (3) BNSF.

PacifiCorp operates two balancing authority areas in the WECC region: PacifiCorp East (PACE) and PacifiCorp West (PACW). PacifiCorp operates as a vertically integrated utility in California, Idaho, Oregon, Utah, Washington, and Wyoming. In the

PACE balancing area, PacifiCorp operates as Rocky Mountain Power in Idaho, Utah, and Wyoming. In the PACW balancing area, PacifiCorp operates as Pacific Power in California, Oregon, and Washington. PacifiCorp owns about 8,300 MW of coal-fired generation. About one-third of the coal burned comes from affiliated mines owned by PacifiCorp. In Wyoming, PacifiCorp owns a two-thirds interest in the Jim Bridger Mine. Bridger Coal Company, a PacifiCorp joint venture with Idaho Power Company, is the mine operator. PacifiCorp also owns the Deer Creek mine in Utah, which is operated by its subsidiary, Energy West Mining Company. PacifiCorp also has an ownership interest in the Trapper mine in Colorado, but it does not control or operate the mine.

Kern River is an interstate natural gas pipeline regulated by the Commission. It has a capacity of approximately 2.167 Bcf/d of capacity, of which 1.836 Bcf/d is deliverable into California. It operates within the PACE area in southwest Wyoming and in Utah. It also runs through southern Nevada near Las Vegas, which is in the Nevada Power Company service territory. It interconnects with the Mojave pipeline in California, and it can deliver natural gas to the SoCalGas local distribution system at Wheeler Ridge and Kramer Junction and the Pacific Gas & Electric (PG&E) southern transmission line at Daggett, California. Kern River was originally placed into service in February 1992 to supply natural gas to the enhanced oil recovery (EOR) operations in Kern County, California. It still supplies natural gas to EOR qualifying facilities in California, as well as newer electric generators in Utah, Nevada, and California. It also delivers natural gas to the local distribution companies in southern Nevada and California.

BNSF is a rail transporter that mainly operates west of the Mississippi River. BNSF delivers coal for electric energy generation in many states west of the Mississippi River and as far east as Alabama. BNSF, however, does not currently deliver any coal to Nevada, where NVE operates.

NVE is a vertically integrated electric utility. NVE owns two electric utilities in Nevada: Sierra Pacific Power Company (SPPC) d/b/a NV Energy and Nevada Power

Company (NPC) d/b/a NV Energy. On May 31, 2013, NV Energy filed applications with the Commission and the PUCN to merge the utilities and operate a single, integrated balancing authority area. SPPC will be merged into NPC and the surviving firm will be named NV Energy Operating Company.

SPPC operates an integrated gas and electric utility. Although SPPC serves most of northern Nevada with electric power, the gas service territory is a relatively small area centered on Reno and Sparks, Nevada. Southwest Gas serves the remainder of Nevada that has local gas distribution. SPPC receives natural gas supplies via Paiute Pipeline Company (Paiute) and Tuscarora Gas Transmission Company (Tuscarora), two interstate pipelines. Paiute and Tuscarora in turn receive gas supplies upstream via Northwest Pipeline Corporation, Gas Transmission Northwest Corporation, and Ruby Pipeline, L.L.C., which are all interstate natural gas pipelines regulated by the Commission. None of these interstate pipelines are affiliated with NVE or MidAmerican. The coal supplies for SPPC's North Valmy plant are delivered by the Union Pacific Railroad (Union Pacific). SPPC is typically a net purchaser of electric energy and sells very little in wholesale markets. Based on FERC Form 1 data, SPPC's gross sales in 2012 averaged 57 MW and its net sales averaged -418 MW.

NPC operates a vertically integrated electric utility in and around Las Vegas in southern Nevada. NPC mainly operates coal-fired and gas-fired generation and purchases a substantial amount of its energy. The fuel for its gas-fired generation is delivered directly by Kern River or indirectly from Kern River through Southwest Gas. NPC has long-term contracts with Kern River that allow it to receive gas from Opal, Wyoming and from sources in California, depending upon the contract. Union Pacific delivers the coal supplies for NPC's Reid Gardner plant. Based on FERC Form 1 data, NPC's gross sales in 2012 averaged 357 MW and its net sales averaged -655 MW.

NVE does not own upstream fuel supply facilities that might raise vertical market power issues. As discussed above, NVE also has contractual rights on interstate pipelines

to supply its gas-fired generation and its local distribution operations in northern Nevada. These contractual rights are included in the upstream market analyses discussed in detail below.

Section 4. Theory of Vertical Market Power

4.1. Economic Issues

A merger of an electricity generation company and an upstream input supplier (e.g., a fuel supplier) could raise a theoretical competitive concern that control over vital inputs may allow the integrated company to raise input costs to rival generators of electricity to raise downstream electricity prices. When rival generation companies have higher costs, the integrated company may receive higher electric energy prices and profits from electric power sales than it would otherwise earn. This is most likely to occur in restructured electricity markets in which merchant generation companies receive all the benefits from higher electricity prices. This theory is often called either vertical foreclosure or raising rivals' costs, and it is the primary theory addressed by the Commission in prior mergers of electric power generation and upstream fuel suppliers.

For this theory to apply in fact, it is necessary to show that Applicants have *both* the ability and the incentive to raise input costs to rivals. In the instant case, only one upstream geographic area is highly concentrated—NorthWestern Energy—and Applicants' share in that area is below levels that would give them market power.⁵ Therefore, Applicants would not have the ability to raise input costs in a manner that would raise electricity prices. Without market power they would not be able to control input supplies sufficiently to raise downstream energy prices in a profitable and sustained manner. Likewise, if Applicants, as in the instant case, have no additional incentive to raise downstream electricity prices, then Applicants would have no incentive to raise

⁵ This is discussed in more detail in Section 7.1.2., below.

rival input costs because a strategy to seek to raise input costs to rivals would not be profitable.

A merger of an electric power generation and an upstream input supplier may have another theoretical concern: the merger could facilitate anticompetitive coordination within markets. This may occur through very high concentration in both the upstream and downstream markets. In the instant case, however, only one upstream market is highly concentrated: NorthWestern Energy. But the HHI for NorthWestern Energy is the result of supplies from a non-affiliated coal mine—the Rosebud mine owned by Westmoreland Coal Company—and Applicants’ upstream share is less than 7 percent. The Commission has previously found that firms would not exercise vertical market power when their shares were small.⁶ Accordingly, the transaction does not meet the requirements for a concern about anticompetitive coordination.

A third theoretical concern is regulatory evasion where regulated electric utilities may use vertical relationships to evade rate of return regulation of the electric utility. As the Commission has previously explained, this issue is largely an issue for state retail rate regulation and is not typically considered by the Commission.⁷ Moreover, the upstream facilities at issue—Kern River and BNSF—are not candidate vehicles for regulatory evasion because rates and terms of service for Kern River are regulated by this Commission and BNSF does not currently deliver any coal to NVE generation facilities. Accordingly, regulatory evasion is not discussed further in this affidavit.

4.2. Commission Screening Methodology

The Commission’s screening methodology for vertical acquisitions is described in 18 CFR §33.4 (2012). Applicants may provide both an upstream (fuel supply) and

⁶ See *Exelon Corp.*, 138 FERC ¶ 61,167, at PP 109, 113 (2012).

⁷ See *San Diego Gas & Electric Company and Enova Energy, Inc.*, 79 FERC ¶61,372, 62,560 (1997), *order denying reh’g*, 85 FERC ¶61,037 (1998) (Enova).

downstream (electric energy) market analysis. In the upstream market analysis, Applicants identify the relevant products, relevant geographic markets, suppliers, the size of the suppliers, market shares, and the HHI. In the downstream market analysis, Applicants identify the relevant electric energy products, relevant geographic markets, suppliers, the capacities of the suppliers, market shares, and the HHI. This downstream analysis is done similarly to the Delivered Price Test horizontal analysis with two differences. First, in the downstream vertical analysis the ownership of capacities of generation units supplied with the relevant fuels are attributed to the upstream supplier rather than the actual owner of the capacity. Second, the downstream analysis only considers the post-transaction HHI and not the HHI changes. Per Commission decisions, the Commission will find a vertical market power concern only if both the upstream and downstream markets are highly concentrated, which means the HHI is over 1,800 in both the upstream and downstream markets covering the same geographic area.⁸ When both upstream and downstream markets are highly concentrated, Applicants may present information on other factors concerning “[t]he potential adverse competitive effects of the transaction.”⁹ When these other factors demonstrate that a merger presents no real market power concern, the Commission can approve the merger without mitigation for the vertical combination created by the merger.

Section 5. Product and Geographic Markets

5.1. Product Market

The relevant product market in which to study upstream competition for the MidAmerican/NVE merger is delivered fossil fuel. This upstream market includes coal, natural gas, and oil. But oil accounts for less than 0.5 percent of the fossil fuel used in WECC for electric generation, so it is not of competitive significance and will not be

⁸ See note 1, *supra*; *Dominion Resources, Inc. and Consolidated Natural Gas Company*, 89 FERC ¶61,162, 61,477 (1999).

⁹ 18 CFR §33.4(e)(1)(i) (2012).

discussed further.¹⁰ Accordingly, the analysis here concerns coal and natural gas supplies.

As the Commission has stated numerous times, its primary concern in mergers of electric utilities with upstream suppliers is that “the merged firm would be able to adversely affect competition in downstream [wholesale electric power] markets.”¹¹ Hence, it is necessary to consider fuel supplies that would affect downstream electricity prices and competition in the electric power markets that the merged entity might control after the acquisition. The MidAmerican/NVE merger involves a company, MidAmerican, that owns coal mines, coal delivery infrastructure, and an interstate natural gas pipeline. Because MidAmerican owns both natural gas and coal delivery infrastructure, it makes sense to consider the combined ownership in the upstream segments when doing the upstream competitive screens.

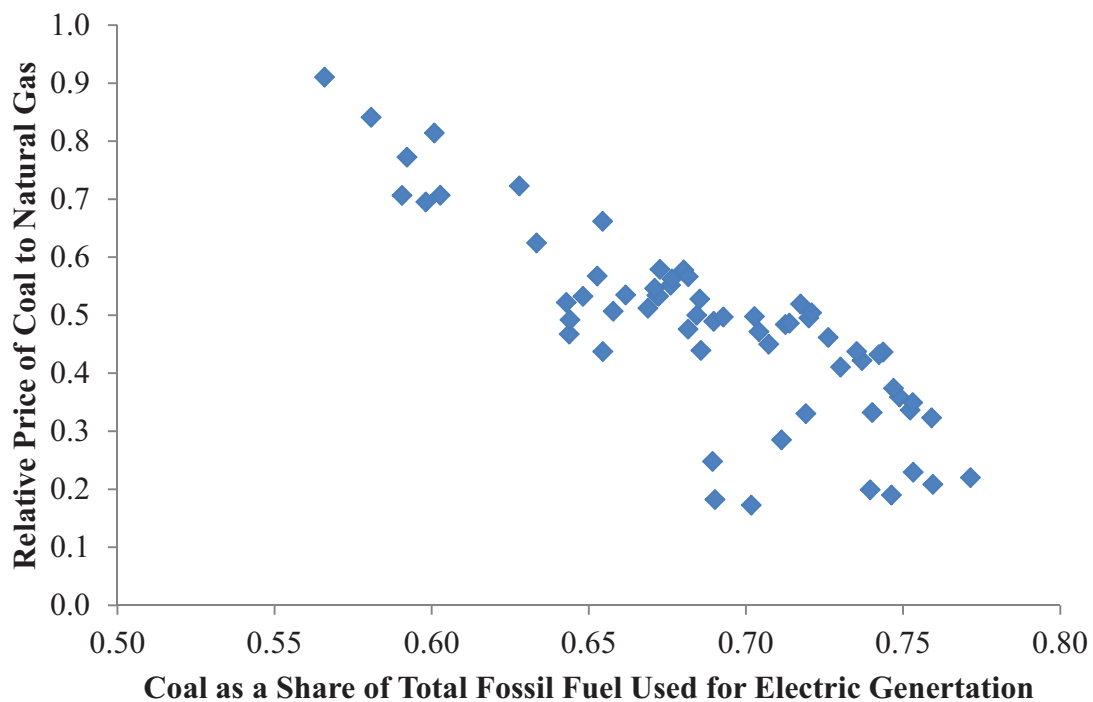
Two additional factors indicate that fossil fuels should be considered the relevant product. First, from the recent changes in relative prices and changes in fuel consumption, it is clear that coal and natural gas compete for electric power generation. Figure 1 shows the share of fuel used for fossil-fired generation coming from coal and the price of coal relative to the price of natural gas. Each diamond in Figure 1 represents one month from January 2008 through March 2013. The bottom axis is the coal share of the fossil energy used for electric power generation. The shares range from 0.57 (57 percent) to 0.77 (77 percent). The left-hand axis shows the relative price of coal to natural gas. The relative prices range from 0.17, which means the price of coal was only 17 percent

¹⁰ Based upon Form EIA-932 data for 2011. For calculations from EIA data, we define the WECC region as including all of the states of Arizona, California, Idaho, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. This excludes a small section of western South Dakota that is in WECC region and includes southeast New Mexico, which is not in the WECC region. But the group of 9 western states is the best approximation to WECC based upon state level data.

¹¹ *Dominion Resources, Inc. and Consolidated Natural Gas Company*, 89 FERC ¶61,162, 61,477 (1999), hereinafter “*Dominion*”. Also see *Revised Filing Requirements under Part 33 of the Commission’s Regulations*, Order No. 492, FERC Stat. & Regs. ¶ 31,111, 31,904 (2000), 65 FR 70983 (“... we are concerned as to whether mergers will adversely affect competition in electricity markets...”).

the price of natural gas, to a high of 0.91, which means that the price of coal was 91 percent of the price of natural gas. Figure 1 in essence maps out a demand curve for coal consumption based on its relative price to natural gas. As coal becomes less expensive relative to natural gas, its consumption increases substantially. This demonstrates that coal and natural gas act as competitive substitutes to supply electric generation facilities.

Figure 1 — Coal Consumption Increases with Lower Prices

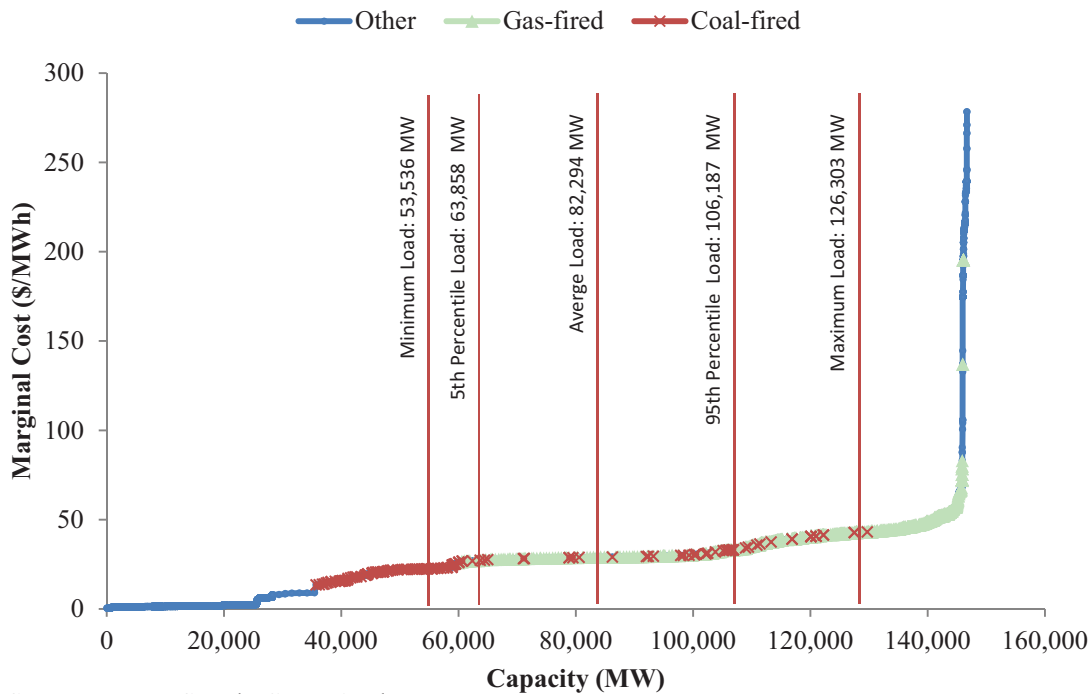


Source: EIA.

Second, raising the cost of coal by itself would be unlikely to have any appreciable effect on downstream electric power prices. Figure 2 shows the aggregate supply curve for electric power generation in the WECC region and representative demand levels. The bottom axis shows the cumulative quantity of generation capacity and aggregate demand levels. The left-hand axis shows the cost of the generation. Different types of generation are represented by different colors. Coal-fired generation, in dark red, predominates in the range of 40,000 to 60,000 MW. But this range is below the 5th percentile level of

demand, indicating that coal-fired generation would be on the margin in less than 2.5 percent of the year. The vast majority of the year a combination of coal and gas-fired generation would be on the margin competing to supply additional electricity. Hence, from the perspective of the Commission's concern on effects in the downstream electric power markets, coal suppliers would have little ability to raise electric power prices apart from an increase in natural gas prices. The reason is that the coal-fired generation is either low-cost infra-marginal generation or it competes with gas-fired generation with similar costs. Where coal-fired generation is infra-marginal, raising delivered coal costs would not affect downstream electric power prices because the coal-fired generation is not setting electric power prices. Where higher-cost coal-fired generation competes directly with natural gas, in a demand range from about 64,000 MW to 126,000 MW, raising coal-fired generation cost would simply result in gas-fired generation replacing the coal-fired generation. Once again, coal suppliers would not have the ability to raise electric power prices independently of those controlling gas-fired generation.

Figure 2 — WECC Region Electric Energy Supply Curve and Demand Levels



Source: Ventyx Supply Curve Analyst

Accordingly, a proper analysis of the upstream product market requires examining the upstream market for fossil fuel.

5.2. Short Run versus Long Run

Competition in fossil fuel supplies varies over time. For the purpose of this affidavit, short-run is defined as the period in which the capacity of the existing pipeline systems and coal delivery systems are fixed.¹² That is, a short-run analysis considers

¹² In Order No. 637, the Commission considered one year as the proper length for delineating short-term transactions. This appears reasonable for the purpose of setting and regulating interstate pipeline rates. Yet, as long as delivery infrastructure and annual demand stay the same, the competitive conditions would remain unchanged from year to year. For convenience, I consider all of these similar conditions as the short-run. A long-run analysis considers the incentive and ability to change the capacity and length of energy delivery infrastructure.

control over existing capacity. In the short-run, pipelines can construct new taps, meters, and laterals to serve new customers, but they do not have the ability to expand mainline capacity significantly. In the short-run, coal and rail companies can sign and deliver to new customers and switch utilization of current facilities, but they cannot open new mainlines or install new long-distance transportation routes. The majority of this affidavit concerns competition in the short-run. Competition in the long-run is discussed in Section 8, below.

5.3. Geographic Markets

The concept of vertical market power is based on the notion that by combining ownership or control of fuel supplies of one Applicant with the electric generation assets of the other, the costs of input supplies to rival generation companies may increase. For a merger to affect the likelihood that a company would exercise market power, it must change significantly the structure of relevant markets. In the instant matter, that structural change would be the combination of the MidAmerican fuel supplies and generation assets with the NVE generation assets. Such a structural change takes place within each of the MidAmerican and NVE balancing authority areas and the surrounding areas in which MidAmerican and NVE purchase and sell electric energy.

Precisely delineating relevant geographic markets for studying upstream competition is difficult.¹³ Several facts suggest that geographic markets for delivered energy may be substantially larger than one might expect. One fact is that holders of capacity rights to downstream delivery zones on interstate natural gas pipelines may use their capacity rights to deliver gas within a broad upstream zone. This limits potential price discrimination over very large areas because holders of capacity rights can shift deliveries to locations that place the highest value on that gas. For example, a shipper

¹³ For a discussion of the general principles of defining relevant markets for pipeline transportation, see American Bar Association Section of Antitrust Law, MARKET DEFINITION IN ANTITRUST: THEORY AND CASE STUDIES (2012), at 260-275.

with firm capacity rights from Opal, Wyoming to California may deliver natural gas in southern Nevada if natural gas prices were to increase in southern Nevada. And even if a fuel supplier could set different prices within a small area, it would typically face competition “over the wires” to supply generation. That is, if fuel prices rose at location A, generators at location B, unaffected by the fuel price increase, would seek to displace sales of fuel at A by consuming more fuel at B and transmitting the electric energy to A. These conditions suggest that relevant geographic markets for fuel supply are likely to be quite large.¹⁴ For the purpose of a Section 203 filing, a relevant upstream market would usually be no smaller than a regional transmission group with economic transmission rates.

For the purpose of the instant matter, I conservatively examine competition in each of the 14 balancing authority areas of the Applicants and first tier to the Applicants. In addition, I examine upstream fuel supply competition in the WECC region as a whole.

Section 6. Measuring Short-run Concentration of Delivered Fossil Fuel

The analysis here focuses on the short-run supply conditions for fossil fuel because that is naturally the focus of the Commission’s market power analysis. In the long-run many entry and substitution possibilities are available. It is in the short-run when the capital stocks are fixed that market-power is most likely to be exercised. This is consistent with the Delivered Price Test for the horizontal analysis that selects a near future period that includes existing generation and only the new generation that has already committed to entry. The remainder of this section discusses the methodology for

¹⁴ For example, SPPC could potentially double its annual purchases, reduce its internal generation significantly, and serve as much as 50 percent of its peak loads from imports. Given these facts, it would not be profitable to raise fuel costs to the SPPC area relative to nearby areas because public utilities would increase electric energy imports and reduce their fuel purchases in the area. Accordingly, SPPC would not be a relevant upstream fuel supply market.

identifying and measuring the short-run suppliers of fossil fuels. Section 7, below, discusses the HHI results from implementing these methods.

6.1. Gas Suppliers of Fossil Fuels

In a long line of mergers the Commission has examined upstream competition and the Commission has accepted that suppliers of upstream gas supplies include firm shippers on interstate pipelines with long-term contracts. Applicants in mergers such as El Paso/Sonata, El Paso/Coastal, MidAmerican/PacifiCorp, and Exelon/Constellation all considered firm capacity shippers as suppliers to the market.¹⁵ As articulated in my prior testimonies on this topic, there are several reasons for this.¹⁶ The most important reason is that the Commission's regulations of interstate pipelines provide for flexible receipt and delivery point rights and allow firm shippers to both segment and to release their capacity to third parties. Commission regulations provide a firm shipper the flexibility to change receipt or delivery points so it can receive and deliver gas at any point within the firm capacity rights of its contract path. Segmentation provides holders of firm capacity rights the ability to subdivide their capacity rights into segments and to use each segment for different capacity transactions. Order No. 637 required all interstate pipeline companies to permit shippers to segment their capacity for their own use and for the purpose of capacity release.¹⁷ As a result, a firm shipper with capacity from Opal, Wyoming to California on Kern River can deliver gas at an interim point in Utah or Nevada. The flexibility rights allow a shipper to purchase gas and deliver at many different locations. A firm shipper can also release its capacity so that a third party takes

¹⁵ Application of El Paso Corp. and Sonat Inc., 88 FERC ¶ 61,302 (1999); Application of El Paso Corp. and Coastal Corp., 92 FERC ¶ 61,076 (2000); Application of MidAmerican Holdings Co. and PacifiCorp, 113 FERC ¶ 61,298 (2005); Application of Exelon Corp. and Constellation Energy, Inc., 138 FERC ¶ 61,167 (2012).

¹⁶ *See, for example*, Affidavit of Dr. John R. Morris, El Paso Corp. 88 FERC ¶ 61,302 (1999); Affidavit of Dr. John R. Morris, El Paso Corp. 92 FERC ¶ 61,076 (2000).

¹⁷ *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091 (2000), 65 FR 10156 (2000).

control of the capacity. The fact that a firm shipper can release its capacity means that firm shippers can compete with the pipeline in offering new capacity to prospective new shippers in the short-run. Finally, firm shippers typically have rights to maintain their capacity on the pipeline when they are willing to sign long-term contracts. Hence, firm shippers may keep their capacity for the indefinite future. For these reasons, we include firm shippers as suppliers in the upstream fossil fuel market. Unsubscribed mainline capacity on interstate pipelines is considered under the control of the pipeline owner.¹⁸

6.2. Coal Suppliers of Fossil Fuels

Coal suppliers do not operate under the same regulatory mechanisms as natural gas pipelines. Although railroads are subject to regulation by the STB, railroads are not subject to the segmentation and capacity release requirements of interstate pipelines. Hence, for fossil fuel supplies delivered by railroads, although the railroads only provide transportation of the coal supplies and the plant owner separately contracts with the coal commodity supplier, for purposes of this analysis I treat the railroad delivering the coal to the plant as the “supplier” of the fossil fuel. About one-third of the capacity of coal-fired plants in the WECC region is near coal mines and receives coal supplies via conveyor, truck, or proprietary short-line railroads. For these coal supplies, the mine owner (or operator) is considered the supplier for the coal supplies. Although the plant owners likely have long-term supply contracts with the mines, the plant owners do not have the ability to resell the coal supplies to other electric generators when railroad service is not close to either the plant or the mine. In addition, with reimbursable cost-based contracts the mine owners may have the ability to raise fossil fuel costs despite the presence of long-term contracts by artificially inflating costs.

¹⁸ Even though the unsubscribed capacity is under the control of the pipeline owner for the purpose of this analysis, that control is not absolute. The pipeline must post the capacity as available for contracting, must honor requests for long-term service at the maximum tariff rate, and must make the capacity available for interruptible shipments at the maximum tariff rate.

6.3. Measuring Sizes of Suppliers

The capacities of natural gas fossil fuel suppliers are available from FERC Form-567B Index of Customer data and from the operational postings of unsubscribed capacity. These data are utilized for the size of those supplying fossil fuel in the form of natural gas. Because of segmentation rights, capacity for any market area includes the forward haul capacity to that area plus the forward haul capacity through that area and downstream delivery rights. So, for example, a firm shipper on Kern River with capacity rights from Wyoming to California would be included in capacity for California, Nevada, and Utah.

Such capacities are not readily available for the coal suppliers of fossil fuels. Railroads do not post available capacity to a region. And because of the nature of the railroad business that utilizes tracks to ship a wide variety of products and can change rail equipment among routes, they do not calculate the capacity to deliver a single product to an area. Moreover, without proprietary information known by individual railroads, third parties do not have the ability to calculate capacities for railroads. As a result, it is necessary to use an alternative methodology.

For coal capacities we utilized actual coal deliveries in 2010 and 2011 as reported to the Energy Information Administration Form EIA-923. We assumed that BNSF delivered all of the coal to those generation facilities identified in Form EIA-923 where BNSF indicated it delivered to those generating facilities in the 2010-2012 period. In addition, all of the coal delivered to several smaller generation facilities that were located near BNSF tracks and distant from Union Pacific tracks was assumed to be supplied by BNSF. All of the coal delivered to generation facilities that were associated with a proprietary short-line rail was considered to be supplied by the mine owner. Coal delivered to all other generation facilities reporting railroad deliveries was considered to

be made by Union Pacific. All other coal delivered to generation facilities in the WECC region was considered to be supplied by the mine owners and operators.¹⁹

Many generation facilities in the WECC region have joint ownership and each owner considers its capacity as being in its own balancing authority area. This raises an issue when calculating market concentration for individual balancing authority areas because capacities and supplies are to the generation facility and not to a particular balancing authority area. I use the convention that all the capacities and deliveries to a generation facility are included in each of the balancing authority areas that are associated with that generation facility.

6.4. Measuring Market Concentration

Consistent with Commission policy, I used the HHI measure of concentration. To convert the coal supply quantities to similar quantities as the natural gas capacities, which are in Dth/d or equivalently mmBtu/d, we multiply the tons of coal delivered by the average heat content to get the Dth delivered for 2010 and 2011. We then divide the energy delivered by 730 days to put it on a per day basis similar to the natural gas capacities. The natural gas capacities and coal deliveries are aggregated by supplier for each of the study areas, shares are calculated, and the HHI is calculated.

Section 7. Concentration of Delivered Fossil Fuel

7.1. Concentration by Balancing Authority Area

Attachment 2 shows the quantities delivered, shares, and the HHI for each of the relevant balancing authority areas. These comprise the three balancing areas to be operated by the combined firm after the merger and the relevant first tier balancing authority areas. Upstream HHIs are not presented for Grant County PUD because there

¹⁹ I rely upon Ventyx for specifying the balancing authority areas of generation facilities.

is no gas-fired or coal-fired generation for wholesale sales in Grant County. I first cover the three Applicant areas and then the first tier areas.

7.1.1. Applicants' Areas

The NVE area is not highly concentrated with an HHI of 1,038. Although MidAmerican has the highest share, this is mainly driven by the fact that NVE has over 5,000 MW of gas-fired generation in the area and it has secured long-term contracts on Kern River, Paiute, and Tuscarora to supply that generation. Nevertheless, the market is not highly concentrated, which indicates many other potential supply options in the area.²⁰

The PACE area is not highly concentrated with an HHI of 467. The MidAmerican share is only 8.6 percent. The PACW area also is not highly concentrated with an HHI of 632. The MidAmerican share is only 9.3 percent.

7.1.2. First Tier Areas

All first tier areas except for one are not highly concentrated. Arizona Public Service is not highly concentrated with an HHI of 841. The MidAmerican share is only 4.0 percent. Avista is not highly concentrated with an HHI of 1,257 and a MidAmerican share of 5.3 percent. BPA also is not highly concentrated with an HHI of 745. The MidAmerican share is only 7.9 percent. The California ISO area also is not highly

²⁰ Neither the NPC nor SPPC areas individually presents upstream vertical issues related to the merger. MidAmerican's Kern River pipeline only serves the NPC area, and the NPC area is not highly concentrated. For the reasons discussed in footnote 14, the SPPC would not be a relevant upstream fuel supply market. Even if the SPPC area were considered a relevant upstream fuel supply market, it would not present any vertical market power issues with respect to the present transaction because MidAmerican's Kern River pipeline does not serve the SPPC area and the BNSF railroad does not currently deliver to the SPPC area. Although the SPPC area (if it were a relevant fuel supply market) is highly concentrated in upstream fuel supplies, the results are driven by the inappropriately small area having relatively little fossil fuel demand, NV Energy firm capacity contracts to supply its gas-fired generation and its local distribution operations around Reno, and Union Pacific (which is not affiliated with any of the applicants) as the only railroad currently delivering coal in the SPPC area. These are all pre-transaction conditions that are not impacted by the merger.

concentrated with an HHI of 597. The MidAmerican share is only 6.4 percent. The Idaho Power area also is not highly concentrated with an HHI of 1,174. The MidAmerican share is only 4.4 percent. The PGE area also is not highly concentrated with an HHI of 1,190. Puget Energy has the highest share of 29.1 percent. The MidAmerican share is only 7.0 percent. The WACM area is not highly concentrated with a HHI of 391. Puget Energy has the highest share of 11.1 percent, and the MidAmerican share is only 8.7 percent. The WALC area is also not highly concentrated with a HHI of 619. Puget Energy has the highest share of 17.4 percent, and the MidAmerican share is 3.8 percent.

Generation connected to LADWP is either gas-fired generation located in southern California or LADWP's interest in the Intermountain facility in Utah that is connected to LADWP via a DC transmission line. Supplies to Intermountain are included in the PACE upstream analysis. All the gas for gas-fired generation in the LADWP area in California is delivered by SoCalGas. The upstream HHI analysis presented here is for the interstate pipeline capacity rights to deliver natural gas to SoCalGas. This is appropriate in this case because the issue is a combination of a public utility with an interstate pipeline and not with a local distribution company. Supplies to LADWP are not highly concentrated with an HHI of 1,157. Sempra is the holding company of the distribution company, and not surprisingly it is the largest capacity rights holder with 27.6 percent of the capacity.

The NorthWestern Energy area is highly concentrated with an HHI of 5,537. This HHI level, however, is not the result of any assets owned by MidAmerican or NVE. The high HHI mainly results from the Rosebud mine that supplies the Colstrip generation facility. The Rosebud mine is owned by Westmoreland Coal Company, which has a 73.5 percent share in the area. Although the Colstrip facility is located in the NorthWestern Energy balancing authority area, the Colstrip facility is owned by 6 different owners stretching from western Washington and Oregon to Wyoming. Hence, coal supplies to the facility are comparatively large for the balancing authority area. The MidAmerican

share of the upstream fuel supplies is only 6.4 percent, and all the upstream market shares are the same both pre-merger and post-merger. This indicates that the highly concentrated market has nothing to do with the proposed merger; rather, it is a pre-existing condition unrelated to the Applicants and unaffected by the merger.

7.2. Concentration within the WECC Region

Because geographic size of upstream energy markets can be quite large, I also examined upstream concentration in the WECC region as a whole. The results are presented in Attachment 3. The HHI is only 282. MidAmerican has the second highest share, and it is only 8.8 percent. These levels are well below any level associated with either a unilateral or coordinated exercise of market power.

Section 8. Long-run Competition and Entry Conditions

The preceding analysis focuses on short-run competitive conditions under current rate regulation, current tariff provisions, and without new generation, pipeline, or rail construction. This section shows that interstate pipelines and railroads have the incentive to expand capacity efficiently and that entry is sufficiently easy; therefore, the merger presents no competitive problem in the long-run.

8.1. Current Competitive Situation

Because applicants face significant competition to expand pipeline capacity and rail service, they will not withhold capacity expansions or foreclose capacity expansion to electric power generators. Attachment 4 gives a list of proposed pipelines and pipeline expansions in the WECC region during the last five years. There have been many projects proposed and substantial capacity expansions by incumbent pipelines. Many of these capacity expansion projects that are completely independent of Applicants are recently completed, under construction, or announced within relevant markets. Although

comparable data is not available for railroads, railroads in the United States have been expanding capacity in recent years in response to growing demand for rail transport.²¹

There is intense competition among all natural gas pipelines for new electric generation loads. Attachment 5 gives a list of gas-fired generation units that have entered the WECC region in the past five years. In total, over 9,000 MW of generation has been added independently of MidAmerican facilities.

Applicants could not prevent rival generation companies from obtaining fossil fuel supplies. Given the announced projects by competitors, Applicants cannot prevent rival generators from receiving additional gas supplies. Even if competitors had no projects, Applicants could not restrict supplies to rival generation companies because the Commission's regulations require interstate pipeline companies to have non-discriminatory open season for new capacity and to make unscheduled firm capacity available to shippers as interruptible capacity.

Due to more stringent environmental regulations and the plentiful supplies of natural gas, there have been relatively few new coal-fired generation facilities in recent years and few, if any, are expected for the foreseeable future. This heightens the competition for railroads and coal mines to serve the current or any proposed coal-fired facilities.

8.2. Current Rate Regulation Encourages Interstate Pipelines and Railroads to Expand Capacity Efficiently

Just and reasonable cost-of-service rate regulation gives pipeline companies the correct incentives to expand capacity when the market has sufficient demand for the new capacity. Capacity right holders benefit more than pipeline companies from shortages of

²¹ See, for example, Betsy Morris, *Boom Times on the Tracks: Rail Capacity, Spending Soar*, THE WALL STREET JOURNAL, March 27, 2013, at A1.

capacity.²² This fact provides pipeline companies with the incentive to expand capacity efficiently. Pipeline companies cannot directly benefit from not expanding capacity efficiently because they are subject to cost-of-service rate regulation and are not allowed to bundle gas sales. Whenever the weighted-average basis differential in receipt and delivery prices over the course of a year is greater than the pipeline's incremental cost of adding capacity, the pipeline benefits by adding capacity. The reason is that the price difference is the value placed by the market on transmission rights, so shippers would be willing to purchase the additional capacity from the pipeline. Selling new capacity is the only way that the pipeline company benefits from the increase in demand. This expansion criterion is also applicable in determining when it is efficient for the pipeline to add capacity. That is, it is efficient to expand capacity whenever customers are willing to pay for the costs of the expansion. Therefore, pipelines have the incentive to add capacity whenever it is efficient. The Commission explained this reasoning in Order No. 637.

Because pipeline rates are regulated, however, there is little incentive for a pipeline to [not expand capacity], because even if it creates scarcity, it cannot charge rates above those set by its cost-of-service. Since pipelines cannot increase revenues by [not expanding capacity], rate regulation has the added benefit of providing pipelines with a financial incentive to build new capacity when demand exists. The investment in new capacity increases a pipeline's revenue because the new investment increases the pipeline's rate base on which the pipeline earns a rate of return. Thus, annual rate regulation protects against the pipeline's exercise of market power by limiting the incentive of a monopolist to withhold capacity in order to increase price as well as creates a positive incentive for a pipeline to add capacity when needed by the market.²³

²² Order No. 637, at 31,281. ("In today's market, when the value of transportation exceeds the maximum rate, firm capacity holders have an incentive not to release capacity, but to bundle that capacity with gas so that they can obtain the full market value of the transportation capacity by selling gas in the delivery market."). Under Order No. 637, capacity rights holders would be allowed to directly obtain the higher value from short-term capacity releases by allowing them to receive prices above the pipeline company's maximum tariff rate.

²³ Order No. 637, at 31,270-71.

Although operating under a different regulatory environment, BNSF similarly has incentives to expand its delivery services. BNSF does not take title to the coal that it ships and does not benefit from higher market values for coal where coal is delivered. It has the incentive to expand capacity whenever the rates that shippers are willing to pay are greater than the costs of providing new services.

8.3. Relevant Geographic Markets for Long-Run Competition Are Larger than Balancing Authority Areas

When one considers long-run competition, then the relevant geographic markets for delivered gas may be substantially larger than the immediate area of study. An example highlights this concept. The entry of the Ruby pipeline from Opal, Wyoming to Malin on the California/Oregon border resulted in Gas Transmission Northwest having unsubscribed capacity from Canada to California. The result is that the Avista area, hundreds of miles to north, now has excess pipeline capacity available to supply new gas-fired generation.

8.4. Entry is Easy for Long-Run Competition

As the Commission has previously stated, entry “can counteract any potential competitive harm indicated by market share and concentration statistics.”²⁴ In the instant case, easy entry—or the threat of entry—is sufficient to negate any potential inference of competitive harm from concentration statistics. The U.S. Department of Justice and Federal Trade Commission Merger Guidelines outline three criteria for determining whether entry is sufficiently easy to negate potential anticompetitive harm. Each of these criteria is met for fossil fuel supplies in the western United States.

The first criterion is that entry must be timely. The antitrust agencies take a time frame of two years from planning to “significant market impact” as the time frame for

²⁴ FERC, *Notice of Proposed Rulemaking: Revised Filing Requirements under Part 33 of the Commission’s Regulations*, 83 FERC ¶ 61,027 (1998), 63 FR 20340, at 20352 (1998).

timely entry. In the natural gas industry, entry (or the threat of entry) routinely has significant market impact within two years. A typical entry scenario is that a pipeline company desiring to enter an area announces a new pipeline or expansion proposal and holds an open season for capacity. This announcement puts the geographic region into play. The entrant competes with incumbent pipelines to contract for new capacity. The key for entry analysis is that market impacts, in terms of contract prices for firm capacity and commitments to expand capacity, occur substantially before the entrant pipeline is constructed. Indeed, the entrant pipeline may never be built because the incumbent pipelines offer to expand capacity at prices below those required by the entrant. This is a major form of competition in the natural gas industry.

Although the process is different, the underlying economics for railroads to serve new coal-fired facilities is similar to natural gas pipelines to serve new gas-fired generation. In the case of coal-fired generation facilities, the developer would solicit interest from railroads and mines early in the plant development process. Discussions about service would begin years before a facility would begin operations. Because the competition for service begins in the planning stages, new facilities on the ground are not necessary for the long-run competition. Because the new facilities are not necessary before the competition begins, railroads can quickly have competitive impacts in the plant and site-selection process.

The second criterion is that entry must be likely. Likely entry means that entry would be profitable at prices no higher than those that would have occurred but for the merger. In the instant case, entry and capacity expansion are occurring pre-merger, and we can expect them to continue post-merger because markets are growing and pipelines have the incentive to expand capacity efficiently. As discussed above, gas-fired generation is growing significantly in the relevant markets, and rival pipeline companies have announced new pipelines and capacity expansions. Therefore, entry meets the likelihood criterion. Although entry of coal-fired generation is less likely, it is very

likely that railroads would compete with mine-mouth locations to serve any new coal-fired generation that might consider entering in the WECC region.

The third criterion is that entry must be sufficient to prevent or eliminate the potential competitive harm. As is recognized in the Merger Guidelines, entry will generally be sufficient because multiple small-scale entry is feasible. In this case, Commission regulations regarding open-access transportation, flexible receipt and delivery points, and capacity release help to ensure that the impact of capacity expansions can extend over a wide area. In other words, it appears unlikely that Applicants could prevent rival generation units from obtaining capacity on other pipeline systems in the relevant markets. As for railroads, any new coal-fired power plant would be sited with many alternatives in mind so that railroad, trucks, and mine-mouth conveyors would all potentially compete to serve a new coal-fired generation facility.

In summary, announced entry often occurs before actual pipeline or railroad facility construction, entry is timely, and entry would likely prevent any potential competitive harm even if fossil fuel suppliers were highly concentrated in the WECC region.

Section 9. Other Factors

Highly concentrated upstream fossil fuel supply and downstream electric power markets are necessary conditions for a vertical market power concern, but they are not sufficient conditions.²⁵ Even when both the upstream and downstream markets are highly concentrated, other factors may indicate that no competitive concern exists. For the reasons discussed below, these other factors indicate that the proposed transaction would not lead to an exercise of vertical market power even if both the upstream and downstream markets were highly concentrated.

²⁵ Order No. 492, at 31,911 (“...highly concentrated upstream and downstream markets are necessary, but not sufficient, conditions for a vertical foreclosure strategy to be effective.”).

Both the raising rivals' costs and coordinated interaction theories posit that the combined company would benefit to a greater extent from raising downstream electricity prices. Because only MidAmerican is affiliated with upstream fossil supply facilities, the relevant question for assessing whether the merger would have anticompetitive effects is whether adding NVE to the MidAmerican family of assets would increase the incentive of MidAmerican to exercise vertical market power. The answer to that inquiry is clear and unambiguous: *No*. The proposed transaction does not increase any incentive to exercise vertical market power for two reasons.

First, regulation by the PUCN specifies that that net benefits from off-system sales are transferred to the Nevada cost-based customers.²⁶ Specifically, the Nevada Administrative Code states:

For an electric utility, the rate [is] determined by dividing the cost of fuel for electric generation and purchased power, reduced by any revenue from off-system sales for the test period, by the total megawatt-hours that have been sold, exclusive of off-system sales, for the test period ...²⁷

Both of the Nevada utilities make quarterly deferred energy account filings setting forth the specific off-system purchases and sales.²⁸ These filings include all purchases and sales of three-years or less.²⁹ Via Nevada regulation and wholesale requirements contracts, any additional profits from short-term sales would be credited to cost-based customers.³⁰ As a result of this regulation, if MidAmerican attempted to exercise vertical

²⁶ NAC 704.032.1. *Also see* NAC 704.035.1, 704.037, 704.039.1, 704.045.1, 704.120.

²⁷ *Id.*

²⁸ *See*, for example, Prepared Direct Testimony of Gregory A. Kern, Nevada Power Company d/b/a NV Energy 2013 Deferred Energy Proceeding, NPUC Docket No. 13-03003, March 1, 2013; Prepared Direct Testimony of Gregory A. Kern, Sierra Pacific Power Company d/b/a NV Energy 2013 Deferred Energy Proceeding, NPUC Docket No. 13-03004, March 1, 2013.

²⁹ Longer-term purchases and sales are rolled into base rates.

³⁰ *See* NAC 704.035.1, 704.037, 704.039.1, 704.045.1, 704.120.

market power post-merger and succeeded in raising downstream market prices, it would earn no additional benefits from the wholesale energy markets. The merger provides no additional incentive to MidAmerican. Hence, the pricing choices at the upstream supply level would be no different after the merger from before the merger. The merger will simply have no effect on upstream supply decisions and, as a result, on downstream prices.

Second, even if such regulation did not exist, the merger actually *decreases* the incentive for an exercise of market power because NVE is typically a net buyer and not a net seller. Table 2 shows the net sales of NVE energy based upon FERC Form 1 data for 2008 through 2012. As Table 2 shows, NVE was a net buyer in all five years. Even when the analysis is more focused on just short-term sales and purchases, as shown in Table 3, NVE is a net buyer in all five years. As a result, the combined entity would actually have less incentive to exercise market power than MidAmerican might theoretically have prior to the transaction. Once again, the merger does not provide any increased incentive or ability to exercise vertical market power.

Table 2 — NVE Net Sales, 2008-2012 (MWh)

<i>Entity</i>	<i>Year</i>	<i>Purchases</i>	<i>Sales</i>	<i>Net Sales</i>
<i>NPC</i>	2008	8,211,808	1,095,354	-7,116,454
	2009	6,973,223	1,325,100	-5,648,123
	2010	8,131,066	1,817,532	-6,313,534
	2011	8,606,065	2,079,304	-6,526,761
	2012	8,886,776	3,137,140	-5,749,636
<i>SPPC</i>	2008	4,989,135	838,094	-4,151,041
	2009	3,406,246	321,315	-3,084,931
	2010	3,668,348	377,988	-3,290,360
	2011	4,473,506	378,086	-4,095,420
	2012	4,168,205	499,869	-3,668,336
<i>NVE</i>	2008	13,200,943	1,933,448	-11,267,495
	2009	10,379,469	1,646,415	-8,733,054
	2010	11,799,414	2,195,520	-9,603,894
	2011	13,079,571	2,457,390	-10,622,181
	2012	13,054,981	3,637,009	-9,417,972

Source: SPPC and NPC FERC Form 1, 2008-2012.

Note: NVE is the sum of SPPC and NPC.

Table 3 — NVE Net Short-term Sales, 2008-2012 (MWh)

<i>Entity</i>	<i>Year</i>	<i>Purchases</i>	<i>Sales</i>	<i>Net Sales</i>
<i>NPC</i>	2008	5,448,886	1,095,362	-4,353,524
	2009	3,789,822	1,325,080	-2,464,742
	2010	4,847,257	1,792,190	-3,055,067
	2011	5,592,074	2,078,609	-3,513,465
	2012	6,067,167	3,137,213	-2,929,954
<i>SPPC</i>	2008	3,787,439	839,379	-2,948,060
	2009	1,876,841	321,336	-1,555,505
	2010	1,884,801	377,988	-1,506,813
	2011	2,661,890	377,746	-2,284,144
	2012	1,988,714	499,869	-1,488,845
<i>NVE</i>	2008	9,236,325	1,934,741	-7,301,584
	2009	5,666,663	1,646,416	-4,020,247
	2010	6,732,058	2,170,178	-4,561,880
	2011	8,253,964	2,456,355	-5,797,609
	2012	8,055,881	3,637,082	-4,418,799

Source: SPPC and NPC FERC Form 1, 2008-2012.

Note: NVE is the sum of SPPC and NPC.

Because of state retail rate regulation, MidAmerican had little incentive to exercise vertical market power prior to the transaction. PacifiCorp operates in California, Idaho, Oregon, Utah, Washington, and Wyoming. California regulation is similar to Nevada's in that retail customers get 100 percent of the benefits from off-system sales.³¹ In Idaho, retail customers get 90 percent of the benefits and shareholders get 10 percent.³² In

³¹ See Pacific Power & Light Company, *Pacific Power & Light Tariff for the State of California*, Energy Cost Adjustment Clause Tariff Rate Rider, Schedule ECAC-94, Revised Cal.P.U.C. Sheet No. 3571-E & ff., Nov. 10, 2011.

³² See Idaho Public Utilities Commission, *In the Matter of the Application of Rocky Mountain Power for Approval of an Energy Cost Adjustment Mechanism (ECAM)*, Case No. PAC-E-08-08, Order No. 30904, Sept. 29, 2009, at 4.

Washington State, the shareholders get the net benefits until the next rate case at which time the net benefits of off-system sales are included in the new rate calculations. But in recent years, PacifiCorp has filed rate cases about once a year in Washington so that in practice retail customers receive most of the benefits of off-system sales, albeit with a one or two year delay.³³ Oregon has a deadband in which shareholders keep all the benefits up to \$15 million, at which point retail customers receive 90 percent of the benefits of off-system sales.³⁴ Finally, in Utah and Wyoming retail customers receive 70 percent of the benefits of off-system sales.³⁵ As a result of this rate regulation, MidAmerican would keep only a fraction the theoretical downstream gains from raising fossil fuel supply costs. Because all the benefits of NVE off-system sales are transferred to Nevada retail customers and cost-based wholesale requirements customers, the merger has no impact on the incentives of PacifiCorp, Kern River, or BNSF.

³³ See Pacific Power & Light, Washington Utilities and Transportation Commission Docket Nos. UE-080220 (filed Feb. 6, 2008, general rate increase to recover increased electric cost), UE-090205 (filed, Feb. 9, 2009, general rate increase to recover increased costs), UE-100749 (filed May 4, 2010, general rate increase to recover increased electric cost), UE-111190 (filed July 1, 2011, general rate increase to recover increased costs of providing electric service), UE-130043 (filed Jan. 11, 2013, proposed general rate increase).

³⁴ See Public Utilities Commission of Oregon, *In the Matter of PacifiCorp d/b/a Pacific Power Request of a General Rate Revision*, Docket No. UE246, Order No. 12-493, issued Dec. 20, 2012, at 14-15.

³⁵ See *Utah Code 54-7-13.5*; Public Service Commission of Utah, *In the Matter of the Application of Rocky Mountain Power for Approval of Its Proposed Energy Cost Adjustment Mechanism*, Docket No. 09-035-15, Corrected Report and Order, issued March 3, 2011, at 70; Rocky Mountain Power, *Rates and Rules Applicable to Electric Service in all Territory Served by Rocky Mountain Power in the State of Wyoming*, Energy Cost Adjustment Mechanism, Schedule 95, Original Sheet No. 95-5, Oct. 22, 2012.

EXPERIENCE AND QUALIFICATIONS OF

Dr. John R. Morris

OVERVIEW

Dr. Morris, a recognized expert in studying competition in energy industries, currently is a Principal at Economists Incorporated. He began his research of competition in energy industries in 1985 while working for the Federal Trade Commission. Since joining Economists Incorporated in 1992, he has consulted on many mergers and acquisitions involving energy companies, examined competitive issues relating to rates, and studied issues in state restructuring proceedings. He has published articles on competition and energy matters, and he has spoken on numerous occasions concerning competition in natural gas, electric power and other industries. He has been accepted as an expert witness on energy matters before the Federal Energy Regulatory Commission, state regulatory commissions, and in federal court.

EDUCATION

Ph.D., University of Washington, August 1985 Dissertation: *Intellectual Property: Creating, Pricing, Copying* • M.A., University of Washington, December 1983 • A.B., Georgetown University, May 1981

PRESENT POSITION

Dr. Morris is a *Principal* at Economists Incorporated, an economic consulting firm located at 2121 K Street, NW, Suite 1100, Washington, DC 20037. (202-223-4700) Economists Incorporated studies competition and regulation in many industries in the United States and in other countries. It is a leading firm in studying the competitive effects of mergers and acquisitions.

PREVIOUS EXPERIENCE

Senior Vice President, Economists Incorporated, December 2001 – December 2002 • *Vice President*, Economists Incorporated, December 1995 – December 2001 • *Senior Economist*, Economists Incorporated, June 1992 – December 1995 • *Economic Tutorial Leader*, Stanford University (Stanford in Washington), April 1993 – June 1995 • *Visiting Assistant Professor*, Department of Business Economics and Public Policy, School of Business, Indiana University, September 1991 – May 1992 • *Assistant to the Director for Antitrust*, Bureau of Economics, Federal Trade Commission, November 1989 – August 1991 • *Economic Advisor*, Office of Commissioner Machol, Federal Trade Commission, December 1988 – October 1989 • *Economist*, Division of Antitrust, Bureau of Economics, Federal Trade Commission, October 1985 – December 1988

MEMBERSHIPS

Member, International Association of Energy Economics • Associate, Energy Bar Association • Member, American Economic Association • Member, Western Economic Association International • Associate, American Bar Association

AWARDS & HONORS

Award for Excellence in Law Enforcement, Federal Trade Commission, 1988 • Graduate School Scholarship, University of Washington, 1984 • Graduated Cum Laude Georgetown University, 1981 • Senior Comprehensive Passed with Distinction, Georgetown University, 1981

TESTIMONY BEFORE
THE FEDERAL
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COMMISSION

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STATE COURTS

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PRESENTATIONS &
PROFESSIONAL
ACTIVITIES

Comments, Notice of Inquiry: Analysis of Horizontal Market Power under the Federal Power Act, Docket No. RM11-14-000, Federal Energy Regulatory Commission, May 23, 2011 • Comments, Position Limits for Derivatives, RIN 3038-AD15 and 3038-AD16, Commodity Futures Trading Commission, March 28, 2011 • Comments, Guidance on Simultaneous Transmission Import Limit Studies, AD10-2-000, Federal Energy Regulatory Commission, February 12, 2010 • “Geographic Market Delineation in LMP Electric Power Markets,” presentation before representatives of the Federal Energy Regulatory Commission, U.S. Department of Justice, and U.S. Federal Trade Commission, January 27, 2010 • Comments, Notices of Intent to determine that 15 natural gas financial basis contracts traded on the Intercontinental Exchange, Inc. are Significant Price Discovery Contracts, Commodity Futures Trading Commission, October 26, 2009 • “Efficacy of Vertical Integration in Energy Industries with Applications to Proposed Standards of Conduct for Transmission Providers,” submitted to FERC by Santee Cooper in Docket No. RM07-1-000 (2007) • Chair, Antitrust Committee, Energy Bar Association, 2004-2005 • “Competition in the Natural Gas Industry: An Antitrust Perspective, presentation to staff of the Federal Energy Regulatory Commission,” March 28, 2005 • Vice Chair, Antitrust Committee, Energy Bar Association, 2003-2004 • “Weston 4 Effect on Wholesale Competition in WUMS,” submitted to the Public Service Commission of Wisconsin by Wisconsin Public Service Corporation in Docket No. 6690-CE-187, September 26, 2003 • “Computer Models In The Electric Power Industry,” presented to staff of the Federal Trade Commission, Washington, DC, June 11, 2002 • “TECO EnergySource Market Share Analysis,” submitted to FERC by TECO EnergySource, Inc. in Docket No. ER96-1563-017, September 10, 2001 • “Finding Market Power in Power Markets,” presented to staff of the Federal Trade Commission,

Washington, DC, June 20, 2001 • “A Study of Marketing Affiliate and Other Affiliate Holdings of Firm Capacity on Interstate Natural Gas Pipelines and the Effects on Natural Gas Markets,” April 30, 2001, submitted to FERC by the Interstate Natural Gas Association of America in Docket No. PL00-1-003 • “Why We Should Use Computer Models to Unveil Market Power,” presented at the Sixth DOE–NARUC National Electricity Forum, Brown Convention Center, Houston, TX, September 16, 1998 • Comments, *Agency Information Collection and Dissemination Activities: Comment Request*, U.S. Department of Energy, Energy Information Administration, August 28, 1998 • Comments, *Revised filing Requirements Under Part 33 of the Commission’s Regulations*, Federal Energy Regulatory Commission Docket No. RM98-4-000, August 21, 1998 • “Use of Computer Simulation Models to Unveil Market Power,” presented to staff of the Federal Trade Commission, Federal Energy Regulatory Commission and U.S. Department of Justice, Federal Trade Commission, Washington, DC, April 10, 1998 • “Use of Computer Simulation Models to Unveil Market Power: The Primergy Case,” presented to the Bureau of Economics, Federal Trade Commission, Washington, DC, December 8, 1997 • “Use of Computer Simulation Models to Unveil Market Power,” presented at the 29th Annual Conference of the Institute of Public Utilities, Williamsburg, Virginia, December 3, 1997 • “Mergers and Market Power,” presented at the National Association of State Utility Consumer Advocates Mid-Year Meeting, Charleston, South Carolina, June 9, 1997 • “Market Power Analysis: An Economic Perspective,” (with Mark Frankena), presented at the Strategic Research Institute Conference on The Legal Challenges of Restructuring, Arlington, Virginia, April 16, 1997 • “Mergers and Market Power,” presented at the Edison Electric Institute Workshop on FERC Merger Policy Guidelines, Arlington, Virginia, April 1, 1997 • “New Approaches to Controlling Distribution Company Market Power,” presented at the New York Energy Efficiency Council Conference on Innovative Solutions to a Changing Energy Market, New York Athletic Club, February 7, 1997 • Description of the Western Power Model, with Mark Frankena, Exhibit 8 to Prepared Testimony Before the Nevada Public Service Commission, January 31, 1997 • Reviewer, American Bar Association, Section of Antitrust Law, *Manual on the Economics of Antitrust Law, 14th Supplement*, 1995 • Referee, *Quarterly Journal of Business and Economics*, 1994—1995 • Reviewer, American Bar Association, Section of Antitrust Law, *Manual on the Economics of Antitrust Law, 10th Supplement*, 1993 • Expert Witness, Federal American Inn of Court, Washington, DC, Winter 1993 • “Advertising Restrictions as Rent Increasing Costs,” presented at a *Contemporary Policy Issues* Session of the Western Economics Association’s 67th Annual Conference, July 1992 • “Let’s Make Merger Policy ‘Fully Consonant With Economic Theory,’” presented at a *Contemporary Policy Issues* Session of the Western Economics Association’s 67th Annual Conference, July 1992 • “Advertising Restrictions as Rent

Increasing Costs,” Seminar, Department of Business Economics, Indiana University, October 1991 • “International Trade and Antitrust: Comments,” presented at a *Contemporary Policy Issues* Session of the Western Economics Association’s 66th Annual Conference, July 1991 • Discussant, Western Economics Association’s 66th Annual Conference, July 1991 • Horizontal Restraints Cases at the Federal Trade Commission: From *American Medical Association* through the Present,” with Jim Langenfeld, presented at the 60th Annual Conference of the Southern Economics Association, November 1990 • “Defining Markets for Merger Analysis,” with Gale Mosteller, presented at a *Contemporary Policy Issues* Session of the Western Economics Association’s 65th Annual Conference, cosponsored by the *Antitrust Bulletin* and the Antitrust and Trade Regulation Section of the Federal Bar Association, July 1990 • “Analyzing Agreements Among Competitors: What Does the Future Hold?” with Jim Langenfeld, presented at a *Contemporary Policy Issues* Session of the Western Economics Association’s 65th Annual Conference, cosponsored by the *Antitrust Bulletin* and the Antitrust and Trade Regulation Section of the Federal Bar Association, July 1990 • “The Relationship Between Industrial Sales Prices and Concentration of Natural Gas Pipelines,” Seminar, Office of Economic Policy, Federal Energy Regulatory Commission, Summer 1989 • “The Relationship Between Industrial Sales Prices and Concentration of Natural Gas Pipelines,” Seminar, Economic Analysis Group, Antitrust Division, U.S. Department of Justice, February 1989 • “Deregulation by Vertical Integration?” Seminar, Department of Business Economics, Indiana University, January 1989 • Discussant, Industrial Organization Society Session, Annual Meeting of the American Economics Association, December 1988 • “Concentration and Price in the Natural Gas Industry,” Seminar, Federal Trade Commission, July 1988 • “Relevant Measures of Concentration for Antitrust Policy,” presented at an Industrial Organization Society Session of the 57th Annual Conference of the Southern Economics Association, November 1987

<i>HHI of Upstream Fossil Fuel Supplies (dth/day equivalents)</i>		
<i>Balancing Area - NVE</i>		
Firm	Firm Total	Share
MidAmerican Energy Holdings Company	700,178	23.9
Southwest Gas Corp	457,298	15.6
Sempra Energy	199,430	6.8
Union Pacific RR	197,717	6.7
Royal Dutch Shell plc	169,243	5.8
Los Angeles Dept of Water & Power	149,853	5.1
Calpine Corp	100,000	3.4
Chevron Corp	91,080	3.1
California Dept Water Resources	85,000	2.9
Williams Companies Inc (The)	83,925	2.9
Anadarko Petroleum Corp	83,786	2.9
Bank of America Corp	70,000	2.4
Occidental Petroleum Corp	56,161	1.9
Questar Corp	54,885	1.9
PG&E Corp	50,033	1.7
NRG Energy Inc	50,000	1.7
FirstEnergy Corp	45,122	1.5
Edison International	42,500	1.4
Morgan Stanley	40,734	1.4
ExxonMobil Corp	30,000	1.0
Qep Resources Inc	21,500	0.7
BP plc	21,482	0.7
Barrick Gold Corp	20,000	0.7
Sacramento Municipal Utility District	20,000	0.7
EDF Group	20,000	0.7
Nevada Cogeneration Associates No 2	13,455	0.5
Berry Petroleum Co	12,000	0.4
Concord Energy LLC	7,500	0.3
Goldman Sachs Group Inc (The)	6,161	0.2
Black Hills Corp	6,161	0.2
JPMorgan Chase & Co	6,161	0.2
TransCanada Corp	5,951	0.2
Cima Energy Ltd	5,000	0.2
National Fuel Gas Co	4,658	0.2
Other	8,094	0.3
Total	2,935,068	100.0
HHI		1,038

HHI of Upstream Fossil Fuel Supplies (dth/day equivalents)

Balancing Area - PacifiCorp East

Firm	Firm Total	Share
Anadarko Petroleum Corp	1,362,661	10.7
MidAmerican Energy Holdings Company	1,092,608	8.6
Puget Energy Inc	991,685	7.8
Questar Corp	954,624	7.5
Williams Companies Inc (The)	826,410	6.5
BP plc	563,091	4.4
Kinder Morgan Inc	560,812	4.4
EnCana Corp	500,000	3.9
Union Pacific RR	385,135	3.0
PG&E Corp	375,000	2.9
Northwest Natural Gas Co	301,995	2.4
MDU Resources Group Inc	290,559	2.3
Arch Coal	265,223	2.1
Royal Dutch Shell plc	247,187	1.9
Occidental Petroleum Corp	213,650	1.7
Copano Energy LLC	209,100	1.6
Avista Corp	208,720	1.6
ConocoPhillips	203,536	1.6
Ultra Petroleum Corp	200,000	1.6
EOG Resources Inc	185,250	1.5
Intermountain Gas Co	172,198	1.3
Chevron Corp	152,993	1.2
ExxonMobil Corp	151,484	1.2
Westmoreland Coal Company	149,067	1.2
Bill Barrett Corp	149,000	1.2
Black Hills Corp	140,374	1.1
Yates Petroleum	125,000	1.0
TransAlta Corp	100,000	0.8
Sempra Energy	100,000	0.8
IDACORP Inc	92,311	0.7
Devon Energy Corp	87,375	0.7
Fortis Inc	83,934	0.7
JPMorgan Chase & Co	83,069	0.7
Xcel Energy Inc	79,092	0.6
Other	1,163,646	9.1
Total	12,766,789	100.0
HHI		467

HHI of Upstream Fossil Fuel Supplies (dth/day equivalents)

Balancing Area - PacifiCorp West

Firm	Firm Total	Share
Puget Energy Inc	1,073,918	14.3
PG&E Corp	784,968	10.4
TransCanada Corp	746,464	9.9
MidAmerican Energy Holdings Company	701,368	9.3
Avista Corp	395,762	5.3
BP plc	325,005	4.3
Northwest Natural Gas Co	315,975	4.2
MDU Resources Group Inc	285,843	3.8
Royal Dutch Shell plc	235,914	3.1
Anadarko Petroleum Corp	220,000	2.9
Williams Companies Inc (The)	204,486	2.7
Portland General Electric Co	170,478	2.3
Union Pacific RR	147,707	2.0
Intermountain Gas Co	121,278	1.6
Iberdrola SA	109,000	1.5
TransAlta Corp	100,000	1.3
Occidental Petroleum Corp	88,078	1.2
Fortis Inc	83,934	1.1
Southwest Gas Corp	77,123	1.0
Pioneer Natural Resources Co	75,000	1.0
IDACORP Inc	70,311	0.9
EnCana Corp	62,838	0.8
JPMorgan Chase & Co	60,020	0.8
Suncor Energy Inc	58,019	0.8
ConocoPhillips	53,125	0.7
Sempra Energy	52,508	0.7
Marathon Oil Corp	50,000	0.7
Bill Barrett Corp	50,000	0.7
Marubeni Corp	48,000	0.6
Chevron Corp	47,500	0.6
Noble Group Ltd	45,000	0.6
PUD No 1 of Snohomish County	45,000	0.6
Sumitomo Corp	44,700	0.6
Macquarie Cook Energy LLC	35,000	0.5
Other	531,266	7.1
Total	7,515,588	100.0
HHI		632

HHI of Upstream Fossil Fuel Supplies (dth/day equivalents)

Balancing Area - Arizona Public Service

Firm	Firm Total	Share
Sempra Energy	920,455	19.1
Southwest Gas Corp	503,811	10.5
ConocoPhillips	483,888	10.0
BHP Billiton	379,424	7.9
Pinnacle West Capital Corp	361,766	7.5
PG&E Corp	301,739	6.3
Salt River Project	247,000	5.1
MidAmerican Energy Holdings Company	190,445	4.0
Kinder Morgan Inc	188,878	3.9
JPMorgan Chase & Co	185,000	3.8
UniSource Energy Corp	167,928	3.5
Cuba MO (City of)	135,000	2.8
Pioneer Natural Resources Co	112,000	2.3
Yates Petroleum	70,000	1.5
Royal Dutch Shell plc	69,930	1.5
Americas Mining Corp	54,662	1.1
Mgi Supply Ltd	50,428	1.0
DCP Midstream LLC	40,000	0.8
St James Municipal Utilities	37,000	0.8
St Robert MO (City of)	37,000	0.8
Freeport McMoran Copper & Gold Inc	32,942	0.7
Mesa Electric Utility AZ (City of)	32,134	0.7
Apache Corp	29,000	0.6
Great Plains Energy Inc	21,850	0.5
Arizona Electric Power Coop Inc	20,577	0.4
Sacramento Municipal Utility District	20,000	0.4
PPL Corp	20,000	0.4
Occidental Petroleum Corp	15,000	0.3
BP plc	15,000	0.3
Société Générale	15,000	0.3
Anadarko Petroleum Corp	10,000	0.2
Navajo Tribal Utility Authority	8,143	0.2
USG Corp	4,500	0.1
Grupo México S A de C V	4,000	0.1
Other	34,897	0.7
Total	4,819,396	100.0
HHI		841

<i>HHI of Upstream Fossil Fuel Supplies (dth/day equivalents)</i>		
<i>Balancing Area - Avista</i>		
Firm	Firm Total	Share
TransCanada Corp	740,513	27.9
PG&E Corp	409,968	15.5
Avista Corp	265,237	10.0
BP plc	157,194	5.9
MidAmerican Energy Holdings Company	140,169	5.3
Northwest Natural Gas Co	106,165	4.0
Royal Dutch Shell plc	103,777	3.9
Puget Energy Inc	65,392	2.5
EnCana Corp	62,838	2.4
Suncor Energy Inc	58,019	2.2
Sempra Energy	52,508	2.0
ConocoPhillips	48,125	1.8
Noble Group Ltd	45,000	1.7
Sumitomo Corp	44,700	1.7
Portland General Electric Co	44,500	1.7
MDU Resources Group Inc	38,063	1.4
Macquarie Cook Energy LLC	35,000	1.3
Tenaska Inc	30,000	1.1
Marubeni Corp	25,000	0.9
Iberdrola SA	24,000	0.9
Sacramento Municipal Utility District	22,101	0.8
Chevron Corp	20,000	0.8
Paramount Resources Ltd	19,592	0.7
Devon Energy Corp	16,707	0.6
Turlock Irrigation District	15,744	0.6
Apache Corp	11,755	0.4
Husky Energy Inc	11,624	0.4
USG Corp	7,530	0.3
Redding Electric Utility	7,500	0.3
Burbank (City of)	4,770	0.2
Pasadena Water & Power Dept	4,034	0.2
Glendale Water & Power	4,034	0.2
Talisman Energy Inc	4,034	0.2
Northern California Power Agency	2,743	0.1
Other	1,500	0.1
Total	2,649,836	100.0
HHI		1,257

HHI of Upstream Fossil Fuel Supplies (dth/day equivalents)

<i>Balancing Area - Bonneville Power Administration</i>		
Firm	Firm Total	Share
Puget Energy Inc	1,114,310	18.1
TransCanada Corp	740,513	12.0
MidAmerican Energy Holdings Company	487,024	7.9
Northwest Natural Gas Co	421,591	6.9
PG&E Corp	409,968	6.7
Avista Corp	287,886	4.7
MDU Resources Group Inc	284,293	4.6
Williams Companies Inc (The)	282,486	4.6
BP plc	244,285	4.0
Intermountain Gas Co	172,148	2.8
Royal Dutch Shell plc	156,414	2.5
Portland General Electric Co	117,805	1.9
TransAlta Corp	100,000	1.6
Occidental Petroleum Corp	98,078	1.6
IDACORP Inc	92,311	1.5
Fortis Inc	83,934	1.4
EnCana Corp	62,838	1.0
Suncor Energy Inc	58,019	0.9
ConocoPhillips	53,125	0.9
Southwest Gas Corp	52,623	0.9
Sempra Energy	52,508	0.9
Marubeni Corp	48,000	0.8
Chevron Corp	47,500	0.8
PUD No 1 of Snohomish County	45,000	0.7
Noble Group Ltd	45,000	0.7
Sumitomo Corp	44,700	0.7
Macquarie Cook Energy LLC	35,000	0.6
Koch Industries Inc	31,475	0.5
Black Hills Corp	30,000	0.5
Tenaska Inc	30,000	0.5
ExxonMobil Corp	30,000	0.5
Iberdrola SA	29,000	0.5
Boeing Co (The)	28,756	0.5
Sacramento Municipal Utility District	22,101	0.4
Other	309,168	5.0
Total	6,147,858	100.0
HHI		745

HHI of Upstream Fossil Fuel Supplies (dth/day equivalents)

Balancing Area - California ISO

Firm	Firm Total	Share
PG&E Corp	835,001	14.1
TransCanada Corp	606,058	10.2
Sempra Energy	556,938	9.4
Royal Dutch Shell plc	413,020	7.0
MidAmerican Energy Holdings Company	383,007	6.4
Tenaska Inc	312,000	5.3
Anadarko Petroleum Corp	293,786	4.9
Southwest Gas Corp	249,630	4.2
BP plc	162,850	2.7
Los Angeles Dept of Water & Power	149,853	2.5
Occidental Petroleum Corp	121,161	2.0
Calpine Corp	100,000	1.7
ConocoPhillips	97,125	1.6
Chevron Corp	90,625	1.5
California Dept Water Resources	85,000	1.4
Williams Companies Inc (The)	83,925	1.4
Pioneer Natural Resources Co	75,000	1.3
Union Pacific RR	73,379	1.2
Bank of America Corp	70,000	1.2
Yates Petroleum	70,000	1.2
EnCana Corp	62,838	1.1
Suncor Energy Inc	58,019	1.0
JPMorgan Chase & Co	56,161	0.9
Bill Barrett Corp	50,000	0.8
NRG Energy Inc	50,000	0.8
FirstEnergy Corp	45,122	0.8
Noble Group Ltd	45,000	0.8
Edison International	42,500	0.7
Avista Corp	42,260	0.7
Sacramento Municipal Utility District	42,101	0.7
Morgan Stanley	40,734	0.7
DCP Midstream LLC	40,000	0.7
Marathon Oil Corp	40,000	0.7
Berry Petroleum Co	37,000	0.6
Other	460,112	7.7
Total	5,940,205	100.0
HHI		597

<i>HHI of Upstream Fossil Fuel Supplies (dth/day equivalents)</i>		
<i>Balancing Area - Idaho Power</i>		
Firm	Firm Total	Share
Puget Energy Inc	992,301	29.0
Northwest Natural Gas Co	318,548	9.3
Williams Companies Inc (The)	260,486	7.6
MDU Resources Group Inc	251,609	7.3
Avista Corp	208,720	6.1
Intermountain Gas Co	172,148	5.0
MidAmerican Energy Holdings Company	149,784	4.4
TransAlta Corp	100,000	2.9
Occidental Petroleum Corp	98,078	2.9
BP plc	97,091	2.8
IDACORP Inc	92,311	2.7
Fortis Inc	83,934	2.5
Portland General Electric Co	73,305	2.1
Royal Dutch Shell plc	52,637	1.5
Southwest Gas Corp	52,623	1.5
PUD No 1 of Snohomish County	45,000	1.3
Koch Industries Inc	31,475	0.9
Black Hills Corp	30,000	0.9
ExxonMobil Corp	30,000	0.9
Boeing Co (The)	28,756	0.8
Chevron Corp	27,500	0.8
Marubeni Corp	23,000	0.7
Atlantic Power Corp	21,878	0.6
Anadarko Petroleum Corp	20,000	0.6
Morgan Stanley	17,449	0.5
Weyerhaeuser Co	15,453	0.5
JPMorgan Chase & Co	10,020	0.3
Marathon Oil Corp	10,000	0.3
Kansas Energy LLC	10,000	0.3
PUD No 1 of Clark County	10,000	0.3
Brookfield Asset Management Inc	9,000	0.3
Cascade Kelly Holdings LLC	8,500	0.2
EDF Group	7,500	0.2
International Paper Co	6,420	0.2
Other	60,133	1.8
Total	3,425,659	100.0
HHI		1,174

HHI of Upstream Fossil Fuel Supplies (dth/day equivalents)

Balancing Area - NorthWestern Energy

Firm	Firm Total	Share
Westmoreland Coal Company	442,502	73.5
MDU Resources Group Inc	50,737	8.4
MidAmerican Energy Holdings Company	38,565	6.4
AGL Resources Inc	26,276	4.4
Deutsche Bank AG	10,270	1.7
Black Hills Corp	10,270	1.7
Xcel Energy Inc	8,689	1.4
ConocoPhillips	5,854	1.0
United Energy Corp	5,136	0.9
CHS Inc	3,266	0.5
Rainbow Gas Co	807	0.1
Total	602,372	100.0
HHI		5,537

<i>HHI of Upstream Fossil Fuel Supplies (dth/day equivalents)</i>		
<i>Balancing Area - Portland General Electric</i>		
Firm	Firm Total	Share
Puget Energy Inc	1,048,918	29.1
Northwest Natural Gas Co	315,426	8.8
Williams Companies Inc (The)	282,486	7.9
MidAmerican Energy Holdings Company	252,191	7.0
MDU Resources Group Inc	251,055	7.0
Avista Corp	201,650	5.6
Intermountain Gas Co	172,148	4.8
TransAlta Corp	100,000	2.8
Occidental Petroleum Corp	98,078	2.7
BP plc	97,091	2.7
IDACORP Inc	92,311	2.6
Fortis Inc	83,934	2.3
Portland General Electric Co	73,305	2.0
Royal Dutch Shell plc	52,637	1.5
Southwest Gas Corp	52,623	1.5
PUD No 1 of Snohomish County	45,000	1.3
Koch Industries Inc	31,475	0.9
Black Hills Corp	30,000	0.8
ExxonMobil Corp	30,000	0.8
Boeing Co (The)	28,756	0.8
Chevron Corp	27,500	0.8
Marubeni Corp	23,000	0.6
Atlantic Power Corp	21,878	0.6
Anadarko Petroleum Corp	20,000	0.6
Morgan Stanley	20,000	0.6
Weyerhaeuser Co	15,453	0.4
JPMorgan Chase & Co	10,020	0.3
Kansas Energy LLC	10,000	0.3
Marathon Oil Corp	10,000	0.3
PUD No 1 of Clark County	10,000	0.3
Brookfield Asset Management Inc	9,000	0.3
Cascade Kelly Holdings LLC	8,500	0.2
EDF Group	7,500	0.2
International Paper Co	6,420	0.2
Other	60,133	1.7
Total	3,598,488	100.0
HHI		1,190

HHI of Upstream Fossil Fuel Supplies (dth/day equivalents)

Balancing Area - WAPA - Rocky Mountain

Firm	Firm Total	Share
Puget Energy Inc	1,051,407	11.1
MidAmerican Energy Holdings Company	825,817	8.7
ConocoPhillips	579,532	6.1
CCE Holdings LLC	375,686	4.0
MDU Resources Group Inc	362,063	3.8
Northwest Natural Gas Co	353,649	3.7
Williams Companies Inc (The)	335,865	3.6
Southwest Gas Corp	321,390	3.4
Continental Energy Systems LLC	271,098	2.9
Xcel Energy Inc	270,633	2.9
Pioneer Natural Resources Co	250,400	2.6
Avista Corp	249,545	2.6
Mgi Supply Ltd	243,490	2.6
Union Pacific RR	234,001	2.5
Intermountain Gas Co	195,073	2.1
Kinder Morgan Inc	179,023	1.9
Anadarko Petroleum Corp	169,940	1.8
Black Hills Corp	164,160	1.7
Tri State Generation & Transmission Association Inc	161,964	1.7
BP plc	161,791	1.7
ExxonMobil Corp	154,321	1.6
Salt River Project	139,097	1.5
Energy Transfer Partners LP	123,998	1.3
Royal Dutch Shell plc	118,637	1.3
Occidental Petroleum Corp	118,186	1.3
TransAlta Corp	100,000	1.1
IDACORP Inc	92,311	1.0
Colorado Springs Utilities	92,028	1.0
Source Gas LLC	90,905	1.0
El Paso Electric Co	85,510	0.9
Sempra Energy	85,000	0.9
Fortis Inc	83,934	0.9
Pinnacle West Capital Corp	68,153	0.7
Portland General Electric Co	67,305	0.7
Other	1,276,352	13.5
Total	9,452,263	100.0
HHI		391

HHI of Upstream Fossil Fuel Supplies (dth/day equivalents)

Balancing Area - WAPA - Lower Colorado

Firm	Firm Total	Share
Puget Energy Inc	1,125,058	17.4
Southwest Gas Corp	486,878	7.5
Northwest Natural Gas Co	422,267	6.5
Sempra Energy	414,455	6.4
ConocoPhillips	364,888	5.7
MDU Resources Group Inc	329,129	5.1
Williams Companies Inc (The)	282,486	4.4
Avista Corp	270,657	4.2
MidAmerican Energy Holdings Company	245,837	3.8
Intermountain Gas Co	218,949	3.4
Kinder Morgan Inc	188,878	2.9
Salt River Project	167,000	2.6
PG&E Corp	151,739	2.4
Pinnacle West Capital Corp	148,016	2.3
Royal Dutch Shell plc	122,567	1.9
Pioneer Natural Resources Co	112,000	1.7
UniSource Energy Corp	111,928	1.7
Occidental Petroleum Corp	110,078	1.7
TransAlta Corp	100,000	1.5
BP plc	97,091	1.5
IDACORP Inc	92,311	1.4
Fortis Inc	83,934	1.3
Portland General Electric Co	73,305	1.1
Americas Mining Corp	54,662	0.8
Mgi Supply Ltd	50,428	0.8
PUD No 1 of Snohomish County	45,000	0.7
Freeport McMoran Copper & Gold Inc	32,942	0.5
Mesa Electric Utility AZ (City of)	32,134	0.5
Koch Industries Inc	32,091	0.5
Black Hills Corp	30,000	0.5
ExxonMobil Corp	30,000	0.5
Apache Corp	29,000	0.4
Boeing Co (The)	28,256	0.4
Chevron Corp	27,500	0.4
Other	341,426	5.3
Total	6,452,890	100.0
HHI		619

HHI of Upstream Fossil Fuel Supplies (dth/day equivalents)

WECC Region		
Firm	Firm Total	Share
MidAmerican Energy Holdings Company	3,335,886	8.8
EnCana Corp	1,853,838	4.9
Williams Companies Inc (The)	1,591,994	4.2
ConocoPhillips	1,539,299	4.1
Anadarko Petroleum Corp	1,518,581	4.0
Sempra Energy	1,462,963	3.9
BP plc	1,264,382	3.4
Union Pacific RR	1,152,972	3.1
Questar Corp	1,135,849	3.0
Kinder Morgan Inc	1,120,778	3.0
PG&E Corp	1,086,707	2.9
ONEOK Inc	1,044,358	2.8
Puget Energy Inc	1,042,199	2.8
Energy Transfer Partners LP	976,948	2.6
Xcel Energy Inc	900,777	2.4
Southwest Gas Corp	824,451	2.2
TransCanada Corp	746,464	2.0
BHP Billiton	696,673	1.8
Westmoreland Coal Company	602,319	1.6
Peabody Energy	595,956	1.6
Royal Dutch Shell plc	545,304	1.4
Continental Energy Systems LLC	494,152	1.3
Black Hills Corp	445,431	1.2
Tenaska Inc	438,629	1.2
Occidental Petroleum Corp	402,150	1.1
Avista Corp	393,414	1.0
CCE Holdings LLC	375,686	1.0
Pinnacle West Capital Corp	361,766	1.0
Mgi Supply Ltd	353,918	0.9
Pioneer Natural Resources Co	347,900	0.9
Atmos Energy Corp	346,768	0.9
MDU Resources Group Inc	344,706	0.9
Northwest Natural Gas Co	317,808	0.8
Arch Coal	265,965	0.7
Other	7,796,017	20.7
Total	37,723,008	100.0
HHI		282

New and Expanded Pipelines in WECC (2008 to Present)

Project Type	Pipeline Operator Name	Description	Status	Year In Service Date	Additional Capacity (MMcf/d)	State(s)
Lateral	Gas Transmission Northwest LLC	Carty Lateral Project	Approved	2014	175	OR
Lateral	Tricor Ten Section Hub LLC	Tricor Ten Section Hub Natural Gas storage pipeline	Construction	2013	973	CA
Lateral	Puget Sound Energy	South Seattle Delivery Lateral Expansion	Pre-filed	2013		WA
Lateral	Puget Sound Energy	North Seattle Delivery Lateral Expansion	Completed	2012	84	WA
Lateral	Kern River Gas Transmission	Mountain Pass Lateral	Completed	2012	24	CA
Expansion	Paiute Pipeline	Paiute South Tahoe Lateral	Completed	2011		NV
Lateral	Gill Ranch Storage LLC	Gill Ranch Storage Lateral	Completed	2010	200	CA
Expansion	Transwestern Pipeline Co	TW Phoenix Lateral Project	Completed	2009	500	AZ
Expansion	Transwestern Pipeline Co	TW San Juan Lateral Expansion	Completed	2008	375	NM
Expansion	MarkWest New Mexico LP	MarkWest Lea County Expansion	Completed	2008	110	NM
Lateral	Tuscarora Pipeline Co	Tuscarora 2008 Sys Expn	Completed	2008	40	NV,CA
Expansion	El Paso Natural Gas	El Paso Picacho Compressor Station Project	Completed	2008	30	AZ
Expansion	El Paso Natural Gas	El Paso Eunice Replacement Project	Completed	2008	12	NM

Source: EIA

New Gas-fired Generation in the WECC Region, 2008-2012

Plant State	Plant Name	Unit	Net		Month Online	Kern Supplies
			Summer Capacity (MW)	Prime Mover Code		
Washington	Mint Farm Energy Center	CC	275.9	CC	Jan-08	
Idaho	Evander Andrews	3	171.0	GT	Mar-08	
Washington	Grays Harbor Energy	CC1	637.0	CC	Apr-08	
Arizona	Black Mountain Generating Station	GT1	45.0	GT	May-08	
Arizona	Black Mountain Generating Station	GT2	45.0	GT	May-08	
California	DST Cogen	CG1	2.1	IC	May-08	
California	DST Cogen	CG2	2.1	IC	May-08	
Colorado	Plains End II LLC (IC1-IC14)	IC1	116.2	IC	May-08	
New Mexico	Valencia Energy Facility	GT1	144.3	GT	May-08	
California	Niland Combustion Turbine Project	GT1	47.5	GT	Jun-08	
California	Niland Combustion Turbine Project	GT2	47.5	GT	Jun-08	
Colorado	Rawhide	GT5	128.0	GT	Jun-08	
Arizona	Yucca	GT5	47.0	GT	Jun-08	
Arizona	Yucca	GT6	47.0	GT	Jun-08	
Nevada	Clark (NV)	GT11	52.0	GT	Jul-08	Y
Nevada	Clark (NV)	GT12	52.0	GT	Jul-08	Y
Nevada	Clark (NV)	GT13	52.0	GT	Jul-08	Y
Nevada	Clark (NV)	GT14	52.0	GT	Jul-08	Y
Nevada	Clark (NV)	GT19	52.0	GT	Jul-08	Y
Nevada	Clark (NV)	GT20	52.0	GT	Jul-08	Y
Nevada	Clark (NV)	GT21	52.0	GT	Jul-08	Y
Nevada	Clark (NV)	GT22	52.0	GT	Jul-08	Y
California	Pixley Cogeneration Facility	GT1	6.2	GT	Jul-08	
Nevada	Tracy (NV)	CC2	553.0	CC	Jul-08	
Nevada	Clark (NV)	GT15	52.0	GT	Sep-08	Y
Nevada	Clark (NV)	GT16	52.0	GT	Sep-08	Y
Nevada	Clark (NV)	GT17	52.0	GT	Sep-08	Y
Nevada	Clark (NV)	GT18	52.0	GT	Sep-08	Y
California	Inland Empire Energy Center	CS1	345.0	CS	Sep-08	
California	Kaweah Delta District Hospital	KDHT1	3.5	GT	Oct-08	
California	Noble House Hotels (IC1-IC7)	IC1	1.8	IC	Oct-08	
Nevada	Citycenter Cogeneration	CC1	8.0	CC	Jan-09	
California	COI Energy Center	IC	2.0	IC	Jan-09	
California	Ebay San Jose	FC1	0.5	FC	Jan-09	
California	Gateway Generating STN	CC08	563.4	CC	Jan-09	
California	North Coles Levee Gas Plant	GT	5.6	GT	Jan-09	
California	Turlock Irrigation District Fuel Cell	FC1	1.1	FC	Jan-09	
Nevada	EP Minerals	GT1	1.0	GT	Mar-09	
Colorado	Fort St Vrain	GT1	145.0	GT	May-09	
Colorado	Fort St Vrain	GT2	144.0	GT	May-09	
California	North Island Cabrillo II LLC	GT3	37.0	GT	May-09	

New Gas-fired Generation in the WECC Region, 2008-2012

Plant State	Plant Name	Unit	Net		Month Online	Kern Supplies
			Summer Capacity (MW)	Prime Mover Code		
California	Starwood-Midway Project	GT1	60.0	GT	May-09	
California	Starwood-Midway Project	GT2	60.0	GT	May-09	
California	Panoche Energy Center	GT1	100.0	GT	Jul-09	
California	Panoche Energy Center	GT2	100.0	GT	Jul-09	
California	Panoche Energy Center	GT3	100.0	GT	Jul-09	
California	Panoche Energy Center	GT4	100.0	GT	Jul-09	
California	Miramar Peaking Facility	GT2	47.9	GT	Aug-09	
California	Otay Mesa Generating Project	CC	571.0	CC	Oct-09	
Utah	University of Utah	GT	7.6	GT	Oct-09	
California	High Sierra Cogeneration Power Plant	GT1	2.5	GT	Mar-10	
California	High Sierra Cogeneration Power Plant	GT2	2.5	GT	Mar-10	
California	Orange Grove Project	GT1	49.6	GT	Apr-10	
California	Orange Grove Project	GT2	50.0	GT	Apr-10	
California	Inland Empire Energy Center	CS2	366.3	CS	May-10	
California	El Cajon Energy Center Peaker	GT1	48.1	GT	Jun-10	
Oregon	Oregon State University	CC	5.7	CC	Jun-10	
Utah	Millcreek Power	GT2	36.8	GT	Jul-10	
California	Adobe San Jose	FC1	0.4	FC	Sep-10	
California	Adobe San Jose	FC2	0.8	FC	Sep-10	
California	Humboldt Bay (IC1-IC10)	IC 1	167.0	IC	Sep-10	
California	Colusa Generating Station	CC1	640.0	CC	Dec-10	
California	John Wayne Arpt Cogen (GT1-GT4)	GT1	7.0	GT	Dec-10	
Utah	Kucc	RCHP	5.9	GT	Dec-10	
California	Santa Rosa Fuel Cell	FC	1.4	FC	Dec-10	
Montana	Dave Gates Generating Station	GT1	44.1	GT	Jan-11	
Montana	Dave Gates Generating Station	GT2	44.1	GT	Jan-11	
California	Cox Communication Rancho Santa Margarita	FC1	0.4	FC	Feb-11	
California	Cox Communication Rancho Santa Margarita	FC2	0.4	FC	Feb-11	
California	Cox Communication San Diego (Federal)	FC1	0.4	FC	Feb-11	
California	Cox Communication San Diego (Federal)	FC2	0.4	FC	Feb-11	
Texas	Newman	CC5	281.9	CC	Feb-11	
California	Riverside Energy Resource Center	GT3	48.0	GT	Apr-11	
California	Riverside Energy Resource Center	GT4	48.0	GT	Apr-11	
California	Canyon Power Project	GT3	49.4	GT	May-11	
California	Canyon Power Project	GT4	49.5	GT	May-11	
Arizona	Coolidge Generating Station	1	43.4	GT	May-11	
Arizona	Coolidge Generating Station	2	43.4	GT	May-11	
Arizona	Coolidge Generating Station	3	43.4	GT	May-11	
Arizona	Coolidge Generating Station	4	43.4	GT	May-11	
Arizona	Coolidge Generating Station	5	43.4	GT	May-11	
Arizona	Coolidge Generating Station	6	43.4	GT	May-11	

New Gas-fired Generation in the WECC Region, 2008-2012

Plant State	Plant Name	Unit	Net		Month Online	Kern Supplies
			Summer Capacity (MW)	Prime Mover Code		
Arizona	Coolidge Generating Station	7	43.4	GT	May-11	
Arizona	Coolidge Generating Station	8	43.4	GT	May-11	
Arizona	Coolidge Generating Station	9	43.4	GT	May-11	
Arizona	Coolidge Generating Station	10	43.4	GT	May-11	
Arizona	Coolidge Generating Station	11	43.4	GT	May-11	
Arizona	Coolidge Generating Station	12	43.4	GT	May-11	
Nevada	Harry Allen (NV)	CC	422.8	CC	May-11	Y
California	Canyon Power Project	GT1	49.5	GT	Jul-11	
California	Canyon Power Project	GT2	49.4	GT	Jul-11	
California	Woodland Generation Station	IC1	8.2	IC	Jul-11	
California	Woodland Generation Station	IC2	8.2	IC	Jul-11	
California	Woodland Generation Station	IC3	8.2	IC	Jul-11	
California	Woodland Generation Station	IC4	8.2	IC	Jul-11	
California	Woodland Generation Station	IC5	8.2	IC	Jul-11	
California	Woodland Generation Station	IC6	8.2	IC	Jul-11	
California	FuelCell San Francisco St Univ	FC1	0.2	FC	Sep-11	
California	FuelCell San Francisco St Univ	FC2	1.4	FC	Sep-11	
New Mexico	Ford Utilities Center	ST4	0.7	ST	Oct-11	
California	FuelCell CSU East Bay	FC1	1.4	FC	Oct-11	
California	Franklin Templeton San Mateo	FC1	1.0	FC	Nov-11	
California	U S Army Camp Parks	FC1	0.3	FC	Nov-11	
California	Lockheed Martin Fuel Cell	FC1	1.0	FC	Dec-11	
Montana	Highwood Generation Station	GT	40.0	GT	Jan-12	
Colorado	Pueblo Arpt Generation Station	CC1	100.0	CC	Jan-12	
Colorado	Pueblo Arpt Generation Station	CC2	100.0	CC	Jan-12	
Colorado	Pueblo Arpt Generation Station	GT1	90.0	GT	Jan-12	
Colorado	Pueblo Arpt Generation Station	GT2	90.0	GT	Jan-12	
California	AT&T Fuel Cell Corona	FC1	3.4	FC	Apr-12	
California	AT&T Fuel Cell Fontana	FC1	0.7	FC	Apr-12	
California	AT&T Fuel Cell Hayward	FC1	0.7	FC	Apr-12	
California	AT&T Fuel Cell Pasadena	FC1	0.7	FC	Apr-12	
California	AT&T Fuel Cell Redwood City	FC1	0.7	FC	Apr-12	
California	AT&T Fuel Cell Rialto	FC1	0.6	FC	Apr-12	
California	AT&T Fuel Cell San Bernardino	FC1	0.6	FC	Apr-12	
California	AT&T Fuel Cell San Diego	FC1	0.6	FC	Apr-12	
California	AT&T Fuel Cell San Jose	FC1	0.6	FC	Apr-12	
California	AT&T Fuel Cell San Ramon	FC1	0.6	FC	Apr-12	
Utah	Bountiful City	GT2	10.0	GT	Jun-12	
Utah	Bountiful City	GT3	10.0	GT	Jun-12	
Idaho	Langley Gulch Power Plant	CC1	298.7	CC	Jun-12	
California	Wellhead Power Delano	GT	48.5	GT	Jun-12	

New Gas-fired Generation in the WECC Region, 2008-2012

Plant State	Plant Name	Unit	Net		Month Online	Kern Supplies
			Summer Capacity (MW)	Prime Mover Code		
California	Almond Power Plant	GT2	50.0	GT	Jul-12	
California	Almond Power Plant	GT3	50.0	GT	Jul-12	
California	Almond Power Plant	GT4	50.0	GT	Jul-12	
California	Life Technologies Fuel Cell	FC1	1.0	FC	Jul-12	
California	Kyocera Cogen Plant	GT1	2.1	GT	Sep-12	
California	Kyocera Cogen Plant	GT2	1.6	GT	Sep-12	
California	El Centro	CC2	144.0	CC	Oct-12	
California	Mariposa Energy	GT1	50.0	GT	Oct-12	
California	Mariposa Energy	GT2	50.0	GT	Oct-12	
California	Mariposa Energy	GT3	50.0	GT	Oct-12	
California	Mariposa Energy	GT4	50.0	GT	Oct-12	
California	Lodi Energy Center	CC1	280.0	CC	Nov-12	
California	Oxnard Peaker	GT	45.7	GT	Nov-12	
California	Tracy Combined Cycle (CA)	CC	314.0	CC	Nov-12	
Oregon	Univ of Oregon Central	CC1	11.0	CC	Dec-12	
TOTAL			10,337			


UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

_____)	
Silver Merger Sub, Inc.)	
NV Energy, Inc.)	Docket No. EC13-__-000
Nevada Power Company)	
Sierra Pacific Power Company)	
_____)	

DECLARATION OF JOHN R. MORRIS


I, John R. Morris, declare under penalty of perjury that I am the author of the preceding testimony, that the facts set forth herein are true and correct to the best of my knowledge, and that if asked today the same questions contained in the text, I would give the answers contained in the testimony.

Executed on this 12th day of July 2013



 John R. Morris, Ph.D.
 Principal
 Economists Incorporated

Subscribed and sworn before me this 12th day of July 2013.



 Notary Public, District of Columbia

My commission expires: _____

Lori J. Rodriguez
 District of Columbia, Notary Public
 My Commission Expires
 June 30, 2018

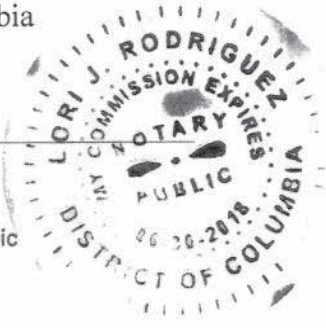


Exhibit K: Maps of Physical Property



NV Energy™

OREGON

IDAHO

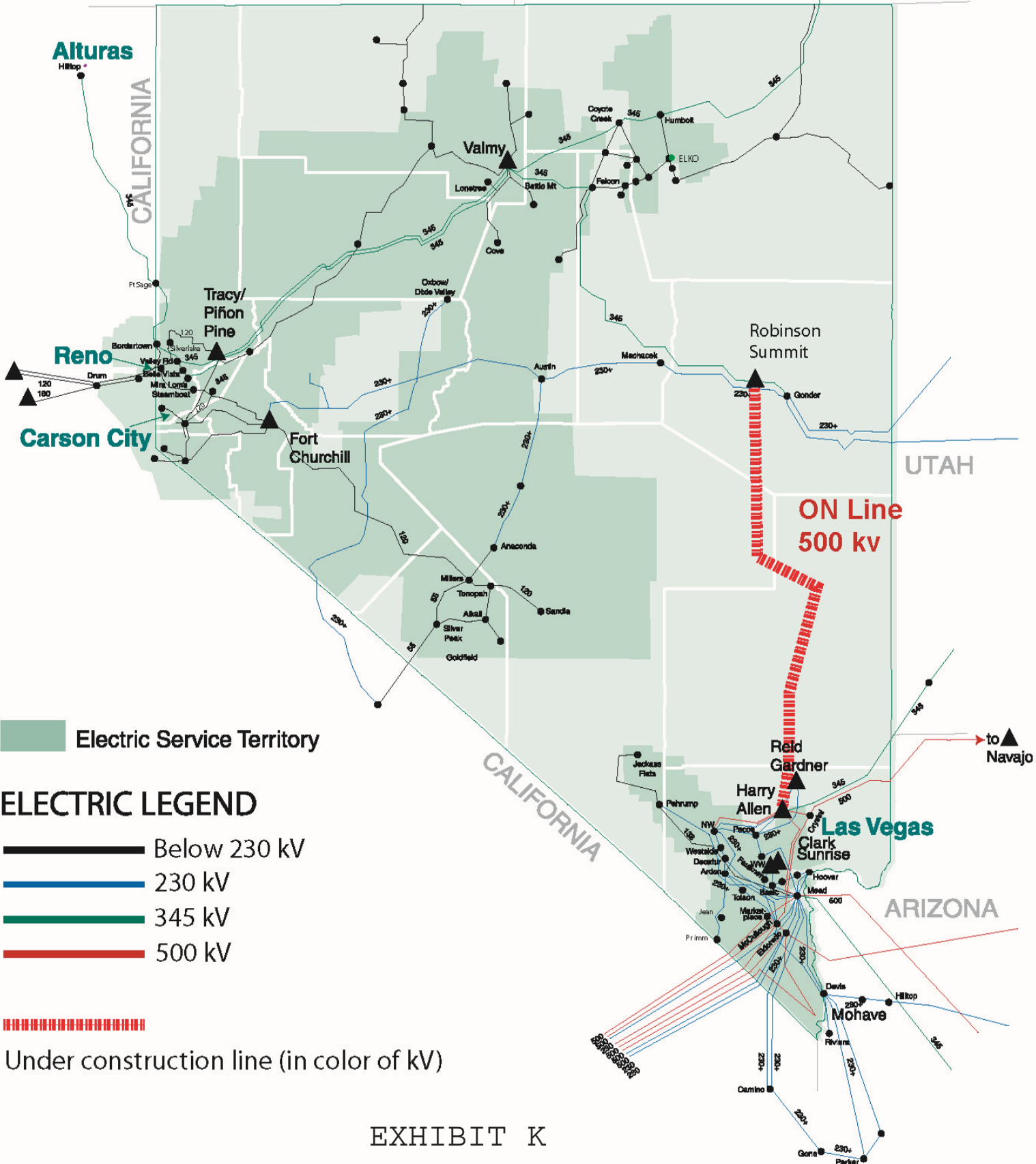


EXHIBIT K
MAP OF NV ENERGY UTILITIES
GENERATING FACILITIES

Company-Owned Generating Stations

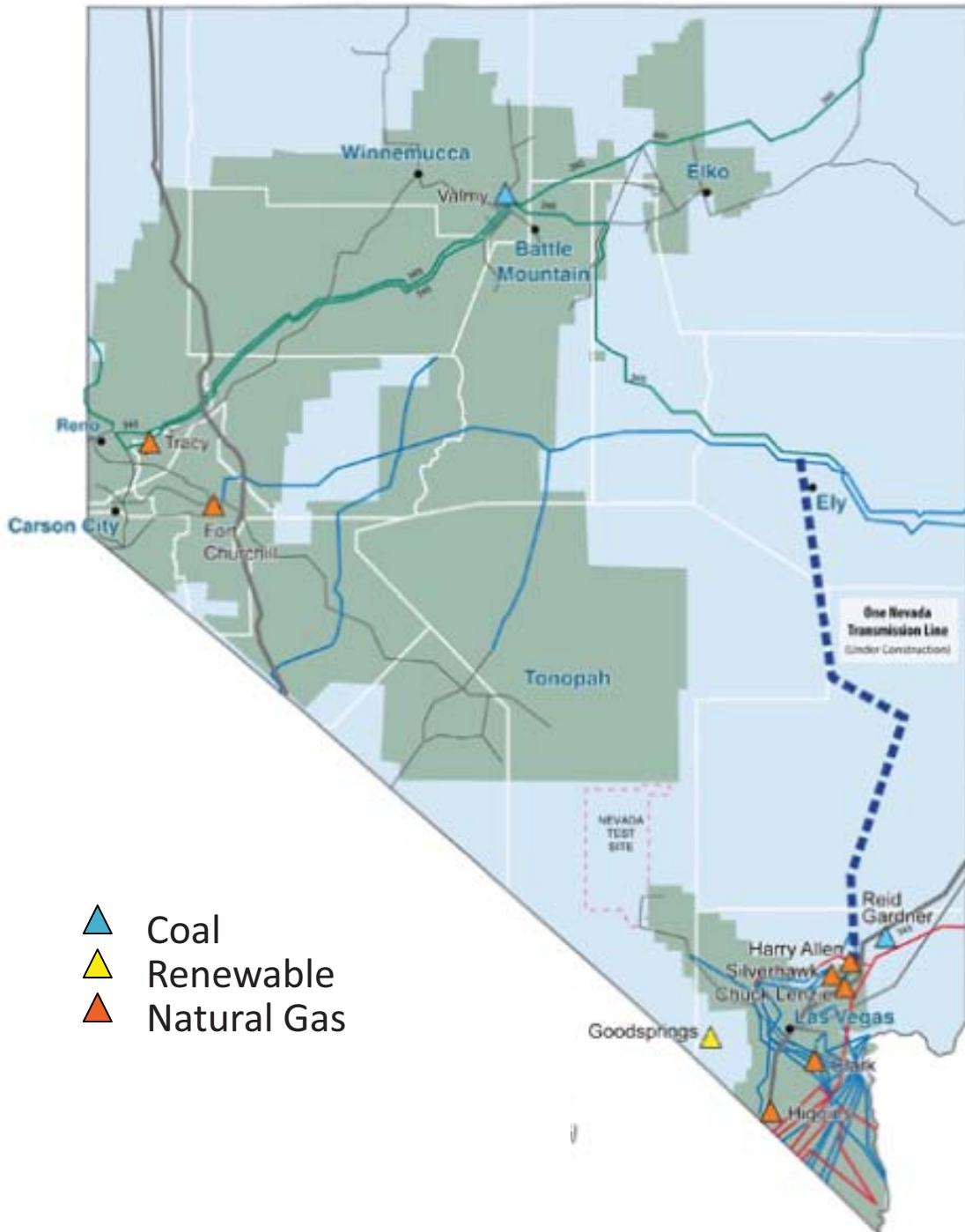
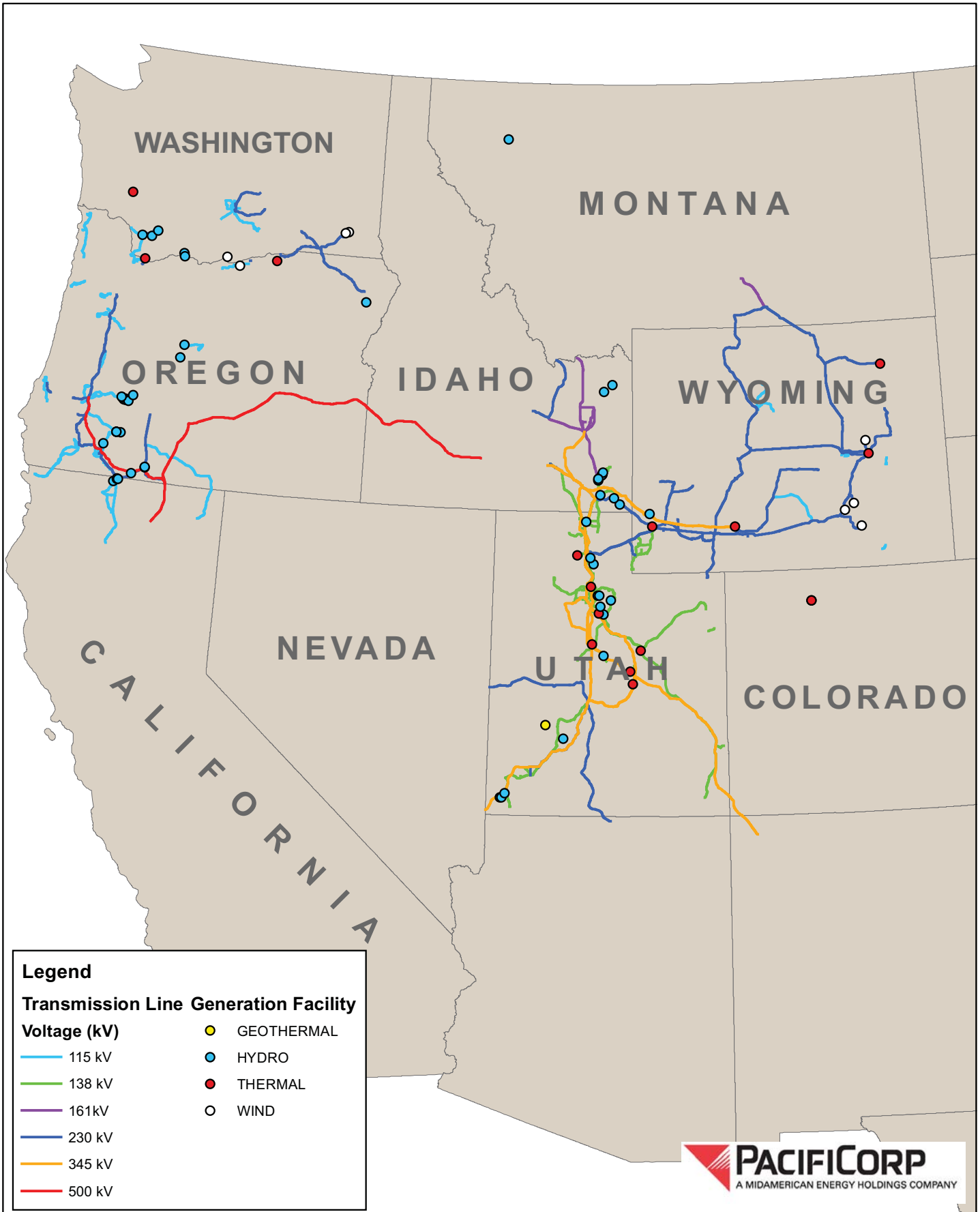
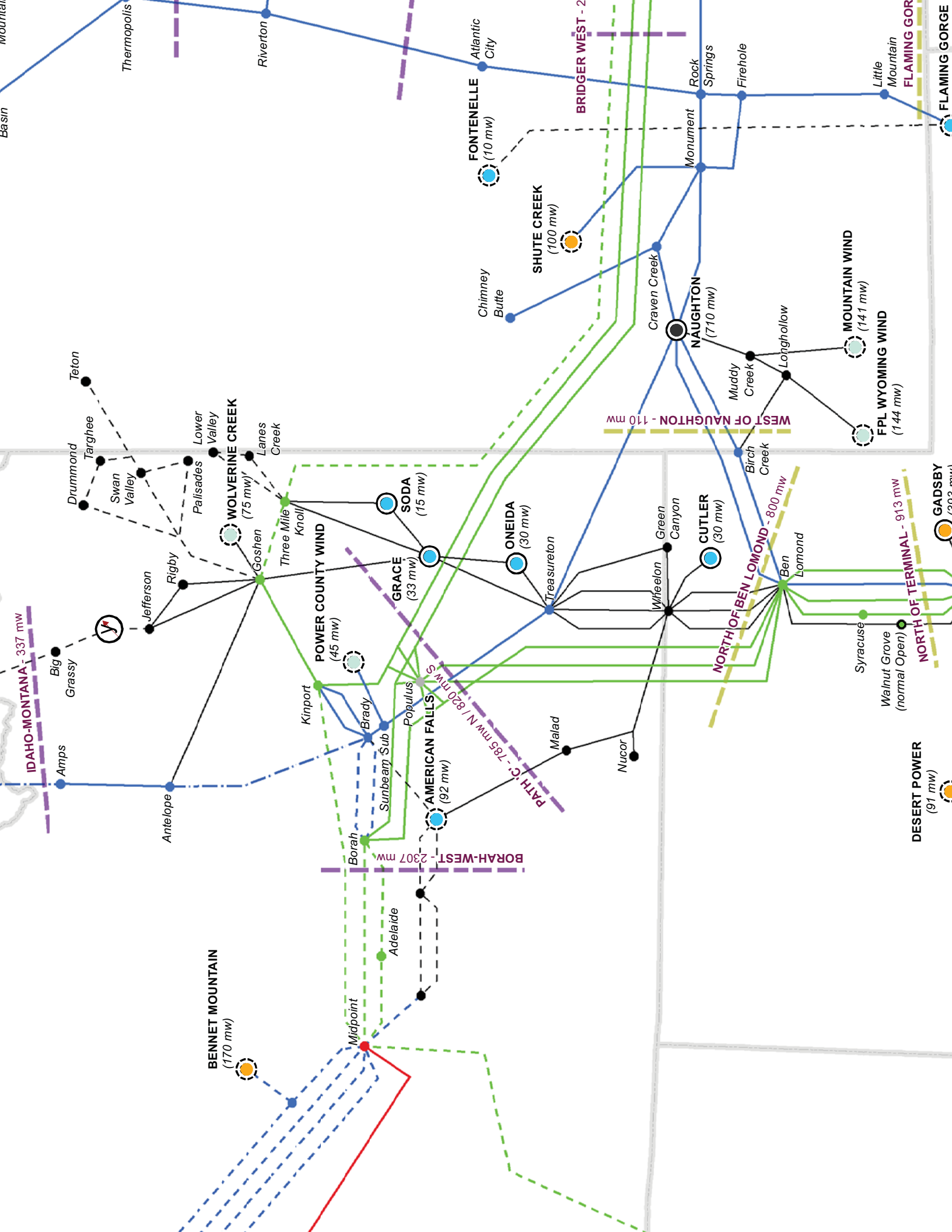


EXHIBIT K

MAP OF PACIFICORP TRANSMISSION SYSTEM AND GENERATION PLANTS





IDAHO-MONTANA - 337 mw

BENNETT MOUNTAIN (170 mw)

AMERICAN FALLS (92 mw)

POWER COUNTY WIND (45 mw)

WOLVERINE CREEK (75 mw)

FONTENELLE (10 mw)

SHUTE CREEK (100 mw)

NAUGHTON (710 mw)

MOUNTAIN WIND (141 mw)

FPL WYOMING WIND (144 mw)

DESERT POWER (91 mw)

NORTH OF TERMINAL - 913 mw

NORTH OF BEN LOMOND - 800 mw

BORAH-WEST - 2307 mw

PATH C - 785 MW / 820 MW S

WEST OF NAUGHTON - 110 mw

GADSBY (202 mw)

WALNUT GROVE (normal Open)

SYRACUSE

BEN LOMOND

WHEELON CANYON

CUTLER (30 mw)

ONEIDA (30 mw)

GRACE (33 mw)

SODA (15 mw)

KINPORT

THREE MILE KNOLL

LANES CREEK

LOWER VALLEY

PALISADES

SWAN VALLEY

TARGHEE

DRUMMOND

TETON

JEFFERSON

RIGBY

GOSHEN

ANTILOPE

AMPS

BRADY

SUNBEAM SUB

ADELAIDE

WALNUT GROVE

SYRACUSE

BEN LOMOND

WHEELON CANYON

CUTLER (30 mw)

ONEIDA (30 mw)

GRACE (33 mw)

SODA (15 mw)

KINPORT

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TETON

JEFFERSON

RIGBY

GOSHEN

ANTILOPE

AMPS

BRADY

SUNBEAM SUB

ADELAIDE

MALAD

NUCOR

TREASURETON

GREEN CANYON

WHEELON CANYON

CUTLER (30 mw)

ONEIDA (30 mw)

GRACE (33 mw)

SODA (15 mw)

KINPORT

THREE MILE KNOLL

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MALAD

NUCOR

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RIGBY

GOSHEN

ANTILOPE

AMPS

BRADY

SUNBEAM SUB

ADELAIDE

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NUCOR

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SYRACUSE

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BRADY

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ADELAIDE

MALAD

NUCOR

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SWAN VALLEY

TARGHEE

DRUMMOND

TETON

JEFFERSON

RIGBY

GOSHEN

ANTILOPE

AMPS

BRADY

SUNBEAM SUB

ADELAIDE

MALAD

NUCOR

TREASURETON

GREEN CANYON

WHEELON CANYON

CUTLER (30 mw)

ONEIDA (30 mw)

GRACE (33 mw)

SODA (15 mw)

EXHIBIT K
MAP OF MIDAMERICAN RENEWABLES
GENERATING FACILITIES

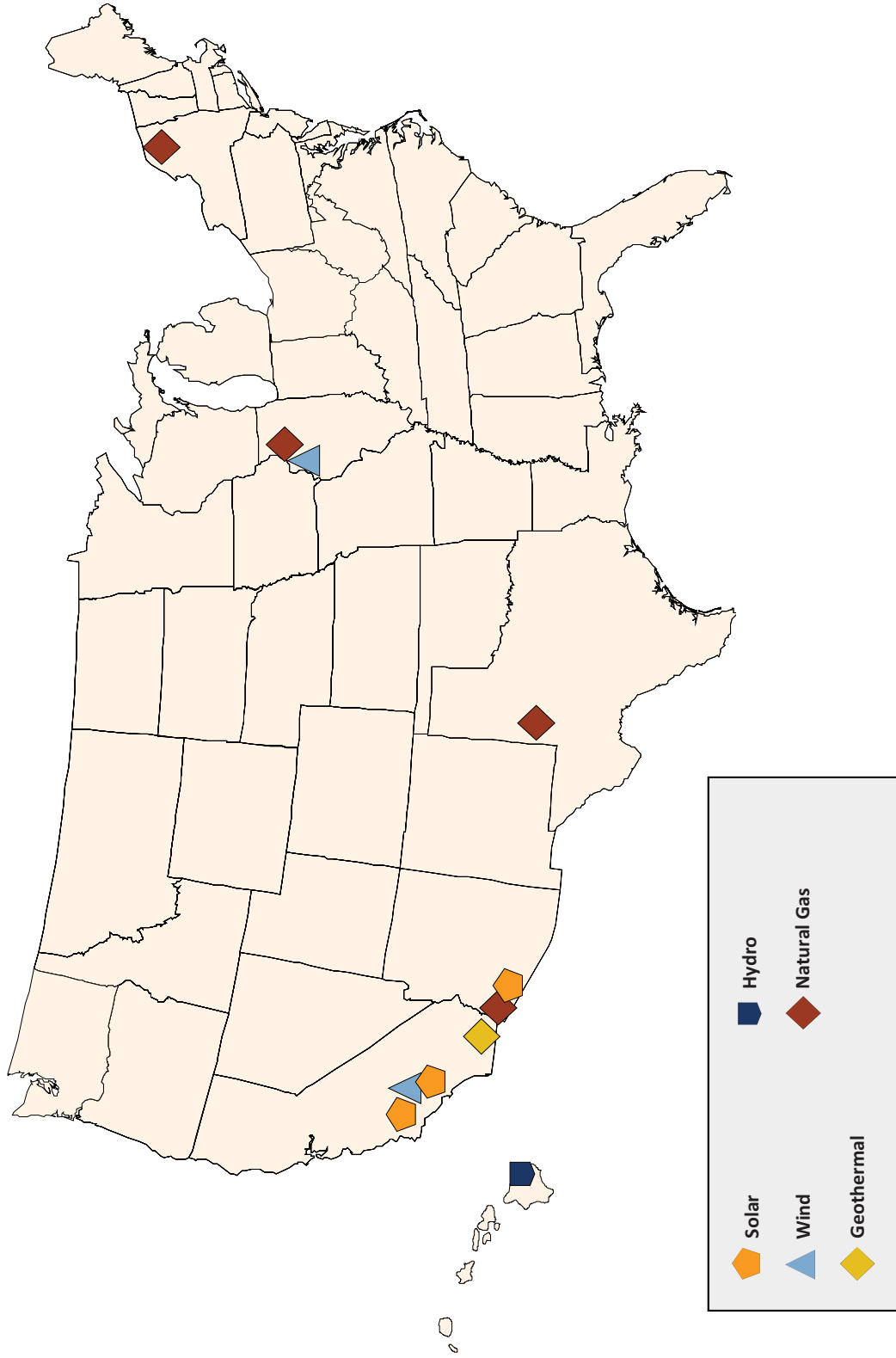


Exhibit L: Licenses, Orders, or Other Approvals Required from Other Regulatory Bodies in Connection with the Proposed Transaction and the Status of Other Regulatory Actions

The Transaction requires the approval of the PUCN and Federal Communications Commission. In addition, Applicants will be providing notice to the Federal Trade Commission and to the Department of Justice pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

Exhibit M: Cross-Subsidization and Encumbrance of Utility Assets

The Commission's Merger Regulations require that FPA Section 203 applicants explain that their proposed transaction will not, at the time of the transaction or in the future, result in (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under Sections 205 and 206 of the FPA. *See* 18 C.F.R. § 33.2(j)(1)(ii) (2012).

As explained in this Exhibit M, the Applicants provide assurance and verify, based on facts and circumstances known to the Applicants or that are reasonably foreseeable, that the proposed Transaction will not result in, at the time of the Transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company.

Overall Discussion of Cross-Subsidization Implications Resulting From the Transaction

The Transaction is a straightforward merger that does not present any concerns about the improper subsidization of an associate company by its public utility affiliates. The NV Energy

Applicants do not own merchant generation, while MidAmerican owns both regulated utilities and wholesale generation companies that make sales at market-based rates.

Moreover, the Transaction does not present any longer-term concerns about improper cross-subsidization. The Commission has, and will continue to have, the ability to provide ongoing protection against cross-subsidization through its authority over the rates, terms, and conditions of service associated with any and all jurisdictional transmission facilities owned by any electric utility subsidiary of MidAmerican or NVE, as well as the merged company as a public utility holding company.

Similarly, because the Transaction does not affect any state utility commission's jurisdiction over any subsidiary of MidAmerican or NVE, including any traditional public utility associate companies, the state utility commissions' ability to address cross-subsidizations issues will be unaffected by the Transaction.

Discussion of the Four Factors Identified by the Commission in its Merger Regulations

A. Transfers of Facilities

The Transaction is a stock-for-stock merger that does not call for any transfers of any facilities of the traditional public utility associate companies of MidAmerican and NVE (the "Regulated Companies"), either at the time of the Transaction or in the future. The Regulated Companies will continue to operate as regulated utilities under their existing Commission-approved tariffs. After the Transaction, the Regulated Companies will continue to own and operate the generation facilities that they owned and operated prior to the Transaction.

B. New Issuance of Securities

The Transaction does not provide for the new issuances of securities by the Regulated Companies for the benefit of an associate company, either at the time of the Transaction or in the future.

C. New Pledge or Encumbrance

The Transaction does not provide for any new pledges or encumbrances of assets of the Regulated Companies for the benefit of an associate company, either at the time of the Transaction or in the future.

D. New Affiliate Contracts

No new contracts between any of the Regulated Companies and any unregulated affiliate are contemplated to implement the Transaction, other than non-power goods and services agreements, either at the time of the Transaction or in the future.

In sum, Applicants are providing assurance, based on facts and circumstances known to them or that are reasonably foreseeable, that the Transaction will not result in, at the time of the Transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including:

- (A) Any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company;
- (B) Any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company;
- (C) Any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service

over jurisdictional transmission facilities, for the benefit of an associate company;
or

- (D) Any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under Sections 205 and 206 of the FPA.

Below is a list of the encumbrances of the utility assets of MidAmerican and NVE.

MidAmerican

PacifiCorp

Mortgage and Deed of Trust dated as of June 9, 1989 with The Bank of New York Mellon Trust Company, N.A., as successor trustee, as amended and supplemented

NV Energy, Inc.

Nevada Power

\$500 million Revolving Credit Facility entered into in March 2012 with Wells Fargo, N.A., as administrative agent

General and Refunding Mortgage Indenture dated as of May 1, 2001, with The Bank of New York Mellon Trust Company N.A., as Trustee

Sierra Pacific

\$250 million Revolving Credit Facility entered into in March 2012 with Wells Fargo, N.A., as administrative agent

General and Refunding Mortgage Indenture, dated as of May 1, 2001, with The Bank of New York Mellon Trust Company N.A., as Trustee

ATTACHMENT 1

Verifications

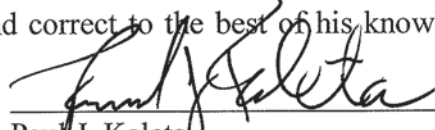
**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Silver Merger Sub, Inc.)
NV Energy, Inc.)
Nevada Power Company)
Sierra Pacific Power Company)

Docket No. EC13-___-000

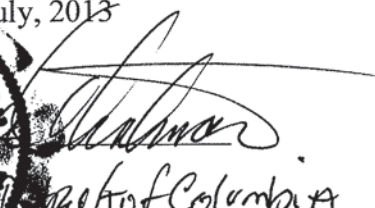
VERIFICATION OF APPLICATION

The undersigned, being duly sworn, states that he is the authorized representative of NV Energy, Inc., Nevada Power Company and Sierra Pacific Power Company; that he has read said application and knows the contents thereof; and that all of the statements contained therein with respect to the foregoing entities are true and correct to the best of his knowledge, information, and belief.



Paul J. Kaleta
Executive Vice President
General Counsel & Shared Services
Corporate Secretary
NV Energy

Subscribed and sworn to before me
this 10th day of July, 2013



Notary Public, District of Columbia

My Commission expires: 6/20/2015

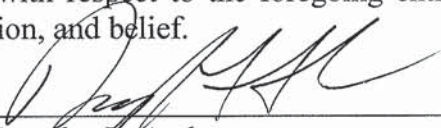
UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Silver Merger Sub, Inc.)
NV Energy, Inc.)
Nevada Power Company)
Sierra Pacific Power Company)

Docket No. EC13-___-000

VERIFICATION OF APPLICATION


The undersigned, being duly sworn, states that he is the authorized representative of Silver Merger Sub, Inc.; that he has read said application and knows the contents thereof; and that all of the statements contained therein with respect to the foregoing entities are true and correct to the best of his knowledge, information, and belief.



Douglas L. Anderson
Executive Vice President and General Counsel
MidAmerican Energy Holdings Company

Subscribed and sworn to before me
this 10th day of July, 2013




Notary of Columbia
Commission expires: 6/30/2015

ATTACHMENT 2

Draft Protective Order

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Silver Merger Sub, Inc.)
NV Energy, Inc.)
Nevada Power Company)
Sierra Pacific Power Company)

Docket No. EC13-__-000

PROTECTIVE ORDER

1. This Protective Order shall govern the use of all Protected Materials produced by, or on behalf of, any Participant. Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Presiding Administrative Law Judge (“Presiding Judge”) or the Federal Energy Regulatory Commission (“Commission”).

2. This Protective Order applies to the following two categories of materials: (A) A Participant may designate as protected those materials which customarily are treated by that Participant as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business injury; and (B) A Participant shall designate as protected those materials which contain critical energy infrastructure information, as defined in 18 C.F.R. § 388.113(c)(1) (“Critical Energy Infrastructure Information”).

3. Definitions -- For purposes of this Order:

4. The term “Participant” shall mean a Participant as defined in 18 C.F.R. § 385.102(b).

5. The term “Protected Materials” means (A) materials (including depositions) provided by a Participant in response to discovery requests and designated by such Participant as protected; (B) any information contained in or obtained from such designated materials; (C) any other materials which are made subject to this Protective Order by the Presiding Judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the Participants; (D) notes of Protected Materials; and (E) copies of Protected Materials. The Participant producing the Protected Materials shall physically mark them on each page as “PROTECTED MATERIALS” or with words of similar import as long as the term “Protected Materials” is included in that designation to indicate that they are Protected Materials. If the Protected Materials contain Critical Energy Infrastructure Information, the Participant producing such information shall additionally mark on each page containing such information the words “Contains Critical Energy Infrastructure Information — Do Not Release.”

6. The term “Notes of Protected Materials” means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials

described in Paragraph 5. Notes of Protected Materials are subject to the same restrictions provided in this order for Protected Materials except as specifically provided in this order.

7. Protected Materials shall not include (A) any information or document contained in the files of the Commission, or any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order, or (C) any information or document labeled as “Non-Internet Public” by a Participant, in accordance with Paragraph 30 of FERC Order No. 630, FERC Stats. & Regs. ¶ 31,140. Protected Materials do include any information or document contained in the files of the Commission that has been designated as Critical Energy Infrastructure Information.

8. The term “Non-Disclosure Certificate” shall mean the certificate annexed hereto by which Participants who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Order, and that such Participants have read the Protective Order and agree to be bound by it. All Non-Disclosure Certificates shall be served on all parties on the official service list maintained by the Secretary in this proceeding.

9. The term “Highly Sensitive Protected Material” is a sub-set of Protected Material and means material provided by a Participant and designated as Highly Sensitive Protected Material. Except for the more limited list of persons who qualify as Reviewing Representatives for purposes of Highly Sensitive Protected Materials, such materials are subject to the same provisions in the Protective Order as Protected Materials. The Participant producing Highly Sensitive Protected Material shall physically mark them on each page as “Highly Sensitive Protected Material Provided Pursuant to the Protective Order” or words of similar import as long as the term “Highly Sensitive” is included in the designation to indicate that they are Highly Sensitive Protected Materials.

10. For purposes of reviewing Protected Material, the term “Reviewing Representative” shall mean a person who has signed a Non-Disclosure Certificate and who is:

- a. Commission Litigation Staff;
- b. an attorney who has made an appearance in this proceeding for a Participant;
- c. attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Paragraph 10(b);
- d. an expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for, or testifying in this proceeding;
- e. a person designated as a Reviewing Representative by order of the Presiding Judge or the Commission; or

f. employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket.

11. For purposes of reviewing Highly Sensitive Protected Material, the term “Reviewing Representative” shall mean a person who has signed a Non-Disclosure Certificate and who is:

- a. Commission Litigation Staff;
- b. an outside attorney who has made an appearance in this proceeding for a Participant;
- c. attorneys, paralegals, and other employees of the firm of the outside attorney described in paragraph 11(b), working with such outside counsel for purposes of this case;
- d. an outside expert or an employee of an outside expert retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding; or
- e. a person designated as a Reviewing Representative by order of the Presiding Judge or the Commission.

12. Protected Materials shall be made available under the terms of this Protective Order only to Participants and only through their Reviewing Representatives as provided in Paragraphs 16-20.

13. Protected Materials shall remain available to Participants until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Participants shall, within fifteen days of such request, return the Protected Materials (including Notes of Protected Materials) to the Participant that produced them, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Material may be retained, if they are maintained in accordance with Paragraph 14, below. Within such time period each Participant, if requested to do so, shall also submit to the producing Participant an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 14. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.

14. All Protected Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to the terms of this Protective Order. The Secretary shall place any Protected Materials filed with the Commission in a non-public file. By placing such documents in a non-public file, the Commission is not making a determination of any claim of privilege. The Commission retains the right to make determinations regarding any claim of privilege and the discretion to release information necessary to carry out its jurisdictional responsibilities.

15. For documents submitted to Commission Litigation Staff (“Staff”), Staff shall follow the notification procedures of 18 C.F.R. § 388.112 before making public any Protected Materials.

16. Protected Materials shall be treated as confidential by each Participant and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 19. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person’s responsibilities in this proceeding. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials.

17. If a Reviewing Representative’s scope of employment includes the marketing of energy, or the development or acquisition of electric power plants, the direct supervision of any employee or employees whose duties include the marketing of energy, or the development or acquisition of electric power plants, the provision of consulting services to any person whose duties include the marketing of energy, or the development or acquisition of electric power plants, or the direct supervision of any employee or employees whose duties include the marketing of energy, or the development or acquisition of electric power plants, such Reviewing Representative may not use information contained in any Protected Materials obtained through this proceeding to give any Participant or any competitor of any Participant a commercial advantage.

18. In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraphs 10 and 11 above, the Participant shall seek agreement from the Participant providing the Protected Materials. If an agreement is reached, that person shall be a Reviewing Representative pursuant to Paragraphs 10 and 11 above with respect to those materials. If no agreement is reached, the Participant shall submit the disputed designation to the Presiding Judge or the Commission for resolution.

19. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate, provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial, and clerical personnel under the attorney’s instruction, supervision, or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Participant asserting confidentiality prior to disclosure of any Protected Material to that Reviewing Representative.

20. Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this order.

21. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that

any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraphs 10 and 11, access to Protected Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the certification.

22. Subject to Paragraph 29, the Presiding Judge or the Commission shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Presiding Judge or the Commission, the parties to the dispute shall use their best efforts to resolve it. Any participant that contests the designation of materials as protected shall notify the party that provided the protected materials by specifying in writing the materials whose designation is contested. This Protective Order shall automatically cease to apply to such materials five (5) business days after the notification is made unless the designator, within said 5-day period, files a motion with the Presiding Judge or the Commission, with supporting affidavits, demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, the burden of proof shall be on the participant seeking protection. If the Presiding Judge or the Commission finds that the materials at issue are not entitled to protection, the procedures of Paragraph 29 shall apply. The procedures described above shall not apply to protected materials designated by a Participant as Critical Energy Infrastructure Information. Materials so designated shall remain protected and subject to the provisions of this Protective Order, unless a Participant requests and obtains a determination from the Commission's Critical Energy Infrastructure Information Coordinator that such materials need not remain protected.

23. All copies of all documents reflecting Protected Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed under seal and served under seal upon the Presiding Judge and all Reviewing Representatives who are on the service list. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information — Do Not Release." For anything filed under seal, redacted versions or, where an entire document is protected, a letter indicating such, will also be filed with the Commission and served on all parties on the service list and the Presiding Judge. Counsel for the producing Participant shall provide to all Participants who request the same, a list of Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

24. If any Participant desires to include, utilize, or refer to any Protected Materials or information derived there from in testimony or exhibits during the hearing in these proceedings in such a manner that might require disclosure of such material to persons other than reviewing representatives, such participant shall first notify both counsel for the disclosing participant and the Presiding Judge of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Material will be governed by procedures determined by the Presiding Judge.

25. Nothing in this Protective Order shall be construed as precluding any Participant from objecting to the use of Protected Materials on any legal grounds.

26. Nothing in this Protective Order shall preclude any Participant from requesting the Presiding Judge, the Commission, or any other body having appropriate authority, to find that this Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to this Protective Order. The Presiding Judge or the Commission may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

27. Each party governed by this Protective Order has the right to seek changes in it as appropriate from the Presiding Judge or the Commission.

28. All Protected Materials filed with the Commission, the Presiding Judge, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials subject to this Protective Order. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information — Do Not Release."

29. If the Presiding Judge or the Commission finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Order for three (3) business days from the date of issuance of the Presiding Judge's decision, and if the Participant seeking protection files an interlocutory appeal or requests that the issue be certified to the Commission, for an additional seven (7) business days. None of the Participants waives its rights to seek additional administrative or judicial remedies after the Presiding Judge's decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. The provisions of 18 C.F.R. §§ 388.112 and 388.113 shall apply to any requests for Protected Materials in the files of the Commission under the Freedom of Information Act (5 U.S.C. § 552).

30. Nothing in this Protective Order shall be deemed to preclude any Participant from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Protective Order.

31. None of the Participants waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.

32. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this proceeding. Any violation of this Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

