Case No. 80911

In the Supreme Court of Nevada

SOUTHWEST GAS CORPORATION,

Appellant,

vs.

PUBLIC UTILITIES COMMISSION OF NEVADA; and STATE OF NEVADA BUREAU OF CONSUMER PROTECTION,

Respondents.

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable WILLIAM KEPHART, District Judge
District Court Case No. A-19-791302-J

JOINT APPENDIX
VOLUME 8
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<u>Certificate of Service</u>

I certify that on January 4, 2021, I submitted the foregoing "Joint Appendix" for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

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390. BCP therefore recommends an adjustment to remove both the SERP and the EDP expenses is $620,681 for SND and $154,977 for NND. (*Id.* at 65.)

Staff's Position

391. Staff states that it agrees that the "SERP provides participating executives with a similar retirement opportunity that is available to other SWG employees, but the SERP benefits should match the benefits provided by the otherwise applicable retirement plan to truly provide comparable plans for all employees." (Ex. 58 at 25.) Staff states that it "acknowledges that offering some type of SERP seems to be a standard industry practice, full cost recovery is not," and therefore recommends that the benefits that are eligible for cost recovery be equal to the non-executive employee's benefits by removing the portion related to retirement benefits that exceed the restoration benefit. (*Id.* at 25-26.)

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392. Staff therefore recommends that the SERP expenses for the NND and SND be decreased in the amounts of $57,844 and $273,916, respectively, to remove costs that are in excess of the restoration amount of SERP from the revenue requirements. (Ex. 63 at 11.)

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SWG's Rebuttal Position

393. SWG states that the full SERP amount included in its initial filing is appropriate; however, if the Commission determines that an adjustment to the SERP benefits for the non-restorative amount is necessary, then SWG suggests that Staff's calculation should be corrected to reflect a decrease of $274,612 for SND and $58,804 for NND. (Ex. 62 at 3.)

394. SWG states that it agrees with Staff's "recommendation regarding the Company being allowed to recover EDP and SERP restoration benefits through customer rates," disagrees with Staff's recommendation "to disallow SERP expenses beyond the restoration benefits," and

disagrees with BCP's recommendation" regarding the disallowance of all Company expenses associated with these programs." (Ex. 75 at 18.)

395. With respect to BCP's recommendation to disallow 100% of SWG's expenses under the EDP and SERP, SWG states that while BCP cites to a few jurisdictions that have denied recovery of these expenses, it failed to "cite to prior Nevada rulings that permitted the Company to recover a portion of these expense." (Ex. 75 at 17-18.)

396. SWG notes that "SERP benefits are calculated by reference to length of service, which facilitates retention of participating Executives," and that "[r]etention of a high-performing team clearly benefits the Company's customers." (*Id.* at 18.) SWG further notes that "each of these programs are components of the Company's market-competitive compensation and benefit programs and as such help the Company attract and retain top talent by offering these programs, which also benefits the Company's customers," and therefore "recovery of the Company's full SERP and EDP expenses through customer rates is warranted." (*Id.*)

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Commission Discussion and Findings

397. The Commission accepts Staff's recommendation to exclude from cost recovery of all SERP benefits exceeding the restoration benefit. In making this determination, the Commission notes that the IRS limits the annual payout under a tax-qualified defined benefit pension plan to $220,000 per retiree. The normal SWG pension plan benefit allows employees who retire with service up to a maximum of 30 years to receive an annual benefit equal to 50 percent to 60 percent of their base salary up to the $220,000 annual IRS maximum benefit, while higher-paid employees receive a benefit equal to an amount which is less than 50 percent to 60 percent of base salary as a result of the $220,000 IRS maximum benefit under a normal pension plan.

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398. The Commission further notes that the SERP provides an additional retirement to higher-paid retired employees which allows them to receive a retirement benefit equal to the same 50 percent to 60 percent of base salary available to employees under the normal pension plan whose annual benefit does not exceed the IRS maximum of $220,000. This supplemental benefit is referred to as the "restoration benefit."

399. The Commission also notes that if SWG decides that a limited number of its highest-paid employees should receive a maximum retirement benefit, as a percentage of base pay which exceeds the level available to all other employees, shareholders should be assigned the additional cost.

F. Payroll Expense

SWG's Position

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400. SWG states that Schedule No. I-C2, Labor and Benefits "reflects the estimated overall general wage increase of approximately 2.9 percent to be effective during the certification period. (Ex. 37 at 3.) SWG further states that since the effective date for these changes in expenses occurred after the end of the January 31, 2018, test year but prior to the certification date of July 31, 2018, the adjustment was included as a certification adjustment. (*Id.*)

BCP's Position

401. BCP states that while the adjustment for SWG's NND appears reasonable, the SND adjustments total 5.29 percent, and that a 5.29 percent increase is high for a one-year period. (Ex. 59 at 66.) BCP notes that "[m]ost of the increase came from within the test year," and that "SWG began the test year with 2,231 employees on the payroll, and ended it with 2,299,

the highest number of employees at any time during the five-year period from June 2013 through July 2018. (*Id.* at 67.)

402. BCP further states that, similar to the test year period, "the Certification period started with 2,280 employees, dropped to 2,269 in March, before increasing to 2,282 by the end of July," and that "[p]rior to the test year, SWG did not have more than 2,246 employees, and that was in December 2016." (*Id.*) BCP argues that the "increase in employee levels results in a loss of productivity for SWG that it should try to reverse, and the Commission should not accept a reduced level of labor productivity for SWG." (*Id.*)

403. BCP recommends that SWG payroll cost increase for the SND be limited to 3.0 percent based on data provided by the Bureau of Labor Statistics ("BLS"), which showed that "the average increase in salaries from June 2017 to June 2018 was 2.5 percent." (*Id.*) This results in a recommended adjustment to reduce the payroll expenses in the amount of $840,593.00. (*Id.* at 68.)

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Staff's Position

404. Staff recommends that the Commission approve SWG's requested base salary and wage levels for all employees. (Ex. 58 at 5.) However, Staff notes that "SWG needs to provide justification for all employee compensation in future rate cases, not just the 19 members of the executive employee group. SWG has over 400 employees designated as either SND or NND, and almost 900 employees designated as corporate employees who work companywide." (*Id.* at 8.) Staff further states that "SWG must make available justification for including their salary in revenue requirement to the Commission in the initial filing, instead of having it pieced together through data requests." (*Id.*)

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SWG's Rebuttal Position

405. SWG states that "BCP's analysis and recommendation is based on a misleading calculation that compares the Company's percentage increase in annualized payroll expense adjustments to a one-year average in salary increases and that BCP mischaracterizes the Company's proposed adjustments to payroll expense as a request that equates to a one-year wage increase of 5.29% in Southern Nevada. BCP's analysis fails BCP's analysis and recommendation is based on a misleading calculation that compares the Company's percentage increase in annualized payroll expense adjustments to a one-year average in salary increases. BCP mischaracterizes the Company's proposed adjustments to payroll expense as a request that equates to a one-year wage increase of 5.29% in Southern Nevada. BCP's analysis fails to offer an apples to apples comparison and ignores the administrative aspect of employee compensation resulting in a flawed recommendation." (Ex. 74 at 1-2.)

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406. SWG states that "due to the timing of the test year and certification period, the Company experienced employee wage increases for 2017 and 2018 resulting in payroll expense adjustments, and that consistent with the Company's long history of issuing its employee wage adjustments mid-year (with Board approval generally obtained in May and the increase taking effect in June), these payroll expenses were known and measurable and appropriate for inclusion by SWG as test year and certification adjustments." (*Id.* at 3.)

407. SWG also states that using BCP's calculation of 5.29% for the increase in payroll expense adjustments would result in average annual wage increases of 2.64%, which is in line with the BLS 2.5% average for annual salary increases. (*Id.* at 4.) SWG further states that the BLS is merely a single economic indicator that may be considered in evaluating appropriate wage increases or the reasonableness of payroll costs in any given year but is inappropriate for

determining reasonableness of annualized payroll expenses that include costs over an extended period." (*Id.* at 4.)

Commission Discussion and Findings

408. The Commission rejects BCP's recommendation to limit SWG's payroll cost increase for SND to 3.0 percent. The Commission notes that SWG addressed its concerns raised by BCP's testimony by clarifying that the 5.29-percent increase relates to a two-year period rather than an annual period. Given the clarification, the annual increase over the last two years would amount to approximately 2.65 percent. The Commission finds that such an increase is not excessive, and a reduction to SWG's annual payroll cost would not be justifiable.

409. The Commission agrees with Staff's recommendation that SWG provide justification for all employee compensation in future rate cases instead of merely the 19 members of the executive employee group. Accordingly, the Commission directs SWG to meet with Staff prior to its next GRC to determine a satisfactory manner for how SWG will provide benchmarking for all employees similar to what it provided for executives regarding salary and/or wage levels.

G. Perquisites ("Perks") and Vehicle Stipends

BCP's Position

410. BCP does not address this issue.

Staff's Position

411. Staff recommends that the Commission remove "the Perks and vehicle stipend costs," from the revenue requirement because "SWG has not provided any information to indicate that the perquisites benefit the ratepayers who are expected to pay for the costs, or to

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indicate that the costs further the goal of providing adequate, safe and reliable service." (Ex. 58 at 27.)

SWG's Rebuttal Position

412. SWG states that the perks that it seeks recovery for are physical exams, life insurance, and financial and estate planning. (Ex. 81 at 33.) SWG provides that the physical exams help SWG minimize medical expenses and reduce medical absences while ensuring its highest-level executives are able to perform their duties. (*Id.*) SWG further provides that the benefits help attract and retain key employees, are relatively low cost, and allow employees to focus their duty to provide adequate, safe, and reliable service. (*Id.* at 33-34.)

413. SWG states that vehicle stipends are reasonable to include in rates and should be viewed within the context of total cash compensation, as a vehicle stipend is another form of base pay. (*Id.* at 34.) SWG provides that "it addressed the Commission's concerns of including luxury vehicles in its revenue requirement by changing its policy of providing certain employees with a vehicle owned by the company" and "removed all vehicles that were not fully amortized from the revenue requirement for director level and above." (*Id.*) SWG further provides that such actions eliminated the Commission's concerns. (*Id.*)

414. SWG states that the vehicle stipend is a fixed amount, and provided the employee meets the conditions for the vehicle as specified by the company, it may use the vehicle for both business and personal reasons, with no additional reimbursements for work use. (*Id.*) SWG further states that the stipend is another form of cash compensation. (*Id.*) SWG recommends that perks and vehicle stipends be authorized for full recovery. (*Id.*)

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Commission Discussion and Findings

415. The Commission finds that the inclusion of requested perks and executive vehicle stipends in SWG's revenue requirement will not result in just and reasonable rates. In making this determination, the Commission considers the evidence on the record and how that evidence balances the interests of ratepayers and shareholders. The Commission is not persuaded by SWG's rationale that the inclusion of physical exams, life insurance, financial and estate planning, and vehicle stipends are necessary for the successful operation of the utility.

416. The Commission agrees with Staff that SWG failed to adequately justify how the perks and vehicle stipends benefit ratepayers and did not identify how such costs further the goal of providing adequate, safe, and reliable service. Instead, SWG focused on the manner in which the benefits are given to employees and how they benefit the employees. Accordingly, the Commission accepts Staff's recommendation to remove costs associated with the perks and vehicle stipends from SWG's revenue requirement.

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H. Board of Directors ("BOD") Compensation

BCP's Position

417. BCP does not address this issue.

Staff's Position

418. Staff recommends a disallowance of 50 percent of the BOD's compensation. (Ex. 58 at 28.) Staff states that the "Board's legacy compensation was not aligned with its peer group in regards to total compensation."(*Id.*) Thus, Staff states that SWG reviewed "the non-employee Board compensation and compar[ed] it to the peer group compensation, and that "[i]n 2017, the Board's compensation was changed to provide a more equal distribution between cash and equity compensation." (*Id.*) Staff concludes that because the changes were implemented in 2017, "it is

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impossible to know at this point in time if the Board's compensation amount is now aligned with its peers" and that "the ratepayers should not bear 100 percent of the risk." (*Id.*)

SWG's Rebuttal Position

419. SWG states that Staff's adjustment does not represent a 50 percent disallowance of the board of director costs. (Ex. 81 at 35.) SWG further states that to align with previous Commission orders, Adjustment No. 12 removed $1,082,245.00 of BOD costs, allocating $291,072 to its SND and $60,584.00 to its NND. (*Id.*) SWG provides that removing an additional $331,081.00 for its SND and 68,911.00 for its NND, results in a 65.3 percent disallowance of BOD-related expenses. (*Id.*) SWG further provides that it is required to have a BOD, Staff did not express concerns about unjust compensation, and its Board of Director's compensation is aligned with SWG's peers. (*Id.*) Accordingly, SWG contends that its Board of Director costs are reasonable, necessary, and Staff failed to provide objective information supporting excluding the associated costs from rates. (*Id.*)

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Commission Discussion and Findings

420. The Commission accepts Staff's proposal to disallow 50 percent of the BOD compensation costs in order to share the costs equally between ratepayers and shareholders. The Commission finds that the evidence on the record supports benefits to both ratepayers and shareholders. A competent BOD provides value to SWG through increased earning and market value, while ratepayers benefit from safe, reliable service. Accordingly, it is appropriate that the costs be shared between shareholders and ratepayers.

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I. Pension Expenses and Tracker

Pension Expenses

SWG's Position

421. SWG requests a revenue requirement increases of $1.37 million for SND and $335.6k NND related to Pension and PBOP expense. (Ex. 36 at 7.) SWG states that Pension and PBOP expenses are based on current actuarial studies and test year employee counts. (*Id.*) SWG further states that since 2011, pension costs have fluctuated due to the discount rate and mortality rates used in calculating the pension cost. (*Id.* at 13.) SWG provides that the reduction in the discount rate from 4.50 percent in 2017 to 3.75 percent in 2018 resulted in an increase in total gas operation pension costs (including its Arizona, California, and Nevada jurisdictions) of $11.7 million, with 28.13 percent and 5.86 percent allocated to SWG's SND and NND, respectively. (Ex. 36 at Attachment CMB-3, Tr. at 946.)

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422. SWG states that the discount rate is used to estimate the existing liability for future pension benefits and is determined through the utilization of an actuary's proprietary yield curve that includes a portfolio of AA-rated bonds. (*Id.* at 14.) SWG further provides that the discount rate has been the driving force in changes in pension costs. (*Id.*) SWG states that its actuary recommends the annual discount rate, which is then discussed with senior management, who has some input on the selection of the discount rate. (Tr. at 948.) SWG was not able to provide specifics about what information was utilized by the actuary and senior management in determining recommendations for the appropriate annual discount rate. (Tr. at 948-950.)

BCP's Position

423. BCP's witness, a Certified Public Accountant with both public and private experience, opines that upper-level management has some control over the two biggest factors

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affecting volatility and pension costs – discount rates and the expected rate of return. (Tr. at 444-445, Ex. 53 at JDK-1.) BCP contends that a pension tracker does not provide an incentive to control pension costs. (Tr. at 441.)

Staff's Position

424. Staff does not address this issue.

SWG's Rebuttal Position

425. SWG does not address this issue in its rebuttal testimony.

Commission Discussion and Findings

426. The issue before the Commission is whether Nevada's allocated share of an $11.7-million increase in pension cost, resulting from a reduction in the discount rate used in calculating the annual pension cost, should be included for cost recovery. The Commission notes that the discount rate is used to estimate the total future pension liability to date, as well as the level of pension expense charged to annual financial results. Selection of the annual discount rate is a result of a recommendation from SWG's actuarial firm and input from senior management. SWG put forth evidence that indicates that the annual discount rate from 2011 through 2017 averaged 4.75 percent and never dropped below 4.25 percent for the entire seven-year period.

427. The 2018 discount rate was reduced from 4.50 percent in 2017 to 3.75 percent in the test year for this GRC, resulting in an approximate increase in pension cost to SWG's SND and NND of $3,291,000.00 and $686,000.00, respectively. SWG did not provide the Commission with evidence explaining the cause of the significant reduction in the discount rate for the 2018 test year, nor did it produce a witness during the hearing that could testify about the selection process for the rate reduction.

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428. The Commission finds that SWG failed to provide evidence justifying an increase of approximately $4.0 million in pension costs to its Nevada gas operations. SWG is directed to recalculate its 2018 pension cost, allocated to Nevada, excluding the reduction in the discount rate of 3.75 percent in 2018. The Commission further finds that the annual pension cost to be reflected in the cost of service in this proceeding will be based upon a three-year average of 2016, 2017, and the revised calculation for 2018. The Commission's decision to use a three-year average for determining annual pension cost is addressed in paragraphs 435-437 of this Order.

Pension Tracker

SWG's Position

429. SWG requests authority to implement a Pension Tracker in order to "track the difference between pension expenses included in base rates and the level of expense incurred between GRC proceedings through a regulatory asset that is adjusted annually in the company's Annual Rate Adjustment filing." (Ex. 1 at 5.) SWG states that a pension tracker is appropriate for SWG's pension expense because 1) the amount of pension expense typically fluctuates from year-to-year and can significantly deviate from the expense levels set in base rates; and 2) management has limited managerial discretion over the components or volatility of the expense. (*Id.* at 13.)

BCP's Position

430. BCP recommends that the Commission deny SWG's request for Pension Tracker, because "BCP does not agree it is prudent to review a single-issue such as pension expense via an annual filing as proposed by the Company without conducting a holistic review of the Company's operations which are performed during a general rate case, such as in this instant docket. (Ex. 53 at 4.)

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Staff's Position

431. Staff states that due to volatility in pension expense the 5-year average periodic pension expense from 2014-2018 should be used to set the reasonable level of expense for inclusion in rates. (Ex. 63 at 8.) Staff also states that normalization of expenses is a common practice in ratemaking. (*Id.* at 6.) Therefore, Staff recommends that the Commission reduce revenue requirement $1,387,087 for SND and $339,132 for NND to reflect normalization. (*Id.*)

432. Staff states that the Commission should deny implementation of a pension tracker in the instant docket. (Ex. 63 at 5.) Staff states that creation of a comprehensive pension tracking mechanism is more complex than presented by SWG, and that if the Commission determines a pension tracker is may be appropriate it should be addressed in an investigation and/or rulemaking docket. (*Id.*)

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SWG's Rebuttal Position

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433. SWG states that a pension tracker provides a straight forward mechanism with comparing the amount in base rates with the pension expense incurred for the annual period. (Ex. 77 at 2.)

434. SWG also states that consideration of pension tracker in the instant docket is administratively efficient and that other utilities interest or not in a pension tracker is not relevant. (*Id.* at 5.) SWG also states that BCP provides no support that pension tracker is too complicated to address in annual filing, and that BCP's position on trackers is inconsistent with its support for implementing a tracker for ARAM amortization. (*Id.* at 6.)

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Commission Discussion and Findings

435. The Commission rejects SWG's request to establish a tracking mechanism for the recovery of pension and PBOP expenses. In rejecting SWG's request, the Commission finds that normalization of expenses is a more appropriate means to address volatility.

436. The Commission finds that expense normalization is a common practice in ratemaking for addressing costs that can vary from year to year. Accordingly, the Commission accepts the premise of Staff's proposal to address volatility in pension expense by normalizing the amount for recovery using an average of a number of historical years. However, in doing so, the Commission modifies Staff's recommendation to utilize an average of the last three years. More specifically, the Commission finds that SWG shall use an average of the 2016, 2017, and 2018 (as corrected in accordance with Paragraph 442) pension expenses.

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437. The Commission finds that, after the effects from the outlier reduction in the discount rate have been removed from pension expense for 2018, a three-year average of 2016, 2017, and the corrected rate for 2018 represents a more appropriate period reflective of historical figures. The Commission notes that utilizing the above-referenced three-year average addresses volatility without the risk of dis-incentivizing cost management by the utility between rate cases that could otherwise occur with the pension tracker mechanism proposed by SWG. The Commission also notes that SWG can address its concerns about managing pension costs by taking steps to revise the amount, type, and structure of pension-related benefits offered to employees.

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J. Winnemucca Home

BCP's Position

438. BCP does not address this issue.

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Staff's Position

439. Staff recommends disallowing all of the costs associated with the Winnemucca District Manager's house. (Ex. 64 at 2, Tr. 843.) Staff states that SWG initiated Work Order No. 026W0000877 to purchase a home in Winnemucca, Nevada for approximately $307,753 in 2012 for the Winnemucca District Manager. (Ex. 64 at 27, Ex. 71 at 6.) Staff recommends an adjustment to remove the costs and related accumulated depreciation, depreciation expense, and ADIT associated with this property from rate base. (*Id.*, Attachments WC-2, page 2, CW-8, CW-14.) Staff states that it disputes the appropriateness of both the company's decision to purchase the home and the rent that SWG charges. (Tr. at 843.)

440. According to Staff, SWG stated that it needed to purchase the prior Winnemucca District Manager's home when he transferred to a new position within SWG. (Ex. 64 at 27.) Staff states that SWG stated it retained the home because the incoming District Manager was unable to find suitable available housing in the area. (Ex. 64 at 27-28.) Staff further states that the District Manager does not pay SWG rent for the purchased home; however, SWG imputes a monthly rent of $1,368, which is included as additional income in the Winnemucca District Manager's taxable earnings. (Ex. 64 at 28.)

441. Staff provides that "[i]f SWG wants to offer free housing for its employees as part of its compensation plan, its shareholders should pay for those costs, not ratepayers, unless SWG can show that this Perk is part of a below-normal salary package." (Ex. 64 at 29.) Staff notes that it is aware of other utility personnel that work in Winnemucca, and that those other utilities don't pay for homes. (Tr. at 842.)

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SWG's Rebuttal Position

442. SWG states that Staff did not provide a reason for disallowing this cost. (Ex. 81 at 25.) SWG further states that the employees occupying the home are typically in developmental positions and the company-owned housing enables the company to move people in and out of these positions while minimizing relocation costs. (*Id.*) SWG states that in lieu of salary adjustments, the company provides a home, with imputed earnings, as part of the employee's compensation package. (*Id.*) SWG states that the cost of the home is reasonable and essential to providing safe and reliable service. (*Id.*)

Commission Discussion and Findings

443. The question before the Commission is whether costs associated with the Winnemucca home should be included in rates. In assessing whether its inclusion in rate base would result in just and reasonable rates, the Commission weighs the benefits to both ratepayers and shareholders. The Commission is persuaded by Staff's testimony that other utilities have employees who live and work out of Winnemucca and do not receive housing benefits. The Commission is not persuaded by SWG's contention that providing a benefit to an individual employee is essential to providing safe and reliable service. Moreover, while SWG provides that the employees occupying the home are typically in developmental positions, the Commission distinguishes this from employees that might require short-term housing when relocating.

444. SWG has failed to show how employees of SWG and other utilities can find suitable housing in Winnemucca while SWG's District Managers uniquely cannot. Based on the evidence presented, the Commission finds that SWG did not adequately justify how the home will benefit ratepayers or result in just and reasonable rates. Accordingly, the Commission

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accepts Staff's adjustment to remove all costs and related accumulated depreciation, depreciation expense, and ADIT associated with the Winnemucca home from rate base.

K. Incline Village Home

BCP's Position

445. BCP does not address this issue.

Staff's Position

446. Staff recommends that the Commission disallow and make an adjustment removing from rate base $0.830 million from the NND rate base all of the costs associated with of the Lake Tahoe District Manager's house in Incline Village owned by SWG, including accumulated depreciation, depreciation expense, and ADIT. (Ex. 64 at 2, Ex. 71 at 6-7, Attachments CW-2, page 2, CW-9, CW-14.)

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447. Staff disputes the appropriateness of both the company's decision to purchase the home and the rent that SWG charges. (Tr. at 843.) According to Staff, SWG stated it owns a home in Incline Village, Nevada, for the Lake Tahoe District Manager. (Ex. 64 at 28.) Staff SWG purchased this home from a different SWG employee for over a quarter of a million dollars in 2004. (*Id.*) Staff states that the Lake Tahoe District Manager does not pay rent and that SWG imputes a monthly rent of $1,621, which is included as additional income in the Lake Tahoe District Manager's taxable earnings. (*Id.*) However, because the home value is close to one million dollars, it does not appear to Staff that the imputed rent even covers the property tax for the home. (*Id.*) Staff provides that "the fair market rent value [of the home] is $2,360.00, well above, some $700.00 more than what the utility is imputing as income." (Tr. at 841.)

448. Staff states "Nevada ratepayers should not be asked to pay for the cost of a District Manager to live in a million-dollar home in Incline Village, Nevada." (Ex. 64 at 29.) "If

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SWG wants to offer free housing for its employees as part of its compensation plan, its shareholders should pay for those costs, not ratepayers, unless SWG can show that this Perk is part of a below-normal salary package." (*Id.*)

SWG's Rebuttal Position

449. SWG states that "company-provided housing is an essential element of operational effectiveness and emergency response in the Lake Tahoe area." (Ex. 81 at 25.) SWG further states that the employees occupying the home are typically in developmental positions and the company-owned housing enables the company to move people in and out of these positions while minimizing relocation costs. (*Id.*) SWG states that in lieu of salary adjustments, the company provides a home (with imputed earnings) as part of the employee's compensation package. (*Id.*) SWG provides that the cost of the home is reasonable and essential to providing safe and reliable service. (*Id.*)

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Commission Discussion and Findings

450. The question before the Commission is whether costs associated with the Incline Village home should be included in rates. In assessing whether its inclusion in rate base would result in just and reasonable rates, the Commission again weighs the benefits to both ratepayers and shareholders. The Commission again agrees with Staff's criticism of SWG's business decision to both purchase the house and provide the District Manager with rent, regardless of whether it is imputed from the District Manager's salary. As Staff notes, the rent charged to the District Manager is approximately $700.00 below monthly fair market rental value for the area and may even be inadequate to cover the property tax on the home.

451. Moreover, the Commission is not persuaded that the home is essential to providing safe and reliable service. As Staff also notes, SWG has field offices in the area and

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has the capacity for employees to work out of those offices. It is unclear how providing the District Manager with this home is essential or ensures safe and reliable service. The evidence before the Commission does not adequately demonstrate a benefit to ratepayers, and as a result, this expense should fall to the shareholders.

452. Accordingly, the Commission accepts Staff's adjustment to remove $0.830 million from the NND rate base related to the entire cost of the Lake Tahoe District Manager's house in Incline Village owned by SWG and to make corresponding adjustments to remove the costs and related accumulated depreciation, depreciation expense, and ADIT related to the home from rate base.

L. Las Vegas Apartments

BCP's Position

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453. BCP does not address this issue.

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Staff's Position

454. Staff recommends disallowing all of the costs associated with the two apartments SWG rents in Las Vegas. (Ex. 64 at 2.) Staff states that SWG rents two apartments in Las Vegas, Nevada for temporary use by select employees. (*Id.* at 28.) According to Staff, SWG stated that it rents two apartments in Las Vegas that are used for new hires while they obtain permanent housing, and for temporary housing of employees attending training, or other short-term activities at a monthly cost of $2,350. (*Id.* at 30.) Staff states that SWG did not provide any analysis showing whether the apartment rents were more cost effective than individual hotel costs for the test period. (*Id.*)

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SWG's Rebuttal Position

455. SWG states that the apartments were utilized by new hires who relocated from other areas of the state and country. (Ex. 81 at 27.) SWG further states that the monthly cost for the two apartments is $2,350.00 with a daily rate of less than $40.00. (*Id.*) SWG provides that the apartments are conveniently located, provide temporary housing for new-hires, and are more cost-effective and convenient than placing employees in hotels. (*Id.*)

Commission Discussion and Findings

456. The issue is whether the costs associated with the two apartments in the Las Vegas area should be allowed in rates. The Commission rejects Staff's recommendation to disallow the costs of the apartments. In rejecting Staff's recommendation, the Commission distinguishes the apartment expenditures from the costs associated with the District Manager homes in Incline Village and Winnemucca, Nevada. First, SWG clearly demonstrates that the cost of the apartments, less than $40.00 per day, are cost-effective compared to other options. Second, the Commission differentiates between the need to provide short-term housing for relocating employees and the prudence of providing housing to District Managers for the duration of their position in those roles. Accordingly, the Commission accepts SWG's position and finds that the cost of the Las Vegas apartments should be allowed.

M. Vdara Hotel Expenses

BCP's Position

457. BCP does not address this issue.

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Staff's Position

458. Staff recommends disallowing all of the costs associated with Vdara Hotel lodging expenses. (Ex. 64 at 2.) Staff states that SWG paid approximately $7,800 to reserve hotel rooms at the Vdara Hotel. (Ex. 64 at 30.)

SWG's Rebuttal Position

459. SWG states that it agrees with Staff's recommendation to disallow costs related to lodging at the Vdara Hotel. (Ex. 81 at 49.) SWG states that it had intended to remove all charges related to employee events from its operating expenses. (*Id.*)

Commission Discussion and Findings

460. The Commission agrees with and accepts Staff's recommendation to disallow costs related to employee events at the Vdara Hotel.

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N. Leasehold Improvements to Former Elko Office Building

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BCP's Position

461. BCP does not address this issue.

Staff's Position

462. Staff recommends that the Commission approve adjustments to retire $375,170.00 of leasehold improvements from SWG's NND rate base related to the previously leased Elko office building, resulting in an annual $8,741.00 in revenue requirement for annual depreciation expense. (Ex. 70 at 4.) Staff states that otherwise including the amounts in rate base would result in earning a return on the improvements as well as a return of investment through annual depreciation expense. (*Id.* at 2.)

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SWG's Rebuttal Position

463. SWG states SWG states that "it does not oppose an adjustment to retire the leasehold improvements made on its formerly leased Elko office." (Ex. 81 at 48.)

Commission Discussion and Findings

464. The Commission accepts Staff's recommendation to remove $375,170.00 in costs associated with leasehold improvements to the retired office in Elko, Nevada, from rate base. As Staff notes, allowing these costs to remain in rate base would result in SWG earning a rate of return on the improvement as well as a return on investment through the annual depreciation expense. Moreover, SWG does not oppose Staff's adjustment. Accordingly, the Commission finds that the expense is not acceptable and accepts Staff's adjustment to remove $375,170.00 from the NND rate base.

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O. Directors and Officers (D&O) Liability Insurance

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SWG's Position

465. SWG states that quality individuals will not risk their personal assets to serve as a corporate director or officer without mitigating risks associated with certain positions, especially when other comparable positions with other companies mitigate such risk. (Ex. 3 at Statement P, Sheet 8.) SWG provides that indemnification creates a liability for the company that is prudent to cover through D&O insurance. (*Id.*) SWG further provides that D&O insurance "is a reasonable and necessary expense that is incurred by publicly traded companies. (*Id.*) SWG states that D&O liability insurance increases its revenue requirement by approximately $30,278.00. (*Id.*)

BCP's Position

466. BCP does not address this issue.

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Staff's Position

467. Staff recommends that the Commission reduce rate base by $40,321 for SND and $8,393 for NND for costs related to D&O liability insurance. (Ex. 70 at 4.) Staff argues that these costs should be shared 50-50 as was ordered in Docket No. 12-04005. (*Id.* at 6.)

468. Staff states that while it is likely that ratepayers derive some benefit from D&O liability insurance, there are direct benefits that accrue to shareholders. (*Id.*) Staff further states that both SPPC and NPC split such costs between shareholders and ratepayers. (*Id.*) Accordingly, Staff contends that the costs associated with the D&O liability insurance should be split equally between ratepayers and shareholders, as was ordered in SWG's previous GRC. (*Id.*)

SWG's Rebuttal Position

469. SWG states that D&O liability insurance is a necessary and reasonable cost that should be included in rates. (Ex. 81 at 37.) SWG further states that the expenses are not discretionary or optional and that no party claimed that D&O insurance costs "are unjust, unreasonable, or imprudent." (*Id.*) SWG contends that such an adjustment would constitute an implicit reduction in its rate of return and return on common equity because if the company continues to incur reasonable, required expenses and cannot recover them in rates, the company is effectively earning a lower return on equity than what the Commission authorizes. (*Id.*)

Commission Discussion and Findings

470. The issue before the Commission is how to apportion the costs associated with the D&O Liability Insurance for inclusion in rates. The Commission notes that in SWG's previous GRC, the Commission ordered a 50/50 sharing of the expense between ratepayers and the company.

471. As noted by Staff, D&O insurance covers claims against the company resulting from misconduct or breach of fiduciary duties. The Commission notes that without such insurance, SWG might request recovery of the costs associated with such claims from ratepayers; however, it should be noted that there is no guarantee that such a request would be granted. The Commission agrees with Staff that D&O insurance benefits both shareholders and ratepayers, and consequently, those costs should be shared. Based on the foregoing analysis, the Commission finds that a 50/50 apportionment of the cost of D&O Liability Insurance between ratepayers and SWG is just and reasonable. Accordingly, the Commission accepts Staff's recommendation to disallow 50 percent of D&O liability insurance expenses by reducing SWG's SND rate base by $40,321.00 and reducing SWG's NND rate base by $8,393.00.

P. Rate Case Expenses

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Amortization of rate case expenses

BCP's Position

472. BCP does not address this issue in testimony.

Staff's Position

473. Staff recommends amortizing the new regulatory asset for general rate case expenses incurred in this proceeding over a six-year period for the reasons discussed *infra* paras. 487-491. Staff states that "changing the amortization period from five years to six years for this asset will result in amortization expense adjustments in the amounts of ($3,480) for the SND and ($724) for the NND." (Ex. 54 at 15.) Staff also states that "if the Commission approves SWG's requested five-year amortization period for SWG's regulatory asset, SWG will collect an additional year of amortization expense that was not calculated into rates and over-recover the value of the regulatory asset." (*Id.* at 15-16.)

SWG's Rebuttal Position

474. SWG states that it continues to recommend a five-year amortization period; however, SWG provides that its primary concern is that all amortizations based on a rate case cycle be treated consistently. (Ex. 81 at 41.)

Commission Discussion and Findings

475. The Commission accepts Staff's proposal to amortize SWG's rate case expense over a six-year period. The six-year period is consistent with the most recent duration between SWG GRCs and depreciation cases. Moreover, the six-year period reduces the risk of over-recovery. In the event SWG files a GRC prior to the completion of the amortization period, it can request to have the amortization period reset.

Rate Case Cost Discrepancies

BCP's Position

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476. BCP does not address this issue.

Staff's Position

477. Staff states that as of SWG's certification period, it requested a combined rate case expense recovery of $126,147.00 for its SND and NND; however, after Staff inquiry, SWG discovered that the total expenses should have reflected $331,998.00 upon the conclusion of its certification period. (Ex. at 17.) Staff contends that such oversight problems and failures to properly update certification materials are demonstrative of a pattern of SWG failing to adequately prepare and defend its Application. (*Id.* at 17.)

478. Staff states that "SWG is requesting expense recovery of $126,147 (combined SND and NND), as of the certification date, relating to rate case expenses for this current proceeding." (Ex. 54 at 16.) Staff states that SWG claimed this represented actual amounts

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incurred to the certification date, and that $475,250 represented estimated amounts SWG expected to incur at the certification. (*Id.*)

479. However, Staff states that through review of SWG's "13 Month Average" balance, it came to Staff's attention that "SWG had included this regulatory asset in rate base as 'Nevada Rate Case 2018' (account 182303044) with a thirteen-month average balance of $238,563, and a July 2018 ending balance of $331,998." (*Id.*) In addition, Staff states that "[a]fter discovering that the regulatory asset's balance at July 2018 was $331,998 ($205,851 more than the $126,148 requested at certification), [it] issued DR Staff-387 requesting clarification for the discrepancies between SWG's request and that workpaper." (*Id.*) Staff states that in response, SWG stated 'In preparing this response, it was discovered that the total expenses should have reflected $331,998, rather than $126,148, as that was the ending balance at July 31, 2018.'" (*Id.*)

480. Staff states that "it is SWG's responsibility to ensure that its applications and certification filings are correct and adequately supported when filed" and that "Staff has not determined the reasonableness of the $331,998 figure, since SWG only provided invoices for 'professional services' supporting the lower figure and there is no time to further investigate this issue before this testimony." (*Id.* at 17.)

481. Staff states that "this rate case expense error is but one of many instances, uncovered during Staff's investigation, in which SWG has failed to adequately prepare and defend the instant GRC filing" and that "given the extent of the problems that Staff has experienced during its investigation, Staff believes it is not reasonable for SWG to recover these additional, unvetted rate case expenses from ratepayers." (*Id.*)

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482. Therefore, Staff recommends that the $126,147 requested at the time of certification in Schedule I-C3, and subsequently confirmed to Staff in the response to DR Staff-352 be recovered in rates by SWG. (*Id.*) Additionally, Staff recommends that the value of the regulatory asset in rate base be set to the $126,147 represented in the certification filing and confirmed by the response to DR Staff-352 (with a corresponding adjustment to ADIT and then allocated to the SND and NND). Staff states that this results in the net amount of ($73,071), which is then allocated to the SND ($60,482) and the NND ($12,589). (*Id.*)

SWG's Rebuttal Position

483. SWG states that it regrets that this error was not identified prior to the filing and that it responded to Staff with the corrected amounts. (Ex. 77 at 9.) SWG also states that Staff's recommended write-off is extreme, given that it was the result of an unintentional oversight and that Staff "had ample time to ask any additional follow up questions to verify the reasonableness of the expense." (*Id.*) SWG concludes that because "the costs incurred are valid business expenses incurred processing this general rate case," SWG should be afforded full cost recovery of the expenses. (*Id.*)

Commission Discussion and Findings

484. The Commission rejects Staff's proposal to deny recovery of $205,851.00 in GRC costs related to SWG's error in reporting the correct regulatory asset certification balance. While the Commission agrees with Staff that SWG has exhibited certain failures to provide adequate documentation and information that have resulted in problems in this proceeding, the Commission finds that this particular error was the result of an unintentional oversight. In this circumstance, denying recovery of the corrected amount would be an excessive response and

could create a chilling effect on applicants identifying and correcting their own inadvertent errors in filings.

Q. Regulatory Amortization Adjustments related to Schedule I-C7

Amortization Period Adjustment

SWG's Position

485. SWG requests a regulatory amortization adjustment increase of $1,064,802.00 for its SND and a decrease in operating expenses of $7,405.00 for its NND related to various regulatory assets on schedule H-C7. (Ex. 36 at 9-10.)

BCP's Position

486. BCP does not address this issue.

Staff's Position

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487. Staff recommends a six-year amortization period for the six regulatory assets requested by SWG between the SND and NND. (Ex. 54 at 4.)

488. Staff's states that "SWG's last general rate case was filed six years ago, which is a six-year rate cycle (ideally, a six-year amortization period would have been used in the last rate case)." (*Id.*)

489. Secondly, Staff states that "SWG is required by NAC 703.276 to file depreciation studies 'not exceeding 6 years or as otherwise directed by the Commission,'" and that "[b]ecause SWG submitted a depreciation study in this current proceeding, it could be up to another six years before they are required to file a new depreciation study, which is also suggestive of a six-year rate cycle." (*Id.* at 5.)

490. In addition, Staff states that "according to NAC 704.7983, regarding cost recovery of the replacement of existing pipeline and related infrastructure, it is [Staff's] understanding that

the utility 'is not eligible to file another gas infrastructure replacement advance application' until the utility has filed a GRC, and that '[t]he Commission shall not approve a request for a waiver if the Commission has not issued a final order on a general rate application' filed by SWG 'during the immediately preceding 6 years,' which is also suggestive of a six-year rate case cycle." (*Id.*)

491. Staff states that "[i]f the Commission approves amortization periods of five years for the majority of these regulatory assets, SWG will collect from ratepayers an additional year of amortization expense and will over-recover the value of the regulatory assets." (*Id.* at 5-6.)

SWG's Rebuttal Position

492. SWG states SWG states that it continues to recommend a five-year amortization period; however, SWG provides that its primary concern is that all amortizations based on a rate case cycle be treated consistently. (Ex. 81 at 41.)

Commission Discussion and Findings

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493. The Commission accepts Staff's proposal to amortize various regulatory assets included on HC-C7 over a six-year period. The Commission finds that the six-year period is consistent with the most recent SWG rate cases and depreciation cases. The Commission further finds that the six-year period also reduces the risk of over-recovery. In the event that SWG files a rate case before the amortization is complete, SWG can request to have the amortization reset.

Updated Regulatory Asset Certification Values

SWG's Position

494. SWG requests a regulatory amortization adjustment increase of $1,064,802.00 for its SND and a decrease in operating expenses of $7,405.00 for its NND related to various regulatory assets on schedule H-C7. (Ex. 36 at 9-10.)

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BCP's Position

495. BCP does not address this issue.

Staff's Position

496. Staff states that not all of the regulatory assets listed in certification Schedule I-C7 are stated at the assets' value as of the certification date. (Ex. 54 at 6.) Staff further states that "[i]f the value of a regulatory asset that was initially estimated in Schedule H-C7 is not updated in Schedule I-C7 to reflect the balance as of the end of certification (July 31, 2018), SWG will potentially over-recover amortization expenses related to those assets." (*Id.* at 7.)

497. Staff therefore recommends, to prevent double-recovery of amortization expense, that the Commission order SWG to adjust the following regulatory assets in Schedule I-C7 to reflect the value at the certification date:

a. "The new regulatory asset for 'Gas Lamps: Post —May 2012 to July 2018' (account 182303087) in the amount of $750,00023 is in rate base and needs its starting amortization balance to be equal to the ending balance on certification (July 31, 2018) in the amount of $737,876;" (*Id.* at 8.)

b. "The existing regulatory asset for 'Pre-May 2012 Incr. Pipe Repl' for $150,15026 (account 182303017)," needs to be updated because " the $150,150 figure in Schedule I-C7 was, the same estimate included in the precertification Schedule H-C7 and was not subsequently updated to reflect the July 31, 2018 balance in the certification;" (*Id.* at 9.)

c. "The existing regulatory asset for 'Gas Lamps: Pre-May 2009' (account 182303086) that is in rate base in the amount of $246,30829," needs to be updated because "the $246,308 figure in Schedule I-C7 was the same

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estimate included in the precertification Schedule H-C7 and was not subsequently updated to reflect the July 31, 2018 balance in the certification filing;" (*Id.*)

d. The "existing regulatory asset found in Schedule I-C7 'Balance of Pre-May 2012 Incr. Pipe Repl at 7/31/18' for $28,05035 (account 182303017)," needs to be updated because "the $28,050 figure in Schedule I-C7 was the same estimate used in the precertification Schedule H-C7 and was not subsequently updated to reflect the July 31, 2018 balance in the certification filing." (*Id.* at 10.)

498. Staff states that other utilities before the Commission that project their regulatory assets forward to the rate effective date and notes that NPC was authorized to do so in Docket No. 06-11022.[37] (*Id.* at 10-11.) Staff states that NV Energy has since projected all of its regulatory assets forward to their rate effective dates. (*Id.* at 11.)

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SWG's Rebuttal Position

499. SWG states that it is not appropriate to update the regulatory asset balances consistent with the rate-effective period because doing so "would be analogous to making an Expected Change in Circumstance ("ECIC") adjustment, but with a limited scope." (Ex. 77 at 7-8.) SWG argues that "the NRS does not require a utility to file a statement of ECIC adjustments, nor does it permit a utility to make an ECIC adjustment for a single cost of service item. (*Id.* at 8.)

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[37] *See* May 24, 2007, Order in Docket No. 06-11022 at Paragraphs 349-351.

Commission Discussion and Findings

500. The Commission accepts Staff's adjustment. The Commission is not persuaded by SWG's analogy and finds that such an adjustment is not precluded by the NRS. The Commission notes that updating a regulatory asset to the correct certification date balance is the routine, accepted, and correct practice for Nevada utilities in GRC proceedings in order to reflect the correct amount for cost recovery.

Updated Regulatory Asset Values for Rate-Effective Date

SWG's Position

501. SWG requests a regulatory amortization adjustment increase of $1,064,802.00 for its SND and a decrease in operating expenses of $7,405.00 for its NND related to various regulatory assets on schedule H-C7.[38] (Ex. 36 at 9-10.)

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BCP's Position

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502. BCP does not address this issue.

Staff's Position

503. Staff states that, if the net book value ("NBV") "of a regulatory asset is not updated to the rate effective date, SWG will double-recover five months of amortization expense (August 1, 2018 through December 31, 2018) on the asset," and that therefore "to prevent over-recovery of amortization expense, certain regulatory asset accounts requested in the certification schedule need their balances … projected forward to the rate effective date in this proceeding." (Ex. 54 at 7.)

[38] Schedule H-C7 is SWG's pre-certification schedule, whereas Schedule I-C7 represents H-C7 after SWG's certification period.

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504. Staff therefore recommends, to prevent double-recovery of amortization expense, that the Commission order SWG to adjust the following regulatory assets in Schedule I-C7 to bring the NBV of these assets to the rate effective date:

a. "The existing regulatory asset for 'Pre-May 2012 Incr. Pipe Repl' for $150,15026 (account 182303017) is not in rate base but needs to be adjusted to the rate effective date (*Id.* at 9.) Staff calculated its "adjustment by taking the July 2018 balance of $162,16227 and amortizing this asset for five months at $6,006 per month to achieve the rate effective date balance of $132,132;" (*Id.* at 9.)

b. "The existing regulatory asset for 'Gas Lamps: Pre-May 2009' (account 182303086) that is in rate base in the amount of $246,30829 needs to be adjusted to the rate effective date." (*Id.*) Staff calculated its "adjustment by taking the July 2018 balance of $284,2083 and amortizing this asset over five months at $18,950 per month to the rate effect date balance of $189,458;" (*Id.*)

c. "The regulatory asset titled 'existing regulatory amortizations' that consists of $513,984 (account 182303085) in annual amortization expense is currently in rate base," and should be "adjusted to the rate effective date." (*Id.*) Staff calculated this adjustment "by taking the July 2018 balance and amortizing this asset five months at $42,832 per month to achieve the rate effect date balance of $1,970,243; and" (*Id.* at 10.)

d. The "existing regulatory asset found in Schedule I-C7 'Balance of Pre-May 2012 Incr. Pipe Repl at 7/31/18' for $28,05035 (account 182303017) is not in rate base but needs to be adjusted to the rate effective date." (*Id.*) Staff calculated this adjustment "by taking the July 2018 balance of $30,292 and amortizing this asset over five months at $1,122 per month to achieve the rate effective date balance of $24,684." (*Id.*)

SWG's Rebuttal Position

505. SWG states that it is not appropriate to update the regulatory asset balances consistent with the rate-effective period because doing so "would be analogous to making an ECIC adjustment, but with a limited scope." (Ex. 77 at 7-8.) SWG argues that "the NRS does not require a utility to file a statement of ECIC adjustments, nor does it permit a utility to make an ECIC adjustment for a single cost of service item. (*Id.* at 8.)

Commission Discussion and Findings

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506. The Commission accepts Staff's proposal to update various regulatory assets on Schedule I-C7 to reflect the additional amortization up to the rate-effective date. The Commission is not persuaded by SWG's analogy and finds that such an adjustment is not precluded by the NRS. The Commission finds that the cost adjustments and amortization updates proposed by Staff are routine GRC adjustments that are necessary to prevent the double-recovery of costs. As Staff notes, other utilities, such as SPPC and NPC, have consistently projected its regulatory assets forward to the rate-effective date since 2007.

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R. Commerce Tax Treatment

BCP's Position

507. BCP recommends that the "Commission require SWG to establish a regulatory liability for the Commerce Tax collections from July 2015 through December 2018, and refund those taxes back to ratepayers over a 3-year period." (Ex. 59 at 21.)

508. BCP argues that, although the Commission at one time allowed SWG to surcharge certain state taxes, SWG did not have the authority to use the surcharge mechanism to collect the Commerce Tax. (*Id.* at 17.) BCP states that in SWG's last rate case, Docket No. 12-04005, the Commission required SWG to stop surcharging the Mill Tax and the Modified Business Tax ("MBT") and instead embed these taxes in base rates." (*Id.* at 18.)

509. BCP acknowledges that, in Docket No. 12-04005, SWG was allowed to continue surcharging Franchise Taxes, but Staff distinguished Franchise Taxes from the Mill Tax in that the Mill tax is a fixed amount based on revenues from the previous year and the Franchise Tax is collected by SWG from ratepayers and passed on the appropriate government entity. (*Id.* at 18.) BCP states that the Commerce Tax is similar to the Mill Tax because it is also based on revenues from the previous year and is not a dollar for dollar pass through to ratepayers like the local franchise tax. (*Id.* 18-19.) Thus, BCP states that SWG should have "known that it had no authority to surcharge the Commerce Tax." (*Id.* at 19.)

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510. Further, BCP states that, unlike the Modified Business Tax, there was never any statutory authority that allowed SWG to collect this tax through a surcharge. (*Id.* at 19-20.) BCP states that both SPPC and NPC "waited for the next rate case, after the tax was implemented, to embed the tax in their respective base rates," and that SWG should have done the same in its 2015 rate case, which it chose not file "apparently to take advantage of the opportunity to over-earn throughout 2015 and into 2016." (*Id.* at 20-21.)

511. BCP recommends that the Commission "require SWG to establish a regulatory liability for the Commerce Tax collections from July 2015 through December 2018, and refund those taxes back to ratepayers over a 3-year period." (*Id.* at 21.) BCP's recommended adjustment "includes a 3-year amortization of the taxes collected from July 2015 through July

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2018 plus an estimate of the taxes that will be collected through December 2018." (*Id.*) BCP states that [t]he estimated amounts through December should be subject to a true-up adjustment when the Company has actual numbers." (*Id.*)

Staff's Position

512. Staff recommends that the Commission direct SWG to cease charging the Commerce Tax on ratepayers' bills, and instead include the tax as an expense in its revenue requirement and rates, and approve a corresponding adjustment to SWG's tax expense. (Ex. 72 at 2.) Staff states that the Commerce Tax is an annual assessment that was passed by the Nevada Legislature during the 2015 Legislative Session which is imposed on businesses with gross state revenue exceeding $4,000,000.00 in taxable year. (*Id.*) Staff notes that for utilities, the current tax rate is 0.136 percent. (*Id.*)

513. Staff states that SWG currently passes its Commerce Tax through to its ratepayers through an add-on rate, expressed as a percentage of what the ratepayer would otherwise pay for natural gas service. (*Id.* at 3.) Staff contends that the Commerce Tax should be embedded in rates as opposed to a pass-through item on customers' bills because the tax is an annual, rather than monthly charge. (*Id.* at 3-4.) Moreover, Staff states that SWG currently bills customers at the full tax rate of 0.136 percent, which doesn't account for the exclusion of SWG's first $4,000,000.00 of annual revenue or other adjustments applied in the calculation of its Nevada taxable revenue. (*Id.* at 4, Tr. at 891.) Staff states that treating the Commerce Tax as a revenue requirement item would be consistent with how NV Energy collects its tax. (Ex. 72 at 4.)

514. Staff states that based upon the foregoing analysis, it recommends that the Commission "direct SWG to change its Commerce Tax billing and collection methodology, and embed this tax in its rates on a going-forward basis." Staff states that its recommendation

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corresponds with a similar Commission-approved Staff recommendation in SWG's previous rate case concerning the treatment of the Mill Tax and its inclusion for recovery in rates.[39] Staff notes that if the Commission directs SWG to include the Commerce Tax in the revenue requirement, it will be necessary to adjust SWG's recorded tax expense in the test period by increasing the "Taxes Other than Income" expense by $444,435.00 and $129,090.00 for the SND and NND, respectively. (*Id.* at 5.)

SWG's Rebuttal Position

515. SWG states it relied on the Commission's Order in Docket No. 00-1028, when, on July 1, 2015, it submitted to the Commission notice of Adjustment No. 44 to its "Taxes and Assessments Not Included in Rates" schedule to reflect the implementation of the Commerce Tax. (Ex. 78 at 4.) SWG states that it provided a copy of the notice to Staff and BCP and updated customer invoices consistent with the change. (*Id.* at 4-5.) SWG states that neither Staff nor BCP raised concerns with the proposed treatment of the Commerce Tax following the July 1, 2015, filing. (*Id.* at 5.)

516. SWG states that the Commerce Tax is very different from both the MBT and the Mill Assessment in that it is based solely on revenues and can therefore be traced to customer bills. (*Id.* at 7.) SWG states that the Commerce Tax is similar to both the Franchise Fees and Business License Taxes, which are included on the "Taxes and Assessments Not Included in Rates" schedule, in that it is directly derived from current revenue charged to each customer's bill. (*Id.*) Given that the Commerce Tax is based on revenue from customers, SWG believes it is appropriate to continue its current treatment of recovery. (*Id.* at 7-8.)

[39] *See* March 20, 2013 Second Modified Final Order in Docket No. 12-04005 at 114-115.

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517. SWG states that neither Staff nor BCP consider the accuracy and efficiency that is inherent to SWG's surcharge methodology. (*Id.* at 8.) SWG states that by treating the Commerce Tax as a surcharge, each customer is assured that it only bears the Commerce Tax expense for which it is directly responsible. (*Id.*)

518. SWG states that if the Commission determines that the Commerce Tax should be embedded in general rates, it would only be appropriate to do so in conjunction with the establishment of a tracking mechanism, similar to the one suggested for the protected EDIT, to track both over-collections and under-collections to ensure customers are paying no more, or no less, as it relates to the Commerce Tax. (*Id.* at 9.) SWG suggests that if the Commission does not agree that a tracking mechanism is appropriate, the amount to be recovered should be determined on a prospective basis by multiplying the approved revenue in the instant docket by the current Commerce Tax rate for utilities (0.136%). (*Id.*) SWG states that using a historical amount is less appropriate and does not match the customer bill to the associated Commerce Tax; however, if a historic amount is used, SWG recommends that the amount of expense from the most recently ended fiscal year of June 30, 2018, would be most appropriate. (*Id.*)

519. SWG states that it does not agree with BCP's recommendation to establish a regulatory liability for Commerce Tax collected since enactment with amounts refunded to customers over a three-year period. (*Id.* at 9.) SWG says that the regulatory liability amounts to nothing more than an unwarranted and unsubstantiated penalty against SWG and that there is no evidence that SWG acted improperly in determining how to treat the Commerce Tax. (*Id.* at 9-10.) SWG also states that it has remitted the dollars collected for the Commerce Tax to the State of Nevada as required by statute. (*Id.*)

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Commission Discussion and Findings

520. The Commission accepts the proposal by Staff and BCP directing SWG to recover the Commerce Tax in its revenue requirement in lieu of a surcharge included on customers' bills. The Commission rejects SWG's argument that the Commerce Tax is similar to the local franchise tax applied monthly to certain customers' bills. The Commission notes that the Commerce Tax is an annual tax on SWG's gross annual revenue for a given July 1 through June 30 period and is subject to various exclusions and deductions. The Commerce Tax is not a tax on the individual customer that is collected by SWG and subsequently remitted to the taxing authority by the utility. The Commission's decision on this matter is consistent with the rationale in SWG's last GRC, Docket No. 12-04005, where SWG was directed to recover the Mill assessment and MBT in revenue requirement in lieu of a surcharge on customers' bills.

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521. The Commission rejects BCP's proposal to establish a regulatory liability account for the Commerce Tax surcharge amounts collected from customers between 2015 and 2018. The Commission agrees with SWG that such an action would be disproportionately punative. Morever, SWG represents that it remitted the taxes to the proper taxing authority, as required.

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S. City of Elko Franchise Fee

Staff's Position

522. Staff recommends that the Commission disallow the City of Elko Franchise Fee payment, which is already a pass-through item on ratepayers' bills as "Local Taxes." (Ex. 72 at 5, 6.) Staff states that it found that a tax expense was erroneously included on Schedule M-5 as Franchise & Business Taxes for recovery through rates. (*Id.* at 5.) Staff provides that a July 2017 franchise fee payment of $6,177.00 made to the City of Elko was incorrectly included on the schedule for recovery. (*Id.* at 5-6.)

BCP's Position

523. BCP does not address this issue.

SWG's Rebuttal Position

524. SWG states that the $6,771.00 franchise fee payment was properly remitted to the City of Elko and properly recorded as a business expense of SWG, but given that this is not an on-going expense, SWG does not oppose Staff's recommendation that it be removed from cost recovery. (Ex. 78 at 11.)

Commission Discussion and Findings

525. In considering Staff's recommendation, the controlling question is whether the expense is appropriate to include in rates. The Commission agrees with Staff that the inclusion of the tax expense was erroneously included in the schedule for recovery as the fee is recovered on a pass-through basis on customer bills. Moreover, SWG has agreed to not seek recovery of the expense. Accordingly, the Commission accepts the adjustment proposed by Staff to reduce the revenue requirement by $6,177.00 for SWG's NND.

T. Commerce Substation Regulatory Asset

BCP's Position

526. BCP states that SWG has not complied with the Commission's prior rate case order in Docket No. 12-04005 regarding treatment of the Commerce Substation costs. (Ex. 59 at 7.) First, "the order contemplated that the Company would provide support for the reasonableness and prudence of the costs incurred associated with the loss, something the Company failed to provide in its direct case, where the information had to be provided." (*Id.* at 9.) Second, "the order contemplated that the Company would file its rate case in 2015, something the Company chose not to do for business reasons," and that "[a] rate case in 2015

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would have most likely resulted in lower rates and a lower ROE for the Company, at least in Southern Nevada." (*Id.*)

527. BCP states that in 2015, SWG "should have either filed a rate case to include the deferred substation costs in rates, or it should have written-off those costs to income, more precisely, to the excess income it was enjoying at the time," and that "[i]t was inappropriate for the Company to continue deferring those costs through a period of over-earning in order to avoid a rate case that would have likely resulted in lower rates and a lower authorized ROE." (*Id.* at 10.) BCP therefore recommends that the Commission reduce SND rate base by $6,000,000.00 and annual amortization expense by $1,200,000.00. (*Id.*)

Staff's Position

528. Staff recommends approval of the $6.0 million costs related to Commerce Substation regulatory asset over a six-year period. (Ex. 54 at 3 6, NL-2.) Staff states that it recommends the six-year amortization period considering SWG's last GRC was in 2012. (*Id.* at 4.) Moreover, NAC 703.276 requires that utilities file depreciation studies at least every six years, and NAC 704.7983 prohibits GIR advance applications in circumstances where a utility has not issued a final order in a GRC during the immediately preceding six years. (*Id.* at 5.) Staff argues that such facts are suggestive of a six-year rate cycle. (*Id.* at 5.)

SWG's Rebuttal Position

529. SWG states that BCP's $6.0 million rate base adjustment is unreasonable. (Ex. 77 at 10.) SWG notes that in Docket Nos. 12-02019 and 12-04005, the Commission found that its request to adjust the rate base to reflect the $6.0 adjustment was appropriate. SWG provides that BCP's recommendation contradicts the Commission's previous order authorizing its inclusion. (*Id.*)

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Commission Discussion and Findings

530. The Commission rejects BCP's recommendation to disallow recovery of $6 million in costs. As SWG noted, the Commission previously approved the establishment of the Commerce Substation Regulatory Asset in SWG's previous GRC, which was intended to delay its recovery to a future GRC until the Commission could gather sufficient information to determine the reasonableness of the costs. In the instant proceeding, the Commission finds that the costs were reasonable and accepts Staff's recommendation to allow the recovery of $6.0 million in costs over a six-year amortization period.

531. The Commission finds that a six-year amortization period is consistent with the most recent timing of SWG rate cases and depreciation cases. The six-year period also reduces the risk of over-recovery. In the event that SWG files a case prior to the conclusion of the amortization period, it can request to have the amortization period reset.

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U. Repair Costs for Wigwam Parkway & Jessup Road Safety Incident

Staff's Position

532. Staff recommends that the Commission approve its adjustment to SWG's SND O&M costs to remove approximately $112,000.00 to account for the response and repair costs associated with a grade one leak. (Ex. 60 at 2, 4.) Staff states that on September 27, 2017, SWG's contractor was performing a leak survey and discovered a grade one leak requiring the evacuation of two premises at the intersection of Wigwam Parkway and Jessup Road in Henderson, Nevada, which resulted in 2,092 customers losing service. (*Id.* at 2.) Staff provides that the cost of the incident, including emergency response and relight costs, exceeded $50,000.00 and was therefore a Federal Reportable incident as outlined by the Code of Federal Regulations ("CFR") 49 §§ 191.3 and 191.5. (*Id.* at 2-3.)

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533. Based upon its investigation and summary report filed in Docket No. 17-01001, Staff states that it determined that in 1984, SWG failed to properly bed and shade the 4-inch M700/8000 Polyethylene ("PE") pipeline main during its installation, resulting in rocks having direct contact with the buried 4-inch PE pipeline, which later caused a crack in the pipe and the subsequent grade one leak. (*Id.* at 3.) Staff further states that failure to properly bed and shade the pipeline is inconsistent with SWG's Pipeline Main Construction Procedures as well as 49 CFR Part 192. (*Id.*) Staff provides that because the incident was caused by SWG's failure to follow its procedures and federal pipeline safety regulations, ratepayers should not bear the cost of the incident. (*Id.* at 3.)

SWG's Rebuttal Position

534. SWG states that it does not oppose Staff's adjustment and agrees to not seek cost recovery related to the federal reportable incident. (Ex. 81 at 47.)

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Commission Discussion and Findings

535. The Commission agrees with Staff's contention that ratepayers should not bear the costs associated with SWG's failure to follow its procedures and federal pipeline safety regulations. Moreover, SWG does not oppose Staff's adjustment and agrees to not seek cost recovery for this incident. Accordingly, the Commission accepts Staff's adjustment to SWG's SND O&M costs to remove approximately $112,000.00 to account for the response and repair costs associated with a grade-one leak.

V. Repair Costs for Hawk Springs / Mesa Park Safety Incident

Staff's Position

536. Staff recommends that the Commission approve its proposed adjustment to SWG's SND O&M costs to remove approximately $112,000.00 related to response and repair

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costs incurred as a result of a grade one leak. (Ex. 60 at 5, 6.) Staff states that on January 15, 2018, SWG discovered the grade one leak at the intersection of Hawk Springs and Mesa Park Drive in Las Vegas, Nevada through an odor complaint from a consumer. (*Id.* at 5.) Staff further states that it implemented a valve isolation plan resulting in approximately 1,766 customers losing gas service. (*Id.*) Staff provides that the cost of the incident, including emergency response and relight costs, exceeded $50,000.00 and was therefore a Federal Reportable Incident pursuant to 49 CFR §§ 191.3 and 191.5. (*Id.*) Staff notes that were no injuries or significant property damage. (*Id.*)

537. Staff states that its investigation determined that in 2005, SWG's construction contractor failed to perform a proper butt fusion joint on the 4-inch PE pipeline. (*Id.*) Staff states that the improper pipe jointing was inconsistent with Section 2.7 of SWG's pipe jointing procedures and the provisions of 49 CFR Part 192. (*Id.*) Staff provides that SWG's customers should not bear the cost of the incident and is still determining whether to pursue a civil penalty against SWG for the incident. (*Id.* at 5-6.)

SWG's Rebuttal Position

538. SWG states that it does not oppose Staff's adjustment and agrees to not seek cost recovery related to the federal reportable incident. (Ex. 81 at 47.)

Commission Discussion and Findings

539. The Commission agrees with Staff's position that ratepayers should not bear the costs associated with SWG's failure to follow its own procedures and federal pipeline safety regulations. Moreover, SWG does not oppose Staff's adjustment and agrees to not seek cost recovery for this incident. Accordingly, the Commission accepts Staff's adjustment to SWG's

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SND O&M costs to remove approximately $112,000.00 related to response and repair costs incurred as a result of a grade one leak.

W. Challenged Utility Work Orders

Supporting Testimony and Documentation for Work Order Nos. 0061W0001059, 0061W0001001, 0061W0000511, 0061W0000888, and 0061W001120 (collectively, the "Challenged Work Orders") - Expenditures Exceeding $1 Million

SWG's Position

540. SWG states that in Docket Nos. 12-02019 & 12-04005, it was directed to meet with Staff prior to filing its next GRC to determine the proper scope of testimony necessary to support work orders produced in response to MDR 106. (Ex. 42[40] at 20.) SWG provides that it met with Staff prior to filing the GRC, and pursuant to an agreement with Staff, it agreed to identify and summarize all non-GIR projects exceeding $1 million. (*Id.* at 20-21.)

541. SWG states that it is "providing support for all non-GIR projects over $1 million that are identified in MDR 106." (*Id.* at 21.) SWG states that Ex. 42 at RLC-4 "provides description, work order number, amount, and brief project summary for each item over $1 million placed in service since the last GRC." (*Id.*)

542. Regarding Ex. 42 at RLC-4, SWG confirms that the first 14 pages are a reproduction of MDR 106,[41] and that MDR 106 covers works orders for all system allocable Northern Nevada and Southern Nevada work orders that are over "$100,000 that have closed since the certification period in the last rate case." (Tr. at 366.) In response to Staff's question regarding where "a summary for any of the system allocable plant project that are greater than [$]1 million" is located within Ex. 42 at RLC-4, SWG states that "[t]hose appear to be missing" but that summaries had been "prepared." (Tr. at 367.)

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[40] Ex. 42 is the prepared direct testimony of Randi L. Cunningham on behalf of SWG.
[41] Notably, Ex. 42 at RLC-4 contains 19 pages (referred to as "sheets").

543. Additionally, when asked if Ex. 42 contains "project summaries for any of the system allocable [work order] greater than [$]1 million," SWG's witness states: "...I would have to go back and check. I don't know why they're not here [in Exhibit 42]. They were probably provided electronically. They should have been here." (*Id.*) SWG then agrees that Ex. 42 at RLC-4 contains 19 pages and that it was all that was provided. SWG further agrees that "even though Staff and [SWG] agreed that [SWG] would identify and summarize all MDR work orders, MDR work orders greater than ($)1 million, it appears [SWG] did not provide those summaries as requested." (*Id.* at 368.) SWG refers to the missing summaries as an "oversight," and mentions that it would have been "nice" had Staff informed SWG that its summaries for the worker orders greater than $1 million were missing because SWG "would have definitely provided them promptly." (*Id.*) However, SWG recognizes that, "in every case," it has the burden of proof to show that its proposed rate changes are just and reasonable. (*Id.* at 372.)

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544. SWG confirms that one witness was "selected by the Company as the witness to sponsor testimony regarding the non-GIR projects over $1 million." (Tr. at 372.) However, when this witness was asked whether she was involved in the execution of any of the non-GIR projects for which she sponsors testimony, she responds: "[t]o the extent I was involved at the portfolio review board, the software projects came to us before they were launched. So from that perspective I was involved. But as far as the ongoing execution I was not, which is why we brought in a rebuttal witness to address the more finer [sic] details of what went on during those projects." (*Id.* at 373.) Moreover, when asked if she recalled SWG's response to a data request that asked whether she was involved in the execution of any of the projects, she agrees that SWG responded that she was "not involved in the execution of any of the projects." (Tr. at 373.) Significantly, despite being the company's sponsoring witness for the capital projects identified

in the work orders, SWG's witness responds to a question regarding certain costs included in the capital work orders by stating, "I did not review the charges of any work order" (Tr. at 375.) and later proclaims that "[t]here was not an internal audit done on those work orders." (Tr. at 377.)

545. In response to a question from the Presiding Officer regarding whether the witness has responsibility for any of the work order projects that resulted in the costs documented by the witness in Ex. 42 at RLC-4, SWG's witness responds: "I don't. Typically the Company's approach when it files rate cases is to provide a limited number of witnesses focused on cost recovery, and then to the extent there is any issues raised through the discovery process, and that aren't addressed in direct, we may bring in additional subject matter experts on rebuttal to address those items." (Tr. at 416.)

546. In response to a question from the Presiding Officer regarding whether SWG's witness could provide the "business case" for each of the projects listed in Ex. 42 at RLC-4, and other information that the Commission would receive from a project manager, like information how the request for proposals were handled and "the basis for the Company making the decision to incur these costs," SWG's witness responds: "Generally on direct we provide high level information. We have a rebuttal witness that can respond to all those questions, Mr. Murandu." (Tr. at 416-417.) SWG's witness then confirms that Mr. Murandu would be the proper witness to explain to the Commission whether "it was prudent to incur" the costs listed in Ex. 42 at RLC-4. (Tr. at 417.)

547. In response to a question from the Presiding Officer regarding whether she has "personal knowledge" to support the underlying cost data of any of the itemized work order projects included in the witness's testimony, SWG's witness responds that she has "knowledge of the cost data, but not the underlying, no." (Tr. at 420.) When asked to identify a company

witness who does have personal knowledge of the underlying cost data, SWG's witness responds, "Mr. Murandu." (*Id.*)

548. In response to a question from the Presiding Officer asking whether SWG understands that it is SWG's burden to justify the prudence of expenditures, SWG responds, "[a]bsolutely." (Tr. at 425-426.)

BCP's Position

549. BCP does not address this issue.

Staff's Position

550. Staff states that, generally, it "reviews all capital projects with expenditures over $1 million and reviews a sample set of capital projects with expenditures less than $1 million." (Ex. 64 at 3.) Staff further states that "[f]or each project selected, Staff reviews the utility's business case (or justification) for the capital project, budget, and schedule, responses to request for proposals ('RFP's), executed contracts, any change orders, and major invoices charged to the project." (*Id.*)

551. Staff states that SWG did not provide any material information or documentation in its Application supporting the prudency of including the costs associated with the non-GIR plant SWG placed into service since its last GRS. (*Id.*) Staff explains that "SWG closed a total of approximately $366 million in non-GIR projects and approximately $294 million in GIR projects." Staff states that "SWG provided minimal and inadequate information for the non-GIR projects to support the prudency of the $366 million of expenditures associated with the non-GIR projects." (*Id.*) Staff states that "[o]ther than a few paragraphs and an exhibit listing the projects," SWG, through its testimony in Ex. 42, "does not offer substantial testimony on any of the non-GIR projects to support the reasons for the project prudency." (*Id.*) Staff opines that "[i]t

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appears that SWG believes that simply because SWG spent the money it should be automatically considered reasonable for inclusion in rates." (*Id.*)

552. Staff states that SWG's sponsoring witness for the costs associated with the non-GIR projects is "not the proper SWG personnel to sponsor direct testimony for capital projects" because this witness was "not involved in executing the projects" and does not "have direct knowledge of and did not have any approval authority over any of the projects…sponsored." (*Id.* at 4.) Staff opines that a "SWG Program/Project Sponsor and/or Officer who has the financial fiduciary responsibility of the project should be the individual to offer direct testimony supporting the prudency of the project." (*Id.* at 5.)

553. Staff explains that in order for the Commission to evaluate the reasonableness of the costs a utility incurs, "the Commission must be able to investigate and assess the decision-making of the utility at the time the costs were incurred." (*Id.*) Staff states that "[b]est practices in Nevada require the filing of testimony on behalf of individuals who actually worked on and supported the projects that customers are being asked to pay for, especially when those projects total well over $600 million in new expenditures." (*Id.*) As an example, Staff cites to the documentary evidence provided by other utilities in GRC proceedings. (*Id.*)

554. Staff states that SWG's "failure to provide adequate documentary and decision-maker support could reasonably cause the Commission to determine that none of the costs are reasonable for inclusion in rates." (*Id.* at 5-6.)

555. To assess whether the costs related to several capital projects were prudently incurred and thus just and reasonable to include in rates, Staff issued a number of data requests seeking SWG's justification, or business case, for these projects, including the Challenged Work Orders. (*See generally* Ex. 65; Ex. 64 at 6-11.) While Staff agrees that, during discovery, it

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gathered “a tremendous amount of information” regarding these project like invoices, names and budgets of projects, and internal memos regarding expenditures (Tr. at 810; *See generally* Exs. 65, 67, 68, and 69), Staff states that “even in that amount of data [SWG] has not demonstrated the prudency of these expenditures of these projects.” (Tr. at 810.)

556. Moreover, in recognizing that the Commission does not have access to all of the data that is produced in response to discovery, Staff explains that SWG could have provided additional information on rebuttal to supplement this record and demonstrate the prudency and just and reasonableness of the costs associated with the challenged works orders and this GRC. (Tr. at 856-857.) However, Staff states that SWG’s rebuttal similarly fails in this respect, explaining, for example, that SWG’s rebuttal testimony also lacks descriptions of key decisions made regarding projects. (*Id.* at 857.) Instead, Staff opines that “it seemed like the rebuttal was more of a focus on [Staff] than the Company’s actions of actually executing [these] projects.” (*Id.*)

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SWG’s Rebuttal

557. As indicated during the presentation of its direct testimony at hearing, SWG offers a rebuttal witness to address whether “it was prudent to incur” the costs listed in Ex. 42 at RLC-4 (the costs incurred regarding the Challenged Work Orders). (Tr. at 416-417.) SWG witness Murandu states that the purpose of his rebuttal testimony “is to respond to specific aspects” of Staff’s testimony regarding its “recommendations and comments concerning [the Challenged Work Orders].” (Ex. 80 at 2.) Specifically, SWG witness Murandu provides as follows:

> “As the incoming [Chief Information Officer (‘CIO’)] starting in May 2017, I apprised myself of the programs and projects referenced in Staff’s conclusions in this Docket. After reviewing the same materials referenced by Staff’s witness…and developing a detailed knowledge of [SWG’s] project governance and management guidelines, I came

> to a different conclusion. Staff's conclusions regarding each of the [Challenged Work Orders] and projects are incorrect. [SWG] provided extensive oversight for each of the referenced programs and projects. Furthermore, [SWG] was willing to recognize and take accountability for misclassifications identified through the auditing process in this current Docket."

(*Id.*)

558. SWG states that its projects are managed according to project governance guidelines within the Project Management Institute ("PMI") Standards. (*Id.* at 29.) SWG states that PMI "is globally recognized as a non-profit organization that creates the standards for project and portfolio management practices that are written in the Project Management Book of Knowledge ("PMBOK"), used to certify project management professionals." (*Id.*) SWG further states that it established the Portfolio Review Board ("PRB") and the Portfolio Advisory Council ("PAC") "to centralize the governance of processes, tools, and resources to maximize the business value of proposed projects." (*Id.*) SWG explains that "[t]he PRB serves the PAC as a technical resource" and that the primary purpose of "[t]he PAC is to instate portfolio governance and sustain it with disciplined oversight." (*Id.* at 30.)

559. SWG witness Murandu agrees that the projects included in the Challenged Work Orders all "closed to plant sometime between 2012 and 2016," that he did not start working for SWG until May 2017, and that, therefore, these projects were completed before he began working for SWG. (Tr. at 968-969.) While SWG witness Murandu states that he reviewed the records and documents associated with these projects to "ascertain the health of the projects, the genesis of the projects, the expenditures that had been spent to date on the projects, and the future direction and roadmap for these projects," he was not involved in the execution of these projects. (*Id.* at 969-970.)

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560. In recognition of Staff's difficulties obtaining the documented support for the projects in the Challenged Work Orders, SWG witness Murandu recognizes that he is the "first officer level representative" to provide testimony in this Docket and represents that SWG shares Staff's frustrations. (Tr. at 972.)

561. SWG witness Murandu states that while he was able to avail himself of the opportunity to learn about these projects after-the-fact in addition to familiarizing himself with SWG's governance structure for oversight of its projects (Tr. 973-978.), he agrees that this information should have been provided by SWG in its direct testimony and that SWG should not be permitted to "expand the scope of rebuttal beyond its proper function…" (Tr. at 979.)

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562. SWG witness Cunningham, recalled again on rebuttal after SWG filed a revised version of her direct testimony at RLC-4 to include the sheets that had been prepared containing the summaries for the projects associated with the Challenged Work Orders (Tr. at 367.), again confirmed that she was neither personally responsible for managing any of the projects listed in her testimony on those sheets, nor did she prepare SWG's business case, budget, schedule, RFPs, contracts, change orders, or invoice for these projects. (Tr. at 1546-1547.)

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Work Order 0061W0001059 - Financial Applications Replacement

SWG's Position

563. SWG provides that the Financial Application Replacement cost a total of $18,146,654.00, with $5,105,334.00 allocated to its SND and $298,955.00 allocated to its NND. (Ex. 42 at RLC-4, Sheet 2 of 19, line 1.)

BCP's Position

564. BCP does not address this issue.

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Staff's Position

565. Staff recommends disallowing 50 percent of the costs associated with SWG's System Allocable Pant Work Order No. 0061W0001059. (Ex. 64 at 1-2, Ex. 71 at 4.) Staff provides that such an adjustment would remove $9.051 million from rate base related to the work order ($2.546 million in its SND and $0.530 million in its NND). (Ex. 71 at 3-4.) Staff recommends corresponding adjustments to remove the costs and related accumulated depreciation, depreciation expense, and ADIT from rate base. (*Id.*, Attachments CW-2, pages 1-2, and CW-3, CW-13, CW-14.) Staff states that these work orders are the corporate level capital projects that SWG utilizes in all of its rate jurisdictions and subsidiaries. SWG's Southern Nevada and Northern Nevada jurisdictions are allocated approximately 28 percent and 6 percent, respectively, of the total costs of SWG's System Allocable Plant. (Ex. 64 at 11-12.)

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566. According to Staff, SWG states it initiated the Financial Applications Replacement Project, referred to as the Financial System Modernization Program ("FSM"), to modernize SWG's financial processes and supporting systems to better position SWG for the modern operating requirements associated with modern financial systems (Ex. 64 at 12-13.) Staff states that, on May 7, 2014, SWG's Board of Directors authorized the FSM Program to proceed with a budget of $19 million over a 22-month schedule. (*Id.* at 13.)

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567. Staff states that SWG entered into a consulting contract with Mr. Biernacki on March 3, 2014, to perform professional services related to the FSM Program. (*Id.* at 14.) Staff states that Mr. Biernacki was paid an hourly rate of $155 for his services and a $10,000 relocation expense to move him from Hawaii to Las Vegas, Nevada. (*Id.*) Staff states that the final cost of the FSM Program was approximately $18.1 million. (*Id.*) Staff states that, in its review of the documentation associated with the FSM Project, it found "excessive consultant

expenses, travel expenses, and numerous vouchers for frivolous items that caused [Mr. Danise] concern that SWG did not exert prior financial oversight over project costs." (*Id.*) For example, Staff reviewed one voucher from Power Promotions LLC, and found SWG had ordered a Casio Digital Piano, a Yamaha 7.2 channel home theater system, a Broil King natural gas grill, multiple Bose wireless speaker systems, and multiple JBL Bluetooth headphones, for a total of $7,568.39. (*Id.*) Staff states that numerous other vouchers included charges associated with food, gifts, birthday supplies, and other miscellaneous items. (*Id.* at 15.) Staff states that one example of miscellaneous other items from one voucher include charges for Pink Box donuts, a baby shower cake from Sam's Club, ice cream sundae supplies from Walmart for an employee appreciation day, and Popcorn Girl for St. Patrick's Day team morale. Staff finds it "extremely troubling that, based on the documents provided, SWG never questioned any charges, never questioned the booking of those costs as project costs for ratepayer recovery." (*Id.*)

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568. Staff states that, once it discovered a lack of SWG oversight on the FSM Program, it began reviewing the amount of hours consultants were charging to the FSM Program. For example, one consultant billed an average of approximately 242 hours per month—over 80 hours of overtime a month. (*Id.*) Staff states that SWG has not provided any documentation or discussion as to why such excessive overtime was necessary or how it managed the consultant workload. As a result, Staff cannot agree that the amount of charges billed from consultants were reasonable. (*Id.*)

569. Staff states that it appears many consultants retained on the FSM Program were flown to Las Vegas each Monday and flown back home for the weekend. One example is Mr. Nauduri. Mr. Nauduri was paid on hourly rate of $130 an hour, $165 per diem per day he was on-site, and flown back home each weekend. (*Id.* at 16.) Staff states that during the Christmas

week in 2015, SWG flew Mr. Nauduri out from Washington, D.C. to Las Vegas to work three days on-site, and during New Year's week in 2015, SWG flew Mr. Nauduri to Las Vegas to work three days on-site and then back to Washington, D.C. on a Wednesday in which Mr. Nauduri claimed to have billed 11 hours of work that day. (*Id.*) Staff states that SWG has not provided any supporting material as to why it was necessary for many consultants working on the FSM Program to fly home each weekend. (*Id.* at 17.)

570. Staff states that SWG provided rental cars for many consultants regardless of the need for a rental car. For example, one consultant submitted a rental car receipt for $135.58, when that consultant drove a total of 10 miles, which equates to $13.56 per mile. (*Id.*) In another example, a consultant rented a car for $184.72 during the week of June 1 through June 4, 2015, and drove a total of one mile. (*Id.*)

571. Staff states that it found other charges that appear to be incorrectly charged to the FSM Program. Staff found two vouchers from Deloitte and Touche LLP related to professional services rendered in connection with the NPL Construction Co. Cyber Risk Assessment for approximately $40,000. Staff states that it appears these charges should be allocated to SWG's wholly-owned construction company NPL Construction Co., not to SWG's ratepayers. (*Id.* at 17-18.)

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572. Staff acknowledges that "there is no dispute" that the software needed to be replaced. (Tr. at 764.) However, Staff states that the FSM Program expenditures "could have been lower had SWG prudently managed the program" and that "[i]t is difficult to believe that a SWG employee was reviewing these costs and decisions and approving them as reasonable." (Ex. 64 at 18.) Accordingly, "[g]iven the extreme lack of oversight leading to the unreasonable expenditures…and SWG's lack of accountability with respect to those expenditures," Staff

recommends the Commission disallow 50 percent of the costs associated with SWG's FSM Program. (Ex. 64 at 18; Tr. at 755-756.) Staff states that SWG failed to provide any alternatives or justifications for the timeline of the project or why it chose the contractor it chose. (Tr. at 765-766.) Staff states "SWG also must ensure that in future general rate cases it provides adequate justification supporting its project costs." (Ex. 64 at 19.)

SWG's Rebuttal Position

573. SWG states that it requests a net plant of $13,283,718.00 for the FSM Program. (Ex. 81 at 12.) SWG further states that it removed $43,706.46 related to reasonable and necessary business expenses that were improperly characterized as capital instead of an accounting expense, $266,239.00 in non-incremental labor costs, and $6,986.97 identified by Staff. (*Id.* at 12-13.)

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574. SWG states that, prior to the implementation of the FSM Program, SWG used a software "implemented in 1986." (Ex. 80 at 2.) SWG states that "it needed to replace that system to leverage improvements made in the software industry with respect to financial systems for organizations of this magnitude." (*Id.*) SWG states that implementation of the FSM Program "resulted in improvements in the supply chain processes, invoice recording and reporting, improved contract management, and improved accounting processes and controls." (*Id.* at 3.)

575. SWG states that it disagrees with Staff's assertion that the FSM program suffered from an "extreme lack of oversight leading to unreasonable expenditures." SWG provides that Staff was provided all invoices from the FSM program and objected to 19 of 672 of them, representing 2.8 percent of all vouchers provided for review. (Ex. 80 at 3.) SWG further provides that it "cannot reconcile how the total amount of misclassified vouchers" identified by

Staff ($93,514.74) could statistically justify a 50 percent disallowance from a project that totals $18.1 million. (*Id.*)

576. SWG states that that Staff's claim that it lacked accountability with expenditures related to the work order is simply not true. (*Id.* at 4.) SWG provides that after being made aware of certain expenditures were incorrectly classified in the FSM program, it removed them and informed Staff of the corrections. (*Id.*) SWG further provides that it also independently reviewed expenditures beyond what Staff questioned on its own accord and "made additional adjustments to appropriately reclassify misclassified expenses." (*Id.*)

577. SWG contends that its FSM program did not suffer from an extreme lack of oversight, noting that 1) the FSM program was sponsored by SWG's senior management and was authorized by its board of directors; 2) SWG's documentation shows that its FSM program had extensive oversight beginning at the executive level and throughout the program including activities such as the initial planning, staffing decisions, budget development, System Implementer selection, hiring of individual contractors, and all project deliverables through project completion; 3) the incurred charges were reviewed and compared to the budget and SWG kept extensive records (including 672 vouchers comprised of 2,280 pages of invoices and supporting documentation); 4) SWG held regular meetings with different committees overseeing the execution of the FSM program, kept minutes, and provided 510 pages of governance-related activities; and 5) records indicate that the FSM Program was completed on-time and under budget. (*Id.* at 4-5.)

578. SWG states that several invoices from the FSM Program that Staff was critical of were not inquired about in discovery. (*Id.* at 13.) SWG provides that it would have appreciated an opportunity to respond to specific questions regarding costs, but was not given an opportunity.

(*Id.*) After reviewing the additional invoices questioned by Staff, SWG provides that it only supports $420.00 for costs considered "employee appreciation" expenses, and $41,035.00 for the Deloitte and Touche LLC invoices. (*Id.* at 13-14.) SWG further provides that it believes the remaining FSM Program costs are reasonable. (*Id.* at 14.)

579. With respect to the Deloitte and Touche invoices, SWG states that it "did not charge its internal labor to the project since the costs of those employees are generally expensed and already included in rates." (*Id.*) SWG further states that it only billed incremental costs to the FSM program, which were included in the original budget for the project. (*Id.*) SWG provides that Deloitte and Touche were engaged as contract labor to provide services for its internal audit department on an incremental basis while several of its employees were dedicated to the FSM Program; however, when internal audit employees perform audits for affiliates, such expenses are directly charged. (*Id.*) SWG further provides that because the services performed by Deloitte and Touche LLP were not for SWG audits, the company agrees that such audits should not have been included in the project. (*Id.*)

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580. SWG states that the FSM Program did not suffer from an extreme lack of oversight; rather, it was sponsored by SWG's senior management and was authorized by the company's BOD. (Ex. 81 at 14-15.) SWG further states that the program had extensive oversight on a granular and executive level throughout the program, that the incurred charges were reviewed and compared to its budget, and the company held regular meetings with different committees that were overseeing the project. (*Id.* at 15.)

581. SWG states that it disagrees with Staff's recommendation to disallow 50 percent of the FSM Program costs and contends that Staff's reference to approximately 0.5 percent of costs for the FSM Program that were reasonable but misclassified did not demonstrate a lack of

oversight. (*Id.*) SWG provides that Staff's claim of a lack of accountability is unsupported given that SWG acknowledged its error and removed costs that were incorrectly accounted for. (*Id.*) SWG provides that as Staff was provided all of the invoices for the FSM Program, it had all of the data required to calculate a specific cost disallowance. (*Id.*) Accordingly, SWG states it is not appropriate to use a projected disallowance. (*Id.*)

Work Order 0061W0001001 - Field Operations Management System ("FOMS"), Phase I

SWG's Position

582. SWG provides that FOMS, Phase I, cost a total of $13,313,529.00, with $3,745,595.00 allocated to the SND and $219,332.00 allocated to its NND. (Ex 42 at Exhibit RLC-4, Sheet 2 of 19, line 3.)

BCP's Position

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583. BCP does not address this issue. 001809

Staff's Position

584. Staff recommends disallowing 50 percent of the costs associated with SWG's System Allocable Pant Work Order Nos. 0061W0001001 and 0061W0000511. (Ex. 64 at 1-2, Ex. 71 at 4.) With respect to Work Order No. 0061W0001001, Staff provides that the adjustment would remove $6.654 million from rate base related to the work order ($1.872 million in its SND and $0.390 million in its NND). (Ex. 71 at 4.) Staff recommends corresponding adjustments to remove the costs and related accumulated depreciation, depreciation expense, and ADIT from rate base. (*Id.*, Attachments CW-2, pages 1-2, CW-4, CW-13, and CW-14.)

585. Staff states that these work orders are the corporate level capital projects that SWG utilizes in all of its rate jurisdictions and subsidiaries. SWG's Southern Nevada and

Northern Nevada jurisdictions are allocated approximately 28 percent and 6 percent, respectively, of the total costs of SWG's System Allocable Plant. (Ex. 64 at 11-12.)

586. Staff states that SWG initiated FOMS project to consolidate its field operations systems to automate and optimize field-related activities, increasing labor efficiencies for dispatch, customer service field processes and compliance procedures. (*Id.* at 19.) FOMS Phase I focused on the customer service related field operations. Staff states that the final cost of the FOMS Phase I project was approximately $13.3 million. (*Id.* at 20.) Staff states that there were "excessive SWG and consultant travel expenses and a lease for office space" associated with FOMS Phase I. (*Id.*) Staff states that there were approximately $68,000 in airfare, $160,000 in lodging, $42,000 in car rentals, $17,000 in meals, and $24,000 in seminar and/or conference fees. (*Id.*) Staff states "SWG has not demonstrated why these costs are reasonable." (*Id.*)

587. Staff states that on March 2, 2011, SWG rented a 6,192 square foot office space at 3110 South Rainbow Blvd. for a three-year term at $6,183 per month. (*Id.*) Staff states that SWG "has not justified the need to lease a specific office space for the FOMS Phase I Project, nor has SWG explained why its corporate buildings could not be used for the FOMS Phase I project." (*Id.*)

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588. Staff states that given the "unreasonable" expenditures and "SWG's lack of accountability with respect to those expenditures," Staff recommends a 50 percent disallowance of the costs associated with SWG's FOMS Phase I. (*Id.* at 21.) Staff states that SWG must implement proper processes and procedures to ensure adequate oversight and control over project costs. (*Id.*)

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SWG's Rebuttal Position

589. SWG states that, in 2009, it "embarked on an effort to analyze what new options might be available in Work Management specifically the customer service arena" due to "limitations in the operation of the Company's legacy work management solution – Mobile Service." (Ex. 80 at 15.) Notably, SWG states that "[t]he asset management process had become cumbersome as a result of increasing requirements to collect compliance information related to work orders." (*Id.*) Ultimately, SWG states that it "determined that a single vendor, integrated solution for both Work Management/Compliance and Customer Service Dispatching would be in the best interest of process efficiencies for [SWG]….[and]….[a]s a result, Logica's Asset Resource Management ('ARM') suite of products was selected." (*Id.*)

590. SWG states that it "managed FOMS Phase I Project according to project governance guidelines within PMI Standards." (*Id.* at 17.) SWG states that "[p]roject expenditures were approved through a set channel of executive oversight and recorded in project documents…" (*Id.*) Moreover, SWG states that "[c]hange orders and deviation to budget required governance structure approval, and the recording of those expenditures into the accounting system required management sighn-off." (*Id.*)

591. SWG states that implementation of FOMS, Phase I, "addressed a key component of customer service by introducing a more efficient method of assigning and distributing work orders and customer service assignments to [SWG] field staff," as well as "providing an added benefit of linking asset records to compliance level activities performed on those assets" and "providing an integrated solution for work management and customer service dispatching." (*Id.* at 15-16.)

592. SWG states that all of the expenditures referenced by Staff "were valid and necessary business expenses." (Ex. 80 at 16.) SWG contends that Staff merely identifies certain expenses and baldly asserts that they are excessive without providing reasoning. (*Id.*) SWG further states that Staff failed to seek an explanation from SWG regarding the reasonableness of costs identified in its testimony. (*Id.* at 16-17.) SWG provides that Staff does not need to seek an explanation, but contends that if it identifies expenditures as excessive, it would be appropriate for Staff to seek an explanation before making assertions without support. (*Id.*)

593. SWG states that as of its certification filing, it requests a net plant of $6,260,832.00 for FOMS Phase I. (Ex. 81 at 16.) SWG further states that prior to the certification period, it removed $4,758.00 related to meals related to FOMS, Phase I. (*Id.*) SWG notes that Staff identified and questioned various costs for consultant travel-related expenses, conference fees, and the lease for additional office space and related improvements but did not conduct discovery on the related vouchers. (*Id.*) SWG provides it would have appreciated the opportunity to respond to specific questions regarding those costs. (*Id.*) SWG states that in reviewing the vouchers questioned by Staff, it determined that the costs were valid, reasonable, and associated with the implementation of the project. (*Id.* at 16-17.) Accordingly, SWG does not believe additional expenses should be removed. (*Id.* at 17.)

594. SWG disagrees with Staff's recommendation to disallow 50 percent of the project's costs. (*Id.*) SWG states that Staff's identification of a small percentage of costs related to the project that were mistakenly charged to the wrong account demonstrate a lack of oversight. (*Id.*) SWG provides that Staff's assertion of a lack of accountability on behalf of SWG is unsupported given that once it was apprised of misallocation of costs, it acknowledged the error and removed the costs. (*Id.*) SWG further provides that Staff was given all of the invoices for

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the project and could have calculated a specific disallowance for the project, making Staff's proposed projected disallowance inappropriate. (*Id.*)

Work Order 0061W0000511 - FOMS, Phase II

SWG's Position

595. SWG seeks recovery of the costs associated with FOMS Phase II, Work Management, cost a total of $9,786,464.00, with $2,753,299.00 allocated to its SND and $161,226.00 allocated to its NND. (Ex. 42 at Exhibit RLC-4, Sheet 2 of 19, line 4.)

BCP's Position

596. BCP does not address this issue.

Staff's Position

597. Staff recommends a 50 percent disallowance for the costs associated with Phase II of the FOMS project. (Ex. 64 at 21-22.) Staff states that Phase II focused on SWG's work management system used to track its construction and technical processes. (*Id.* at 21) Staff states that the final cost of the FOMS Phase II project was approximately $9.8 million. (*Id.*) Staff states that given the expenditures it found unreasonable and SWG's lack of accountability with respect to those expenditures it is recommending the disallowance. (*Id.* at 22.)

598. More specifically, Staff recommends that the Commission accept an adjustment for Work Order No. 0061W000511, removing $4.892 million from rate base related to FOMS-II ($1.376 million from its SND and $0.287 million from its NND). (Ex. 71 at 5.) Staff recommends corresponding adjustments to remove the costs and related accumulated depreciation, depreciation expense, and ADIT from rate base. (*Id.*, Attachments CW-2, pages 1-2, CW-5, CW-13, and CW-14.)

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SWG's Rebuttal Position

599. SWG states the "FOMS Phase II Project was initiated to mitigate several issued in the lgacy Work Management System ('WMS') including components of the system that were becoming unsupported, the aging of the internally developed construction management scheduling tool, lack of functionality provide by the WMS system and the vendor's resistance to making necessary enhancements." (*Id.* at 19.) SWG states that the FOMS Phase II project was governed under the same PMI Standards which governed the FOMS Phase I project. (*Id.* at 21.)

600. SWG disagrees with Staff's claim that the FOMS Phase II project had unreasonable expenditures and that SWG had a lack of accountability regarding the expenditures. (Ex. 80 at 20.) SWG further states that Staff did not reference any particular costs or expenditures related to the work order that it claimed to be excessive or unsupported. (*Id.*) SWG provides that Staff similarly did not provide an explanation for its claim that SWG lacked accountability relating to the FOMS Phase II project. (*Id.*) SWG contends that contrary to Staff's position, it "provided oversight for the FOMS Phase II Project and is accountable for the success of that project." (*Id.*)

601. SWG specifically disagrees with Staff's recommendation regarding the work order because, "like other projects, SWG managed the FOMS Phase II Project according to project governance guidelines within PMI Standards" and notes that the project had a Project Manager, Project Director, Oversight committee, Executive Steering Committee, and an Executive sponsor. (*Id.* at 21.) Moreover, SWG states that project expenditures were approved with executive oversight and recorded in project documents. (*Id.*) SWG provides that change orders and deviations to budget required governance structure approval and recoding of those expenditures required sign-off from management. (*Id.*) SWG contends that it successfully

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implemented the FOMS Phase II Project and states that it currently uses the system as part of its work management system. (*Id.*)

602. SWG states that as of its certification filing, it requests a net plant of $5,897,108.00 for FOMS Phase II. (Ex. 81 at 16.) SWG states that prior to the certification period, it removed $2,160.00 related to meals from Phase II. (*Id.*) SWG notes that Staff identified and questioned various costs for consultant travel-related expenses, conference fees, and the lease for additional office space and related improvements but did not conduct discovery on the related vouchers. (*Id.*) SWG provides it would have appreciated the opportunity to respond to specific questions regarding those costs. (*Id.*) SWG states that it reviewing the vouchers questioned by Staff, it determined that the costs were valid, reasonable, and associated with the implementation of the project. (*Id.* at 16-17.) Accordingly, SWG does not believe additional expenses should be removed. (*Id.* at 17.)

603. SWG disagrees with Staff's recommendation to disallow 50 percent of the project's costs. (*Id.*) SWG states that Staff's identification of a small percentage of costs related to the project that were mistakenly charged to the wrong account demonstrate a lack of oversight. (*Id.*) SWG provides that Staff's assertion of a lack of accountability on behalf of SWG is unsupported given that once it was apprised of misallocation of costs, it acknowledged the error and removed the costs. (*Id.*) SWG further provides that Staff was given all of the invoices for the project and could have calculated a specific disallowance for the project, making Staff's proposed projected disallowance inappropriate. (*Id.*)

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Work Order 0061W0000888 (GIS Mapping Migration Project)

SWG's Position

604. SWG provides that the GIS Mapping Migration Project cost a total of $6,530,306.00, with $1,837,220.00 allocated to its SND and $107,587.00 allocated to its NND. (Ex. 42 at Exhibit RLC-4, Sheet 2 of 19, line 5.)

BCP's Position

605. BCP does not address this issue.

Staff's Position

606. Staff recommends disallowing 50 percent of the costs associated with SWG's System Allocable Pant Work Order No. 0061W0000888. (Ex. 64 at 1-2.) Staff states that these work orders are the corporate level capital projects that SWG utilizes in all of its rate jurisdictions and subsidiaries. SWG's Southern Nevada and Northern Nevada jurisdictions are allocated approximately 28 percent and 6 percent, respectively, of the total costs of SWG's System Allocable Plant. (Ex. 64 at 11-12.)

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607. More specifically, Staff recommends that the Commission accept an adjustment removing $3.259 million from rate base related to the GIS Mapping Migration Project ($0.917 million for its SND and $0.191 million for its NND). (Ex. 71 at 5.) Staff provides that the adjustment excludes 50 percent of the cost of the work order. (*Id.*) Staff recommends corresponding adjustments to remove the costs and related accumulated depreciation, depreciation expense, and ADIT from rate base. (*Id.*, Attachments CW-2, pages 1-2, CW-6, CW-13, and CW-14.)

608. Staff states that SWG initiated the GIS Mapping Migration Project to replace its existing electronic mapping and records system, which was implemented in the late 1980's to the

early 1990's and had reached its useful life. (Ex. 64 at 22.) Staff states that the final cost of the GIS Mapping Mitigation Project was approximately $6.5 million. Staff states that there appear to be "excessive consultant expenses." (*Id.* at 23.) Staff states that it appears that for almost every meeting SWG held on its capital projects there was some sort of meal or refreshment provided. Staff states that SWG's shareholders, and not ratepayers, should pay free meals and refreshment costs for consultants. (*Id.*) Additionally, Staff states that SWG paid consultants to attend seminars and/or conferences. However, "since consultants are hired for their expertise and experience as represented in SWG's contract language, and are paid a premium wage for that expertise and experience, it seems unreasonable for SWG to also pay for consultants to attend seminars or conferences to receive training that benefits that particular consultant." (*Id.* at 23-24.)

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SWG's Rebuttal Position

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609. SWG states that the GIS Migration Project replaced the existing GIS given that the legacy system "was highly distributed, inefficient, and challenging to sustain in its aged state." (Ex. 80 at 22.)

610. SWG disagrees with Staff's claim that the GIS Migration Project had unreasonable expenditures or that SWG had a lack of accountability with respect to the expenditures. (Ex. 80 at 23.) SWG provides that "notwithstanding the total number of objections not exceeding $31,664.00 that [Staff] cites, this represents less than 0.5 percent of the total investment in the GIS Migration Project." (*Id.*)

611. SWG states that all of the expenditures on the project were reasonable. (*Id.*) With respect to Staff's specific criticisms, SWG provides that meals included in the expenditures were reasonable because they occurred during times that were inconvenient or where self-provided

meals would have resulted in inefficient use of time. (*Id.*) SWG further provides that expenditures related to conferences and training for the project team and its project manager were reasonable because it minimized the risk of extended implementation durations and cost overruns due to inexperience and lack of knowledge. Accordingly, SWG asserts that all of the expenditures on the project were valid and reasonable, and that a 50 percent disallowance of a $6.5 million project based upon $31,664.00 contested expenditures is punitive and not justifiable. (*Id.* at 24.)

612. SWG states that the requested gross plant amount after the certification period for the GIS Mapping Migration Project was $6,517,032.00, which excludes $13,274.00 in meals related to the project, which were removed at certification. (Ex. 81 at 17-18.) SWG further states that the vouchers that Staff critiqued regarding the project, such as the cost of seminars and conferences, were appropriate and associated with the implementation of the project. (*Id.* at 18.) SWG states that it does not support removing additional costs charged to the GIS Mapping Migration Project. (*Id.*)

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613. SWG provides that Staff's identification of 0.5 percent of the total costs of the project being mistakenly charged to the wrong account does not demonstrate a lack of oversight. (*Id.*) Moreover, SWG provides that Staff's assertion of a lack of accountability is not supported given SWG's acknowledgement of the error and removal of incorrect costs. (*Id.*) SWG contends that, considering Staff was provided all invoices related to the project, it was able to calculate a specific recommended disallowance, making its projected disallowance inappropriate. (*Id.*)

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Work Order 0061W001120 (Web Content Management)

SWG's Position

614. SWG provides that its Web Content Management ("WCM") cost a total of $3,479,565.00, with $978,932.00 allocated to its SND and $57,324.00 allocated to its NND. (Ex. 42 at Exhibit RLC-4, Sheet 2 of 19, line 6.)

BCP's Position

615. BCP does not address this issue.

Staff's Position

616. Staff recommends disallowing 50 percent of the costs associated with SWG's System Allocable Pant Work Order No. 0061W0001120. (Ex. 64 at 1-2.) Staff states that these work orders are the corporate level capital projects that SWG utilizes in all of its rate jurisdictions and subsidiaries. SWG's Southern Nevada and Northern Nevada jurisdictions are allocated approximately 28 percent and 6 percent, respectively, of the total costs of SWG's System Allocable Plant. (*Id.* at 11-12.)

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617. More specifically, Staff recommends that the Commission accept an adjustment removing $1.737 million from rate base related to WCM ($0.489 million from its SND and $0.102 for its NND). (Ex. 71 at 5-6.) Staff provides that the adjustment excludes 50 percent of the cost of the work order. (*Id.* at 6.) Staff recommends a corresponding adjustment to remove the costs and related accumulated depreciation, depreciation expense, and ADIT from rate base. (*Id.*, Attachments CW-2, pages 1-2, CW-7, CW-13, and CW-14.)

618. Staff states that the final cost of the WCM Project, phase II, was approximately $3.5 million. Staff states that there were "excessive consultant expenses" associated with this project. (Ex. 64 at 25.) Staff states that there were many vouchers with team meals billed and,

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additionally, many instances where multiple consultants billed in excess of 100 hours for the same two-week period. (*Id.* at 25-26.) Staff states that SWG did not provide any documentation that the project was a time-sensitive project requiring hundreds of hours of overtime by multiple consultants. (*Id.* at 26.) Staff states it additionally found vouchers for the purchase of an Apple Mac computer, and multiple iPads, totaling approximately $4,000. (*Id.*) Staff states that SWG failed to provide any documentation to support the purchase of these Apple products for this project. (*Id.*)

SWG's Rebuttal Position

619. SWG states that "[t]he primary objective of the WCM project is to allow [SWG] to publish content in a timely and efficient manner." (Ex. 80 at 25.) SWG states that it managed this project similar to FOMS, and in accordance with PMI Standards. (*Id.* at 26.)

620. SWG states that its gross plant amount requested at the end of its certification period was $3,473,492.00, which was $6,073.00 less than its initial filing to account for the removal of the cost of meals related to the project. (Ex. 81 at 19-20.) SWG further states that it does not support removing additional costs charged to the project. (*Id.* at 20.) SWG provides that Staff's 50 percent disallowance is justifiable, as Staff's identification of a small percentage of costs mistakenly charged to the wrong account does not demonstrate a lack of oversight. (*Id.*) Moreover, SWG further provides that Staff's assertion of a lack of accountability is unsupported given that the company acknowledged the misallocated costs and removed them from the project. (*Id.*) SWG contends that Staff's 50 percent disallowance is not appropriate given that it was provided all of the invoices related to the project and could have calculated a specific cost disallowance. (*Id.* at 21.)

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Commission Discussion and Findings

621. The Commission finds that SWG failed to sustain its "burden of proof of establishing that its proposed [rate] changes" associated with the projects in the Challenged Work Orders "are just and reasonable and not unduly discriminatory or preferential."[42] Accordingly, the Commission disallows 100 percent of the costs associated with the projects in the Challenged Work Orders.

622. As discussed in the Applicable Law section of this Order, SWG does not enjoy a rebuttable presumption of prudence regarding its expenditures in GRC proceedings,[43] and given that there has been no proceeding in which the Commission could address the prudence of the costs associated with these Challenged Work Orders other than this proceeding, the Commission cannot satisfy its responsibility to set just and reasonable rates if it includes these costs which lack evidentiary support.

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623. To sustain its burden of proof of establishing that its proposed rate changes are just and reasonable, SWG is required to "ensure that the material it relied upon is of such composition, scope and format that it would serve as its complete case if the matter is set for hearing."[44] As the evidentiary record reveals, the total support provided by SWG for the Challenged Work Orders in its direct case is presented in the testimony included under Exhibit 42, which is the prepared direct testimony of SWG witness Cunningham.[45] However, despite being the one witness "selected by the Company as the witness to sponsor testimony regarding the non-GIR projects over $1 million,"[46] this sponsoring witness was not involved in the

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[42] NAC 703.2231

[43] Notably, SWG initially understood that it is its burden to carry to justify the prudence of its expenditures. (Tr. at 425-426.)

[44] NAC 703.2231.

[45] SWG states that Ex. 42 at RLC-4 "provides description, work order number, amount, and brief project summary for each item over $1 million placed in service since the last GRC." (*Id.*)

[46] Tr. at 372.

execution of any of the projects included in the Challenged Work Orders,[47] "did not review the charges of any work order,"[48] and does not possess any personal knowledge to support the underlying cost data of any of the itemized work order projects included in her testimony.[49] In fact, SWG's sponsoring witness for the Challenged Work Orders was unable to even provide the Commission with information demonstrating "the basis for the Company making the decision to incur these costs" associated with the Challenged Work Orders.[50] SWG was not even aware during hearing that its testimony supporting the expenditures for the Challenged Work Orders omitted the summaries it agreed to provide for these work orders.[51]

624. In contrast, Staff offers substantial evidence regarding SWG's failure to provide adequate documentary support showing that the costs associated with the Challenged Work Orders were prudently incurred and just and reasonable, in addition to SWG's lack of oversight regarding the costs it seeks to recover.[52] Based upon this evidence and SWG's response to the challenges made regarding the prudence of its expenditures over the course of these proceedings, the Commission is troubled by SWG's lack of oversight and its continuous implication that it is Staff's responsibility to not only identify the deficiencies in SWG's filing,[53] but to issue discovery to determine the reasonableness of the costs that SWG seeks to recover from ratepayers.[54] To be clear, the Commissions finds that SWG cannot shift its burden of proof regarding the prudence of its expenditures to any party, including Staff – this is SWG's burden to sustain.[55]

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[47] Tr. at 373.
[48] Tr. at 375.
[49] Tr. at 420.
[50] Tr. at 416-417.
[51] Tr. at 368.
[52] *See Generally* Ex. 64
[53] Tr. at 368.
[54] *See for example* Tr. 751-753, 770-773, 819-824, 858.
[55] NAC 703.2231

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625. Similarly, the Commissions finds that SWG cannot establish the prudence of its expenditures through the discovery process given that, legally, it must "ensure that the material it relied upon is of such composition, scope and format that it would serve as its complete case if the matter is set for hearing,"[56] and as a matter of course, the Commission simply does not have access to all of the data that is produced in response to discovery.[57] While this record includes discovery responses received by Staff,[58] those responses were introduced during hearing and not in SWG's Application, and similarly fail to establish the prudence of SWG's expenditures related to the Challenged Work Orders given that the sponsoring witness was not involved in the execution of the projects, did not have direct knowledge of the manner in which the projects were overseen, and could not even explain the company's basis for incurring the costs associated with the projects.[59]

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626. Moreover, after representing to the Commission that it had a witness who would be able to explain to the Commission whether "it was prudent to incur" the costs associated with the Challenged Work Orders,[60] SWG offered a witness who did not start working for the Company until May 2017, which means that the witness could not have been directly involved in the execution of any of the projects included in the Challenged Work Orders because each of the projects "closed to plant sometime between 2012 and 2016."[61] Therefore, similar to SWG witness Cunningham, SWG witness Murandu was unable to provide the Commission with any evidence regarding the prudence of the expenditures associated with the Challenged Work Orders.

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[56] *Id.*
[57] Tr. at 856-857.
[58] *See for example* Ex. 65-69,
[59] Tr. at 373, 375, 416-417, 420.
[60] Tr. at 417.
[61] Tr. at 968-969.

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627. Finally, while Staff recommends a 50-percent disallowance for the costs associated with these Challenged Work Orders, the Commission finds that Staff's proposal is arbitrary and unsupported by the record given SWG's inability to offer sufficient evidence establishing the prudence of any of these costs. Therefore, instead, the Commission finds and agrees with Staff's alternate proposal that SWG's failure to provide adequate documentary and decision-maker support for the costs associated with the Challenged Work Order projects requires the Commission to determine that none of these costs is reasonable for inclusion in rates.[62] Accordingly, as established above, the Commission disallows 100 percent of the costs associated with the projects in the Challenged Work Orders in this Docket, but SWG may again seek recovery of the costs associated with these Challenged Work Orders in a future GRC.

X. Work Order No. 0026w1423077 (Winnemucca Cyanco MSA/Regulator Project)

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SWG's Position

628. SWG states that the cost of this project was $223,306.00. (Ex. 42 at Exhibit RLC-4, 4 of 19, line 58.)

BCP's Position

629. BCP does not address this issue.

Staff's Position

630. Staff recommends disallowing all of the costs associated with Work Order No. 0026W00000877, the Winnemucca Cyanco MSA/Regulator project. (Ex. 64 at 2.) More specifically, Staff recommends that the Commission remove $0.208 million from rate base for SWG's NND related to Work Order No.0026W1423077. (*Id.* at 7.) Staff recommends

[62] Ex. 64 at 5-6.

corresponding adjustments to remove the costs and related accumulated depreciation, depreciation expense, and ADIT from rate base. (*Id.*, Attachments CW-2, page 2, CW-10, CW-14.)

631. Staff state that SWG initiated Work Order No. 0026W142307 to relocate and replace the meter set assembly for the Cyanco plant in Winnemucca, Nevada. The Cyanco MSA Replacement Project cost approximately $223,306, all of which SWG allocated to its Northern Nevada jurisdiction. (Ex. 64 at 31.) Staff states that SWG initiated this project primarily due to Cyanco's plant expansion and corresponding increase in its gas demand. (*Id.*) Therefore, a new MSA with greater capacity needed to be installed. (*Id.*) Staff states that SWG indicated that it utilized NPL Construction for the Cyanco/MSA Regulator Project; however, Staff states that in NPL's vouchers, NPL notes that the MSA/Regulator was used to assist Paiute Pipeline, not Cyanco. (*Id.*)

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632. Staff states that, in fact, the payment authorization for NPL's vouchers also came from Paiute Pipeline. (*Id.*) Staff further states that it does not believe that SWG's retail customers should pay for all or some portion of the facilities used to serve Cyanco. (*Id.* at 31.) Staff states that Cyanco is a contract customer of SWG who pays negotiated rates to SWG and does not pay a full margin rate. (*Id.*) Thus, Staff states that any upgrades to SWG's system that alone benefit Cyanco should be paid for by Cyanco, not SWG ratepayers. (*Id.*)

633. Staff states that "[f]rom a policy standpoint, [it] does not believe that [the] Commission should support retail ratepayers paying any portion of these costs that SWG incurs to serve customers who pay something less than a full margin or full retail rate. Moreover, neither Schedule No. ST-1/NT-1 nor SWG's Rule 9 state explicitly that SWG may adjust or reduce the costs it incurs to build facilities to serve contract customers." (*Id.* at 32.)

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634. Staff states that SWG's Northern Nevada ratepayers should not have to pay for the costs associated with the Cyanco MSA/Regulator Project. (*Id.*) Staff states that, additionally, since the vouchers from NPL Construction are from Paiute Pipeline, it appears that SWG may have incorrectly allocated the costs of the project to SWG's NND. (*Id.*)

SWG's Rebuttal Position

635. SWG states that it allocated the costs of the project to the correct company. (Ex. 81 at 24.) SWG further states that the project's costs "are justified by the additional margin and allowable investment provided solely by Cyanco's plant expansion project and forecasted gas usage at their current (negotiated) gas service rates. (*Id.*) SWG provides that it ran an Incremental Contribution Model to determine the allowable investment, and that the Cyanco margin is included in the current GRC. (*Id.*) SWG further provides that the project will pay for itself in less than a year. (*Id.*)

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Commission Discussion and Findings

636. The Commission finds that SWG's economic analysis adequately demonstrates that the cost of the project was justified given the increased margins at the facility. Moreover, as SWG notes, the project will pay for itself in less than a year. In this instance, the Commission is not persuaded by the concerns raised by Staff regarding whether the upgrades solely benefit Cyanco. Accordingly, the Commission rejects Staff's recommendation to disallow the costs associated with Work Order No. 0026W00000877, the Winnemucca Cyanco MSA/Regulator project.

Y. Change Order No. 4 regarding Contract No. 205579

BCP's Position

637. BCP does not address this issue.

Staff's Position

638. Staff recommends disallowing all of the incremental costs associated with the price increases contained in Change Order 4 in SWG's Contract Number 205579 with Arizona Pipeline Company ("APL"), that were greater than the consumer price index adjustment of 2.1 percent. (Ex. 64 at 2, 37.) More specifically, Staff recommends that the Commission exclude the incremental costs of $0.595 million for SWG's SND related to price increases contained in Change Order 4 of SWG's Contract No. 205579 with APL from rate base. (*Id.* at 7-8.) SWG recommends a corresponding adjustment to remove the costs and related accumulated depreciation, depreciation expense, and ADIT from rate base. (*Id.* at 8, Attachments CW-2 page 1, CW-11, and CW-13.)

639. Staff states that SWG entered into a contract with APL on November 17, 2015, for the five-year term January 1, 2016 through December 31, 2020 for the installation, abandonment, replacement, relocation, and building of early vintage plastic pipe ("EVPP"), and mains and services. (Ex. 64 at 34-35.) Staff states that SWG did not bid this contract. (*Id.* at 35.) In an October 9, 2015 email from Jo Taylor to Shane Thacker, SWG provided justification for renegotiating the APL EVPP contract, stating that renegotiating the contract would capitalize on the advances that had been made during the previous contract. (*Id.*) However, Staff states that SWG noted that its justification was contingent upon the pricing APL offered; that is, if APL's pricing were to increase greater than SWG anticipated, SWG would consider bidding the contract. (*Id.*) Staff states that SWG's justification for not bidding the contract was reasonable. (*Id.*) Staff states that, while SWG was able, by continuing to contract with APL, to maintain the efficiencies and experience already in place, SWG payments to APL of price increases greater

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than the Consumer Price Index ("CPI") adjustments outlined in the contract were excessive, especially in view of past problems with APL's performance under the contract. (*Id.* at 26, 35.)

640. Staff states that APL has had multiple incidents due to the lack of effective quality and safety plans in place, which has resulted in pipeline damages, APL employee disqualifications and revocations, notice of probable violations from Commission Staff, and disruption of service to SWG's customers. (*Id.* at 36.)

641. Staff states that in Change Order 4, dated January 18, 2018, SWG authorized APL to receive price increases between 10 and 70 percent, much greater than CPI adjustment of 2.1 percent contained in sections 2.1, 3.1, 4.1, 10.1, and 10.1A of the contract. (*Id.*) Staff further states that it was not reasonable for SWG to authorize the price increases contained in Change Order 4. (*Id.* at 37.) Staff states that SWG provided no valid justification for the price increases contained in Change Order 4. (*Id.*)

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642. Staff states it understands that prices in the Las Vegas Valley are increasing, and could warrant adjustments to the APL EVPP contract higher than the generic CPI adjustment; however, no justification was provided by SWG for its "generous, above-CPI price increases." (*Id.*) Furthermore, Staff states that given APL's performance issues that resulted in SWG issuing work stoppages to APL, the price increases above the CPI adjustment were not warranted and are "frankly, a surprising reward for poor performance." (*Id.*) Finally, Staff states that SWG's own justification for not rebidding the contract when it expired at the end of 2015 was that APL was offering attractive pricing with just the CPI adjustment. (*Id.*) "SWG acted inconsistently with its own justification for not rebidding the work and the contract itself. As such, SWG's ratepayers should not be required to pay for the increased costs associated with SWG changing the contract terms for the benefit of APL." (*Id.*)

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SWG's Rebuttal Position

643. SWG states that it disagrees with Staff's recommendation to disallow all incremental costs associated with the price increases contained in Change Order 4 in Contract Number 205579 above the CPI adjustment. (Ex. 73 at 2.)

644. SWG states that increased quality and safety standards, construction activity increasing to pre-recession levels, the strength and growth of the local economy, and upward pressure on wages,[63] have resulted in increased operating costs for APL since the contract was executed, which justified an adjustment to contract prices. (*Id.* at 3-4.)

645. SWG states that in determining the price adjustment for the contract, it determined that regardless of installation methods, the expense that contractors realized were consistently the same due to set up costs. (*Id.* at 4.) Accordingly, SWG provides that it normalized the prices of the service installation in the contract in order to gain efficiencies and allow its contractor to establish the best installation method, and in turn reduce overall costs. (*Id.*)

646. SWG states that it conducted a post-adjustment analysis that determined APL had the lowest cost per foot, represented a fair and reasonable cost to SWG customers, and also proved to be below market rates. (*Id.*)

647. SWG states that it compared the existing APL EVPP contract inclusive of the January 18, 2018, Change Order ("Above CPI") to what the price impact would have been if the "CPI-only" increase had been applied to the contract and found that the difference between the Above CPI and CPI Only to be a 12.7 percent increase. (*Id.* at 6.) SWG contends that the overall difference of 12.7 percent is more reflective of the actual price increase than to broadly

[63] *See* Direct Testimony of Paul Maguire in Docket No. 18-06004 at 9.

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characterize the increase as "between 10 percent and 70 percent" because the "70 percent" items are infrequently utilized on projects. (*Id.*)

648. SWG states that even after the "Above CPI" increase in January of 2018, APL has approached the company to assert that they require additional price adjustments given market conditions. (*Id.* at 7.) SWG provides that the contractor has expressed that it has been taking months of financial losses and that if SWG doesn't agree to additional increases or rebid the entire contract, the contractor will be forced to discontinue it after January 1, 2019. (*Id.*)

649. SWG states that it agrees with Staff's position that prices in the Las Vegas Valley are increasing and could warrant adjustments to the APL EVPP contract higher than the generic CPI adjustment. (*Id.*) SWG contends that it "has demonstrated sufficient justification to warrant the price increases granted to the APL EVPP contract "Above CPI." (*Id.*)

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650. Accordingly, SWG provides that Staff's recommendation to disallow the incremental costs associated with the price increased contained in Change Order 4 in Contract Number 205579 above the CPI adjustment should be rejected. (*Id.* at 7-8.)

Commission Discussion and Findings

651. The Commission adopts Staff's proposed adjustments to 1) disallow costs associated with the price increases contained in Change Order 4 in SWG's Contract Number 205579 with APL; and 2) disallow all incremental costs associated with the price increases that were greater than the consumer price index adjustment of 2.1 percent. The resulting disallowance excludes incremental costs of $0.595 million for SWG's SND related to price increases contained in Change Order 4 from rate base, in addition to a corresponding adjustment to remove the costs and related accumulated depreciation, depreciation expense, and ADIT from rate base.

652. The Commission notes that, in adopting Staff's position, the Commission finds that SWG failed to demonstrate that such costs are justifiable in the current economic environment. Specifically, the costs above CPI indicate that a competitive solicitation might have yielded lower costs. While SWG asserts that current costs have risen above the CPI, it failed to demonstrate why it was prudent to continue its contract with APL.

Z. Battle Mountain Lateral Project

BCP's Position

653. BCP does not address this issue.

Staff's Position

654. Staff recommends that the Commission approve an adjustment to exclude $200,000.00 in costs for SWG's NND related to the Battle Mountain Lateral Project." (Ex. 60 at 8-9.) More specifically, Staff recommends that the Commission remove $0.200 million from rate base for SWG's NND related to the Battle Mountain Lateral Project. (Ex. 71 at 8.) Staff recommends corresponding adjustments to remove the costs and related accumulated depreciation, depreciation expense, and ADIT from rate base. (*Id.*, Attachments CW-2 page 2, CW-12, CW-14.)

655. Staff states that the project, which was approved in SWG's GIR Advance Application in 17-05027, involved replacement of an existing 6-mile, 1960s vintage 4-inch pipeline serving Battle Mountain, Nevada, with a new higher grade 6-inch pipeline. (*Id.* at 6.) Staff provides that after the pipe was welded, installed, and pressure-tested, it ultimately determined that a 40-foot section of the pipe was defective. (*Id.* at 7.) Staff contends that it is inappropriate for ratepayers to fund the defect, and that SWG should pursue a claim against its pipe manufacturer. (*Id.* at 8.) Moreover, Staff is critical of SWG for failing to identify a visible

pipe defect issue considering that it conducted on-site inspections at the pipe mill to have its personnel inspect the pipe that it was purchasing for the project. (*Id.* at 8.)

SWG's Rebuttal Position

656. SWG recommends that the Commission deny Staff's proposed Battle Mountain adjustment as the costs occurred outside the Company's certification filing at July 31, 2018, and are not part of SWG's filing and not at issues in this docket. (Ex. 62 at 1.) SWG suggests that any discussion related to the prudency of costs incurred after July 31, 2018, are for a future GRC proceeding and it is inappropriate to discuss the possible disallowance of costs that have not occurred as of the certification date of this proceeding. (*Id.* at 2.)

Commission Discussion and Findings

657. The Commission rejects Staff's proposed adjustment to exclude $200,000.00 in costs for SWG's NND related to the Battle Mountain Lateral Project. In rejecting Staff's recommendation, the Commission notes that the incurred costs associated with the adjustment occurred outside of the certification period and are therefore inappropriate to address in the instant Docket.

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VIII. RATE DESIGN

A. Class Cost of Service ("CCOS") Study

SWG's Position

658. SWG provided two CCOS studies in response to compliance items set forth in Docket Nos. 12-02019 and 12-04005. (Ex. 84 at 4.) SWG states that the first CCOS study excluded negotiated rate customers and was to be used in setting rates. (*Id.*) SWG provides that the second CCOS study includes all of the negotiated rate customers and is intended to provide the Commission with information to determine whether negotiated rate customers, as a class,

provide the average rate of return. (*Id.*) SWG states that it prepared both CCOS studies as directed by the Commission. (*Id.*)

659. SWG states the purpose of a CCOS study is to allocate the revenue requirement to the appropriate customer rate classes and determine the resulting rate of return for each customer class identified in the study. (*Id.* at 2.) SWG provides that the results of the CCOS study are used as a guide to establish proposed class revenues and proposed class rates for each customer class. (*Id.*) SWG states that it utilized a three-step process to develop its CCOS study wherein costs are functionalized, classified, and then allocated to the customer classes included in SWG's proposed rate design. (*Id.* at 3.)

660. SWG provides that the functionalization process assigned plant investment costs and expenses to the appropriate operating functions; the classification process identified whether plant investment costs and incurrence of expenses are related to providing capacity, annual volume of gas actually delivered, or providing customers with access; cost allocation process apportioned costs as demand, commodity, or customer to each rate class based on the characteristics of class demand, class consumption, and number of customers associated with each class. (*Id.*)

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661. SWG states that its certification filing updated the number of bills and monthly throughput by rate schedule to reflect certification period amounts through July 31, 2018, and to reflect contract Customer 6 switching from a negotiated customer to a full margin transportation customer in March of 2018. (Ex. 85 at 1.) SWG states that the revenues associated with Customer 6's service were re-allocated to rate schedule SG-G3 and removed from the negotiated customers, as reflected in the updated CCOS Study and Statement J schedules. (*Id.*)

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662. SWG provides that its certification filing CCOS study differs from what it had originally filed in that it adjusted the allocation of Other Gas Supply Expenses (Account No. 813) to reflect the number of customers served on each rate schedule, and to more closely represent costs incurred on SWG's system. (*Id.* at 2.) SWG contends that the change will have "a de Minimis impact on proposed rates, since these expenses only represent approximately 0.3 percent of the proposed revenue requirements for both its SND and NND. (*Id.*)

663. SWG states that, as a result of the changes in its certification filing, revenues in the NND fell by approximately $1,700,000.00 and revenues in the SND fell by $1,230,000.00. (*Id.*)

664. SWG states that it initially added Allocation 15, KAM Direct Allocation, and inadvertently failed to reference it in its direct testimony. (*Id.* at 3.) SWG provides that the allocation is related to all labor and materials expenses associated with the Key Account Management department. (*Id.*) SWG states that the department manages the full-margin transportation customers and contract customers. (*Id.*) SWG notes that prior to separating the money associated with these larger customers, the expenses were rolled into Customer Records & Collections Expenses and allocated to every customer class. (*Id.*)

BCP's Position

665. BCP recommends the Commission accept SWG's CCOS studies with three proposed changes for both the SND and NND. (Ex. 90 at 45, 47-48.) Specifically, BCP recommends that SWG's SND CCOS study include NCA 1 and NCA 2 in its study; classify the costs recorded in FERC Account No. 813 as commodity-related costs; and classify the costs recorded in FERC Account No. 871 as commodity-related costs. (*Id.* at 46.) For the NND, BCP recommends that SWG's CCOS study include Customer 1; classify the costs recorded in FERC

Account No. 813 as commodity-related costs; and classify the costs recorded in FERC Account No. 871 as commodity-related costs. (*Id.* at 47.)

666. BCP states that it recommends including NCA 1 and NCA 2 for the SND in the CCOS study because it states the contracts are non-conforming, were never filed with the Commission, and either negotiated or renegotiated after the adoption of the Transmission Management Program final rule on December 15, 2003 by the Pipeline and Hazardous Materials Administration. (*Id.* at 31-32.) Similarly, BCP recommends including Customer 1 for the NND in the CCOS study. (*Id.* at 36.) BCP states that it was imprudent for SWG to not seek approval for these contracts, and that the difference in the revenues from the inclusion of the three contracts in the CCOS study and the present contract revenues should be subsequently imputed in the revenue requirement. (*Id.* at 34, 36.)

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667. BCP states that SWG reclassified the costs recorded in FERC Account No. 813 from commodity-based to customer-based in its certification filing in violation of NAC 703.2461. (*Id.* at 41-42.) BCP argues that "[t]he CCOS is not included in Statement I and therefore the Commission's regulations do not provide for the reclassification of costs as a customer-related cost from a commodity-related cost in the CCOS. (*Id.* at 42-43.) BCP also argues that "presenting a new classification of costs in the certification filing does not afford parties the time necessary to investigate whether the reclassification was proper." (*Id.*)

668. BCP states that FERC Account No. 813 (Other Gas Supply Expenses) should be classified as commodity-related costs in the CCOS allocating it as customer-related would have an adverse and non-trivial effect on single-family residential customers. (*Id.* at 41.) BCP notes that the total expenses recorded to the account in the SND during the certification period was $709,908.00 and that classifying the cost as customer-related allocates 77.7509% of the cost to

single-family residential customers, or $551,960.00 in total compared to 35.9192% or 254,993.00, when classifying the cost as commodity-related. (*Id.*)

669. BCP states that the costs in FERC Account No. 871 should be classified as commodity-related costs, consistent with the definition of the account in the Uniform System of Accounts. (*Id.* at 45.) BCP provides that the definition includes "expenses related to distribution system operating pressures and British Thermal Units content of the natural gas in the distribution system." (*Id.*) BCP further provides that those "costs are related to the volumes of gas flowing through the distribution system – including those volumes for transportation customers – not the number of customers of the natural gas utility." (*Id.*)

670. BCP recommends that SWG file a compliance filing with the same terms as those in Ordering Paragraph 30 of the Commission's March 20, 2013, Second Modified Final Order in Docket No. 12-04005, which stated:

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> SWG shall file tariffs implementing the Commission's findings in this Order showing the resulting rates for each customer class in each division within 15 calendar days of the issuance of this Order. These tariffs shall be supported by the following schedules: (a) Statement I incorporating all of the Commission's ordered adjustments; (b) Schedule N-2 and associated workpapers detailing the allocation of the Commission ordered revenue requirement to each customer class; (c) Statement O showing the derivation of the rates contained in the compliance tariffs; (d) Statement J showing the increase and decreases in the compliance tariff rates from the certification present rates; (e) Statement F showing the cost of capital; and (f) Depreciation Study per Commission Order.

(*Id.* at 4.)

Staff's Position

671. Staff states that it does not propose any modifications to either of SWG's CCOS studies. (Ex. 103 at 15.) Staff further states that the Commission should find that SWG has satisfied its compliance from Docket No. 12-04005 requiring it to file the two separate CCOS studies. (*Id.* at 11.)

672. Notwithstanding the aforementioned, Staff states that it questions the reasonableness of certain allocation factors used in the CCOS studies filed by SWG and recommends that the Commission issue a directive requiring that SWG addressing issues related to the allocation factors in its next GRC. (*Id.* at 12, 16.) More specifically, Staff is critical of SWG's use of a single critical peak ("CP") (January) in its CCOS studies, as well as its allocation factors for its distribution investments and transmission investments, "which are allocated to customer classes by a 50 percent demand / 50 percent Customer Count allocation factor, and by a 100 percent demand allocation factor, respectively." (*Id.* at 12.)

673. Staff states that it agrees with SWG that January is a peak month for its SND and NND; however, Staff contends that its SND is not a single-peaking system. (*Id.*) Staff provides that monthly consumption data for SWG's SND shows a relatively flat load and more closely resembles a three-CP or four-CP for allocation purposes. (*Id.*) SWG further provides that separating full margin transportation customers and contract customers from other customer classes shows that the majority of consumption during the summer months come from ST-1 customers. (*Id.*) Staff suggests "that the use of a single CP (in the month of January) unreasonably allocates the costs away from large customers such as ST-1, and modifying the allocations in the CCOS studies to a 3 CP or 4 CP could significantly reduce the amount of costs allocated to the residential customer class." (*Id.* at 12-13.)

674. Staff states that SWG's NND does not exhibit the same consumption pattern; however, Staff notes that it could find a two-CP or four-CP appropriate. (*Id.* at 13.) Staff further states that "demand may not be the only deciding factor in allocating expenses" and that the "NT-1 customer class exhibits a fairly flat load shape wile residential customer class load is still peaking in winter months." (*Id.*) Staff provides that the NT-1 customer class represents

approximately 70 percent of the total consumption during summer months, yet the costs for the facilities are only based on January. (*Id.*) Staff further provides that for the consumption during the test period from February 2017 to January of 2018, the NT-1 customers consumed approximately 42.4 percent while the Residential Customer class consumed 31.6 percent. (*Id.*)

675. SWG states that the total load in SWG's SND and NND are relatively flat and a significant portion of the loads, particularly in the summer months, come from larger customers such as the ST-1 customers. (*Id.*) Staff provides that such patterns call into question whether SWG's allocation factors for Distribution and Transmission investments are appropriate. (*Id.*)

676. Staff states that there is merit in allocating some costs based on customer count as well as basing some allocation costs on peak periods. (*Id.* at 14.) Staff further states that some customers receive value from the ability to consume during all times of the year. (*Id.*) Accordingly, Staff states that it is reasonable to allocate a portion of costs based upon consumption. (*Id.*) With that under consideration, Staff conducted a modified CCOS study allocating Distribution investments based upon a 33.3 percent factor based on Demand, Customer Count, and Consumption, and allocated Transmission investments based on a 50 percent demand and 50 percent commodity allocation factor. (*Id.*) Staff provides that the results show that contract customers do not provide SWG with enough revenues to cover the costs to serve the customer class in the SND or NND. (*Id.*)

677. Staff states that it is concerned with SWG's allocation of O&M expenses based on a Customer Count and Demand allocation factor because O&M occurs year-round, not just during peak time. (*Id.*) Staff further states that O&M expenses "are incurred mostly in the summer months and are not tied to the peak amount served or the amount of customers served." (*Id.* at 14-15.) SWG provides that SWG conducts leak surveys for business areas every year and

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leak surveys for residential customers every three years; however, based on SWG's CCOS studies, the majority of these costs are allocated to residential customers despite receiving fewer benefits. (*Id.* at 15.)

678. Staff states that additional costs are caused by ST-1 and NT-1 customers that could potentially be shifted to sales customers. (*Id.*) Specifically, Staff notes that in certain instances, SWG occasionally has to procure gas supplies to cover its sales customer needs, as well as the needs of its transportation customers. (*Id.*) Staff notes Docket No. 18-08016, where SWG stated "[s]ince those gas supply costs are solely the responsibility of the sales customers, and flow through the Company's PGA mechanism, there is potential for gas costs incurred due to the actions of transportation customers to be shifted to sales customers." (*Id.* at 15; Application at 3 in Docket No. 18-08016.) Given the potential cost shift above, Staff is critical of SWG's CCOS study, which it states does not allocate additional costs to the cost causer. (Ex. 103 at 15.)

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SWG's Rebuttal Position

679. SWG states that it complied with the Commission's March 20, 2013, Second Modified Final Order in Docket No. 12-04005. (Ex. 107 at 2-3.)

680. SWG states that BCP inaccurately claims that peak month usage was not properly represented for all negotiated rate contracts in the illustrative CCOS study. (*Id.* at 12.) SWG provides that it properly allocated transmission based on January peak volumes for all negotiated rate customers in both of its jurisdictions. (*Id.*)

681. SWG states that "the labor, materials, and expenses associated with dispatching and controlling the supply and flow of gas through the distribution system (Acct. No. 871) and for purchasing gas supply (Acct. No. 813) vary more based on variations in customer demand than customer size. (*Id.* at 13.) SWG states that allocating FERC Account Nos. 813 and 871

based upon annual throughput results in large volume customers bearing a substantial amount of the costs for these accounts. (*Id.* at 14.) Accordingly, SWG provides that the cost allocation for FERC Account Nos. 813 and 871 in the CCOS study is appropriate on a customer, rather than commodity basis. (*Id.*)

682. SWG states that NAC 703.2461 does not preclude a utility from incorporating a correction to an allocation within its CCOS certification. (*Id.*) Moreover, SWG notes that in past GRC proceedings, both BCP and Staff have not objected to modifications to FERC Account No. 871 in certification filings. (*Id.*) SWG contends that BCP's proposed allocation for FERC Account No. 813 does not appropriately reflect the cost to serve customers and should not be approved. (*Id.*)

Commission Discussion and Findings

683. The Commission declines to modify SWG's CCOS as recommended by BCP or to direct SWG to incorporate the changes discussed by Staff. However, the Commission stresses to SWG that each and every cost allocation and allocation methodology is subject to review and potential modification in every CCOS study filing. Such items include, but are not limited to, the evaluation of the need for any new or revised customer classes. The CCOS study is the foundation for just and reasonable rate design, and the position that a certain cost has been allocated the same way for years carries less weight than the underlying basis for that allocation. SWG, BCP, and Staff are encouraged to continue robust discussions and analysis of SWG's CCOS studies in order to provide the Commission with the most information available to ensure just and reasonable rates. Additional evaluation of the CCOS study and its components may be required in future filings.

684. The Commission finds that SWG shall file tariffs implementing the Commission's findings in this Order showing the resulting rates for each customer class in each division within 15 calendar days of the issuance of this Order. These tariffs shall be supported by the following schedules: (a) Statement I incorporating all of the Commission's ordered adjustments; (b) Schedule N-2 and associated workpapers detailing the allocation of the Commission ordered revenue requirement to each customer class; (c) Statement O showing the derivation of the rates contained in the compliance tariffs; (d) Statement J showing the increase and decreases in the compliance tariff rates from the certification present rates; (e) Statement F showing the cost of capital; and (f) Depreciation Study per Commission Order.

685. In addition, the Commission directs SWG, in its next GRC application, to file two CCOS studies. The first CCOS study shall exclude negotiated rate customers ("NRCs") and shall be used to set rates. The second CCOS study shall include all of the NRCs and shall be used to provide information to the Commission regarding whether the NRCs, as a class (or classes), provide the average rate of return.

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B. General Revenues Adjustment ("GRA")

SWG's Position

686. SWG requests authority to continue its GRA provision originally approved by the Commission in Docket No. 09-04003 without any modifications. (Ex. 36 at 17, Ex. 1 at 4.) SWG provides that the GRA provision has performed as designed, benefitted customers by providing credits during times of colder-than-normal weather, and has ensured that SWG has recovered no more or less than its Commission-authorized revenues. (Ex. 36 at 17.) SWG seeks approval, consistent with NAC 704.9716, to continue tracking and balancing "the margins for

Single-Family Residential, Multi-Family Residential, and the General Service rate classes (SG/NG-1, SG/NG-2, and SG/NG-3)." (*Id.* at 17-18.)

BCP's Position

687. BCP does not address this issue.

Staff's Position

688. Staff recommends the Commission approve SWG's request to continue its GRA provision for Single-Family Residential, Multi-Family Residential, and the General Service classes, as originally approve in Docket No. 09-04003 and more recently in Docket No. 12-04005. (Ex. 95 at 2.)

Commission Discussion and Findings

689. NAC 704.9716 provides that in a GRC filing, a gas utility may elect to utilize general revenue decoupling methodology in lieu of an "equity adder" methodology in order "to remove financial disincentives that discourage a public utility which purchases gas for resale from planning and implementing substantive conservation and energy efficiency programs." General revenue decoupling allows a gas utility to recover the base tariff general rate revenue without regard to the difference in the quantity of natural gas actually sold.[64] SWG received approval to implement a full decoupling mechanism in Docket No. 09-04003 and was authorized to continue the mechanism in Docket No. 12-04005.

690. The Commission agrees with SWG that the GRA provision has provided benefits to ratepayers and finds that SWG also receives a substantial benefit from full revenue decoupling by reducing risk to the utility. Moreover, Staff also recommends continuation of the GRA mechanism, and BCP does not contest its use. Accordingly, the Commission approves SWG's

[64] *See* NAC 704.9563.

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request to continue its GRA provision, as originally approved by the Commission in Docket No. 09-04003, without any modifications.

C. Basic Service Charge

SWG's Position

691. SWG states that it does not propose any adjustments for its existing Basic Service Charge in its SND or NND and is only proposing to update rates based upon the cost of service and the results of the CCOS study. (Ex. 36 at 18.) SWG provides that it proposes an updated Delivery Charge of $0.39366 per therm for single family residential customers and $0.42205 per therm for multi-family residential customers for its SND. (*Id.*) SWG further provides that it "proposes an updated Delivery Charge for its NND of $0.037594 per therm and $0.43143 per therm for single and multi-family residential customers, respectively." (*Id.* at 18-19.)

BCP's Position

692. BCP does not address this issue.

Staff's Position

693. Staff recommends that the Commission approve SWG's proposal to keep the Basic Service Charge and Demand Charges at the current rates for all customer classes and approve modifications to the volumetric Delivery Charge therm rate. (Ex. 103 at 16-17.) Staff notes that SWG is proposing to maintain its current rate structure for residential customers by maintaining the current basic service charge and modifying the delivery charge therm rate to recover the revenue requirement change. (*Id.* at 17.) Staff further notes that SWG requests to maintain the basic service charge for all General Service customers and modify the delivery charge therm rate for all general service customers to recover the revenue requirement change. (*Id.*)

Commission Discussion and Findings

694. SWG requests to maintain its basic service charges and demand charges while updating its delivery charges for its NND and SND. Staff supports SWG's request, and BCP did not object to the proposals. Accordingly, the Commission approves SWG's request to maintain its existing basic service charge with an updated Delivery Charge of $0.39366 per therm for single family residential customers and $0.42205 per therm for multi-family residential customers for its SND. The Commission also grants SWG's request to maintain its existing basic service charge in its NND with an updated Delivery Charge of $0.037594 per therm for single family residential customers and $0.43143 per therm for multi-family residential customers.

D. Biogas and Renewable Natural Gas Tariff

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SWG's Position

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695. SWG proposes a Biogas and Renewable Natural Gas Tariff (Schedule No. SG-RNG/NG-RNG). (Ex. 36 at 21, Ex. 1 at 5.) SWG states that "the Biogas and Renewable Natural Gas ('RNG') industry is a developing industry representing potential new supply sources stemming most commonly from waste-water treatment facilities, dairies, and landfills." (*Id.*) SWG further states that this proposed schedule "is intended to provide potential customers the general terms and conditions relevant to interconnections with SWG facilities, dependent upon the type of RNG activity proposed." (*Id.*)

696. SWG provides that, "[b]ecause each project would be unique, the proposed tariff describes multiple agreements that can be developed according to the type of activity ranging from RNG Transportation to gathering systems dedicated to RNG. (*Id.*) SWG further provides

that the tariff will specify applicable rates, identify customer and utility responsibilities, as well as identify definitions specific to the proposed schedule. (*Id.*)

BCP's Position

697. BCP does not address this issue.

Staff's Position

698. Staff recommends that the Commission approve SWG's proposed Biogas and Renewable Natural Gas Tariff with additional language. (Ex. 95 at 3.) Staff states the tariff language is vague and general in nature, and does not include some components that are normally contained in a utility tariff outlining service provisions such as specific costs or rates applicable to the customer. (*Id.* at 4.) Moreover, Staff notes that while the applicant is intended to cover all costs of a project under the tariff, it would be appropriate to have the Commission ensure that each contract properly falls under it. (*Id.*)

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699. Staff recommends the tariff include additional language that is currently in SWG's Arizona Biogas and Renewable Natural Gas Tariff: "Contract agreements qualifying for service under this Rate Schedule, shall be subject to review and approval by the Commission." (*Id.*) Staff states that the language would be added to the end of the first paragraph under the rates section on page 53A. (*Id.*)

700. Staff states that it also recommends revising a provision under the "Applicability" heading on sheet 53A. (*Id.* at 5.) Specifically, Staff recommends that the first sentence read "Applicable to non-residential suppliers of Biogas and suppliers of Renewable Natural Gas (RNG) ("Applicant")." (*Id.*) Staff states that it recommends this addition for clarity and to align it with the language of Biogas and Renewable Natural Gas tariffs in other states that Staff reviewed. (*Id.*)

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SWG's Rebuttal Position

701. SWG states that agrees with Staff's proposal. (Ex. 108 at 4; Tr. at 1375.)

Commission Discussion and Findings

702. The Commission finds that SWG has demonstrated the need for the Biogas Renewable Natural Gas tariff to provide customers with a specific service while addressing an emerging customer need. The Commission further finds and agrees with Staff that certain proposed tariff language is vague and requires additional language to ensure adequate oversight. Notably, SWG agreed with Staff's recommended changes to address Staff's concerns. The Commission approves the Biogas and Renewable Natural Gas Tariff Schedule Nos. SG-RNG/NG-RNG in accordance with Staff's recommendations.

E. Compression Service Tariff

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SWG's Position

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703. SWG proposes a Compression Tariff (Schedule No. SG-CGS/NG-CGS). (Ex. 36 at 20.) SWG states that it has identified opportunities to provide high pressure compression service through facilities owned and operated by SWG and located on a customer's property. (*Id.*) SWG notes that "[b]ecause each potential project would be unique, the proposed tariff describes the specific components of the rate structure which will be designed to recover the depreciation, return on capital investment, income taxes, property taxes, and operating expenses associated with the high-pressure equipment." (*Id.*) SWG provides that "[i]n addition to specifying applicable rates, the proposed Compression Tariff identifies both customer and utility responsibilities, as well as definitions specific to the proposed Schedule No. SG-CGS/NG-CGS." (*Id.*)

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704. SWG states that typical types of customers that need high pressure compression facilities include enterprises with large vehicle fleets that could use natural gas as a transportation fuel and require natural gas fueling stations. (*Id.* at 21.) SWG provides that the Compression Tariff is not intended for residential applications. (*Id.*)

BCP's Position

705. BCP does not address this issue.

Staff's Position

706. Staff recommends that the Commission approve SWG's proposed Compression Gas Service Tariff with additional language recommended by Staff. (Ex. 95 at 6.) Staff states that it recommends the same Commission approval and "Applicability" language that it recommended for the Biogas and Renewable Natural Gas Tariff. (*Id.*) Specifically, Staff recommends that language be added to the Compression Gas Service tariff "Rates" section to include a provision that states "Contract agreements qualifying for service under this Rate Schedule, shall be subject to review and approval by the Commission." (*Id.*)

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707. SWG also recommends that under the "Applicability heading on sheet 47A, the first sentence be revised to read "Applicable to qualified non-residential Applicants requiring compressed natural gas (CNG)." Staff states that it proposed this modification for clarity and to align the language with similar tariffs in other states that Staff reviewed. (*Id.*)

SWG's Rebuttal Position

708. SWG states that it agrees to Staff's recommended modifications to the tariff language. (Ex. 108 at 4.)

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Commission Discussion and Findings

709. The Commission finds that SWG's proposed tariff would enable the utility to expand its services to address additional customer needs. The Commission agrees with Staff's recommendation and further finds that the tariff requires additional language to ensure adequate Commission oversight and more closely conform with language from similar tariffs. Moreover, SWG agrees with Staff's proposed modifications. Accordingly, the Commission approves SWG's proposed Compression Tariff Schedule Nos. SG-CGS/NG-CGS as modified by the recommendations made by Staff.

F. Tariff No. 7, Rule 2, and Rule 2D

SWG's Position

710. SWG requests changes to Tariff No. 7, Rule 2, and the addition of Rule 2.D. (Ex. 1 at 156-158.)

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BCP's Position

711. BCP does not address this issue.

Staff's Position

712. Staff recommends that the Commission approve SWG's proposed change to Tariff No. 7, Rule 2 and the addition of Rule 2.D. (Ex. 94 at 2.) Staff states that the proposed language clarifies that only the language in the tariff or Commission rules are considered agreed upon. (*Id.*) Staff states that the additional proposed inclusion of Rule 2.D is consistent with the language in SWG's Arizona Gas Tariff No. 7, Provision of Service Rule 7.1.D.1. (*Id.*)

Commission Discussion and Findings

713. The Commission finds that the proposed modifications to Tariff No. 7, Rule 2, and the addition of Rule 2.D, clarify the scope of SWG's contractual relationship with its

customers. Staff reviewed the proposed changes and additions and recommended their approval. Moreover, BCP did not dispute the proposal. Accordingly, the Commission approves SWG's proposed changes to Tariff No. 7, Rule 2, and the addition of Tariff No. 7 Rule 2.D as filed.

G. Tariff No. 7, Rule 3 - Easements

SWG's Position

714. SWG requests to modify Rule 3 of Tariff No. 7 to include Rule 3.F.1 and 3.F.2. (Ex. 1 at 161-162.)

BCP's Position

715. BCP does not address this issue.

Staff's Position

716. Staff states that the proposed changes are reasonable. (Ex. 94 at 3.) Staff contends that customers that have applied for a service should reasonably expect to provide the access necessary for SWG to provide that service. (*Id.*) Staff provides that the language clarifies that "the cost of a needed easement on private property will not be borne by other ratepayers and that the easement must be satisfactory to install and maintain gas pipelines and appurtenances." (*Id.*) Staff notes that the proposed change to Rule 3 is consistent with SWG California Tariff No. 19.D, 19.E, and 19.F. Services and Facilities on Customer's Premises. (*Id.*)

Commission Discussion and Findings

717. The Commission finds that the proposed changes are reasonable and should ensure that the utility, as part of its agreement to provide a customer with service, may access the customer's property in furtherance of the provision of service. Moreover, the Commission finds that the language protects ratepayers by clarifying that ratepayers will not be responsible for the

cost of a needed easement. Accordingly, the Commission accepts SWG's additions Tariff No. 7, Rule 3, to include sections 3.F.1 and 3.F.2, as filed.

H. Tariff No. 7, Rule 5 – Third-Party Electronic Billing

SWG's Position

718. SWG states that it proposes to implement changes related to Rule No. 5 – Electric Billing in order to provide more flexibility and update the tariff in a manner that is more consistent with current industry business practices. (Ex. 36 at 21.)

BCP's Position

719. BCP does not address this issue.

Staff's Position

720. Staff recommends that the Commission approve the proposed change to Rule No. 5. (Ex. 94 at 4.) Staff notes that "[w] the removal of the requirement to use a third-party Electronic Billing Provider, customers will have more options, such as paying bills through the SWG website. (*Id.*) Staff provides that the change will also help SWG to streamline its electronic billing process. (*Id.*)

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Commission Discussion and Findings

721. The Commission finds that the proposed modifications to Rule No. 5 – Electric Billing will provide ratepayers with more payment options while providing internal administrative benefits to SWG. Accordingly, the Commission approves SWG's changes to Tariff No. 7, Rule 5 as filed.

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I. Tariff No. 7, Rule 8.C.2.i

SWG's Position

722. SWG requests that the Commission approve changes to Tariff No. 7, Rule 8.C.2.i. (Ex. 1 at 185.)

BCP's Position

723. BCP does not address this issue.

Staff's Position

724. Staff recommends that the Commission approve SWG's proposed change to Tariff No. 7, Rule 8.C.2.i. (Ex. 94 at 4.) Staff states that the revision removes references that are no longer applicable and should be removed to provide clarity and accuracy within the tariff. (*Id.*)

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Commission Discussion and Findings

725. The Commission agrees with Staff's analysis that the proposed revision to Tariff No. 7, Rule 8.C.2.i updates the tariff to remove inapplicable references and provides more clarity and accuracy. Accordingly, the Commission approves SWG's changes to Tariff No. 7, Rule 8.C.2.i as filed.

J. Tariff No. 7, Rule 8.E

SWG's Position

726. SWG proposes the addition of Rule 8.E – Limitation of liability. (Ex. 36 at 22.) SWG provides that the "change adds greater certainty to the obligations between SWG and its customers." (*Id.*) SWG further provides that the provision's intent is to avoid overly broad liability exposure that could create upward pressure on its cost of service. (*Id.*)

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BCP's Position

727. BCP does not address this issue.

Staff's Position

728. Staff recommends that the Commission reject SWG's proposed addition of Rule 8.E. (Ex. 94 at 6.) Staff states that proposed language is broad and fails to address the possibility of gross negligence or willful misconduct of the utility. (*Id.*) Moreover, Staff is critical of the manner in which the provision is written, as there is no recourse for the customer in the event of gross negligence or willful misconduct of the company. (*Id.*)

SWG's Rebuttal Position

729. SWG states that it does not agree with Staff's concern that Rule 8.E may remove an incentive for it to behave in the most prudent manner possible because SWG is obligated to behave prudently as a highly regulated entity. (Ex. 108 at 3.) SWG provides that its failure to act prudently could result in significant disallowances or penalties. (*Id.* at 3-4.)

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730. SWG states that, provided that the Commission does not accept its original language, the following language would be acceptable and an improvement over existing tariff language:

> The Utility's liability, if any, for its gross negligence or willful misconduct is not limited by this Tariff. With respect to any claim or suit, by a customer or by any others, for damages associated with the establishment, interruption, resumption, and termination of service to a customer, the Utility's liability shall not exceed an amount equal to the proportionate charge for the service for the period during which service was affected. The utility shall not be liable for any special, indirect, or consequential damages whatsoever including, but not limited to, loss of profits or revenue, loss of use of equipment, cost of capital, cost of temporary equipment, overtime, business interruption, spoilage of goods, claims of customers of the customer or other economic harm.

(*Id.*)

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Commission Discussion and Findings

731. The Commission agrees with Staff's contention that SWG's proposed language is overly vague, fails to consider the possibility of gross negligence by SWG, and does not provide an avenue for customer recourse in the event of such negligence. Moreover, the Commission finds that the record does not adequately support acceptance of SWG's alternative proposed language. Accordingly, the Commission rejects SWG's proposed modifications to Tariff No. 7, Rule 8.E. In rejecting the provision, the Commission notes that SWG is able to address the Commission's concerns and file an updated tariff outside of a GRC.

K. Tariff No. 7, Rule 14

SWG's Position

732. SWG proposes modifying Tariff No. 7, Rule 14 – Claims against the Company. (Ex. 36 at 22.) SWG provides that "the modifications are intended to clarify that billing and service complaints should be adjudicated by the Commission." (*Id.*) SWG states that the proposed language is consistent with current practice and Commission policy to resolve disputes with the Commission and avoid the judiciary. (*Id.*)

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BCP's Position

733. BCP does not address this issue.

Staff's Position

734. Staff recommends that the Commission approve the proposed change to Rule 14. (Ex. 94 at 7.)

Commission Discussion and Findings

735. The Commission agrees with SWG that the Commission is the appropriate venue for resolving billing and service complaints that cannot be remedied at the company level. The

Commission finds that SWG's proposed modification to Tariff No. 7, Rule 14 – Claims against the Company provides clarity that benefits both ratepayers and the company. Accordingly, the Commission approves SWG's modifications to Tariff No. 7, Rule 14 as filed.

L. Tariff No. 7, Rule 16.B

SWG's Position

736. SWG requests approval of modifications to Tariff No. 7, Rule 16.B. (Ex. 1 at 206-207.)

BCP's Position

737. BCP does not address this issue.

Staff's Position

738. Staff recommends that the Commission approve the proposed change to rule 16.B. (Ex. 94 at 8.) Staff notes that the modification would remove Rule 16.B.3, which allowed SWG to install automatic meter reading or offsite meter reading devices on a customer's premises and to assess a charge when such an installation is requested and for the convenience of a customer. (Ex. 36 at 7.) Staff states that because company policy now dictates the installation of an AMR or OMR device on all customer premises, there will not be any circumstances where a customer would request an installation of such a device for customer convenience. (*Id.* at 7-8.)

Commission Discussion and Findings

739. The Commission approves the proposed changes to SWG's Tariff No. 7, Rule 16.B as filed. The Commission agrees with Staff that the current language is unnecessary and finds that removal of the language eliminates an outdated provision.

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M. Tariff No. 7, Rule Nos. 3.F 16.C.1

SWG's Position

740. SWG requests to modify Rule Nos. 3.F and 16.C. (Ex. 36 at 22.) SWG states that the modifications are intended to "clarify the customer's obligation to provide access to the company for its gas facilities whenever the company provides service through gas facilities that are installed on the customer's property." (*Id.*)

BCP's Position

741. BCP does not address this issue.

Staff's Position

742. Staff recommends that the Commission approve the proposed change to rule 16.C.1. (Ex. 94 at 8.) Staff provides that it is necessary for SWG "to have access to properties to provide service, maintain facilities, move facilities when needed, and remove facilities when no longer providing service." (*Id.*) Staff states that the "Grant of Easement" form required by SWG from the customer clarifies that SWG "will only use the easement for the purpose of providing gas service, will work with due care, and will be responsible for leaving the property in the same condition as before the work was performed." (*Id.*)

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Commission Discussion and Findings

743. The Commission finds that the proposed modifications to Tariff No. 7, Rule 3F and 16.C.1 are practical and ensure that SWG can provide adequate, safe and reliable service. The Commission further finds that the proposed changes memorialize that SWG will limit the scope of accessing customer property to providing service while further ensuring that it will respect the condition of customer property. Accordingly, the Commission approves SWG's proposed changes to Tariff No. 7, Rule 3F and 16.C.1 as filed.

N. Tariff No. 7, Rule 16.C.2

SWG's Position

744. SWG requests changes to Tariff No. 7, Rule 16.C.2. (Ex. 36 at 22.) SWG states that the proposed changes are intended to clarify the customer's obligation to provide access to the company for its gas facilities whenever SWG provides service through gas facilities that are installed on the customer's premises. (*Id.*)

BCP's Position

745. BCP does not address this issue.

Staff's Position

746. Staff recommends that the Commission approve the proposed change to Rule 16 to add Rule 16.C.2. (Ex. 94 at 10.) Staff states that the rule provides that when a customer is currently receiving service, it is the customer's responsibility to, within ten days of SWG's request, provide a non-exclusive perpetual easement at no cost to SWG. (*Id.* at 9.) Staff states that "[t]he easement must be in a form that is satisfactory to the installation and maintenance of a gas pipeline" and that the company has rights to ingress and egress. (*Id.*)

747. Staff states that the addition also describes circumstances where easements or other property rights may be deemed unsatisfactory. (*Id.*) Staff states that the changes do not prohibit the customer from requesting additional time or prohibit SWG from granting additional time to provide the easement if a good faith attempt is made. (*Id.*) Staff notes that if a request is not made, SWG may initiate the termination process, which gives the customer a ten-day notice. (*Id.*)

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Commission Discussion and Findings

748. The Commission finds that the addition of Rule 16.C.2 is reasonable and ensures that the utility should be able to access customers' premises and provide adequate service upon request to receive such service. The Commission agrees with Staff's contention that the language provides SWG and its customers with flexibility to seek additional time to make good-faith efforts, as necessary, to procure a perpetual non-exclusive easement. Further, Staff supports the language, and BCP did not oppose it. Accordingly, the Commission approves modifications and additions to SWG's Tariff No. 7, Rule 16.C.2 as filed.

O. Tariff No. 7, Rule 16.D

SWG's Position

749. SWG requests to modify Tariff No. 7, Rule 16.D. (Ex. 36 at 22.)

BCP's Position

750. BCP does not address this issue.

Staff's Position

751. Staff states that it recommends that the Commission approve the proposed change to Rule 16.D. (Ex. 94 at 11.) Staff states that the proposed change provides that "the customer will be solely responsible for any injury, damage, or loss resulting from the gas or its use loss after such gas passes beyond the point of delivery, and that the company shall not be responsible for any loss, injury, or damage" from the negligence of the customer." (*Id.* at 10.) Staff states that an additional sentence was included to clarify that SWG has the right, but not the responsibility, to refuse service to a customer if the company believes that the facilities beyond the point of delivery present a hazardous condition. (*Id.*)

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Commission Discussion and Findings

752. The Commission finds that the proposed language protects SWG from events that are outside of the control of the utility by clarifying that SWG is not responsible for damages occurring from gas after it has passed the point of delivery. Staff supports the language and BCP did not oppose the modification. Accordingly, the Commission approves SWG's request to modify Tariff No. 7, Rule 16.D as filed.

P. Tariff No. 7, Rule 16.E

SWG's Position

753. SWG proposes changes to Tariff No. 7, Rule 16.E in order to clarify SWG's service obligations and to provide a clear expectation of the scope of services that SWG provides to customers as it relates to a customer's responsibility for equipment. (Ex. 36 at 22.)

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BCP's Position

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754. BCP does not address this issue.

Staff's Position

755. Staff recommends that the Commission approve the proposed change to Rule 16.E. (Ex. 94 at 11.) Staff states that the proposed changes language in Rule 16.E from the company "performing a safety inspection upon connection" to "performing a leak check upon connection." (*Id.*) Staff further states that the change clarifies that while SWG has the right to refuse service if it detects a leak, it doesn't have the obligation to inspect, maintain, repair or warn of any condition that it might observe. (*Id.*) Staff provides that the revision also puts customers on notice that they are responsible for the "upkeep and safety standards of anything on the premises outside the scope of gas service." (*Id.*)

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Commission Discussion and Findings

756. The Commission finds that the proposed language is reasonable and clarifies the obligations of the utility and customer. Moreover, Staff recommends approval of the tariff modification and BCP did not oppose it. Accordingly, the Commission approves SWG's proposed changes to Tariff No. 7, Rule 16.E as filed.

Q. Modifications to SWG's Nevada Gas Tariff No. 7 – Service Territory

SWG's Position

757. SWG submitted late-filed Ex. 109, which contains modifications to SWG's Nevada Gas Tariff No. 7, PUCN Sheet Nos. 128-133. (Ex. 109 at 1-9.) SWG requests acceptance of the tariff and states that it merely clarifies SWG's Description of Service Area. (*Id.* at 1.)

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BCP's Postion

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758. BCP does not address this issue.

Staff's Position

759. Staff does not address this issue.

Commission Discussion and Findings

760. NRS 704.390 provides that "it is unlawful for any public utility to discontinue, modify or restrict service to any city, town, municipality, community or territory theretofore serviced by it, except upon 30 days' notice filed with the Commission, specifying in detail the character and nature of the discontinuance or restriction of the service intended, and upon order of the Commission, made after hearing, permitting such discontinuance, modification or restriction of service." Accordingly, a utility's service territory cannot be modified except by a properly filed notice to allow other parties to thoroughly vet and intervene as necessary.

761. Here, SWG submitted its tariff modification as a late-filed exhibit to its GRC application. The Commission appreciates that the filing may not, by its nature, seek to modify SWG's service territory. However, the manner in which it was filed did not provide current parties and other potentially interested parties with sufficient notice to examine the proposed changes to its tariff and ensure due process. Accordingly, the Commission rejects the proposed tariff modification. In rejecting the proposed tariff modification, the Commission notes that SWG may properly re-file it in a separate proceeding in accordance with NRS 704.390 and other applicable laws and regulations.

IX. DOCKET NO. 17-08020

A. Request to Recover Cost of Backhoe

Commission Discussion and Findings

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762. In Docket No. 17-08020, the Commission accepted a Stipulation between SWG and Staff regarding a series of incidents where SWG was implicated in violating Nevada's One Call Law and/or the Federal Pipeline Safety Regulations in multiple significant incidents. (*See* the Commission's October 18, 2018, Final Order in Docket No. 17-08020.) The utility paid significant administrative fines totaling $300,000.00 as a result of the incidents. (*Id.* at para. 10.) Relevant to this proceeding, the aforementioned order prohibited SWG from seeking "cost recovery for the replacement backhoe associated with the one destroyed" in one of the incidents. (*Id.* at Ordering Paragraph 6.)

763. In the instant Docket, SWG originally sought cost recovery of the backhoe contrary to the Stipulation in Docket No. 17-08020. SWG's own witness testified that she was aware, prior to filing its GRC Application, of the Stipulation in Docket No. 17-08020. (Tr. at 994.) Whether the backhoe's inclusion in rate base in its original application was the result of an

oversight as SWG states,[65] the result of negligent or careless record keeping and filing practices, or intentional conduct in blatant disregard or defiance of the Commission's authority, such an occurrence is unacceptable. A utility that received a substantial $300,000.00 regulatory fine should have taken corrective and preventative measures to ensure that it remained in compliance with all aspects the Commission's order. As a regulated utility in the State of Nevada, SWG has a solemn obligation to provide safe and reliable service. The public's trust is violated when a utility breaches its duty to comply with state and federal safety laws, as was the case in the above-referenced incidents.

X. NEGOTIATED RATE CONTRACTS

A. Negotiated Rate Contracts

SWG's Position

764. SWG does not address this issue in its Application.

BCP's Position

765. BCP recommends that the Commission find that SWG's Schedule No. ST-1/NT-1 generally only allows contract rate discounts to the volumetric demand and delivery charge and does not provide for adjustments to the Basic Service Charge or Transportation Service Charge. (Ex. 90 at 2, 8.) Moreover, BCP states that SWG's tariff does not allow SWG to apply rates with a different rate structure than those listed in SWG's Nevada Gas Tariff No. 7. (*Id.* at 8.)

766. BCP acknowledges that SWG may negotiate contract rates including discounts to terms other than the volumetric demand and delivery charge, as well as rates inconsistent with SWG's tariff rate design; however, such contracts require prior Commission approval. (*Id.* at 10.) BCP testifies that SWG has not obtained approval for nine of the twelve contracts at issue

[65] SWG Witness Randi Cunningham stated that the inclusion of the costs in the Application "was inadvertent." *See* Tr. at 995.

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in this proceeding. (*Id.*) BCP notes that the Commission's Order in Docket No. 09-04003 found that contracts that conform to SWG's tariff do not require Commission approval, but contracts that do not conform to SWG's tariff require Commission approval before they go into effect. (*Id.* at 25-26.)

767. BCP states that none of SWG' twelve negotiated rate contracts comply with SWG's tariff. (*Id.* at 15.) SWG provides a detailed analysis to support this conclusion. Due to SWG's claim of confidentiality, BCP assigns each contract customer a numeric designation. (*Id.* at 16.)

768. BCP notes that "five of six contract customers in SWG's NND pay only a Basic Service Charge of $1,000.00 per month and Transportation Service Charge of $500.00 per month." (*Id.* at 11.) BCP provides that SWG essentially eliminated or waived all volumetric charges and demand charges for these customers. (*Id.*) BCP further provides that "none of the other seven contract customers pay a reduced or discounted Demand Charge per therm consistent with the rate structure in the Statement of Rates." (*Id.*)

769. BCP states that SWG's tariff allows SWG to "reduce" rates to specify allowable adjustments to the Volumetric and Demand charges for a contract rate; however, it does not allow SWG to eliminate or waive these charges. (*Id.*) Accordingly, BCP argues that SWG's tariff does not allow SWG to apply a rate of $0.00 per therm for the volumetric demand and delivery charges for contract customers. (*Id.* at 12.)

770. BCP identifies the following violations of SWG' tariff in its contracts with customers in SWG SND:

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a. Contract Customer 1 in SWG's SND does not pay the Basic Service Charge or the Transportation Service Charge; and does not pay the fixed Monthly Demand Charge; (*Id.* at 16.)

b. Contract Customer 2 in SWG's SND pays a Basic Service Charge of $750.00 a month instead of the SWG tariff rate for a customer with two meters, of $2,000.00 a month; and does not pay the fixed Monthly Demand Charge; (*Id.* at 17, 18.)

c. Contract Customer 3 in SWG's SND pays a Basic Service Charge of $1,000.00 instead of the SWG tariff rate for a customer with two meters, of $2,000.00 per month; receives a $0.00 per therm volumetric rate and does not pay the fixed monthly Demand Charge; (*Id.* at 18.)

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d. Contract Customer 4 in SWG's SND receives a $0.00 per therm volumetric rate; and does not pay the fixed monthly demand charge. (*Id.* at 19.) 001863

e. Contract Customer 5 in SWG's SND receives discounts to the Basic Service Charge and Transportation Service Charge; receives a $0.00 per therm volumetric rate; and does not pay the fixed Monthly Demand Charge; and (*Id.* at 20.)

f. Contract Customer 6 in SWG' SND receives a $0.00 per therm Demand Charge. (*Id.* at 20-21.)

771. BCP identifies the following violations of SWG tariff and NAC 704.518 in its contracts with customers in SWG' NND:

a. Contract Customer 1 in SWG' NND pays a Volumetric Charge of $0.01442 per therm, which is higher than the Volumetric Charge of $0.01129 per therm

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in the Statement of Rates. (*Id.* at 22.)[66]; and receives a rate of $0.00 per therm for the Demand Charge; and (*Id.*)

b. Contract Customers 2 through 6 in SWG' NND receive a rate of $0.00 per therm for the Volumetric Demand and Delivery Charges. (*Id.*)

772. BCP recommends that the Commission find that there is no authority in SWG's tariff to waive the volumetric demand and delivery charges by applying a rate of $0.00 per therm. (*Id.* at 10-11.)

773. BCP recommends that the Commission find that SWG was required to obtain Commission approval of three of the negotiated rate contracts for Contract Customers in SWG's SND and six of the negotiated rate contracts for Contract Customers in SWG's NND, because they do not comply with SWG's Gas Tariff No. 7. (*Id.* at 24.)[67]

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774. BCP states that NAC 704.518(3) requires that SWG file contracts and supporting documentation of a bypass alternative for Commission approval if the terms of the contracts do not conform to SWG's tariff. BCP further states that the Commission's Order in Docket No. 93-3003 did not exempt SWG from filing contracts with the Commission for approval. (*Id.* at 25.) BCP provides that the Order in Docket No. 93-3003 only applied to contracts executed pursuant to SWG's Schedule No. SG-OS/NG-OS (Optional Gas Service) and still required that they be filed with the Commission pursuant to NAC 704.516 through 704.528. (*Id.*)

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775. BCP takes issue with the manner in which SWG calculated its informative CCOS study. (*Id.* at 28.) BCP states that SWG' CCOS calculations show annual revenues of $14,997,

[66] BCP points out that SWG's tariff "does not provide for rate terms that are higher than the tariff rates." (Ex. 90 at 22.)

[67] BCP notes that the Commission approved three of the negotiated rate contracts for contract customers in its SND: Saguaro, NPC, and Desert Star Energy. (*Id.*)

567.00 and annual rate of return of 18.45 percent from contract customers in its SND, and $403.467.00 and 296.61 percent from contract customers in its NND. (*Id.* at 28-29.)

776. BCP points out that "the peak month allocator is a key driver of the allocation of revenues to customer classes in the CCOS study", and that allocators used in the CCOS study must be consistent for all customer classes to fairly assign revenues. (*Id.*) BCP provides that SWG' CCOS calculations do not meet these standards. (*Id.*)

777. BCP states that SWG's informative CCOS study used the peak month therms for only two of its six contract customers in SWG's NND, which accounts for only 18 percent of total therms transported through SWG's SND distribution system that month. (*Id.*) BCP further states that SWG's informative CCOS study used the peak month therms for only 21.3 percent of the total therms transported in SWG's NND distribution system that month. (*Id.*)

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778. BCP states that it conducted its own CCOS study that fully included the peak month volumes for SWG's contract customers. (*Id.* at 29.) BCP provides that for SWG's SND, it calculated a $15,320,517.00 class net operating margin when all contract customers are grouped as a class, compared to SWG's estimated $14,997,567.00 – an annual deficiency of $322,950.00 when all peak month volumes of contract customers are included. (*Id.* at 29-30.) BCP further provides that it calculated SWG's NND net operating margin to be $2,201,381.00 when all contract customers are grouped as a class compared to the $403,467.00 in present contract revenue – an annual revenue deficiency of $1,797,914.00 when all peak month volumes of the contract customers are included in the CCOS study. (*Id.* at 30.) Accordingly, neither SWG's SND nor NND contract customers pay their average rate of return. (*Id.*)

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779. In addition to its concerns regarding whether SWG's contract customers pay rates which generated revenues paying SWG's authorized rate of return, BCP states that it was

imprudent for SWG to not file its NCA 1 and NCA 2 contracts with the Commission. (*Id.* at 33.) BCP provides that the contract issue has been raised in every GRC proceeding since 2001 – eight years prior to SWG renegotiating the contracts with NCA 1 and NCA 2. (*Id.*) BCP further provides that given the concerns raised in previous proceedings regarding whether rates from contract customers and the flow-back of contract revenues in the CCOS study resulted in just and reasonable rates for full margin tariff customers, it would have been prudent for SWG to seek Commission approval of the contracts prior to renegotiating them. (*Id.*)

780. To address these two concerns, BCP recommends that the Commission find that the contract revenue from the rates paid by SWG's contract customers do not provide the average rate-of-return when grouped as a customer class, and that that the difference in revenues from the inclusion of NCA 1 and 2 in the CCOS study and the present contract revenues from NCA 1 and NCA be imputed as a reduction to SWG's revenue requirement in its SND. (*Id.* at 31.)

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781. BCP also recommends that the difference in revenues from the inclusion of SWG's NND Customer 1 in the CCOS study and the present contract revenues from that customer should be imputed as a reduction to SWG's NND revenue requirement. (*Id.* at 31, 34, 35.) BCP provides that the reduction in annual revenue requirement based upon SWG's requested certified revenue requirement is $659,045.00; however, if the Commission accepts BCP's recommendation to classify costs recorded in FERC Account Nos. 813 (Other Gas Supply Expenses) and 871 (System Load Dispatching) as commodity-related costs, the reduction in annual revenue requirement increases to $798,739.00. (*Id.* at 35.) BCP notes that "to the extent that the Commission reduces SWG's certification requested revenue requirement, the reduction to the annual revenue requirement would be less because the calculated CCOS study net

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operating margin for [SWG's NND] Customer 1 would decrease and therefore the differential to the contract revenues would decrease." (*Id.*)

782. BCP does not recommend imputation of revenues from SWG's SND contracts with Saguaro Power Company, NPC, and Desert Star, because these contracts were previously approved by the Commission. (*Id.* at 32, 32)

783. Furthermore, BCP does not recommend imputation of revenues from Las Vegas Generating Station II's contract, because it does not support imputation of revenues from contracts executed prior to the implementation of PHMSA's Transmission Integrity Management Program ("TRIMP") rule in 2003. (*Id.* at 31-32.) [68]

784. Additionally, BCP recommends that the Commission direct SWG to provide notice to Contract Customers 2 through 6 in its NND to terminate their contracts to allow the customers to become direct connect customers of SWG's affiliate – Paiute Pipeline Company ("Paiute"). (*Id.* at 36, 38.) BCP provides that if the customers are truly direct connect customers of Paiute, they should become direct customers of Paiute. (*Id.*) BCP further provides that the five direct connect customers are only paying a Basic Service Charge of $1,000.00 a month, and a $500.00 Transportation Service Charge – an insignificant contribution the margin paid by all full margin customers. (*Id.*) BCP contends that if the above-referenced customers "are not making a sufficient contribution to pay for distribution plant investment, general plant investment, depreciation expenses, and non-gas operations & maintenance expenses, then there is little value to full margin tariff customers to have these five direct connect customers as retail customers of SWG." (*Id.*)

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[68] NCA 1 and NCA 2 were renegotiated subsequent to the implementation of PHMSA's TRIMP. (*Id.*)

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Staff's Position

785. Staff states that SWG offers two broad types of service: "1) bundled, full-service natural gas commodity deliveries and 2) unbundled transportation service that allows customers to purchase their own natural gas commodity and use SWG's infrastructure to schedule, balance and deliver gas to the customer's location." (Ex. 98 at 3.) Staff further states that SWG offers full margin transportation service under tariff schedules ST-1 or NT-1 for customers in SWG's SND and NND, respectively. (*Id.*) Staff provides that not all transportation customers are full-margin, and that there are a subgroup of customers who receive service under contracts. (*Id.* at 4.)

786. Staff states that there are three types of contracts that have distinct characteristics and regulatory requirements: 1) discounted contracts; 2) contracts for special services; and 3) legacy contracts that pre-date current regulations governing SWG's transportation service contracts. (*Id.*)

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787. Staff states that discounted transportation contracts are used for customers that operate under Section 3.1 (g)-(h) of SWG's ST-1 or NT-1 tariff. (*Id.*) Staff further states that these customers may pay a lower volumetric and/or demand rate if they can demonstrate that their requirements can be served by alternate fuels or other natural gas pipelines. (*Id.*) These customers pay a rate that may be lower, but their rates otherwise follow the rate design of SWG's tariff. (*Id.* at 5.) Staff states that because the discounted contract rates retain the overall rate design in SWG's Commission-approved tariff, SWG may simply file the executed contracts with accompanying supporting documentation of bypass alternative with the Commission, without seeking pre-approval from the Commission. (*Id.*)

788. By contrast, Staff states that contracts for special services are used for customers that operate under NAC 704.518(3)-(7) and incorporate certain provisions of SWG's ST-1 or NT-1 tariff by reference. (*Id.*) Staff provides that these customers may receive rates which are different from the rates set forth in SWG' tariff and may not follow the tariff's rate design. (*Id.*) Staff further provides that a customer seeking a contract for special services must demonstrate its ability to bypass SWG's system and pay a negotiated contract rate to SWG that is different from SWG' tariff rate. (*Id.*) For example, Staff notes contracts for special services can include a high, fixed demand charge in exchange for not paying a volumetric rate based on usage. (*Id.*) Staff states that because contracts for special services do not need to comply with SWG's tariff rate design, such agreements must be individually approved by the Commission pursuant to NAC 704.518(3)-(5) in order to be made effective. (*Id.*)

789. Staff states that legacy contracts are agreements that pre-date current regulations and tariff provisions outlined in NAC 704.518, incorporate contract rates largely unrelated to otherwise applicable tariff rates, and have been separately approved by the Commission. (*Id.* at 5-6.)

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790. Staff states that during discovery, SWG provided that the nine above-referenced contracts are "discounted contracts" subject to its tariff ST-1/NT-1 provisions, including the demonstration of bypass alternative. (*Id.* at 6.) Staff notes that three other contracts, NPC, Saguaro, and Desert Star, were identified and found to not be at issue. (*Id.*)

791. Staff states that SWG is not complying with its tariff because it reduced its Basic Service Charge ($1,000.00 per meter) for certain customers, which is not provided for, and thus violates its tariff. (*Id.* at 9.) Staff further states that SWG "appears to be stretching the meaning

of a rate "adjustment" by allowing fixed and $0.00 per therm charges in certain contracts because the volumetric charge in SWG's tariff contemplates a charge per therm. (*Id.* at 10.)

792. Staff states that SWG is also "inconsistently complying with its contract filing requirements by filing negotiated rate contracts late or not at all." (*Id.* at 10.) Staff notes that SWG's inflation adjustment for Cyanco filed in Docket No. 18-06016 showed that the contract was renegotiated in 2016; however, SWG did not file the 2016 contract with the Commission until Staff issued data requests regarding the inflation adjustment due to a reference to a new contract that was not on file with the Commission. (*Id.*)

793. Staff states that if the contracts in violation of SWG's tariff are properly classified as "contracts for special services" pursuant to NAC 704.516 through 704.528, the contracts would still not be fully compliant with Commission regulations because the agreements never received the Commission approval required for these types of contracts. (*Id.* at 11.)

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794. Staff states that if the nine contracts at issue are classified as "contracts for special services," they must comply with the provisions of NAC 704.516 through 704.528. (*Id.*) Staff notes that, in particular, NAC 704.518(3) provides that a "utility shall file with the Commission an application for approval of a contract for special services between the utility and the generating, industrial, or large customer… A utility shall not provide service to a generating, industrial, or large customer pursuant to a contract of special services until the contract is approved by the Commission." (*Id.* at 12.)

795. Staff provides that, with respect to contracts for special services, "NAC 704.518(4)(b) & 7(a) requires a customer who seeks a contract for special services to demonstrate that a bona fide alternative is available, and that SWG, in establishing the rates and charges under a contract for special services, must ensure the customer has a "bona fide

alternative." (*Id.* at 16.) Staff contends that the regulations require the demonstration of "a bypass alternative. (*Id.*) Staff further contends that providing "some form of an economic bypass study is an integral part of an application requesting Commission approval of a contract for special services." (*Id.*)

796. Staff further provides that discounted contracts require the economic bypass study pursuant to Section 3(g) of SWG's transportation tariff, Schedule No. ST-1/NT-1, which states that "[p]rior to initiating service under this provision, the company shall file the executed service agreement and supporting economic studies with the Commission." (*Id.*)

797. Staff states that under the terms of SWG's tariff, SWG must file an executed service agreement and documentation satisfying the 3-prong test of bypass alternative with the Commission before operating under the terms of a discounted contract. (Ex. 96 at 2-4.)

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798. Staff states that SWG has not filed the supporting documentation of bypass alternative with the Commission as required by its tariff Schedule ST-1/NT-1 and that on many occasions, Staff has had to file data requests to obtain copies of contracts and studies that should have been filed with the Commission. (*Id.* at 19.) Staff contends that SWG has failed to adhere to the filing requirements of its tariff, which has made Staff's assessment of the contracts and supporting studies more difficult. (*Id.* at 19-20.)

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799. Staff states that its confidential analysis shows that none of the four contracts reviewed by Staff complied with the requirement to document a bypass alternative. (*Id.* at 20.) Staff further provides that such a demonstration requires that the customer "demonstrate that the alternative is economically and operationally feasible and that the cost to the customer to bypass the system of the utility is less than the marginal cost needed for the utility to serve the customer" as delineated in NAC 704.518(7) (a). (*Id.* at 20-21.)

800. Staff further states that SWG has not filed supporting documentation of bypass alternative for its contracts with LV Cogen II, EP #1, EP #2, Premier Magnesia, Newmont Gold (Carlin), and Newmont Twin Creeks. (*Id.* at 18). Staff further states that SWG has indicated that it did not have documentation of bypass alternative for its EP #1, EP #2, Premier Magnesia, Newmont Gold (Carlin) and Newmont Twin Creeks contracts. (*Id.*) Staff provides that the Commission does not have an economic bypass study for LV Cogen II on file. (*Id.*)

801. Staff recommends that the Commission find that SWG's contracts with Cyanco, EP #1. # 2, Newmont Gold (Carlin) & Twin Creeks, Premier Magnesia, LV Cogen II and NCA #1 and #2 are not fully compliant with SWG's tariff, Schedule No. ST-1/NT-1, including the demonstration of bypass alternative, and that the rate designs in the aforementioned contracts are most appropriately characterized as contracts for special service. (*Id.* at 8.)

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802. Staff recommends that the Commission confirm that SWG is required to file documentation of bypass alternative for all contracts, including contracts for "directly connected customers" executed under Section 3(g) of ST-1/NT-1 or under NAC 704.518, with the Commission. (*Id.* at 14-17.)

803. Staff recommends that the Commission order SWG to file supporting documentation of bypass alternative for its contract with LV Cogen II, and renegotiate and file new contracts and supporting economic studies for the expired contracts with EP #1, EP #2, Newmont Gold (Carlin), Newmont Twin Creeks, and Premier Magnesia within nine months of the date of the issuance of the Commission's final order. (*Id.* at 17.)

804. Staff states that SWG is still providing transportation service pursuant to expired contracts to EP #1, EP #2, Premier Magnesia, Newmont Gold (Carlin), and Newmont Twin Creeks and notes that some of them expired decades ago. (*Id.* at 19.) Staff provides that SWG

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has been providing service under these contracts pursuant to an evergreen clause contained in its tariff, and "these contracts were neither renegotiated nor have they ever been filed with the Commission." (*Id.*)

805. Staff states that in SWG's 2009 GRC, the Commission directed the utility to renegotiate expired contracts and file the new agreements with the Commission. (*Id.* at 20.) Staff acknowledges that it had previously testified that SWG had complied with the Commission's request, but notes that SWG had not actually filed new contracts to replace the old agreements, and instead provided Staff with updated price sheets that were signed subsequent to the 2009 Commission order. (*Id.*) Staff states that while it previously found that sufficient, Staff's current recommendation is based upon a better understanding and appreciation for supporting economic studies. (*Id.* at 20-21.) As Staff explained at hearing, while Staff has performed some review of SWG contracts previously, "to the best of my knowledge a review of this level of detail has not previously been conducted." (Tr. at 1279).

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806. Staff contends that "such [economic bypass] studies are essential to assess the reasonableness and justification for a contract and the rates contained within it, regardless of whether the customer is directly connected to an alternative pipeline." (*Id.* at 21.) Staff further contends that, "without such studies, the Commission would be left without any means to ensure the reasonableness of a contract, whether it is executed under SWG's tariff" or governing regulations for special services. (*Id.*) Staff also notes that absent further Commission action, the expired contracts may continue to operate in perpetuity pursuant to evergreen clauses. (*Id.*)

807. Accordingly, Staff recommends that the Commission order SWG to "renegotiate and file new contracts and supporting economic bypass studies for the expired contracts with EP

#1, EP #2, Newmont Gold (Carlin), Newmont Twin Creeks, and Premier Magnesia, within nine months of the date of the issuance of the Commission's final order in this Docket." (*Id.* at 21-22.)

808. Staff states that SWG has not updated the price lists for its NND customers since SWG's 2012 rate case for the contracts with EP #1, EP #2, Premier Magnesia, Newmont Gold (Carlin), and Newmont Twin Creeks. (*Id.*)

809. Staff states that in CCOS studies, revenues from contract customers are used to offset the amount of revenues paid by other customer classes, which SWG refers to as "full margin customers." (Ex. 103 at 2, 8.) Staff provides that the revenues from contracts are used to offset the revenues to be collected from full margin customers because, but-for the negotiated contracts, the loss of these entities as customers would have meant the loss of the transportation customers' billing determinants, requiring SWG's remaining customers to pay a greater portion of costs. (*Id.* at 2-3, 8-9.) Accordingly, Staff provides that, by retaining the customers on SWG's system, it helps reduce the costs borne by the remaining customers. (*Id.* at 3, 9.)

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810. Staff questions "the reasonableness of some of the allocations and allocation factors used in the CCOS studies filed by SWG", including but not limited to SWG's use of a single critical peak, and SWG's allocation of distribution investments and transmission investments. (*Id.* at 12.).

811. Staff ran the CCOS study using alternative allocation factors and found that SWG' contract customers "do not provide SWG with enough revenues to cover the costs to serve this customer class in the SND or the NND." (*Id.* at 14.).

812. Staff also provides that SWG' recent filing in Docket No. 18-08016 identified costs that are being incorrectly "spread to all customer classes and not to the transportation customers, even when such costs were caused by the NT-1/ST-1 customers." (*Id.* at 15.).

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813. Staff states that it is concerned with SWG's alleged violations of its own tariff and the Commission's regulations. (*Id.* at 5, 8.) Staff provides that SWG's tariff and the Commission's regulations provide SWG with tools to retain customers, provided that customer's bypass is physically, operationally, and economically feasible and imminent, while ensuring that those rates and services do not impose a burden or cause a harm to ratepayers. (*Id.* at 5, 8-9.) Staff's concern relates to the possibility that the costs associated with serving the contract customers may be shifting to remaining ratepayers without justification, which Staff contends would be inappropriate and unreasonable. (*Id.* at 5, 9.)

814. Staff recommends that the Commission impute the revenues into the cost of service that SWG would have received had the contract customers taken service under the otherwise applicable class in lieu of the revenues actually received by the customers. (*Id.* at 5-6, 9.) Staff recommends that the Commission impute up to $3,590,356.00 for rate making purposes in SWG's NND. (Ex. 103 at 2.) For SWG's SND, Staff recommends that the Commission impute up to $13,031,780.00 for rate making purposes. (Ex. 103 at 8.)

815. Staff provides that it would be unreasonable for remaining SWG customers to absorb costs associated with SWG violating its own tariff and Commission regulations. (*Id.* at 6, 9.)

816. Staff states that SWG's CCOS study lists the contract customers as rate class NG-G4 for SWG' NND and SG-G4 for its SND. (*Id.* at 6, 10.) Staff states that using the proposed certification rates for the NG-G4 and billing determinants for those customers would lead to an imputation of revenue of up to $3,590,356.00 for the NND; however, that tariff applies to customers that utilize SWG's distribution facilities to receive service. (*Id.*) Staff notes that SWG indicated that all of the contract customers in the NND are direct connect customers of Paiute

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and have minimal, if any distribution facilities associated with their service. (*Id.* at 6-7.) Accordingly, Staff contends that the use of the NG-G4 rates could result in overstating the revenues that SWG should have received from the customers of those noncompliant contracts. (*Id.* at 7.), noting that SWG states that it does not have a tariff available for direct access customers served by SWG. (*Id.*)

817. Staff states that utilizing the proposed certification rates for the SG-G4 and billing determinants for the relevant customers in SWG' SND leads to a revenue imputation of up to $13,031,780.00. (*Id.* at 10.) Staff provides that it does not have the same concern about direct access customers that it does for the NND because the contract customers in SWG' SND use SWG's distribution system to move their gas supplies, and without the contract customers, would be subject to the SG-G4 rates. (*Id.*)

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818. Staff states that the Commission has broad authority in setting rates and could impute whatever amount it deems appropriate or impose a civil penalty in a separate proceeding. (*Id.* at 6, 7, 10.) Staff states that the imposition of a penalty would go to the State's general fund and would not address the problem with respect to SWG's customers. (*Id.* at 7, 10-11.)

819. Staff recommends that the Commission find that four of SWG's current contracts are non-compliant with SWG' tariff because SWG has failed to demonstrate that bypass is economically, operationally, and physically feasible and imminent with respect to those contracts (also referred to as the "three-prong bypass feasibility test"). (Ex. 96 at 2.) Staff provides that, as noted in SWG' tariff (Schedule No. ST-1/NT-1 § 3.1(g)), the demonstration of eligibility "shall include engineering studies, cost estimates, economic feasibility analyses, the ability to obtain all necessary right-of-way, and the ability to obtain upstream transportation capacity sufficient to supply the customer's requirements." (*Id.*)

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820. Staff also recommends that the Commission open an investigation and rulemaking to address issues identified by Staff and other parties in the pre-hearing briefs, as well as consideration of potential revisions to SWG's tariff, Schedule No. ST-1/NT-1. (Ex. 98 at 23.) Staff provides that addressing SWG's contracts in a separate rulemaking will enable the Commission to propose clarifications to the tariff and regulations while ensuring that the contracts are appropriately addressed in other proceedings going forward, such as the GIR or expansion proceedings. (*Id.*)

821. Regarding SWG's CCOS study of the costs of its contract customers, Staff states that it does not request immediate modifications of SWG's CCOS study, because Staff believes that a higher priority should be placed upon other issues regarding SWG's contract customers. (Ex. 103 at 16.) However, Staff recommends that the Commission direct SWG to address Staff's concerns in revisions to the CCOS study it will file with SWG' next general rate case. (*Id.*)

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SWG's Rebuttal Position

822. SWG states that Staff and BCP's recommendations contradict Staff's testimony in Docket 12-04005, where Staff found SWG to be in compliance with its contracts and found that their contracts were reasonable and provided a positive rate of return/net income. (Ex. 113 at 2.) SWG provides that since Docket No. 12-04005, no material changes have been made to its Nevada Gas Tariff No. 7, the NRS, or the NAC regarding the approval or execution of contracts. (*Id.*) SWG further provides that since its last GRC, it has not entered into any additional contracts and only one contract customer, Cyanco, has been renegotiated. (*Id.* at 2-3.) Accordingly, SWG contends that all of the other contracts that Staff and BCP claims to be non-compliant have been previously reviewed and found to be reasonable and compliant. (*Id.* at 3.) SWG further contends that, notwithstanding other issues raised in this docket regarding

contracts, Staff and BCP's recommendation would represent an extreme and punitive disallowance of its authorized revenue of up to approximately $3.5 million in its NND and $13 million in its SND. (*Id.*)

823. SWG states that calculating its rates for full-margin customers requires 1) determining the calculation of the annual revenue requirement; 2) deducting revenue derived from service to the contract customers from the total revenue requirement; and 3) determining the amount of revenue collected through rates for each of the full-margin rate schedules. (*Id.*) SWG provides that "imputing additional revenue to the NRCs reducing the amount of revenue collected from SWG full-margin rate schedules." SWG contends that in order to recover the lost revenue resulting from the proposed imputation, it would need to break its current negotiated contracts, which could result in costly litigation. (*Id.* at 3-4.) SWG further contends that "there is no cost-of-service basis to charge contract customers more than they currently pay as their rates already produce greater than the system rate of return." (*Id.* at 4.)

824. SWG states that its contracts have been addressed in previous dockets. (*Id.*) SWG notes that in Docket No. 01-7023, the Commission ordered SWG to include contract customers as a class in its CCOS study and noted that using the same allocation methods as other classes in the study would be inappropriate because it would not reflect the characteristics of each contract customer. (*Id.*)

825. SWG states that pursuant to the order in Docket No. 01-7023, SWG included the contracts as a customer class in its CCOS study to enable the Commission, Staff, and BCP to review whether the customer provided a positive benefit to the system. (*Id.*) SWG provides that its CCOS study analyses showed that its rate of return from the contract customer class was greater than its proposed system rate of return and that the contract customers benefitted the

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other customers in the system, and summarizes its view of the results of the embedded CCOS study filed in Docket No. 04-3011. (*Id.* at 4-5.).

826. SWG states that in Docket No. 04-03011, the Commission "did not allocate any costs or impute any revenue to the NRC class." (*Id.*)

827. SWG notes that the number of contract customers has dropped from 23 customers to 12 customers. (*Id.*) SWG notes that three of the remaining customers operate under approved contracts for special services, while only four have executed new contracts (Cyanco (2016), Premier Magnesia (2010), NCA #1 (2010), and NCA #2 (2010). (*Id.*) SWG provides that all other customers have been operating under the same contracts since 2004. (*Id.* at 5-6.)

828. SWG states that it filed all of its executed service agreements and supporting economic studies and renegotiated its expired contracts as required in Docket No. 09-4003. SWG states further that in Docket No. 12-04005, it included an allocation of costs for Premier Magnesia, NCA #1, and NCA #2 and an additional allocation of costs for every other contract in existence except the three Commission-approved contracts for special services. (*Id.* at 6.)

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829. SWG states that the CCOS study in Docket No. 12-04005 showed that the rate of return for the contract class was greater than the proposed system rate of return, with SND contracts providing a rate of return ranging from 21.69 percent to 82.18 percent, and NND contracts providing a rate of return ranging from 156.59 percent to 292.13 percent. (*Id.* at 7.)

830. SWG also states that, in Docket No. 12-04005, Staff and BCP testified that SWG was in compliance regarding its contracts, and the Commission did not allocate any additional costs or impute any revenues to the contract customer class. (*Id.*)

831. SWG states that in Docket No. 14-06004, it provided copies of all contracts in its SND and NND to BCP and Staff. (*Id.* at 9.) SWG further states that its contracts have been

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addressed in multiple GIR dockets because NAC 704.7985 requires that all customers, except for contract customers, pay the GIR rate for the cost of GIR projects, and that contract customers only pay a GIR rate if the replacement of a pipeline benefits that contract customer. (*Id.*) SWG notes that in those proceedings, no contracts were identified as non-compliant and thus subject to the full GIR rate. (*Id.*)

832. SWG states that its CCOS study analyses do not support the revenue adjustments proposed by Staff or BCP. (*Id.* at 11.) SWG provides that imputing additional revenue to contract customers would only increase the interclass rate subsidy that contract customers provide to other customers and would be contrary to establishing cost-of-service based rates. (*Id.*) SWG argues that a case can be made that in seeking cost-of-service based rates, the Commission could correct the interclass subsidy these customers are currently providing with the addition margin the contract customers provide to the benefit of other customers. (*Id.* at 11-12.)

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833. SWG disagrees with Staff and BCP's assertion that its contracts are non-compliant with its tariff, and notes that in previous proceedings its contracts (with the exception of the Cyanco contract) have been either not contested or found to be in compliance. (*Id.* at 12, 13.)

834. SWG contends that "it is more important the totality of each contract rate design than to focus on individual components that could potentially have been included in a customer's rate structure." (*Id.* at 13.) SWG asserts that when contracts are accounted for in a CCOS study, "there is no difference if the revenues are collected as a demand rate, commodity rate or basic service charge – it is the total dollars that matter." (*Id.*) SWG further asserts that the allocation of payment between various rates is secondary to ensuring that its contracts meet the minimum annual margin needed to cover the costs to serve the contract customers. (*Id.*)

835. SWG states that it did not bring its contracts to the Commission for approval as special contracts because there was nothing unique about the service being provided and the revenues for each customer exceeds the rate of return. (*Id.* at 14.) Given that, SWG states that the agreements did not need to be filed for Commission approval. (*Id.*) Moreover, SWG states that the Commission indicated that it does not desire that all contracts be brought before the Commission for approval. (*Id.*) SWG points to the Commission's November 3, 2009, Order in Docket No. 09-04003, which stated "the Commission finds that it would not be appropriate to require the filing for approval by the Commission of all service agreements between SWG transportation customers under ST-1 and NT-1 tariffs. The requirement would require deviation from NAC 704.518 and would likely violate NRS 704.075." (*Id.* at 14-15.)

836. SWG argues that Staff and BCP "attempt to manipulate the company's CCOS study to provide support for the extreme recommendation that revenue should be imputed." (*Id.* 15.)

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837. SWG asserts that Staff's allocation of costs to contract customers in its CCOS study adjustments are contrary to previously approved studies, and that Staff and BCP both fail to acknowledge that the contract customers are not served from low pressure distribution facilities. (*Id.* 15-16.)

838. SWG compared the net plant allocated by Staff, BCP, and SWG to the contract customers in their respective CCOS studies to the net book value of SWG's facilities installed to serve the customers and found that Staff and BCP's calculations are "extreme and unsupported." (*Id.* at 16.) SWG provides that Staff allocated 33 percent of SWG's distribution facilities on commodity, which it contends violates the 50 percent customer and 50 percent demand allocation of the facilities used in previous dockets. (*Id.*) SWG further provides that Staff

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allocates Gas Transmission system facilities 50 percent on commodity in violation of the 100 percent coincident peak demand allocation approved in previous proceedings. (*Id.* at 16-17.)

839. SWG states that Staff and BCP's analyses are also problematic because they allocate substantial amounts of low-pressure distribution facilities although none of the contract customers receive service from such facilities. (*Id.* at 17.) SWG further states that LV Cogen II, NCA #1, and NCA #2 are each served from a pipeline connected directly to Kern River, and that such contractors do not require 11.6 percent or 6.9 percent of SWG's SND total net plant to be served. (*Id.*)

840. SWG provides that "Staff's allocation of net plant to the NRCs of $156.8 million exceeds the total value of SWG net transmission plant of $95.0 million by over 60 percent, while BCP's allocation of net plant to the NRCs essentially equals SWG net transmission plant." (*Id.*) SWG contends that, effectively, Staff and BCP's analyses would not charge SWG's remaining customers anything for SWG's SND transmission plant, which is sized and built to meet all customers' peak winter demands. (*Id.*) SWG presents a similar analysis for NND. (*Id.* at 18.)

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841. SWG provides that CCOS studies can diverge from measuring cost-of-service when manipulated to use commodity-based allocation factors to measure value of service, when it inappropriately includes all contractors in the allocation of distribution costs. (*Id.* at 18.)

842. SWG states "[w]hen dealing with very large and uniquely situated customers, like the NRCs, each customer's location and specific facilities must be considered for the CCOS study to be of any real value as a tool for rate design and/or determining whether customers are contributing a positive rate of return to the system." (*Id.* at 19.) Accordingly, SWG contends that Staff and BCP's respective studies are unreliable for use in rate design. (*Id.*)

843. SWG states that it is not appropriate to assume that contract customers would be charged G-4 rates in lieu of their respective contract rates. (*Id.* at 20.) SWG provides that "the facilities used to serve the NRCs are identifiable, limited in scope, and do not include any low-pressure distribution facilities, and therefore, NRCs should not be allocated/pay for the corresponding system costs." (*Id.*) Moreover, SWG further provides that the "NRCs are much larger on average than SWG G-4 customers." (*Id.*) SWG notes that in its NND, contract customers use 15 times more gas annually than G-4 customers, and in the SND, contract customers use 67 times more gas annually when compared to G-4 customers. (*Id.*) SWG asserts that the acceptance of its CCOS study "shows the NRCs are generating revenues greater than the system rate of return" and that if any adjustment is made, it should be to reduce contract revenues. (*Id.*)

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844. SWG disagrees that recent PHMSA rules have resulted in making bypass a non-viable option for any customers. (Ex. 110 at 5.) SWG states that current contract customers are large and sophisticated companies that have the ability to construct and operate their own pipeline facilities or contract for the services. (*Id.*) SWG notes that six of the existing contract customers "operate utility-scale power plants are experienced in the energy industry, well versed complying with safety regulations and have the expertise to safely operate an underground pipeline." SWG also argues that given Cyanco's experience in safety and complex manufacturing, it also has the technical expertise to construct and operate a bypass pipeline and connect directly to Paiute. (*Id.* at 5-6.)

845. SWG states that its tariffs are designed in consideration of each individual bypass option. (*Id.* at 6.) SWG further states that in all cases, it establishes a floor in setting the rate that is the equivalent cost for the customer to construct new gas pipeline facilities to bypass SWG's

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system and connect directly to the nearest interstate pipeline or alternate fuel source. (*Id.* at 6.) SWG provides that, at a minimum, the rates must earn a rate of return that won't cause other customers to subsidize the cost of the service for contract customers. (*Id.*)

846. SWG distinguishes between "Direct Connect" customers and Cyanco, Desert Star, LV Cogen II, NCA #1, NCA #2, NPC, and Saguaro. (*Id.* at 6-7.) SWG states that for Direct Connect customers, it does not make sense to conduct a bypass study because the customers have already bypassed SWG's system through direct connections to Paiute and are not served by SWG facilities. (*Id.* at 15.) SWG provides that, even without any analysis, it can be concluded that the cost for these customers to bypass would be zero. (*Id.*) SWG asserts that the Direct Connect customer contracts conform to its tariff. (*Id.* at 15.)

847. SWG states that in Docket No. 09-04003, it was required to review contracts operating subject to an evergreen clause. (*Id.* at 16.) SWG provides that Direct Connect customers are allowed to continue in evergreen status because the customers were already connected to Paiute and therefore SWG did not have much leverage to negotiate higher rates. (*Id.*) SWG further provides that the only value it provides the customers related to the convenience of balancing gas deliveries under SWG's tariff compared to Paiute's tariff. (*Id.*) SWG notes that continuation of the contracts under evergreen clauses were important because the contracts enable SWG to curtail service in accordance with Rule No. 8. (*Id.* at 16-18.) SWG provides that if the NT-1 agreements were terminated, it could not curtail them to protect higher priority residential customers. (*Id.*)

848. SWG states that the need to curtail Direct Connect customers is an important aspect of allowing the evergreen provisions of certain contracts to continue. (*Id.*) SWG notes that Elko is downstream of Newmont Gold (Carlin) and Newmont Twin Creeks on Paiute's Elko

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lateral and that, during the winter, Newmont Gold (Carlin) was frequently curtailed by SWG to ensue service to residential customers in Elko, Nevada. (*Id.*) SWG provides that since 2013, Newmont Gold (Carlin) has been curtailed 137 times. (*Id.*)

849. SWG states that it determined, to its satisfaction, that bypass for Cyanco was economically, operationally, and physically feasible, and imminent. (*Id.* at 8.) SWG provides that Cyanco is located in a remote area outside of Winnemucca, Nevada, and near Paiute, and owns or could reasonably obtain the required land along the alignment that could be used to construct a bypass pipeline. (*Id.*) SWG notes that it acquired such rights for a rejection line it intended to build to Paiute. (*Id.*) SWG contends that Cyanco is familiar with the equipment needed for precise measurement and pressure regulation of natural gas and has the financial means/technical ability to operate a pipeline or contract with a third party. (*Id.*)

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850. SWG states that it filed the Cyanco contract and supporting economic bypass analysis with the Commission, albeit in an untimely manner due to an administrative error. (*Id.* at 9.) SWG also states that the contract conforms with the provisions of its NT-1 tariff and provides a benefit to other customers in its NND. (*Id.* at 9.)

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851. SWG states that it determined that LV Cogen II's bypass was economically, operationally, and physically feasible and imminent when it executed the contract in 2001. (*Id.* at 10, 11.) SWG further states that it timely filed the contract and analysis with the Commission and refiled it in Docket No. 09-04003. (*Id.*) SWG provides that the basic service charge in the agreement was set to $750.00 because it was the basic service charge set at the time that the contract was written. (*Id.*) SWG provides that the transportation rate was set on a fixed basis to ensure that SWG recovered the cost of the facilities installed to serve LV Cogen II. (*Id.*) SWG further provides that the adjustment provided to LV Cogen II conforms with its tariff. (*Id.* at 10.)

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SWG notes that the contract has been reviewed in multiple dockets, and that it was not aware of any claim that the contract was in violation of any regulation or tariff over the 17 years of its existence. (*Id.* at 11.)

852. SWG states that it does not agree with Staff's position that SWG violated its tariff by not having NCA #1 and NCA #2 conduct a bypass analysis because, given the volume of gas used by the customers and its proximity to the Kern River Pipeline, SWG knew that bypass alternatives were available. (*Id.* at 12.)

853. SWG disagrees with Staff's position that SWG would have been willing to allow another public utility to set up business within its service territory to serve NCA #1, NCA #2, PABCO, and Georgia Pacific. (*Id.*) SWG f states that "PABCO and Georgia Pacific are full margin transportation customers served by existing SWG facilities" and that in its analysis, "SWG assumed that NCA #1 and NCA #2 would build separate pipelines to serve the gas needs for each generating facility." SWG states that "[i]ncluding PABCO or Georgia Pacific in its analyses would have created a scenario in which multiple customers would have been served by the same pipeline" which "would essentially create a public utility on an intrastate pipeline." SWG contends such a scenario was not likely and was therefore not considered. (*Id.*)

854. SWG states that it determined to its own satisfaction that the bypass of NCA #1 and NCA #2 was economically, operationally, and physically feasible and imminent. (*Id.* at 13.) SWG further states that a bypass analysis was conducted at the time of the contract's execution, timely filed with the Commission. (*Id.*) SWG provides that the contracts have been reviewed in additional dockets, and that Staff testified that the contracts "generate a positive rate of return on rate base and that they are reasonable." (*Id.*)

855. SWG states that it chose the flat rate structure in NCA #1 and NCA #2's contracts to ensure monthly margins irrespective of whether NCA #1 and NCA #2 operate. (*Id.*) SWG further states that it was able to contract 10 years of a "predictable margin at rates greater than what was needed to recover the cost of service" to serve the customers. (*Id.*) SWG contends that it would not have likely guaranteed ten years of margin if NCA #1 and NCA #2 were full margin G-4 customers because there would have been no incentive on the customers' end to agree to a minimum annual volume or minimum annual margin if it was paying the full G-4 margin rates. (*Id.*)

856. SWG states that the rates for NCA #1 and NCA #2 conform with the provisions of its tariff Schedule No. ST-1. (*Id.* at 14.) SWG contends that the rates were tailored to address the customers' bypass alternative and provide a rate of return exceeding what is necessary to cover the cost of the dedicated SWG facilities serving it, which in turn provides benefits to other SND customers. (*Id.*)

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Commission Discussion and Findings

857. Like other utilities, SWG is required to provide its services, and apply rates, terms and conditions to its provision of services, in compliance with the requirements of NRS 703 and 704 and its tariff approved by the PUCN.

858. A tariff is a collection of rules that define the relationship between a utility and its customers.[69] Tariff modifications require Commission approval. Specifically, NRS 704.100(1)(a) states that "[e]xcept as otherwise provided in NRS 704.075 and 704.68861 to 704.68887, inclusive, or as may otherwise be provided by the Commission pursuant to NRS 704.095 or 704.097, [a] public utility shall not make changes in any schedule, unless the public

[69] *See* NAC 703.375 through 703.410, inclusive.

utility: Files with the Commission an application to make the proposed changes and the Commission approves the proposed changes pursuant to NRS 704.110; or files the proposed changes with the Commission using a letter of advice…"

859. SWG serves the majority of its customers on a bundled commodity and delivery basis. As Staff states, "only a small subset of SWG customers purchase their own commodity gas and purchase transportation service from SWG." (Exhibit 98, at 3.)

860. Gas transportation customers that purchase service pursuant to contracts under Tariff Schedule No. ST-1/NT-1 include:

a. Limited discount gas transportation customers

b. Special contract gas transportation customers

c. Legacy power plant contracts[70]

d. Desert Star contract for special gas transportation services[71] (Exhibit 98, at 4.)

861. In this proceeding, Staff and BCP challenged SWG's use of limited discounts and special contracts. In summary, Staff and BCP assert that SWG has misused its contracting authority under NAC 704.518 and tariff pages NT-1 and ST-1 by including unauthorized discounts in the contracts, failing to document risk of bypass, and failing to file contracts or obtain Commission approval of the contracts prior to their effective dates. Staff and BCP ask the Commission to remedy these violations by imputing to ratepayers the value of the discounts

[70] Legacy power plant contracts: SWG has contracts with NPC and Saguaro Power Company ("Saguaro"), both of which pre-date current regulations and tariff provisions set forth in NAC 704.518, which were approved by the Commission in Docket No. 95-3052 and Docket No. 94-4050, respectively, and are not at issue here. (Exhibit 98 at 6.)

[71] Desert Star contract for special services: SWG has a contract with Desert Star, which was approved by the Commission in Docket No. 98-4013, which is not at issue here. (Exhibit 98 at 8.)

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SWG provided to contract customers under contracts which do not comply with NRS 704.100, NAC 704.518 and SWG tariff pages ST-1/NT-1.

862. On the other hand, SWG defends the challenged contracts, and asserts that the fact that the Commission has not previously rejected these contracts or made specific findings that the contracts violate applicable laws should limit the scope of the Commission's actions on these contracts in this proceeding. (Ex. 113, at 2-3.)

863. SWG claims that it complied with the filing requirements, stating that it provided copies of all contracts to BCP and Staff in Docket No. 14-06004. (*Id.* at 9.)

864. SWG also opposes the imputation remedies proposed by Staff and BCP, stating that its CCOS demonstrates that its rate of return from contracts is higher than the proposed system rate of return and that contractors benefit other SWG customers. SWG adds that it has reduced its number of contract customers from 23 to 12, and that 3 of the remaining 12 customers operate under special contracts approved by the Commission. (*Id.* at 4-5.)

865. Throughout this proceeding, various witnesses have asserted that there may be some confusion regarding the Commission's view of what SWG may or may not do in contracting with gas transportation customers. The time has come to clarify these matters.

866. NAC 704.518 and SWG Tariff Schedules NT-1 and ST-1 provide SWG with two options in contracting with gas transportation customers once it satisfies the threshold requirement of demonstrating that the customer has an opportunity to bypass SWG's system: 1) SWG may enter into limited discount contracts under NAC 704.518(2) which only discount volumetric demand and delivery charges and which follow the rate design set forth in NT-1 and ST-1, file these contracts with the Commission along with documentation demonstrating the risk of bypass, and execute them without prior Commission approval; or 2) SWG may enter into

special contracts under NAC 704.518(3) which offer discounts in addition to volumetric demand and delivery charge discounts, and which do not follow the rate design set forth in tariff pages NT-1 and ST-1. However, SWG may only utilize this second type of contract, which offers terms inconsistent with SWG's tariff, if SWG files the proposed contract and documentation demonstrating the risk of bypass, and obtains Commission approval of the contract before it goes into effect. As NAC 704.518(3)(c) states, "a utility shall not provide service to a generating, industrial or large customer pursuant to a contract of special services until the contract is approved by the Commission."

867. The Commission finds that SWG violated NAC 704.518 and tariff pages ST-1/NT-1 by failing to file information demonstrating that the customer has a "bona fide alternative" to receiving fully-bundled gas services from SWG, with regard to the following customers: EP#1 and #2, Newmont Gold (Carlin) and Twin Creeks, Premier Magnesia[72], and LV Cogen II.

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868. The Commission rejects SWG's assertion that the existence of a direct physical connection to Paiute eliminates the need for an economic bypass analysis for Premier Magnesia or for any other customer connecting directly to its gas supplier. As BCP states, there is no provision in SWG's tariff, or in regulation or statute, that relieves SWG from the duty to satisfy the threshold showing of bypass for direct-connect customers.[73] And, as Staff explains, the direct physical connection only satisfies one of the three prongs of the bypass feasibility test, and

[72] The Commission rejects SWG's assertion that the existence of a direct physical connection to Paiute eliminates the need for an economic bypass analysis for Premier Magnesia (See SWG response to Staff Data Requests 314, 318, and 319, provided for the record as Exhibit CJP-9 to Exhibit 98), or for any of the other customers connecting directly to their gas supplier.

[73] TR at 1111, 1112.

it does not eliminate the need for the customer to also satisfy the operational and economic prongs of the test.[74]

869. The Commission finds that SWG violated NAC 704.518 and tariff pages ST-1/NT-1 by including a complete waiver of the volumetric demand and delivery charges in its contracts with all nine of the contracts in dispute.

870. The Commission finds that SWG violated NAC 704.518 and tariff pages ST-1/NT-1 by failing to obtain prior Commission approval for its contracts with the following customers: Cyanco, EP #1 and #2, Newmont Gold (Carlin) and Twin Creeks, Premier Magnesia (2010 contract)[75] and LV Cogen II.

871. Recognizing that SWG may not be exclusively responsible for the lack of complete filed documentation of the NCA #1 and NCA #2, contracts,[76] the Commission finds that the records of the Commission do not contain complete documentation for these contracts.

872. Prior Commission approval for all of these nine contracts is required because each of them includes discounts other than the volumetric demand and delivery charges, or waivers to those charges, and because each of these contracts fails to conform to the rate design approved by the Commission in its approval of SWG's tariff.

873. The Commission rejects SWG's notion that it can comply with its obligations to file proposed contracts and supporting documentation, and, where appropriate, obtain prior Commission approval of contracts, by sharing such documents informally with Commission Staff and BCP.[77] As BCP explains, in 2009, the Commission ordered SWG to file all of its

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[74] *See* SWG response to Staff Data Requests 314, 318, and 319, in Exhibit CJP-9 to Exhibit 98
[75] Staff provides evidence that this contract was never filed with the Commission, although it was provided to staff in discovery in this proceeding. (Exhibit 98 at 18.)
[76] Staff concedes that SWG submitted contracts for NCA #1 and NCA #2 to Commission personnel in 2010, but "they were never docketed due to an unknown administrative error." (Exhibit 98 at 18.) Apparently, these contracts were never reviewed or approved by the Commission.
[77] Exhibit 98 at 19

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contracts in Docket 09-04003 because the Commission recognized that "nobody had in one place all of the contracts."[78] Despite this clear directive, SWG has mostly provided copies of the contracts in a piecemeal fashion – leading all the way up to a closed session of the hearing in the instant Docket – and in many instances, the contracts had limited supporting documentation.

874. Therefore, and in order to comply with NAC 704.518, SWG must file the required documents with the Commission.

875. The Commission also rejects SWG's position that it does not need to comply with the filing and approval requirements of NAC 704.518 and the tariff sheets NT-1/ST-1 if the company has a belief that a contract's changes to rate design are insignificant or not "unique."[79] NAC 704.518 does not allow these items as bases for non-compliance with the tariff and does not delegate to SWG the responsibility of determining which discounts comply with its tariff. Changes to contract terms must be limited to the items which are specifically permitted under NAC 704.518 and the tariff sheets NT-1/ST-1, unless the Commission reviews and approves the contract prior to its effective date.

876. The Commission rejects SWG's argument that the Commission's ability to take action against the violations cited here is limited because prior Commissions have not taken action against the same, or similar, violations in the past. While prior decisions of the Commission often provide useful guidance for addressing contemporary challenges, they are not subject to the doctrine of *stare decisis*, and do not have the weight of precedent.[80]

[78] TR at 1109.
[79] Exhibit 113 at 12-14.
[80] *State, Dept. of Taxation v. Chrysler Group LLC,* 129 Nev. Adv. Op. 29, 300 P.3d 713, 717 at fn.3 (2013) (*quoting Motor Cargo v. Public Service Comm'n,* 108 Nev. 335, 337, 830 P.2d 1328, 1330 (1992); *see also Desert Irrigation, Ltd. v. State of Nevada,* 113 Nev. 1049, 1058, 944 P.2d 835, 841 (1997) ("[N]o binding effect is given to prior administrative determinations.")

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877. Notably, in this proceeding, the Commission has received much more detailed evidence of SWG contracting practices in violation of applicable regulations and its tariff,than was provided in previous Commission proceedings.

878. Moreover, the Commission now knows that the Commission's earlier efforts in Docket Nos. 09-04003, 12-04005, 14-05042, 15-06001 and 17-1108, to call the attention of SWG to the need to bring its contracting practices into compliance with applicable laws and tariff provisions, have not resulted in SWG reforming its contracting practices.

879. The Commission is convinced by the evidence of this record that SWG's contracting practices violate applicable laws and tariff requirements. The Commission is most concerned that SWG's contracting practices might be imprudent and therefore conflict with the public interest by applying rates to contract customers which impose a burden or cause a harm to ratepayers by shifting to them the costs of serving the contract customers. (*Id.* at 5, 8-9.)

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880. Moreover, the Commission has clear authority to utilize imputation to address tariff violations, as it did in Docket No. 07-12001. In that proceeding, Staff identified a Rule 9 line extension contract between SPPC and the Tahoe Reno Industrial Center ("TRIC") that did not require TRIC to pay any advance or contribution in aid of construction. The agreement, which was in clear violation of SPPC's Rule 9 tariff, was addressed by adjusting the rate base to account for the cost of the violations.

881. However, the Commission is not convinced that it is appropriate at this time to implement the imputation remedies proposed by Staff and BCP. There are difficulties with quantifying the precise amount of revenues that should be imputed for the benefit of ratepayers based upon the record in this proceeding. In this Order, the Commission makes a number of findings that affect overall revenue requirement. That, in turn, affects the calculation of imputed

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revenues under either BCP's or Staff's methodologies. In addition, while SWG has itself identified NG-4 and SG-4 as the otherwise applicable rate class, it appears that the negotiated rate customers could more appropriately be placed in a different (if not currently existing) rate classification. Imputing revenues based upon the NG-4 and SG-4 rates may unduly skew the calculation. A reasonably imputed revenue impact would require modifications to the CCOS to add one, if not two, rate classes for these customers and more specific allocation of plant and expenses related to those customer classes.

882. The Commision will provide SWG one final opportunity to bring its contracting practices into compliance with applicable law and tariff provisions.

883. The Commission directs SWG to file with the Commission in this Docket, no later than 60 days from the date of this Order, its contracts and supporting documentation sufficient to meet Staff's proposed "three-prong bypass feasibility test" for the following contracts: Cyanco, EP #1 and #2, Newmont Gold (Carlin) and Twin Creeks, Premier Magnesia (2010 contract), LV Cogen II, NCA #1 and NCA #2. The Commission recognizes that SWG may have filed some of this documentation in the past or have shared it informally with Staff or BCP in the context of other proceedings. However, in view of the extreme difficulty experienced in this proceeding with obtaining the complete package of documents for each contract, the Commission deems it appropriate to ensure materials arrive in a single, organized location by directing SWG to file the contacts. SWG may seek confidential treatment of such documents pursuant to NAC 703.527-703.5282, to the extent it deems appropriate, within 20 days of the issuance of this Order.

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884. The Commission directs Staff to review SWG's filings pursuant to the preceding paragraph and report to the Commission regarding SWG's compliance with its requirements, no later than 105 days from the issuance of this Order.

885. In the event that Staff determines SWG has not complied with the requirements of the prior paragraph, Staff shall file with the Commission a Petition to Show Cause pursuant to NAC 703.540, itemizing SWG's violations of these requirements, and specifying Staff's recommendations regarding civil penalties and other sanctions.

886. Regarding SWG's CCOS study, the Commission finds that Staff and BCP have raised substantial concerns regarding whether SWG's CCCOS study accurately shows SWG's costs of serving its contract customers and and whether the contracts are fair to all customers.

887. The Commission will open an investigation regarding SWG's contracting practices to: 1) determine the changes to be made to SWG' CCCOS study prior to the study being submitted in the Application in SWG's next GRC; and 2) evaluate whether changes need to be made to SWG contracting practices which are not directly related to violations, but which are not prudent practices.

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XI. GIR MECHANISM

A. GIR Rates

SWG's Position

888. SWG requests, pursuant to NAC 704.7984, that its revenue requirement associated with GIR projects that have been previously approved be included in its GIR mechanism. (Ex. 1 at 4.) SWG provides that the resulting rate increase in base rates for its SND will be $17,072,082.00 or approximately 5.2 percent, and the increase in base rates for its NND

will be $1,086,278.00 or approximately 1.1 percent. (*Id.*) SWG also requests a determination of prudency for the GIR projects. *(Id.)*

889. SWG proposes to reset its GIR rates, effective January 1, 2019, in order to account for the deferred revenue requirement accrued through August of 2018 for previously approved GIR projects. (Ex. 1 at 9.) SWG states that the net deferrals for the GIR projects through August of 2018 are $14,300,989.00 ($0.02609/therm) for the SND, and $426,950.00 (0.00384/therm) for the NND. (Ex. 35 at EEP-1.)

BCP's Position

890. BCP does not address this issue.

Staff's Position

891. Staff states that the Commission should accept SWG's GIR rates as filed in its GIR Certification filing. (Ex. 57 at 4.) Staff states that it verified the calculations in SWG's GIR certification filing and supporting schedules. (*Id.* at 3.) More specifically, Staff provides that it selectively reviewed a variety of GIR costs that were provided in the Prudency Packages for SND and NND, as contained in the Prepared GIR Certification (*See* Ex. 35 at EEP-1), in addition to invoices, charges for labor, and labor loadings. (*Id.*) Staff further provides that "in all material respects, the Prudency Packages seemed to be in order and well-supported" and only found discrepancies for amounts that Staff considered de minimus. (*Id.*)

Commission Discussion and Findings

892. The Commission approves SWG's proposed GIR rates as filed in its GIR Certification filing. In approving SWG's proposed GIR rates, the Commission notes that the GIR is distinct from the GRC and has different evidentiary thresholds. The Commission still

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maintains its ability to oversee and audit GIR projects placed into rate base in this proceeding to ensure compliance and prudency.

THEREFORE, it is ORDERED:

1. The Application of Southwest Gas Corporation, designated as Docket No. 18-05031, is GRANTED in part and DENIED in part, as MODIFIED by this Order.

2. Southwest Gas Corporation's GIR Mechanism rates are APPROVED.

3. Southwest Gas Corporation shall use the capital structure designated by the Commission in Paragraph 18 of this Order.

4. Southwest Gas Corporation shall use the cost of debt designated by the Commission in Paragraph 24 of this Order.

5. Southwest Gas Corporation's return on equity shall be set at 9.25 percent for both its Southern Nevada Division and Northern Nevada Division as established in Paragraph 195 of this Order.

6. Southwest Gas Corporation's Variable Interest Expense Recovery Mechanism shall be reset, consistent with its filing and Paragraph 32 of this Order.

7. Southwest Gas Corporation's basic service charge and updated delivery charges are approved as filed, consistent with Paragraph 694 of this Order.

8. Southwest Gas Corporation's General Revenues Adjustment is approved as filed, consistent with Paragraph 690 of this Order.

9. Southwest Gas Corporation shall remove from its revenue requirement 100 percent of Management Incentive Plan payouts related to the damages per 1,000 tickets metric, consistent with Paragraph 359 of this Order.

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10. Southwest Gas Corporation shall remove from its revenue requirement all Management Incentive Plan payouts allocated to the Nevada ratemaking jurisdictions created by the net income metrics or Return on Equity metrics, consistent with Paragraphs 359-360 of this Order.

11. Southwest Gas Corporation shall remove from its revenue requirement 100 percent of Restricted Stock Unit costs, consistent with Paragraph 375 of this Order.

12. Southwest Gas Corporation shall remove from its revenue requirement all Supplemental Executive Retirement Plan and Executive Deferred Plan benefits exceeding the restoration benefit, consistent with Paragraphs 397-399 of this Order.

13. Southwest Gas Corporation shall remove from its revenue requirement all perquisites and vehicle stipend costs, consistent with Paragraphs 415-416 of this Order.

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14. Southwest Gas Corporation shall exclude from its revenue requirement 50 percent of the Board of Director compensation costs, consistent with Paragraph 420 of this Order.

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15. Southwest Gas Corporation shall remove from is revenue requirement all costs and related accumulated depreciation, depreciation expense, and ADIT associated with the Winnemucca, Nevada home, consistent with Paragraph 444 of this Order.

16. Southwest Gas Corporation shall remove from its revenue requirement all costs and related accumulated depreciation, depreciation expense, and ADIT associated with the Incline Village, Nevada home, consistent with Paragraph 452 of this Order.

17. Southwest Gas Corporation shall remove from its revenue requirement all costs related to employee events at the Vdara Hotel, consistent with Paragraph 460 of this Order.

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18. Southwest Gas Corporation shall remove from its revenue requirement $375,170.00 in costs associated with leasehold improvements to the retired office in Elko, Nevada, consistent with Paragraph 464 of this Order.

19. Southwest Gas Corporation shall exclude 50 percent of costs associated with its Directors and Officers Liability Insurance, consistent with Paragraph 471 of this Order.

20. Southwest Gas Corporation shall update regulatory asset values identified by Staff for Schedule I-C7 as of the Certification Date of July 31, 2018, consistent with Paragraph 500 of this Order.

21. Southwest Gas Corporation shall update regulatory asset values identified by Staff for Schedule I-C7 to reflect the additional amortization up to the rate effective date, consistent with Paragraph 506 of this Order.

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22. Southwest Gas Corporation shall modify its Commerce Tax billing collection and methodology to embed the tax in revenue requirement on a forward-basis, consistent with Paragraphs 520-521 of the Order.

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23. Southwest Gas Corporation shall remove $6,177.00 from its revenue requirement in its Northern Nevada Division to exclude costs associated with its City of Elko franchise fee, consistent with Paragraph 525 of the Order.

24. Southwest Gas Corporation shall remove $112,000.00 from its SND's operation and maintenance costs related to the Wigwam Parkway and Jessup Road safety incident, consistent with Paragraph 535 of this Order.

25. Southwest Gas Corporation shall remove $112,000.00 from its Southern Nevada Division's Operation and Maintenance costs related to the Hawk Springs / Mesa Park safety incident, consistent with Paragraph 539 of this Order.

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26. Southwest Gas Corporation shall remove 100 percent of the costs associated with the projects in the Work Order Nos. 0061W0001059, 0061W0001001, 0061W0000511, 0061W0000888, and 0061W001120, consistent with Paragraphs 621-627 of this Order.

27. Southwest Gas Corporation shall remove costs associated with the price increases contained in Change Order 4 in Southwest Gas Corporation's Contract Number 205579 with Arizona Pipeline Company, consistent with Paragraphs 651-652 of this Order.

28. Southwest Gas Corporation shall remove all incremental costs associated with the price increases that were greater than the consumer price index adjustment of 2.1 percent associated with Change Order 4, consistent with Paragraph 651 of this Order.

Compliances

29. Southwest Gas Corporation shall file new tariff sheets reflecting the Commission's findings in Paragraph 702 regarding its Biogas and Renewable Natural Gas Tariff within 30 days of the date of issuance of this Order.

30. Southwest Gas Corporation shall file new tariff sheets reflecting the Commission's findings in Paragraph 709 regarding its Compression Service Tariff within 30 days of the date of issuance of this Order.

31. Southwest Gas Corporation shall file new tariff sheets reflecting the Commission's findings in Paragraph 713 regarding the clarification of the scope of Southwest Gas' contractual relationship with its customers within 30 days of the date of issuance of this Order.

32. Southwest Gas Corporation shall file new tariff sheets reflecting the Commission's findings in Paragraph 717 regarding changes to easement provisions within 30 days of the date of issuance of this Order.

33. Southwest Gas Corporation shall file new tariff sheets reflecting the Commission's findings in Paragraph 721 regarding third-party electronic billing within 30 days of the date of issuance of this Order.

34. Southwest Gas Corporation shall file new tariff sheets reflecting the Commission's findings in Paragraph 725 regarding the removal of certain inapplicable tariff language within 30 days of the date of issuance of this Order.

35. Southwest Gas Corporation shall file new tariff sheets reflecting the Commission's findings in Paragraph 735 regarding claims against the company within 30 days of the date of issuance of this Order.

36. Southwest Gas Corporation shall file new tariff sheets reflecting the Commission's findings in Paragraph 739 regarding the removal of unnecessary meter reading device installation language within 30 days of the date of issuance of this Order.

37. Southwest Gas Corporation shall file new tariff sheets reflecting the Commission's findings in Paragraph 743 regarding a customer's obligation to provide access to their property in certain instances within 30 days of the date of issuance of this Order.

38. Southwest Gas Corporation shall file new tariff sheets reflecting the Commission's findings in Paragraph 748 regarding the utility's access to customer's premises within 30 days of the date of issuance of this Order.

39. Southwest Gas Corporation shall file new tariff sheets reflecting the Commission's findings in Paragraph 752 regarding liability within 30 days of the date of issuance of this Order.

40. Southwest Gas Corporation shall file new tariff sheets reflecting the Commission's findings in Paragraph 756 regarding leak checks within 30 days of the date of issuance of this Order.

41. Southwest Gas Corporation shall file shall file tariffs implementing the Commission's findings in this Order showing the resulting rates for each customer class in each division within 15 calendar days of the issuance of this Order. These tariffs shall be supported by the following schedules: (a) Statement I incorporating all of the Commission's ordered adjustments; (b) Schedule N-2 and associated workpapers detailing the allocation of the Commission ordered revenue requirement to each customer class; (c) Statement O showing the derivation of the rates contained in the compliance tariffs; (d) Statement J showing the increase and decreases in the compliance tariff rates from the certification present rates; (e) Statement F showing the cost of capital; and (f) Depreciation Study per Commission Order, consistent with Paragraph 684 of this Order.

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42. Southwest Gas Corporation shall file all of its negotiated rate contracts and supporting documentation sufficient to meet the "three-prong bypass feasibility test" described by Staff within 60 days of the issuance of this Order, consistent with Paragraph 883 of this Order.

43. Within 105 days of Southwest Gas Corporation's filing, filed pursuant to Ordering Paragraph 42, Staff shall file with the Commission a review and analysis of Southwest Gas Corporation's compliance with its "three-prong test," consistent with Paragraph 884 of this Order.

44. Southwest Gas Corporation shall file a recalculated 2018 pension cost in this Docket within 30 days of the issuance of this Order, consistent with Paragraph 428 of this Order.

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Directives

45. Prior to its next General Rate Case filing, Southwest Gas Corporation shall meet and coordinate with Staff to determine a satisfactory manner for Southwest Gas Corporation to provide benchmarking for all employees, consistent with Southwest Gas Corporation's current practice for executives and Paragraph 409 of this Order.

46. In its next General Rate Case application, Southwest Gas shall file two Class Cost of Service studies, consistent with Paragraph 685 of this Order.

By the Commission,

ANN WILKINSON, Chairman

ANN PONGRACZ, Commissioner and Presiding Officer

C.J. MANTHE, Commissioner

Attest:
TRISHA OSBORNE,
Assistant Commission Secretary

Dated: Carson City, Nevada
12/24/18
(SEAL)

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18-05031

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Staff Counsel Division

FILED WITH THE PUBLIC UTILITIES COMMISSION OF NEVADA - 11/30/2018

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BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Application of Southwest Gas Corporation for authority to increase its retail natural gas utility service rates and to reset the Gas Infrastructure Replacement Rates for Southern and Northern Nevada.	Docket No. 18-05031

<u>REGULATORY OPERATIONS STAFF'S POST-HEARING BRIEF</u>

The Regulatory Operations Staff ("Staff") of the Public Utilities Commission of Nevada ("Commission") hereby files its Post-Hearing Brief ("Brief") in accordance with the Commission's Corrected Procedural Order No. 4, which outlines the issues to be addressed in Briefs and orders that the Briefs be filed by November 30, 2018. On July 27, 2018, Staff filed a Pre-Hearing Brief which provides the framework for numerous issues that were addressed in testimony and discussed at the hearing. All of the issues addressed therein are properly within the scope of this proceeding and Staff hereby incorporates by reference its Pre-Hearing Brief. The Corrected Procedural Order No. 4 directs that the parties address the following issues in Briefs:

a. A legal analysis addressing SWG's burden of proof in this Docket as it relates to prudency determinations of its expenditures.

b. Whether SWG has violated its ST-1 and NT-1 tariffs, including with specificity the violations and the actions that the Commission should take to address such tariff violations.

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c. Whether SWG's practices regarding "negotiated rate" contracts are consistent with prudent management of the utility pursuant to NRS 704.110(9)(e); if not, what actions the Commission should take to address such imprudence such as disallow revenue requirement associated with the contracts, impute revenues received under the contracts to other rate classes, or other action.

d. The conditions under which SWG is required to file "negotiated rate" contracts for gas service with the Commission, including the proper procedural mechanism for Commission consideration of the "negotiated rate" contracts, and the level of Commission approval that is required.

Therefore, in accordance with Corrected Procedural Order No. 4, Staff will address each of these issues in turn.

I. BURDEN OF PROOF

a. Legal Standard

The Commission has statutory authority to regulate utility rates pursuant to Nevada Revised Statutes ("NRS") 704.100, 704.130, and 704.210. The Supreme Court of Nevada has stated that the Commission has "plenary" authority in its regulation of utility rates, meaning that this authority is "broadly construed." *Nevada Power Co. v. Eighth Judicial Dist. Court of Nevada ex rel. Cnty. of Clark*, 120 Nev. 948, 102 P.3d 578 (2004). The only limit on the Commission's authority to regulate utility rates is that it is bound by its legislative directive to ensure that rates charged by a public utility for utility services are "just and reasonable," and that "it is unlawful for a public utility to charge an unjust or unreasonable rate." NRS 704.120; *Nevada Power Co. v. Pub. Serv. Comm'n*, 91 Nev. 816, 544 P.2d 428 (1975); *Nevada Power*, 120 Nev. at 584. This "just and reasonable" rates concept is more fully discussed by the United States Supreme Court in *Bluefield Waterworks & Improvement Co. v. West Va. Pub. Serv. Comm'n*, 262 U.S. 679, 692-93, 43 S.Ct. 675, 679, 67 L.Ed. 1176 (1923):

> A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be

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> reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

Pursuant to NRS 704.110, a public utility may file an application with the Commission to make changes in any rate or other schedule, including the recovery of costs that were justly and reasonably incurred in providing utility service. A public utility is required to provide substantial evidence indicating that the recovery sought is for changes in its schedule that were justly and reasonably incurred. *See* NRS 233B.135; *In re Sierra Pac. Power Co.*, 2008 WL 1882807 (Nev. P.U.C.); *Tighe v. Las Vegas Metro. Police Dep't*, 110 Nev. 632, 877 P.2d 1032 (1994). Pursuant to NRS 233B.135, "substantial evidence" is defined as "evidence which a reasonable mind might accept as adequate to support a conclusion." Pursuant to Nevada Administrative Code ("NAC") 703.2231, the public utility applicant must be prepared to "sustain the burden of proof of establishing that its proposed changes are just and reasonable and not unduly discriminatory or preferential." The applicant must ensure that the material upon which it relies is "of such composition, scope and format that it would serve as its complete case" at the hearing. NAC 703.2231. After investigation and a hearing on the application, if the Commission determines that any rate, regulation, practice or service is unjust, unreasonable, or unjustly discriminatory, it has the authority to substitute a just and reasonable rate, regulation, practice or service in its place. NRS 704.120; *Nevada Power*, 120 Nev. at 585. The Legislative grant of authority in establishing the Commission also includes the requirement "to provide for the safe, economic, efficient, prudent and reliable operation and service of public utilities." NRS 704.001.

A gas utility is also required to sustain the burden of proof in demonstrating that the costs and investments by the utility are prudent. While the Commission's statutes require that certain utilities (electricity and water/wastewater utilities) file integrated resource planning applications with the Commission through which the utilities are able to receive a determination of prudency outside of a general rate case, no Nevada statute affords gas utilities the same opportunity. *See, e.g.*, NRS 704.661, NRS 704.741, and NRS 704.110.

The absence of a statutory requirement to file a resource plan does not exempt SWG from proving that its costs and investments are prudent. As noted above, Nevada statutes clearly mandate that public utilities "provide for the safe, economic, efficient, prudent and reliable operation and service . . . ." NRS 704.001. Prior Commission decisions have dictated that SWG is obliged to demonstrate prudency for its costs in a rate case, despite the absence of a specific statute or rule mandating such a demonstration. Specifically, in 2014, the Commission found even though SWG was required to file and seek approval for its Conservation and Energy Efficiency ("CEE") plan in accordance with the Commission's rules, "all CEE expenditures [included in the plan] are subject to [a] prudence review in the appropriate general rate case." *See* 2014 WL 4827865, *6 (Nev. P.U.C.); Docket No. 14-04038, Order at ¶ 23 (dated Sept. 12, 2014).

Moreover, Commission statutes and regulations also confirm that SWG must demonstrate prudency in a rate case. For example, with respect to Gas Infrastructure Replacement ("GIR") projects, NAC 704.7984 explicitly provides that a Commission order approving or denying an advance or rate application "is not a determination of prudency with respect to any replacement project set forth in such an application." Rather, the utility is required to seek a "determination of prudency in the first general rate application file pursuant to NRS 704.110." NAC 704.7984(2). NRS 701B.339 similarly requires a natural gas utility to establish that its Solar Thermal Systems Demonstration Program costs are "reasonable and prudent" in a rate case filed pursuant to NRS 704.110. In addition, Section 19 of the regulations adopted by the Commission in Docket No. 15-05025, governing applications for gas infrastructure expansion projects, states that "[a] Commission order authorizing, denying or modifying a gas infrastructure expansion application is not a determination of prudency with respect to any execution or costs of a gas infrastructure expansion activity that is authorized by the Commission and set forth in such an application." Docket No. 15-05025, LCB File No. R116-15 (effective April 4, 2016).

The fact is that a public utility always bears the burden to prove prudency separate and apart from, and in addition to proving that a cost is just and reasonable for inclusion in rates. The Commission has plainly stated that "[j]ust and reasonable is the standard the Commission applies to evaluate whether expenditures incurred in ***the execution of a prudent project*** are recoverable." *See* Docket No. 07-04028, Order at ¶ 83 (Mar. 18, 2008) (emphasis added). As such, without first determining that a project is prudent, the Commission cannot reach the conclusion that a cost is just

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and reasonable and recoverable because an imprudent cost is never just and reasonable.[1] The Commission also unambiguously addressed this standard in SWG's last general rate case, stating:

> ***Whether a cost was prudently incurred is only one step*** in determining whether or not a cost should be allowed in rates. The next step, as set forth in NRS 704.001, requires the Commission to view the evidence in light of NRS 704.001 which includes balancing the interests of customers and shareholders by providing public utilities with the opportunity to earn a fair return on its investment while providing customers with just and reasonable rates.

Docket Nos. 12-02019, 12-04005, Order at ¶ 45 (Dec. 19, 2012). Based on the foregoing, in addition to a determination that costs and investments are just and reasonable, all costs and investments made by a gas utility are also subject to a prudency review in its general rate case.

In the instant case, SWG filed an application for authority to increase its retail natural gas utility service rates and to reset the GIR rates for Southern and Northern Nevada. As the Applicant, SWG is required to sustain the burden of proof in establishing, based on substantial evidence, that the proposed changes to its retail natural gas utility service rates and GIR rates, which include any costs for which it is seeking recovery in those rates, are prudent, and just and reasonable. SWG did not dispute that it is required to sustain this burden of proof in general rate case proceedings. Tr. at 371-72.

Contrary to SWG's assertions during the hearing that the utility is entitled to a presumption of reasonableness or prudence in general rate case proceedings, there is no rebuttable presumption of reasonableness or prudence of any costs/investments by a public utility in any proceedings in Nevada. At the hearing, SWG's counsel cited to, and requested the Commission take administrative notice of the case of *Nevada Power Co. v. Pub. Utilities Comm'n of Nevada*, 122 Nev. 821, 138 P.3d 486 (2006)[2] to support its argument that when a utility seeks a rate increase it is entitled to a rebuttable

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[1] If the Commission were to only look at whether a cost is just and reasonable for inclusion in rates, then any investments made by a utility that were related to providing utility service could be included in rates, regardless of whether those investments were prudently incurred. However, the Commission can never determine that costs are just and reasonable without delving into whether those costs were prudently incurred. For example, in order to reliably serve its customers, a utility may decide it needs a new power plant facility in order to reliably serve its customers. However, if the utility does not look at alternatives to building the new facility (i.e., purchasing a used facility or purchasing power on the market) to ensure that the decision to build the new power plant is the most economic, efficient, and sound decision out of its options, then the Commission will never be able to determine that the purchase of the plant is just and reasonable. A determination of prudency is a critical step in the Commission's evaluation of whether a cost is just and reasonable.

[2] SWG's counsel also cited to and asked to take administrative notice of a Commission order, 1986 WL 1301281 (Nev. P.S.C.), 74 P.U.R.4th 703, that preceded the Supreme Court of Nevada's decision. However, the Commission decision is irrelevant and has been superseded by statute for the same reasons included in the discussion regarding the *Nevada Power* case.

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presumption that the costs incurred are prudent. *See* Tr. at 577, 787-91. However, the *Nevada Power* case was not only superseded by statute over a decade ago in 2007, which is discussed in more detail below, but also is completely irrelevant to the instant SWG general rate case docket. While the *Nevada Power* case did discuss the circumstances under which a utility was entitled to a rebuttable presumption of prudence under the old statutes, the circumstances addressed were limited to energy or fuel costs incurred in a utility's <u>deferred energy accounting proceeding</u> ("DEAA"). *Nevada Power*, 122 Nev. at 834 (holding a utility enjoys a presumption of prudence of its energy costs when applying for recovery of losses documented by deferred energy accounting, and that the rebuttable presumption analysis is the controlling procedure in DEAA proceedings). The instant docket is a general rate case proceeding, not a deferred energy accounting proceeding, and therefore the rebuttable presumption analysis discussed in the *Nevada Power* case is completely irrelevant to the issues before this Commission, even if the case law had not been superseded by statute.

More importantly, Staff informed the Commission mid-hearing that the ruling in the *Nevada Power* case was superseded by statute the year after the case was decided. Tr. at 788-89. During the 74th Legislative Session of the Nevada Legislature in 2007, the Legislature passed Assembly Bill No. 7 ("AB 7") specifically in response to the *Nevada Power* court case.[3] In passing AB 7, the Legislature stated in Section 1 of that bill:

> **Section 1.** The Legislature hereby finds and declares that:
>
> 1. In proceedings involving deferred energy accounting where a public utility seeks to recover from its ratepayers costs recorded in its deferred accounts pursuant to NRS 704.185 or 704.187, <u>it is just and reasonable to require a public utility to prove that the costs recorded in its deferred accounts were incurred prudently. Therefore, to ensure that ratepayers do not pay for costs incurred as a result of any practices or transactions that were undertaken, managed or performed imprudently, the public utility should have the burden of proving that its practices and transactions were reasonable and prudent.</u>
>
> 2. In *Nevada Power Company v. Public Utilities Commission of Nevada*, 122 Nev. Adv. Op. 72 (2006), the Nevada Supreme Court held that, in the absence of a statute to the contrary, the controlling procedure in proceedings involving deferred energy accounting is the rebuttable presumption of prudence adopted by the Public Utilities Commission of

[3] A.B. 7, 2007 Leg., 74th Sess. (Nev. 2007), *available at* https://www.leg.state.nv.us/Session/74th2007/Bills/AB/AB7_EN.pdf.

> Nevada in the 1986 rate case of *Re Nevada Power Company*, 74 Pub. Util. Rep. 4th 703 (Nev. Pub. Serv. Comm'n May 30, 1986).
>
> 3. The provisions of this act are intended to supersede the holding of the Nevada Supreme Court in *Nevada Power Company v. Public Utilities Commission of Nevada*, 122 Nev. Adv. Op. 72 (2006), to the extent that the Court determined that the rebuttable presumption of prudence is the controlling procedure in proceedings involving deferred energy accounting.[4]
>
> . . .

Thus, as part of AB 7,[5] the Legislature amended NRS 704.110 to remove all language providing for a rebuttable presumption analysis in DEAA proceedings, which includes a gas utility's annual rate adjustment application (also referred to as "ARA" applications). Specific language was added and is currently contained within NRS 704.110(9) (concerning gas utility ARA applications) and NRS 704.110(13) (concerning electric utility DEAA applications) to make clear that "there is no presumption of reasonableness or prudence for any" (emphasis added) rate adjustment, transaction, or recorded costs of utilities in their ARA or DEAA proceedings. While the *Nevada Power* case previously stood for the proposition that there is a rebuttable presumption in DEAA proceedings, such case was superseded by Nevada statute in the year following the issuance of the opinion and therefore is no longer the law in DEAA and ARA proceedings.

The case law cited by SWG has not only been superseded by statute, but also is irrelevant to the issues and standards applicable in general rate case proceedings. SWG's declaration that there is a rebuttable presumption standard applicable to utilities in general rate case proceedings in Nevada is unsupported by the case law that was cited, and unsupported by Nevada law in general. Rather, as discussed above, SWG must sustain the burden of proof to demonstrate with substantial evidence that the costs and/or investments that it incurred are prudent, and just and reasonable for inclusion in rates.

[4] *Id.*

[5] The Legislature also passed Senate Bill No. 437, which similarly references that AB 7 "superseded by statute the holding of the Nevada Supreme Court in *Nevada Power Co. v. Pub. Utilities Comm'n of Nevada*, 122 Nev. Adv. Op. 72 (2006) and established as the public policy of this State that in proceedings involving deferred energy accounting by a public utility, there is no presumption that the public utility's practices and transaction were reasonable or prudent and the public utility has the burden of proving reasonableness and prudence in such proceedings." S.B. 437, 2007 Leg., 74th Sess. (Nev. 2007).

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b. SWG has failed to sustain its burden of proof in showing that various costs and investments for which it seeks cost recovery in this proceeding were prudent, and just and reasonable.

As reflected in Staff's pre-filed testimony and testimony during the hearing, SWG failed to satisfy its burden of proof in this case concerning various costs for which it is seeking cost recovery. *See* Exhibits 54, 58, 60, 63, 64, 65, 70. The prime example of SWG's failure to satisfy its burden is discussed thoroughly in Staff witness Adam Danise's testimony. Mr. Danise testified in detail regarding five capital projects and various other costs that SWG failed to provide adequate documentary support showing the costs were prudently incurred, and just and reasonable. Exhibit 64 (Danise) at 10-11, 14-27. Given the issues encountered by Staff throughout this proceeding and the limited time allowed to review general rate case applications, Mr. Danise provided testimony on certain projects and costs as a representative sample of SWG's filing. Exhibit 64 (Danise) at 3, 18.

During the course of this proceeding, Staff issued numerous data requests to SWG seeking SWG's justification (or business case) for several high-dollar capital projects in an attempt to evaluate whether the costs related to such projects were prudently incurred, and just and reasonable for inclusion in rates. *See, e.g.,* Exhibits 48, 49, 51. Based on the responses provided, Staff identified five of SWG's nine million-dollar system allocable capital projects in its sampling review that lacked support sufficient to indicate the costs were prudently incurred, and just and reasonable for inclusion in rates. *See* Exhibit 64 (Danise) at 10-11, 14-27. For those projects, SWG provided Staff with documentation containing information such as: the names of and budgets for the capital projects; invoices or estimates for purchases made; the name and/or signature of the employee or consultant authorizing the expenditures; memos identifying individuals in charge of various projects; organization charts; and other documentation. *See, e.g.,* Exhibit 49. However, no evidence was provided indicating that the projects, authorized budgets, or expenditures were prudent investments, the least cost or best available alternative project, or reasonable under the circumstances. *Id.*; *see also* Exhibit 64 at 10-11, 14-27. Also, little to no evidence was provided to indicate why various costs incurred by SWG, including expert fees/services, personnel overtime, rental car fees, daily meals and/or refreshments, and various project costs assigned to the project work order numbers were

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appropriate, necessary, the least cost alternative, or reasonable. *See* Exhibit 64 (Danise) at 10-11, 14-27; Tr. at 750, 755-56, 780 (Danise).

In fact, during the course of this proceeding, SWG admitted that numerous costs included in its revenue requirement request were improperly assigned to the associated work orders and/or included in SWG's application, including costs for things such as weekly chair massages, bartender costs, a golf course membership, a digital piano, a home theater system, wireless speaker systems, a natural gas grill, and a backhoe that SWG had previously stipulated to not include in rates, among numerous other inappropriate costs. Tr. at 374, 818-19; Exhibit 81 (Cunningham Reb.) at 11; Exhibit 64 (Danise) at 9, n.8, Att. AED-6. While SWG ultimately agreed to remove such costs from cost recovery, it was not until after Staff issued data requests seeking justification for the inclusion of such costs in the revenue requirement that SWG made the effort to remove the costs.[6] *See* Exhibit 64 (Danise) at 9, n.8, Att. AED-6; Exhibit 81 (Cunningham Reb.) at 11; Tr. at 375-77. In addition, even though SWG claimed daily meal costs were "reasonable," it failed to provide any justification for why such costs were reasonable and ultimately agreed to remove the costs from the revenue requirement. Exhibit 64 (Danise) at 9, n.8, Att. AED-6; Exhibit 81 at 11.

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Staff thoroughly reviewed the documentation provided for the five high-dollar capital projects addressed in Mr. Danise's testimony. Based on the documentation provided to support the five projects, no reasonably minded person would accept the documentation as adequate to support the conclusion that the costs incurred for those projects were just and reasonable. Tr. at 810. Moreover, the fact that SWG continually pointed to the documentation provided in discovery as justification and evidence that the costs were just and reasonable, despite Staff's independent and neutral review demonstrating otherwise, is indicative of the larger oversight, process, and documentation problem discussed by Mr. Danise. *See* Exhibit 64 (Danise) at 11, Tr. at 812-14. Clearly, SWG needs to improve its internal approval processes to ensure accountability for costs approved for inclusion in the revenue requirement, and develop a more efficient and effective documentation process that will enable SWG to adequately support its filings. This oversight and process problem was made further

[6] While SWG did remove some costs that Staff pointed out were unreasonable, SWG did not go back through its consultant and project costs to determine whether the costs were reasonable. Tr. at 754-55.

apparent by SWG's executive decision to have witnesses sponsor and testify in support of the projects, despite those witnesses: 1) not being involved in the execution of any of the projects at issue (*see* Exhibit 64 at Att. AED-2); 2) having no direct knowledge of the oversight, prudence, or reasonableness of the projects (Tr. at 417-20); and/or 3) lacking regulatory experience or expertise in evaluating the sufficiency of evidence provided to support the capital projects. *Id.*; *see also* Tr. at 969-70, 977, Exhibit 80 (Murandu) at Appendix A. Due to SWG's inability to sustain its burden of proof in demonstrating that all costs for which SWG is seeking cost recovery are just and reasonable, along with the apparent lack of oversight over costs authorized for inclusion in the revenue requirement, Staff has recommended the Commission disallow 50 percent of the costs associated with the five projects identified by Staff. Exhibit 64 (Danise) at 18-27, Tr. at 812-14.

In fact, rather than sustaining its burden of proof, SWG repeatedly attempted to shift the burden of proof to Staff when testifying that Staff should have pointed out deficiencies in SWG's filing (Tr. at 368), or suggesting that Staff should have issued more data requests asking SWG specific questions so that SWG could explain the reasonableness of its projects (*see, e.g.,* Tr. at 751-53, 771-73, 819, 821). Rather than taking the initiative up front in its direct testimony or throughout the discovery process to explain why the costs were prudent or just and reasonable, SWG instead thought it was appropriate to wait around for Staff to issue data requests and then "data dump" on Staff all documentation maintained by SWG for the projects and let Staff engage in a fishing expedition to search for documents that might support the projects. When asked if it's Staff's responsibility to dig through SWG's data and try to guess whether the costs were reasonable and necessary, SWG testified that it believes it is:

> Q So let me just understand your testimony. You think it was -- so it's Staff's responsibility to look through the Company's -- all of the data the Company provides in response to discovery, and kind of guess whether it's reasonable or necessary?
>
> A Well, that's what the discovery process is for. If Staff didn't want to look at all of the information, I don't know why they asked for it.

Tr. at 398. In other words, SWG outright admitted—in contradiction to its own testimony that it has the burden of proof (Tr. at 371-72)—that it did not believe it needed to justify the reasonableness of its expenditures. Instead, SWG believes it is Staff's responsibility to hunt through SWG's 55,000+

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pages[7] of documents during discovery to attempt to locate evidence indicating a project is prudent, and just and reasonable. SWG further tried to shift the burden to Staff when it claimed that Staff did not follow-up on data request responses received from SWG (*see* Exhibit 81 (Cunningham Reb.) at 9-10; Tr. at 400, 751-53, 771-73)—notwithstanding the fact that Staff issued over 400 data requests in this proceeding alone, and the Bureau of Consumer Protection issued over 100 data requests. Clearly, SWG does not understand what it means to sustain the burden of proof.[8] Furthermore, the fact that SWG had to dig through storage in order to attempt to produce evidence demonstrating the prudency, and just and reasonableness of its projects and costs, not only confirmed Staff's suspicion that SWG was not expecting all of its capital costs to be vetted/examined, but also confirms SWG was unprepared to sustain its burden of proof in this case. Tr. at 413-14; Exhibit 64 (Danise) at 10.

Based on the foregoing, SWG has failed to satisfy its burden of proof with respect to the various costs and investments addressed by Staff in testimony. *See* Exhibits 54, 58, 60, 63, 65, 70. Staff has provided substantial evidence showing that various costs and investments by SWG have not been proven to be prudent, and just and reasonable for inclusion in rates. Therefore, the Commission should accept the disallowances and recommendations made by Staff's witnesses in this docket.

II. CONTRACT CUSTOMER ISSUES

In the Pre-Hearing Brief incorporated herein, Staff laid the history, foundation, and authority for why Staff intended to investigate and provide testimony regarding SWG's contracting practices in this case.[9] As more fully described in the testimony of Staff witnesses Carly Page, Manuel Lopez, and Paul Maguire, Staff determined following its investigation that the majority of SWG's contracts are in violation of its tariffs and/or the Commission's regulations. In addition, the fact that several

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[7] SWG testified that at approximately 55,000 pages of documents were provided just in response to DRs 67-69. Exhibit 81 (Cunningham Reb.) at 8.

[8] SWG has also struggled in prior cases to sustain its burden of proof, including its last general rate case in which SWG offered no witness in support of projects over $100,000 and Staff provided testimony regarding the inadequate documentary support. Exhibit 64 (Danise) at 5, n.2-3. In Docket No. 12-04005, the Commission directed SWG to provide testimony in the instant general rate case to support projects with plant balances over $1 million. *Id.*

[9] Staff's Pre-Hearing Brief at 2-11. In 2009, the Commission held that if Staff determines that SWG has violated its ST-1/NT-1 tariffs, it can raise the issue in a general rate case by proposed a loss margin adjustment for the specific customer at issue. Docket No. 09-04003, Modified Final Order at ¶ 206 (issued Dec. 21, 2009). Prior to that, when approving certain of these contracts in 1993, the Commission held that "Southwest [Gas] must be prepared to justify any such contracts, including a showing that other customers are not harmed, in any docket following the contract's execution." Docket No. 93-3003, et al., Order at 200 (issued Oct. 25, 1993).

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contracts executed by SWG have been operating under evergreen clauses for over 30 years and without any attempt by SWG to re-evaluate or renegotiate such contracts is not only problematic, but also further highlights the lack of prudency and reasonableness in SWG's contracting practices. As a result of these imprudent, unreasonable, and non-compliant contracting practices, Staff recommends that the Commission impute revenues consistent with contract customers paying additional revenues up to or at the otherwise applicable tariff transportation rate. Exhibit 103 (Lopez) at 6-8, 9-11. Staff has demonstrated this is appropriate given that SWG has authorized these transportation customers to receive discounted and/or modified services to which they are not entitled or have not demonstrated they are entitled. *Id.* at 5-6, 8-9.

a. Tariff Violations

The Commission's procedural order seeks an analysis of whether SWG has violated its ST-1 and NT-1 tariffs, and to identify with specificity the violations and any actions the Commission should take to address such tariff violations. As discussed below, Staff has demonstrated that SWG's contracts with nine of its contract customers contain rate designs that do not conform to SWG's tariffs and are therefore in violation of SWG's tariff provisions. Exhibit 96 (Maguire) at 1-2; Exhibit 98 (Page) at 3-7.[10]

As stated in Staff's Pre-Hearing Brief, the Commission has the authority to exempt certain natural gas rates applicable to generating, industrial and large commercial customers from the statutory ratemaking requirements and allow gas utilities to charge rates that take into consideration the value of service and the customer's ability to change from one fuel to another.[11] NRS 704.075(3), NAC 704.518(5). NAC 704.518 was promulgated pursuant to this authority. Pursuant to NAC 704.518(1)-(2), a utility is authorized to file a schedule with the Commission to be applied to generating, industrial, and large commercial customers of the utility that are capable of using fuel other than natural gas or that have a bona fide alternative to purchasing service from the utility. The regulation provides that if a utility executes a contract that complies with the Commission-approved

[10] Staff also demonstrated that the nine contracts are more appropriately classified as "contracts for special services" pursuant to the Commission's regulations, and that such contracts fail to meet the requirements in the Commission's regulations because they have not been filed with the Commission for approval. Exhibit 98 (Page) at 11-14.

[11] As noted in Staff's Pre-Hearing Brief, SWG's full-margin transportation rates are not exempt from the ratemaking requirements of NRS 704.070, NRS 704.100, and NRS 704.110. Staff's Pre-Hearing Brief at 9.

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tariff schedule, then the utility does not need to obtain Commission approval of the contract in order to serve the customer. SWG filed its Schedule No. ST-1/NT-1, which includes Section 3.1(g) titled the "Anti-Bypass Rate Adjustment," with the Commission and received approval to provide service and charge discounted rates to "transportation customers"[12] that are eligible for such service and charges under the terms of the tariff. Under the regulation, if SWG executes a contract that complies with the Anti-Bypass Rate Adjustment provisions of Section 3.1(g) of Schedule No. ST-1/NT-1, then SWG does not need to seek Commission approval of the contract.

Under Section 3.1(g) of Schedule No. ST-1/NT-1, SWG is only authorized to adjust (or discount) the transportation rate charged to transportation customers if the "condition precedent" is met that the customer has the ability to bypass the utility's system and take service from another natural gas pipeline. As discussed farther down in this Brief, the condition precedent in Section 3.1(g) requires customers to demonstrate they are eligible to receive this exemption by proving that bypass is economically, operationally and physically feasible and imminent. If a customer demonstrates to SWG that it is eligible pursuant to the tariff, the Anti-Bypass Rate Adjustment provision allows SWG to "adjust from time to time the applicable transportation rates to customers whose requirements may be served by other natural gas pipelines." Section 3.1(g). When making such adjustments from the maximum applicable rate in order to avert the customer's bypass, SWG is authorized to reduce "the margin components set forth in subsections (b) and/or (c)" of Section 3.1. Exhibit 98 (Page) at 9. The tariff clearly provides for a rate design that allows SWG to adjust, or reduce, the delivery charge per therm and/or the demand charge per therm. *Id.*

However, as detailed in the testimony of Staff witness Carly Page, for those contracts which SWG claims were executed pursuant to the tariff, SWG has reduced charges other than those authorized by the tariff, including reducing the fixed basic service charge for five of the contracts. *Id.* In addition, SWG has authorized charges not permitted under the tariff, such as eliminating delivery and/or demand charges (charging $0) for eight of its contracts, or charging a fixed rather than "per therm" demand charge for three of its contracts. *Id.* Section 3.1(g) of SWG's tariff does not permit SWG to select any rate design it chooses in contracting with its customers, but limits the authorized

[12] Which are typically generating, industrial and/or large commercial customers.

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adjustments to reducing the components identified in subsections (b) and (c) of Section 3.1. While SWG is authorized to *reduce* the delivery or demand charge components, nothing in the tariff authorizes SWG to waive or eliminate the charges altogether. Because SWG has executed nine contracts that contain rate designs and charges (or $0 charges) that are not authorized by its tariff, those nine contracts are in violation of Section 3.1(g) of Schedule No. ST-1/NT-1.

Attachment CJP-7 of Exhibit 98, Ms. Page's testimony, lists the contracts that are not in compliance with the tariff. Confidential Attachment CJP-6 provides more specific details of the contract provisions that do not comply with the tariff. In rebuttal, SWG attempted to justify its contracts that deviate from the rate design specified in the tariff by arguing that "[e]ach anti-bypass rate adjustment is effectively a customer-specific cost based rate" in response to a question as to why the anti-bypass rate adjustment structures change from contract to contract. Exhibit 110 (Gabe) at 6, 9-10. But Section 3.1(g) of SWG's tariff only permits SWG to apply a "customer-specific" rate for purposes of the delivery and demand charge components of the transportation rate. If SWG wished to create a completely customer-specific rate that deviates from the rate design specified in Section 3.1(g), SWG was required to seek approval from the Commission for the contract for special services.

SWG also tried to argue in its rebuttal testimony and during the hearing that the specific terms of the tariff do not need to be followed as long as the system rate of return for these customers is being collected by SWG. SWG testified it "believes it is more important to consider the totality of each [contract] rate design than to focus on individual components that could potentially have been included in a customer's rate structure. . . . there is no difference if the revenues are collected as demand rate, commodity rate or a basic service charge – it is the total dollars that matter." Exhibit 113 (Congdon) at 13. However, such a position not only ignores the clear terms of the requirements in the Commission-approved tariff, but also is based on the faulty assumption that the customers being served under the tariff are in fact eligible to receive discounted charges. As discussed in section II(b) below, Staff provided substantial evidence demonstrating that certain contract customers are ineligible under the tariff and therefore not entitled to receive discounted contracts for service. Instead, these customers should be paying full-margin transportation rates, or some other more

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appropriate rate outlined in SWG's tariff. As the contract customers are not actually paying full-margin transportation rates designed to recover the costs imposed by transportation customers, or some other rate, as they should be, then it is unlikely that the revenue received from the contract customers is covering their system rate of return. This is why it is important for utilities to comply with the terms of their tariff to ensure that the customers are eligible to receive discounts and then to set a rate that will ensure the customer is covering their system rate of return. Ignoring the clear terms of the tariff and simply looking at whether customers are meeting what is an inaccurately calculated system rate of return would not only result in a flawed analysis, but also could set a very dangerous precedent in the utility industry. By ignoring the terms of the tariff and accepting SWG's argument, the Commission would be rendering the tariffs meaningless, and allowing a utility to ignore and evade compliance with its own tariffs. The Commission should decline to accept SWG's position as the consequences of doing so would certainly not be in the public interest of SWG's Nevada customers.

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During the hearing, SWG admitted that it does not comply with its tariffs when its witness testified that it can contract for any rate design it chooses without Commission approval, as long as it is recovering the system rate of return. Tr. at 1536. In other words, as long as SWG is recovering what it has calculated as the system rate of return, regardless of whether that analysis is flawed, SWG has bestowed upon itself the flexibility to construct any rate design of its choosing without Commission approval, in direct violation of its tariffs (and the Commission's regulations as discussed below). *Id.* However, as discussed above, the tariffs do not provide the broad flexibility that SWG claims that they do, but mandate a specific rate design that is laid out in Section 3.1 of the tariff, authorizing adjustments be made to the delivery and/or demand charges only. The Commission's regulations in NAC 704.518(3)-(4) prescribe the actions required by a utility for situations in which a contract by a utility falls outside such limits established by the utility's tariff.

Because the charges reflected in the contracts executed by SWG were non-conforming to the tariff, Staff evaluated whether the contracts complied with NAC 704.518(3)-(4). NAC 704.518(3) provides that a utility may contract with a qualifying customer pursuant to this section if the utility intends to charge a rate that is outside of the limits established by the utility's schedule or seeks terms and conditions of service that are outside of those in the schedule. Because the rate designs or rates charged by SWG for nine of its contracts were outside the limits established by Schedule No. ST-1/NT-1, the contracts appeared to more closely resemble "contracts for special services" that may be executed pursuant to NAC 704.518(3). However, in order for SWG to charge a customer a rate that does not conform to the provisions in its Schedule No. ST-1/NT-1, the regulation requires that the utility file an application with the Commission seeking approval of the contract, and the utility cannot serve the customer until the contract is approved by the Commission. NAC 704.518(3). Staff's testimony showed that none of the nine contracts with terms that deviate from the provisions of Schedule No. ST-1/NT-1 were filed with the Commission for approval. Therefore, nine of SWG's contracts are non-compliant with NAC 704.518(3) to the extent that these contracts are contracts for special services that deviate from SWG's anti-bypass rate adjustment in Section 3.1(g) of its tariff.

As noted above, the tariff violations extend beyond the non-conforming rate design identified in Staff witness Page's testimony. Section 3.1(g) of Schedule No. ST-1/NT-1 states that "[a]s a condition precedent to qualifying for an Anti-Bypass Rate Adjustment, the customer must establish, to the Company's satisfaction, that bypass is economically, operationally and physical feasible and imminent." As such, before one ever gets to the question of whether a customer's contract comports with the rate design set forth in the tariff, this condition precedent must be satisfied. SWG does not attempt to satisfy this condition precedent, but instead readily admits that it does not even try to comply with this section of its tariff given that SWG believes it is better equipped than its customers are to determine bypass feasibility.[13] Regarding the NCA #1 and #2 contracts specifically, SWG states that it was aware of the bypass alternatives available to them. SWG adds:

> When customers provide bypass studies developed by their consultants, the requirements are often incomplete and include facilities costs that are significantly lower than the estimates prepared by Southwest Gas using historic values based on actual project costs. Estimates prepared by Southwest Gas are complete and conform to company design standards and therefore represent the most realistic bypass option.

[13] Tr. at 1421 ("I don't recall asking NCA 1 and 2, or 2, for any engineering studies. We were using engineering studies, engineering analysis provided by our own engineering department.").

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Exhibit 110 (Gabe) at 12. But SWG provides no further evidence indicating that it can do a better job than its customers in first determining the feasibility and imminency of bypass. As Staff witness Maguire testified, it is impossible for SWG to gauge the feasibility or imminency of bypass, particularly if the customer is new. Even for a returning customer, SWG may not be aware of changed circumstances that would result in a different determination as to the feasibility of bypass. Exhibit 96 (Maguire) at 6. The fact remains that "[w]ithout the customer providing analysis demonstrating its alleged bypass option, SWG may never know the alternatives the customer has, if any, to bypass." Exhibit 96 (Maguire) at 6. More importantly, and what apparently SWG is ignoring is, the tariff does not designate SWG as the first-mover in evaluating a customer's bypass options just because SWG believes it can do a better job at this analysis than the customer. Tr. at 1215. Rather, the tariff says the exact opposite, requiring that the customer as a condition precedent establish to SWG's satisfaction that "bypass is economically, operationally and physical feasible and imminent." Schedule No. ST-1/NT-1 at § 3.1(g). While this language still provides SWG with ample authority to negotiate with its customer or work on the specific terms in the customer's analysis of bypass options, it does not provide SWG with the ability to be the first or only party determining the feasibility of bypass.

In addition to SWG assuming it knows better than its own customer what bypass alternatives exist, SWG also appears to assume that owning and operating a customer-owned natural gas pipeline as a bypass alternative was something its customers were more than qualified to undertake. Seemingly indicating that any company that works with complicated equipment or products could run a natural gas pipeline, SWG witness Gabe states that six of the current contract customers operate power plants and thus have the expertise to safely operate underground pipelines. Regarding Cyanco, Mr. Gabe states that as a large industrial company that manufactures sodium cyanide for mining, it has the technical expertise to construct and operate a bypass pipeline and connect directly to Paiute. Exhibit 100 (Gabe) at 5-6. However, during the hearing, Mr. Gabe admitted he did not have the requisite qualifications to know and understand the level of knowledge and expertise that SWG's customers must possess to own or operate their own natural gas pipeline. Tr. at 1415-16.

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As Staff's testimony reflects, it cannot agree with the idea that several of SWG's contract customers could or would own and/or operate their own bypass pipeline. It isn't just the increased regulation of underground natural gas pipe that serves as a roadblock, although that is a factor. Tr. at 1191. As Mr. Maguire pointed out, most companies do not want the liability of operating a highly regulated natural gas pipeline, which has a value even if that value is unknown or unquantifiable. When one considers the scale of the Massachusetts pipeline incident alone for Columbia Gas, it is hard to believe that any business, no matter how complicated their operations already are, would want to take on this additional liability. Tr. 1190-92.

As to the actions the Commission should take as a result of SWG not meeting this condition precedent in its tariff, Staff supports the same result it recommends for SWG's failure to comply with the rate design portions of the tariff.[14] In other words, Staff supports the imputation as recommended by Mr. Lopez. Exhibit 103 (Lopez).

b. <u>Practices Consistent with Prudent Management of the Utility Pursuant to NRS 704.110(9)(e).</u>

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NRS 704.110(9) does not directly apply to this rate case. NRS 704.110(9) sets forth certain requirements if the Commission approves a utility's request to make any rate adjustments on a quarterly basis pursuant to subsection (8) of this same statute. Subsection (8) states that a natural gas public utility must request approval to adjust its rates on a quarterly basis between annual rate adjustment applications based upon changes in the utility's recorded costs of natural gas purchases for resale. In other words, subsection (8) and (9) of NRS 704.110 concern quarterly fuel adjustment rates and, more generally, the standards that apply for recovery of the recorded costs of natural gas purchases (those proceedings previously referred to as DEAA or ARA proceedings).

Even if the prudency standard as set forth in NRS 704.110(9) is not directly applicable in a general rate case proceeding, Staff has outlined fully above why prudency still applies to the costs and investments that SWG seeks recovery of in a rate case. And, SWG has not demonstrated prudent

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[14] It should be noted that Mr. Maguire's analysis of whether or not SWG complied with this section of its tariff regarding bypass feasibility did not examine every negotiated contract as Staff witness Page did. Rather, Mr. Maguire focused his analysis on the four contracts that had been re-executed since 2009. All four contracts examined by Mr. Maguire overlap with the contracts that Staff witness Page found to be non-compliant with SWG's tariff.

utility management regarding its contracting pursuant to its Schedule No. ST-1/NT-1. SWG witnesses Gabe and Congdon (as discussed above) effectively admit that SWG has not been following its tariff for a number of years. Tr. at 1421, 1536-39; Exhibit 113 (Congdon) at 12-15.

Using just one example, the "Availability" and "Applicability" sections of Schedule No. ST-1/NT-1 presume that SWG will be serving customers from its own facilities.[15] But, SWG readily admits that it does not have any facilities connected to five of its "direct connect" contract customers. Again, while SWG has tried to blame Staff for not raising this or other issues in the past regarding these contracts, the fact of the matter is that neither Staff nor the BCP fully understood before this rate case that SWG had absolutely no facilities servicing those direct connect customers. BCP witness Chairez explained that his understanding was that SWG was able to serve direct connect customers in accordance with its tariff given that SWG had a little piece of plant (a flange) between Paiute's facilities and the customers. Tr. at 1112-13. Because SWG was the only party with knowledge that it had no facilities serving these direct connect customers, SWG should have taken the initiative to propose changes to its own tariff such that these direct connect customers actually qualify for service under Schedule No. ST-1/NT-1. In fact, given the vintage of the direct customers' contracts, which dates back to 1990 or earlier, SWG has had multiple rate cases—maybe as many as five rate cases—to propose tariff changes that align with the reality of its contracts.[16] But SWG did nothing to come into compliance with its tariff or, indeed, to revise its tariff to reflect the physical realities on its system. Even worse, SWG's own contract terms with its direct connect customers presume SWG has facilities, and by its own admission, it does not.[17]

SWG appears to justify the violation of its own tariff terms for its direct connect contract customers by stating that these contracts have value since SWG can curtail service to these customers

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[15] Schedule No. ST-1/NT-1 at § 1 (Availability) and § 2.1 (Applicability and Character of Service) ("b. The transportation of gas through the Company's system …").

[16] Tr. at 1133-34 states:

> Q: … [I]f some of these vintages on these direct connect customers are older than the 90's, but the newest being around 1990, and the [A]vailability and [A]pplicability section of NT-1/ST-1 doesn't even seem to permit these customers to be part of this tariff, how many rate cases has Southwest Gas had to change its tariff to make sure that its tariff applies to those direct connect customers?
>
> A: Well, since the 2001 case, the 2001, 2004, 2009, 2012, and then this proceeding is the fifth rate case including the 2001 rate case.

[17] *See, e.g.*, Exhibit C-13 at Attachment CJP-9 (SWG contract with Premier Magnesia).

in times of emergency. Exhibit 110 (Gabe) at 16-17. The only specific example provided by SWG for curtailment, however, was Newmont Gold (Carlin). Exhibit 110 (Gabe) at 17-18; Tr. at 1425. In his rebuttal testimony, SWG witness Gabe stated that Newmont Gold (Carlin) was curtailed 137 times since 2013. Exhibit 110 (Gabe) at 17-18. But Mr. Gabe did not tell the full story in testimony. At hearing, SWG witness Gabe admitted that since the Adobe lateral was built, he would be "surprised" if Newmont Gold (Carlin) was curtailed at all. Tr. at 1437. Moreover, Mr. Gabe stated it was fair to assume that the 137 times referenced in his rebuttal testimony occurred between 2013 and 2016, with no curtailments happening since 2016. *Id.* Given that the only evidence of actual curtailment presented by SWG was of Newmont Gold (Carlin) and SWG's own admission that this curtailment isn't needed or utilized anymore, there does not appear to be any benefit to retaining SWG's contracts with these direct connect customers, which violate SWG's tariff.

Perhaps the best example of SWG's faulty utility management regarding its contracting concerns the Cyanco contract. SWG admitted that it did not file a new contract with this customer that presumably was executed in 2016, even though Section 3.1(g) of Schedule No. ST-1/NT-1 explicitly requires the contract and supporting studies to be filed before service is initiated to the customer under the contract terms. Exhibit 110 (Gabe) at 9. After Staff called this to SWG's attention during the course of discovery in this general rate case, SWG still did not file the contract with Staff, instead filing only some "analysis" that purports to be Cyanco's natural gas supply bypass feasibility study, cost estimates and economic studies. Exhibit 96 (Maguire) at PRM-7; Exhibit C-12 at PRM-7. This "analysis" in and of itself demonstrates imprudence in terms of the enforcement of SWG's own tariff. First, the analysis did not include any demonstration on the part of Cyanco that bypass is economically, operationally and physically feasible and imminent, which is required by Section 3.1(g) of Schedule No. ST-1/NT-1. Moreover, the analysis includes numerous handwritten notes without any explanation or justification, as well as an e-mail draft that purports to be from Paiute (who is not a party to the contract between SWG and Cyanco) with no specific information as to who sent or received the e-mail or when it was sent. Staff had to seek extensive clarification on this "analysis," and even then, did not reach any conclusion that Cyanco had demonstrated that bypass was feasible and imminent. Exhibit 96 (Maguire) at PRM-8; Exhibit C-12 at PRM-8.

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Rather, at best, the "analysis" filed by SWG regarding the Cyanco contract seems to be SWG's rough estimate as to whether or not SWG can recover its marginal cost of serving Cyanco via the proposed contract terms. As to the contract itself with Cyanco, SWG finally presented it to the Commission on the last day of hearing, only after Staff cross-examined SWG witness Gabe.[18]

Moreover, SWG's imprudent management also is evidenced by what appears to SWG's own confusion as to how to justify the $223,306 SWG is seeking recovery of in this rate case for the Cyanco/MSA Regulator Station. Even though Cyanco is a contract customer that does not pay full retail rates, SWG sought to add $223,306 to rate base as a result of upgrades to Cyanco's MSA/Regulator Station. Staff witness Danise recommends disallowance of this rate base addition. Exhibit 64 (Danise) at 31. SWG witness Cunningham justifies the inclusion of this rate base in retail rates by stating that Regulator Station work for Cyanco was done in conjunction with Cyanco's 2011 request for a gas delivery and contractual increase. Exhibit 81 (Cunningham) at 24. In contradiction to Ms. Cunningham's pre-filed rebuttal testimony, at hearing, SWG witness Gabe states that there was no new contract with Cyanco in the 2011 to 2012 timeframe. Tr. at 1439-40; Conf. Tr. at 1465. Staff tried to probe this inconsistency in the confidential session at hearing, but even after extensive cross examination on this issue, Staff still is unclear whether SWG's prior contract with Cyanco (in place since 2005) appropriately accounted for the $223,306 in costs SWG now seeks to recover from ratepayers and how the new 2016 contract is meant to account for current or future costs. Conf. Tr. at 1477-81. In other words, Staff believes it is still an open question whether SWG will collect sufficient revenue from Cyanco to ensure that full retail customers are not subsidizing Cyanco. Staff does not believe SWG has presented sufficient evidence for the parties to this rate case to understand how its prior or new contract with Cyanco recovers sufficient costs that justify full retail customers paying for upgrades to Cyanco's facilities. *Id.* at 1465-69, 1477-81.

c. <u>Conditions Under Which Contracts Must be Filed with the Commission.</u>

As discussed above, rates charged to generating, industrial, and large commercial customers in conformance with a Commission-approved schedule are exempt from Nevada's statutory

[18] Given the late presentation of this contract, it was not admitted into evidence in this rate case, and as such, Staff will not discuss herein some of its concerns related to this contract.

ratemaking requirements. NRS 704.075, NAC 704.518. However, if a natural gas public utility intends to charge a rate or provide terms and conditions of service that deviate from the Commission-approved schedule, such rates must be filed for approval with the Commission per NAC 704.518.

Specifically, NAC 704.518(3) provides that a utility may contract with a qualifying customer if the utility intends to charge a rate that is outside of the limits established by the utility's schedule authorized pursuant to NAC 704.518(1), or seeks terms and conditions of service that are outside of the schedule. If the utility executes a contract pursuant to NAC 704.518(3), it is required to "file with the Commission an application for approval of a contract for special services" and the utility "shall not provide service to a...customer pursuant to a contract for special services until the contract is approved by the Commission" in accordance with NAC 704.518(3). As explained above, nine of the contracts which SWG claims were executed pursuant to Schedule No. ST-1/NT-1 contained rate designs and rates charged that were outside the limits of the utility schedule. These contracts are more appropriately terms "contracts for special services" and are required to be filed in an application for approval by the Commission, which SWG did not do.

SWG has tried to argue that the Commission's determination in Docket No. 09-04003 that "it would not be appropriate to require the filing *for approval* by the Commission of all service agreements between Southwest and transportation customers under ST-1 and NT-1 tariffs. The requirement would require deviation from NAC 704.518 and would likely violation NRS 704.075"[19] means that SWG shouldn't be required to file all of its contracts with the Commission. Exhibit 113 (Congdon) at 14-15. NRS 704.075 allows the Commission to exempt certain natural gas rates from the general ratemaking provisions that the Commission has determined are not needed to protect the public interest. Sections 1 and 2 of NAC 704.518 then allow a utility to file a schedule with the Commission setting forth terms and conditions of service and a range of rates or mechanisms to determine such rates. If the utility provides service in accordance with the Commission-approved schedule, then the utility need not obtain Commission approval to serve the customers. In other

[19] Docket No. 09-04003, Modified Final Order ¶ 206, at 64-65 (issued Dec. 21, 2009) (emphasis in original). The Commission stated that pre-approval would require deviating from NAC 704.518 and would likely violate NRS 704.075. Staff reserves the right to argue in a future investigatory docket why such an interpretation of NRS 704.075 may be flawed and erroneous. Staff's proposals in this rate case do not require an immediate decision as to the scope of NRS 704.075.

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words, as long as the contracts conform to the tariff that was approved by the Commission, there is no need to verify that the rates contained in those contracts are just and reasonable since the Commission already made such a determination when it approved the tariff prescribing the rate components allowed to be adjusted. Thus, Staff agrees that not all contracts need to be filed with the Commission for approval. However, in order for SWG to serve a customer pursuant to a contract that is not filed with the Commission, SWG must first fully comply with the terms of its Schedule No. ST-1/NT-1. If SWG chooses to not conform its contracts to the tariff provisions, then SWG must file all such non-conforming contracts with the Commission for approval so that the Commission can ensure that the rates charged pursuant to those contracts are just and reasonable.

SWG's testimony and assertions throughout this proceeding have indicated that its contracts are executed pursuant to the tariff. Exhibit 113 (Congdon) at 12-15; Tr. at 1538. However, because nine of SWG's contracts fall outside the limits of the utility schedule, SWG is in violation of the provisions contained in Schedule No. ST-1/NT-1 of its tariff regarding those contracts. The regulations provide that if a contract falls outside the limits of the utility schedule, the utility is required to file the contract with the Commission for approval. NAC 704.518(3). Because nine of SWG's contracts fall outside the limits of SWG's Schedule No. ST-1/NT-1, those contracts are "contracts for special services" that should have been filed with the Commission for approval. SWG did not file any of those nine contracts with the Commission for approval prior to providing service to such customers under the contract. Therefore, SWG is in violation of the Commission's regulations governing contracts for special services. Because such contracts have not been approved, they have not been determined by the Commission to contain just and reasonable rates.

As a result of SWG's failure to comply with its tariffs and/or the Commission's regulations when contracting with its customers, Staff recommends the Commission impute the revenues into the cost of service that SWG would have received had the contract customers taken service under the otherwise applicable rate class, in lieu of the revenues actually received from the contract customers. Exhibit 103 (Lopez) at 5-6.[20] Staff's reasoning is that it is inappropriate and unreasonable for the

[20] The practical effect of imputing the revenues is that SWG shareholders will be assigned that amount of revenue responsibility rather than remaining customers.

remaining SWG customers in the NND and SND to absorb the costs associated with SWG violating its own tariff and/or the regulations when it provided noncompliant contract services with discounts to those customers that are either ineligible or have failed to demonstrate eligibility for such discounted rates. *Id.* at 6.

III. CONCLUSION

In conclusion, Nevada law requires a natural gas public utility bear the burden of proof in general rate case proceedings, including proving that the costs and investments incurred are prudent, and just and reasonable for inclusion in general rates. The record shows that SWG has failed to satisfy its burden of proof concerning various costs addressed in testimony by Staff. Therefore, the Commission should accept the disallowances and recommendations contained in Staff's testimony in this case.

In addition, SWG has failed to comply with the provisions of its tariffs when contracting with nine of its contract customers pursuant to Schedule No. ST-1/NT-1 when executing contracts that contain rate designs that are not authorized under the tariff. Moreover, SWG has failed to comply with its tariff provisions to ensure that the customers are eligible to receive these discounted rates by requiring the customer prove they have a bypass that is economically, operationally and physically feasible and imminent. SWG's contracts also fail to comply with the Commission's regulations governing contracts for special services because SWG has failed to obtain Commission approval to serve customers pursuant to contracts that fall outside the limits prescribed by its tariff. Accordingly, the Commission should accept Staff's recommendation to impute revenues into the cost of service that SWG would have received had the contract customers taken service under the otherwise applicable rate class.

RESPECTFULLY SUBMITTED this 30th day of November, 2018.

PUBLIC UTILITIES COMMISSION OF NEVADA
REGULATORY OPERATIONS STAFF

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PROOF OF SERVICE

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An employee of the Public Utilities Commission of Nevada

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DISTRICT COURT

CLARK COUNTY, NEVADA

SOUTHWEST GAS CORPORATION,

Petitioner,

vs.

PUBLIC UTILITIES COMMISSION OF NEVADA, *et al.*,

Respondents.

CASE NO. A-19-791302-J

DEPT. NO. 19

RECORD OF DOCKET NO. 18-05031

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BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

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Application of SOUTHWEST GAS CORPORATION for authority to increase its retail natural gas utility service rates and to reset the Gas Infrastructure Replacement Rates for Southern and Northern Nevada. /	DOCKET NO. 18-05031

TRANSCRIPT OF PROCEEDINGS

HEARING

VOLUME 4

PHASE 2, REVENUE REQUIREMENT
PHASE 3, RATE DESIGN

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9:06 a.m., Thursday
October 25, 2018

Office of the Public Utilities Commission
1150 East William Street
Hearing Room A
Carson City, Nevada

VIDEOCONFERENCED TO:

Office of the Public Utilities Commission
9075 West Diablo Drive
Suite 250
Hearing Room A
Las Vegas, Nevada

Reported by: DEBRA J. BARTGIS, CCR #56

APPEARANCES:

Commissioner Present:	ANN PONGRACZ Commissioner and Presiding Officer
Commissioner's Administrative Attorney:	DALLAS HARRIS
Commission Policy Advisors:	CRAIG McDONNELL Manager Policy Analysis STEVE TRAXLER KIM LIGHTHART JOHN VINSKI
For Southwest Gas Corporation:	KYLE STEPHENS Assistant General Counsel CARLA KOLEBUCK Counsel Legal Affairs 5241 Spring Mountain Road Las Vegas, Nevada 89150
For PUCN Regulatory Operations Staff:	DEBREA TERWILLIGER Assistant Staff Counsel 1150 East William Street Carson City, Nevada 89701 SHELLY CASSITY Assistant Staff Counsel 9075 West Diablo Drive Suite 250 Las Vegas, Nevada 89148
For Office of Attorney General Bureau of Consumer Protection:	PAUL STUHFF Sr. Deputy Attorney General MICHAEL SAUNDERS Sr. Deputy Attorney General 10791 West Twain Avenue Suite 10 Las Vegas, Nevada 89148

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CARSON CITY AND LAS VEGAS, NEVADA

THURSDAY, OCTOBER 25, 2018

9:06 A.M.

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PHASE 2

REVENUE REQUIREMENT

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COMMISSIONER PONGRACZ: This hearing will come to order.

The record will reflect that this is the time and place set before the Public Utilities Commission of Nevada for a hearing regarding the application of Southwest Gas Corporation for authority to increase its retail natural gas utility service rates and to reset the Gas Infrastructure Replacement Rates for Southern and Northern Nevada.

This matter has been designated by the Commission as Docket No. 18-05031.

Appearing for the Commission today are myself, Ann Pongracz, Commissioner and Presiding Officer; Administrative Attorney Dallas Harris; Policy Advisors John Vinski and Steve Traxler in Las Vegas; and Policy Advisor Craig McDonnell in Carson City.

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Appearing for Southwest Gas?

MR. STEPHENS: Good morning. Kyle Stephens and Carla Kolebuck.

COMMISSIONER PONGRACZ: Thank you.

Appearing for the Bureau of Consumer Protection?

MR. STUHFF: Good morning, Commissioner Pongracz. Paul Stuhff here in Las Vegas.

COMMISSIONER PONGRACZ: Thank you.

Appearing for Commission Staff?

MS. CASSITY: Good morning. Shelly Cassity and Debrea Terwilliger.

COMMISSIONER PONGRACZ: Thank you.

(Off the record.)

COMMISSIONER PONGRACZ: Are there any other persons who would like to make their presence known for the purpose of this hearing today?

(No Response)

COMMISSIONER PONGRACZ: Let the record reflect that no other persons have come forward.

The record will reflect that the Commission has in its files Affidavits of Publication for a continuation of this hearing at this time and place.

Is there anyone present who has any

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questions regarding the notice, or who wishes to review the affidavits on file?

(No Response)

COMMISSIONER PONGRACZ: Let the record reflect that this matter has been duly and properly noticed for this time and place.

Are there any preliminary issues to come before us today?

Mr. Stephens?

MR. STEPHENS: Southwest Gas has one. Yesterday during the examination of the BCP Witness Mr. Garrett there was a reference to some Nevada authority, and the rebuttable prudence presumption, and we recited a case, and the Commission asked us to provide copies of that authority.

So we have that, that case that was cited, as well as the underlying -- well, back to that case. It was the Nevada Public Service Commission case that is referenced in that Supreme Court case, and so we're just going to hand that out so that people have reference to that information.

COMMISSIONER PONGRACZ: Thank you very much.

MS. BARTGIS: Commissioner, I need to

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go off the record for a second. The mikes are not coming through my machine. Can we hold just one second?

COMMISSIONER PONGRACZ: Yes, certainly.

(Off the record.)

COMMISSIONER PONGRACZ: And Mr. McDonnell, did you have anything you needed to say before we get started?

MR. McDONNELL: No, I was just trying to assist Debbie by talking into the mike.

COMMISSIONER PONGRACZ: Ah. Very good. Are there any other preliminary matters -- Miss Bartgis, are we good to go now in Carson?

MS. BARTGIS: Yes, ma'am. Thank you. We got it.

COMMISSIONER PONGRACZ: Very good. Thank you.

Are there any other preliminary matters to come before us this morning?

MS. CASSITY: Yes, Commissioner.

COMMISSIONER PONGRACZ: Miss Cassity?

MS. CASSITY: Just to add onto this case that was provided by the Company, Staff would like the Commission to take administrative notice of Senate Bill No. 437 from the 2007 Nevada legislative session, and I would note that the Legislative Counsel's Digest, I'll read that into the record: Assembly Bill No. 7 of this session superseded by statute the holding of the Nevada Supreme Court case in Nevada Power Company versus Public Utilities Commission of Nevada, which is the case that was provided, and established as a public policy of this State that in proceedings involving deferred energy accounting by a public utility, there is no presumption that the public utility's practices and transactions were reasonable or prudent, and the public utility has the burden of proving reasonableness and prudence in such proceedings.

COMMISSIONER PONGRACZ: Thank you. We'll take administrative notice of that.

And Miss Harris reminds me, we will take administrative notice of SB 437 from the 2007 Nevada legislative session.

(Administrative Notice Taken)

MS. CASSITY: And Assembly Bill No. 7.

COMMISSIONER PONGRACZ: And Assembly Bill No. 7.

Also from the 2007 session?

MS. CASSITY: Yes.

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COMMISSIONER PONGRACZ: Thank you.

(Administrative Notice Taken)

COMMISSIONER PONGRACZ: And Mr. Stephens, would you like us to take administrative notice of the two orders that you distributed this morning?

MR. STEPHENS: Sure. You know, quite frankly, I don't know if we need to, it's - yes, we can. But it's precedent in this State, and I'm fine with taking administrative notice of the Assembly Bill and Senate Bills that were referenced in there, because that is addressing a different type of proceeding than this one.

But, yes.

COMMISSIONER PONGRACZ: Yes, you would like us to take administrative notice of the orders?

MR. STEPHENS: Yes.

COMMISSIONER PONGRACZ: Thank you.

And we will take administrative notice of the two orders that Mr. Stephens and Miss Kolebuck distributed in the 1986 decision in Nevada Power Company -- I believe it's Nevada Power Company V Nevada Public Service Commission.

Would that be correct, the 1986 order?

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MR. STEPHENS: I would just say: In re Nevada Power Company. I believe it is a Commission opinion, and the citation that I referred to it as the 74 PUR 4th 703.

COMMISSIONER PONGRACZ: Thank you.

(Administrative Notice Taken)

COMMISSIONER PONGRACZ: And also of Nevada Power Company V Public Utilities Commission of Nevada 122, NEV 821.

(Administrative Notice Taken)

COMMISSIONER PONGRACZ: Thank you to counsel for both of those.

With that, are there any additional preliminary matters to come before us today?

(No Response)

MR. STEPHENS: So while we're taking administrative notice of things, and it is in respect to this issue, we ask that the Commission take administrative notice of the Nevada Public Utilities Commission's order in Docket No. 08-12002, issued on June 24th, 2009, and it's in regards to a Nevada Power application.

COMMISSIONER PONGRACZ: We will take administrative notice of the order issued in Docket 08-12002 on June 24th, 2009.

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(Administrative Notice Taken)

MR. STEPHENS: Thank you.

COMMISSIONER PONGRACZ: Are there any additional preliminary matters for us to address before we resume the cross-examination of Mr. Danise?

(No Response)

COMMISSIONER PONGRACZ: Hearing none, then let us return to the cross-examination of Mr. Danise by Mr. Stephens.

MR. STEPHENS: Thank you.

So I believe we have copies of Exhibit 65 up North this morning. That's why I wanted to start there. And we'll also hand out additional copies for those who didn't receive them down here.

COMMISSIONER PONGRACZ: Mr. McDonnell, do you have copies of Exhibit 65?

MR. McDONNELL: I do not.

COMMISSIONER PONGRACZ: Could that be provided to Mr. McDonnell, please?

MR. STEPHENS: Well, it appears that Southwest Gas' representative is not there yet, so I'll hold this line of questioning --

MR. McDONNELL: Actually, Mr. Stephens, your representative is here, and --

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MR. STEPHENS: Oh, Okay.

MR. McDONNELL: -- and I believe she is --

MR. STEPHENS: Gathering the information?

MR. McDONNELL: Yes, she's looking.

MR. STEPHENS: Okay. Yes, and this would be, for reference, the response to DR Staff 30-170.

COMMISSIONER PONGRACZ: Let's go off the record for a moment so that the representative of Southwest Gas can provide Mr. McDonnell with a copy of that material.

And also, is there anyone else in the hearing room in Carson City who should have received it? I'm wondering if we have Staff Counsel there?

MS. BARTGIS: Just me, Commissioner.

COMMISSIONER PONGRACZ: Ah, okay. So is there anyone else, Miss Bartgis, who is in the room who would require a copy of the exhibit other than yourself and Mr. McDonnell.

MS. BARTGIS: No. Thank you.

COMMISSIONER PONGRACZ: Okay. Thank you.

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(Off the record.)

COMMISSIONER PONGRACZ: We'll be back on the record.

MR. STEPHENS: And that's been previously marked as Exhibit 65; correct?

ADAM DANISE
the witness on the stand at the
time of the evening recess
resumed the stand and was
examined and testified further as follows:

CROSS-EXAMINATION
(Resumed)

BY MR. STEPHENS:

Q Good morning, Mr. Danise.

A Good morning.

Q So do you have a copy of Exhibit 65 in front of you?

A Yes, I do.

Q And Exhibit 65 is a copy of Southwest Gas' response -- initial response to Staff DR-170; correct?

A Yes, it appears to be a complete reproduction of it.

Q And we're not going to go through all of it, okay? And just so you understand my premise

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this morning, I've got a couple more of these, but it's just to demonstrate in general kind of what was produced and have some high level discussions about it. Okay?

And so with respect to 170 this was, you know, a DR that you were requesting the justification or business case with respect to those work orders that are listed in that DR. Correct?

A Correct.

Q And if you go back to Attachment 7 of Exhibit 65, and that's a copy of the FSM program's charter --

COMMISSIONER PONGRACZ: Excuse me, Mr. Stephens. I am looking -- I'm looking at a document that says, Agenda Item 7. Is that what you're referring to?

MR. STEPHENS: No, if you look in the upper right-hand corner, I believe they should be labeled Staff 30-170, Attachment --

COMMISSIONER PONGRACZ: Ah.

MR. STEPHENS: -- and so look for one that says attachment -- it's near the end.

COMMISSIONER PONGRACZ: Okay. Let me go to that.

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Okay. Okay. There we go.

MR. STEPHENS: It's bound. It's about 35, 40 pages.

COMMISSIONER PONGRACZ: Yes. Thank you.

BY MR. STEPHENS:

Q Are you there?

A Yes.

MR. STEPHENS: And everybody else there as well?

COMMISSIONER PONGRACZ: Yes. Thank you.

MR. STEPHENS: Okay.

BY MR. STEPHENS:

Q And so this is actually a document that was attached to your testimony as well; right?

A Correct.

Q Okay. And so if you look at this document, and let's go to sheet 5 of 35, would you agree with me that it provides an explanation of what the project is about, you know, the current state with respect to why the system needs to be updated -- and just in general. I understand it may not have been all of the information that you were seeking, but it provides an explanation of

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what the project is, and some justification - maybe not all that you requested - but some justification with respect to the basis of the project.

A Yes, and that's why I included it in my testimony, because I thought it had relevant information in it.

And, but I would add that I don't have the response letter in front of me, but the request date on this is 7/20 of 2018. I believe we received this document about a month later.

COMMISSIONER PONGRACZ: And when was your testimony due, Mr. Danise?

THE WITNESS: It was due to be filed on October 3rd.

COMMISSIONER PONGRACZ: Thank you.

BY MR. STEPHENS:

Q And I'm not disputing that. And one of the premises that we'll discuss today is that Southwest Gas acknowledges that the information was not presented to Staff as quickly as desired, and in some instances in the format as desired.

And so, you know, my idea today, just to let you know the path that we're going to go forward, is to talk about some of these, and then kind of lay the groundwork for that so we don't

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have that continual back and forth routine, you and me, with some of the premises that we are both asking the questions on or responding to the questions on. And so hopefully that will help expedite this examination kind of as we go forward.

So I understand your premise, and that the documents could have been provided or would liked to have been provided in a quicker fashion, and in some instances a better format. I understand that. Just getting to the information in terms of what was provided, you did have an opportunity to look at it. Okay?

So that's my context for these lines of questions.

MS. CASSITY: And I would just add that I think Mr. Danise should be able to respond however he feels appropriate in response to the questions that are asked, and should not be limited in any respect with respect to what Mr. Stephens just laid out on the record.

COMMISSIONER PONGRACZ: Thank you.

MR. STEPHENS: And it's not my intent to limit him whatsoever. It's just trying to move things along, and address the issues that we think

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need to be addressed.

COMMISSIONER PONGRACZ: Thank you. We are here to listen to all.

BY MR. STEPHENS:

Q And so consistent with the discussion on 65, Exhibit 65, I think you acknowledged in your testimony yesterday that, you know, even from the outset there was kind of confusion between the parties about, you know, what exactly you were looking for when it came to a justification or business case; correct?

A I believe there was a misunderstanding by Southwest Gas of what I was seeking, and maybe a lesson learned that I took from it is maybe I -- I take some responsibility, maybe I didn't explain it as well, or tried to capture exactly what I was looking for. But we did have discussions, and those discussions did occur to what I was trying to receive.

And my only request was for Southwest Gas to produce what it could when it could and send it to me as soon as it could, and that's what I'm trying to get at here is, you know, I got this a month after I issued this DR, which is well past the date that was set for responding to DRs in this

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docket.

So I tried to be lenient and say, you know, let's set up a process where we just have an exchange of information. As you gather information send it to me, and that way we can have more of a back and forth. But when it comes all at one time, and I have to review it all at one time, it becomes hard to have that discussion because then I have to take a considerable amount of time to evaluate what was provided; when if that information was provided timely, and maybe in batches as I suggested, it could have been a more efficient process where I said, okay, you know, I'm looking for something that has a little bit different information than this. But waiting until the end to dump a lot of paper on me to review, it hindered the process.

Q Acknowledging that it could have been better, the parties still worked together to provide you the information, you explaining what you needed, and Southwest Gas working to identify where that was located, and subsequently provide it to you.

A Correct. Staff and Southwest Gas -- I never stopped coordinating with Southwest Gas. I believe that, you know, is not efficient, and it is not what we're here for. We're both trying to present as much information as we can to this Commission, and therefore I took it as very important to continue the dialogue and to continue to seek the information I was looking for.

MR. STEPHENS: Okay. So I would like to move to the next exhibit we have, or introduce the next exhibit, which is a supplemental response to Staff 170, and it's a thick one. We did not print out everything, but I just wanted to use it as an illustrative example of the types of information that were produced.

And so give us a minute so we can hand that out down here and up there.

MS. HARRIS: Southwest Gas supplemental response to Staff DR-170, will be marked Exhibit 66.

(Exhibit No. 66 was marked for identification.)

BY MR. STEPHENS:

Q You've been handed what's been labeled as Exhibit 66, which is not a complete, but a portion of Southwest Gas' supplemental response to Staff DR-170. Correct?

A Correct.

Q And this one was originally produced, I

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believe, on a thumb drive, and so we don't necessarily have all the same labels that we did on the top right-hand corner of the original response, but maybe about -- well, pretty early on there is a slide deck that's titled Financial Systems Roadmap Project Recap.

A In the first binder?

Q I think so.

MR. STUHFF: Is that dated November 7th, 2013?

MR. STEPHENS: Yes.

MR. STUHFF: Thank you.

MR. STEPHENS: Thanks, Paul.

BY MR. STEPHENS:

Q I was looking at something that --

A Okay.

Q Okay. Okay.

A That was attached to it that I was trying to see if it was --

Q And understanding that, you know, this information may not have been produced in the time frame that was desired, you did receive this information from Southwest Gas with respect to the FSM program. Correct?

A Correct. And I think you can't just

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gloss over the timeline. I think the timeline is very important here.

This is still Staff-170, which was propounded to Southwest Gas on July 20th, 2018. This supplemental -- I don't have a letter for the supplemental, but if you go to the first attachment or the first document in this supplement, there is an attachment labeled: 6092 Staff 30-170 supplement attachment project summaries. The date on this is September 7th, 2018. That is less than one month away from when I needed to file this testimony in this docket, not accounting for any time to have my testimony internally reviewed and approved.

So getting this information almost three months since I first asked for it, can't just be glossed over. This is, this is the process that I had to go to get information from Southwest Gas.

Was it ultimately sent? Yes. Was it sent timely? No. And I think that needs to be very -- it's very important to this discussion, because timeliness in a general rate case is essential. We have timelines for responses to data requests, we have limited days in order to review, and this document, which I believe was even

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prepared for this response, says it was submitted on September 7th. And I would just lay that out, that we can't gloss over the timeline involved.

Q And we're not attempting to, and in fact my question acknowledged that.

The reason we are discussing this, from Southwest Gas' perspective, is just to identify that as we've discussed, the parties continued to work together, Southwest Gas continued to supplement and provide information once they had a better understanding of the explicit type of information that you were seeking, and so the Company was attempting to comply with your requests.

And would you agree with me on that?

A I would, but I find it troublesome that it took three months, almost three months to be able to gather this data. Obviously, this data existed, so I don't know why Southwest Gas took that time.

And, I mean, I believe even by this time I had maybe even submitted a data request indicating that I was requesting -- going to request a disallowance with this Commission on this project.

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So I'm unsure of why it took Southwest Gas so long. And I think that's one of the answers that needs to be stated here on record, is that goes into Southwest Gas' internal approval process, internal processes, and in my point of view, lack of being able to support its documentation and provide things in a timely manner.

Q Well, could a cause also be that misunderstanding between what you were seeking and what Southwest Gas initially produced, and as the audit continued there was further communication between the parties that provided more understanding between them about the types of information that was being requested?

MS. CASSITY: I'm going to object. I think this has been asked and answered.

COMMISSIONER PONGRACZ: Well, there seems to be two very different perspectives being advanced here on what the Company's duties are in the case, and I think at this point I myself am very clear on the Company's perspective regarding the scope of its duties, and I believe I'm also very clear on Staff's different perspective.

So if we could move on?

MR. STEPHENS: You bet.

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So let me hand out the next set. And I'm going to collect three exhibits -- or mark three exhibits at the same time. They are Southwest Gas responses to Staff DRs 171, 178, and 184.

And we would request those be marked the next exhibit in order.

MS. HARRIS: Southwest Gas response to Staff DR-171, will be marked Exhibit 67.

(Exhibit No. 67 was marked for identification.)

MS. HARRIS: Southwest Gas response to DR-178, will be marked Exhibit 68.

(Exhibit No. 68 was marked for identification.)

MS. HARRIS: And Southwest Gas response to DR-184, will be marked Exhibit 69.

(Exhibit No. 69 was marked for identification.)

MS. TERWILLIGER: Miss Harris, could you just go through the marked, because we didn't have them in front of us, and so I just want to write them down.

MS. HARRIS: Southwest Gas response to Staff DR-171 is Exhibit 67; followed by the response to Staff DR-178; and that followed by Southwest Gas response to Staff DR-184, as Exhibit 69.

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MS. TERWILLIGER: Thank you.

BY MR. STEPHENS:

Q And I know you just received them, but are you generally familiar with Exhibits 67, 68, and 69?

A Yes.

Q Okay. And we're not going to go into much detail on these, and in fact we'll just really reference the first one.

But Staff DR-171 requests CR query reports, and then it lists specific work orders; correct?

A Correct.

Q And I'm not an accountant, but if you flip to sheet 1 of 21 for the Attachment 1 of that, to me that just appears to be a breakdown, or a line -- I don't know if it's appropriate to say a line item, but by grouping of the costs that were incurred for that particular work order. Correct?

A Correct. And it's actually interesting that you brought that up, because I'm not an accountant either, and I look at this, and I can look at this and see that there might be some overlapping, or I'm uncertain to exactly which cost element pertains to which type of cost. And I

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followed up with a DR to Southwest Gas asking for a description of each of these cost elements, and the response I got was, well, it's pretty intuitive. And that was the response.

And so I'm still unclear exactly what types of costs Southwest Gas put in each of these cost elements. I mean, I can assume myself by reading this, but I can't get your understanding, Southwest Gas' understanding of what's included in these cost elements after I even tried to get that information.

Q But it's a breakdown of the costs, if you will, that were associated with the project. Correct?

A Correct.

Q And for each of these work orders and these CR query reports, you were provided copies of the vouchers and invoices that support these figures in these reports. And I haven't printed them out, because they would be a mountain of documents. But is that accurate?

A Correct.

Q And those vouchers and invoices were, when they were produced, were separated out by work order number; it wasn't, here's 50,000 documents,

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figure out which one it goes to. It was tied to a particular work order; correct?

A Correct. When I eventually received the documentation, it was segregated out, yes.

Q Okay. And so, you know, Exhibits 65, 66, 67, 68, and 69, we admitted those or offered those not intending to provide the universe of everything that was produced, because there was a lot of documents that were ultimately produced in this case; correct?

A Correct.

Q Okay. But these are just an example of the type of information that was produced. Correct?

A Yes, that was the type of information that was produced. However, after reading this information I had additional questions as to what types of costs were included in each of these cost element categories, and Southwest Gas was nonresponsive and basically stated it's pretty intuitive.

COMMISSIONER PONGRACZ: Mr. Stephens, is there a reason why Southwest Gas data responses included data requests but not the data response? Or am I just missing the date of response?

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MR. STEPHENS: You know, I don't know if it was on that sheet. They are sent out either via e-mail or hard copies with a cover letter that is assigned with it.

BY MR. STEPHENS:

Q And I'm not trying to gloss over this, or anything like that but, you know, acknowledging that the Company was not able to get you the information you desired as quickly as desired, and I think that comes from both parties' perspectives, and in some instances not in the format that was desired, you would agree that at the end of the day there was a lot of information that was provided through the course of this audit. Correct?

A Well, I agree there was a tremendous amount of information that I gathered and requested from Southwest Gas, and even in that amount of data Southwest Gas has not demonstrated the prudency of these expenditures of these projects.

Q And notwithstanding those difficulties along the way, you ultimately were able to do your audit, and you testified yesterday that you were able to verify the expenditures were incurred, and identify expenditures that you question in your

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testimony. Correct?

A Correct. I was able to review the vouchers and see what was charged to the capital projects, and I highlighted some very concerning vouchers that I reviewed that play into Southwest Gas' management of the capital projects at the time that Southwest Gas was executing those projects.

Q So ultimately with respect to the FSM program, you come to a recommendation that the Commission should disallow 50 percent of the costs associated with the FSM program. Correct?

A Correct.

Q And your basis for that recommendation is that the FSM program suffered from an extreme lack of oversight and a lack of accountability.

A Yes.

Q Now Southwest Gas understands your frustration, and the Company, as I've indicated, is frustrated that Staff is frustrated as well, but --

COMMISSIONER PONGRACZ: Now Mr. Stephens --

MR. STEPHENS: Yes?

COMMISSIONER PONGRACZ: -- you do

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understand you're not testifying.

MR. STEPHENS: Yes. Yes.

COMMISSIONER PONGRACZ: So let's be careful about --

BY MR. STEPHENS:

Q So putting that aside, is the basis for your disallowance recommendation driven mostly by your frustration over the auditing process in this instance?

A Not at all. My disallowance is associated with the lack of oversight that I encountered when I reviewed the capital costs of these capital projects.

When an auditor tries to -- when an auditor reviews a project, it has to determine the oversight and the reasonableness of the Company's decisions at the time that the project was in execution. So whatever occurred during my discovery or on-site process does not hinder or overshadow what the ultimate goal of my audit is.

That ultimate goal is to determine how the Company executed and managed its costs, and did it prudently incur those costs at the time those costs were charged to the project.

And that is the ultimate goal of this

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Commission, it's to determine if the costs of each project were reasonable at the time that they were incurred. And that was -- that is my auditing process.

Q And at the end of the day, your testimony basically identifies one-half of 1 percent of the costs of the project to be frivolous or excessive; correct?

A Correct. That's correct. That's part of the sampling that I included in my testimony. But that doesn't overshadow that when those expenditures were being approved by the consultant who was the project manager at that time, what other charges was he approving?

If he felt that it was a prudent, reasonable cost to charge 10-minute chair massages to the capital project, what other charges did Mr. Biernacki feel was appropriate to charge to the capital project?

You have to get into decisionmaking at the time the costs were made. Just because a cost is presented in a voucher doesn't mean that cost is prudent or reasonable. The oversight and the reasonableness of the costs have to be determined when they're approved, and the consultant who

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approved these project costs didn't portray or demonstrate that he was prudently managing this project or spending ratepayer funds, you know, appropriately.

And that's the ultimate concern here. It's not the value of the dollars; it's what was the mind-set of the project managers? What was the oversight of Southwest Gas at that time? If they fully feel that massages and team meetings, spending hundreds of dollars at meals is appropriate, then how do I know that they didn't feel that tremendous hours is being appropriate, or giving other perks as being appropriate? That's the level of review that has to take place here. It's not just keying in on a few charges; it's the overall project management that was going on at the time that the project was being executed.

Q And for those charges that you identified, Southwest Gas in fact went back and removed more than what you had presented to them during the course of discovery; correct?

MS. CASSITY: Objection. Asked and answered.

COMMISSIONER PONGRACZ: Sustained.

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BY MR. STEPHENS:

Q Okay. Let's move on to the FOMs Phase 1 project.

In Q&A 37 you provide a decent description of that project as well. Where did you get that information?

A In Q&A 37 I cite the FOMs project charter, as provided in Attachment AED-18, which is an excerpt of Southwest Gas' supplemental response to Staff-170.

So as we discussed today, it was a supplemental response to Staff-170 that was produced on September 7th of this year, approximately 90 days after I asked for that type of information.

Q Do you know what the software that was implemented in FOMs is used for?

A I believe I describe some of that.

It's work management-type software and work tracking, and that type of software.

Q As you understand it, is that a core function for the operation of the Company?

A Yes.

Q Are you aware that the FOMs Phase 1 project involved the implementation of a new system

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across all five Company divisions?

A Yes.

Q So travel was necessary for that implementation; correct?

A Correct. However, Southwest Gas hasn't provided any information to support what level of travel was needed, or any support to determine if the travel was reasonable.

Q With respect to the FOMs Phase 1 project, your testimony generally cites to 68,000 in airfare, 160,000 in lodging, 42,000 in car rentals, 17,000 in meals, and 24,000 in seminar and conference fees. Correct?

A Correct. In addition to having costs that were similar to the FSM program, and also costs that I lay out in Q&A 43, the rental of an office space that Southwest Gas hasn't supported in its application.

So when I reviewed the totality of all of these projects, there appeared to me a systemic issue, so all of these projects are in relation, in my testimony, to the systemic issues that plagued Southwest Gas of being able to determine what is a reasonable cost that should be recovered by ratepayers.

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Q And specifically with the 17,000 in meals, we've talked about it generally, but the Company removed those costs from this in its certification testimony; correct?

MS. CASSITY: Asked and answered.

COMMISSIONER PONGRACZ: Sustained.

BY MR. STEPHENS:

Q So let's discuss the remaining costs. And I'll direct your attention to AED-20 of your testimony.

So with AED-20 as a reference point, your citation in your testimony to 68,000, does that represent the entirety of the airfare for the project?

A I believe so. What I did was not knowing the difference between airfare 2010 and 2011 airfare OS, I assume service territory, as I have stated, I asked for an explanation as to these cost categories, so not knowing what the difference really was, I lumped those two categories together to get that amount.

Q Okay. And so by your citation to the 68,000, are you saying that all of the airfare costs were excessive for that project?

A No. What I'm saying is that because of

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the lack of Southwest Gas' accountability and oversight of its system allocable projects, I cannot say that all are reasonable. I can't say that some are and some aren't. I have to question Southwest Gas' judgment at the time that it incurred those costs, given that at the same time it was incurring costs that it ultimately pulled from this docket, as it felt it was inappropriate to recover from ratepayers, so even Southwest Gas, in its own actions today, is questioning the actions that it took previously.

So I think that that gives this Commission grave concerns, because Southwest Gas is even admitting that some of the costs that it incurred when it was executing the project were not reasonable for recovery. So how can -- that type of questioning then has to then come down to all of the other charges here.

Q And again, Southwest Gas has removed those costs; correct?

A Correct. And that's to my point, that Southwest Gas itself is admitting that those costs aren't appropriate for recovery from ratepayers, so you have to question what other costs at the time that those costs were being approved, are also

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included in here that are not reasonable for recovery from ratepayers.

Q Did you ever ask Southwest Gas for an explanation about the 68,000 for travel costs identified in your Q&A 42?

A I don't believe I did, and I don't believe Southwest Gas provided anything in any of the documentation that supported that level of expenditures.

Q Sticking with AED-20, let's go through the same line of questioning with respect to the lodging.

Does the $160,000 you cite in your testimony represent all of the lodging costs that were expended for the project?

A No. And again, going to my discussion of trying to understand what these charges mean, and not getting an answer from Southwest Gas, I only took a cost element 2030 lodging. There's also cost element 2291 lodging OSSVC -- I'm assuming off-site service territory; I don't know what type of costs those are. I tried to reach out to Southwest Gas and ask for what would be included for those types of costs and a better description, and again I was told that it's

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intuitive and -- so I can't tell you if all those costs are the airfare.

Q So we're talking, I'm sorry, we're talking about the lodging --

A Okay. Excuse me.

Q -- and so, and maybe we'll look at it.

So there's cost element 2030, and that's about 160,000, and then the other cost element that you reference was 2291, which is another $1200, approximately. Correct?

A Correct.

Q And so I took it to mean that by saying approximately 160, you were including both of those, but if that's not the case, that's fine.

So by your citation to the $160,000 in lodging, are you saying that all of the lodging was excessive for that project?

A No. Again, I am stating that because of the lack of oversight and accountability demonstrated by Southwest Gas in its execution of these capital projects, this Commission cannot be assured that these costs are reasonable.

And even by Southwest Gas' own admission in pulling those costs from its certification projects, Southwest Gas is alluding

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to some of the costs of these projects are not reasonable for recovery, and that should give this Commission grave concern that even Southwest Gas is questioning its own costs that were -- now questioning the costs that were incurred when this project was being executed. That doesn't give any support to this Commission approving these costs. It demonstrates very seriously the lack of oversight and accountability that occurred during the execution of those projects.

Q Did you ever ask Southwest Gas for an explanation about the $160,000 in lodging identified in your Q&A 42?

A No.

Q What about the $42,000 in car rentals? Does that amount to all of the car rental expenditures for that project?

A Again, I believe so. There's a few, or a couple line items that have car rentals in them. I would agree that maybe that doesn't count if you add them up, but there are a few car rental entries in here. I don't know what types of costs makes up the differences, and why they're broken out.

Q So by your testimony, in reference to the 42,000 in car rentals, are you stating that all

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of the car rental costs were excessive?
A No. I'm stating, again, that because of the lack of oversight and accountability that Southwest Gas has demonstrated in the projects, system allocable projects, Southwest Gas has not supported the prudency or the reasonableness of these costs, and given Southwest Gas' own accord in removing certain costs associated with these projects, demonstrates that Southwest Gas additionally is concerned with the oversight and the prudency determination of the costs it expended while it was executing the project.
Q Did you ever ask Southwest Gas for an explanation about the car rental costs identified in your Q&A 42?
A No, I did not.
Q Your testimony also references $24,000 in seminar and conference fees. Does that amount represent all of the project's costs for seminar and conference fees?
A Again, the line item 2260 says seminar, conference fees, and professional organizations, so I don't know how much of that is seminars, conferences, or how much of that Southwest Gas paid for professional organization membership, so I

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can't state.

But that is approximately what that cost element goes to. But not having the information of what types of charges Southwest Gas includes in that cost element, because Southwest Gas refused to provide that information, I cannot state exactly what are seminar and conference fees.

Q But it's your understanding that that represents all of the seminar and conference fees, correct, for the project?

COMMISSIONER PONGRACZ: I believe the witness just testified he has no way of knowing that.

BY MR. STEPHENS:

Q So are you stating that all of the seminar and conference fees are excessive?

A No, I'm not. I'm stating, as I stated before, given the lack of oversight and accountability of Southwest Gas when it was conducting the execution of this project, I cannot determine that all the costs associated with this project are reasonable.

And even given Southwest Gas' own admission in the certification filing that certain cost were not deemed reasonable for recovery from

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ratepayers, I have to question that any of these costs have not been supported as being reasonable and proper for recovery from ratepayers.

Q Did you ever ask Southwest Gas for an explanation about the seminar and conference fees you identified in your Q&A 42?

A Other than asking for a description and the types of charges that would be included in cost element code 2260, seminar, conference fees, and professional organizations, no, I did not.

Q You also referenced in earlier testimony the office space that was leased at 3110 South Rainbow; correct?

A Correct.

Q When did you ask Southwest Gas why the office space at 3110 South Rainbow was necessary for the project?

A I don't believe I did, nor did Southwest Gas support why that office space was reasonable.

Q Did you review other comparable projects to see how Southwest Gas' FOMs Phase 1 project compares to those projects?

A I reviewed the system allocable projects that were included this rate case.

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Q And at the end of the day, your testimony recommends a 50 percent disallowance for the FOMs Phase 1 project; correct?
A Correct.
Q And in similar fashion to the FSM program, your testimony identifies approximately one-half of 1 percent of the costs that you believed to be frivolous or excessive, and then you project that amount and recommend the 50 percent disallowance; correct?
A Correct. The costs that are represented in my testimony are a sample of the costs that I reviewed. To me, they demonstrate Southwest Gas' lack of accountability and lack of oversight of the costs as they executed the project. And that Southwest Gas has reiterated today, it has pulled some costs that it deems not proper for recovery from ratepayers; therefore, Southwest Gas questions its own accountability and oversight of the project, alluding to the fact that those costs are not reasonable for recovery.
Then as an auditor, given all this data that I reviewed, and the ultimate oversight and management of this project, I have to question

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all the costs, not just -- it's not just the small costs that identify here, it's a more global and more -- it's a more serious problem that Southwest Gas is alluding to. By just stating that costs are only a half a percent of the total project cost, it frankly is trying to again gloss over the actual problem here.

If those costs were allowed in costs for the project, what other costs did Southwest Gas allow at the time that it approved those costs?

And I think that that is the telling question that needs to be asked by this Commission is, although these other costs were very small, what other costs did Southwest Gas incur that shouldn't -- that aren't reasonable for recovery from ratepayers?

Q So let's address that question. You reviewed, you've testified that you reviewed all of the invoices associated with each of these five projects. Correct?

A Correct.

Q And so you know what other costs were incurred for these projects, but identified the ones that are contained in your testimony.

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Correct?
     A   Correct. As I stated prior in my testimony yesterday, I don't have the expertise to evaluate the amount of hours a consultant worked, or how much travel is necessary, how many consultants are necessary to complete a task, or the timeline, and given that information such as budgets or why the timeline wasn't supported, it goes again to question what was Southwest Gas' decisions, and why were those decisions made? And that is ultimately not supported in this application.
     Q   Let's move on to the FOMs Phase 2 project.
            What's your understanding of what the software from FOMs Phase 2 does?
     A   It's basically the -- I want to say it's also, again, similar to the type of software of the FOMs Phase 1.
            The FOMs program started as one single project, and it had multiple phases to that project, and had only at the time, I believe, one work order. So it essentially uses all the same project documentation.
            And I believe the first one was for

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customer service-related software and processes, and the second one was for more technical processes for construction progress, construction work activities and, you know, the like.

So the FOMs project, I believe, was envisioned in a single FOMs project, and was broken out into phases to try to get what was more necessary to implement first.

Q Is that software from the FOMs Phase 2 project used as part of a core function for the operation of the Company?

A Correct. And that's why I allude to that in my testimony by saying, you know, I'm only recommending a 50 percent disallowance because there is some recognition that this software and all of this work needed to be conducted. It's the amount of expenditures that resulted in this work that hasn't been supported and hasn't been deemed reasonable, and Southwest Gas hasn't provided any of that support that those costs are reasonable.

I totally agree with you that the ratepayers are getting a benefit from these projects.

Q And I think the question was, and just for clarification, the question was with respect to

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FOMs Phase 2, but I'll broaden the question.
In fact, you recognize in your testimony that each of these five projects that you identify provides benefit to customers in Nevada; correct?
A Yes. And I allude to that.
Q Yes. Your testimony doesn't identify any expenditures from the FOMs Phase 2 project that you claimed to be excessive or unreasonable; correct?
A I don't specifically call it out. But FOMs Phase 2 and FOMs Phase 1 were pretty much done by the same people, the same type of process was in place, and so I, in the efficiency of time sake for my testimony, I lumped them together. It's the same procedures, the same project charter, the same, you know, personnel, although there may be some nuances to moving in certain personnel that were more intimate with the different software applications that were associated with each of the different phases.
Q But like FOMs Phase 1, you had all the vouchers and invoices for Phase 2, and reviewed them; correct?
A Correct.

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Q So let's move to the GIS mapping migration project.

What's your understanding of the software that was -- oh. Sorry. What was your understanding of the use of the software that was implemented in this project?

A It's basically a mapping function, a tool used for mapping for the utility. I believe the utility was using some very old mapping or, you know, type software, and needed to upgrade it to a current system.

Q In fact, I think it was approximately a 30-year old system in software; correct?

A Yes, I think I state that in Q&A 51.

Q And it's mapping of the Company's underground facilities; correct?

A Correct.

Q And you would agree that that is a core function of the Company's operation?

A Oh, yes. And that's a very -- an area that this Commission has taken very seriously, the safety and accountability of Southwest Gas' lines, and being able to properly identify and mark those lines, and that is very important.

Q So the project, the total project costs

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for the GIS mapping migration project was approximately 6.5 million; correct?

A I believe so.

Q And your testimony identifies approximately 32,000 in costs that appeared to be unreasonable to you; correct?

A Again, my testimony provides a sampling. There are numerous instances where Southwest Gas has sent a consultant to training, numerous refreshments, numerous expenses and, you know, to be frank, if we want to have the Commission have the ability to review all that, we can submit all the vouchers to this Commission so that the Commission can actually see the extent of this.

Q With respect to the meals, similar to the other projects, the Company removed those costs at certification; correct?

A Correct. Because the Company also agrees that there was some lack of oversight and accountability to those charges, that it felt that it was unreasonable to request recovery from ratepayers.

Q Did you ever ask Southwest Gas for an explanation of the approximately $31,000 in seminar

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costs?

A No.

Q When you transfer data from one software platform system to another, do you know if there's some risk associated with a loss of data?

A Yes.

Q And so given the sensitivity of the data involved with the GIS mapping migration project, don't you think it's prudent to fully investigate and learn about the migration of that data before it is implemented, to take precautions in an effort to avoid data loss?

MS. CASSITY: I'm going to object. I think this assumes facts not in evidence.

COMMISSIONER PONGRACZ: Can you point me to something, Mr. Stephens, that would indicate that that's been the record here?

MR. STEPHENS: Sure. You want a reference to the seminars, or --

COMMISSIONER PONGRACZ: Actually, I believe your question was different from talking about the seminars specifically, and whether it's proper to recover the costs of the seminars. You were moving into the area of what approach should

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be taken by a utility in the process of going through a migration of data --

MR. STEPHENS: Yes.

COMMISSIONER PONGRACZ: -- I'm wondering --

MR. STEPHENS: And I'm just asking his opinion if he thinks it's prudent to do that. I don't know if anything has to be in the record for that.

COMMISSIONER PONGRACZ: How does that tie to Mr. Danise's testimony?

MR. STEPHENS: It ties to the fact that -- what the question says is: Don't you think it is prudent to fully investigate and learn about the migration before it is implemented, to take precautions in an effort to avoid data loss? And that learning of the migration occurs at seminars related to the new software that was implemented.

MS. CASSITY: Commissioner?

COMMISSIONER PONGRACZ: And so that's a leap. You know, for example, it assumes that information is not currently existing within the Company.

So, Staff Counsel?

MS. CASSITY: Yes, if I could just

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respond.

Mr. Stephens is here testifying that these projects are sensitive in nature, and therefore that this project is reasonable, and to lay the foundation for the question that, you know, that because of the sensitivity of this information, this is why the Company needed this project.

He's essentially testifying as to the reasonableness of the project. There is no information provided by the Company indicating on the record that that project was reasonable because of the sensitivity of the nature of the documents.

COMMISSIONER PONGRACZ: Well, that's true. And as we already established today, as an attorney Mr. Stephens cannot provide evidence.

So if you could ask your question more directly, Mr. Stephens, and tie it to Mr. Danise's testimony, without theorizing about the Company's business practices or attempting to augment the record --

MR. STEPHENS: Okay.

COMMISSIONER PONGRACZ: -- it would be helpful.

MR. STEPHENS: I'll just move on.

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BY MR. STEPHENS:

Q The GIS mapping migration project is another example of where you reference less than one-half of 1 percent of the total costs of the project, but recommend a 50 percent disallowance. Correct?

A Correct. As I stated for the other projects, Southwest Gas has not supported any of the expenditures given in its application, and given the types of costs that I have encountered during my audit, I have to question the reasonableness of those costs due to the fact that when Southwest Gas was executing this project it approved costs that both Southwest Gas and Staff deem is unreasonable to request recovery from ratepayers; therefore, I have to question all of the costs that Southwest Gas incurred in this project.

Q What is your understanding of the Web content management project?

A It's a project to -- it's essentially to interface between Southwest Gas and its customers, and it gives Southwest Gas the ability to take more control of its Website and provide additional information through its Web portal.

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Q And for this project you cite to a few vouchers for meals and consultants' time and certain Apple equipment, as being unreasonable; correct?

A Correct. And I'm actually glad that we got to this one, because when you introduced - I don't remember what exhibit it was - but it's the attachments to Staff-170, and specifically I'm on sheet 104 of 146 of Staff-170. So this appears to be a work authorization for Web content management Phase 2 memo, and in there there are project estimates.

The total work order estimate is 1,250,000. And it says at the bottom: A total $1 million was budgeted in 2014 for this project. This project may cause a $250,000 negative variance in the 2014 capital budget.

Now turning to Exhibit RLC-4, sheet 2 of 19, which lists the costs of the project that are included in rate base, they are requested to be included in the rate base, Web content management Phase 2 is almost 3.5 million. So I would state that this shows $2 million over what Southwest Gas appears to have budgeted in this information that was just provided, you know, that

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I reviewed while I was on the stand.

Q So with respect to the consultants' time that you identified in your testimony, what's wrong with consultants working in excess of 100 hours for the same two-week period?

A I don't believe I said there is anything wrong. I said that there is no justification or supporting documentation as to what needed that amount of labor or needed the number of consultants that was necessary.

Q Did you review the consultants' contracts that were provided?

A Yes.

Q With respect to the Apple equipment, did you ever ask Southwest Gas why that equipment was required?

A No.

Q With respect to the consultants' time for the two-week period, did you ever ask Southwest Gas why the consultants needed to work in excess of 100 hours for that same two-week period?

A No, and Southwest Gas has not provided anything in this docket to support the necessity of those consultants needing to work such hours.

Q With respect to the difference between

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what is represented in Exhibit 65 and RLC-4 for the budget, did you ever ask Southwest Gas about the discrepancy or the difference between those two numbers?

A No, I did not. Nor has Southwest Gas provided documentation in its application to support why the budget had to be exceeded by $2 million.

Q So let's shift gears. Let's move from these software projects, and let's talk about the Northern Nevada homes.

Now let's start with a home owned in Winnemucca that is used as the district manager's house. So I direct your attention to Exhibits AED-34 through AED-38.

A Okay. I am there.

Q And AED-34 through AED-38 are examples of, well, are DRs that you asked Southwest Gas specifically about the purpose of expenditures related to these Northern Nevada homes; correct?

A Correct.

Q And Southwest Gas responded as identified in those exhibits; correct?

A Correct. The response states that: The Winnemucca home was purchased when the existing

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Winnemucca district manager transferred to a new position in the Company. The decision was made to retain this home because the incoming district manager was unable to find suitable available housing in the area. This position has been a developmental position and incumbents have rotated in and out of this position every two to three years in recent years. Having this home has helped to attract and retain qualified resources in this district.

And I would point for the third statement, this position has been a developmental position and incumbents have rotated in and out of this position every two to three years, that is a business decision that Southwest Gas has made to make this district manager position a developmental position, and choosing to have employees rotate in and out of this position every two to three years, that causes Southwest Gas to have a home in order to be able to provide that business decision.

Q What's the difference between charging rent and imputing income?

A Charging rent, is a tenant actually pays a dollar amount that is due to the landlord or

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the owner of the property. Imputing rent is a company incrementing the individual salary by the amount of that rent, so his taxable earnings would increase. It's my understanding that's what imputing means, is we're giving you something that has a material value, and therefore we have to account for it as kind of like a wage in reporting to the IRS.

Q Did you evaluate the compensation of the employees who have resided at the Winnemucca or Lake Tahoe homes?

A No, I did not. I reviewed the homes and the amount of monthly -- the amount that Southwest Gas monthly imputes as income, and evaluated whether that aligns to what is appropriate under the U.S. Department of Housing and Urban Development guidelines for that.

Q Do you know what the average cost of a home is in Winnemucca?

A I don't, but I would state that the average house, the average house for this size of house in Incline Village would have to be more than 1600 a month.

Q Do you know what the average cost of a home in Lake Tahoe is?

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A No, but I do know what the actual fair market rental value that HUD puts forth in its guidelines, and that is located in Q&A 75, and using 2017 data, which aligns with what the utility provided me, the fair market rent value is 2,360, well above, some $700 more than what the utility's imputing as income. And to me that became a red flag, because I'm not an accountant, I'm not -- I don't know what's taxable and not taxable, or how earnings -- or how wages are reported, but if he's getting a value more than is being reported to the IRS, to me that is a discrepancy that should be very seriously looked at, as there could be some tax complications and even misrepresentations to the IRS of benefits that are provided.

Q Let's discuss the rationale for holding these homes for employees. And let's go to AED-36 in this instance.

And similar to the response to AED-34 and AED-36, the Company explains that the district manager's jobs at Winnemucca and Lake Tahoe are typically non long-term positions, in part because of the isolated locations. Correct?

A I'm sorry. Can you point me -- I might be lost.

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Q AED-36, basically saying that these are not long-term positions with respect to the -- and that they are developmental in recent years. It's consistent with the response before.

A Yes, but I don't see any discussion about the remoteness, or -- I think that was something added by you, and I'm not sure --

Q Well, is Winnemucca close to any major metropolis?

A I don't think so, but I know that other utility personnel work in and out of Winnemucca, and other utilities don't pay for those homes.

And I'm sure that Incline Village isn't too remote from Carson City or -- it's actually, from what I hear, a very nice place to live.

Q But it is isolated, correct, and during weather issues it's good to have personnel close in case there is an emergency.

A I believe Southwest Gas does have offices up in that area, or field offices, and has the ability for workers to work out of that. So I'm not sure how having a district manager's house up in Lake Tahoe has any effect on how workers in Lake Tahoe respond to anything.

Q Do you dispute the Company's rationale of owning these homes, or do you just dispute the amount of rent that the Company charges?

A I dispute both. I believe that if Southwest Gas -- if it's a business decision on Southwest Gas to have these district managers' roles as a short-term assignment, that that is Southwest Gas' choice, not ratepayers, and therefore ratepayers shouldn't be subjected to that cost, and that could be a perk that is provided by Southwest Gas' shareholders for its employees.

COMMISSIONER PONGRACZ: Mr. Stephens, would you like to continue? I was planning to break at 10:30, but would it be inconvenient to break right now?

MR. STEPHENS: We can break right now.

COMMISSIONER PONGRACZ: Okay. Why don't we -- we'll go off the record right now, and we will be back at 20 minutes to 11.

Thank you.

(At 10:31 a.m. a recess was taken.)

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