



1 consideration and risk allocation achieved pursuant to the parties' negotiations, as well as to  
2 prevent disclosure of trade secrets.

3 Thus, the provisions that deviated from the pro forma contract represented the result  
4 of negotiations in which the developer's unique qualifications, expertise and circumstances  
5 brought a competitive edge and added value.

6 In addition, portions of the PPA that contained trade secrets or commercially  
7 sensitive information were previously redacted. Disclosure of such information would be  
8 harmful to the developer and would not serve any public interest. For example, information  
9 regarding the amount of security deposits, liquidated damages, delay damages, milestone  
10 requirements, and the developer's financing obligations were previously redacted to  
11 preserve the confidentiality of those provisions. None of those provisions pertained to the  
12 Companies' costs; rather, they represent costs or obligations that the developer must bear.

13 In the Companies' Integrated Resource Plan ("IRP") filing (Docket No. 10-02009),  
14 the Commission determined that PPAs were not confidential and were subject to disclosure  
15 pursuant to a public records request.

16 As a result, it appears the Companies are moving toward a non-modifiable pro forma  
17 PPA that will be fully disclosed.

18 This change may have a detrimental effect on the growth of the renewable energy in  
19 Nevada.

20 Generally, documents and information that are confidential under statute or common  
21 law are not subject to disclosure, even if they are in the possession of a Nevada  
22 governmental entity. NRS 239.010; City of Reno v. Reno Gazette Journal, 119 Nev. 55,  
23 60-61, 63 P.3d 1147, 1149 (2003) (holding that records which were made confidential by  
24 statute were not subject to public disclosure under the Nevada Public Records Act). Trade  
25 secrets and confidential commercial information, for example, are confidential as a matter  
26 of law. NRS 703.190(2) (stating that "if the Commission determines that . . . information

1 would otherwise be entitled to protection as a trade secret or confidential commercial  
2 information,” its disclosure is prohibited).

3 Trade secrets are defined in Nevada as:

4 information, including, without limitation, a formula, pattern,  
5 compilation, program, device, method, technique, product,  
6 system, process, design, prototype, procedure, computer  
programming instruction or code that:

7 (a) Derives independent economic value, actual or potential,  
8 from not being generally known to, and not being readily  
9 ascertainable by proper means by the public or any other  
persons who can obtain commercial or economic value from its  
disclosure or use; and

10 (b) Is the subject of efforts that are reasonable under the  
11 circumstances to maintain its secrecy.

12 Confidential commercial information is business-related information that is  
13 “intended to be held in confidence or kept secret” (Saini v. International Game Technology,  
14 434 F.Supp.2d 913, 924 (D. Nev. 2006), and which, if disclosed “would cause substantial  
15 economic harm to the competitive position of the entity from whom the information was  
16 obtained.” Diamond State Ins. Co. v. Rebel Oil Co., Inc., 157 F.R.D. 691, 697 (D. Nev.  
1994).

17 Items such as project milestones, schedule information, and technical performance  
18 data would all be either trade secrets or confidential commercial information. Disclosure of  
19 that information could lead to an increase in costs by third party suppliers to the developer.

20 By going to a non-modifiable pro forma PPA, NVEnergy intends to minimize the  
21 amount of the trade secret information that will be included in order to minimize  
22 confidentiality concerns. However, going to a non-modifiable PPA leaves little room for  
23 negotiations between the developer and the utility. That also reduces the developer’s  
24 competitive edge over other developers because its internal processes, ability to meet  
25 milestones, and performance data will be subject to the same contract as all other  
26 developers. It could also reduce the willingness of developers to respond to RFPs,

1 effectively reducing the number of competitors. Thus, the decrease of competitive edge  
2 amongst developers is likely to result in fewer developers from which to choose, and with  
3 reduced competition, higher costs. Thus, the unintentional effect of the Commission's  
4 order in the IRP docket (No. 10-02009), and NVEnergy's resulting decision to use a non-  
5 modifiable pro forma PPA could be reduction of competition and increased costs.

6 **3. What parts of the process could be improved.**

7 LSA has two suggestions to improve the RFP process. First, LSA suggests that  
8 return to a modifiable PPA that results from negotiations, and which is subject to  
9 confidential treatment, would enhance the process and allow for more competition.

10 Second, LSA suggests changes with respect to how the utility weighs cost components. In  
11 its November 23, 2010 , filing, NV Energy explains that it converts the bid price to a Levelized  
12 Cost of Energy ("LCOE") and does the same for Network Upgrades. It sums these two items to  
13 get an overall respondent LCOE. "This overall respondent LCOE is then compared across projects  
14 in the separate technology classifications (i.e., solar PV, solar thermal, wind, etc.)" Comments of  
15 Nevada Power Company and Sierra Pacific Power Company dated Nov. 23, 2010 at 7, ll. 26-27.

16 It is not clear whether or how this comparison takes into account a relevant element of cost  
17 associated with a project: the cost of Ancillary Services. Such services include spinning reserves,  
18 scheduling, system control and dispatch, reactive supply and voltage control, regulation and  
19 frequency response, and generator imbalance service. Every project or generator requires them. It  
20 is unclear if the technology evaluation that is conducted by Black & Veatch to score respondents'  
21 proposals addresses this question. See Figure 2 of the Comments filed by Nevada Power Company  
22 and Sierra Pacific Power Company dated Oct. 8, 2010 and Comments filed by Nevada Power  
23 Company and Sierra Pacific Power Company dated Nov. 23, 2010 at 7, ll. 1-9. If such costs are  
24 taken into account, how does Black & Veatch address them?

25 Therefore, it is unclear if operational differences have resulted in the increase or decrease of  
26 a respondent's bid, or if the cost of Ancillary Services has been included in the overall

1 respondent's LCOE. Different projects and different technologies require different levels of such  
2 services and, thus, costs can vary significantly. This has a bearing on the provision of Balancing  
3 Services by NV Energy and associated costs. Our question is further underlined by the current  
4 conduct of one or more studies by NV Energy of the potential impact of intermittent generating  
5 resources in its system. Hence, LSA suggests that providing more information as to how these  
6 costs factor into the utility's LCOE determination would help to improve the RFP process.

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8 Respectfully submitted this 4 day of December, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that I have on this date served the foregoing document upon all parties of record in this proceeding by electronic mail to the recipient's current electronic mail address or mailing a true copy thereof, properly addressed with postage prepaid or forwarded as indicated below to:


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DATED December 4~~th~~, 2010.

  
An Employee of Lewis and Roca