

# **BOARD OF REGENTS BRIEFING PAPER**

**1. AGENDA ITEM TITLE: NV ENERGY CUSTOMER SERVICE AGREEMENT: INCENTIVE PAYMENT**  
**MEETING DATE: December 5-6, 2019**

**2. BACKGROUND & POLICY CONTEXT OF ISSUE:**

At the June 6-7, 2019, meeting, the Board of Regents authorized the Office of the Chancellor to negotiate with NV Energy on the Optional Pricing Program Rate (OPPR), which would offer NSHE and all its administrative offices and institutions a long-term fixed renewable energy rate. By moving to the OPPR, the Board is projected to save approximately \$380,000.00 on annual energy costs statewide (costs would likely increase in the North and decrease in the South). While the OPPR is pending before the Public Utilities Commission of Nevada (PUCN) and awaiting approval, further negotiations with NV Energy on the OPPR are on hold.

NV Energy has offered the Board an incentive payment of \$500,000.00 for each the years 2019, 2020, and 2021 as set forth in the attached Customer Service Agreement, to remain a bundled customer of NV Energy and not pursue leaving the current structure pursuant to NRS Chapter 704B. This totals to \$1.5 million. As a condition of the payments, the Board must agree to negotiate in good faith and enter into a contract for the OPPR rate if, and when, it is approved by the PUCN. Currently, the OPPR is anticipated to be in place by the year 2022. However, if the OPPR is not available, NV Energy has agreed to pay the Board \$500,000.00 per year for the additional years of 2022 and 2023.

The Customer Service agreement before the Board is substantially similar to the agreements approved by other public entities and NV Energy. No restrictions are placed on the Board on the use of the funds. However, the Office of the Chancellor recommends that the Board authorize the funds to be used to directly support student success initiatives.

**3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:**

Approve the draft Customer Service Agreement with NV Energy, and direct that the funds be used to support the Board's student corequisite and college-ready gateway policies.

**4. IMPETUS (WHY NOW?):**

The funds being offered by NV Energy can begin to immediately benefit Nevada students.

**5. CHECK THE NSHE STRATEGIC PLAN GOAL THAT IS SUPPORTED BY THIS REQUEST:**

- Access (Increase participation in post-secondary education)
- Success (Increase student success)

**INDICATE HOW THE PROPOSAL SUPPORTS THE SPECIFIC STRATEGIC PLAN GOAL**

Funding from NV Energy and the Customer Service Agreement are needed to support student success efforts by the Board.

**6. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:**

- Board of Regents has an opportunity to lead on this energy issue.
- NSHE has been a long-term customer and community partner of NV Energy.
- The OPPR presents a unique opportunity for all NSHE institutions and administrative offices statewide to cumulatively reduce energy costs and 'go green' by being based upon Nevada-generated renewable energy.

**7. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:**

It will require work by the Office of the Chancellor and the financial officers of each NSHE institution to determine an equitable and efficient process to offset the savings in the South and the increased costs in the North under the OPPR, so that all NSHE institutions benefit from a cumulative decrease in rates by the move to renewable energy.

**8. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:**

Further explore NRS Chapter 704B options or maintain the status quo.

**9. RECOMMENDATION FROM THE CHANCELLOR'S OFFICE:**

Approve.

**10. COMPLIANCE WITH BOARD POLICY:**

X Consistent With Current Board Policy: Handbook, Title 4, Chapter 10, Section 29  
Procedures and Guidelines Manual, Chapter 5, Section 8

Amends Current Board Policy: Title # \_\_\_\_\_ Chapter # \_\_\_\_\_ Section # \_\_\_\_\_

Amends Current Procedures & Guidelines Manual: Chapter # \_\_\_\_\_ Section # \_\_\_\_\_

Other: \_\_\_\_\_

X Fiscal Impact: No  
Explain: \_\_\_\_\_

This **NV ENERGY CUSTOMER SERVICES AGREEMENT** (the “Agreement”) dated as of \_\_\_\_\_, 2019, (the “Effective Date”) is made by and between NEVADA POWER COMPANY, a Nevada corporation doing business as NV Energy (“Nevada Power”), and SIERRA PACIFIC POWER COMPANY, a Nevada corporation doing business as NV Energy (“Sierra Pacific Power”) (collectively referred to as “NV Energy”) on the one hand; and THE BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION (including NSHE institutions) on the other hand (“Customer”). NV Energy and Customer are also each referred to as a “Party” and collectively as the “Parties.”

## **RECITALS**

WHEREAS, NV Energy is a public utility, as defined in Nevada Revised Statutes (NRS) Chapter 704 providing electric service;

WHEREAS, Customer is currently taking retail electric service from NV Energy under the applicable tariff rates for its various facilities and desires to receive certain services and continue to take retail electric service from NV Energy;

WHEREAS, Customer continuing to take retail electric service from NV Energy is beneficial to the Customer, NV Energy and other NV Energy customers, and advances the economic and energy policy objectives of the State of Nevada;

NOW THEREFORE, in consideration of these mutual premises, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending to be legally bound, do agree as follows:

## **AGREEMENT**

### **1. TERM.**

1.1 Term and Termination. The term of this Agreement commences on the Effective Date, and terminates five (5) years after the Effective Date (the “Term”). Either Party may terminate this Agreement at any time, with or without cause, with thirty (30) days’ notice to the other Party.

1.2 Liquidated Damages. In the event that this Agreement is terminated prior to the end of the Term by Customer without cause, Customer shall return to NV Energy the full amount of all Incentives (defined below) received by the Customer from NV Energy within sixty (60) days of the effective date of such termination.

### **2. NV ENERGY OBLIGATIONS.**

2.1 Customer Incentive. NV Energy shall provide an incentive payment to Customer in each calendar year of 2019, 2020 and 2021 equal to the amount shown in Exhibit A (the “Incentive”). The Incentive will be paid to the Customer no later than January 31<sup>st</sup> of each year, except the first payment in 2019 for which the incentive payment will be made no later than thirty (30) days after the Effective Date.

2.2 Optional pricing program. NV Energy has requested that the Public Utilities Commission of Nevada (“PUCN”) approve an optional pricing program tariff, or a substantially similar pricing program tariff (“NVEOPPR Tariff”). NV Energy will continue to seek approval of the NVEOPPR Tariff until such time as it receives a final PUCN order approving or denying the NVEOPPR Tariff. Once the NVEOPPR Tariff is approved, NV Energy and Customer will enter into good faith negotiations to enter into an NVEOPPR Tariff agreement. NV Energy will, by January 1, 2022, make capacity under the NVEOPPR Tariff available to Customer, or NV Energy will continue to pay the Customer Incentive set forth in Section 2.1 for calendar years 2022 and 2023 in the same amount it paid customer for 2021 (as identified in Exhibit A). However, notwithstanding the previous sentence, if NV Energy makes capacity available to Customer under the NVEOPPR Tariff between January 1, 2022, and January 1, 2023, NV Energy will not be required to pay any remaining Customer Incentives for years 2022 and 2023 (as identified in Exhibit A) for those years in which NVEOPPR Tariff is approved and any subsequent years for which Customer Incentives would be owed. The terms and conditions of taking service pursuant to the NVEOPPR Tariff will be governed by a separate agreement between NV Energy and Customer.

2.3 2021 revenue requirement reduction. NV Energy will request a \$120 million revenue requirement reduction which will begin to benefit customers effective January 1, 2021, through the NV Energy rate review case scheduled to be filed with the PUCN June 1, 2020 (the “Case”). If the Case results in a revenue requirement reduction greater than \$120 million, the Parties agree that any remaining Incentive for calendar years 2022 and 2023 will be reduced by an amount equal to the amount of benefit Customer receives in the form of reduced retail rates during the Term (due to the revenue requirement reduction being greater than \$120 million), so that the total benefit to Customer will equal the amount of the Incentives for calendar years 2022 and 2023 identified in Exhibit A. The determination of the benefit to the Customer, for purposes of reducing any Incentive payment, will be calculated by identifying the actual difference between what the savings would have been for Customer with a \$120 million rate reduction, and the savings actually achieved by the Customer for any revenue reduction above \$120 million in the Case.

2.4 Renewable energy. At Customer’s election, NV Energy and Customer will conduct good faith negotiations to enter into an agreement, mutually acceptable by the Parties, whereby NV Energy will assist Customer in satisfying Customer’s renewable energy objectives, including the purchase of renewable energy credits that will be retired on behalf of the Customer for the amount of renewable energy Customer desires above Nevada’s Renewable Energy Portfolio standard. Customer shall reimburse NV Energy for the market price of renewable energy credits procured for Customer by NV Energy.

### 3. CUSTOMER OBLIGATIONS

3.1 Customer. Customer shall remain a full service electric customer of NV Energy during the Term. During the Term, Customer shall not file an application with the PUCN pursuant to NRS Chapter 704B or any other mechanism that would allow the Customer to receive electric service from an alternative energy provider.

### 4. MISCELLANEOUS PROVISIONS.

4.1 Governing Law; Venue. This Agreement is governed by and construed in accordance with the laws of the State of Nevada, without giving effect to any conflict of law principles that would apply the laws of another jurisdiction. In the event the PUCN has jurisdiction over a civil action or remedy brought under this Agreement, the Parties agree that they will first seek to initiate such action before the PUCN. In

the event the PUCN lacks jurisdiction over such a dispute, the Parties agree the dispute will be brought in the U.S. District Court, District of Nevada. In the event the federal court lacks jurisdiction over such a dispute, the Parties agree the dispute will be brought in the state district court in Clark County, Nevada. The Parties agree not to initiate any legal action against the other Party except in the jurisdictions as provided in this Section 4.1.

4.2 Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

4.3 Confidentiality.

4.3.1 *[Intentionally Omitted]*

4.3.2 Public Announcements. Neither Party will issue or make any press releases or similar public announcements concerning this Agreement without the prior written consent of the other Party.

4.3.3 *[Intentionally Omitted]*

4.3.4 Public Records. The Parties agree that this Agreement, pursuant to Nevada's Public Records Act, is a public document and the Board of Regents may release copies of this Agreement to persons requesting the same. *See* NRS Chapter 239.

4.4 Entire Agreement. This Agreement states the rights and obligations of the Parties with respect to the subject matter addressed and supersedes all prior agreements, oral or written, with respect thereto.

*[signature page follows]*

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties as of the Effective Date.

**NEVADA POWER COMPANY and SIERRA PACIFIC POWER COMPANY d/b/a NV ENERGY**

By: \_\_\_\_\_  
Name: Douglas A. Cannon  
Title: President and CEO

**The BOARD OF REGENTS of the  
NEVADA SYSTEM OF HIGHER EDUCATION**

\_\_\_\_\_  
Name: Dr. Thom Reilly  
Title: Chancellor

**EXHIBIT A**  
**CUSTOMER INCENTIVE**

<u>Year</u>	<u>Incentive</u>
2019	\$500,000
2020	\$500,000
2021	\$500,000
2022	\$500,000, if applicable and as modified pursuant to Section 2.2 or 2.3 of the Agreement.
2023	\$500,000, if applicable and as modified pursuant to Section 2.2 or 2.3 of the Agreement.