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November 20, 2017

Dear Ms. Sorensen,

We have received your letter and have posted it to docket number 14-035-114, the docket on which you are commenting. As a quasi-judicial agency, we are unable to comment on a newspaper story, or on the specific questions you have asked in your letter. However, all of our decisions are contained in written orders that describe the factual results and the underlying evidence and reasoning. The written order in the case to which your letter is referring is attached for your convenience.

Best regards,

A handwritten signature in blue ink, appearing to read "Gary Widerburg".

Gary Widerburg
Commission Secretary
Public Service Commission of Utah
801-530-6713

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Investigation of the Costs and Benefits of
PacifiCorp's Net Metering Program

DOCKET NO. 14-035-114
ORDER APPROVING SETTLEMENT
STIPULATION

ISSUED: September 29, 2017

For the reasons detailed herein and pursuant to its authority under Utah Code Ann. § 54-7-1, the Public Service Commission ("PSC") approves the Settlement Stipulation ("Settlement") that PacifiCorp dba Rocky Mountain Power ("RMP") filed on August 28, 2017.

1. PROCEDURAL HISTORY AND BACKGROUND

a. The 2015 Order and RMP's Request to Complete All Analysis Required under the Net Metering Statute

We initiated this docket in August 2014 for the purpose of complying with Utah Code Ann. § 54-15-105.1. The statute requires the PSC to:

- (1) Determine, after appropriate notice and opportunity for public comment, whether costs that the electrical corporation or other customers will incur from a net metering program will exceed the benefits of the net metering program, or whether the benefits of the net metering program will exceed the costs; and
- (2) Determine a just and reasonable charge, credit, or ratemaking structure, including new or existing tariffs, in light of the costs and benefits.

Utah Code Ann. § 54-15-105.1 (hereafter we refer to § 54-15-105.1(1) as "Subsection One" and § 54-15-105.1(2) as "Subsection Two" and to them collectively as the "NM Evaluation Statute").

Acknowledging that widespread disagreement existed as to the appropriate method for conducting the analysis under Subsection One, we bifurcated the docket into phases. In the first

phase, we sought to establish a framework for assessing the costs and benefits under Subsection One. We conducted a hearing on October 6, 2015 and held a public witness hearing on October 8, 2015 to consider the parties' and other stakeholders' evidence and positions. On November 10, 2015, we issued an order ("2015 Order"), establishing a framework for the Subsection One analysis and directing RMP to provide comparative cost of service studies ("COS Studies") to complete the analysis.

On November 9, 2016, RMP filed its Compliance Filing and Request to Complete All Analyses Required under the Net Metering Statute for the Evaluation of the Net Metering Program ("Request"). RMP attached COS Studies to the Request, which asked us to complete the Subsection One analysis and establish a rate structure under Subsection Two. More specifically, the Request asked the PSC to (i) find the COS Studies submitted with the Request fulfill the requirements in the 2015 Order; (ii) find, based on the COS Studies, that the costs of the net metering program exceed the benefits under the extant rate structure; (iii) find the unique characteristics of net metering customers warrant segregating them into a distinct class; (iv) find the current rate structure for net metering customers is unjust and unreasonable because it does not reflect the costs to serve these customers and unfairly shifts costs from net metering customers to other customers or to RMP; (v) approve new rates and schedules for net metering customers; and (vi) approve a waiver of Utah Admin. R. 746-312-13 to allow PacifiCorp to charge its proposed interconnection application fee for net metering customers. (Request at 2.) The Request proposed a specific rate structure that RMP asserted is just and reasonable in light of the costs and benefits identified in the COS Studies.

b. Adjudication of the Request and Filing of the Proposed Settlement

After holding a scheduling conference, the PSC issued a Scheduling Order and Notices of Hearing and Public Witness Hearing, establishing an adjudication schedule for the Request and noticing a public witness hearing on August 9, 2017 and a hearing on the merits from August 14 through August 18, 2017. The Division of Public Utilities ("DPU") and the Office of Consumer Services ("OCS") appeared in this proceeding, and the following parties sought and obtained intervenor status: Sunrun, Inc.; the Energy Freedom Coalition of America; Vivint Solar, Inc. ("Vivint"); Western Resource Advocates ("WRA"); the Utah Solar Energy Association ("USEA"); Utah Clean Energy ("UCE"); Sierra Club; the Utah Association of Energy Users ("UAE"); Intermountain Wind and Solar, LLC; Legend Ventures, LLC dba Legend Solar, LLC; Park City Municipal Corporation; Vote Solar; Salt Lake County; Auric Solar; HEAL Utah; The Alliance for Solar Choice; Salt Lake City Corporation; Utah Citizens Advocating Renewable Energy; the Interstate Renewable Energy Council, Inc.; and Summit County (collectively with RMP, DPU and OCS, the "Parties").

On August 10, 2017, several of the Parties filed an unopposed joint motion to continue the hearing on the merits, representing a negotiated resolution appeared achievable and imminent. The PSC granted the motion and rescheduled the hearing on the merits for September 18 through September 22, 2017. On August 9, 2017, the PSC held the noticed public witness hearing.

On August 28, 2017, RMP filed the Settlement, recommending the PSC cancel the hearing on the merits and, instead, notice a hearing for the PSC to consider approval of the

Settlement. The PSC granted the request and conducted a hearing to hear testimony in support of the Settlement on September 18, 2017. The following Parties offered testimony at the hearing: RMP, OCS, DPU, USEA, UCE, WRA and UAE. Other intervening Parties appeared at the hearing but did not offer testimony, including Vivint, Sierra Club, the Energy Freedom Coalition of America, Summit County, HEAL Utah, Salt Lake City Corporation, Salt Lake County, and Park City Municipal Corporation.

c. The Settlement's Terms and Signatories

The following parties are signatories to the Settlement: RMP, OCS, DPU, Vivint, Auric Solar, LLC, HEAL Utah, Intermountain Wind and Solar, LLC, Legend Ventures, LLC dba Legend Solar, LLC, USEA, Salt Lake City Corporation, UCE, Summit County, Utah Citizens Advocating Renewable Energy, and Park City Municipal Corporation (collectively, the "Settling Parties"). Several Parties who did not join the Settlement filed documents with the PSC indicating they did not oppose it, including Sierra Club and Vote Solar.¹ Only two Parties, WRA and UAE, advocated against the PSC's approval of the Settlement.

Broadly, the Settlement does the following:² it (1) lowers the cap on participation under the current, statutory net metering program such that no new customers will be accepted into that

¹ Vote Solar did not join the Settlement and submitted testimony recommending certain changes to its terms. However, Vote Solar affirmed it did not oppose our approving the Settlement, as its witness Rick Gilliam explained: "The [Settlement] filed with the [PSC] has the support of several Utah solar industry representatives, and because Vote Solar's primary interest is to maintain a viable solar industry in Utah, Vote Solar will not oppose the [Settlement]." (Gilliam Direct Test. at 3:21-23.)

² The language in the Settlement speaks for itself. To avoid inadvertently creating confusion or summarily prejudging any ambiguities that may or may not exist in its terms, the PSC

program after a specified date, the "NEM Cap Date";³ (2) "grandfathers" statutory net metering customers and allows them to remain on the extant program through a defined "Grandfathering Period," ending December 31, 2035; (3) creates a time-limited "Transition Program" for customers with generation systems who submit an interconnection application after the NEM Cap Date until the "Transition Cap Date";⁴ (4) fixes the compensation Transition Customers receive for energy they export back to the grid, "Export Credits," through a specified "Transition Period,"⁵ measuring and netting Transition Customers' usage and Export Credits in 15-minute intervals;⁶ (5) waives R746-312-13 with respect to Transition Program customers and those who file applications later than the Transition Cap Date, establishing interconnection application fees at Levels 1-3; (6) allows RMP to recover a portion of the energy payments it makes to Transition Program customers through the Energy Balancing Account ("EBA") or "another pass-through mechanism"; (7) provides the PSC will, on RMP's filing, open a new Export Credit Proceeding to determine the compensation for exported power from customer generation systems, including

intentionally declines to paraphrase or duplicate all terms of the Settlement in this Order. We discuss the terms only as necessary to give context to our analysis.

³ The NEM Cap Date is the earlier date of (a) 60 days after the PSC issues an order approving the Settlement or November 15, 2017. (Settlement at ¶ 11.)

⁴ The Settlement establishes a "Transition Cap," limiting participation in the Transition Program to a cumulative nameplate capacity of 170 MW direct current for Schedules 1, 2, 3, 15 and 23 and 70 cumulative MW direct current for Schedules 6, 6A, 6B, 8 and 10. (Settlement at ¶ 22.) The Transition Cap Date is the earlier date of (i) the date the Transition Cap is reached or (ii) the date the PSC issues a final order in the "Export Credit Proceeding" contemplated in the Settlement. (Settlement at ¶ 15.)

⁵ The Transition Period runs from the NEM Cap Date until December 31, 2032.

⁶ The Settlement contains a provision that modifies the export credit Transition Customers will receive contingent upon changes in applicable tax credits.

Transition Customers after expiration of the Transition Period and NM Customers after expiration of the Grandfathering Period; and (8) provides that customers who submit an interconnection application after the Transition Cap Date but before a final order issues in the Export Credit Proceeding will receive the Export Credit applicable to Transition Program Customers until the PSC issues a final order in the Export Credit Proceeding and a new tariff is implemented, after which such customers will be subject to the terms of the new tariff.

For clarity, in this Order we refer to the statutory net metering program, established in Utah Code Ann. § 54-15-103, as the "NM Program" and to customers in that program as "NM Customers." We refer to Transition Program customers as "Transition Customers" and customers who submit interconnection applications after the Transition Cap Date as "Post-Transition Customers." We refer to distributed generation customers generally as "DG Customers."

2. LEGAL STANDARDS

a. A Determination under Subsection One is Not a Necessary Precursor to Settlement, but the PSC Must Consider Whether Settlement is an Appropriate Mechanism for Resolution Given the Interests of the Public and Other Affected Persons.

Although the Parties have not addressed the issue, a threshold legal question exists as to whether we may approve the Settlement without first making findings under Subsection One. We conclude we may.

The Legislature has made plain that resolution by agreement of the parties "is encouraged" as a means to minimize the time and expense associated with resolving disputes, enhance administrative efficiency, and improve the regulatory process by allowing the PSC to concentrate on those issues that adverse parties cannot otherwise resolve. Utah Code Ann. § 54-

7-1(1). Accordingly, the PSC "may approve *any agreement* after considering the interests of the public and other affected persons to use a settlement proposal to resolve a disputed matter." *Id.* at § 54-7-1(2) (emphasis added).

Yet, Subsection One states the PSC "shall determine" whether the costs of the NM Program exceed the benefits (or vice versa), and Subsection Two provides the PSC "shall determine" a just and reasonable rate structure for NM Customers in light of those costs and benefits. One might argue, therefore, we must make the required determination under Subsection One before making any decision concerning NM Customers' rates, precluding us from approving the Settlement.⁷

While this is a plausible reading of the plain language, this strict interpretation of Subsection One vitiates the language in § 54-7-1 and the legislative purpose underlying it, which encourages negotiated resolution and empowers us to approve settlements. Like courts, "we have an obligation to harmonize alleged inconsistencies within and between statutes, avoiding conflicts when possible." *Bd. of Educ. of Jordan Sch. Dist. v. Sandy City Corp.*, 2004 UT 37, ¶ 20; *see also Jerz v. Salt Lake County*, 822 P.2d 770, 773 (Utah 1991) ("When a construction of an act will bring it into serious conflict with another act, our duty is to construe the acts to be in harmony and avoid conflicts.").

Whether the costs of the NM Program outweigh the benefits is a complex question that is highly disputed among the Parties, and we cannot make any determination under Subsection One without allowing all interested stakeholders a fair and reasonable opportunity to assert their

⁷ We note the Settlement does not change NM Customers' rates. Instead, it fixes their existing rate structure through the Grandfathering Period.

positions and present evidence in support of them. Which is to say, we cannot make the Subsection One determination without holding a contested hearing.

Considering the complexity of the underlying issues, we understand the Parties' inclination to negotiate a resolution. In the Settlement, the Parties contemplate up to an additional three years of proceedings to litigate the distinguishable, but related, inquiry into the value of the energy DG Customers export to the grid. Further, although it was only a preliminary step of completing our analysis under Subsection One, adopting the general framework in our 2015 Order was the product of more than a year of litigation in this docket. We highlight this context to illustrate the complexity and highly contested nature of the issues presented.⁸ Where a substantial majority of the Parties have expressed a preference for their negotiated agreement as an alternative to litigating these issues, we are disinclined, in the absence of unambiguous instructions from the Legislature, to deny them the opportunity they ordinarily enjoy to negotiate settlement under § 54-7-1, compelling them to endure costly, contentious administrative litigation.

We conclude, therefore, the Legislature did not intend the NM Evaluation Statute to retract our authority to approve "any agreement" and thereby preclude the possibility of settlement. Instead, we conclude the Legislature intended we proceed with making the required determinations under the NM Evaluation Statute while preserving the possibilities for negotiated resolution § 54-7-1 affords the parties. In so concluding, we do not disregard our responsibilities

⁸ We do not suggest a record could not have been developed at the previously scheduled hearing on the merits to support our making findings under Subsection One. We acknowledge the Parties may have presented evidence sufficient to support our making such a determination.

under Subsection One; we understand them in a manner that is consistent with Title 54 as a whole.

We also note that, while the Settlement caps the NM Program and resolves rates for a period that will allow current net metering customers an opportunity to recover a reasonable return on their investments in distributed generation, the NM Evaluation Statute will continue to pertain.⁹ That is, the Settlement does not operate to annul our obligations under Subsection One, rather it prolongs them. Given the additional load studies and other data that will be collected in the meantime, we anticipate being even better equipped to make the required findings at that future date.¹⁰

While the NM Evaluation Statute does not preclude settlement, § 54-7-1(2) requires we find it is in "the interests of the public and other affected persons" to resolve this disputed matter

⁹ As a practical matter, we acknowledge the findings we would make in a docket devoted to fulfilling Subsection One will be largely subsumed in the Export Credit Proceeding and the general rate cases we are likely to consider between now and the conclusion of the Grandfathering Period. We further acknowledge that the Settlement states NM Customers will, after the Grandfathering Period, "become subject to the applicable rate class and any rate and rate structure then in effect that would otherwise apply to those customers" and that the Export Credit Proceeding will "determine the compensation rate for exported power ... including all customers after the expiration of the Grandfathering Period" (Settlement at ¶¶ 14, 28). These provisions are not incompatible with our observation that findings related to determining DG Customers' rates and the amount of their Export Credit are likely to satisfy our obligations under the NM Evaluation Statute.

¹⁰ We do identify one potentially problematic consequence of the Parties' Settlement in lieu of litigating to a determination under Subsection One. Section 54-2-201 provides that independent energy producers may not provide electric service, as described therein, to NM Customers until the PSC "makes the first determination ... required by Subsection 54-15-105.1(2), and the determination becomes final agency action." Because no party has offered argument or testimony on the subject, we make no findings or conclusions here concerning whether or how our approval of the Settlement affects an independent energy producer seeking to provide such service.

through settlement. This inquiry, which goes to whether settlement is an appropriate mechanism for resolution of a particular dispute, is distinct from the findings we must make under § 54-7-1(3) to approve the terms of a particular settlement proposal, discussed below.

b. To Adopt a Settlement, the PSC Must Find It is Just and Reasonable in Result.

To approve a settlement proposal, the PSC must find (i) it "is just and reasonable in result" and (ii) "the evidence, contained in the record, supports a finding that the settlement proposal is just and reasonable in result." Utah Code Ann. § 54-7-1(3)(d). "When considering whether to adopt a settlement proposal, the [PSC] shall consider the significant and material facts related to the case." *Id.* Additionally, the PSC "may adopt any settlement entered into by two or more of the parties to an adjudicative proceeding," *i.e.*, all parties need not agree to the settlement. *Id.* at 54-7-1(3)(b).

3. FINDINGS AND CONCLUSIONS

a. Resolution of the Disputed Issues through Negotiated Settlement is in the Interests of the Public and Other Affected Persons.

The rate structure applied to DG Customers is a matter of intense concern to numerous stakeholders and opinions differ widely as to the costs and benefits distributed generation brings to RMP and its customers. NM Customers, who have already invested in distributed generation, have a strong interest in recovering a reasonable return on their investments. Additionally, prospective investors in rooftop solar wish to enjoy some measure of stability and certainty as to the value of their investments. Other customers have a compelling interest in not suffering unfair cost shifting. Solar installers have a strong interest in the viability of their industry.

Environmental advocates are passionate about the environmental benefits they believe renewable

generation offers. Of course, RMP is very interested in the makeup of generation sources on its system, the financial ramifications of distributed generation, and fairly allocating costs among its customers.

Despite these important, diverging interests, after extensive negotiations and considerable effort, a significant majority of the Parties and representatives from nearly all identifiable stakeholder groups join in asking us to approve their negotiated resolution, including the DPU, the OCS, RMP, numerous municipalities, solar advocates, and installers. The Parties who did not join the Settlement generally do not oppose it.¹¹ The only parties asking us to reject the settlement are WRA, one of the several parties advocating for the advancement of solar energy, and UAE, which represents the interests of industrial customers. Despite these parties' concerns, as more fully discussed below (*infra* at 16-17, 19), we find the strong majority of parties supporting the Settlement fairly and adequately represent the "interests of the public and other affected persons." As numerous witnesses testified at hearing, the Settlement is not ideal from the perspective of any party but offers a compromise that all stakeholder groups generally believe to be acceptable, just, reasonable, and in the public interest. (*See, e.g.*, Hr'g Tr. at 25:22-24.)

In other words, the Settlement offers the Parties an opportunity to ensure an outcome that is acceptable to all of them, rather than risk an outcome that one or more of them may consider

¹¹ Sierra Club and Vote Solar do not join the Settlement but have affirmed they do not oppose it. With the exceptions of WRA and UAE, no other intervening, non-signatory offered testimony or argument in opposition to the Settlement.

less satisfactory. In our view, such a scenario is precisely the kind in which negotiated settlement offers a compelling alternative to litigation for the public and affected parties.

Additionally, as discussed above, the issues presented are extremely complex and vigorously contested. The hearing on the merits was scheduled to last a week with the potential for post-hearing briefing, petitions for reconsideration, and appellate practice. Reaching a final resolution through litigation would have been costly for the parties and for the PSC in both time and resources. The negotiated resolution offers a far more efficient alternative.

For these reasons, we find negotiated settlement is an appropriate means for resolving this dispute and is in the interests of the public and other affected persons.

b. The Evidence Supports our Finding the Settlement is Just and Reasonable in Result.

In evaluating the Settlement, we consider it as a whole and must find whether the Settlement is just and reasonable in result. In addition to the major terms discussed below, the Settlement includes numerous other terms and provisions. By way of example, the Settlement contains terms related to real property transferees' rights to enjoy "grandfathered" status, a modified Export Credit contingent on legislative changes to existing tax credits, regulatory and legislative "stay-out" provisions, and so on. We do not believe it necessary or helpful for us to identify and discuss every term and provision of the Settlement in this Order. Consequently, our discussion here focuses on those key provisions we believe will have the greatest impact on stakeholders.

We emphasize that our consideration and approval applies to the entire Settlement. The testimony at hearing suggests that all, or nearly all, of the Settlement's terms are material to one

or more signatories, and we have considered all of the Settlement's provisions in analyzing whether it is just and reasonable in result. (*See, e.g.*, Hr'g Tr. at 35:20-36:1.) For clarity and brevity only, we separately discuss certain key terms below.

i. The NM Program Cap.

RMP, the DPU and the OCS have long expressed concern over the rate structure applied to NM Customers, the alleged interclass subsidies arising out of it and its long-term viability. (*See, e.g.*, A. Powell Direct Test. at 3:35-37 ("The current [NM Program] ... does not fairly capture and apportion the benefits and costs of distributed generation, and is unsustainable in the long run."); J. Daniel Direct Test. at 3:71-74 ("[T]he current [NM Program] ... does not recover the cost of serving the [NM Customers]").) Even the Legislature appears to have been concerned about the ramifications of proportionately high levels of NM Program participation because it wrote a participation cap into the statute. Specifically, § 54-15-103 provides an electric utility "may discontinue making [its NM Program] available" once the cumulative generating capacity of customer generation systems equals .1% of the electric utility's peak demand (during 2007). The Legislature also gave the PSC discretion to increase this cap, which we did – significantly – in 2009.¹² We take administrative notice, based on RMP's regularly filed Customer Owned Generation and Net Metering Reports, that NM Program participation has now exceeded the presumptive statutory cap, though capacity exists under the higher cap the PSC established in 2009.

¹² *See In the Matter of the Consideration of Changes to Rocky Mountain Power's Schedule No. 135 – Net Metering Service*, Docket No. 08-035-78, Report and Order Directing Tariff Modifications dated February 12, 2009.

We acknowledge disagreement exists as to the costs and benefits of the NM Program and the effects increasing levels of participation in the NM Program will have on RMP and its other customers. However, where the Parties, including several who advocate for the benefits of distributed generation, have stipulated to cap participation in the statutory NM Program and to do so at a level that already exceeds the presumptive statutory ceiling, we do not find their agreement to be unreasonable or contrary to the public interest.

ii. *The Grandfathering Period for NM Customers and the Time-Limited Transition Program.*

As RMP conceded at hearing, "[t]hrough the course of this proceeding and through this settlement process, [RMP] became convinced that abrupt changes would have negative repercussions to our customers, the solar industry, and the state." (Hr'g Tr. at 25: 15-19.) To avoid these abrupt changes, the Settlement proposes the Grandfathering Period for NM Customers and the time-limited Transition Program for near-term adopters of distributed generation. (See Hr'g Tr. at 43:15-20; 44:10-14 (M. Beck of the OCS testifying these Settlement provisions avoid "rate shock" and employ the principle of "gradualism.").)

We note the PSC has received voluminous public comments, which are posted on our website, from customers who have invested in distributed generation, or wish to invest in distributed generation, and are concerned that a change in the NM Program will deprive them of the benefits they expect from their investments. The Settlement insulates NM Customers from such risk. As UCE's witness explained, the Settlement "provides a reasonable grandfathering period for existing net metering customers that is consistent with the grandfathering periods throughout the country, and [] allows customers to recoup their investments made under the net

metering paradigm." (*Id.* at 53:22-54:3.) With respect to those customers considering whether to invest in distributed generation, the Settlement creates a transition to a "post-net metering paradigm" that "tends to ease the transition in a predictable and stable way with minimal economic impact for customers who install solar over the next three years." (*Id.* at 54:3-8.)

Similarly, numerous parties have testified that abrupt changes in the rate structure applicable to DG Customers would have severely negative consequences for the burgeoning rooftop solar industry. (*See e.g.*, T. Plagemann Direct Test. at 12:245-246 (representing that if the proposal in RMP's Compliance Filing were implemented "it would be hard for a responsible company to recommend solar to any residential customer, essentially wiping out Utah's residential solar industry".)) The Transition Program appears to alleviate these issues to a satisfactory degree for the Parties. (*See, e.g.*, Hr'g Tr. at 49:3-5 (R. Evans of USEA testifying "[w]hile it is certainly not a perfect solution for all, [the Settlement] does allow the industry to continue to participate in this market".))

We find the Grandfathering and Transition Periods constitute a just and reasonable mechanism to address concerns about the long-term viability and rate fairness of the NM Program while providing adequate price signaling to DG Customers and insulating them and other stakeholders from significant, abrupt changes in rate structure.

iii. The Fixed Export Credit for Transition Customers and 15-Minute Netting Interval.

The fixed rate on Export Credits that RMP will pay to Transition Customers and the 15-minute netting intervals in which they will be measured appear to reflect hard won

compromises.¹³ For example, the Settlement calculates the Export Credit to be 90% of the current average energy rate for Schedules 1, 2, and 3 and 92.5% for all other schedules. (Settlement at 6, n.1.) As originally proposed in the OCS and DPU's Joint Proposal, the Export Credit would have been fixed at 95% of a class' average retail rate. Though the Parties did not address the matter specifically at hearing, we expect the final rates in the Settlement reflect negotiated compromises. Moreover, regardless of the precise credit amount, we find the DPU's observations in its written testimony remain applicable:

Fixing compensation for transitional customers provides some level of stability for those customers and the solar industry while limiting [any potential] subsidy they receive. Given the proposed cap on the transitional group's size, this proposal limits risk to other ratepayers while smoothing the transition away from [any] retail rate subsidy received by current [NM Customers].

(A. Powell Rebuttal Test. at 20:340-21:344.)

Similarly, the 15-minute netting interval for Transition Customers' Export Credits reflects a material, negotiated term of the Settlement. As RMP's witness explained at hearing, "a 15-minute netting [interval] for the transition program was a key compromise by the parties The [Settlement] is clear that 15-minute netting is non-precedential, but it is an important part of the overall package and should be retained." (Hr'g Tr. at 28:18-29:3.)

WRA opposes the Settlement, in part, because it prefers an hourly netting interval, testifying a 15-minute interval is "confusing to customers and the economic impact is uncertain." (Hr'g Tr. at 59:12-14.) However, one party's dissatisfaction with a negotiated term does not preclude our approval of the Settlement. (*See* Utah Code Ann. § 54-7-1(3)(b) (providing the PSC

¹³ We acknowledge and are aware Post-Transition Customers will also receive the fixed Export Credit until a final order issues in the Export Credit Proceeding. (*See* Settlement at ¶ 23.)

"may adopt any settlement proposal entered into by two or more of the parties to an adjudicative proceeding".) This is especially so where other parties find a provision similarly unappealing but nonetheless find the compromise as a whole acceptable to advance a shared interest. For example, UCE shares WRA's concerns about 15-minute interval netting but nevertheless endorses the Settlement as "a reasonable path forward to a new rooftop solar paradigm." (Hr'g Tr. at 54:8-22.)

We conclude the Export Credit and the 15-minute netting interval are reasonable, negotiated terms of the Settlement.

iv. Recovery of a Portion of the Energy Export Credit through the EBA.

The Settlement treats the difference between the cost RMP incurs from paying Export Credits and the market value of the exports (adjusted for line losses) as a purchased power expense to be recovered through the EBA, or another pass-through mechanism as determined by the PSC.¹⁴ (See Settlement at ¶ 32.)

The Parties did not offer significant testimony in support of this provision. However, RMP testified the recovery represents a "straight pass-through" and "will not increase [RMP's] earnings." (Hr'g Tr. at 29:13-16.) No party opposing this provision elected to cross-examine RMP's witness or any other witness who endorsed the Settlement on this point.

We are mindful of the dissenting Parties' concern that the record does not show RMP's revenues are insufficient, in the absence of such recovery, to cover its costs and allowed rate of

¹⁴ Insofar as the Settlement invites us to designate another "pass-through mechanism" for this cost recovery, we decline to do so at this time.

return. (*See, e.g.*, Hr'g Tr. at 60:1-4.)¹⁵ However, Title 54 expressly authorizes the recovery of purchased power costs through the EBA, and RMP routinely recovers such costs through its EBA account. RMP is not required to file a general rate case to recover these expenses, which are reconciled annually in an EBA docket under § 54-7-13.5(2)(c)(ii). We find it conceptually reasonable to treat the stipulated portion of RMP's Export Credit expense as a purchased power cost.

Additionally, the DPU and OCS are both signatories to the Settlement and testified it is just and reasonable in result.¹⁶ In light of the limited record on this issue, we give significant weight to the endorsements of the DPU and OCS. On the whole, we find allowing RMP to recover the stipulated portion of Export Credits through the EBA is a reasonable compromise that does not preclude the Settlement from being just and reasonable in result.

v. *Waiver of Interconnection Rules.*

Absent a waiver of the rule, electric utilities may not charge customers an application, or other fee, when they request a Level 1 interconnection review and may not charge such fees for Level 2 or Level 3 interconnection fees except as dictated in R746-312-13. In ¶ 17 of the Settlement, the Parties stipulate good cause exists to waive the rule and establish application fees

¹⁵ We also acknowledge UAE's argument that the additional costs the Export Credits contribute to the EBA should be allocated to customer classes consistent with class causation. (Hr'g Tr. at 66:25-67:6.) However, the record has not been sufficiently developed on the topic to address the matter here. The Parties will have an opportunity in the next EBA docket to address any questions or concerns the Settlement might raise with respect to the EBA, including but not limited to the allocation of Export Credit costs.

¹⁶ The DPU and OCS are statutorily charged with representing the public interest and, with respect to OCS, the specific interests of residential and small commercial customers. *See* Utah Code Ann. §§ 54-4a-6, 54-10a-301.

and charges applicable to Transition and Post-Transition Customers. Specifically, these customers will pay a metering fee equal to the incremental cost of the bi-directional meter (refundable, if not installed) as determined by the PSC and application fees as follows: (i) Level 1 - \$60; (ii) Level 2 - \$75 plus \$1.50 per kilowatt of the generating facility's capacity; and (iii) \$150 plus \$3.00 per kilowatt of the generating facility's capacity. The Settlement provides these fees will be subject to change by the PSC and will be reevaluated in conjunction with the Export Credit Proceeding.

These stipulated fees mirror those RMP proposed in its Request. In its written testimony in support of that Request, RMP explained "[r]ecovery of the costs to process the applications for net metering, particularly for Level 1, has not kept pace with the growth in applications." (J. Steward Direct Test. at 35:657-658.) According to RMP, of the applications processed in 2015, RMP recovered only about \$17,000 in fees despite incurring \$560,000 in costs, mostly stemming from Level 1 applications for which no fee is charged. (*Id.* at 36:680-682.) RMP based its proposed new fee for Level 1 customers on "the average cost of processing a residential net metering application, which was about \$60." (*Id.* at 36:685-688.) To recover the remaining shortfall and "[t]o gradually move towards better recovery of all net metering application fees, [RMP] propose[d] a uniform 50 percent increase to Level 2 and Level 3 application fees." (*Id.* at 36:697-699.)

The Settling Parties also stipulate good cause exists to waive the "time periods provided in Utah Administrative Rules 746-312-8(2) and 746-312-10(2) regarding the interconnection process deadlines for applications received beginning on the NEM Cap Date for a period of up to

15 days thereafter." (Settlement ¶ 18.) The Settling Parties agree the waiver is appropriate "to give [RMP] time to modify its applications, billing, and interconnection processes." (*Id.*)

Under R746-312-3(2), "[f]or good cause shown, the [PSC] may waive or modify any provision of [the] electrical interconnection rule." Here, evidence in the record supports RMP's claim that it is incurring substantial, unrecovered expenses to process interconnection applications for distributed generation customers and the majority of the Parties have stipulated to implementing RMP's proposed fee schedule, as detailed in the Settlement. Accordingly, we conclude good cause exists to grant the Settlement's contemplated waiver of R746-312-3. We similarly conclude good cause exists to waive, for 15 days beginning on the NEM Cap Date, the deadlines pertaining to interconnection review enumerated in R746-312-8(2) and R746-312-10(2).

vi. Export Credit Proceeding.

In ¶¶ 28-30 of the Settlement, the Settling Parties agree RMP will "promptly" file an application to initiate the Export Credit Proceeding, seeking findings from the PSC to determine the compensation rate for exported power from customer generation systems, including all customers after the expiration of the Grandfathering Period and Transition Period, respectively. The Settling Parties agree to support an adjudication schedule that will consume no more than three years. RMP also agrees to facilitate a workshop to discuss the type and scope of data expected to be considered in the proceeding. The Settling Parties agree to include tariff requirements that all randomly selected NM Customers and Transition Customers shall participate in any load research study.

We find the Settling Parties' proposed path forward as regards the Export Credit Proceeding to be reasonable. We are hopeful the additional time and data will better facilitate the Parties' ability to support their positions and, ultimately, allow us to enjoy a high degree of confidence in determining an appropriate value for DG Customers' exported energy.

4. CONCLUSION AND ORDER

We approve the Settlement as a whole. We enumerate here only the express relief the Settlement appears to require of the PSC at this time. Our exclusion of any subject matter should not be construed as our disapproval of any term of the Settlement.

For the foregoing reasons, it is ordered:

1. The Settlement is approved in its entirety and nothing in this Order should be construed to modify any of its terms;
2. Participation in the NM Program is capped as of the NEM Cap Date as detailed in the Settlement and this Order;
3. RMP will file proposed new and revised tariff sheets to effectuate all changes called for under the Settlement; and
4. The requested waivers of R746-312-8(2), R746-312-10(2) and R746-312-13 are granted, but the waiver of the interconnection application processing deadlines is limited to 15 days beginning on the NEM Cap Date as dictated in the Settlement.

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DATED at Salt Lake City, Utah, September 29, 2017.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#297036

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the PSC within 30 days after the issuance of this written order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on September 29, 2017, a true and correct copy of the foregoing was served upon the following as indicated below:

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