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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Authority to Increase Its Retail Electric Utility Service Rates in Utah and for Approval of Its Proposed Electric Service Schedules and Electric Service Regulations.	Docket No. 13-035-184 **ROCKY MOUNTAIN POWER'S POST-HEARING BRIEF ON NET METERING FACILITIES CHARGE**

PacifiCorp doing business as Rocky Mountain Power (the "Company" or "RMP") submits this post-hearing brief on legal issues associated with the Net Metering Facilities Charge ("NMFC") in accordance with the Commission's direction at the conclusion of the hearing.

I. INTRODUCTION

RMP filed its application and supporting direct testimony in this general rate case on January 3, 2014. Among other things, RMP proposed that Schedule 135, Net Metering Service, be modified to include a monthly NMFC to allow the Company to recover the fixed distribution and customer service costs of serving residential net metering ("NM") customers from them

rather than from the general body of residential customers. This revenue-neutral, rate-design proposal was supported by testimony of A. Richard Walje, President, and Joelle R. Steward, Director of Pricing, Cost of Service and Regulatory Operations, including the Company's full cost of service study presented by Ms. Steward.[1]

On March 25, 2014, Governor Herbert signed Senate Bill 208 ("SB 208"). SB 208 amended Chapter 15 of Title 54 of the Utah Code, Net Metering of Electricity. The principal change was to replace Section 105 with Section 105.1, in essence removing presumptions that (1) NM customers would not be charged additional fees and (2) public policy favored spreading costs of NM to all customers. The amendment required the Commission to "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 [vice versa]; and 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.

The Commission issued a Public Notice on April 16, 2014, stating: "The Commission's determinations referenced in subsections (1) and (2) of Utah Code Ann. § 54-15-105.1 will be accomplished in the context of PacifiCorp, dba Rocky Mountain Power's ("PacifiCorp") general rate case in Docket No. 13-035-184. … [P]arties that have intervened in Docket No. 13-035-184 may address this topic as part of their written direct testimony on cost-of-service issues, due May 22, 2014." The Public Notice also invited public comment on the NMFC.

On May 22, 2014, other parties filed their direct testimony on cost-of-service issues, including the proposed NMFC. The Division of Public Utilities ("DPU") and Office of

[1] Ms. Steward noted in her direct testimony that the amount of the NMFC, then proposed at $4.25, would vary based on the Commission's decision on the Company's proposal to increase the customer charge and on the final revenue requirement approved in the case.

Consumer Services ("OCS") supported the NMFC based on the Company's evidence that the NM tariff caused a cost shift from residential NM customers to other residential customers.[2] Utah Citizens Advocating Renewable Energy ("UCARE"), The Alliance for Solar Choice ("TASC"), Sierra Club and Utah Clean Energy ("UCE") (collectively "Intervenors") opposed the NMFC largely on the basis that the Company had not provided a complete study or analysis of costs and benefits of NM. In addition, UCE submitted a study of the value of solar in Utah, Sierra Club provided an analysis of avoided costs of solar, and all of the Intervenors claimed that the benefits of NM likely exceeded its costs based on studies in other states and countries. The Intervenors all urged the Commission to defer the issue to another docket.

On June 25, 2014, all parties to the general rate case with the exception of the Intervenors filed a Settlement Stipulation resolving all of the numerous issues in the case except the NMFC.

On June 26, 2014, the Company, DPU, OCS, UCARE, TASC and UCE filed rebuttal testimony. Ms. Steward's testimony explained that in light of the Settlement Stipulation, the NMFC would increase to $4.65 per month. The Company's rebuttal also included testimony of Douglas L. Marx, Director of Engineering Standards and Technical Services, and Gregory N. Duvall, Director, Net Power Costs. Mr. Marx testified regarding the potential impacts of NM on the Company's distribution system and presented a study previously conducted under his direction that demonstrated that distribution system upgrades proposed for a circuit could not be deferred even if all customers installed solar panels on their rooftops in an optimal manner. Mr. Duvall testified that the costs avoided by the Company as a result of solar generation, including whether certain types of claimed benefits would be considered as avoided costs, had recently

[2] The OCS supported a NMFC based on the capacity of the customer's self-generation system rather than a uniform NMFC applicable to all residential NM customers. RMP does not object to this rate design should the Commission find it preferable to a single uniform NMFC to all residential NM customers.

been determined by the Commission in Docket No. 12-035-100 and that they were less than one-third of the direct costs imposed by the NM tariff. The DPU and OCS rebutted certain of the Intervenors' testimony and continued to support the NMFC. The Intervenors continued to object to the NMFC and urge the Commission to defer the matter to another docket.

On July 17, all parties filed surrebuttal testimony. Among other things, Sierra Club's witness, Dustin Mulvaney, attached a study of NM impacts in Nevada.[3]

Hearings were held on July 28 and 29, 2014, at which all parties were given the opportunity to present opening statements and cross examine the testimony of other parties. In addition, the Commission has received extensive public comment, both in written and oral form.[4] Throughout this proceeding, parties have conducted extensive discovery, including primarily discovery of information available from the Company.

Based on this thorough procedure, the Commission may fully comply with its obligations under Section 54-15-105.1. It has provided appropriate public notice that it would be considering the costs and benefits of the NM program in this docket and has allowed all interested parties and the public in general the opportunity to provide any information they deem relevant on that issue. Based on its review of the evidence presented, the Commission may determine that the costs of NM exceed its benefits and that the NMFC is just and reasonable. Having provided the Public Notice, the Commission should not defer a decision that is sufficiently supported now on the basis that other evidence may be presented at some time in the future that may cause a refinement of that decision.

[3] During the hearing on July 29, 2014, Sierra Club agreed that the study was not submitted to establish the truth of the matters stated in the study, but only to support references in Dr. Mulvaney's testimony and to provide an example of the type of study it urged the Commission to conduct before approving the NMFC.

[4] The Public Witness Hearing commenced at 5:00 p.m. on July 29 and did not conclude until 11:00 p.m.

II. ARGUMENT

A. Section 54-15-105.1 Requires the Commission to Act and Does Not Restrict Its Determinations to Reliance on a Demand-Side Management Study.

The dispute between RMP, the DPU and the OCS, on the one hand, and Intervenors, on the other, focuses on the meaning of Section 54-15-105.1. The section provides that:

> The governing authority *shall*:
>
> (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 (emphasis added).[5]

Well-accepted principles apply in interpreting this section. In *Anderson v. Bell*, the Utah Supreme Court summarized these principles:

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[5] Section 54-15-105.1 replaced Section 54-15-105 effective May 13, 2014. Section 54-15-105 provided:

> (1) An electrical corporation administering a net metering program may not charge a customer participating in the program an additional standby, capacity, interconnection, or other fee or charge unless the governing authority *after appropriate notice and opportunity for public comment*:
>
> (a) *determines* that:
>
> (i) the electrical corporation will incur direct *costs* from the interconnection or from administering the net metering program *that exceed benefits*, as determined by the governing authority resulting from the program, and
>
> (ii) public policy is best served by imposing a reasonable fee or charge on the customer participating in the net metering program rather than by allocating the fee or charge among the electrical corporation's entire customer base ….

Utah Code Ann. § 54-15-105 (2013) (emphasis added).

Whether the new section or the old section applies, both require notice and opportunity for public comment and the Commission's consideration of costs and benefits.

> Our goal when confronted with questions of statutory interpretation is to evince the true intent and purpose of the Legislature. It is axiomatic that the best evidence of legislative intent is the plain language of the statute itself. But our plain language analysis is not so limited that we only inquire into individual words and subsections in isolation; our interpretation of a statute requires that each part or section be construed in connection with every other part or section so as to produce a harmonious whole. Moreover, the purpose of the statute has an influence on the plain meaning of a statute.

2010 UT 47, ¶ 9, 234 P.3d 1147 (citations and internal quotation marks omitted). In addition, the word "shall" is generally presumed mandatory. *Brewster v. Brewster*, 2010 UT App 260, ¶ 18, 241 P.3d 357.

Applying these principles, it is apparent that the statute *requires* the Commission to provide appropriate notice and an opportunity for public comment and then to determine whether costs of NM outweigh benefits or vice versa and to determine whether a charge, credit or ratemaking structure should apply to NM service in light of the costs and benefits.

In urging the Commission to defer action, Intervenors ignore the fact that the Commission provided the Public Notice that it would make the determinations required by Section 54-15-105.1 in this proceeding. While the Commission might arguably have deferred application of Section 105.1 to some other proceeding and decided the NMFC issue in this case under typical cost-of-service, rate-design standards, the Commission elected to comply with Section 54-105.1 in this proceeding. Having done so, the parties were on notice that they should present whatever evidence they deemed relevant to the Commission's determinations under the statute, and the Commission is now required to make the determinations based on that evidence.

Intervenors argue that the only type of evidence upon which the Commission could make the determinations required by the statute is the type of analyses that have been applied to demand-side management programs, including the five tests sometimes applied to those programs. The statute does not support this argument. It simply requires the Commission to

determine the costs and benefits of the NM program. Therefore, the Commission should not interpret Section 105.1 to require a demand-side management type of study. Instead, the statute plainly allows the Commission to determine costs and benefits of the program and whether a charge is just and reasonable in light of them on evidence presented to it.

In interpreting the section, it may also be helpful to note that Section 54-15-105 previously contained a presumption that no additional charge would be imposed on NM customers, that a charge could only be imposed if *direct* costs to the utility of NM exceeded benefits (not limited to direct) and if public policy were served by the charge being imposed rather than allocating it to all customers. These presumptions were removed by SB 208, indicating a legislative intent for NM customers to pay their fair share of costs and for a charge to be instituted based on a more balanced view of costs and benefits.[6]

B. Approval of the NMFC Will Comply with Section 54-15-105.1.

Section 54-15-105.1 contains only four requirements. First, the Commission must provide appropriate notice that it is considering the costs and benefits of NM. Second, it must provide an opportunity for public comment on the costs and benefits of NM. Third, it must determine the costs and benefits of NM. Fourth, it must determine a just and reasonable charge, credit or ratemaking structure in light of the costs and benefits.

1. The Commission Has Provided Appropriate Notice and Opportunity for Comment.

The Commission has complied with the requirement that it provide appropriate notice and an opportunity for comment, and Intervenors have waived any claim that it has not. Intervenors have been on notice since January 3, 2014 that RMP was proposing the NMFC.

[6] "The challenge is as we expand our solar applications at the residential level, how those customers bear their fair share of the … fixed costs of the grid." Recording of Utah Senate Floor Debates, 2nd Substitute S.B. 208, 60th Leg., 2014 Gen. Sess. (March 5, 2014) (statement of Sen. Bramble), http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=16994&meta_id=499144.

With or without Section 105.1, they were on notice that, if they wished to oppose the NMFC, they would be required to rebut RMP's evidence that without the NMFC all residential customers are subsidizing residential NM customers' use of the distribution network.

After SB 208 was signed by the Governor, the Commission promptly gave notice that it intended to make the determinations required by Section 105.1 in this proceeding. Following this notice, one of the Intervenors filed a study on the value of solar in Utah. Another Intervenor provided an analysis of costs avoided as a result of solar generation. Finally, as early as January 8, 2014, the Commission began receiving public comment on the proposed NMFC which culminated in an unprecedented six-hour Public Witness Hearing on July 29, 2014. In these circumstances, Intervenors cannot reasonably claim that the notice and opportunity for comment were inappropriate.

Furthermore, even if Intervenors had not filed testimony and the public had not commented, the Commission's Public Notice would have been adequate. Due process requires only that an interested party have notice and an opportunity to be heard. *V-1 Oil Co. v. Dept. of Envtl. Quality*, 939 P.2d 1192, 1197 (Utah 1997). The only Utah case located holding the timing of notice insufficient did so because notice of a hearing was mailed only one week before the hearing. *Becker v. Sunset City*, 2009 UT App 197, ¶ 8, 216 P.3d 367. Notice that an issue is being considered over five weeks prior to the time the party is expected to initially address the issue and three and one-half months prior to the hearing on the issue is more than adequate to satisfy due process requirements.

Finally, if Intervenors believed that the notice or opportunity to present evidence were not appropriate, they should have moved the Commission to reconsider its position on making the determinations in this docket or asked for more time to present evidence they deemed relevant.

By failing to timely make such motions, Intervenors waived their right to complain that the notice or opportunity to provide evidence were inadequate.

2. The Record Is Sufficient for the Commission's Determinations.

The statute requires the Commission to make a determination whether the costs of the NM program exceed the benefits or vice versa and whether the NMFC is just and reasonable in light of the costs and benefits. The Commission must make this determination based on the evidence presented to it.

RMP presented evidence to the Commission that (1) fixed costs of the distribution system are shifted from residential NM customers to all residential customers through the NM tariff, (2) the avoided costs of the NM program through energy produced by NM customers in excess of their own consumption are less than one-third of the amount NM customers are credited for that energy, (3) RMP's distribution infrastructure costs are not likely to be reduced even in a circumstance where all customers on a circuit install rooftop solar in an optimal manner, and (4) it is likely that the costs of the distribution system will increase as the penetration of NM increases. The DPU recognized that a cost shift is occurring and that it will not be obviated by any analysis of costs and benefits of solar. The OCS also recognized the cost shift.

Even some of Intervenors' witnesses acknowledged the cost shift, but claimed that benefits of solar NM outweigh the costs. However, as discussed below, the benefits they considered were recently rejected as too speculative by the Commission in the avoided cost docket, Docket No. 12-035-100. In the two "Utah" analyses presented by the Intervenors, if their assumptions regarding avoided energy costs are replaced with the avoided costs recently determined in that docket and if the claimed benefits rejected by the Commission in that docket are eliminated, their own analyses show that the costs far exceed the benefits.

Therefore, the Commission may appropriately determine, based on the record presented in this proceeding, that costs of the Company's NM program exceed its benefits and that the NMFC is just and reasonable.

C. RMP Has Met Its Burden That the NMFC Is Just and Reasonable.

In testimony and argument at the hearing, Intervenors repeatedly took the position that RMP had failed to meet its burden of proof, so they had no duty to present evidence of costs and benefits and the record is inadequate for the Commission to act. This argument is based on a misunderstanding of the burden of proof in the context of this general rate case and ignores the fact that RMP has met its burden of proof.

RMP does not dispute that the party proposing a rate change, usually the utility, has the burden to demonstrate that the rate change is just and reasonable. *Utah Dept. of Bus. Reg. v. Pub. Serv. Comm'n*, 614 P.2d 1242, 1245-1246 (Utah 1980). However, if parties in rate cases presume the role of the Commission and simply claim that the utility has not met its burden of proof, they do so at their own risk. Once the utility has established a prima facie case that the rate change it is proposing is just and reasonable, the utility has satisfied its burden of proof, and, absent persuasive evidence from other parties that the change is not just and reasonable, the Commission must accept it. *U S West Comm, Inc. v. Pub. Serv. Comm'n*, 901 P.2d 270, 275 (Utah 1995) (concluding "that the Commission acted arbitrarily and capriciously in ignoring uncontradicted testimony and in concluding that USWC did not meet its burden").

The application of Section 54-15-105.1 in this general rate case arguably alters these normal principles regarding burden of proof. The statute directs the Commission to make determinations and does not specify that any party has the burden of proof with respect to those determinations. Intervenors argue that, because RMP proposed the NMFC (a rate change), it has the burden of establishing that it is just and reasonable. At the same time, they argue that, under

Section 54-15-105.1, the only way the Company could meet its burden is by presenting a demand-side management study examining the entire universe of costs and potential benefits of NM. This argument is incorrect and selective.[7] If there were no Section 54-15-105.1, a proposal to make a revenue-neutral rate change to avoid a cost shift would not require *any* type of comprehensive cost-benefit study. Given the application of Section 54-15-105.1, there is no requirement that a comprehensive demand-side management cost study be presented. In either event, the Company has presented evidence that the costs of NM clearly exceed its benefits. Thus, the Company has satisfied its burden, and the Commission may approve the NMFC.

D. Other Parties Have Failed to Rebut RMP's, the DPU's and the OCS's Evidence.

Intervenors have relied primarily on an argument that the Company has not met its burden of proof, so they have no need to rebut the Company's evidence. Therefore, they effectively acknowledge that they have not rebutted the evidence presented by RMP, the DPU and the OCS that the costs of the NM program exceed its benefits and that the NMFC is just and reasonable in light of that evidence. Notwithstanding the foregoing, Intervenors have presented some evidence in support of their objection to the NMFC. This evidence, however, is not persuasive and does not rebut the evidence in favor of the NMFC.

The principal evidence presented by the Company and relied on by the Company, the DPU and the OCS in support of the NMFC, is that a portion of fixed costs of the distribution system, which is used and relied upon by NM and non-NM customers alike, are recovered through volumetric energy charges and that because residential NM customers use less energy than residential customers in general, they do not pay their fair share of those fixed costs. Apart from UCARE's confusing attempts to question this straightforward calculation, none of the

[7] The studies filed by the Intervenors' own experts, such as Mulvaney for Sierra Club and Gilliam for Utah Clean Energy, were based on avoided costs, not on the demand side management studies.

Intervenors attempted to rebut it. Instead, Intervenors argued that it was simply an analysis of lost revenue rather than of costs and benefits. They further argued that imposition of the NMFC based on this evidence was discriminatory because the calculation could apply equally to any subset of residential customers that consume less than average amounts of energy and also does not apply to commercial customers.

Residential NM customers are already differentiated from other residential customers because they receive service under the NM tariff and are different from commercial customers because commercial customers' rate structure includes a demand component. In addition, the Company presented evidence that NM customers have different load profiles than other residential customers and their reliance on the Company for energy is rapidly increasing to at or near their full requirements at the time of system peak demand. The Company also presented evidence that customers who adopt energy efficiency measures to achieve lower consumption have load profiles that are similar to other residential customers but consistently at lower levels, particularly during peak demand periods. Thus, the Company may make adjustments in its facility planning based on the lower consumption of these customers. Intervenors were unable to rebut this evidence, simply arguing that there was still some possible contribution from NM customers at system peak and that peaks on different circuits occurred at different times.

Intervenors' primary claim was that benefits provided by NM customers exceeded costs imposed by those customers. In support of this position, Intervenors cited studies from other states and countries and two analyses purportedly based on Utah data. Some of these studies concluded that distributed generation *may* not impose additional costs on the distribution system. Others considered as benefits avoidance of future fuel cost volatility and avoidance of environmental costs. At least one of the studies included avoidance of societal costs through

claimed improved health of the population as a benefit of NM. The studies that estimated benefits included factors that the Commission recently concluded were too speculative to consider. Order on Phase II Issues, Docket No. 12-035-100 (Utah PSC Aug. 16, 2013) at 41. The response of Intervenors was that avoided costs are determined under the Public Utility Regulatory Policies Act ("PURPA") and that they apply to qualifying facilities ("QFs") that are larger than residential solar installations and not located within the distribution network. However, the Commission's findings on avoided costs and the speculative nature of claimed benefits in Docket No. 12-035-100 were factual findings irrespective of the legal standard, and QFs have purchased power agreements that make them more reliable sources of energy than individual residential NM customers. In addition, some QFs can locate very near the distribution networks.

Intervenors also failed to present a qualified expert to rebut Mr. Marx's expert opinions as an experienced electrical system engineer, based on the Company's experience and a Utah study, that, as penetration of distributed generation increases, there likely will be additional costs imposed on the distribution system and that distribution system upgrades could not be avoided even by installation of solar panels on all available customer rooftops in an optimal manner.

In sum, the evidence offered by Intervenors did not rebut the evidence submitted by the Company, and relied upon by the Company, the DPU and the OCS in support of the NMFC. Therefore, the Commission may reasonably conclude on the evidence presented in this case that the costs of NM exceed the benefits and that the NMFC is just and reasonable.

E. Commission Approval of the NMFC in this Docket Need Not Be Delayed Until Further Analysis of Costs and Benefits of NM Is Presented in Future Proceedings.

Intervenors argue that the Commission should wait until it has received more comprehensive evidence of the costs and benefits of NM before doing anything. This argument

is contrary to the mandatory nature of the statute and fundamental concepts of ratemaking and is inconsistent with UCE's position in an earlier docket.

As discussed above, having provided the Public Notice and electing to make the determinations required by Section 54-15-105.1 in this proceeding, the Commission is required to make those determinations based on the evidence presented to it in this case.

Furthermore, ratemaking is a continuous and ongoing process and a Commission decision in one proceeding does not prevent it from reaching a different decision in a future proceeding based on different evidence or even a different view of the public interest. *Utah Dept. of Admin. Services v. Pub. Serv. Comm'n*, 658 P.2d 601, 621 (Utah 1983) (referring to "the lack of finality that exists as to orders fixing public utility rates"); *Reavley v. Pub. Serv. Comm'n*, 436 P.2d 797, 802 (Utah 1968) ("Certainly an administrative agency which has a duty to protect the public interest ought not be precluded from improving its collective mind should it find that a prior decision is not now in accordance with its present idea of what the public interest requires.")

This principle has particular application to cost-of-service decisions such as the NMFC. It is common and appropriate in rate spread and rate design decisions for the Commission to go only part way toward strictly imposing costs on the cost causer under the principle of gradualism. In fact, as discussed by Dr. Artie Powell in his testimony for the DPU in this docket, various objectives of ratemaking may be in conflict, requiring the regulator to balance interests in arriving at a decision in the public interest. *See* Bonbright, Principles of Public Utility Rates (1961) at 287-305.

In 2008, when the Commission was considering changes to the NM tariff under Section 105, UCE acknowledged that "a complete cost-benefit analysis of net metering and distributed generation ha[d] not been conducted for Utah," but nonetheless urged the Commission to

increase the credit to NM customers for excess generation. Comments of Utah Clean Energy and Western Resource Advocates, Docket No. 08-035-78 (Utah PSC Nov. 26, 2008) at 3, 6. Now that the shoe is on the other foot, UCE argues that the Commission must have a complete cost-benefit analysis before it can act. The Commission should reject this opportunistic argument.

The NMFC addresses an issue that will become more significant as penetration of NM increases over time. The Commission and the parties will undoubtedly continue to review this issue and provide additional information to assist the Commission in making any necessary refinements to its treatment of this issue. The fact that a comprehensive, demand-side management study of costs and benefits of NM in Utah was not presented in this case is no reason to allow residential NM customers to continue to shift some of their fixed distribution system costs to other residential customers when it is clear, based on the evidence presented in this docket and the Commission's recent findings in the avoided cost docket, that costs of the program exceed its benefits.

III. CONCLUSION

The Commission may approve the NMFC consistent with the requirements of Section 54-15-105.1 and the evidence in this case. The arguments of the Intervenors ignore the Public Notice and the mandatory nature of the statute, read a requirement into the statute that only the type of demand-side cost-benefit study they deem appropriate would satisfy the statute and RMP's burden of proof and ignore or attempt to dismiss the Commission's recent order resolving the major benefit issue—avoided cost for solar generation. In light of the evidence presented, it is apparent that the NMFC is just and reasonable and should be approved by the Commission.

DATED: August 8, 2014. Respectfully submitted,

ROCKY MOUNTAIN POWER

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ROCKY MOUNTAIN POWER'S POST-HEARING BRIEF ON NET METERING FACILITIES CHARGE** was served on the following by email on August 8, 2012:

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