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BEFORE THE
PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Investigation of the Costs and Benefits of Pacificorp's Net Metering Program	)	**Docket No. 14-035-114**
	)	**MOTION TO DISMISS ROCKY MOUNTAIN POWER'S COMPLIANCE FILING AND REQUST TO COMPLETE ALL ANALYSES REQUIRED UNDER THE NET METERING STATUTE FOR THE EVALUATION OF THE NET METERING PROGRAM**

Pursuant to Utah Administrative Rule § R746-100-3, Sunrun, Inc. ("Sunrun") and Energy Freedom Coalition of America ("EFCA") (jointly "Movants") jointly request that the Public Service Commission of Utah ("Commission") dismiss the so-called "Compliance Filing" of Rocky Mountain Power Company ("Company"). The Compliance Filing is legally deficient and should be dismissed because it: (1) fails to comply with the Commission's Order requiring that the approved analytical framework be applied to a test year commensurate with the Company's

next general rate case, (2) proposes to establish a new rate class and increase base rates outside of a rate case in violation of the principle against single-issue ratemaking, and (3) would require unnecessary and wasteful expense to litigate factual issues that will need to be re-litigated in a future rate case as the basis for determining just and reasonable rates in compliance with the Commission's analytical framework Order and Utah Code Annotated section 54-15-105.1. Movants request that the order granting this motion affirm that a general rate case is the only appropriate proceeding to change rates for net metering customers under section 54-15-105.1, as ad hoc mechanisms such as the Company's "Compliance Filing" are procedurally insufficient to guarantee that rates will be just and reasonable. For these reasons, movants respectfully request that the Commission grant this relief expeditiously to avoid the unnecessary expenditure involved in preparing for and litigating an increase to base rates that is not properly before the Commission.

I. INTRODUCTION & PROCEDURAL HISTORY

In 2014, the Company filed its last general rate case application, which included a proposal to impose a monthly net metering facilities charge on residential net metering customers. After the application was filed, the Legislature added a new provision to the net metering statute (Utah Code Annotated § 54-15-105.1), which requires the Commission to determine the costs and benefits of the net metering program and determine an appropriate charge, credit, or rate structure that is just and reasonable in light of the costs and benefits of net metering. The Commission ultimately concluded that the record in the 2014 rate case application lacked substantial evidence on the costs and benefits of net metering necessary to comply with the new statute and opened a separate proceeding, Docket No. 14-035-114. The Commission's

purpose for opening this docket was to consider the development of an analytical framework to determine the costs and benefits of the net metering program.

After receiving comments, testimony, and evidence from a significant number of parties, the Commission issued an Order on November 10, 2015 ("Framework Order") adopting an analytical framework to be used to make the determination of costs and benefits required by section 54-15-105.1(1) ("Subsection One") prior to any act of determining a just and reasonable rate in light of the costs and benefits under section 54-15-105.1(2) ("Subsection 2"). Within Subsection One, the Commission noted that there were two steps. First, the Commission needed to adopt the analytical framework for making its determination. Second, the Commission would apply the framework to relevant data and make its determination.[1] The Commission opined that it would complete the second step of Subsection (1) "[i]n a further phase of this docket, a general rate case or other appropriate proceeding" where the Commission "will examine the costs and benefits that results from applying data to the approved analytical framework."[2] The Framework Order also provided that the data to be used in making that determination must relate to "[t]he period of time… commensurate with the test period in PacifiCorp's next general rate case."[3]

On November 9, 2016, the Company filed its "Compliance Filing" in this proceeding. The Compliance filing proposes to establish a new rate class and new rate structure for residential net metering customers and to modify the crediting provision for excess generation for non-residential customers. The Compliance Filing includes several cost of service studies: a counterfactual cost of service, an actual cost of service, and a net metering break out cost of service. The Company relies on 2015 test year data to complete these studies.

[1] *Order*, Docket No. 14-035-114 ("Framework Order") at p. 1.
[2] *Id.* at p. 1.
[3] *Id.* at p. 16, ordering paragraph #4.

The Compliance Filing seeks six elements of relief from the Commission: (1) a finding that the cost of service studies comply with the Framework Order; (2) a finding that the costs of the net metering program exceed the benefits; (3) a finding that net metering customers are justifiably segregated into their own, separate rate class; (4) a determination that current rates for net metering customers are unjust and unreasonable; (5) approval of a new rate structure that would apply to net metering customers effective June 1, 2017; and (6) approval a waiver of Utah Admin. R. 746-312-13 (i.e., to increase interconnection fees and charges), pursuant to Utah Admin. R. 746-312-3(2).[4]

Each separate element of the Company's requested relief relates directly to the question of whether the Compliance filing complies with the Framework Order. Any determination of costs and benefits or of a separate rate structure or additional charge for net metering customers relies on the application of relevant data to the analytical framework required in the Framework Order.

II. LEGAL STANDARD

The Commission has the authority to dismiss an application or petition that states a claim upon which relief cannot be granted consistent with law. Utah Admin. Code R746-100-1.C provides that where the Commission's rules do not contain the applicable provision, the Utah Rules of Civil Procedure shall govern. Because the Commission's procedural rules do not specifically provide for motions to dismiss, the Utah Rules of Civil Procedure apply.[5] When

[4] Compliance Filing at p. 16.

[5] *See e.g., Application of Utah Office of Consumer Services for a Deferred Accounting Order*, Docket No. 11-035-47, 2011 Utah PUC Lexis 233, *1- *2 (June 2, 2011); *Formal Complaint of Richard Rawlinson Against Rocky Mountain Power*, Docket No. 14-035-84, 2014 Utah PUC LEXIS 67 (Aug. 28, 2014).

considering a motion to dismiss pursuant to Rule 12(b)(6) for failure to state a claim, the Commission should accept the claimant's allegations as true[6] and construe factual claims in the light most favorable to the claimant.[7] When the allegations of the claim are assumed to be true and all reasonable inferences from those allegations are construed in the claimant's favor, but it remains clear that the claimant is not entitled to the relief that it seeks, the motion to dismiss should be granted.[8]

III. ARGUMENT

A. The "Compliance Filing" Was Not Required to Be Filed by Law or any Commission Order and, in Fact, Fails to Comply with the Commission's November 10, 2015 Framework Order in this Proceeding.

None of the November 10, 2015 Order's four ordering paragraphs established a requirement that the Company submit an additional filing in this proceeding to "comply" with that order. Nor did the Order specify a date certain by which the Company must submit further data. In fact, only ordering paragraph No. 4 had any temporal element: it required that "[t]he period of time covered by each of the costs of service studies **shall** be commensurate with the test period in Pacificorp's **next general rate case**."[9] Ordering paragraphs Nos. 1 through 3 merely describe the mandatory elements of the net metering framework that should be

[6] *Formal Complaint of Richard Rawlinson Against Rocky Mountain Power*, Docket No. 14-035-84, 2014 Utah PUC LEXIS 67 (Aug. 28, 2014); *see also Prows v. State*, 822 P.2d 764, 766 (Utah 1991) ("a motion to dismiss [pursuant to rule 12(b)(6)] is appropriate only where it clearly appears that the plaintiff . . . would not be entitled to relief under the facts alleged or under any state of facts [it] could prove to support [its] claim")

[7] *Hudgens v. Prosper, Inc.*, 243 P.3d 1275, 1279 (2010) ("a motion to dismiss should be granted only if assuming the truth of the allegations in the complaint and drawing all reasonable inferences therefrom in the light most favorable to the plaintiff, it is clear that the plaintiff is not entitled to relief").

[8] *Hudgens*, 243 P.3d at 1279.

[9] Framework Order at p. 16 [emphasis added].

presented.[10] For purposes of this motion, it can be assumed that the Company's filing includes the types of cost of service studies required by ordering paragraphs 1, 2, and 3.

There is no room for factual dispute, however, that the Company's "Compliance Filing" fails to ***comply*** with ordering paragraph No. 4. This is because all of the cost of service studies provided, and the entire filing, rely on historic data spanning the Company's last general rate case (i.e., 2015), not the Company's next general rate case. The Company has not given public notice of its intent to file an application for a new general rate case. Thus, even if the allegations in the Compliance Filing are accepted as true, the Compliance Filing fails the fundamental threshold requirement to present the right set of data that the Commission mandated as part of its further consideration of the costs and benefits of the net metering program. There is no reasonable inference that the past test year relied upon by the Company's Compliance Filing is "commensurate" with the Company's next general rate case test year.

The Framework Order is unequivocal regarding the time period that should be encompassed by the cost of service studies presented consistently with the framework. While the Commission explained that "[i]n a further phase of this docket, a general rate case or other appropriate proceeding, [we] will examine the costs and benefits that results from applying data to the approved analytical framework,"[11] this does not enable the Company to seek a rate change for net metering customers prior to its next general rate case. This quoted text contemplates that the Commission could take up the next step of making a **cost-benefit determination** required by Utah Code Annotated 54-15-105.1(1) either in a further phase of this docket, within the next general rate case, or some other appropriate proceeding. The establishment of a just and

[10] *Id.* Ordering paragraphs 1 through 3 describe the elements to be shown in the various cost of service studies within the analytical framework.
[11] Framework Order at p. 1.

reasonable rate is separate and apart from the **cost-benefit determination** and is one step further than the Commission's Framework Order contemplates. Nothing in the Commission's Framework Order suggests that a new rate can be imposed on net metering customers outside of a general rate case.

The flexibility the Commission envisioned for the procedural path to make its required cost-benefit determination does not change the fixed and mandatory time period requirement of ordering paragraph No. 4. It is conceivable that the determination of costs and benefits using the framework could be accomplished in this docket or another separate proceeding while a general rate case is imminent. This is only possible, as the Commission surely contemplated, because a cost-benefit determination is not a rate setting. Inasmuch as the Company has not indicated that a rate case is imminent, however, and the test year period is not tied to a test year to be used in the *next general rate case*, it is impossible for the Commission to satisfy the framework as discussed in its Framework Order. Moreover, proceeding with the Compliance Filing's non-complying time period would undermine the Commission's logic that a cost-of-service framework would be useful for determining rates when it relies on the same time period being used to establish new rates and revenue requirements.[12] Accordingly, the so-called "Compliance Filing" should be dismissed as inconsistent with the prior Commission Framework Order that mandates that the data used to populate the analytical framework be "commensurate with the test period in PacifiCorp's next general rate case."[13]

B. The Company's Compliance Filing Proposes to Establish a New Rate Class and to Increase Base Rates Outside of a Rate Case, in Violation of the Regulatory Principle Against Single-Issue Ratemaking.

[12] Framework Order at p. 8 ("The results of the Subsection One analysis must leave us well poised to 'determine a just and reasonable charge, credit, or ratemaking structure' under Subsection Two.").
[13] *Id.* at p. 16.

The rates charged to net metering customers are currently just and reasonable.[14] These rates carry a presumption of validity until the Company or some other party can demonstrate that these rates are no longer just and reasonable.[15] The codified "just and reasonable" standard governs how the Commission must balance sometimes competing or countervailing factors:

> All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable. The scope of definition "just and reasonable" may include, but shall not be limited to, the cost of providing service to each category of customer, economic impact of charges on each category of customer, and on the well-being of the state of Utah; methods of reducing wide periodic variations in demand of such products, commodities or services, and means of encouraging conservation of resources and energy.[16]

When the Commission determines rates to be just and reasonable, it does not make that determination in a vacuum. In determining just and reasonable rates, the Commission makes a judgment that the revenue required by the utility and the means of collecting that revenue achieve a comprehensive balancing of factors, each put forward as part of the utility's application for a general increase to base rates.

The Company's "Compliance Filing" is not a general rate increase application; rather, it inappropriately and illegally seeks to institute an increase in base rates. A "General rate increase" is defined in Utah law as "(i) any direct increase to a public utility's base rates; or (ii) any modification of a classification, contract, practice, or rule that increases a public utility's base rates."[17] A "base rate" includes "those charges included in a public utility's generally applicable rate tariffs, including… a rate…a toll…[or] any other charge generally applicable to a public utility's rate tariffs."[18] Schedule 135 and the underlying rates that apply to customer-generators,

[14] *Report and Order*, Docket No. 13-035-184.
[15] *W. Union Tel. Co. v. Esteve Bros. & Co.*, 256 U.S. 566, 572 (1921).
[16] Utah Code Ann. § 54-3-1.
[17] Utah Code Ann. § 54-7-12(1)(d).
[18] Utah Code Ann. § 54-7-12(1)(a)(i).

are indisputably rate tariffs of general applicability. The Company, without any reservations, explicitly acknowledges that customers that are subject to the proposed rates will experience an increase on their monthly bills compared to what their bills would be under the status quo, filed rates for net metering customers.[19] Thus, the Compliance Filing rate proposal will increase the rates of net metering customers and, thus, base rates.

Even when proposed rate changes would apply only to customers who submit net metering applications after this proceeding concludes next year, the Company's proposal would still raise base rates over what they would have been if no change were approved. The continuation of the current just and reasonable rate policy allows non-participating customers to enroll in net metering and achieve average bill savings greater than they would realize under the Company's proposal. The current state of affairs would change if the Company's request is approved, resulting in an increase to base rates to currently non-participating customers that decide to engage in net metering subject to the Company's proposed new rates.

The Company's proposal does not fit within any of the statutory exceptions to the term "base rates." The statute specifies that the term "base rates" does not include "charges included in… a deferred account."[20] The Company indicates that it is "**willing** to defer any difference in revenues between current rates and the new rates on Schedule 5."[21] But the Company's mere willingness to engage in deferred accounting—if ordered to do so—does not create a deferred account. Even if aspirational statements were procedurally sufficient to create a deferred account, this does not change the fact that there will be an increase to base rates. A rate increase is a rate increase. It is not legally significant that the Company is willing to amortize any revenue

[19] Compliance Filing Exhibit RMP_(JRS-7) (Steward).
[20] Utah Code Ann. § 54-7-12(1)(a)(ii).
[21] Compliance Filling, Direct Testimony of Joelle R. Steward at p. 5, lines 95-99.

differential (i.e., any increase in base rates) in its next general rate increase. It will still be over-collecting from a certain subset of customers without satisfying the legal predicate of a complete application to support and justify those base rate increases.

The statutory framework and procedural protections for customers regarding proposed increases to base rates would be substantially compromised if such makeshift workarounds were tolerated. If the Company can escape the meaning of "base rates" by couching a rate increase for a discrete group within the deferred account exception, the paramount statutory process of ratemaking would be compromised. The Company could essentially address customer rates in a piecemeal fashion and forego the need to file a rate case for some amount of time. Such an exception would functionally swallow the rule. This bad precedent could enable the Company and other utilities to subvert the intent of the Legislature to have rate base increases considered in a comprehensive manner.

Matters of revenue, risk, equity, and social policy are inextricably linked in the rate setting process and the determination of just and reasonable rates consistent with the meaning in Utah Code Annotated § 54-3-1. None of these components should be considered within a silo. When the Company seeks a general rate increase (or potentially a decrease to adjust for overearning) in its next rate case, there may be an issue of whether, on balance, the rates currently applicable to net metering customers are just and reasonable in light of the overall context of the rate request. Accordingly and appropriately, it is the Commission's practice to consider rate increases or substantial shifts in rate policy within the context of a general rate case and to avoid engaging in single-issue ratemaking.[22] The Compliance Filing inappropriately seeks

[22] *See, In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism*, Docket No. 09-035-15, 2011 Utah PUC LEXIS 90 at *15 ("Only by acting within the bounds of the Energy Balancing Account statute can the

a rate increase for a subset of residential customers outside of a general rate case and should be dismissed as inconsistent with law.

1. Utah adheres to the well-established regulatory prohibition against single-issue ratemaking.

The Company's rate proposal in the Compliance Filing is a textbook example of why single-item ratemaking should not be pursued outside of a general rate case proceeding. Single-item ratemaking has long been prohibited in Utah, in addition to many other jurisdictions.[23] While some rate adjustments are typically allowed outside of a general rate case—where the adjustment is determined by a formula or automatic adjustment mechanism that was approved in a prior proceeding[24]—other changes to components of rates should not, as the Utah Supreme Court held, be meddled with outside of a rate case:

Commission be assured it is not violating the Court's general proscription of retroactive ratemaking and single-issue ratemaking.").

[23] *See, e.g., Utah Dep't of Business Regulation, Div. of Pub. Utils. V. Public Serv. Comm'n*, ("Wage Case") 614 P.2d 1242 (1980); *Scates v. Arizona Corp. Comm'n*, 118 Ariz. 531 (1978); *Application of Portland General Electric for Investigation into Least Cost Plan Plant Retirement; Revised Tariff Schedules for Electric Service in Oregon for Portland General Electric Portland General Electric Application for Accounting Order*, Oregon Public Utilities Commission Order No. 04-597 (Oct. 18, 2004), 2004 Ore. PUC LEXIS 513, *62 ("The Commission must engage in a two-step process whenever it engages in making rate determinations, determining first a utility's total revenue requirement and subsequently allocating that revenue amount among ratepayers. . . . To determine the total revenue requirement, the Commission is required to consider *all* aspects pertinent to the utility's operations. This is the rule against single-issue rulemaking.") [emphasis in original] (*citing* American Can Co. v. Lobdell, 55 Or. App. 451, 454-55, 638 P2d 1152 (1982)); *Application of Montana Power Company for Approval of Electric Utility Restructuring Transition Plan, Before the Montana Public Service Comm'n*, Docket No. D97.7.90, Order No. 5986r (Oct 25, 2000) at P. 23, 2000 Mont. PUC LEXIS 4 at *14 ("MPC cannot justify its requested rate increase based only on increased QF costs. The Commission has traditionally rejected single-issue filings for good reasons. As MCC and LCG commented, load growth and the replacement of MPC-owned generation with a power buyback contract might also have affected MPC's costs and revenues. The positive and negative impacts of all these changes should be considered together in determining whether a rate increase is justified, even on an interim basis.").

[24] *See So. Cal. Edison Co. v. Public Utils. Comm'n*, 20 Cal. 3d 813, 829 (1978) ("The legislative purpose behind section 728 is better served by a plenary consideration of the advantages and

> The basic approach in rate-making is to take a test year and determine the revenues, expenses, and investment for the test year. The test period results are adjusted to allow for reasonably anticipated changes in revenues, expenses, or other conditions in order that the test-period results of operations will be as nearly representative of future conditions as possible. The commission may adjust all figures, revenue, expense, and investment for anticipated changes, but it may not adjust one side or part of the equation without adjusting the other; unless there is a finding the particular expense is extraordinary. There is no basis for adjusting a test year figure in the absence of a finding the increased revenues expected in the future will not be sufficient to offset the investment and other increased investment and expenses.[25]

In the case of energy balancing accounts, for example, the Legislature has seen fit to create an explicit statutory exception to single-issue ratemaking.[26] No such exception exists in statute or Commission practice for adjustments to base rates impacting only net metering customers.

The Company's Compliance Filing asks the Commission to run afoul of long-standing Utah Supreme Court precedent and its own prior decisions refusing to entertain single-issue ratemaking. The Compliance filing seeks to impose a new rate structure, and ultimately collect additional revenue from net metering customers, outside of the context of a rate case. This is unprecedented and unwarranted.

First, the rate charged to net metering customers is premised on the assertion that net metering customers should be in a separate rate class and should be responsible for system costs using previously approved allocation factors. This violates the underlying principle of the *Wage Case* that a single aspect or component of the Company's base rates should not be adjusted in isolation.[27] Moreover, this violates the matching principle that revenues collected should be

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disadvantages of an annual adjustment clause [i.e., at the time that clause is adopted in a true ratemaking proceeding] than by a yearly charade attendant to its application.").

[25] *Wage Case*, 614 P.2d at 1248.

[26] Utah Code Ann. § 54-7-13.5(4)(c) ("An energy balancing account or gas balancing account that is formed and maintained in accordance with this section does not constitute impermissible retroactive ratemaking or single-issue ratemaking.")

[27] *Id.*

designed to match the utility's cost over a specific test year time frame. As the Commission has previously noted:

> All the arguments against conducting single item rate cases argue against consideration of post-test-year adjustments. The fact is, events do not occur in isolation. The utility is a complex web of economic relationships, each of which changes as the result of external and internal forces and events. This is the proper context for considering any proposed adjustment. A competent management will optimize Company operations given an expected, known and measurable, change. This means offsetting effects are probable. Moreover, economic life goes on, bringing a multitude of other events, influences, and changes. The net effect of all of this cannot be known outside full rate case examination. This is the importance of the matching concept in the ratemaking process. When mismatching occurs, so much pertinent information remains unknown, unmeasurable, and unconsidered. This is the very reason for the objective of matching and for the practice of avoiding single-item rate cases.[28]

Indeed, the Company proposes to reshuffle the deck for net metering customers by increasing revenues collected from that specific group without considering an offset for other groups or classes of ratepayers. Moreover, this completely fails to consider the risk profile of the Company at the present time—including the prospect that the Company is earning above its authorized return on equity—and the impact that a new rate structure will have on the overall risk profile of the Company (which thereby affects determinations regarding the allowed return on equity and capital structure).

Second, the Company's rate proposal is unprecedented and seeks to impose a unique rate structure on residential customers in Utah. The Company has cited to no empirical data that this type of rate structure will not upset the fundamental propositions that inform Commission decisions regarding the simplicity and understandability of rates. Another state commission recently rejected a similar proposal that was proposed under similar circumstances. Idaho Power

[28] *In the Matter of the Investigation Into the Reasonableness of Rates and Charges of PacifiCorp,* Docket No. 97-035-01 (1999) 1999 Utah PUC LEXIS 16 (cited in *Order Granting Motion for Summary Judgment*, Docket No. 01-049-75 (June 17, 2005)).

recently requested approval to create a separate and distinct rate class for net metering customers. Under that proposal, net metering customers would be subject to a new pricing structure that would include a higher monthly customer charge, a capacity charge, and a reduced energy charge. The Idaho Public Utilities Commission denied the request finding, in part, that "dramatic changes, such as those found in this case . . . should not be examined in isolation but should be fully vetted in a general rate proceeding."[29]

The same holds true in this case. A major shift in rate design policy is unwarranted outside of a rate case as these untested methods of revenue collection may result in: (1) over-collection from the class of customers subject to the rate and (2) establishment of a rate design that significantly reduces the risk profile of the Company, which impacts the appropriate rate of return on equity and capital structure. This latter concern is exacerbated by the likelihood that the Company is currently overearning (discussed in subsection 2, immediately below).

2. The Company should not be permitted to strategically avoid a general rate case filing in its efforts to preserve its existing, elevated return on equity and to avoid scrutiny of its current over-earnings situation.

The apparent motivations for the Company seeking to impose this rate increase outside the context of a general rate case filing are obvious: (1) the Company's allowed return on equity ("ROE") in Utah would likely be reduced to conform with current equity return requirements, as illustrated by the lower equity returns allowed in other PacifiCorp jurisdictions and nationally, and (2) recent Results of Operations filings in Utah suggest that the Company is currently over-earning. Thus, due to both of these factors, a general rate case filing would likely result in a ***reduction*** to the Company's revenue requirement.

[29] *In the Matter of Idaho Power Company's Application for Authority to Modify its Net Metering Service,* Idaho Public Utilities Commission, Case No. IPC-E-12-27, Order No. 32846, 2013 Ida. PUC LEXIS 82, 306 P.U.R. 4th 259 at *27-28.

The Company's authorized ROE for Utah was set at 9.80% in August 2014 in Docket No. 13-035-184. At the time of that decision, a 9.80% ROE was very much in line with the equity returns awarded to investor-owned utilities throughout the country—9.89%—for the third quarter of 2014, as reported in EDISON ELECTRIC INSTITUTE's *Rate Case Summary*. Since then, however, allowed equity returns have steadily declined, to 9.57% for the second quarter of 2016.[30] EEI reports that this 9.57% return "is the second lowest in [its] dataset and consistent with the more than 30-year long trend of declining approved ROEs."[31] PacifiCorp companies operating in other states have similarly experienced lower allowed equity returns in the last two years. Most recently, in September 2016, Pacific Power was granted an ROE of 9.50% in Washington.[32] Wyoming also granted an authorized ROE of 9.50% to the Company in an order issued late last year (December 30, 2015).[33] Given this trend of downward equity returns, it is highly unlikely that the Company would be able to retain its current allowed ROE of 9.80% if it filed a rate case at this time. By avoiding a general rate case filing, the Company maintains its ability to charge rates calculated on the basis of stale, inflated equity return requirements.

In addition to this above-market allowed ROE, the Company is currently earning in excess of that return in its Utah operations, as indicated in its Results of Operations filings with the Commission.[34] For the twelve months ending on June 30, 2016, the Company's earned ROE

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[30] Edison Electric Institute, Rate Case Summary, Q2 2016 Financial Update.
[31] *Id*., p. 1.
[32] Washington Utilities and Transportation Commission, Docket UE-152253.
[33] Wyoming Public Service Commission, Case 20000-469-ER-15.
[34] *See, e.g.*, PacifiCorp's Results of Operations Reports: 2016, Docket No. 16-035-15 (http://www.psc.utah.gov/utilities/electric/elecindx/2016/1603515indx.html); 2015, Docket No. 15-035-51 (http://www.psc.utah.gov/utilities/electric/elecindx/2015/1503551indx.html); 2014, Docket No. 14-035-36 (http://www.psc.utah.gov/utilities/electric/elecindx/2014/1403536indx.html).

was 11.195% on an unadjusted basis and 10.044% after reflecting reporting and ratemaking adjustments and normalizing adjustments. This "normalized" equity return is over 24 basis points in excess of the Company's authorized ROE of 9.80%. The results are similar with respect to the overall rate of return: compared with the Company's authorized rate of return of 7.531%, the Company actually earned 7.656% on an adjusted basis for the twelve months ended June 30, 2016. (On an unadjusted basis, the Company's overall earned return for Utah was 8.244%). On an adjusted rate base of $6.222 billion, this excess return of 12.5 basis points (7.656% actual return minus 7.531% allowed return) represents $7.78 million of earnings over and above the level the Commission has determined to be reasonable for the Company.[35] It is little wonder that the Company would prefer not to file a general rate case to allow this over-earnings situation to be rectified.[36]

Apart from the need to bring the Company's revenue requirement in line with updated capital costs, the Company should be forced to wait until it files a general rate case to attempt any change to net metering rates to enable the parties and the Commission to evaluate the impact of the Company's proposed new rate structure on its overall risk profile. According to the Company's filing, there is some sense of urgency about the need to address the net metering issue, given the growth rate of 200 percent in net metering customers in 2014 and 2015 and the expectation that over 17,000 net metering customers would be enrolled by the end of 2016.[37] The

[35] This overearning would be approximately $44 million on an unadjusted basis. Taking this issue up in a rate case will allow for a thorough audit of the Company's earnings and adjustments.
[36] Nor are these recent results anomalous; rather, the Company's filing for calendar year 2015 also showed earnings in excess of allowed levels. Its normalized ROE for 2015 was 9.833% (as compared with the allowed ROE of 9.80%) and, on an unadjusted basis, was 10.146%. The Company's earned overall return was 7.548% on a normalized basis, just slightly below the allowed return of 7.57%; on an unadjusted basis, however, the earned return was 7.708% overall.
[37] Compliance Filing, p. 8.

Company asserts that this growth illustrates that the "subsidies embedded in the current rate structure of the net metering program . . . are unsustainable."[38] These claims directly relate to the Company's risk profile. Presumably, approval of the Company's net metering proposals would address the threat of distributed energy resources perceived by the Company, and thereby reduce the apparent risk associated with investing the Company's operations. Any impact on the Company's risk profile, of course, would have implications on the required ROE and capital structure, which are issues that can be considered only in the context of a general rate proceeding. For those reasons, Movants respectfully request that the order granting this motion affirm that a general rate case is the only proceeding where the Commission can perform its duty to determine just and reasonable rates for net metering customers in light of the costs and benefits of the program.

C. There Is No Compelling Need to Litigate a Rate Change and Make a Cost-Benefit Determination on the Current Compliance Filing Because Doing So Would Waste Party Resources and Require Duplicative Efforts in a Future Case Where the Issues and Rate Proposals Would Be Properly Considered.

The Company's Compliance Filing, which conveniently ignores the need for a rate increase application to accomplish the desired relief, serves no legitimate regulatory or legal purpose and will require significant costs to fully litigate the factual issues. First, the Commission did not order the Company to submit this filing. The "Compliance Filing" was wholly voluntary and does not even comply with one of the only explicit directives in the Order: that data supporting a cost-benefit determination must be commensurate with the test period in the Company's next general rate case. Like many aspects of this case, the Company is using an extraordinary procedural vehicle to ask for unique and unprecedented relief from the

[38] *Id.*

Commission. The appropriate vehicle, and the one clearly and explicitly contemplated in the Cost-Benefit Framework Order, is a general rate case proceeding.

If the Commission entertains any motion to bifurcate the issues in this proceeding—i.e., to dismiss or defer rate proposals and continue with a cost-benefit determination based on the Compliance Filing—interested parties will have to duplicate this intensive and exhaustive technical effort again before rates can be lawfully established for net metering customers. Accordingly, it is most efficient for the Commission and for all parties involved to dismiss the "Compliance Filing" and direct the Company to file data conforming to its analytical Framework Order when it files its next general rate case.

V. CONCLUSION

Movants respectfully request that the Commission grant this Motion to dismiss the Company's Compliance Filing and affirm that a general rate case is the only appropriate proceeding to seek net metering rate changes under Subsection (2) (§ 54-15-105.1(2)).

This request for relief is warranted because the Compliance Filing: 1) fails to comply with the explicit direction of the Commission to the Company to provide data from a specific time period; 2) seeks an increase to base rates outside of a general rate proceeding;, and 3) would require the Commission and other parties to expend extensive time and resources litigating an issue that will necessarily have to be re-litigated when proper data is submitted for the establishment of net metering rates in the next general rate case. Each element of the Company's requested relief is undermined by the Company's non-compliance and cannot be granted due to this deficiency.

Respectfully submitted this 20th day of December, 2016.

/s/
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CERTIFICATE OF SERVICE

I hereby certify that I will cause a true and correct copy of the foregoing **MOTION TO DISMISS ROCKY MOUNTAIN POWER'S COMPLIANCE FILING AND REQUST TO COMPLETE ALL ANALYSES REQUIRED UNDER THE NET METERING STATUTE FOR THE EVALUATION OF THE NET METERING PROGRAM** to be dispatched via overnight delivery to be filed with the Utah Public Service Commission on December 20, 2016 and to be served via email on that day upon the following persons:

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Dated December 19, 2016 at Cary, NC.

_____/s/_____
Blake Elder