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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** **UTAH SOLAR ENERGY ASSOCIATION'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, SUMMARY JUDGMENT ON ROCKY MOUNTAIN POWER'S COMPLIANCE FILING DATED NOVEMBER 9, 2016**

Intervenor Utah Solar Energy Association ("**USEA**") respectfully moves the Public Service Commission of Utah (the "**Commission**") for entry of an order (1) dismissing the Compliance Filing and Request to Complete all Analyses Required Under the Net Metering Statute for the Evaluation of the Net Metering Program (the "Compliance Filing"), filed on November 9, 2016 by Rocky Mountain Power (the "**Company**"), or alternatively; (2) limiting the scope of the proceedings outline in the Commission's Scheduling Order and Notices of Hearing and Public Witness Hearing, dated November 18, 2016 (the "**Scheduling Order**"), to a determination of whether the Compliance Filing complies with the Commission's Order dated

November 10, 2015 (the "**November 2015 Order**"), and denying all other relief that the Company seeks in the Compliance Filing.

BACKGROUND

The Compliance Filing is the Company's latest attempt to circumvent the Commission's carefully choreographed process for discharging its statutory duties under the Net Metering Statute.

The Commission should dismiss the Compliance Filing, or limit any proceeding under the Scheduling Order to a determination of whether the Company's November 9, 2016 Compliance Filing indeed complies with the requirements of the November 10, 2015 Order. If the Compliance Filing does not (and as shown later in this Motion it indeed does not), the Compliance Filing should be rejected. In other words, the Commission should not rule at this time on requests for relief numbers 2 through 6 of the Compliance Filing, which seek approval of changes to rate base and modifications of classifications, as those requests are premature and not properly before this Commission. *See* Compliance Filing at p. 2. Requests 2 through 6 should be addressed in a general rate case that is properly noticed and filed under Utah Code Ann. § 54-7-12.

DISCUSSION

I. THE COMPLIANCE FILING IS PROCEDURALLY DEFICIENT

The Compliance Filing is procedurally deficient because (A) the Company is unlawfully seeking a general rate increase in violation of Utah law; (B) the November 2015 Order requires the Company to first complete "Step One" of the Net Metering Statute before potentially seeking new rates at a future proceeding under "Step Two"; and (C) the Company has not shown cause for a waiver of Rule 746-312-13 to impose a new application fee for Level 1 Interconnection.

A. Utah Law Prohibits the Relief Requested in the Compliance Filing Outside a General Rate Case

As a general matter, compliance filings are limited in scope to effectuating the specific terms of a Commission order. *See e.g., New Hampshire Elec. Coop, Inc.*, 83 N.H. P.U.C. 465 (1998) ("as a compliance filing, the scope of this case was narrow, and limited to whether the filing was consistent with the orders of the Commission and applicable statutes"). Thus, any Commission order at this point should be limited to whether the Company's Compliance Filing satisfies the requirements of the November 2015 Order.

The November 2015 Order requires the Company to provide the following:

> (1) A factual cost of services study measuring net metering customers' participation, and a counterfactual cost of service study estimating its cost of service if net metering customers produced no electricity, and drew their entire load from the Company (collectively, the "**Studies**");
>
> (2) The Studies should reflect costs at the system, state and customer class level;
>
> (3) The factual costs of service study should illustrate cost of service in two respects at the customer class level: (i) with net metering customers included in their existing class, and (ii) with net metering customers segregated from the class in which they presently participate; and,
>
> (4) The period of time covered by each of the Studies should be commensurate with the test period in the Company's next general rate case.

See November 2015 Order, pgs. 15-16.

Here, rather than simply showing that it has complied with the November 2015 Order, the Company improperly seeks to have the Commission increase rates for residential ratepayers in a summary fashion. Specifically, the Company requests the Commission, among other things:

> (2) find, based on the cost of service analyses, that the costs of the net metering program under the current rate structure exceed its benefits;
>
> (3) find based on the cost of service analyses, that the unique usage characteristics of net metering customers justify segregating them into a distinct class;
>
> (4) determine that the current rate structure for net metering customers is unjust and unreasonable because it does not reflect the costs imposed on and benefits contributed to the system, and unfairly shifts costs from net metering customers to other customers;
>
> (5) approve, as just and reasonable, the Company's proposed Schedule 136, Net Metering Service, with modifications to net metering service and Schedule 5, Residential Service for Customer Generators, which includes a three-part tariff structure that reflects the costs and benefits that net metering customers impose on and contribute to the system; and
>
> (6) approve a waiver of Utah Admin. R. 746-312-13, pursuant to Utah Admin. R. 746- 312-3(2) for changes to the application fee, as explained in more detail below.

See Compliance Filing at p. 2. These requests go beyond a determination of whether the Compliance Filing meets the requirements of the November 2015 Order and are premature and should not be ruled upon at this time.

B. The Compliance Filing Contradicts the Analysis Prescribed by the Net Metering Statute

The Compliance Filing proposes to skip a two-step process that the plain language of the Net Metering Statute requires. *See* Utah Code Ann. § 54-15-105.1. Specifically, the Legislature tasked the Commission with:

> (1) [determining,] 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) [determining] 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(1) ("**Subsection One**"); 105.1(2) ("**Subsection Two**").

The Commission has repeatedly refused to conflate the separate mandates contained in Subsections One and Two of the Statute. For example, in the July 2015 Order, the Commission held that it perceived "a distinction between the Commission's statutory responsibility to avoid unjust or unreasonable rates through a general awareness and promotion of the public interest and the task the legislature has assigned [to the Commission] under Subsection One, *i.e.*, to quantify and weigh the costs and benefits of net metering." July 2015 Order, 2015 WL 4155503, at *8 n.2. The Commission's refusal to conflate the two subsections is consistent with a long-established cannon of statutory construction: "[w]hen construing the language of a statutory provision," adjudicative bodies "presume that the legislature used each word advisedly" and have a "fundamental duty to give effect, if possible, to every word of the statute." *Associated General Contractors v. Bd. of Oil, Gas and Mining*, 2001 UT 112, ¶ 30, 38 P.3d 291 (refusing to "infer substantive terms into the text" of a statute "that [were] not already there").

Here, the Company attempts to conflate Subsection One with Subsection Two in contravention of the Net Metering Statute's plain language and the Commission's interpretation of it. In essence, the Company reasons that if the Studies withstand scrutiny, which they do not, then necessarily the Commission must grant all of the relief the Company seeks. Put differently, the Company assumes that so long as it can show that the costs outweigh the benefits of net-metering to non-net metering customers under Subsection One, then the Commission must under

Subsection Two (i) raise the rates applicable to net-metering clients, (ii) raise the net-metering client's application fees, and (iii) sanction the segregation of net-metering clients into a sub-class of customers—all without the process and procedure that Utah law requires. An evidentiary hearing will yield that the Studies do not support any of these forms of relief. But more fundamentally, the Company's reasoning fails because it is contrary to the Net Metering Statute's plain language. As the Commission has held, the Statute's mandate under Subsection One is separate and distinct from the mandate under Subsection Two. While the outcome of the Subsection One analysis "will be highly relevant to any rate setting that might occur" under Subsection Two, the Commission nevertheless retains discretion in setting "just and reasonable" rates under Subsection Two. Were the Commission to read the Statute as the Company posits, then Subsection Two would be rendered meaningless, since the Statute would effectively read that so long as the costs of net-metering outweigh its benefits then the rates of net-metering customers—according to the Company's flawed analysis—should be increased. In short, neither the Statute, the cannons of statutory construction, nor the Commission's precedent support the Company's attempt to conflate Subsections One and Two of § 54-15-105.1.

C. The Compliance Filing does not Comport with the Analytical Framework Prescribed by the July and November 2015 Orders

The Compliance Filing should be dismissed on procedural grounds because the Company attempts to skip multiple steps set out in the analytical framework prescribed by the July and November 2015 Orders. Interpreting the Net Metering Statute, the Commission has emphasized that the Legislature requires the Commission to conduct two independent analyses:

> First, the Commission is to perform cost-benefit analysis and determine whether the benefits of the net metering program will exceed the costs ("**Step One**").
>
> Second, the Commission is to determine a 'just and reasonable' ratemaking structure in light of the results of the analysis performed in the first step ("**Step Two**").

July 2015 Order, 2015 WL 4155503 at * 6; *see also*, November 2015 Order, p. 1.

The Commission set out "to create an analytical framework to accomplish Step One." July 2015 Order, 2015 WL 4155503, at *6. It "acknowledged the necessity of conducting the Subsection One analysis in steps," which have included: (a) making multiple legal determinations, including that any costs or benefit to be considered in the Subsection One analysis are costs or benefits that impact the utility's cost of service; (b) determining that for purposes of the Step One, the relevant costs and benefits are those that accrue to the utility or its non-net metering customers in their capacity as ratepayers of the utility; (c) requiring that the Company conduct factual and counterfactual studies estimating the cost of service associated with net-metering; and (d) "in a further phase of this docket, a general rate case or other appropriate proceeding, [examining] the costs and benefits that result from applying data to the approved analytical framework" (the "**Cost-Benefit Phase**"). Once all these stages of Step One are complete, *then* the Commission will proceed to conduct a separate analysis under Subsection Two.

Here, the Company attempts to jump from its purported completion of the factual and counterfactual Studies directly into the "just and reasonable" analysis prescribed by Subsection Two, while skipping entirely the Cost-Benefit Phase. This is a critical issue, because the Commission's analytical framework contemplates that during the Cost-Benefit Phase, parties in interest will have the opportunity to challenge the assumptions that the Company made in conducting the Studies, and to offer their own alternatives. For example, the Commission noted that "[p]arties advocating for the inclusion of any particular costs will bear the burden of establishing it will increase the utility's costs of service, and parties seeking to include any particular benefit will bear the burden of demonstrating it will decrease the utility's cost of service." July 2015 Order, 2015 WL 4155503, at *9. Thus, not only will parties in interest have a

chance to propose their own benefits (or costs) associated with net-metering, but also the Company has to meet its burden of showing that the costs it evaluated will actually increase the cost of service to non-net metering customers. This can only be accomplished at an evidentiary hearing where the Company's Studies can be scrutinized. In sum, rushing through the process as the Company suggests will deny the parties-in-interest an opportunity to submit their own proposals as to which costs and benefits the Commission should consider under Step One. It will also allow the Company to avoid its burden of showing that its own Studies are sound. Thus, the Compliance Filing does not comply with the framework prescribed by the November 2015 Order.

D. The Company has not Shown Cause for a Waiver of Rule 746-312-13

In the Compliance Filing, the Company requests that the Commission waive Rule 746-312-13 to allow the Company to charge, for the first time, a $60 application fee for Level 1 Interconnection. *See* Compliance Filing, pgs. 2, 5-6, 16(6); *see also*, Testimony of Ms. Joelle Steward, at 652-706. The Company does not show "good cause" requiring such waiver.

Rules 746-100-15 and 746-312-3(2) govern waivers of Rule 746-132's requirements. Under Rule 746-100-15, "[t]he Commission may order deviation from a specified rule upon notice, opportunity to be heard and a showing that the rule imposes an undue hardship which outweighs the benefits of the rule." Utah Admin. R. 746-100-15. Moreover, under Rule 746-312-3(2), "[f]or good cause shown, the [C]omission may waive or modify any provision of this electrical interconnection rule [*i.e.*, Rule 746-312-1 et seq.]" Utah Admin R. 746-312-3(2). The Rule does not define "good cause shown," but the Commission's prior applications of Rule 746-312-3(2), along with other provisions of the Administrative Code, show that the Company has not met this standard here.

For example, just one year after adopting Rule 746-312, the Commission found that the Company failed to show good cause to excuse its compliance with certain deadlines imposed by Rule 746-12 upon a showing that it had made "reasonable efforts" to meet the deadlines. *See In the Matter of Rocky Mountain Power Proposed Standardized Non-Net Metering Agreements*, Dkt. No. 10-035-44, 2011 WL 1210478, at ¶ 2.1. The Commission concluded that the Rule "does not provide for [a] reasonable efforts" exception to the timeline, and "[a]bsent any explanation or information substantiating good cause shown as it relates to this issue," the Company cannot read such exception into the Rule. *Id.*

Here, like the 2010 case, the Company fails to provide any "explanation or information substantiating good cause shown" for a waiver of Rule 746-312-13. Instead, it merely

regurgitates the very arguments that the Commission rejected when it first adopted this rule exempting residential consumers from paying application fees. The Commission adopted Rule 746-312 on April 10, 2010 after extensive notice and comment. *See In the Matter of: Notice of Proposed New Rule 746-312, 2010, Standards for Interconnection of Electrical Generating Facilities to Public Jurisdiction Under the Public Service Commission*, Dkt. No. 09-R312-01. During that process, the Commission proposed that "[a] public utility whose rates are determined by the [C]omission may not charge an application, or other fee, to an applicant that requests Level 1 interconnection review." Utah Admin. R. 746-312-13. It also defines "Level 1 Interconnection Review" as "an interconnection review process applicable to an inverter-based facility having a generation capacity of 25 kilowatts or less." *Id.* at 746-312-1(21). Consequently, as Ms. Steward recognizes in her testimony, "the majority of Level 1 applications are for residential customers." *See* Ms. Steward's Testimony at 685-86.

In 2010, the Company objected to the proposed Rule 746-312-13, arguing that "preventing public utilities from charging an application fee for Level 1 interconnection reviews will impose undue burden on the utility's customers that are not participating in the net metering program." *See* the Company's Comments, September 30, 2009, pg. 4. Instead, the Company requested in 2010 that "it be allowed to impose a reasonable fee or charge for review of a Level 1 interconnection application." *Id*. The Company makes those very same arguments again now, purportedly armed with data to back-up its substantive claim. And while USEA disputes that the Studies support the Company's request for a waiver, the Commission should dismiss the request for the more fundamental reason that it is procedurally improper. If the Company has new information supporting a change of such a fundamental rule as Rule 746-312-13, then the proper procedure is for it to propose a new rule, subject to notice and comment. A compliance filing is

simply not the proper forum to entertain even the request for the waiver, let alone what would amount to a whole new rule. Thus, the Commission should dismiss the Compliance Filing.

II. THE COMPLIANCE FILING IS SUBSTANTIVELY DEFICIENT

The Compliance Filing should be dismissed on substantive grounds with respect to the only request for relief properly before the Commission – i.e., whether Studies comply with the November 2015 Order – for multiple reasons.

First the Company relies on the Studies as the sole basis for determining costs and benefits. The Commission, in the November 2015 Order recognized that "other costs and benefits may exist that will not necessarily be captured using PacifiCorp's traditional cost of service apparatus." It further states that the Company should create categories of costs and benefits consistent with those prepared for a general rate case. *See* November 2015 Order, pg. 13. The Compliance Filing fails to adequately include reasonable categories of costs and benefits outside of the Studies. Because the Studies do not comply with this basic requirement of the November 2015 Order, the Commission should dismiss the Compliance Filing.

Second, the Studies rely on assumptions that are speculative, unquantifiable and not subject to reasonable verification. For example, the Company based some of its conclusions on the assumption that solar installations would continue to "increase exponentially" in part because of government subsidies. *See e.g.*, Testimony of Mr. Gary W. Hoogeveen at 144-185; Ms. Steward's Testimony at 126-131. But the Company does not know whether government subsidies will be available in the coming years, let alone whether such subsidies would contribute to saturation of the market. The Commission has emphasized that "any cost or benefit [that is] not reasonably subject to quantification and verification will be of little use in conducting the Step

One analysis." July 2015 Order, 2015 WL 4155503, at *9. Thus, the Studies are substantively deficient to the extent they rely on unverifiable or speculative assumptions.

Third, while the Commission should delay any substantive analysis of the remedies that the Company seeks, a cursory review of these proposals shows that they do not address the purported costs uncovered by the studies. For example, the Company does not propose to reimburse or otherwise lower the rates of non-net metering ratepayers to compensate for their purported subsidizing of net-metering ratepayers. Rather, the Commission proposes to keep whatever excess fees it collects from the proposed tariffs. If the costs of net metering have been outweighing their benefits to the detriment of non-net metering ratepayers, it is those customers who should be compensated – not the Company's shareholders.

In short, the Commission should dismiss the Compliance Filing because the Studies fail to comply with the parameters set out in the November 2015 Order.

III. GRANTING ANY RELIEF OTHER THAN COMPLIANCE REVIEW WOULD UNFAIRLY PREJUDICE ALL OF THE COMPANY'S CUSTOMERS AND UNFAIRLY PREJUDICE THE COMPANY'S COMPETITION

Lastly, the Company's request for temporary relief in the form of Schedule 135A or otherwise, would hurt current ratepayers by decreasing predictability of cost and availability of service and would only serve to magnify the Company's competitive advantage over small businesses.

The rate increase and new rate structure that the Company is attempting to push through would unfairly increase the costs for net-metering ratepayers and artificially and unjustifiably depress the return on the upfront investment required for rooftop solar. This disruption of the industry that manufactures, installs and maintains these systems deprives the customer of reasonable access to the option of net-metering created in statute. Moreover, it would have the same sort of disastrous effects on the solar industry in Utah that have occurred in Nevada, where

rate changes similar to those proposed by the Company led to a 92 percent decrease in residential solar installation permits during the first quarter of 2016. *See* Muro, Mark, Saha, Devashree. May 23, 2016. Rooftop solar: Net metering is a net benefit. Brookings Institute Advanced Industries Series Paper 91.http://www.brookings.edu/research/papers/2016/05/23-rooftop-solar-net-metering-murosaha#.V0MctMHjazs.email (last visited December 20, 2016).

On the other hand, this uncertainty creates a competitive advantage for the Company's own "Subscriber Solar" program, set to launch in September 2017. *See* Mr. Hoogeven's Testimony at 331-360. It would also add to other benefits that the Company enjoys by virtue of its monopoly as a utility. For example, the Company has not published any analysis comparable to the Studies determining whether the costs of its program outweigh their benefit, and if so, how to compensate non-participating ratepayers for such costs. Neither Utah law nor common sense requires such a result.

CONCLUSION

For the foregoing reasons, the Commission should either dismiss the Compliance Filing, or limit the proceedings set out in the Scheduling Order to a determination on whether the Company's Studies comply with the November 2015 Order.

Dated this 20th day of December, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that I will cause a true and correct copy of the foregoing **REPLY COMMENTS OF UTAH SOLAR ENERGY ASSOCIATION** to be delivered to the Utah Public Service Commission on November 29, 2016 via hand delivery and to be served via email on that day on the following persons:

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