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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 The Office of Consumer Services' Motion to Dismiss or in the Alternative Motion for Order to Show Cause.

Pursuant to Utah Code Ann. § 54-10a-303 and Utah Admin. Code r746-100-3 the Office of Consumer Services ("Office") respectfully submits its Motion to Dismiss and in the alternative Motion for Order to Show Cause in the above entitled matter. The Office respectfully moves the Public Service Commission ("Commission") to dismiss Rocky Mountain Power's ("RMP" or "Company") November 9, 2016 Compliance filing setting forth a proposed new rate class and new rate structure for residential net metering customers. In the alternative, if the Commission does not believe dismissal is appropriate the Office moves the Commission to issue an Order to Show Cause to Rocky Mountain Power directing

the Company to show cause why the current proceeding should not be withdrawn and a general rate case be filed to include the issues currently under consideration in this filing.

BACKGROUND

On August 29, 2014 the Commission opened the current docket to examine the costs and benefits of the Company's net metering program under Utah Code Ann. § 54-15-105.1 (1) "Subsection One" and section 54-15-105.1(2) "Subsection Two" and collectively the "Statute". (November 10, 2015 Order at 1.)

On July 1, 2015 the Commission issued an Order Re: Conclusions of Law on Statutory Interpretation and Order Denying Motion to Strike. The Commission defined the relevant costs and benefits to be considered those that "accrue to the utility or its non-net metering customers in their capacity as ratepayers of the utility. Costs or benefits that do not directly affect the utility's cost of service will not be included in the final framework to be established in this phase of the docket."

On November 10, 2015 the Commission Issued an Order rejecting the Company's original proposal for analyzing the costs and benefits under Subsection One. The Commission ordered that the Company perform an Actual Cost of Service study ("ACOS") and a Counter Factual Cost of Service study ("CFCOS") comparison that will reveal costs at the system, state and customer class level.

On November 9, 2016 the Company filed Compliance Filing and Request to Complete All Analyses Required under the Net Metering Statute For The Evaluation Of The Net Metering Program. This filing contains data on the ACOS and the CFCOS

as ordered by the Commission. However, it also includes a proposed three part rate structure for a new customer class of net metering customers as well as a proposal for a deferred accounting order for money collected under the proposed new rate structure and tariff.

ARGUMENT

A. The Company's Compliance Filing and Proposed Rate Structure are Inconsistent with this Commission November 10, 2015 Order

The Company's Compliance Filing and proposed tariff changes are inconsistent with the November 10, 2015 Order, particularly paragraph four of the Order providing: "The period of time covered by each of the cost of service studies shall be commensurate with the test period in PacifiCorp's next general rate case." (November 10, 2015 Order, at pg. 16.) However, the Compliance Filing employs cost of service studies based on data employed in the Company's last general rate case, filed in 2013 . (Compliance Filing and Request to Complete All Analyses Required Under The Net Metering Statute For The Evaluation Of The Net Metering Program, at pg. 5.) Because the Company has not even proposed when it will file its next general rate case, the data obtained in the 2014 general rate case cannot be considered "commensurate" with the Company's next general rate case. Accordingly, the Compliance Filing is in direct conflict with the November 10th Order. [1]

[1] Another example of this Commission's intentions, and the Company's overreaching, is contained in the portion of the Order regarding the price or value of the net metering customer's excess energy. Specifically, this Commission ruled that in "preparing the ACOS, PacifiCorp should **not** assign a price or value to the net metering customer's excess energy other than as recognized in the net power cost analysis. We will consider issues related to how net metering customers should be credited or compensated for their excess energy when we take up the Statute's rate setting implications under Subsection Two." (November 10, 2015 Order, at pg. 9)(bold added.) Clearly, the language "when we take up the Statute's rate setting implication under Subsection Two" indicates that in this phase of the proceeding the "rate setting implications" are not presently at issue.

However, despite this Commission's express admonition to the contrary, the Company did assign a value to the customers' excess energy as part of their proposed rate structure. (Steward Dir. at pg. 30-

Moreover, by proposing a new rate structure outside a general rate case, the Company's Compliance Filing is implicitly contrary to the November 10th Order. While this Commission did not expressly order that the rate making portion of these proceedings must take place in a general rate case, by specifically tying the assessment of net metering impacts to the "test period utilized in PacifiCorp's next general rate case" the Commission implicitly announced its preference that the rate determination for net metering be included in a general rate case rather than in a more limited docket. Indeed, in ruling on the contested issue of what length of time the test period should be under the analytical framework, this Commission observed: "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. It is, therefore, eminently sensible to rely on the same test period data employed to establish all customers' rates." (November 10, 2015 Order at pg. 8.)

Again, by tying the test period data to "data employed to establish all customers' rates," this Commission implicitly recognizes the appropriateness of promulgating a rate structure for net metering in the context of a general rate case. In fact, as discussed below, for legal and sound public policy reasons the Company's rate proposals should only be address in the next general rate case.

B. Pursuant to Utah Code Ann. § 54-7-12, RMP's Proposal Can Only Be Addressed in a General Rate Case.

Utah Code Ann. § 54-7-12 establishes procedures for rate increases and its provisions clearly provide that the increase in rates and the creation of a new class of ratepayers as proposed in RMP's Compliance Filing can only be promulgated in a general rate case. This reading is compelled by the fact that the term "general rate

31, ln. 576-85.) This disconnect between the wording of the November 10th Order and the Company's proposal evidences that the Company's proposal exceeds the scope of the November 10th Order.

increase," used in section 54-7-12, means a rate increase that takes place through the procedures of a general rate case.

Specifically, under section 54-7-12(1)(d), "`General rate increase' means: (i) any direct increase to the utility's base rates; or (ii) any modification of a classification, contract, practice, or rule that increases the utility's base rates." In turn, section 54-7-12(a)(1) provides: "`Base Rates' means those charges included in a public utility's rate tariffs, including: . . . (B) a rate; . . . (E) any other charge generally applicable to a public utility's rate tariffs." Section 54-7-12(2)(a) dictates that a "public utility that files for a general rate increase . . . **shall** file a complete filing with the commission setting forth the proposed rate increase." (bold added.) Section 54-7-12(b)(i) and (ii) establish that the minimum requirements for a complete filing are set forth in Utah Admin. Code r-746-700, which lists the required filings for "a general rate case." In addition, section 54-7-12 provides procedures necessary to conduct a general rate increase and includes provisions solely implicated in general rate cases, such as the 240 day time limit. Section 54-7-12(3)(a). Accordingly, it is clear that the "general rate increase" can only be accomplished through a general rate case and that an increase in rates, or a change in classification that increases rates, constitutes a "general rate increase."

The Company's Compliance Filing proposes to divide the current residential class into two new classes of residential customers, net metering residential customers and non-net metering customers. This represents a "modification of a classification" as describe in section 54-7-12(1) (c) and (d) that would trigger a

"complete filing" for a general rate increase (or decrease) as required by section 54-7-12(2).

This is particularly troubling because the revenue requirement for the residential class is already being fully collected in current rates. The Compliance Filing violates good rate setting practice by creating known and potentially significant over-collection while providing only a vague proposal to true up the inequities created by the over-collection at some undetermined time in the future. Therefore, the mandatory terms of section 54-7-12, and sound ratemaking principles dictate that the proposal in RMP's filing can only be accomplished through a general rate case.[2]

The Company's Compliance Filing proposes a new residential rate class for net-metered customers and three part rate design including a monthly customer charge, a peak demand charge and an energy charge. (Steward Dir. at pg. 22-23, ln. 402-22.) This rate structure results in revenue to the Company in excess of the

[2] Cases decided under a prior version of section 54-7-12 have held that, outside a rate case, a Commission has "limited authority to permit interim rate changes which are necessary because of unexpected increases in certain specific types of costs.'" *Questar Gas Company v. Utah Public Service Commission*, 2001 UT 93, ¶ 12, 34 P.2d 218, quoting, *Utah Department of Business Regulation v. Public Service Commission*, 720 P.2d 420, 423 (Utah 1986.) Utah courts have recognized interim rates pursuant to fuel cost pass-through statute, an abbreviated rate cases, and 191 balancing accounts. *Quester Gas Company*, 2001 UT at ¶ 12.

However, these interim rate cases were decided under a prior version of section 54-7-12 that did not use mandatory terms concerning a "general rate increase" and a "complete filing *Compare* Laws 1996, c. 170 § 51. Eff. July 1, 1996, *with* Laws 2009, c. 319. § 2, 3eff. March 25, 2009. Therefore, the statutory analysis above did not apply under the old statute. Moreover, the new statute expressly incorporates the prior case law dealing with interim rates in section 54-7-12(1)(a)(ii) which provides "Unless included by a commission order, "base rates" does not include charges included in: (A) a deferred account; (B) a balancing account; (C) a major plant addition surcharge; (D) a major plant addition surcredit; (E) a special contract; or (F) a public utility program offering."

revenue presently received in residential rates. (Steward Dir. at pg. 37, ln. 720-22.) As such, this proposal constitutes a "modification of classification, contract, practice, or rule that increases a public utility's base rates." Section 54-7-12(1)(d)(ii). Accordingly, this proposal would trigger a "complete filing" for a general rate case pursuant to section 54-7-12(2).

In the direct testimony of Ms. Joelle Steward filed in support of the Compliance Filing, RMP argues that a general rate case is not necessary because RMP intends to defer excess revenues caused by the rate increase and make a proposal on how the deferred balance will be amortized in its next general rate case.[3] (Steward Dir. at pg. 5 ln. 95-99; pg. 37-38, ln. 709-729.) At first blush, it may appear that RMP has a statutory basis for this argument. Section 54-7-12(1)(a)(ii) provides: "Unless included by a commission order, `base rates' does not include charges included in: (A) a deferred account." However, under RMP's proposal, section 54-7-12(1)(a)(ii)(A) is not applicable.

First, RMP's brief reference in testimony regarding deferring excess revenue until some indefinite time when their next rate case is heard and then amortizing the balance in some unspecified manner is far too amorphous to establish that the procedure RMP proposes constitutes "charges included in . . . a deferred account."

[3] Specifically, Ms. Steward testifies:

> Lastly, to alleviate concerns the filing will result in increased revenues for the Company outside of a general rate case, the Company is willing to defer any difference in revenues between current rates and the new rates of Schedule 5. The Company would make a proposal for amortization of the deferral balance in it next general rate case.

(Steward Dir. pg. 5, ln. 95-99.)

Section 54-7-12(1)(a)(ii)(A). Indeed, while it is obvious that creating a separate ratepayer classification that increases the rate base constitutes a "general rate increase," under section 54-7-12(1)(d)(ii), it is not at all clear how creating such a change in classification can constitute the type of charge described in section 54-7-12(1)(a)(ii)(A).

The Company does not even articulate what portion of the revenues for the new net-metering class are considered excess or what method or assumptions will be used to calculate the excess revenue. Moreover, under the Company's proposal this deferral of revenue will not be reconciled until the next general rate. Since at present we don't know when the next general rate case will occur, this proposal creates the possibility on inter-generational inequity. In sum, RMP failed to offer a concrete explanation regarding the deferral of excess revenue, therefore RMP fails to establish that its complex proposal can be read as simply creating "charges included in . . . a deferred account. Section 54-7-12(1)(a)(ii)(A).

Second, what we do know about RMP's proposal regarding the deferral of excess revenues establishes that the proposal violates the prohibition against retroactive rate making, because the excess revenues acquired prior to the next general rate case are to be accounted for in the next general rate case. *Utah Department of Business Regulation v. Utah Public Service Commission*, 720 P.2d 420, 420 (Utah 1986)(Utilities are "generally not permitted to adjust their rate retroactively to compensate for unanticipated . . . revenues") Accordingly, RMP's deferral argument must be rejected. It follows that section 54-7-12(1)(a)(ii)(A)

does not apply to RMP's Compliance Filing and the changes in rate design put forward in the filing can only be accomplished in a general rate case.

In *In the Matter of the Application of Rocky Mountain Power, a Division of PacifiCorp, for a Deferred Accounting Order To Defer the Cost of Loans Made to Grid West, the Regional Transmission Organization; In the Matter of the Application of Rocky Mountain Power for an Accounting Order To Defer the Cost Related to the MidAmerican Energy Holdings Company Transaction; In the Matter of the Application of Rocky Mountain Power for an Accounting Order for Costs related to the Flooding of the Powerdale Hydro Facility,* Docket Numbers 06-035-164, 07-035-04, 07-035-14, Report and Order (January 3, 2008)("*Powerdale")*, this Commission ruled that the prohibition against retroactive ratemaking applies to requests for accounting orders establishing deferred accounts. *Powerdale* at pg. 15.

In *Powerdale,* this Commission, citing *Utah Department of Business Regulation v. Utah Public Service Commission*, 720 P.2d 420 (Utah 1986), set out the rationale for the prohibition against retroactive ratemaking.

> Following lengthy hearings utility rates are fixed prospectively . . . . To provide utilities with some incentive to operate efficiently, they are generally not permitted to adjust their rate retroactively to compensate for unanticipated costs or unrealized revenues. This process places both utility and the consumers at risk that the rate-making procedures have not accurately predicted costs and revenues.

Powerdale, at pg. 14-15, quoting*, Utah Department of Business Regulation*, 720 P.2d at 240 (citations omitted). In RMP's proposed rate design, excess revenues

acquired before the next general rate case are to be accounted for in the next general rate case. As such, the proposal violates the prohibition against retroactive ratemaking. *See Powerdale*, at pg. 14 (excess costs incurred before general rate case proposed to be accounted for in next general rate case.)

However, both this Commission and the Utah Supreme Court have held that the prohibition against retroactive ratemaking has a limited exception for changes in expenses or revenues that are both extraordinary and unforeseeable. *Powerdale*, at pg. 15-16; *MCI Telecommunications Corporation v. Utah Public Service Commission*, 840 P.2d 765, 771 (Utah 1992.) Accordingly, whether deferred accounting is allowed will depend on whether the facts of the case fall within the exception to the prohibition on retroactive ratemaking.

In addressing the exception to retroactive ratemaking this Commission has observed:

> Increased expenses from natural disasters, such as extreme weather conditions, and other extraordinary events are the typical bases for the exception . . . . An increase or decrease in expenses that is unforeseeable at the time of a rate-making proceeding cannot, by hypothesis, be taken into account in fixing just and reasonable rates. Furthermore, because the increase or decrease must have an extraordinary effect on the utility's earnings, the increase or decrease will necessarily be outside the normal ranges of variance that occurs in projecting future expenses.

Powerdale, at pg. 15-16, quoting, *MCI Telecommunications Corporation v. Utah Public Service Commission*, 840 P.2d 765, 771 (Utah 1992). Accordingly, in *Powerdale* deferred accounting was granted for expenses relating to a flood of a

hydro facility but denied for expenses relating to employee severance plan. *Powerdale* at 23.

Here, the testimony presented in support of RMP's Compliance Filing firmly establishes that RMP's argument regarding deferral of excess revenue does not qualify for the exceptions to the prohibition on retroactive ratemaking. Rather than revenues that "have an extraordinary effect on the utility's earnings," the Company claims that the effect of the excess revenues on RMP's earnings are at best negligible. In fact, RMP's witness stated "the Company does not expect the new structure to result in an increase in income for the Company" and "the overall magnitude of the cost shifting is relatively small now." (Steward Direct at pg. 16, ln. 309-10, pg. 37, ln. 719-20.) This testimony is fatal to the contention that the excess revenues have an "extraordinary effect on the utility's earnings" and therefore fatal to the contention that RMP's proposal for deferring excess revenues qualifies for the exception to the prohibition against retroactive ratemaking.

Similarly, the excess revenue cannot be considered to be unforeseeable. Prior to the conclusion of RMP's last general rate case, the legislature had enacted Utah Code Ann. § 54-15-105.1, which mandates that this Commission "determine a just and reasonable, charge, credit, or ratemaking structure, including new or existing tariffs" reflecting the cost and benefits of net metering. *In the Matter of Rocky Mountain Power's Intent to File a General Rate Case on or about January, 3, 2014,* Docket No. 13-035-184 (August 29, 2014, Report and Order at pg. 58.) Therefore, the excess revenue generated by RMP's proposed rate structure cannot

be considered unforeseeable and RMP's proposal fails both tests for the exception to retroactive ratemaking.

In sum, Utah Code Ann. § 54-7-12 provides that an increase in rates and a change in classification that increases base rates, as proposed by RMP's Compliance Filing, constitute a "general rate increase" and a "general rate increase" can only be accomplished through the procedures for a general rate case. While section 54-7-12(1)(a)(ii)(A) provides "charges included in . . . a deferred account" are excluded from base rates, RMP's proposal of deferring excess revenues does not implicate section 54-7-12(1)(a)(ii)(A). RMP's proposal is too nebulous to qualify as a "charge included in . . . a deferred account" and the proposal violates the prohibition against retroactive ratemaking.

C. RMP's Proposed Rate Design Violates the Regulatory Prohibitions Against Retroactive and Single Issue Ratemaking.

Implementing RMP's proposed rate design outside a general rate case not only is prohibited by Utah Code Ann. § 54-7-12, it also violates the regulatory prohibition against retroactive and single issue ratemaking. As more fully discussed above, RMP's proposal to defer excess revenue until its next general rate case violates the prohibition against retroactive ratemaking. Moreover, every other aspect of RMP's proposal violates the prohibition against single issue ratemaking. Accordingly, regardless of the statutory argument, RMP's proposed rate design can only be implemented in a general rate case.

The Utah Code and Orders from this Commission acknowledge that Utah recognizes both the prohibitions against retroactive and single-issue ratemaking. *See*,

Utah Code Ann. § 54-7-13.5(4)(c)(statutory energy balancing account "does not constitute impermissible retroactive rate-making or single-issue ratemaking"); *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 WL 836438, pg. 6 (Utah P.S.C. March 2, 2011)("Only by acting within the bounds of the Energy Balancing Account statute can the Commission be assured it is not violating the Court's general proscription of retroactive ratemaking and single-issue ratemaking.") Nevertheless, there is scant Utah law concerning the delineations of the doctrine.

However, other jurisdictions have set out the rationale for the doctrine.

> The rule against single-issue ratemaking recognizes that the revenue formula is designed to determine the revenue requirement based on the *aggregate* costs and demand of the utility. Therefore, it would be improper to consider changes to components of the revenue requirement in isolation. Often times a change in one item of the revenue formula is offset by a corresponding change in another component of the formula. . . . . [T]he revenue requirement would be overstated if rates were increased based solely on the higher depreciation expense without first considering changes to other elements of the revenue formula. Conversely the revenue requirement would be understated if rates were reduced based on the higher demand data without considering the effects of higher expenses."

A. Finkl & Sons Co. v. Illinois Commerce Com'n, 620 N.E.2d 1141, 1147 (Ill. App. 1993)(quotations are omitted, emphasis in original.) Several jurisdictions recognize exceptions to this general prohibition for exceptional circumstances where the Utility is exposed to "unexpected, volatile or fluctuating expenses." *Id.*

Here, again, the Company proposes a new residential rate class for net-metered customers and three-part rate design including a monthly customer charge, a peak demand charge and an energy charge that results in excess revenue to the Company.

(Steward Dir. at pg. 22-23, ln. 402-22; pg. 37, ln. 720-22.) This proposal clearly impacts the revenue requirement and therefore implicates the prohibition against single-issue ratemaking. Clearly, because the Company's proposal increases the Company's revenue without allowing for possible offsets, the proposal violates the prohibition against single-issue ratemaking.

Moreover, for the same reasons discussed at length above, the fact that the Company proposes to defer the excess revenue until the next general rate case does not change this analysis. Finally, this case does not present exceptional circumstances that would justify an exception to the prohibition. The cost shifting that the Company seeks to rectify by its proposal cannot be described as "unexpected, volatile or fluctuating." Accordingly, regardless of the statutory argument, outside a general rate case, the Company's proposal cannot be implemented because it violates the prohibition against single-issue ratemaking.

D. Sound Public Policy Dictates that the Subsection Two issues in this Docket be Determined in a General Rate Case.

The public policies underlying the issues set forth above regarding the net metering issue are likewise more broadly applicable to the need for the Company to file a general rate case. The longer the Company delays in filing a general rate case the more attenuated the changing conditions in which the Company is now operating become from the assumptions upon which the current rates are based. This is inconsistent with sound ratemaking principles. The Court has noted the desirability of keeping the test year congruent with the rate effective period. "We agree that one of the fundamental goals of rate making is to select a test year that reasonably approximates the rate-effective period." Mountain Fuel Supply Co. v.

Pub. Serv. Comm'n of Utah, 861 P.2d 414, 422 (Utah 1993) citing Utah Dep't of Business Reg., 614 P.2d at 1248

The 114 Docket itself is indicative of the changing nature of the Company's operational circumstance. The Company believes there is now a need to create an entirely new residential class and create an attendant rate structure that is manifestly different than what has been standard for residential ratepayers for decades. These are precisely the kinds of factors that should be accounted for in a comprehensive way. Taking these steps in isolation runs the risk of creating the very problems that general rate cases seek to avoid, namely single issue ratemaking, improper inter-generational cost allocation and potentially creating cost mismatches among all other rate classes. In its own way, the Company concedes this point in recognizing that there is no way to fully reconcile their proposed changes until they are dealt with in the next general rate case. (Steward Dir. at pg. 5 ln. 95-99; pg. 37-38, ln. 709-729.

The Commission has discretion under the section 54-15-104 to determine the most appropriate forum to decide whether and what changes should be made to rates to deal with the growth of net metering customers. It would be more efficient to decide these rate questions in a general rate case.

While it is true that all issues are technically "relitigated" in general rate cases it seems likely, based on recent experience, that the issue of whether and how to modify the rate structure for residential net metering customers will not be settled in this docket. The rate proposals currently before the Commission propose

changes only for the residential net metering customers and the number of affected individuals is growing rapidly. The Office believes there is a high likelihood that if rates are determined in isolation in this docket they will be subject to considerable public scrutiny when they are again considered in the next general rate case and very likely engender vigorous litigation beyond the norm for other rate classes in such circumstances. Thus, to continue forward in evaluating rate design through this docket when such rates will, of necessity, be reconsidered in a comprehensive way in the next general rate case is contrary to the efficient use of scarce public resources and judicial economy.

E. The Commission Should Order RMP To File a General Rate Case

In the event this Commission feels that the issues in this docket are ripe for decision the Office asserts that the proper path forward would be for the Commission to order that Rocky Mountain Power initiate a General Rate Case. The Office further believes there are additional compelling public policy reasons outside the issues presented in the 114 Docket for the Commission to do so. It is the position of the Office that, RMP's results-of-operations reports filed by the Company with the Commission shows that it is currently overearning, even evaluating the results using normalized data[4]. The number of problems and issues will likely continue to grow as the data underlying the 2014 General Rate Case become further out of date and stale.

[4] *See PacifiCorp's Results of Operations Report for Year Ended June 30, 2016* Docket 16-035-15, (October 31, 2016.) The Office further notes that previous Results of Operations reports have shown overearnings using unadjusted results.

Further, the Commission is charged by statute to incorporate a time of use rate (TOU) as part of approving an electric vehicle program before July 1, 2017. Utah Code Ann. § 54-20-103(1)(b). The TOU rate, like the proposed net metering rate, represents a departure from the currently established rate making structures. The Office believes that making dramatic departures from the current rate making standards should not be done in a piecemeal way. Rather these are best considered in a comprehensive way in the context of a general rate case.

CONCLUSION

For the forgoing reasons, the Office requests that if the Commission does not believe that dismissing this case at this time would result in the public interest, then the Commission should instead issue an Order to Show Cause directing the Company to demonstrate why it should not be ordered to file a general rate case and include as part of the required filing the evidence for the proposed changes pertaining to the net metering customers and the attendant rate changes they believe to be necessary.

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