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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 **OPPOSITION OF ROCKY MOUNTAIN POWER TO MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT**

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Rocky Mountain Power (the "Company") hereby submits its Opposition to Motions to Dismiss and for Summary Judgment[1] on the grounds that the Compliance Filing complies with the Commission's November 2015 Order[2] and is not required to be brought in a general rate case.

INTRODUCTION

The Net Metering Program ("Program") in its current form is not in the public interest. As demonstrated in the ACOS, CFCOS, and NEM Breakout COS (collectively "NEM Studies") submitted with the Compliance Filing, the costs of the Program exceed its benefits causing non-net metering customers to increasingly shoulder additional costs to subsidize net metering customers' use of the Company's electric system. The exponential rise in solar installations—a 600 percent increase since the Commission initiated this docket—means this cost-shifting will grow quickly in the coming months and years. In the Motions, the moving parties attempt to delay Commission action to address this unfairness by arguing that all or part of the Compliance Filing can only be considered in the context of a general rate case.[3] Their arguments ignore the history of the Program and the purpose of the November 2015 Order, and misconstrue the statutory

[1] Because there is significant overlap among the eight motions filed, the Company files one opposition to all pending motions. Specifically, this opposition is responsive to the Division of Public Utilities' Motion for Partial Summary Judgment; The Office of Consumer Services' Motion to Dismiss or in the Alternative Motion for Order to Show Cause; Sierra Club's Motion to Dismiss Rocky Mountain Power's Request for a Single-Issue Rate Increase; 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; Motion to Dismiss of Western Resource Advocates; Utah Clean Energy's Motion to Dismiss Rocky Mountain Power's Compliance Filing; Motion to Dismiss of Vivint Solar, Inc.; and Sunrun, Inc. and Energy Freedom Coalition of America's Motion to Dismiss Rocky Mountain Power's Compliance Filing and Request to Complete All Analyses Required under the Net Metering Statute for the Evaluation of the Net Metering Program (collectively, the "Motions").

[2] Order, Docket No. 14-035-114 (Utah P.S.C. November 10, 2015) ("November 2015 Order").

[3] The Division of Public Utilities' ("Division") Motion concedes that much of the Compliance Filing is appropriately before the Commission in this docket, arguing only that the Commission should rule that the portion of the Compliance Filing seeking new tariffs cannot be accomplished outside of a general rate case. Division Motion at 1, 9. Other moving parties argue that the entire Compliance Filing should be dismissed, but focus their arguments that the Compliance Filing cannot be considered outside a general rate case on the tariff change proposal and on whether the NEM Studies comply with the November 2015 Order's statement about a test period, rather than on whether the cost of service studies could not otherwise be considered in this docket. *See, e.g.*, Office of Consumer Services ("Office") Motion at 3-7; Sierra Club Motion at 7; Utah Clean Energy ("UCE") Motion at 15; Sunrun, Inc. and Energy Freedom Coalition of America ("EFCA") Motion at 18.

framework around the Program and general rate proceedings. Their arguments also contradict the positions that some of the parties took on this issue in the Company's 2014 general rate case in Docket No. 13-035-184 ("2014 GRC").[4] Considering the Compliance Filing outside a general rate case is not only permitted by law, it is the most efficient way to implement needed changes to the Program to ensure net metering customers pay their fair share of system costs and prevent non-net metering customers from bearing an unfair share. Therefore, the Commission should deny the pending Motions and allow this proceeding to move forward to completion.

BACKGROUND

The Company has offered some form of the Program to its customers since 2002.[5] In the last fourteen years, the Program has regularly been modified by the Commission outside of general rate proceedings. For instance, in 2008, the Commission approved a change to the rate credited for excess energy and to the Program cap outside of a general rate case.[6] As part of the 2014 GRC, the Company sought to impose a new monthly facilities charge on net metering customers to account for their increasing use of the Company's system.[7] While the 2014 GRC was pending, the Utah Legislature enacted Utah Code Ann. § 54-15-105.1 (the "Net Metering Statute"). The Net Metering Statute requires the Commission to engage in a two-step analysis:

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

[4] *See, e.g.*, The Alliance for Solar Choice Post-Hearing Brief on Legal Issues, Docket No. 13-035-184 (August 8, 2014), at 7-8. The Alliance for Solar Choice ("TASC") may no longer be a party in this docket, but some of its members are the same as those of EFCA and are represented by the same counsel.

[5] *See* Compliance Filing at 6-7.

[6] *See infra*, at 21-22; Compliance Filing at 7.

[7] Application for General Rate Increase, Docket No. 13-035-184 (January 3, 2014), at 8.

These subsections will be referred to as "Subsection One" and "Subsection Two" respectively in this opposition memorandum. Notably, the Net Metering Statute does not make any reference to the necessity of a general rate case to make these determinations.

Recognizing the exigencies of complying with its obligation under the new Net Metering Statute, on April 16, 2014, the Commission issued a Public Notice in the 2014 GRC.[8] The Public Notice informed parties and the public of the Commission's intent to make the required determination under both subsections of the Net Metering Statute as part of the 2014 GRC.[9] The Public Notice further permitted intervening parties to address the costs and benefits of net metering and proposed rate structure as part of their written direct testimony on cost of service issues, and permitted comments from non-intervening parties.[10]

On August 29, 2014, the Commission issued a Report and Order approving the settlement of the 2014 GRC, which excluded the issue of the requested net metering charge.[11] With respect to the proposed net metering charge, the Commission stated that its intent to comply with its obligations under the Net Metering Statute in the 2014 GRC were "overly optimistic" given that the Company filed its cost of service studies before the Net Metering Statute was enacted and, as a result, had not fashioned its cost of service studies to address the particular requirements of the Net Metering Statute.[12] For instance, the cost of service studies did not identify the benefits of the Program in the format desired by the Commission because the Net Metering Statute describing the analysis had not been implemented at the time of filing.[13] As a result the Commission left the

[8] Public Notice, Docket No. 13-035-184 (Utah P.S.C. April 16, 2014).
[9] *Id*.
[10] *Id*.
[11] Report and Order, Docket No. 13-035-184 (Utah P.S.C. August 29, 2014), at 70-71.
[12] *Id*. at 59.
[13] *Id*.

extant Program in place and "outline[d] a path forward" for fulfilling its statutory responsibilities.[14] The Commission established this docket to fulfill those responsibilities.[15]

The Commission's rejection of the proposed monthly facilities charge rested in part on the Company's assertion that its 2015 load research study would provide a better basis to modify the Program and that the Company believed that an alternative rate structure may provide a better long-term solution to the unique issues presented by the Program.[16] In August 2014, the previous slow growth of net metering and the modest cost shift then believed to be taking place allowed time to investigate the costs and benefits of the Program and to develop an appropriate rate structure in this docket.[17] As noted above, the subsequent rapid growth in net metering presents a greater urgency to address the requirements of the Net Metering Statute now.

Significantly, when the Commission established this docket for that purpose, none of the parties objected or claimed that the Commission could not fulfill its responsibilities under the Net Metering Statute in this proceeding until after the Company made its Compliance Filing—two years after this docket was established. Many of the parties in the 2014 GRC applauded the Commission's decision to remove the Net Metering Statute determinations outside of a general rate case. TASC, for instance, noted in the 2014 GRC that the Net Metering Statute "does not prescribe a particular process (rulemaking, ratemaking, etc.) or dictate a specific time by which the determination must be made."[18] Contrary to EFCA's current argument, TASC noted that

[14] *Id*. at 60.
[15] *Id*. at 69.
[16] *Id*. at 63.
[17] *Id*. at 67.
[18] TASC Post-Hearing Brief, Docket No. 13-035-184, at 7.

"SB208 leaves the Commission broad discretion to determine the time and manner in which it fulfills its statutory obligation . . . ."[19]

In earlier phases of this docket, the Commission made legal rulings interpreting the Net Metering Statute and setting forth the requirements for the studies the Company was to submit to the Commission. In July 2015, the Commission ruled that (1) Subsection One of the Net Metering Statute is independent of Subsection Two; (2) the Commission would consider only the costs and benefits to current customers in their capacity as ratepayers; and (3) the Commission would not consider "costs and benefits that are either unquantifiable or not subject to reasonable verification."[20] The Commission then designed an analytical framework for the NEM Studies using "the established cost of service models."[21] Specifically, the Commission directed the Company in this docket to complete two cost of service studies comparing the actual cost of service to the Company with the cost of service if no net metering customers existed. The Commission

[19] *Id*. at 8. In the same case, Sierra Club indicated that "The Commission's decision on the net metering fee is unquestionably governed by Section 54-15-105. Thus, this section requiring a cost-benefit analysis before any net metering fee is imposed applies in this general rate case. Because the Company has elected to seek this net metering fee through its rate case, the burden of establishing that the costs exceed the benefits, and that its proposed fee is just and reasonable, falls entirely on it." (*See* Sierra Club Post-Hearing Brief on Net Metering Issues, Docket No. 13-035-184 (August 8, 2014), at 5.) Finally, the Office's witness in the same case in rebuttal testimony set forth the Office's position regarding the net metering process issues raised by UCE, TASC, and the Division as follows: "The Office agrees with these parties that the best way of moving forward is for the Commission to open a separate NM docket. The NM issues are complex and require a deliberate review process. In the NM docket, the Commission should do the following: set a schedule for testimony and a hearing to determine whether a NM credit or facilities charge is warranted for affected rate schedules; direct the Company to file a NM cost-benefit analysis for all affected customer classes as required by SB 208; schedule a NM technical conference prior to the filing of non-Company direct testimony. At the first technical conference the Company should be prepared to present its NM valuation method and the cost-benefit results for affected customer classes; allow adequate time for the Company and interested parties to explore areas of agreement and disagreement relating to method specification (key modeling components, assumptions, data inputs, etc.), consistency across resource planning and ratemaking proceedings, and application. A collaborative process may help to narrow analytical differences among parties on certain NM issues prior to filing testimony and allow the Commission to conduct a more efficient hearing on disputed issues." (*See* Rebuttal COS/RD Testimony of Daniel E. Gimble for the Office of Consumer Services, Docket No. 13-035-184 (June 26, 2014), at 4:102-118).

[20] Order Re: Conclusions of Law on Statutory Interpretation and Order Denying Motion to Strike, Docket No. 14-035-114 at 2 (Utah P.S.C. July 1, 2015).

[21] November 2015 Order at 5.

required the studies to "reflect costs at the system, state and customer class level" and to cover a one-year time period.[22]

At the time the November 2015 Order was issued, the Commission assumed that the Company would be filing a general rate case in 2016 based on the Company's indication that it needed a decision under the Net Metering Statute to use in its 2016 general rate case, which the Company expected to file as soon as was permitted under the 2014 GRC settlement agreement. Based on this assumption, the Commission ordered that the Company use a one-year test period "commensurate with the test period PacifiCorp relies on in its next general rate case."[23] With regard to the Subsection Two analysis under the Net Metering Statute, the November 2015 Order stated that the results of the NEM Studies would be used to establish the rate structure for the Program consistent with the Net Metering Statute.

Consistent with the November 2015 Order, the Company conducted the NEM Studies, which are set forth in detail in the Compliance Filing and supporting testimony. In the Compliance Filing, the Company requests that the Commission:

> (1) find that the NEM Studies are compliant with and fulfill the November 2015 Order;
>
> (2) find that the costs of the Program under the current rate structure exceed its benefits;
>
> (3) find 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, 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

[22] *Id.* at 16.

[23] *Id.*

(6) approve a waiver of Utah Admin. Code R746-312-13, pursuant to Utah Admin. Code R746-312-3(2) for changes to the application fee.[24]

The Company's first two requests—acceptance of the NEM Studies and a determination that the costs of the Program outweigh its benefits—are a response to the specific and express directives of the November 2015 Order in this docket and comply with that order. They relate to the Subsection One analysis. The Company's next four requests relate to the Commission's obligations under Subsection Two. To comply with the November 2015 Order relative to the Subsection One analysis and to aid the Commission in engaging in the Subsection Two analysis, the Company adjusted the results of the NEM Studies, specifically the NEM Breakout COS, to the revenue requirement and current rates approved by the Commission in the 2014 GRC.[25]

RESPONSE TO DIVISION'S STATEMENT OF UNDISPUTED MATERIAL FACTS

Pursuant to Utah Rule of Civil Procedure 56(a)(2), the Company responds to the Division's Statement of Undisputed Material Facts. For purposes of this Opposition, the Company does not dispute fact numbers two and four. The Company disputes facts one and three as follows:

1. Rocky Mountain Power has requested new rates be implemented in this docket for NEM customers.

RESPONSE: Disputed in part. The new rates are requested for *new* net metering customers as part of the proposed changes to the Program. The Company has not requested that the new rates be applied to net metering customers taking service prior to December 10, 2016.

3. The new rates requested by Rocky Mountain Power are intended to increase revenue.

[24] Compliance Filing at 2.

[25] Direct Testimony of Robert Meredith at 29:585-30:625.

RESPONSE: Disputed. The new rate structure proposed by the Company is proposed to "minimize the cost shift" identified in the NEM studies.[26] The new Program design is intended to prevent one class of customers from shifting some of their recoverable costs to another class of customers, not to increase net revenue to the Company. Furthermore, as the Company stated in testimony supporting the Compliance Filing: "[T]o alleviate any 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 on Schedule 5."[27] The Division's citation to the Company's request for Schedule 136 is insufficient to support this claimed undisputed fact. Moreover, this "fact" is not material to interpreting the statutory scheme governing the Commission, the Program, and general rate cases.

STANDARD OF REVIEW

Under the Utah Rules of Civil Procedure,[28] the moving parties are only entitled to dismissal of the Compliance Filing if, after "accepting all the factual allegations made in the [Compliance Filing] as true and drawing all reasonable inferences in a light most favorable to the [Company]," the Company is not entitled to relief.[29] A motion to dismiss "is not an opportunity for the trial court to decide the merits of a case."[30] In addition, the Commission may grant summary judgment "only on a showing 'that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.'"[31]

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[26] Direct Testimony of Joelle Steward, at 11:206.

[27] *Id.* at 5:95-99.

[28] There is no provision for motions to dismiss or for summary judgment under the administrative rules governing the Public Service Commission. When no administrative rule governs, the Utah Rules of Civil Procedure apply unless the Commission considers them "unworkable or inappropriate" in a given situation. Utah Admin. Code R747-100-1(C).

[29] *Tuttle v. Olds*, 2007 UT App 10, ¶ 6, 155 P.3d 893 (reversing trial court dismissal); *see also* Order Denying Motion to Dismiss, Docket No. 11-035-47 (Utah P.S.C. June 2, 2011) at 2.

[30] *Tuttle* at ¶ 14.

[31] *Kearns-Tribune Corp. v. Salt Lake County Comm'n*, 2001 UT 55, ¶ 7, 28 P.3d 686.

The Division and Utah Solar Energy Association ("USEA") both filed motions for summary judgment seeking to limit the scope of the docket.[32] USEA's Motion does not include a statement of undisputed material facts, as required by Utah Rule of Civil Procedure 56(a)(1), and yet claims "substantive deficiencies" in the Company's filing should be decided as a matter of law.[33] The arguments made by the Division and USEA in support of partial summary judgment are similar to those made in support of dismissal. Regardless of the mechanism used, dismissal of or summary judgment on the Company's Compliance Filing are inappropriate, and the Motions should be denied.

ARGUMENT

The Company's Compliance Filing submits NEM Studies that are consistent with and required by the November 2015 Order and does not exceed the scope of that order. The Legislature vested the Commission with specific statutory authority under the Net Metering Statute to "determine a just and reasonable charge, credit, or ratemaking structure, including new or existing tariffs, in light of the costs and benefits"[34] of the Program outside of a general rate case, and Utah Code Ann. § 54-7-12 ("GRC Statute") does not mandate otherwise. In fact, public utility program offerings are specifically exempted in the GRC Statute from the general rate case process.[35] The Compliance Filing does not seek retroactive or single-issue ratemaking, and is distinguishable from other instances where the Commission has restricted such ratemaking. Moreover, it is within the Commission's authority to take up an abbreviated proceeding when, as here, it has evidence of

[32] The Division's Motion seeks partial summary judgment that net metering rates may not be implemented outside a general rate case. Division Motion at 1. USEA's Motion seeks dismissal of the Compliance Filing, but alternatively, seeks summary judgment limiting the scope of the proceeding to a determination of whether the Compliance Filing complies with the November 2015 Order. USEA Motion at 1-2.

[33] USEA Motion at 11.

[34] Utah Code Ann. § 54-15-105.1(2).

[35] Utah Code Ann. § 54-7-12(1)(a)(ii)(F).

all factors necessary to establish a rate structure for Program participants. In addition, USEA's arguments concerning the application fee are not properly addressed at this stage in the proceeding. Finally, the Commission should also deny the Office's motion for order to show cause for the reasons discussed below. Therefore, the Commission should deny the Motions and proceed with completing its duties under the Net Metering Statute in this docket as planned on the deadlines set in the November 18, 2016 Scheduling Order and Notices of Hearing and Public Witness Hearing.

I. THE COMPLIANCE FILING COMPLIES WITH THE NOVEMBER 2015 ORDER.

In the Motions, the moving parties seek dismissal of the Compliance Filing based on the claim that it does not comply with and exceeds the scope of the November 2015 Order.[36] For instance, several of them claim that "substantive deficiencies," such as their disagreement with the basis for testimony of Company witnesses or the methods employed in preparing the NEM Studies, justify dismissal. However, these disagreements are not appropriate grounds for dismissal. Rather, they relate to factual disputes regarding the merits of the Compliance Filing, including the adequacy of the studies, and the Commission has established a schedule to hear and address those disputes in this docket.

Other parties argue that the Commission should reject the NEM Studies without further consideration because they do not use the same test period that will be used in the Company's next general rate case, which would be impossible since the Company has not filed a general rate case subsequent to the November 2015 Order. This argument elevates form over substance. To meet the purpose of the November 2015 Order, the Company reconciled the data from the NEM Breakout COS with the Company's currently approved base revenue requirement, making the

[36] Versions of this argument were made in motions filed by the Office, EFCA, Vivint Solar, UCE, USEA, and the Sierra Club.

studies "commensurate with" the data used in the last rate case in compliance with the November 2015 Order.[37] The parties litigated whether the period over which costs and benefits of the Program would be considered should be one year or many years, and the Commission decided that issue in the November 2015 Order. The parties did not litigate the particular test period to be used.

The moving parties also argue that the Company's request for the Commission to proceed to Subsection Two analysis immediately after performing its obligations under Subsection One exceeds the scope of the November 2015 Order, and that the Company's Subsection Two requests should therefore be dismissed. However, nothing in the November 2015 Order precludes the Commission from conducting both Subsection One and Subsection Two analyses in the same proceeding. Indeed, conducting Subsection One and Two analyses in the same proceeding is consistent with the November 2015 Order and the Commission's purpose in creating this docket in the first place. Further, conducting both analyses in this docket is the most efficient way for the Commission to perform its obligations under the Net Metering Statute and would prevent further unnecessary delay in addressing the requirements of the Net Metering Statute.

A. The Commission May Not Decide Claimed Substantive Deficiencies on a Motion to Dismiss.

USEA and UCE both make arguments concerning disagreements they have with the substance of the Company's Compliance Filing. USEA claims that dismissal is appropriate because the Compliance Filing "fails to adequately include reasonable categories of costs and benefits outside of the [NEM] Studies" and points to disagreement with elements of Company testimony.[38] UCE argues that the NEM Studies inappropriately use certain costs it claims are not

[37] Direct Testimony of Robert Meredith, at 29:585-30:625.

[38] USEA Motion at 11.

typically used in a general rate case cost of service study.[39] These arguments concern the merits of the Compliance Filing, and are not grounds for dismissal. The Compliance Filing provides the NEM Studies and evidence supporting them. Disputes about the contents of those studies or the methodology used to perform them should be addressed as part of the evidentiary hearing scheduled by the Commission.[40]

B. The Company Reconciled the Results of the NEM Studies with the Revenue Requirement Approved in the 2014 GRC, Making the Studies "Commensurate with" the Company's Last General Rate Case.

The moving parties virtually ignore the Commission's purpose in ordering that the NEM Studies be "commensurate with" general rate case test period data. One of the primary disputes during earlier phases of this docket was whether the Commission should consider costs and benefits over the long term or the short term. Siding with the Company, the Division and the Office, the Commission adopted a short-term study period that coincides with the test-period data employed to establish all customers' rates.[41] Thus, the reference to the "next general rate case" was a directive to use a short-term study period that matched data to the data used to set all customer rates. When the November 2015 Order was issued, the Commission believed that a general rate case would be filed on or around January 2016, pursuant to the Company's stay out agreement in the settlement of the 2014 GRC.[42] Using test period data from the next general rate

[39] UCE Motion at 7-8.

[40] Vivint Solar also appears to argue that the Commission should consider the "chilling effect" that a rate change would have on the market for solar. Unless this "chilling effect" impacts the costs and benefits of the Program to the Company's other customers and is quantifiable and subject to reasonable verification, it is beyond the Commission's jurisdiction and is an inappropriate consideration in this proceeding. In any event, these arguments are likewise factual issues that cannot be a basis for dismissal.

[41] November 2015 Order at 8.

[42] *See* Report and Order, Docket No. 13-035-184 (Utah P.S.C. August 29, 2014), at 12. In addition, during the hearing preceding the November 2015 Order, the Commission asked off the record about issues associated with timing of its order. The Company requested that the order be issued as soon as possible to facilitate completion of the studies needed by the Commission to make the determinations required by the Net Metering Statute prior to its next general rate case, which everyone assumed would be filed in January 2016.

case would permit the Commission to timely perform its obligations under the Net Metering Statute. However, with no rate case filed and none on the immediate horizon, failing to consider the NEM Studies before the next general rate case will result in an escalation of the improper cost-shifting from net metering customers demonstrated by the NEM Studies, with no cogent justification for the resulting and substantial delay.

To ensure that the new NEM rates are set "commensurate with" the "same test period data employed to establish all customers' rates," as directed by the Commission in the November 2015 Order, and in the absence of a subsequent general rate case, the Company reconciled the results of the NEM Studies with the revenue requirement approved in the 2014 GRC.[43] Of the three studies ordered by the Commission, the NEM Breakout COS considers the specific level of revenue required to bring residential net metering customers to full cost of service, and represents the study that needed to be reconciled to the current revenue requirement. By determining the proportion of residential net metering revenue requirement to overall residential revenue requirement, the Company was able to apply this proportion to the residential revenue requirement approved in the 2014 GRC.[44] This adjustment ensures that the NEM Studies satisfy the "commensurate with" requirement. Because the Company complied with the Commission's directive to use a short-term evaluation period and to match data with general rate case data, the NEM Studies are compliant with the November 2015 Order, and the Commission should not dismiss the Compliance Filing.

[43] Direct Testimony of Robert Meredith at 29:585-30:625. *See also id.* n.7 (noting that the currently effective base revenue requirement was modified by the Commission on September 1, 2015, pursuant to the 2014 GRC Settlement); *see also* Report and Order, Docket No. 13-035-184 at 8-9.

[44] *Id.*

C. It Is Logical and Efficient for the Commission to Consider the NEM Studies in the Same Proceeding It Determines the Appropriate Rate Structure Based on Those Studies.

There is no question that the Commission has the authority to consider the NEM Studies in this docket, as those studies were specifically directed by the November 2015 Order. The NEM Studies show that a cost shift is taking place.[45] Some parties argue that the November 2015 Order specifically precludes the Commission from taking up its obligations under Subsection Two in the same proceeding. For instance, USEA argues that, if the Compliance Filing is not dismissed, the Commission's hearing on the Compliance Filing should be limited to considering only whether the Compliance Filing complies with the November 2015 Order, which would essentially limit the Commission to deciding only the Company's Subsection One requests. Similarly, other parties seek dismissal of the entire Compliance Filing on the grounds that it is "most efficient" to consider the costs and benefits at the same time as the rate structure for Program participants.[46] These arguments misconstrue both the November 2015 Order and the Compliance Filing, and would unnecessarily prolong the proceedings on the Net Metering Statute.

The November 2015 Order specifically recognized that the NEM Studies "will be used to design rates."[47] To ensure that the costs and benefits were evaluated independently from rate design, the Commission ordered that the Company should not consider the value of excess generation in conducting the ACOS:

> ***In preparing the ACOS***, PacifiCorp should not assign a price or value to the net metering customers' excess energy other than as recognized in the net power cost analysis. We will consider issues related to how net metering customers should be

[45] Division Motion at 3-4 ("The [NEM Studies] show[] a significant under-collection of fixed costs . . . ;" "The evidence does support RMP's conclusion that NEM customers are not covering their cost of service based on the costs used in the 2014 general rate case.").

[46] *See, e.g.* EFCA Motion; Vivint Solar Motion at 9.

[47] November 2015 Order at 8.

> credited or compensated for their excess energy when we take up the [Net Metering] Statute's rate setting implications under Subsection Two.[48]

The Company complied with this directive because it did not "assign a price or value to the net metering customers' excess energy other than as recognized in the net power cost analysis" when it conducted its ACOS. Nothing in this paragraph limits the Commission from proceeding with its required analysis under Subsection Two in the same proceeding in which it considers the NEM Studies, so long as valuation of the excess energy is not included in the Subsection One analysis. Indeed, the Commission specifically contemplated that it could do so "in a further phase of this docket . . . ."[49] Nor does consideration of both subsections in one proceeding prevent any party from challenging the NEM Studies, as argued by USEA. The fact that the Compliance Filing seeks both Subsection One and Subsection Two analyses in one proceeding does not "conflate" the analyses.[50]

The Company agrees with parties who argue that Subsection One and Subsection Two analyses are most efficiently conducted in a single proceeding. It will be considerably more efficient for the Commission to conduct its Subsection Two analysis immediately after ruling on the NEM Studies (or alternatives proposed by other parties) under Subsection One. The data used to formulate the Company's proposed rate structure under Subsection Two is directly informed by the NEM Studies. If the two proceedings are split or the ruling on both analyses is delayed, the studies may have to be redone for the Commission to conduct its Subsection Two analysis, adding an unnecessary step and further delay in arriving at an ultimate solution to the cost-shifting identified in the NEM Studies.

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[48] *Id.* at 6 (emphasis added).

[49] Notices of Comment Period and Scheduling Conference, Docket No. 14-035-114 (Utah P.S.C. November 21, 2014).

[50] *See* USEA Motion at 5.

Nothing in the November 2015 Order or any other Commission ruling in this docket prevents the Commission from taking up its Subsection Two obligations in this proceeding, and the Commission should therefore deny the Motions to the extent they claim the Company has exceeded the scope of the November 2015 Order.

II. THE COMMISSION HAS STATUTORY AUTHORITY TO CONSIDER THE COMPLIANCE FILING OUTSIDE OF A GENERAL RATE CASE.

Moving parties also incorrectly claim that the Commission cannot implement a new charge and rate structure for the Program outside of a general rate case. However, none of these parties addresses the explicit statutory authority given the Commission by the Net Metering Statute. Moreover, even if the Commission determined the Net Metering Statute is insufficient by itself, other statutory provisions make clear that the Commission has authority to implement a new charge or rate structure for the Program in this docket. The Commission can hear the Compliance Filing outside of a general rate case due to statutory exceptions to the definition of "base rate" that apply to public utility program offerings and deferred accounts in the GRC Statute.

Determining the scope of the Commission's authority to approve just and reasonable rates under the Net Metering and GRC Statutes is a matter of statutory interpretation. Accordingly, the Commission must interpret the relevant statutes by giving "effect to the legislative intent, as evidenced by the plain language, in light of the purpose the statute was meant to achieve."[51] When interpreting a statute, the Commission must "read the plain language of a statute as a whole and interpret its provisions in harmony with other statutes in the same chapter and related chapters."[52] Moreover, because of the unique language of Utah's Net Metering and GRC Statutes, the actions

[51] *Kearns-Tribune Corp.,* 2001 UT 55, ¶ 14.

[52] *State v. Harker*, 2010 UT 56, ¶ 12, 240 P.3d 780.

of other jurisdictions are irrelevant to the Commission's interpretation of or obligations under Utah statutes.[53]

A. The Net Metering Statute Authorizes Consideration of the Compliance Filing in This Docket.

The Legislature has vested the Commission with a "general grant of regulatory authority" to set and adjust rates, so long as it does so in a manner consistent with its enabling statutes.[54] Generally, the Commission "has authority to set rates 'only in general rate proceedings.'"[55] But when the Legislature grants the Commission authority to conduct a separate proceeding to set or adjust rates, a general rate proceeding is not required.[56] For instance, the Commission can consider fluctuating fuel costs outside a general rate proceeding based on statutory authorization from the Legislature.[57] Additionally, the Commission can implement a tariff that sets forth a formula to adjust rates without the need for a general rate proceeding each time the rate is thereafter adjusted.[58] And the Commission has consistently implemented and modified tariffs related to specific programs, including the Program, outside general rate cases.[59] Some movants claim that

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[53] For instance, the actions of the Idaho Public Utilities Commission referenced in the EFCA Motion at page 14 do not appear to be based on any similar provision of the Idaho Code. Similarly, the fact that Arizona and Colorado considered net metering rate structure in the context of a general rate case, as referenced in Western Resource Advocates' ("WRA") Motion at page 13, does not mean that Utah is required to do the same under its unique statutory scheme. Finally, as the Commission noted in its July 2015 Order, "the mere fact that another state has used a particular method or included a particular variable in its own analysis has little probative value to the Commission as to whether the Commission should adopt that method or include that variable in performing its analysis under Subsection One."

[54] *Utah Dep't of Bus. Regulation v. Public Serv. Comm'n*, 720 P.2d 420, 423 (Utah 1986) (holding that the enabling statute did not permit Commission to set rates retroactively because retroactive ratemaking conflicted with the statute).

[55] *Questar Gas Co. v. Utah Public Serv. Comm'n*, 2001 UT 93, ¶ 12, 34 P.3d 218 (citing *Utah Dep't of Bus. Regulation*, 720 P.2d at 423).

[56] *Utah Dep't of Bus. Regulation*, 720 P.2d at 421.

[57] *Id.*

[58] *Questar*, 2001 UT 93, ¶ 15.

[59] For example, the Commission has modified Schedule 107 (Utah Solar Incentive Program), Schedule 111 (Residential Energy Efficiency), Schedule 114 (Cool Keeper Program), Schedule 135 (Net Metering Service), and Schedule 193 (Demand Side Management Cost Adjustments) outside of general rate cases.

the only exception to the typical practice of setting rates in general rate cases is the statutorily authorized EBA.[60] This reads the rule too narrowly: any statutory authorization allowing the Commission to review and determine rates or rate structures in a context other than a general rate case exempts them from the general rate case requirement.

Here, the Legislature vested the Commission with specific authority to determine the "just and reasonable charge, credit, or ratemaking structure" for net metering customers, without any reference to the GRC Statute. The Net Metering Statute provides for its own separate safeguards for consideration: it directs the Commission to provide "appropriate notice and opportunity for public comment," and grants express discretion to the Commission about how such public participation would occur.[61] The Legislature could have referenced the GRC Statute to explain the mechanism for adjusting the rate, but chose not to do so. In contrast, when the Legislature enacted the low-income assistance program, it specified that the credit given to those who qualify for low-income assistance and the surcharge to fund the assistance would be adjusted "concurrently with the final order in a general rate increase or decrease case under [the GRC Statute.]"[62] The fact that the Legislature chose not to reference the GRC Statute in the Net Metering Statute makes clear the legislative intent to provide the Commission with an entirely separate mechanism to adjust the rate and rate structure for the Program.

If statutory requirements conflict with each other (as discussed below, they do not conflict here), "the provision more specific in application governs over the more general provision."[63] Here, the Net Metering Statute is specific to the Program, where the GRC Statute is not. To the

[60] Office Motion at 13; EFCA Motion at 10.

[61] Utah Code Ann. § 54-15-105.1(1).

[62] Utah Code Ann. § 54-7-13.6(6)(c),

[63] *Pugh v. Draper City*, 2005 UT 12, ¶ 10, 114 P.3d 546 (holding that the portion of the statute specifically applying to campaign disclosure statements governs over the Election Code).

extent the GRC Statute conflicts and would otherwise be applicable, the Net Metering Statute controls.

The Commission acknowledged the variety of avenues available to the Company in its November 21, 2014 Notices of Comment Period and Scheduling Conference ("November 2014 Notice"). In the November 2014 Notice the Commission stated:

> In a further phase of this docket, a general rate case or other appropriate proceeding, the Commission will examine the costs and benefits that result from applying data to the approved analytical framework, as such results are presented by interested parties, and ultimately make the required determination under [Subsection Two] (i.e. whether a charge, credit or other ratemaking structure is just and reasonable in light of the costs and benefits of the net metering program).[64]

EFCA quotes only the portion of the November 2014 Notice that was restated in the November 2015 Order and uses that selective and incomplete quote to argue that this statement indicates only flexibility with respect to Subsection One analysis. Other parties have pointed to this language and the reference to general rate case test-year data to imply a "preference" by the Commission for hearing this matter in a general rate case. But these arguments ignore the Commission's expressed willingness to "make the required determination under [Subsection Two]" in an appropriate proceeding, not limited to a general rate case. This language also demonstrates that the requirement that the NEM Studies use data "commensurate with" general rate case data was not intended to force the Company, regulators and the parties to undergo an arduous general rate case solely for the purpose of implementing the Net Metering Statute. Further, the Commission specifically established this docket for the purpose of fulfilling the requirements of the Net Metering Statute, including the Subsection Two determination. When this docket was established, no party claimed that a general rate case was required to address any aspect of the Net Metering

[64] November 2014 Notice, at 2-3 (emphasis added).

Statute.[65] Indeed, no such claim was made until the Company filed its Compliance Filing in 2016, two years after this docket was established.

In addition, with participating parties' support, including some who now challenge the Commission's authority in this case, the Commission has previously modified the Company's net metering tariff without reference to a need for a general rate case, including determining the appropriate credit to be given to customers for excess generation.[66] In 2008, changes to the Net Metering of Electricity statute necessitated a change to the Company's Schedule 135.[67] In its order relating to the proposed changes, the Commission indicated that the Company could make changes to the Program so long as it sought "appropriate review and evaluation" including providing for "required public notice and comment."[68] In a follow-up investigatory docket concerning the Program, the Commission set the value for net excess generation and set levels of use for purposes of classifying different net metering customers.[69] In the Commission's Report and Order modifying Schedule 135 as a result of the investigatory docket, the Commission noted:

> Regarding financial concerns, to the extent the Company determines it is being adversely affected by net metering . . . . under [the previous version of the Net Metering Statute] the Company has the ability to approach the Commission with information on both costs and benefits to address the issue. ***In addition***, the financial aspect of the net metering can be addressed in a general rate case.[70]

In other words, the Commission recognized two separate avenues for the Company to seek adjustment to the Program: directly approaching the Commission in a separate proceeding or

[65] In fact, as noted above, TASC, Sierra Club, and the Office argued either expressly or implicitly that the Commission had the discretion to deal with the Net Metering Statute in a separate docket, outside of a general rate case.

[66] *See, e.g.*, Order Approving Tariff with Certain Conditions, Docket No. 08-035-T04 (Utah P.S.C. June 13, 2008).

[67] *Id.* at 1 (noting that the Company's request for revisions to Schedule 135 were made as a result of "recently enacted changes" to the Net Metering of Electricity Statute).

[68] *Id.* at 6.

[69] Report and Order Directing Tariff Modifications, Docket No. 08-035-78 (Utah P.S.C. February 12, 2009).

[70] *Id.* at 13 (noting Commission's agreement with Interstate Renewable Energy Council's argument on this issue) (emphasis added).

including them for consideration in a general rate case. The fact that the 2008 changes involved a previous version of the statute has no bearing on the need for a general rate case: neither version of the statute requires a general rate case to impose charges on net metering customers or refers in any way to the GRC Statute.[71]

The moving parties who now argue that changes to the Program cannot be made outside a general rate case have not addressed the specific statutory ratemaking authorization in the Net Metering Statute, nor have they even attempted to distinguish the current situation from the Commission's previous treatment of the Program. Therefore, the Commission should deny their Motions.

B. The Compliance Filing Does Not Seek to Change "Base Rates."

Even assuming that the Net Metering Statute on its own does not grant sufficient authority to the Commission to authorize the rate structure requested in the Compliance Filing outside of a general rate case, the definition of "base rates" in the GRC Statute specifically excludes the Compliance Filing from the general rate case requirement. The GRC Statute requires a general rate case only if the Company seeks to change "base rates."[72] EFCA argues that, if the Commission holds that the Compliance Filing does not alter "base rates," the Company will be permitted to work around the general rate case requirement altogether. The Company and the Commission are both bound by narrow statutory exceptions. The GRC Statute specifically excludes certain types of charges from its definition of "base rates," including "charges included in . . . a deferred account

[71] *Compare* Utah Code Ann. § 54-15-105 (repealed) *with* Utah Code Ann. § 54-15-105.1. Both statutes require evaluation of costs and benefits of the Program and permit the Commission to impose fees and charges based on the costs and benefits. Neither requires Commission action to take place in the context of a general rate case.

[72] Utah Code Ann. § 54-7-12(2)(a). General rate increase and general rate decrease are both defined as a direct or indirect change to base rates. Utah Code Ann. § 54-7-12(1)(c)-(d).

[, or] . . . a public utility program offering."[73] The Compliance Filing is excluded from the definition of "base rates" under these enumerated exceptions.

i. The Compliance Filing seeks to impose a charge pursuant to a "public utility program offering."

The GRC Statute does not mandate a general rate case to implement the changes proposed by the Compliance Filing because the changes relate to a "public utility program offering."[74] Under the definitions section of Chapter 15 of the Utility Code, Net Metering of Electricity, net metering is called a "program" and is specifically defined as "a program administered by an electrical corporation . . . ."[75] The statute proceeds to refer to the "net metering program," including in the Net Metering Statute, § 54-15-105.1, which is central to the Compliance Filing.

Interpreting the Net Metering Statute "in harmony with other statutes in the same chapter and related chapters" leaves no room for alternative interpretation: the "net metering program" is a "public utility program offering." By referring to a "public utility program offering" in the GRC Statute and defining net metering as a "program," the legislative intent to exclude net metering from the requirement that changes in charges be made under the GRC Statute is clear. This interpretation explains why the Commission has previously treated the Program as a discrete public utility program and considered changes to it outside of a general rate case, as described above. The "public utility program offering" exception has previously been interpreted to permit the Company to make changes to other similar programs, including demand-side management programs and the Utility Solar Incentive Program ("USIP").[76]

[73] Utah Code Ann. § 54-7-12(1)(a)(ii)(A),(F).

[74] Utah Code Ann. § 54-7-12(1)(a)(ii)(F).

[75] Utah Code Ann. § 54-15-102(12).

[76] *See, e.g.*, Order Approving Tariff with Certain Conditions, Docket No. 07-035-T14, August 3, 2007 (treating Utah Solar Incentive Program as a discrete public utility program offering and implementing it outside of a general rate case).

UCE argues, without any support, that the Program is not a "program" because it is "generally applicable to all customers at any point on the interconnected system." This argument interprets "generally applicable" in an overbroad manner that would apply to any program offered by a utility and would nullify the "public utility program offering" exception in the GRC Statute. Because a public utility cannot unduly discriminate between similarly situated customers,[77] all of its services must be available to any customer *that qualifies* to receive them. However, there are several programs, including those referenced in the preceding paragraph, that apply only to customers who take steps to qualify for them. Similarly, the Program is available to those who qualify, but is not "generally applicable" as UCE argues. The Commission should reject this argument as lacking any basis in the statutory language and historic treatment of the Program, and deny the Motions.

ii. The Compliance Filing is exempt from the GRC Statute because it may create a deferred account.

The GRC Statute also excludes deferred accounts from its definition of "base rates."[78] This makes sense given that, when a potential increase in revenue is accounted for and retained for potential reduction in the revenue requirement in a future general rate case, the Company does not receive any increased revenue from the requested change.[79] Questions about whether a deferred account is appropriate are not properly considered on a motion to dismiss. [80]

[77] Utah Code Ann. § 54-3-8.

[78] Utah Code Ann. § 54-7-12(1)(a)(ii)(A).

[79] The Office argues that the Company's offer to create a deferred account is tantamount to an admission that it seeks retroactive ratemaking. Office Motion at 15. To the contrary, the Company does not believe a deferred account is necessary because the Company's revenue will still decrease each time a customer subscribes to the Program. Nonetheless, the Company is willing to set up a deferred account as a compromise if it removes any concerns of the Commission about the Company overearning as a result of the tariff change.

[80] Order Denying Motion to Dismiss, Docket No. 11-035-47 (Utah P.S.C. June 2, 2011), at 5.

The moving parties argue that the Company's proposals are too vague to constitute a deferred account for purposes of falling under the exception to "base rates." But Ms. Steward's testimony states that the amount deferred would be the difference "between current rates and the new rates in Schedule 5."[81] Under this proposal, if a customer switched to Schedule 5, the Company would defer *any additional revenue* the Company is paid over what would have been paid under the old Program. The Company is willing to do this, if necessary, even though the Company's overall revenue decreases any time a customer switches to net metering, even under the proposed net metering tariffs. Moreover, even if aspects of the deferred account still need to be fleshed out, the fact remains that the Company has offered and is willing to defer any increased revenue, which means the Compliance Filing does not request a change in "base rates." "[D]isagreement and uncertainty" about the "specific details" of a deferred account are not grounds to dismiss an application.[82] Such disputes can be resolved as part of the further proceedings in this docket or during the next general rate case.[83]

The moving parties argue that the Company's proposal to defer increased revenues, if necessary, is also inappropriate because it does not qualify for deferred accounting. In making these arguments they confuse deferred accounting with retroactive ratemaking.[84] They argue that the proposed deferral is inappropriate because the cost shift caused by the Program is not "unforeseen and extraordinary."[85]

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[81] Direct Testimony of Joelle Steward at 5:95-97, 37:707-38:730.

[82] Report and Order, Docket Nos. 06-035-163, 07-035-04, 07-035-14 (Utah P.S.C. January 3, 2008), at 17.

[83] *Id.* at 18.

[84] Arguments addressing retroactive ratemaking will be discussed below. It is sufficient here to note that retroactive ratemaking is not implicated by the Compliance Filing or by the proposal to defer increased revenues resulting from the proposed tariff change.

[85] Office Motion at 11.

The moving parties' argument that the costs associated with the Program are not "unforeseen" because they were considered in the 2014 GRC does not mean that the expenses associated with net metering are not unforeseen. The testimony of Company witness Ms. Steward establishes that, since this docket opened, the number of net metering applications has increased 600 percent, and the Company is now seeing approximately 1000 new applications each month.[86] This is an unprecedented and unforeseen increase in the cost-shifting caused by the Program.

The moving parties also argue that the costs associated with the Program are not "extraordinary" because Company witness Joelle Steward testifies that the magnitude of the cost shifting is "relatively small now." This is a selective reading of Ms. Steward's testimony. Ms. Steward testifies that the rapid growth of solar installations increased the cost-shift from $1.8 million in the 2015 study period to $6.5 million in 2016, with a projected cost shift of $27 million per year by 2020.[87] She also projects the cumulative cost shift over the next twenty years to be approximately $667 million.[88] This cost shift is "extraordinary" no matter how one looks at it.

In any event, parties' arguments about the foreseeability and magnitude of the cost shift are factual arguments. None of the arguments warrants a dismissal of the Company's filing. The Company's Compliance Filing on its face states and supports a finding that an increase in Program costs is unforeseen and extraordinary and qualifies for deferred accounting. These facts must be accepted as true for purposes of the Motions. Therefore there is no basis to the argument in the Motions that the Compliance Filing does not concern a deferred account that is exempt from the definition of base rates.

[86] Direct Testimony of Joelle Steward at 6:118

[87] *Id.* at 10:196-202.

[88] *Id*. at 11:204-205.

C. Early Versions of the STEP Legislation Do Not Alter the Plain Meaning of the Net Metering Statute.

UCE points to early versions of the Sustainable Transportation and Energy Plan Act ("STEP") supported by the Company in the 2016 general session to support its argument that the current statutory framework requires the Commission to implement any changes to the Program in a general rate case.[89] However, the Commission may not consider legislative history when interpreting a statute if "the language of the statute is clear and unambiguous."[90] Moreover, "[s]ubsequent legislative history is a hazardous basis for inferring the intent of an earlier [legislature]. It is a particularly dangerous ground . . . when it concerns, as it does here, a proposal that does not become law."[91] Even when a law is subsequently amended, which did not happen here as the proposed revisions were never passed, "[l]ater versions of a statute do not necessarily reveal the intent behind an earlier version" when the amendment is intended to clarify the existing law.[92]

UCE attaches two early versions of the STEP legislation, wherein the Legislature considered limiting the Company from initiating a rate proceeding that would take effect before May 10, 2018.[93] To clarify existing law, this early version of STEP explicitly stated that the Commission had the ability to comply with its obligations under the Net Metering Statute outside of a general rate case. These versions of STEP were intended to clarify existing law and were

[89] UCE Motion at 10 and Exhibits B and C.

[90] *Visitor Information Center Authority of Grand County v. Customer Serv. Div., Utah State Tax Com'n*, 930 P.2d 1196, 1197 (Utah 1997).

[91] *Fosberg v. Bocis Lend Lease, Inc.*, 2008 UT App 146, ¶ 27, n.14, 184 P.3d 610 (refusing to consider legislative history of a proposed-but-rejected amendment to a statute to interpret the statute's meaning) (*citing Pension Benefit Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 650 (1990).

[92] *Visitor Information Center Authority of Grand County*, 930 P.2d at 1198.

[93] UCE Motion, Exhibits B and C.

never enacted. The Commission should not consider them in ruling on the clear and unambiguous grant of authority given to it under the Net Metering and GRC Statutes.

III. THE COMPLIANCE FILING DOES NOT SEEK RETROACTIVE OR SINGLE-ISSUE RATEMAKING.

The moving parties argue that the Compliance Filing must be dismissed because it seeks prohibited retroactive and single-issue ratemaking. These arguments are incorrect for at least two reasons. First, they are based on a misunderstanding of retroactive and single-issue ratemaking. Second, they ignore the purpose of these prohibitions. The Compliance Filing does not seek relief that is either retroactive or single-issue ratemaking. To the extent the proscription against retroactive and single-issue and ratemaking is in place, it is to ensure that any changes to rates are "analyzed in a test-year context of matched revenues, expenses, and investments."[94] Because the NEM Studies consider all costs and benefits of the Program and match them to the existing authorized revenue requirement, principles against retroactive and single-issue ratemaking are not implicated.

A. The Compliance Filing Does Not Seek Retroactive Rate Relief.

Retroactive ratemaking is setting rates higher or lower in the future to make up for under- or over-recovery of expenses in the past.[95] The Compliance Filing does not seek to make up for any lost revenue in the past. It seeks a prospective rate structure that will recover costs currently incurred. Furthermore, it does not seek to change rates for any existing net metering customer, and so it does not seek "retroactive" ratemaking. Only customers who choose to take service under

[94] Report and Order, Docket No. 97-035-01, 1999 WL 35637961 (Utah P.S.C. March 4, 1999) (prohibiting permanent adjustments based on events that occurred after the test year); *Utah Department of Business Regulation*, 614 P.2d at 1248.

[95] *Utah Dep't of Bus. Reg.*, 720 P.2d at 420-421; *MCI Telecommunications Corp. v. Public Serv. Comm'n*, 840 P.2d 765, 770-771 (Utah 1992).

the proposed Schedule 136 will be subject to the new rates. Therefore, the Compliance Filing does not seek a retroactive rate adjustment and should not be dismissed.

In support of their claims that the Compliance Filing seeks retroactive ratemaking, several parties, including the Office and Vivint Solar, point to the Commission's order granting in part and denying in part the Company's requests in 2006 and 2007 to create deferred accounts for certain costs.[96] In that order, the Commission granted the Company's request to create a deferred account relating to expenses incurred as a result of a flood, but denied its requests to create deferred accounts relating to severance costs and unrecoverable loans.[97] The Commission denied the latter requests because the expenses were known, at least in part, at the time of the previous rate case and may have been taken into account in a settlement that did not delineate specific cost projections, making it impossible for the Commission (and the parties in interest) to determine whether the expenses were "extraordinary and unforeseeable."[98] The Commission expressed concern that these two areas of expense may represent "selection bias" by the utility in seeking recovery of certain expenses without matching them with additional benefits or revenue received.[99]

The instant docket is in a much different posture than the 2006-2007 deferred accounting requests. The Company is not seeking an adjustment to revenue or expenses from the last rate case. Indeed, the proposed rate structure included in the Compliance Filing does not result in any adjustment for the thousands of customers who have subscribed to the Program in the past two years since the docket opened, nor will it result in increased revenue for the Company since customers who subscribe to the revamped Program will still experience a reduction to their

[96] Report and Order, Docket Nos. 06-035-163, 07-035-04, 07-035-14 (Utah P.S.C. January 3, 2008).
[97] *Id.* at 23.
[98] *Id.* at 20-21.
[99] *Id.* at 19.

electricity bill, and the Company's revenue will thereby decrease. Additionally, rather than seeking to vary from the results of the last general rate case, this docket is a direct outgrowth of the last general rate case. "Selection bias" is not a concern here because the Net Metering Statute mandated that the Commission review the costs and benefits of the Program and make appropriate rate changes based on that review. It was the Commission, not the Company, that initiated this docket and issued the November 2015 Order to which the Company's Compliance Filing responds. Moreover, unlike the severance costs and unrecoverable loans, a specific statute directs the Commission to consider the costs and benefits of the Program and apply an appropriate charge and rate structure. None of the considerations at issue in the denial of the Company's request for a deferred account in 2007 are at issue here.

Because the Compliance Filing does not seek retroactive ratemaking, the Commission may consider the Compliance Filing outside of a general rate proceeding and should deny the motions to dismiss that claim otherwise.

B. The Compliance Filing Does Not Seek Single-Issue Ratemaking.

Single-issue ratemaking occurs when a public utility seeks a general rate increase based on an increase in a single expense (or a few expenses) since the last general rate case without considering changes in other expenses or revenues since the last general rate case. In *Utah Dep't of Bus. Regulation v. Public Service Comm'n* ("*Wage Case*"), Mountain Fuel Supply sought a general rate increase less than one year after a general rate case based solely on increased wages.[100] The Utah Supreme Court reversed the Commission's decision to grant the general rate increase on the ground that the Commission had not found the new rates were just and reasonable.[101] Among

[100] 614 P.2d 1242, 1243 (Utah 1980).

[101] *Id.* at 1246.

the deficiencies in the Commission's order, the court noted that "post-test-year adjustments to expenses must be matched with post-test-year revenue increases which might offset additional expenditures."[102]

The *Wage* Case is consistent with other authorities rejecting single-issue ratemaking. For example, the cases cited by the Office and WRA both involved requests by a utility for approval of riders that would have applied to customers' rates generally based on increases in certain expenses.[103] The Compliance Filing does not seek to impose a general rate increase on all of the Company's customers. It simply seeks to adjust the rates for net metering customers so that they cover their cost of using the system rather than shifting some of these costs to other customers.

In addition, implementing a new tariff is not single-issue ratemaking. The Company has implemented several rate schedules outside a general rate case and the Commission has never considered these efforts as improper single-issue ratemaking.[104] Taken to its logical conclusion, the moving parties' argument would prohibit the Company from seeking approval of any new tariff outside a general rate case. This is not consistent with either the governing statutes or the rationale of the *Wage Case*.

The Compliance Filing does not seek the type of single-issue ratemaking that is not allowed by the *Wage Case* and other authorities. Therefore, the Commission may consider the Compliance Filing outside a general rate case.

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[102] *Id.* at 1249.

[103] Office Motion at 13 (citing *A. Finkl & Sons Co. v. Illinois Commerce Comm'n*, 620 N.E.2d 1141 (Ill. App. 1993); WRA Motion at 10 (citing *Re: Gas Co. of New Mexico*, Case No. 2361, 1992 WL 503187 (N.M.P.S.C. February 6, 1992).

[104] *See* footnote 59.

C. The Compliance Filing Includes All Factors Necessary to Consider Whether the Requested Change Is Just And Reasonable.

The Commission has the authority to consider changes to the net metering tariff without taking all of the evidence required by a general rate case because the rigorous cost of service studies and reconciliation with the previous test year data give the Commission all necessary evidence needed to consider the proposed tariff. "[T]here is no provision in the Public Utilities Act, which precludes the authority of the P.S.C. to conduct an abbreviated proceeding to adjust a utility rate or charge, but any rate so adjusted must be predicated upon a finding that such adjusted rate is just and reasonable."[105] In the *Wage Case*, the Utah Supreme Court reversed the Commission's approval of a general rate increase to cover a wage increase because the request failed to account for the possibility that productivity increased as a result of the wage increase.[106] However, the court noted that the result would have been different had "post-test-year adjustments to expenses [been] matched with post-test-year-revenue increases which might offset additional expenditures."[107]

The *A. Finkl & Sons* case cited by the Office demonstrates how the Company's reconciliation of the NEM Breakout COS with the existing revenue requirement remedies the problem addressed by the rule against single-item ratemaking. In that case, the Illinois Court of Appeals ruled that a rider allowing recovery from customers generally of charges for a particular

[105] *Wage Case*, 614 P.2d at 1249-50; *see also* Utah Code Ann. § 54-3-1 (defining scope of "just and reasonable"); Utah Code Ann. § 54-7-1(4) (permitting Commission to limit issues considered in coming to "just and reasonable rates"); Utah Code Ann. § 54-15-105.1(2) (requiring Commission to determine "just and reasonable" net metering rates "in light of the costs and benefits").

[106] *Wage Case*, 614 P.2d at 1249.

[107] *Id.* The *Scates v. Ariz. Corp. Comm'n*, 578 P.2d 612, 618 (Ariz. 1978), case cited by EFCA also contains similar language. In that case, the Arizona Supreme Court held that the Arizona Commission erred by approving a rate adjustment without considering how it would affect the utility's rate of return, or in other words without considering both the costs and the benefits.

program without making any adjustment to the overall revenue requirement then in place was not permissible.[108]

In contrast, here there is no concern about whether post-test year adjustments accounted for both the costs and the benefits of the Program because the Commission-ordered NEM Studies required the Company to account for both. The NEM Studies were performed in compliance with the cost-of-service model approved by the Commission, including changes made to that model as recently as July 2016.[109] The data underlying the NEM Studies was collected from 2015 forward, and, without an adjustment to the existing revenue requirement, the NEM Studies would not have matched the test-year data underlying the revenue requirement currently in place. To remedy this, the Company proportionally reduced the cost to match the revenue requirement in place rather than the one called for by the NEM Studies. This ensures that customers will not face any "additional" charges and the Company will not receive any "additional" revenue beyond what is authorized by the existing revenue requirement, as was at issue in the *A. Finkl & Sons* case. Because the NEM Studies necessarily took into account all of the costs and benefits associated with the Program and were then adjusted to the currently-approved revenue requirement, the Commission may come to "just and reasonable" net metering rates in an abbreviated proceeding.

IV. THE NEED FOR NET METERING CUSTOMERS TO SHOULDER THE ADMINISTRATIVE BURDEN OF PROCESSING APPLICATIONS JUSTIFIES A WAIVER OF RULE 746-312-13.

The Company seeks a waiver of the administrative rule limiting the amount of net metering application fees so that it can "better balance cost incurrence with recovery."[110] USEA seeks dismissal of this request based on a claim that the Company has not met the requirements for

[108] 620 N.E.2d 1141, 1147. In addition, Illinois apparently does not have Utah's statutory exclusion of public utility program offerings from the general rate case requirement.

[109] Direct Testimony of Robert Meredith at 8:144-158.

[110] Direct Testimony of Joelle Steward at 36:684-685.

waiver of the administrative rule. The Commission's rules permit it to waive the application of the electrical interconnection rule governing application fees for good cause.[111] USEA argues that, in addition to showing "good cause" for the waiver, the Company must also show that the rule "imposes an undue hardship which outweighs the benefits of the rule," as required under the Commission rule governing hearing procedure.[112] Because the rule at issue with the Company's application fee request concerns electrical interconnection, not hearing procedure, it is the "good cause" standard that governs.

As noted by USEA, the rule itself does not define "good cause."[113] The only Commission decision cited by USEA where good cause was not found, involved a situation where the utility provided "no evidence," "explanation or information substantiating good cause" to waive a rule relating to time extensions in the interconnection agreement.[114] The Company's request here is different from the request referenced by USEA because it is justified by ample evidence and explanation. For instance, Company witness Ms. Steward testifies that an application fee for net metering interconnection removes a significant portion of the cost of net metering from the cost included in the proposed rates for Schedule 5.[115] If the application fee were not allowed, the proposed basic charge for Level 1 customers would be higher by $8.41 per month.[116] This testimony supports a finding of good cause to waive the administrative rule.

[111] USEA Motion at 9; Utah Admin. R. 746-312-3(2).
[112] USEA Motion at 9; Utah Admin. R. 746-100-15.
[113] USEA Motion at 9.
[114] Report and Order, Docket No. 10-035-44 (Utah P.S.C. March 23, 2011), at 18, 22.
[115] Direct Testimony of Joelle Steward at 36:691-692.
[116] *Id.* 36:693-696.

Regardless of what the Commission ultimately decides on waiving the rule against applications fees, waiver is a question of fact,[117] and the Compliance Filing states a factual basis for waiving the rule against administrative fees. Therefore the Commission should deny USEA's motion to dismiss the Company's waiver request, and reserve the matter for hearing.

V. THE COMMISSION SHOULD NOT GRANT THE OFFICE'S MOTION FOR ORDER TO SHOW CAUSE.

The Office seeks an order to show cause directing the Company to show why it should not be required to file a general rate case, justified by unspecified "compelling public policy reasons" and its concern that, in its view, the Company is overearning. It also states, without basis, that the time of use rates required by STEP legislation somehow justify a general rate case, even though the STEP legislation creates no such obligation.[118] Other parties similarly speculate about the reasons they believe the Company is putting off a rate case filing, even though such speculation has no bearing on the Commission's authority to consider the Compliance Filing, and they have no authority to request the Company commence a general rate case.[119] Public policy does not support engaging the Company, regulators and other interested parties in a lengthy general rate proceeding when the only issues are whether the costs of the Program exceed its benefits and whether the rates of net metering customers should be changed to reflect the excess. This is particularly the case where proposed changes to public utility programs are specifically exempt from the GRC Statute. Whether the Company is currently overearning and whether its authorized rate of return might be lowered in a future general rate case have nothing to do with whether the

[117] *Cf. Hartwig v. Johnsen*, 2008 UT 40, ¶ 6, 190 P.3d 1242 (holding that whether an attorney has "good cause" to withdraw as counsel is "extremely fact-intensive").

[118] *See* Utah Code Ann. § 54-20-103; *see also* WRA Motion at 17-18 (pointing to STEP legislation requirements to justify a rate case).

[119] *See, e.g.*, EFCA Motion at 14-17; WRA Motion at 14-18.

Commission may comply with its obligations under the Net Metering Statute outside a general rate case.

Furthermore, the fact that the Company is apparently finally earning near its authorized rate of return is no basis for instituting a general rate case.[120] In fact, pulling the Company into a general rate case based only on a small variance between authorized rate of return and reported rate of return is against public policy. "A utility should be rewarded for becoming more efficient through its own efforts. If the authorized rate of return were an absolute ceiling on profits, that objective would be subverted."[121]

Nor does keeping the test year period congruent with the rate-effective period justify an unnecessary general rate case.[122] The Office cites *Mountain Fuel Supply Co. v. Public Serv. Comm'n*, to support the use of a congruent test year.[123] This case is not applicable to whether a general rate case is appropriate here, as the question at issue in that case was whether the utility should be allowed to use a projected test year for determining the cost of service in a general rate case. The court upheld the Commission's requirement that the utility use a historical test year, essentially rejecting the argument that making the test year more "congruent" with the rate-effective period is the most important consideration. The case does not stand for the proposition that general rate cases are favored by the Commission. Without more support, the Office's vague statements are insufficient to require the Company to respond to an order to show cause.

[120] PacifiCorp's Results of Operations Report for Year Ended June 30, 2016, Docket No. 16-035-15, shows that the Company is earning 7.66% after regulatory and normalizing adjustments, which is very close to its authorized rate of return of 7.57%.

[121] *MCI Telecommunications Corp.*, 840 P.2d at 776 (holding that utilities should not be penalized for overearning unless their excess profits resulted from an unforeseen and extraordinary reduction in expenses).

[122] 861 P.2d 414, 422-423 (Utah 1993).

[123] Office Motion at 14.

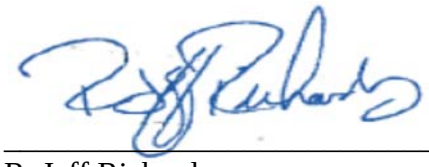
CONCLUSION

For the foregoing reasons, the Commission should deny the Motions filed by the moving parties and proceed to make the determinations required by the Net Metering Statute on the schedule in the Commission's November 18, 2016 Scheduling Order and Notices of Hearing and Public Witness Hearing.

Dated: January 12, 2017

RESPECTFULLY SUBMITTED,

ROCKY MOUNTAIN POWER



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