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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** **Reply of Vivint Solar, Inc. to Rocky Mountain Power's Opposition to Motions to Dismiss and for Summary Judgment**

In accordance with the Public Service Commission's ("Commission") November 18, 2016 Scheduling Order, Vivint Solar, Inc. ("Vivint Solar") files this Reply to Rocky Mountain Power's ("RMP") Opposition to Motions to Dismiss and for Summary Judgment. RMP filed its Opposition January 12, 2017 in response to Motions to Dismiss Vivint Solar, the Office of Consumer Services ("Office"), the Utah Solar Energy Association ("USEA"), Utah Clean Energy, the Energy Freedom Coalition of America and Sunrun, Western Resource Advocates, and the Sierra Club filed December 20, 2016. RMP also responded to the Division of Public Utilities' ("Division") Motion for Partial Summary Judgment, the Office's Alternative Motion to Show Cause, and USEA's Alternative Motion for Summary Judgment.

I. INTRODUCTION

On November 9, 2016, RMP submitted a filing in this docket, characterizing it as a Compliance Filing, and represented it had followed the Commission's November 10, 2015 Order.

RMP requested that the Commission approve a new and unprecedented rate structure that would apply only to net metering customers in a proposed new separate rate class.

On November 18, 2016, the Commission issued a scheduling order inviting parties to file dispositive motions by December 20, 2016 to allow the Commission to consider whether RMP failed to meet statutory or Commission requirements before reaching the substantive issues of the proceeding. Vivint Solar and six other parties enumerated above moved to dismiss RMP's Compliance Filing. The Division moved for partial summary judgment, the Office made an alternative motion to show cause why this case should not be withdrawn in addition to its motion to dismiss, and USEA likewise alternatively moved for summary judgment.

On January 12, 2017, RMP filed its Opposition in accordance with the Commission's scheduling order. The Commission provided for parties to reply by January 26, 2017 and, accordingly, Vivint Solar files this Reply. RMP's Response did nothing to explain or overcome the inadequacies of the Compliance Filing. The Compliance Filing does not comply with the Commission's November 10, 2015 Order in this proceeding and requests that the Commission engage in illegal single-time ratemaking. Vivint Solar, therefore, reaffirms its motion to dismiss the Compliance Filing.

II. LEGAL STANDARD

In its Opposition, RMP cited *Tuttle v. Olds*, 2007 UT App 10, 155 P.3d 893 to establish the legal standard by which the Commission should determine whether to grant or deny the numerous motions to dismiss pending in this proceeding. In *Tuttle*, the Utah Court of Appeals restated the general standard courts apply to motions to dismiss: after assuming all factual allegations RMP made are true and drawing all reasonable inferences in a light most favorable to RMP, it is clear that the moving party is not entitled to relief. However, the Commission is not required to accept RMP's legal arguments or characterizations of the Commission's Orders.

Based on this standard, RMP's Compliance Filing must be dismissed. It does not comply with the Commission's November 10, 2015 Order. The Commission required RMP to develop two cost studies for this phase of the proceeding and ordered that "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."[1] There is no question that RMP failed to do that. The Commission cannot assume or infer that RMP's statement to the contrary is true when what it has done so clearly does not comply with the Commission's Order.

RMP adds another line from *Tuttle* stating that a motion to dismiss "is not an opportunity for the trial court to decide the merits of the case,"[2] but Vivint Solar is not requesting the Commission decide this proceeding on its merits. To the contrary, Vivint Solar maintains that the merits of RMP's proposal should not be considered at this point, but should be presented to the Commission in a general rate case. As stated, RMP did not comply with the Commission's November 10, 2015 Order. RMP also asked the Commission to engage in illegal single-item ratemaking. These issues do not go to the merits or substance of the case; they are procedural and the proceeding should therefore be dismissed.

III. ARGUMENT

A. RMP blatantly disregarded and failed to comply with the Commission November 10, 2015 Order

In its Opposition, RMP argued that its contorted efforts to make the test periods of the three cost studies it performed for this proceeding commensurate with the test period of its next general rate case comply with the Commission's November 10, 2015.[3] Consider what RMP did.

[1] November 10, 2015 Commission Order at 16.

[2] *Tuttle* at ¶14.

[3] RMP Opposition at 12-13.

It used actual data from 2015 then adjusted the 2015 data to bring net metering customers to what it believes are the full cost of service levels. Thereafter, RMP attempted to reconcile these numbers in the NEM Breakout COS to the current revenue requirement from the 2014 general rate case which was decided August 29, 2014.[4]

The rates from RMP's last general rate case were established by stipulation using a forecasted test period ending June 30, 2015. Unless that is the same test period RMP intends to use in its next general rate case, it fails. RMP's proposed unprecedented rate structure in this docket is founded on the test period of RMP's last general rate case, not the test period of PacifiCorp's next general rate case as the Commission ordered. That RMP's twisted test period may be commensurate with the test period in its last general rate case is irrelevant and the probability of error through this unwieldy exercise is extraordinary.

RMP argued that the parties did not litigate the test period to be used in this proceeding.[5] While that may be true, it does not negate the fact that the Commission ordered the test period to be used and RMP must comply. Litigating a test period occurs in a general rate case and that is where the proposals in this proceeding should be examined and decided using current data in RMP's next general rate case.

RMP has blatantly disregarded the Commission's November 10, 2015 Order and failed to comply. Consequently, the Compliance Filing should be dismissed by the Commission.[6] If RMP

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[4] Commission Docket No. 13-035-184.

[5] RMP Opposition at 11.

[6] RMP has violated Utah Code Ann. §54-3-23:
Every public utility shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the commission in the matters herein specified, or in any other matter in any way relating to or affecting its business as a public utility,

had questions or concerns about the test period it was to use to perform the cost studies, it could have asked the Commission for rehearing after the Commission issued the November 10, 2015. Alternatively, RMP could have sought clarification at any time. RMP did neither. Net metering customers should not be penalized for RMP's failures and this proceeding should be dismissed.

B. RMP's Compliance Filing is an illegal single-item rate case addressing only the net metering service and customers

RMP's Compliance Filing is an illegal single-item rate case. In its Opposition, RMP grasped for exceptions to the prohibition against single-item ratemaking to persuade the Commission to deny the motions to dismiss, but it came up short. First, RMP argued that Utah Code Ann. §54-15-105.1 authorizes the Commission to treat the Compliance Filing outside of a general rate case.[7] Subsection (2) of that statute, however, requires that the Commission "determine a just and reasonable charge, credit, or ratemaking structure" and that is impossible using RMP's proposed contorted test period and the data in the Compliance Filing. The rate the Commission would set for net metering would inevitably be based on mismatched revenues, expenses, and investments and that is patently unjust and unreasonable. That is one of the reasons single-item cases are prohibited.

RMP insists the Compliance Filing is not a single-item rate case under the *Wage Case*[8] and does not violate the prohibition against single-item ratemaking. Even if that were true the Court mandated that outside of a general rate case ". . . any rate so adjusted must be predicated

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and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule or regulation by all of its officers, agents and employees.

[7] RMP Opposition at 17.

[8] 614 P.2d 1242, 1245 (Utah 1980). RMP Opposition at 29.

upon a finding that such adjusted rate is just and reasonable. In turn, this finding must be supported by substantial evidence concerning every significant element in the rate making components (expense or investment) which is claimed by the applicant as the basis to justify a rate adjustment."[9] For the reasons stated above, that simply is not possible for the Compliance Filing.

RMP maintained it is not seeking to increase rates on all of its customers, only on net metering customers, so the *Wage Case* prohibition against single-item rates case does not apply.[10] A general rate increase, however, need not affect all customer classes to be a general rate case. The offense of single-item ratemaking occurs when a rate is treated in isolation without considering all other expenses, revenues, and investments that might change that rate. That will not happen if the Commission addresses the Compliance Filing in isolation and will result in unjust and unreasonable rates. Additionally, even if RMP's proposed deferral has no effect on other customer classes in this proceeding, it will affect more than just the net metering customers in the next general rate case. RMP must not be allowed to circumvent the requirements of ratemaking in this way.

Second, RMP claimed the Compliance Filing does not change "base rates" because it is excluded under the deferred account and program offering exceptions.[11] As Vivint Solar noted in its original motion to dismiss, if RMP's proposed rates and resulting revenues in this docket qualify for deferred accounting treatment, then any revenue or expense item would qualify. It is nothing more than an attempt to circumvent the ratemaking process and is an abuse of the

[9] Id. at 1249-50.

[10] RMP Opposition at 30.

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

deferred accounting process. RMP offered this option to assuage any concern that the Compliance Filing would not be revenue neutral,[12] but it does not meet the criteria the Commission established for deferred accounting treatment and orders.[13]

RMP's Compliance Filing fails to meet the requirements for exclusion from the definition of base rates under the program offering exception. Even assuming it did qualify, the Commission ordered in its November 10, 2015 Order that the test period of the cost studies in this proceeding be commensurate with the test period of RMP's next general rate case. That cannot be done except in a rate case and Utah Code Ann. § 54-7- 12(1)(a)(ii) excludes any of the exceptions to "base rates" if they are included by a Commission order.

RMP argued that net metering is nothing more than a program offering, but the Compliance Filing is far more than a program. It is a radical departure from Commission policy. It separates the residential rate class and imposes a demand charge on the new residential class. It more than doubles the customer charge, a charge that is controversial even at its current rate. It slashes compensation for the excess power net metering customers produce. RMP claimed the Compliance Filing is similar to the change in rates it made to net metering in 2008,[14] but what RMP is proposing is not a simple tweak in rates. It is a dramatic change in policy that will stop the expansion of rooftop solar in Utah. Even if this could be done in isolation outside of a rate case it would be terrible public policy. At minimum, the Commission should order that net metering be examined in a general rate case to ensure that costs allocated to the service are accurate and based on correctly matched, current data.

[12] Joelle Steward pre-filed testimony, Line 724.

[13] See Commission Docket Nos. 06-035-163, 07-035-04, and 07-035-14.

[14] RMP Opposition at 2.

The statute, Utah Code Ann. § 54-7- 12(1)(a)(ii)(F), excludes from the definition of "base rates" a public utility program offering. The implication is that a program that qualifies for this exception may be excluded from base rates when it is first offered, but once it has been offered and examined in a rate case, changes thereafter can only be made in a rate case. Net metering has been available for many years, and like other services and rates, should only be changed in a general rate case.

Third, RMP characterized the claimed cost shift between net metering customers and non-net metering customers was extraordinary and the Commission must act immediately in this docket to correct it.[15] To the extent there is any cost shift today it is not extraordinary and can await a general rate case. The only way RMP could make the alleged shift appear extraordinary was to use a 20-year projection, something it strenuously opposed in the first phase of this proceeding when the Joint Parties proposed a similar projection to show solar benefits and against which the Commission ruled.

RMP based its unauthorized projections on a new study performed by Navigant Consulting, Inc.[16] for RMP's 2017 Integrated Resource Plan ("IRP") that parties have not yet been afforded the opportunity to review in depth. This new study shows an alleged cumulative cost shift of $667 million. The study Navigant performed for RMP's 2015 IRP showed system cost savings for RMP of $760 million from distributed generation over 20 years.[17] This tremendous swing in RMP's claims and forecasts casts serious doubt over these new projections, or the assumptions RMP made. The Commission should reject them until they can be examined

[15]RMP Opposition at 25.

[16]A link to this new study is in footnote 1, page 1 of witness Joelle Steward's pre-filed testimony.

[17] Docket No. 15-035-04, Volume II, at 240.

in the context of a general rate case where all elements of RMP's rates are open and at issue to understand the projections and their total impact.

IV. CONCLUSION

Based on the foregoing, the Commission should dismiss this proceeding. RMP failed to comply with the Commission's November 10, 2015 Order and instead, performed a convoluted exercise to try to persuade the Commission it did somehow. RMP could have sought rehearing or clarification but it did not.

This proceeding also constitutes illegal single-item ratemaking which will result in unjust and unreasonable rates. It does not meet the any of the exceptions from being treated and addressed in a general rate case and should therefore be dismissed.

Respectfully submitted this 26th day of January, 2017.

STEPHEN F. MECHAM LAW, PLLC

/s/Stephen F. Mecham
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CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2017, I sent a true and correct copy of Vivint Solar, Inc.'s Reply to RMP's Opposition by email to the following:

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