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**BEFORE THE**
**PUBLIC SERVICE COMMISSION OF UTAH**

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| In the Matter of the Investigation of the Costs and Benefits of Pacificorp's Net Metering Program | ) ) ) ) ) ) | **Docket No. 14-035-114**<br>**REPLY TO THE OPPOSITION OF ROCKY MOUNTAIN POWER TO MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT** |

Pursuant to the November 18, 2016 Scheduling Order and Notices of Hearing and Public Witness Hearing issued by the Public Service Commission of Utah ("Commission"), Sunrun, Inc. ("Sunrun") and Energy Freedom Coalition of America ("EFCA") (jointly "Movants") respectfully reply to Rocky Mountain Power's ("Company") opposition to motions to dismiss. Movants, in their motion to dismiss, requested that the Commission dismiss the Company's so-called "Compliance Filing" as legally deficient for: (1) failing to comply with the Commission's November 2015 Order requiring that the approved analytical framework be applied to a test year commensurate with the Company's next general rate case, (2) proposing to establish a new rate

class and increase base rates outside of a rate case in violation of the principle against single-issue ratemaking, and (3) requiring unnecessary and wasteful expense to litigate factual issues that will need to be re-litigated in a future rate case using appropriate test year data.

The Company, in opposition to an unprecedented total of eight motions to dismiss or to summarily dispose, erroneously asserts that: (1) the Compliance Filing complies with the November 2015 Order because it is adjusted to match the Company's **last** general rate case test year; (2) certain parties have taken contrary positions regarding the ability of the Commission to establish rates for net metering customers outside of a general rate case; and (3) Utah statutes expressly authorize the Commission to establish rates for net metering customers outside of a general rate case.

Each of the Company's primary assertions in opposition is plainly erroneous and fails to provide a basis to overcome the multiple motions to dismiss. First, no amount of contextual argument can cure the deficiency that a filing based on the Company's **last** general rate case test year period is not "commensurate with the test period in Pacificorp's **next** general rate case."[1] The Commission's directive was clear and explicit and cannot be overcome by the Company's attempts to contort its filing to fit the proverbial square peg into a round hole. Second, the Company's characterization of parties taking contradictory positions fails to recognize that most parties agreed that the cost-benefit determination—or at least the development of an analytical framework to be used to set rates in future rate cases—could occur in a separate proceeding, but that future ratesetting for net metering customers was only appropriate in the context of a general rate case. Third, the Company fails to distinguish the net metering program (i.e., the structure of the netting mechanism) from the establishment of the underlying rates that apply to customers'

[1] November 2015 Order at p. 16 [*emphasis added*].

purchases of electricity from the Company. The Company fails to provide an express exception that would insulate its proposal from the charge that it improperly seeks a change in base rates outside of a general rate case.

The Company can present no reason why the Commission cannot or should not grant the Movants' motion to dismiss. Accordingly, for all of the legal and prudential reasons discussed in the various and highly-aligned motions to dismiss, the Commission should dismiss the Compliance filing in its entirety.

## I. A TEST YEAR BASED ON THE COMPANY'S LAST GENERAL RATE CASE CANNOT COMPLY WITH THE EXPRESS DIRECTIVE THAT THE COMPANY BASE ITS COST-BENEFIT FILING ON THE TEST YEAR COMMENSURATE WITH THE NEXT GENERAL RATE CASE.

The November 2015 Order clearly and unequivocally established the directive that the cost-benefit framework should be used prospectively to establish rates in the Company's **next** general rate case. In addition to Ordering paragraph No. 4, which explicitly refers to the "next general rate case," the title of section 2.3 in the November 2015 order is "The CFOS and ACOS Should be Commensurate with the Test Period in PacifiCorp's Next General Rate Case."[2] The Commission's discussion of the time period to be used for the analysis (e.g., the one-year test period) does not create any ambiguity that it intended the framework to be put to use to set rates in the Company's **next** general rate case:

> "The Division, the Office and PacifiCorp agree that we should adopt a framework that analyzes the costs and benefits of the net metering program over a one-year period that is commensurate with the test period PacifiCorp relies on in its next general rate case. [*citations omitted*].
>
> We concur. While our July Order made clear our discretion in rate setting is not relevant to the cost-benefit analysis the Legislature has tasked us to perform under Subsection One, the parties are correct to emphasize that, ultimately, the results of the Subsection One analysis will be used to design rates. [*citations omitted*]. The results of the Subsection One analysis must leave us well poised to "determine a just and reasonable

[2] November 2015 Order at p. 7.

> charge, credit, or ratemaking structure" under Subsection Two. It is, therefore, eminently sensible to rely on the same test period data employed to establish all customers' rates. We are persuaded that relying on the rate case test period is consistent with the Statute and will yield useful results in the rate setting context."[3]

Notably, the Company cannot point to any portion of the record for support of the proposition that it was expected, by the Commission or other parties, to seek an actual rate change outside of a general rate case in Docket No. 14-035-114. The Company states that the Commission assumed the Company would be filing a rate case in 2016, suggesting that the "next" general rate case requirement was predicated on the next general rate case occurring in the near term.[4]

With demonstrable overearnings[5] and no desire to come in for a new general rate case at this time, the Company wishes to gloss over the "next general rate case" requirement. The Company could have sought clarification of the November 2015 Order if it believed that the Commission wrongly assumed that the Company was filing a new general rate case in 2016 and that if the Company knew that it might instead seek to use the test year data from its **last** general rate case for the purposes of seeking a cost-benefit determination and establishing new rates for net metering customers. Absent a directive from the Commission to file a rate proposal in this docket—or to submit data to conduct a cost-benefit determination—it is the Company, not the Commission, making assumptions about the proper timing of a net metering rate proposal. Nothing in the Commission's orders in this case ever suggested that the Commission would entertain a rate proposal outside of a general rate case. The "next general rate case" requirement provides significant guidance of when and where the Commission expected to see the Company's cost-benefit data and any rate proposal being advanced concurrently with that data.

[3] November 2015 Order at pp.7-8.
[4] Company's Opposition at p. 12.
[5] See Sunrun/EFCA Motion at pp. 14-17; Office of Consumer Services Motion at p. 16.

## II. THE COMPANY'S CHARACTERIZATION OF PRIOR PARTY POSITIONS REGARDING THE APPROPRIATENESS OF SEEKING RATE CHANGES OUTSIDE OF A GENERAL RATE CASE IS PLAINLY AND DEMONSTRABLY WRONG.

In several instances, the Company asserts that the positions of Sunrun and EFCA are inconsistent with the position taken by The Alliance for Solar Choice ("TASC") in the Company's last rate case (Docket No. 13-035-184). Beside the fact that these are all separate parties, this characterization is incorrect and fails to recognize the distinction between the Commission's duties under Subsection One (determination of costs and benefits) and Subsection Two (determination of just and reasonable credit, charge or rate structure) of Utah Code § 54-15-105.1. In particular, the Company implies that, in recommending the Commission open a separate docket to consider the cost-benefit aspects of the statute, TASC was implicitly conceding that the Company could pursue rate changes outside of a general rate case.

This is plainly incorrect. TASC's position in the Company's GRC was that the Commission would benefit from developing an analytical framework in a separate proceeding. TASC repeatedly stated on the record that the purpose of developing the analytical framework in a separate proceeding (outside of the rate case) was to aid the Commission in determining a just and reasonable credit, charge or rate structure in a future general rate case:

> While I believe a **General Rate Case ("GRC")** is the proper venue for the Commission to consider this issue **now and into the future**, I take issue with the fact that the cost-benefit issue was not scoped into this proceeding from the start and that no Commission-approved methodology is currently in place.[6]
>
> I propose that the Commission open a separate proceeding to determine a cost-benefit framework for evaluating the NEM program. This framework will allow the Commission to determine definitively whether the proper solution to the issues raised on NEM costs and benefits in this proceeding (and in consideration of SB 208) is a charge, a credit,

[6] Docket No. 13-035-184, Direct Testimony of Nathaniel Miksis at p. 6, lines 12-16 (filed May 22, 2014).

> another ratemaking structure or no change at all. This will allow the Commission to establish a basis for a just and reasonable rate structure applicable to NEM customers **in future GRCs**.[7]
>
> Utah Clean Energy, Sierra Club, UCARE, and TASC all oppose the Company's net metering facilities charge proposal on the grounds that the Company has not put forward sufficient evidence on the costs and benefits of the net metering program, as required by S.B. 208. These parties also call on the Commission to open a separate proceeding to develop a comprehensive cost-benefit framework that could be used **in future rate cases**.[8]

The fact that TASC considered that a cost-benefit analysis or framework could be performed or developed outside of a general rate case does not suggest that TASC or any other party conceded that a single-item rate case would ever be appropriate. The Company's emphasis on the "determination" occurring outside of a rate case simply overlooks the fact that the "determination" referenced in TASC's post-hearing brief was to the Subsection One (cost-benefit) determination.[9] EFCA and Sunrun see no evidence of TASC or any other party departing from the position that TASC repeated throughout its direct, rebuttal, and surrebuttal testimony that any framework developed to carry out the Subsection One determination should be applied in a future rate case to carry out the Commission's duty under Subsection Two.

## III. THERE IS NO EXCEPTION TO RESCUE THE COMPLIANCE FILING FROM THE PROHIBITION AGAINST SINGLE-ISSUE RATEMAKING.

The Company's proposal to change the rate design of net metering customers effects a change in base rates. Despite the Company's attempts to argue to the contrary, there is no clear exception that applies to the rate design proposals in the Compliance Filing. The Company's

[7] Docket No. 13-035-184, Rebuttal Testimony of Nathaniel Miksis at p. 17, lines 9-15 (filed June 26, 2014).
[8] Docket No. 13-035-184, Surrebuttal Testimony of Nathaniel Miksis at p. 4, lines 1-6 (filed July 17, 2014).
[9] Company's Opposition at pp. 4-5.

suggested exceptions to the requirement that base rates be addressed in the context of a general rate case do not apply to the circumstances here. First, while it may be true that changes to the net metering *program*[10] may occur and have occurred outside of a rate case, it is not true that the underlying rates that net metering customers pay for purchases of electricity from the Company can be determined in this stand-alone manner. The Company does not point to any example where the underlying rates for purchases of electricity applicable to net metering customers have been modified outside of a general rate case. The Compliance Filing proposals, with the exception of changes to interconnection fees, are directly reliant on the creation of a new, separate class of service and the establishment of new underlying rates for purchases of electricity from new net metering customers. Movants are unaware of any other circumstance where the Commission has proceeded as the Company suggests. The radical paradigm shift of moving residential net metering customers to mandatory demand charges cannot be justified as only a tweak to net metering program parameters.

Second, the Company cannot claim that base rates are not increased or affected simply because they have stated a willingness or openness to establishing a deferred account to address any revenue variance. As discussed in the Movant's motion, this intention is not sufficient to create a deferred account and would be an unprecedented and inappropriate workaround to the procedural rigor required by Utah law when base rates are increased.

In both instances, the Company asks the Commission to step out on a limb to liberally and creatively interpret the statutes it is charged with administering without due consideration of

[10] Movants note that the Commission has previously made modifications to the policy parameters of the net metering program (e.g., program cap, REC ownership, crediting for net excess generation) in a stand-alone docket. *See* Docket No. 08-035-78. Movants are unaware of any instance where the Commission has modified the underlying rate structures outside of a rate case under the guise of such "program" modifications.

the precedential havoc it could create. Movants ask the Commission to adhere strictly to law and tradition and refuse to allow the Company to take a piecemeal approach to ratemaking when it serves its interest to not come in for a general rate case.

## IV. CONCLUSION

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

Respectfully submitted this 26th day of January, 2017.


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## CERTIFICATE OF SERVICE

I hereby certify that I will cause a true and correct copy of the foregoing **REPLY TO THE OPPOSITION OF ROCKY MOUNTAIN POWER TO MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT** to be dispatched via overnight delivery to be filed with the Utah Public Service Commission on January 26, 2017 and to be served via email on that day upon the following persons:

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Dated January 25, 2017 at Cary, NC.

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