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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program	**DOCKET NO. 14-035-114** **UTAH CLEAN ENERGY REPLY TO ROCKY MOUNTAIN POWER'S OPPOSITION TO MOTIONS TO DISMISS**

Pursuant to Utah Administrative Rule § R746-100-3 and the Scheduling Order in the above-captioned proceeding, Utah Clean Energy hereby submits this reply to Rocky Mountain Power's Opposition to Motions to Dismiss, which was filed with the Utah Public Service Commission on January 12, 2017.

INTRODUCTION AND SUMMARY

When accepting the factual allegations made in Rocky Mountain Power's Compliance Filing as true and drawing all reasonable inferences in the light most favorable to the utility, the Company is not entitled to the relief it seeks. The Company may not create a new rate class from a subset of customers or increase base rates outside of a general rate case. These fundamental principles protecting ratepayers are sound law and policy in Utah. These arguments are outlined in the eight initial motions filed by parties on December 20, 2016. None of the Company's attempts to create exceptions for net metering customers applies. Nothing in the Company's

opposition motion addressed the essential failings of the Company's application to increase base rates and change customer classifications before the next general rate case. Furthermore, the Company's "consistent with" standard is unreasonable for determining whether the Company complied with the Commission's November 2015 Order in this docket. Therefore, when viewing the Company's allegations in the light most favorable to the utility, the Commission cannot lawfully grant the Company's application and must dismiss Rocky Mountain Power's application and requests for relief.

RESTATEMENT OF KEY FACTS

The Company has proposed to create a new class of residential net metering customers from the existing residential class between rate cases. The Company has proposed new rates for this new class of customers, which will result in increased charges for residential net metering customers relative to non-net metering residential customers, in order to alleviate an alleged cost shift from net metering customers to non-net metering customers. This rate increase for net metering customers will result in increased revenues for the Company; however, the Company has expressed a willingness to track any incremental increase in revenues associated with this rate increase, and to redistribute those revenues to other customers in the next rate case, with details to be determined later (the deferred accounting proposal). The Company indicates that the magnitude of revenues currently lost due to the net metering program is "relatively small," (*Dir. Test. of Joelle Steward*, page 16, lines 309-10), but is concerned that significant growth in net metering participation will magnify the alleged cost shift. *Compliance Filing*, page 12.

ARGUMENT

As discussed in the eight initial motions filed in this docket, a net metering-specific ratemaking proceeding is contrary to the law and sound ratemaking policy. The Company's

arguments attempting to justify such a proceeding misrepresent how just and reasonable ratemaking works and ought to work.

During the time between general rate cases, customers do not bear the risk of intra-class cost shifting. Before the next general rate case, non-net metering residential customers will not bear any additional costs in order to "subsidize" net metering customers' use of the grid, assuming all facts in the light most favorable to the utility, because their rates will not increase. Between rate cases, the utility bears all risk associated with lost revenues (or benefits of gained revenues). Despite this, the Company is proposing a rate change for a subset of the residential class (net metering customers), as well as a new class for these customers, in order to address an allegedly growing cost shift that will, in fact, not manifest prior to the next rate case.[1]

Utah Code Section 54-7-12, and sound ratemaking principles, require that the Company's ratemaking proposal can only be accomplished through a general rate case. *See, e.g. Utah Clean Energy Motion to Dismiss* ("UCE Motion"), page 9 ("any increase to base rates constitutes a general rate increase and requires that any application for a change in base rates be accompanied with a complete filing"); *DPU Motion for Partial Summary Judgement* ("DPU Motion"), page 4 ("The proposal in RMP's November 9, 2016 filing is to change base rates and cannot be implemented in this docket"); *OCS Motion to Dismiss or in the Alternative Motion for Order to Show Cause* ("OCS Motion"), page 4 ("Utah Code Ann. § 54-7-12 establishes procedures for rate increases and its provisions clearly provide that the increase in rates and the creation of a new class of ratepayers as proposed in RMP's Compliance Filing can only be promulgated in a general rate case").

[1] The Commission has found that the current cost shift embedded in rates, to the extent it exists, is insignificant. "The distribution and customer intra-class cost shift asserted by PacifiCorp and supported by the Division and the Office is very small, at about 1 cent per customer per month." Utah PSC Docket No. 13-035-184, Report and Order (August 29, 2014), page 19. *See* Utah Clean Energy Motion to Dismiss at pages 2-3.

The revenue requirement for the residential class is already being fully recovered by current rates, and revenues collected from residential net metering customers are comingled with the revenues collected from all other residential customers. *See, e.g., OCS Motion*, page 6 ("This is particularly troubling because the revenue requirement for the residential class is already being fully collected in current rates"); *UCE Motion*, page 11 ("The Company's current single-item rate proposal is particularly problematic because the Company is proposing to take allocated base rates and create a new rate class outside of a rate case").

Residential net metering customers are part of the residential class, and changing their customer classification or changing their rates is a change in residential rates, which is a change in base rates. *See, e.g., OCS Motion*, page 5 ("The Company's Compliance Filing proposes to divide the current residential class into two new classes of residential customers, net metering residential customers and non-net metering customers"); *DPU Motion*, page 6 ("All of these parts of the proposed rate changes are base rates"). Neither changing their customer classification nor changing base rates may be accomplished outside of a general rate case. *See, e.g., OCS Motion*, page 7 ("this proposal would trigger a 'complete filing' for a general rate case pursuant to section 54-7-12(2)"); *DPU Motion*, page 6 ("Utah Law requires a general rate case to implement any outcome of this docket").

The Company's attempt to exclude net metering customers, or the net metering program, from the requirements a full general rate case is unpersuasive, unjust, and unreasonable.

1. **"Commensurate with" is not the standard established by the Commission in its November 2015 Order.**

The Company's net metering ratemaking proposal has been introduced between rate cases, during a time when customers do not bear the risk of lost revenues. The net metering

analysis must be done with the *next* rate case because that is the first time customers will realize bill impacts from RMP's alleged cost shifting associated with the net metering program, if any. Until then, customers do not bear any risk. Thus, the requirement to conduct the net metering analysis during the next general rate case is not a matter of putting form over substance, as the Company argues (*RMP Motion*, page 10); rather, it is critical for establishing just and reasonable rates for all customers.

In order to attempt compliance with the November 2015 Order and sidestep the prohibitions against single item and retroactive ratemaking, the Company created the substance-less "commensurate with" standard. The Commission's direction to analyze the costs and benefits of the net metering program "commensurate with the test period of the next general rate case" is not a meaningless requirement, fit to be decontextualized into sound bites. It is a principled conclusion, consistent with the need to address net metering cost shifting at the time when it has the potential to be embedded in other customers' rates, i.e., in the next rate case.

Rate changes impact all customers as well as the utility. Rate cases provide procedural protections and complete filing requirements for ensuring that rates are just, reasonable, non-discriminatory, non-exploitative, and sufficient – for both customers and the utility. *See Questar Gas Co. v. Utah Pub. Serv. Comm'n*, 2001 UT 93, ¶ 12, 34 P.3d 218, 223 ("any rate established by the Commission in any one of these proceedings must be just, reasonable, and sufficient"). The minimum filing requirements attempt to address the information asymmetry that exists between the utility and all other parties, by opening the aperture to provide a wider view of the dynamic factors that impact utility costs and revenues and the establishment of just and reasonable rates. *See, e.g., DPU Motion*, page 7 ("The revenue requirement and rates designed to recover that revenue set in a general rate case involve a wide range of dynamic factors that all

contribute to just and reasonable rates"); *UCE Motion*, page 11-12 ("The Company is the gatekeeper to information, and rate cases (with their minimum filing and process requirements) provide the appropriate forum for ensuring just and reasonable rate changes"). The Company's decontextualized "commensurate with" standard is unlawful and untethers ratemaking for a subset of customers from an entire history of ratemaking principles and protections that have been safeguarding consumers from monopoly power since the dawn of the regulatory compact.

2. Net metering is distinguishable from all the Company's alleged exceptions to the requirement for a general rate case.

The Company argues that the Commission has statutory authority to change rates for net metering customers outside of a general rate case for the following reasons: 1) the net metering statute itself authorizes the Commission to implement a new net metering tariff outside of a general rate case; and 2) changes to net metering rates do not change base rates because net metering is a "program offering," and the utility is allowed to create a deferred account. These arguments do not withstand scrutiny and do not change the fact that the Company seeks to change base rates and customer classifications outside of a general rate case.

a. It is an absurd contortion of statutory construction to conclude that net metering rates may be set outside a general rate case.

Citing principles of statutory construction, the Company argues that because the net metering statute does not specifically reference the requirements of Utah Code 54-7-12, the procedural protections in place for setting net metering rates are different than those for all other ratepayers.[2] That is, according to the Company, it is sufficient to provide notice and opportunity

[2] "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." *RMP Opposition Motion,* page 18.

for comment when setting rates for net metering customers, as opposed to minimum filing requirements and information on offsetting factors that may put downward pressure on rates. *See RMP Opposition Motion,* page 18. On the other hand, the Legislature specifically directed the Commission to determine the "just and reasonable" ratemaking structure for net metering customers, specifically referencing the longstanding requirement safeguarding all customer rates and ensuring that they are not exploitative or discriminatory.[3]

The NEM statute directs the Commission to set just and reasonable rates, and does not indicate that doing so outside of a general rate case is proper. It strains credulity to infer from a lack of language that setting rates outside of a rate case is just and reasonable. "The primary objective of statutory interpretation is to ascertain the intent of the legislature. Since [t]he best evidence of the legislature's intent is the plain language of the statute itself, we look first to the plain language of the statute. In so doing, [w]e presume that the legislature used each word advisedly. We also presume[ ] that the expression of one [term] should be interpreted as the exclusion of another[,].... [thereby] presuming all omissions to be purposeful. When we can ascertain the intent of the legislature from the statutory terms alone, no other interpretive tools are needed, and our task of statutory construction is typically at an end. *Bagley v. Bagley*, 2016 WL 6299507 (2016 UT) 48, ¶ 10 (quotations and citations omitted). "If statutory language lends itself to two alternative readings, we choose the reading that avoids absurd consequences." *Utley v. Mill Man Steel, Inc.*, (2015 UT) 75, ¶ 46, 357 P.3d 992, 1001. Particularly in light of the just and reasonable requirement, it would be an absurd consequence to find that a certain subset of ratepayers (in this case net metering customers) are not warranted the protections of a full rate case when the utility proposes fundamental changes to their rates (base rates) and classification.

[3] The just and reasonable standard also protects the utility, to ensure that rates are sufficient. *Questar Gas Co. v. Utah Public Serv. Comm'n*, 2001 UT 93, ¶ 12, 34 P.3d 218, 223.

b. Whether net metering is a program offering is irrelevant to the fact that net metering rates have been included in base rates by Commission order since at least 2009.

The Company also argues that changing net metering rates is not a change to base rates because net metering is a public utility program offering.[4] This argument elevates form over substance. Because the word *Program* appears in the net metering statute, the Company urges us to ignore the fact that net metering rates are, and have been for some time, allocated among and entirely comingled with all base rates.

U.C.A. 54-7-12 explains that utility program offerings are *not* exempted from base rates if the charges have been included in base rates by Commission order. U.C.A. Section 54-7-12(1)(ii). Net metering rates have been included in base rates by Commission order since at least 2009. In its February 12, 2009 *Report and Order Directing Tariff Modifications* in Docket No. 08-035-78, the Commission acknowledged that the cost of the NEM program is allocated among the Company's entire customer base. *See* page 28 (concluding that it was appropriate to apply the minimum bill to net metering customers because the cost of the net metering program was allocated among the entire customer base). There have been four general rate cases since that docket, in which Commission has approved revenue requirements and base rates inclusive of the costs and revenues of net metering program participation. *See* Docket Nos. 09-035-23, 10-035-124, 11-035-200, 13-035-184.

[4] The Company attributes to Utah Clean Energy the argument that the net metering program is not a program: "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." RMP Opposition Motion, page 23. This is incorrect. Utah Clean Energy did point out that net metering is generally applicable to all customers and *that net metering program costs and revenues are included in base rates*. UCE Motion to Dismiss, page 10 (emphasis added).

Perhaps the best illustration that metering rates are comingled with all other rates within base rates is the fact that the Commission had to order the Company to perform a *counterfactual* cost of service analysis in order to be able to tease out the impacts of net metering on Utah's jurisdictional cost allocation, the cost of service study, and the residential class cost of service. *See* Docket No. 14-035-114, *Report and Order* (November 10, 2015), page 16. Whether net metering is a *program* is irrelevant to the fact that rates for net metering customers are part of the currently effective revenue requirement set in the last general rate case. As such the statute requires the Company to file a general rate case in order to change them.

The Company argues that it is appropriate to make changes to utility program offerings outside of general rate cases and points to a number of examples, including energy efficiency and demand response programs, the DSM cost adjustment, and Questar's 191 gas balancing account. However, these programs are easily distinguishable from net meeting. Energy efficiency, demand response programs, and the DSM tariff rider are not part of base rates; rather, the Commission has approved a separate process for evaluating their justness and reasonableness: they are thoroughly scrutinized in program and tariff approval and review processes, rather than as part of general rate cases. Docket No. 09-035-27, *Report and Order* (Oct. 7, 2009), page 8 ("we adopted a tariff rider for cost recovery of DSM program expenses in 2003, effectively removing review of DSM costs and benefits in general rate cases, putting greater emphasis on the program approval and revision process").

Questar's 191 gas balancing account is another type of extra-rate case "rate changing mechanism" specifically for "certain types of costs," including purchased gas and royalties. *Questar Gas Co. v. Utah Public Serv. Comm'n*, 2001 UT 93, ¶ 11, ¶ 8, 34 P.3d 218. Importantly, in its development of the 191 account, the Commission established specific procedures for

changing rates via the 191 account, in order to ensure just and reasonable rate changes. "Thus, an application for balancing account approval that confirms to the above-described procedures and contains the appropriate costs and revenues as described in the company's tariff should result in just and reasonable rates." *Id.* at ¶ 15.

The Company also points to Commission Docket No. 08-035-78 as evidence of prior programmatic changes to net metering outside of a general rate case. This docket dealt with the net metering program cap and the value for net excess generation. The docket did not reset rates charged to all customers (or even all residential customers) or address the costs and benefits of the net metering program. And at the time, no one raised the issue of single item ratemaking. The Company's compliance filing, on the other hand, proposes significant changes to base rates and rate structure, including a new customer charge, a new residential demand charge, and new energy rates. *See, e.g., UCE Motion*, page 11 ("the Company has proposed to change the long-standing Commission-approved customer charge method for a specific category of customer (residential net metering customers) outside of a rate case") (footnote omitted); *DPU Motion*, pages 5-6 ("The proposal includes a demand charge that is new to residential rates in Utah. It also includes different energy rates. Furthermore, it increases the fixed customer charge"). These dramatic changes will impact the rates of *all other* Rocky Mountain Power customers and must be heard in a general rate case.

c. Deferred accounting is a narrow exception to the rule against retroactive ratemaking, not an excuse to avoid a rate case.

Finally, the company argues that its ratemaking proposal is not a change to base rates because it is able to create a deferred account for the incremental revenues. This argument misses the mark entirely. The threshold question is whether the Company can increase base rates, which

include NEM rates, outside of a general rate case. The general answer is no. U.C.A. Section 54-7-12; *see also, e.g., DPU Motion*, page 7 ("Single issue ratemaking is prohibited because the adjustment of rates on the basis of one individual issue tends to lead to unreasonable rates"); *UCE Motion*, page 8 ("The prohibition against single issue ratemaking generally precludes changing a single cost or revenue item in isolation because it ignores the multitude of other factors that also influence rates, some of which could, if properly considered, trigger rate changes in different directions from the single-issue change").

Most requests for deferred accounting are attempts to engage in single-issue ratemaking (to account for a single changed expense or revenue) between rate cases. *See, e.g., OCS Motion*, page 14 ("Clearly, because the Company's proposal increases the Company's revenue without allowing for possible offsets, the proposal violates the prohibition against single-issue ratemaking"); *UCE Motion*, page 12 ("the Commission may look to the rule against retroactive ratemaking, exceptions to the rule, and their underlying rationales in determining whether to grant an accounting order").

The use of deferred accounting is limited to extraordinary and unforeseeable circumstances. *See, e.g., OCS Motion*, page 10 ("both this Commission and the Utah Supreme Court have held that the prohibition against retroactive ratemaking has a limited exception for changes in expenses or revenues that are both extraordinary and unforeseeable"); *UCE Motion*, page 12 ("deferred accounting orders should be granted only for revenues or expenses that are so unforeseeable and extraordinary that they cannot be construed as 'missteps made in the ratemaking process'"). Deferred accounting should not be used to extract specific costs or revenues (or class of customers) from rate base.

CONCLUSION

As discussed in Utah Clean Energy's Motion to Dismiss Rocky Mountain Power's Compliance Filing, the best solution to the utility's stated problem is to file a general rate case. The Commission and regulatory community need more comprehensive information in order to evaluate the net metering program, reset base rates, and set just and reasonable rates for NEM customers (and all customers). Although they are participants in the net metering program, NEM customers are ratepayers like everyone else and deserve the substantive and procedural rate protections that are in place to serve all customers. Accepting all the Company's information as true, the Commission does not have the required information to set or change base rates or to reclassify a subset of the residential class. Therefore, accepting all the Company's testimony and exhibits as true is still insufficient to do what the Company has asked.

Additionally, the Commission's requirement to conduct the cost benefit analysis commensurate with the test period of the next general rate case was not a substance-less requirement to conduct the analysis "commensurate with" whatever period of time the Company chose. The test period of the next general rate case is a threshold requirement because it is the time at which any cost shift associated with the NEM program may become embedded in base rates. Until that point, customers do not bear the risk of incremental lost revenues associated with net metering. Furthermore, at the time of the next general rate case, the Commission and regulatory community will benefit from the most current test period data.

RESTATEMENT OF REQUEST FOR RELIEF

Utah Clean Energy hereby respectfully moves that this Commission:

1. Dismiss the Company's Subsection One analysis, which is comprised of the actual and counterfactual cost of service studies and NEM breakout study for failure to comply with the Commission's Order to utilize the test period of the next general rate case.
2. Dismiss the Company's ratemaking proposal, comprised of cost of service analysis, load research analysis, a proposal to adjust the cost of service results to the same basis as the 2014 GRC, a deferred accounting proposal, and an interconnection fee proposal because this ratemaking proposal constitutes prohibited single item ratemaking that does not fall under any exception.
3. Find that the Company's ratemaking proposal must be considered as part of a general rate case.
4. Grant such other and further relief as the Commission may determine to be appropriate.

DATED this 26th day of January, 2017.

UTAH CLEAN ENERGY

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