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Division of Public Utilities

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Action Request Response

TO: Public Service Commission

FROM: Division of Public Utilities
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DATE: November 22, 2016

SUBJECT: **16-035-T14 TARIFF** In the Matter of Rocky Mountain Power's Revisions to Schedule 135, Net Metering Service Proposal for new Schedule 135A, Net Metering - Transition Service.

Recommendation (DO NOT APPROVE)

The Division of Public Utilities (Division) has investigated Rocky Mountain Power's (RMP) Advice Letter No. 16-13, Tariff P.S.C.U. No. 50 Electric Service in the State of Utah, Revisions to Schedule 135, Net Metering Service and Proposal for new Schedule 135A, Net Metering – Transition Service and associated interconnection agreements and recommends that the Commission not approve the tariff provision. It is premature to adopt a tariff provision that may never be needed. RMP's related filing in Docket No. 14-035-114 will not be adjudicated for some time. To the extent RMP's proposed tariff is designed to provide notice to customers and others that net metering rate structures might change, other methods of notice have been and can be provided.

Issue

On November 9, 2016, RMP filed Advice Letter No. 16-13 proposing revisions to Electric Service Schedule No. 135, Net Metering Service, and proposing a new tariff Schedule No. 135A, Net Metering – Transition Service. RMP asked the Commission for an effective date of December 9, 2016, which is 30 days from the date of RMP's filing and pursuant to Rule 746-405-2(E).

On November 9, 2016, the Commission issued an Action Request to the Division requesting an investigation of the filing. The Commission asked the Division to report back by November 24, 2016. In a subsequent filing, the Commission asked that any interested party submit its comments on or before November 22, 2016.

Background

In its order on RMP's 2014 general rate case (GRC), Docket No. 13-035-184, the Commission expressed its intent to address the enactment of Utah Code Ann. § 54-15-105.1 (Net Metering Statute).[1] The statute has two components. First, it requires consideration of the costs and benefits of the Net Metering Program to RMP and its customers. Second, it requires consideration of rate design in light of those costs and benefits. In the GRC, RMP proposed a fixed facilities charge for residential net metering customers, which the Commission denied. The Commission opened Docket No. 14-035-114, In the Matter of the Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program.[2]

The Commission determined that it would perform its investigation into the costs and benefits of the Net Metering Program in steps. First, it would establish an appropriate analytical framework to implement the Net Metering Statute. In the next step, the Commission would examine the costs and benefits that result from applying study data[3] to the approved analytical

[1] http://www.le.utah.gov/xcode/Title54/Chapter15/54-15-S105.1.html?v=C54-15-S105.1_2014040320140513.
[2] Docket No. 14-035-114, In the Matter of the Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program. (Utah P.S.C. August 29, 2014).
[3] Study data refers to the RMP's customer load research study for year 2015. (Utah P.S.C. November 21, 2014).

framework. The Commission's final step would be to determine whether any proposed change in rates is just and reasonable.

The analytical framework approved by the Commission consists of two cost of service analyses, Actual Cost of Service (ACOS) and Counterfactual Cost of Service (CFCOS). ACOS reflects RMP's cost of service, including net metering customers' net load, while CFCOS reflects what the cost of service would be with the net metering customers included but not producing any of their own power. Additionally, an ACOS analysis will be performed to reflect the cost of service of net metering customers as if they were in their own class.[4]

RMP has performed the ACOS and CFCOS analyses and presents its conclusions in what it labels a Compliance Filing, Docket No. 14-035-114, filed concurrently with this advice filing. That filing proposes a new Schedule 136 net metering tariff and a new residential Schedule 5 tariff. Advice 16-13 is the mechanism to stop new service to the current Schedule 135, while keeping the Net Metering Program open to new customers through Schedule 135A with notice that they will be transitioned to the new Schedule 136 and Schedule 5 upon Commission's final determination of RMP's proposal.

RMP's proposed Schedule 135A, Net Metering – Transition Service mirrors Schedule 135 in every way except for a revision to the Availability section of the tariff to read:

> Customers will be subject to all changes to net metering service including changes to credits, charges or rate structures offered herein and in related tariffs resulting from the final determination under Utah Code Ann. § 54-15-105.1 which may include, without limitation, a transfer from this tariff to all new applicable service schedules approved by the Commission.

Residential customers who apply for net metering service after December 9, 2016, will take service pursuant to Schedule 135A until the Commission rules on RMP's proposals filed concurrently with Advice 16-13. The proposed Schedule 135A tariff will not increase rates, charges, conditions, classifications or make changes resulting in lesser service or more restrictive

[4] Docket No. 14-035-114, Order. (Utah P.S.C. November 10, 2015) at pg. 16.

conditions. Schedule 135A is a temporary mechanism for new net metering customers to participate in the Net Metering Program with notice that they will eventually be transitioned to new tariffs.

RMP proposes that current customers remain on the current Schedule 135 and associated class schedules. Following the outcome of the Docket No. 14-035-114 proposal and requested approval of Schedule 136 and Schedule 5, respectively, net metering customers will be moved from Schedule 135A to Schedule 136, and the residential net metering customers beginning service after December 9, 2016, will begin service under Schedule 5. The current residential net metering customers will be allowed to switch to Schedule 5 without the possibility of returning.

Discussion

RMP's proposed tariff should be rejected because it is premature and adequate notice of impending changes has been and can be provided in better ways. No changes have yet been made to net metering provisions. It is possible none will be made. While the creation of a new tariff may have a function of indicating to new customers that their rates are subject to change, it also sends a message to existing customers that they are different and not likely to be subject to the changes to the net metering program. There is significant uncertainty about whether a dual rate structure for otherwise identical sets of customers is legal. The Commission might also wish to issue some notice in connection with its order on this proposed tariff further alerting the public that a net metering agreement is not a contract fixing rates or rate structures. Changes to rates may and often do occur with no notice other than in the case in which the changes are approved.

The need for the proposed tariff provision is entirely dependent on RMP's proposal, or some other change, being adopted. This presumes too much. The Commission should generally not adopt a tariff that reflects a future change. In fact, doing so might provide a false picture of the Commission's predisposition toward proposed or other changes. This is inappropriate and can undermine faith in the regulatory process. Adopting RMP's proposed tariff is likely to significantly disrupt an existing industry operating under existing rules. While that industry and its customers should be aware of impending proposals for change, memorializing a portion of that change in a tariff before adjudication is inappropriate.

Further, the tariff is designed to signal stability for existing net metering customers while concluding that a different rate structure will be imposed on new customers. RMP's proposal in that regard may violate Utah Code Ann. §54-3-8. That section prohibits discriminatory rates in multiple ways. Under the proposal, current residential net metering customers will remain on the existing rate structure, which may result in a significant advantage relative to the new residential net metering customers. It is not obvious that there is some reasonable difference between those customers that would justify a different class or rate. The Commission should not adopt a tariff that signals a predisposition to create a class structure that may be illegal.

The tariff filing seems to be designed primarily to provide notice of impending changes and future imposition of those changes on one group of net metering customers. Utility rates and rate structures change. Creation of a new tariff as a method to signal such changes as should be expected is not an appropriate way of providing information to customers. RMP's proposal for a fixed charge in its last GRC and the Commission's opening of proceedings in Docket No. 14-035-114 should be sufficient to put interested parties on notice of the potential for future changes. Should the Commission consider further notice appropriate, it may wish to include language in its order on this tariff reflecting that need. Filing that order in Docket No. 14-035-114 might also be advisable.

The Division notes that in the Application section of Schedule 135 and Schedule 135A, respectively, Utah Code Ann. § 54-2-1(16)(d) is cited. Such a provision does not exist. RMP should clarify this section in its comments so parties know to what it is supposed to refer.

Conclusion

The Commission should reject the proposed tariff because it is premature, legal impediments may exist to the discriminatory treatment of customers it proposes, and other methods exist for providing notice of impending change if additional notice is required or desired. Additionally, RMP should clarify its reference to Section 54-2-1(16)(d).

CC Jeffrey K. Larsen, Rocky Mountain Power
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