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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of PacifiCorp's Revisions to Schedule 135, Net Metering Service, and Proposal for New Schedule 135A, Net Metering – Transition Service	Docket No. 16-035-T14 **REPLY COMMENTS OF ROCKY MOUNTAIN POWER**

Rocky Mountain Power, a division of PacifiCorp ("Rocky Mountain Power" or the "Company"), pursuant to the Notice of Filing and Comment Period ("Notice") issued by the Commission on November 9, 2016, submits these Reply Comments responding to the comments submitted by others in this docket.

I. INTRODUCTION

Rocky Mountain Power filed Advice No. 16-13 ("Tariff Filing") on November 9, 2016, seeking to close Electric Service Schedule No. 135, Net Metering Service ("Schedule 135") to new customers, and proposing a new Electric Service Schedule No. 135A, Net Metering – Transition Service ("Schedule 135A") to be used in its place until the Commission makes the determinations required by Utah Code Ann. § 54-15-105.1 ("Net Metering Statute"). Schedule 135A is identical to Schedule 135 except for the following language added to the Availability Section:

> 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.

The Company requested that these tariff changes become effective December 10, 2016, 30 days after the Tariff Filing, because Schedule 135A does not "increase rates, charges or conditions, change classifications which result in increases in rates and charges or make changes which result in lesser service or more restrictive conditions at the same rate or charge." Utah Admin. Code R746-405-2(E). *See also* Utah Code Ann. §§ 54-3-3 (requiring 30 days' notice for tariff changes unless otherwise ordered by the Commission) and 54-7-12(5) and (6) (providing that schedules filed by a public utility that do not result in a rate increase *shall* take effect 30 days after filing unless, after hearing, suspended by the Commission).

After the Company made the Tariff Filing, the Commission issued the Notice, inviting comments by November 22, 2016 and reply comments by November 29, 2016.

Formal comments were filed by the Division of Public Utilities ("Division"), the Office of Consumer Services ("Office"), Salt Lake City Corporation ("SLC"), the University of Utah ("U of U"), Sunrun and Energy Freedom Coalition of America ("EFCA"), Utah Citizens Advocating Renewable Energy ("UCARE"); Utah Clean Energy ("UCE"), Utah Solar Energy Association

("USEA"), Vivint Solar, Inc. ("Vivint") and Western Resource Advocates ("WRA"). Each of these comments requested that the Commission either suspend or reject the Tariff Filing.[1] Finally, numerous individuals commented in emails ("Public Comments") on the Tariff Filing, as well as the Compliance Filing and Request to Complete All Analyses Required under the Net Metering Statute for the Evaluation of the Net Metering Program filed by the Company on November 9, 2016 in Docket No. 14-035-114 ("Compliance Filing").

Most of the comments evidence a misunderstanding of the relationship between the Tariff Filing and the Compliance Filing and of the effect of the Tariff Filing. Many of the comments also display misconceptions about tariff filings, specifically, and the regulatory process more generally.[2] As a result of these misunderstandings, most of the comments argue that the Tariff Filing should be suspended or rejected for reasons that are incorrect, irrelevant or inapplicable. The comments further ignore the fact that applicable statutes do not contemplate rejection or dismissal of a tariff filing. On the other hand, the comments evidence that the confusion the Tariff Filing was designed to address in fact exists and illustrate why the Tariff Filing should be allowed to become effective on December 10, 2016.

No change in rates for net metering customers will take place unless and until the Commission makes findings based on substantial evidence that such rates are just and reasonable and that they comply with the mandate of the Net Metering Statute. Likewise, no decisions about separate rate classes for net metering customers or grandfathering service under existing Schedule

[1] In addition, EFCA filed a Motion to Dismiss or, in the Alternative, Suspend Rocky Mountain Power's Advice No. 16-13 ("Motion"). The Motion requested that the Commission require responses to the Motion by November 29, 2016. The Motion does not seek relief different from the comments, and it is unclear why EFCA filed it in addition to EFCA's comments. As a result, the Company suggests that the Commission treat it as additional comments and sees no need for any separate response to the Motion.

[2] The Public Comments evidence an even greater misunderstanding of the impact of the Tariff Filing than the formal comments. Accordingly, the Company will not reply to those comments except to note that the Tariff Filing does not propose any change in rates to net metering customers at all, let alone within 30 days as claimed by many in the Public Comments.

135 to any particular group of net metering customers will be made unless and until the Commission concludes that doing so is just and reasonable and in the public interest.

The Net Metering Statute became law on May 13, 2014. It requires the Commission to determine whether costs of the net metering program to the Company and its other customers exceed its benefits or vice versa and to set appropriate rates based on that determination. In the two and one-half years since the Net Metering Statute became law, the Commission has been engaged in making those determinations through several hearings in two dockets. While certain commenters would undoubtedly prefer that the Commission never reach a decision or delay the decision as long as possible, the Compliance Filing provides all of the information the Commission needs to complete its mandate and to resolve the current uncertainty in the solar industry.

The purpose of the Tariff Filing is simply to provide unequivocal notice to customers who may now be considering private generation systems that the Commission is in the process of fulfilling its mandate under the Net Metering Statute and that net metering rates ***may*** change through that process. The Tariff Filing also indicates that Rocky Mountain Power believes the Commission ***may*** wish to treat customers that have already installed private generation systems and subscribed to net metering differently than those who make that decision going forward. Allowing Schedule 135A to become effective will not, in and of itself, change the rate or rate classification of any customer or grandfather any customer. Rather, it provides flexibility and options for the Commission. It also forecloses future argument that customers who commence net metering service ***after*** December 9, 2016 should be grandfathered under existing rates because they made investments in private generation systems without knowledge that Schedule 135 rates might change. Whether or when Schedule 135 changes remains entirely in the hands of the Commission, and allowing Schedule 135A to become effective does not change that reality in the

slightest. Thus, Schedule 135A is an attempt to provide clarity in the current uncertain environment and allow the Commission to reserve its prerogative to change (or not change) Schedule 135 without the threatened backlash of possibly thousands of customers who may purchase solar generation systems between now and the date the Commission makes the Net Metering Statute determinations, arguing that they purchased those systems without notice of any possible change.

II. REPLY TO SPECIFIC COMMENTS

A. Schedule 135A Is Not Premature.

Many comments contend that the Tariff Filing and the implementation of Schedule 135A is premature. Commenters argue that Schedule 135A is premature because it is, according to them, dependent upon the outcome of the Compliance Filing or a conclusion by the Commission that some rate change will be made in the future.[3] Some assert that Schedule 135A cannot be implemented without specific findings justifying treating current and future net metering customers differently.[4] Both arguments misapprehend the purpose and impact of Schedule 135A and are incorrect.

1. Schedule 135A is not dependent upon the outcome of the Compliance Filing.

Schedule 135A is not dependent upon any particular outcome of the Compliance Filing. It serves two current and valuable purposes, regardless of the outcome of the Compliance Filing. First, it helps customers make decisions with notice that the Compliance Filing is pending. Second, it provides the Commission with greater flexibility by preventing arguments that future

[3] Division Comments at 1, 4; Office Comments at 2; EFCA Comments at 1-3; UCE Comments at 4-6; USEA Comments at 1-2; Vivint Comments at 5;. WRA Comments at 3.

[4] Office Comments at 2; EFCA Comments at 2-3; UCE Comments at 4-6; Vivint Comments at 2-3.

net metering customers decided to invest in private solar generation systems in reliance on a belief that they would always be subject to existing rates.

In 2014, the Utah Legislature enacted the Net Metering Statute, which requires the Commission to assess whether the costs of net metering exceed its benefits and to determine an appropriate charge, credit or rate structure based on that assessment. The Commission initially considered this issue in the Company's 2014 general rate case, Docket No. 13-035-184, but opened a separate docket, Docket No. 14-035-114 ("Net Metering Proceeding"), to focus on the determinations required by the Net Metering Statute. As set forth in its Compliance Filing, the Company has prepared the analyses ordered by the Commission in the Net Metering Proceeding. On November 18, 2016, the Commission established a schedule to review the Company's Compliance Filing.[5] As the Net Metering Statute requires the Commission ultimately to assess the costs and benefits of the net metering program and determine just and reasonable rates in light of those costs and benefits, there is the potential that the Commission may implement an alternative rate structure that could impact net metering rates.

Schedule 135A recognizes that the Commission's determinations in the Net Metering Proceeding could impact customer rates. For this reason, the Company submitted the Tariff Filing, and proposed Schedule 135A, so that customers considering installation of private generation systems will be aware that the rates they pay for net metering service in the future could be impacted by the Commission's determinations in the Net Metering Proceeding. This clarification is contrary to a common misperception that net metering customers can "lock in" or fix their rates.[6]

[5] To accommodate the commenters in this docket and other intervenors, the Commission adopted a schedule that extends longer than the schedule in a general rate case proceeding. Intervenors are not required to file testimony until June 8, 2017 (seven months after the Company's filing), and hearings are scheduled to commence on August 14, 2017 (over nine months after the Company's filing).

[6] *See, e.g.*, USEA Comments at 2 ("This [Schedule 135A] is a significant deviation from Schedule 135 where the ratepayer calculates the value of the investment made to participate in net metering and is able to 'lock in' the rate through an Agreement with the Company.")

Net metering customers need to know that their calculation of the benefits of net metering may be subject to change. Schedule 135A serves this purpose and eliminates existing confusion to the contrary.

In addition, Schedule 135A serves another valuable purpose—it provides the Commission with more, not less, optionality relative to what it ultimately concludes in the Net Metering Proceeding. As is clear from the comments submitted by various stakeholders, there is debate regarding numerous issues in that docket, such as whether existing customers should be grandfathered or whether those customers should be required to move to a new rate schedule determined by the Commission. If Schedule 135A is not implemented, solar proponents will undoubtedly argue that all customers who install private generation systems prior to a final Commission determination under the Net Metering Statute should be grandfathered under current rates, using the investments made by those customers as a justification for their exemption from the rates ultimately set by the Commission. In fact, Vivint has already made the argument:

> To be clear, Vivint Solar does not take issue with the underlying principle of grandfathering net metering customers who have incurred substantial expense in reliance on the existing structure. ***In the event that the Commission approves modification of rates applicable to net metering customers following a hearing on the compliance filing (or in a future rate case), Vivint Solar submits that it will make sense to grandfather current net metering customers in under existing rates***.[7]

Implementing Schedule 135A will check this reliance argument and others like it because new net metering customers' decisions will have been made with clear notice that net metering rates are being evaluated and ***may*** change. What is more, Schedule 135A preserves this flexibility for the Commission without any impact on customer rates. Schedule 135A provides transparency

[7] Vivint Comments at 4 (emphasis added).

about the status of the process, while preserving the Commission's ability to make the decisions it deems appropriate.

Finally, comments that the Tariff Filing is premature because dispositive motions may resolve the Compliance Filing miss the point. Whatever dispositive motions may be filed in response to the Compliance Filing, they would not eliminate the need for the Tariff Filing. Even if the Commission decides that the Net Metering Proceeding is not the appropriate vehicle for its determinations, the justification for notifying new net metering customers that their rates could change in the future would still exist. The Commission will ultimately make the determinations mandated by the Net Metering Statute at some time in some proceeding.

2. The Commission is not required to make any findings before Schedule 135A is implemented.

Similarly, there is no merit to the claim that Schedule 135A cannot be implemented before the Commission rules on the Compliance Filing. Rule R746-405-2(E) provides that tariffs that do not "increase rates, charges or conditions, change classifications which result in increases in rates and charges or make changes which result in lesser service or more restrictive conditions at the same rate or charge" may be implemented without any finding or hearing. That is clearly the case with Schedule 135A. As the Division notes in its comments, "[t]he proposed Schedule 135A tariff ***will not*** increase rates, charges, conditions, classifications or make changes resulting in lesser service or more restrictive service conditions."[8] Notwithstanding this, and while conceding that Schedule 135A does not impact rates, UCE contends that "the impacts" of Schedule 135A, when viewed in conjunction with the Compliance Filing, "is a clear change of condition for new net

[8] Division Comments at 3-4 (emphasis added). *See also* Office Comments at 2 ("The proposed tariff does not increase rates, charges or conditions as they currently exist in Schedule 135.")

metering customers."[9] EFCA and Vivint make similar arguments.[10] These contentions are manifestly incorrect.

Schedule 135A is identical to Schedule 135 with the exception of the paragraph set forth in the introduction above. The language of that paragraph, without further action by the Commission, does not change the rates or service level provided to net metering customers, does not impose new restrictions on net metering customers, and does not impose additional conditions to which other customers are not subject. It also does not mention grandfathering. Instead, it merely provides explicit notice to net metering customers that their rates may be impacted by the outcome of the Net Metering Proceeding.

Utah Code Ann. § 54-7-12(6) provides:

> Notwithstanding any other provision of this title, whenever a public utility files with the commission any schedule, classification, practice, or rule that does not result in an increase in any rate, fare, toll, rental, or charge, the schedule, classification, practice, or rule ***shall take effect 30 days after the date of filing*** or at any earlier time the commission may grant, subject to the authority of the commission, after a hearing, to suspend, alter, or modify the schedule, classification, practice, or rule.

(Emphasis added.) *See also* Utah Code Ann. § 54-7-12(5). Under these statutes, the Tariff Filing must take effect 30 days or less after filing unless the Commission finds, after hearing, that the filing should be suspended, altered or modified. Incidentally, there is no indication in these statutes or elsewhere that the Commission may reject or dismiss the Tariff Filing without a hearing as advocated by some commenters.

Further, contrary to UCE's and others' claims, it is not necessary to resolve the Compliance Filing before allowing Schedule 135A to go into effect.[11] As discussed below, allowing Schedule

[9] UCE Comments at 5.

[10] EFCA Comments at 3; Vivint Comments at 2-3.

[11] UCE Comments at 5-8. *See also, e.g.*, EFCA Comments at 3; Vivint Comments at 2-3, 5; WRA Comments at 3.

135A to go into effect will not have any impact on the Compliance Filing or the Commission's decisions on that filing.

B. Schedule 135A Is Necessary.

Some commenters suggest that Schedule 135A is unnecessary to notify customers of the potential for a change in the net metering rate structure because (i) the Commission already possesses the authority to alter rates as it determines necessary, (ii) the Compliance Filing puts customers on notice that rates may change, and (iii) there are other ways the Commission can ensure that customers are adequately informed of the potential for a rate change.[12] These comments are based on an oversimplification of the current circumstances and are insufficient.

While it is true that the Commission has the authority to change rates as appropriate, that reality is not well understood by customers as is evidenced by the perpetual misunderstanding by net metering customers that their rates can be "locked in" or "fixed" and are not subject to future change.[13] Indeed, as the Office acknowledged in its comments, "delaying a decision about Schedule 135A may result in accelerated efforts in the marketplace for additional rooftop solar installations before a perceived future cutoff date."[14] There would be no such rush if customers clearly understood that their rates can change in the future regardless of when they become net metering customers.[15]

The need to correct current customer misunderstanding is further evidenced by the fact that almost every comment argues that Schedule 135A is likely to "significantly disrupt," "chill," "damage," "destabilize," "devastate," "negatively impact," or "stop the [solar] industry in its

[12] Division Comments at 1, 5; Office Comments at 3; UCE Comments at 11-12.
[13] *See* Footnote 6, above.
[14] Office Comments at 3.
[15] For the same reason, the Company has also included modifications to its interconnection agreements as part of the Tariff Filing to add the same language that is contained in Schedule 135A..

tracks," and that allowing Schedule 135A to go into effect would be "catastrophic."[16] If it were true that customers already understand that their rates may be changed at any time, why would Schedule 135A have these effects?

While normally such misunderstandings would be relatively harmless, in the context of net metering the Company recognizes that there is more at stake. Customers make decisions regarding whether to pursue investment in a private generation system in part based on their perception of the savings they will realize from such a system.[17] Their investment, even after available subsidies, is substantial for the typical residential customer. This reality heightens the need to ensure that customers are making informed decisions, particularly in the present circumstances where a final determination by the Commission will not be made until August or September of 2017, at the earliest, and a significant number of customers could consider installing a private generation system during that time.

Similarly, the Compliance Filing does not provide customers with adequate notice of a potential rate change. The Compliance Filing is complex and yet to be addressed by the Commission. Intervenors, including some of those who have submitted comments on the Tariff Filing, have already argued that the Compliance Filing is not the proper vehicle to complete the mandate of the Net Metering Statute and have delayed substantive consideration of the Compliance Filing through their insistence on an initial motion and briefing period. While the Company strongly believes the Compliance Filing provides all that the Commission needs to make the determinations required by the Net Metering Statute, intervenors will undoubtedly vigorously

[16] *See, e.g.*, Division Comments at 4; SLC Comments; Mem. in Support of Motion at 8; UCARE Comments at 1; USEA Comments at 2; UCE Comments at 8; Vivint Comments at 5-7; WRA Comments at 6-7.

[17] *See, e.g.*, UCE Comments at 10 ("The anticipation of economic savings drives the decision to install solar for the majority of rooftop solar customers, and it is impossible for customers to make this critical determination with knowing if, when, or how their rate will change."); USEA Comments at 2 ("the ratepayer calculates the value of the investment made to participate in net metering").

challenge it. Further, the Compliance Filing is not adequate notice because the Commission has declined to adopt similar relief requested by the Company on this issue in the past.[18] Schedule 135A by contrast is a tariff that makes clear to customers that, whatever the outcome of the Net Metering Proceeding, they will be subject to the determination required by the Net Metering Statute. Schedule 135A does not define, or even suggest, what that outcome will be.

Finally, some commenters assert that, in lieu of Schedule 135A, the Commission could find some other means of providing customer notice. The Office, for example, suggests the Commission find some way "to signal that changes to net metering rate design" are being considered in the Net Metering Proceeding.[19] Similarly, the Division proposes that the Commission "may wish to include language in its order on this tariff" clarifying the potential for a rate change or "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."[20] Certainly Commission language in an order making clear that new net metering customers would be subject to whatever rate structure is implemented would be preferable to no such language. However, the Company believes that Schedule 135A is a superior means of providing notice, removing any potential ambiguity, and providing the Commission with greater flexibility.

C. Implementation of Schedule 135A Will Not Predetermine or Indicate the Commission Is Predisposed on Any Aspect of the Compliance Filing.

A number of comments claim that Schedule 135A should not be allowed to go into effect because it would allegedly imply that the Commission has predetermined the outcome of the Compliance Filing or that the Commission is predisposed to some particular rate change or type of grandfathering. For example, several commenters argue that approval of the Tariff Filing

[18] Report and Order, Docket No. 13-035-184 (Utah PSC, August 29, 2014) at 66.
[19] Office Comments at 3.
[20] Division Comments at 4-5.

amounts to a segregation of net metering customers into two groups: (1) those who subscribe to net metering prior to December 10, 2016 and (2) those who subscribe to net metering after December 9, 2016.[21] They also argue that approval of the Tariff Filing essentially approves grandfathering of service to the first group without any factual finding that such differentiation is just and reasonable.[22] Finally, they argue that the Company's selection of the December 10, 2016 date is arbitrary and that the Company is simply trying to create uncertainty that will cripple the solar industry in Utah.[23] These arguments are incorrect, are not based on legitimate grounds, and could, in any event, be addressed by the Commission in an order on the Tariff Filing, should the Commission choose to issue one.

The Tariff Filing does not seek any determination by the Commission related to the Compliance Filing. Indeed, allowing Schedule 135A to become effective would not impact the Commission's latitude to make any determination on the Compliance Filing. As noted, Schedule 135A serves to nullify claims of new net metering customers that they should not be required to pay the rates determined by the Commission in the Net Metering Proceeding because they relied on continuance of the existing rate structure in deciding to install private generation systems.

Moreover, whether the Commission allows the Tariff Filing to go into effect or not, it will be free, after hearing all of the evidence and argument on the Compliance Filing, to either separate net metering customers into different groups depending on when they became net metering customers or other factors, or to keep them all in the same group. The Company's purpose in proposing to close Schedule 135 to new customers and to have new customers take service under

[21] *See, e.g.*, UCE Comments at 6-8.

[22] *See, e.g.*, Division Comments at 4-5; Office Comments at 3; EFCA Comments at 3-4; Vivint Comments at 3-4, 7.

[23] *See, e.g.*, U of U Comments at 2-3; EFCA Comments at 5-6; UCARE Comments at 1; UCE Comments at 8-11; USEA Comments at 2; Vivint Comments at 4-5, 6-7; WRA Comments at 6-8.

Schedule 135A was simply to put new customers on notice that their net metering service may be on different terms in the future than it is today. In fairness, they should make an informed decision knowing that there is a pending proposal to change rates for net metering service in the future and that the Commission is obligated to change the rates if the substantial evidence demonstrates (as the Company believes it clearly will) that the costs of net metering to the Company and its other customers outweigh its benefits.

Likewise, and contrary to claims by commenters, the Company's proposal to allow existing customers to continue to take service under Schedule 135 indefinitely would not in any way prevent the Commission, at the conclusion of the Net Metering Proceeding, from determining either that existing customers should not be grandfathered, or that customers commencing net metering service prior to some other date should be grandfathered. The Company readily concedes that December 9, 2016 is not the only possible cutoff. It could just as easily be March 25, 2014, the date Governor Herbert signed the bill enacting the Net Metering Statute; May 13, 2014, the date the law became effective; or some other date.[24] As already discussed above, the Division, the Office and others have correctly acknowledged in their comments that the Commission may change rates at any time and apply those new rates to existing customers prospectively regardless of their expectations at the time they commenced service. The fact that the Company believes December 10, 2016—the date the Tariff Filing will be effective unless suspended—is a reasonable

[24] The U of U requests that, if the Commission allows Schedule 135A to become effective, it should be delayed until at least January 1, 2017. U of U Comments at 6. This date is suggested to accommodate the U Community Solar program that is scheduled to close on December 31, 2016. *Id.* at 2. The Company acknowledges the basis for this date, but notes that there will always be customers at various stages in the process of investigating and installing private generation systems and subscribing to net metering. There must be some date after which customers can be deemed to have explicit notice that they may no longer claim entitlement to continued service under existing net metering rates. With the exponential growth occurring in net metering in Utah, that date should be sooner rather than later.

cutoff is irrelevant to a decision on whether to allow Schedule 135A to go into effect 30 days after filing or to suspend it.

Finally, even if there were a legitimate basis to claim that a decision on Schedule 135A could have any relationship to the Compliance Filing (and there is not), the Commission could readily state in an order on the Tariff Filing that no determination made in this proceeding will have any precedential impact on the Net Metering Proceeding.

D. Approval of the Tariff Filing Does Not Impact Any of the Commenters' Arguments Regarding Whether the Compliance Filing Issues May Be Decided Outside a General Rate Case.

Several of the comments argue that the Tariff Filing should not be approved because it (and the matters raised in the Compliance Filing) can only be approved in a general rate case.[25] These arguments completely misunderstand the process for filing tariff changes and also misapprehend the effect of allowing the Tariff Filing to become effective. As already explained above, closing Schedule 135 to new customers and having new customers take service under Schedule 135A will not result in a rate change, let alone a rate increase. The terms and conditions of Schedule 135A are the same as those in Schedule 135. Therefore, any argument that the Tariff Filing cannot be allowed to go into effect after 30 days because this does not allow time for a full rate case proceeding ignores the fact that the Commission is required to allow tariff changes that do not result in a rate increase to take effect 30 days after filing unless, after hearing, it finds good cause to suspend them.[26]

Further, commenters are incorrect when they suggest that tariffs can or should only be implemented in the context of a rate case. As WRA acknowledges, "transitional tariffs are commonly used (and approved by the Commission), particularly when the Company faces the risk

[25] USEA Comments at 2; Vivint Comments at 7-8; WRA Comments at 4.
[26] *See* Utah Code Ann. § 54-7-12(5) and (6).

of financial harm . . . ."[27] Moreover, tariffs are regularly changed outside of the context of a rate proceeding.[28] In fact, the Commission has allowed changes to Schedule 135 to go into effect 30 days after filing without any hearing.[29] Since Schedule 135A has no rate impacts whatsoever, there is no reason that implementation of that tariff should await any determinations in a rate proceeding.

E. Arguments Regarding the Alleged "Chilling Effect" of Schedule 135A on the Solar Industry Are Not Within the Commission's Jurisdiction and Do Not Fairly Represent the Confusion that Already Exists in the Market.

Many of the comments urge the Commission to delay a ruling on the Tariff Filing because they claim approval of Schedule 135A will result in the death or crippling of the solar industry in Utah and result in loss of jobs and economic benefits to the state.[30] These arguments ignore the fact that the Commission is an administrative agency created by the Legislature and is obligated to follow the directions it receives from the Legislature.[31] In addition, these arguments entirely ignore the existing confusion in the market.

The Legislature has directed the Commission in no uncertain terms to determine whether the costs of net metering to the Company and its other customers exceed its benefits or vice versa. If the costs of the net metering program exceed its benefits, the Legislature has directed the

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[27] WRA Comments at 2. While WRA claims the Company is not in danger of imminent harm, WRA ignores the fact that transitional tariffs are not only approved when harm is imminent, but also ignores the fact that Schedule 135A does not have any rate impact at all.

[28] *See, e.g., In the Matter of Rocky Mountain Power's Proposed Revisions to Electric Service Schedule No. 8*, Docket No. 16-035-T08 (Utah PSC, July 14, 2016); *In the Matter of Rocky Mountain Power's Proposed Revisions to Electric Service Schedule No. 140*, Docket No. 16-035-T03 (Utah PSC, March 9, 2016).

[29] *See, e.g., In the Matter of Rocky Mountain Power's Proposed Revisions to Electric Service Schedule No. 135*, Docket No. 16-035-T07 (Utah PSC June 21, 2016) (changing the credit provided to net metering customers).

[30] U of U Comments at 2-3; EFCA Comments at 5-6; UCARE Comments at 1; UCE Comments at 8-9; USEA Comments at 2; Vivint Comments at 5-6.

[31] *Williams v. Mountain States Tel. & Tel Co.*, 763 P.2d 796, 799 (Utah 1988) (holding that the PSC is given its authority from the Legislature and is bound to follow legislative direction). *See also Heber Light & Power Company v. Utah Public Service Comm'n*, 210 UT 27, ¶ 17, 231 P.3d 1203 ("It is well established that the Commission has no inherent regulatory powers other than those expressly granted or clearly implied by statute." (quoting *Hi-Country Estates Homeowners Ass'n v.Bagley & Co.*, 901 P.2d 1017, 1021 (Utah 1995) (quoting *Mountain States Tel. & Tel. Co. v. Pub. Serv. Comm'n*, 754 P.2d 928, 930 (Utah 1988)))).

Commission to determine charges and a ratemaking structure that are just and reasonable in light of the costs and benefits of the program.[32] Whether and how that determination may impact the solar industry is not a matter within the Commission's purview and is irrelevant to the Commission's consideration of the Tariff Filing.

In addition, commenters' contention that the alleged confusion in the market is being generated by the Tariff Filing is disingenuous. Even before the Company filed the Compliance Filing and the Tariff Filing, there was significant confusion regarding the status of net metering in Utah. This is the result of the fact that the Net Metering Proceeding has been pending for over two years and it is unknown what the Commission's determination under the Net Metering Statute will be. Further, uncertainty may have been fueled by some in the market who claim that there is an urgency to invest in private solar generation systems to avoid the impacts of a future determination by the Commission, as if immediate investment provides some sort of safe harbor from future rate changes. Given that uncertainty, Schedule 135A, rather than causing confusion, clarifies that, whatever the Commission's determination may be, at least new net metering customers may be subject to it.

F. The Tariff Filing Is Consistent with Regulatory Practice.

EFCA argues in the Motion that the Tariff Filing should be dismissed because it seeks unprecedented and extraordinary relief without legal or regulatory basis and violates regulatory and legal norms and standards of ratemaking, including the filed-rate doctrine.[33] Other parties make similar arguments in their comments.[34] These arguments misconstrue the effect of the Tariff Filing and misunderstand the tariff change process in Utah.

[32] Net Metering Statute, Utah Code Ann. § 54-15-105.1.
[33] Motion at 2-8.
[34] UCARE Comments at 1; USEA Comments at 2.

As has already been emphasized in these Reply Comments, allowing the Tariff Filing to take effect will not, in and of itself, result in changing the rates or rate class of any customer and will not impose any differentiation on customers based on when they started net metering service. Utah Code Ann. §§ 54-7-12(5) and (6) and Utah Admin. Code R746-405 specifically contemplate that such tariff changes should go into effect 30 days after filing unless a shorter time is granted by the Commission. This is the legal and regulatory norm for rate-neutral tariff changes in Utah.

The filed-rate doctrine is codified in Utah as Utah Code Ann. § 54-3-7. It simply requires a utility to charge the rates set forth in its tariffs that have been filed with and approved by the Commission. Nothing in the Tariff Filing implicates this requirement. The Company will charge all net metering customers the rates approved by the Commission unless and until those rates are modified by the Commission. The Tariff Filing does not suggest otherwise.

In addition, as discussed above, arguments that any tariff change must be approved in a general rate case are incorrect, but are also misplaced. Those arguments will apparently be made in the Net Metering Proceeding. They have no relevance to the issues presented here.

G. The Reference in Schedule 135A to Utah Code Ann. § 54-2-1(16) Should Be Updated.

The Division correctly notes that Utah Code Ann. § 54-2-1(16)(d) referenced in Schedule 135A does not currently exist.[35] Schedule 135 refers to the same statute, and, in the Company's efforts to keep Schedule 135 and 135A identical except to add the clarification that rates adopted in the Net Metering Proceeding would apply to customers taking service under Schedule 135A, the Company inadvertently failed to update the reference to reflect statutory renumbering that has occurred in recent years. The Company appreciates the Division bringing this to the attention of the Commission and will make this administrative change at an appropriate time.

[35] Division Comments at 5.

H. EFCA's Suggestion that the Company Should Not Be Free to Communicate Its Views and Proposals to Its Customers Is Absurd.

EFCA argues in its comments that Rocky Mountain Power's public messaging regarding the Tariff Filing and the Compliance Filing "is unwarranted and must stop immediately."[36] EFCA further argues that such public messaging and any other messaging regarding its Subscriber Solar Program is anticompetitive.[37] Although these arguments are completely irrelevant to the issue before the Commission, they warrant a brief response.

The Company has the right, protected by the First Amendment to the United States Constitution and Article I, Section 1 of the Constitution of Utah, to speak freely and to communicate its thoughts and opinions.[38] The Company's public messaging on the Tariff and Compliance Filings clearly falls within these constitutional rights. In addition, the Company's messaging is not misleading in any respect. Instead, it represents a transparent effort to provide information to customers about what the Company is proposing, what the Commission is doing pursuant to the Net Metering Statute, and what may happen as a result of those efforts.

As a public utility regulated by the Commission, the Company's actions are protected by the state-action exemption to the antitrust laws.[39] The Company will not make any changes to the net metering program that have not been approved by the Commission. The Company's promotion

[36] EFCA Comments at 6.

[37] *Id.* at 5, 7.

[38] *See, e.g., Citizens United v. FEC*, 558 U.S. 310 (2010) (confirming that non-profit corporations are guaranteed the right of free speech under the First Amendment); *Pacific Gas and Elec. Co. v. Public Utilities Comm'n of California*, 475 U.S. 1, 20 (1986) (holding that attempts to require a public utility to foster certain viewpoints violated its First Amendment right to free speech); *Consolidated Edison Co. of New York v. Public Service Comm'n of New York*, 447 U.S. 530, 534-35 (1980) (rejecting a ban on utility inserts on the ground that they violated the utility's right to freedom of speech under the First Amendment); *Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York*, 447 U.S. 557, 571 (1980) (holding that restrictions on utility advertising violated a public utility's First Amendment right of free speech).

[39] *Parker v. Brown*, 317 U.S. 341 (1943); *TEC Cogeneration, Inc. v. Florida Power & Light Co.*, 76 F.3d 1560, 1570 (11th Cir. 1996) (holding that a public utility's activities were protected from antitrust laws by the state-action exemption).

of its Utah Subscriber Solar Program has been approved by the Commission.[40] To suggest that the Company is not free to seek tariff changes or to support its positions because they may be inconsistent with the business strategy of the solar industry is, frankly, absurd.[41]

I. The Company's Messaging Does Not Suggest that Grandfathering of Existing Net Metering Customers Is Assured.

In its Comments and Motion, EFCA contends that the Company's public messaging provides "assurance" to existing customers "that they will be grandfathered and protected from imminent rate changes."[42] This contention by EFCA is incorrect and misstates the Company's clearly-delineated position. The Company has no authority to assure existing net metering customers that they will be grandfathered and, hence, protected from any future changes to the net metering rate structure. Nor has the Company suggested otherwise. The Company's statement on its website, quoted by EFCA, clearly states that the Company ***is proposing*** that new rates apply only to customers subscribing to net metering service after December 9, 2016.[43] The website further states that "Rocky Mountain Power ***supports*** keeping current net metering customers on the same rate schedule."[44]

As noted in the Company's Compliance Filing:

> ***The Company supports keeping the current net metering customers on the existing net metering program and rate schedule***, as further explained in Mr. Hoogeveen's testimony. In addition, current net metering customers on Schedule 135 do not have meters that can measure on-peak demand, which will be required under proposed Schedule 136. As a result, a wholesale transition of these customers to the new schedule would be administratively and operationally challenging. Rather than requiring these customers to replace their meters when Schedule 136 or another rate structure is approved, the Company ***proposes*** that they be allowed

[40] Order Approving Amended Settlement Agreement, Docket No. 15-035-61 (Utah PSC, October 21, 2015) at Exhibit A: Amended Settlement Agreement, ¶¶ 16-17.

[41] The anticompetitive argument is also ironic. EFCA's argument that the Company's promotion of the Subscriber Solar Program must cease is itself anticompetitive.

[42] EFCA Comments at 5; Motion at 8 (emphasis added).

[43] *See* https://www.rockymountainpower.net/netmetering (quoted in EFCA Comments at 5).

[44] *See* https://www.rockymountainpower.net/about/nr/nr2016/proposed-net-metering-changes.html (emphasis added).

> to continue to receive service under Schedule 135. The Company expects this issue will be considered in a future proceeding.[45]

As is clear from these quotes, while the Company ***supports*** grandfathering of existing net metering customers under the current rates given the circumstances, the Company fully recognizes that the Commission may conclude that existing customers should not be grandfathered in the event there is a change to the net metering rate structure. The Company's public messaging and the Compliance Filing and Tariff Filing are each wholly consistent on this point.[46]

III. CONCLUSION

The Company respectfully requests that the Commission allow Schedule 135A to be implemented 30 days after filing, consistent with Utah law. Its implementation will not result in a change in any rate, service or customer classification and will not impact or indicate any predisposition of the Commission's determinations in the Net Metering Proceeding. Instead, Schedule 135A will provide clear notice to customers subscribing to net metering in the future that they will not be able to argue that they should continue to receive service under existing rates because they relied on those rates in making their investment in private generation systems. It will eliminate confusion in the market and provide the Commission with additional options depending on the outcome of its decisions in the Net Metering Proceeding.

The comments submitted in opposition to the Tariff Filing illustrate why Schedule 135A is needed. The arguments against the tariff change are incorrect, are not supported by the law, are based on mischaracterizations of the impact of the Tariff Filing, or are irrelevant.

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[45] Compliance Filing at 15.

[46] In addition to being incorrect, EFCA's position is also contradictory. While it claims in its comments and Motion that the Company's statements effectively assure grandfathering, EFCA's own comments contradict that erroneous contention. Specifically, in its comments, EFCA argues that the Company's statements only indicate a desire to "avoid the perception that it is opposed to grandfathering," while "the substance of what [the Company] proposes . . . gives no certainty to existing customers that their investment would be respected, assuming that some rate change actually does occur over the short term." EFCA Comments at 8.

DATED November 29, 2016.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **REPLY COMMENTS OF ROCKY MOUNTAIN POWER** was served by email this 29th day of November, 2016, on the following:

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