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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

<p><b>IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER FOR AUTHORITY TO INCREASE ITS RETAIL ELECTRIC UTILITY SERVICE RATES IN UTAH AND FOR APPROVAL OF ITS PROPOSED ELECTRIC SERVICE SCHEDULES AND ELECTRIC SERVICE REGULATIONS</b></p>	<p>Docket No. 13-035-184</p> <p><b>DIVISION OF PUBLIC UTILITIES' POST HEARING BRIEF</b></p>
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Pursuant to Utah Code Ann. § 54-4a-1 and Utah Admin. Code r746-100 the Utah Division of Public Utilities (“Division”), hereby submits this Post Hearing Brief. The Division will briefly address the language of 2014 Senate Bill 208 and its grant of discretion to the Commission.

**INTRODUCTION**

On November 5, 2013 Rocky Mountain Power Company (“Company”) filed its Notice of Intent to File a General Rate Case in this docket. On January 3, 2014 the Company filed its General Rate Case. On March 25, 2014 Senate Bill 208 (“SB 208”) was signed by Governor Herbert. The

law became effective May 13, 2014. On April 16, 2014 the Commission issued a Public Notice that the newly enacted “Determination of costs and benefits – Determination of reasonable charge, credit, or ratemaking structure” would be combined into the general rate case. Utah Code Ann. §54-15-105.1. Public comment on the matter was invited. On June 25, 2014 the Company filed a joint Settlement Stipulation settling the general rate case with all parties signing or not opposing with the exception of the net metering issue. On July 28<sup>th</sup> and 29<sup>th</sup> a hearing was held for the parties to the docket and public witness hearing was held on the evening of July 29<sup>th</sup>. At the conclusion of the hearing the Commission granted a request for post hearing briefing of legal issues.

## DISCUSSION

### SENATE BILL 208

Both in prefiled testimony of various witness as well as during the hearing the issue was raised regarding the level of analysis required by the Commission and whether sufficient evidence had been provided by the Company to evaluate the costs and benefits of the net metering fee proposed by the Company. It is the Division’s position that the Commission has fully satisfied the requirements of SB 208 with respect to providing notice and opportunity for interested parties to submit comments and evidence regarding the costs and benefits of net metering. Moreover, the Division believes that SB 208 grants discretion to the Commission as to the level of analysis it chooses and the types of costs and benefits it considers. Sufficient evidence has been provided for the Commission to make the SB 208 determination of a just and reasonable rate for net metering customers. In the alternative if the Commission deems it necessary to continue analysis of the issue in another docket, that would also be within the Commission’s discretion.

The Commission has sufficient evidence before it to satisfy SB 208 and find a net metering fee as proposed by the Company to be just and reasonable. SB 208 leaves the evidentiary standard at the discretion of the Commission. It states in relevant part that the commission shall:

- (1) determine, after appropriate notice and opportunity for public comment, whether costs that the electrical corporation or other customers will incur from a net metering program will exceed the benefits of the net metering program, or whether the benefits of the net metering program will exceed the costs; and
- (2) determine a just and reasonable charge, credit, or ratemaking structure, including new or existing tariffs, in light of the costs and benefits.

(Emphasis added). While much argument has been made in testimony and cross examination of witnesses regarding the meaning and application of SB208 the plain language of the statute leaves little ambiguity. The Commission is directed by the Legislature to offer *appropriate notice and opportunity for public comment*. Then determine whether the costs exceed the benefits of a net metering program and implement an appropriate rate.

Notably, the language does not mention nor require exhaustive analysis. It does not require an independent third party consulting company to spend a year and unknown expense analyzing every possible permutation of tangentially related cost and benefit. There is no requirement that specific types of costs be included or excluded. There is no requirement that a particular formula be used to reach the determination. The language does not even go so far as to require a study. SB 208 requires notice and opportunity for public comment. Beyond that, it is at the discretion of the Commission to determine the level of analysis necessary and how to evaluate the evidence presented.

Appropriate notice and opportunity for public comment has been provided. In its April 16, 2014 Public Notice the Commission gave notice “The Commission’s determinations referenced in subsections (1) and (2) of Utah Code Ann. § 54-15-105.1 will be accomplished in the context of PacifiCorp, dba Rocky Mountain Power’s (“PacifiCorp”) general rate case in Docket No. 13-035-184.” The Commission further invited “public comment on whether costs that PacifiCorp or other customers will incur from PacifiCorp’s net metering program will exceed the benefits of the net metering program, or whether the benefits of the net metering program will exceed the costs.” *Id.*

Parties to the docket provided extensive testimony and information regarding net metering in response to the Commission’s directive. As demonstrated by both the language of the Settlement Stipulation and the record itself, no party to the docket was prevented from submitting commentary and analysis regarding the net metering program. Each party had an opportunity to present its data and analysis of its view of the relative costs and benefits of the net metering program. The parties spent two days in hearings before the Commission addressing net metering and witnesses were available for cross examination and questions from the Commission. Comments from individuals have been submitted by an intervening party even after the close of the evidentiary hearing. Without addressing the merits of the parties’ positions, it must be noted that voluminous testimony, evidence, and comments were filed and presented in support and opposition of the proposed net metering fee.

The record further demonstrates that the notice and opportunity for public comment was appropriate. The public provided hundreds of comments to the Commission. The public witness hearing began at approximately 5 pm and concluded at approximately 11 pm. At its conclusion,

there were no more public witnesses in the room who wished to speak. The transcript from the public witness hearing contains approximately 194 pages.

It is the Division's position that the Commission has adequate evidence upon which a determination can be made regarding both the costs and benefits of the proposed net metering program and what a just and reasonable rate is. Therefore the Commission can make a determination consistent with SB 208 on whether the net metering fee is just and reasonable. It has met the requirements and has sufficient evidence to do so.

SB 208 does not require the Commission to act now. While it is clear that Commission must "determine a just and reasonable charge, credit, or ratemaking structure, including new or existing tariffs, in light of the costs and benefits" the Division does not take the position that it must do so immediately. Utah Code Ann. § 54-15-105.1(2). SB 208 does not on its face prohibit an additional period of public comment or procedure to evaluate the costs and benefits of net metering. The Division has been consistent that it does not oppose an additional process to gather more information. The decision to do so is within the discretion of the Commission.

#### BURDEN OF PROOF

It has further been argued by certain parties that the Company has failed to meet its burden of proof in establishing the net metering fee. The law is well settled - and the Commission is certainly well versed in this area of law - that the burden of proof for a rate increase rests on the Company.<sup>1</sup> The Division, without rearguing the evidence in the record,

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<sup>1</sup> See *ex. Utah Dept. of Business Regulation, Division of Public Utilities v. Public Service Commission*, 614 P.2d 1242, 1245 (Utah 1980) ("In the regulation of public utilities by governmental authority, a fundamental principle is: the burden rests heavily upon a utility to prove it is entitled to rate relief and not upon the commission, the commission staff, or any interested party or protestant; to prove the contrary.")

believes that the evidence on the record is sufficient to justify a rate increase to net metering customers for unrecovered fixed distribution costs.

It is important that the Commission note that the burden of proof generally relates to the matter of whether the company is entitled to increased revenue through rates. The Company is therefore required to establish that current rates provide insufficient revenue to cover costs and return on investment. The revenue requirement allocated to the residential class has already been addressed in the Settlement Stipulation. The net metering fee to recover fixed distribution costs is *not* additional revenue for the Company. Either the residential class customers as a group or the net metering customers will see a rate increase to pay for the distribution system fixed costs. The burden of proof with respect to the revenue has been met. The remaining burden to be addresses is only with respect to the decision to collect the costs from the residential customer class as a group or the net metering customers.

#### SINGLE ISSUE RATEMAKING

Finally with respect to the issue of single issue ratemaking, this is a general rate case. General rate cases are where rates are made. Every rate charged by the Company was open to being adjusted or modified. It's difficult to envision a more comprehensive or appropriate process than a general rate case in which to adjust or implement new rates. As such the prohibition on single issue has no application in a general rate case.

#### CONCLUSION

This is a general rate case, not a single item ratemaking. The burden of proof has been satisfied. SB 208 is a simple bill. It's brief and written in plain language. The words are not

difficult to parse. The Commission has provided adequate notice and opportunity for public comment. The commission has received volumes of public comment and evidence from parties. The Commission has satisfied the requirements and may determine the appropriate rates for net metering customers at this time consistent with SB 208. In the event that the Commission believes that it does not have sufficient information SB 208 gives the Commission discretion to conduct additional proceedings.

Submitted this 8th day of August, 2014.

/s/ Justin C. Jetter

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CERTIFICATE OF SERVICE

I hereby certify that on this 8<sup>th</sup> day of August, 2014, a true copy of the foregoing document was sent via Email to the following:

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