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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>IN THE MATTER OF THE INVESTIGATION OF THE COSTS AND BENEFITS OF PACIFICORP'S NET METERING PROGRAM</p>	<p>Docket No. 14-035-114</p> <p>MOTION FOR PARTIAL SUMMARY JUDGMENT</p>
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Pursuant to Utah Admin. Code r.746-100 and Rules 7 and 56 of the Utah R. Civ. P., the Utah Division of Public Utilities (“Division”) files this Motion for Partial Summary Judgment that net metering rates may not be implemented outside of a general rate case. On November 18, 2016 the Public Service Commission of Utah (“Commission”) issued a Scheduling Order setting December 20, 2016 as the date for dispositive motions. The Division’s Motion, if granted, is dispositive of the issue identified and is appropriate at this time to narrow the scope of the petition. The Division requests partial summary judgment clarifying that the Commission cannot implement the proposed rates recommended by Rocky Mountain Power (“RMP”) in its November 9, 2016 compliance filing in this docket.

INTRODUCTION

The fair treatment of Net Electric Metering (“NEM”) customers has been a hotly contested issue in Utah for a number of years. On January 3, 2014 RMP filed its complete 2014 general rate case.¹ As part of its initial testimony RMP witness Joelle R. Steward identified a mismatch between the traditional rate design for residential customers where variable energy rates recover a significant portion of fixed costs and a net metering tariff where variable generation is netted against the combined variable and fix costs. “Since the full retail rate [offsets] both variable energy costs along with a significant portion fixed costs, the net metering customer is not contributing to fixed cost recovery through the usage that the customer’s excess generation is credited against.”² As of November 2013 there were only 2,139 customers participating in the net metering program.³ RMP proposed a \$4.25 per month facilities charge at that time to recover a portion of the mismatch.⁴

Throughout the 2014 general rate case the treatment of NEM customers was at issue. Many interested stakeholders participated. No conclusion was reached however. During the 2014 legislative session SB 208 was enacted requiring the Commission to determine the costs and benefits to RMP and other customers of the net metering program and to determine just and reasonable treatment in light of that determination.⁵ On August 29, 2014 the Commission issued its report and order in the 2014 general rate case approving a settlement stipulation while declining to implement RMP’s proposed facilities charge. The Commission determined that

¹ See *In the Matter of Rocky Mountain Power's Intent to File a General Rate Case on or about January 3, 2014*, Docket No. 13-035-184.

² Docket No. 13-035-184 (Direct Testimony of Joelle R. Steward lines 510-14).

³ *Id* at line 483.

⁴ RMP proposed a \$4.25 facilities charge in its initial testimony. That value was increased to \$4.65 in rebuttal testimony.

⁵ Laws 2014, c. 53, § 3, eff. May 13, 2014.

additional study and analysis was necessary. The Commission opened this docket for that purpose.

On July 1, 2015 the Commission issued an order concluding that under the plain language of Utah Code Ann. § 54-15-105.1(1) “the relevant costs and benefits are those that accrue to the utility or its non-net metering customers in their capacity as ratepayers of the utility.”⁶ On October 6, 2015 a hearing was held. And on November 10, 2015 the Commission issued an Order largely adopting the Division’s proposal to compare two cost of service studies; the actual cost of service and a counterfactual cost of service measuring the costs that would exist but for the NEM customer’s generation. The difference between the two demonstrating the net effect of NEM customer’s generation on the system. The Commission recognized that the results would leave the Commission “well poised to ‘determine a just and reasonable charge, credit, or ratemaking structure’ under Subsection Two [of 54-15-105.1].”⁷ Therefore the Commission also ordered that cost of service studies use the same test period as RMP’s next general rate case. The Commission reasoned that it was “eminently sensible to rely on the same test period data employed to establish all customers’ rates. We are persuaded that relying on the rate case test period is consistent with the Statute and will yield useful results in the rate setting context.”⁸

With that direction from the Commission, RMP collected data for the study. On November 9, 2016, RMP filed the results of its study. The study shows a significant under-collection of fixed costs and a proposed rate schedule and rate design RMP is requesting to

⁶Docket No 14-35-114 (Order Re: Conclusions of Law on Statutory Interpretation and Order Denying Motion to Strike at p.15, July 1, 2015).

⁷ Docket No. 14-035-114 (Order at p.8, November 10, 2015).

⁸ *Id.*

implement through this docket. While RMP did complete the study, it has not filed a rate case in which to implement the rates. The Commission should grant partial summary judgment clarifying that the implementation of new net metering rates must be done as part of a general rate case.

STATEMENT OF MATERIAL UNDISPUTED FACTS

1. Rocky Mountain Power has requested new rates be implemented in this docket for NEM customers.⁹
2. The new rates requested by Rocky Mountain Power are different from those currently in effect.¹⁰
3. The new rates requested by Rocky Mountain Power are intended to increase revenue.¹¹
4. Rocky Mountain Power has not filed a general rate case.

DISCUSSION

The Commission should grant partial summary judgment that new net metering rates must be implemented as part of a general rate case. The proposal in RMP's November 9, 2016 filing is to change base rates and cannot be implemented in this docket. Increases in base rates may be implemented only in a general rate case. In addition to the statutory restriction, implementing the new rates outside of a general rate case would also be an impermissible single issue rate making.

⁹ Docket No. 14-035-114, (RMP Net Metering Compliance Filing at p.2, November 9, 2016 (requesting the Commission "approve, as just and reasonable, the Company's proposed Schedule 136, Net Metering Service, with modifications to net metering service and Schedule 5, Residential Service for Customer Generators, which includes a three-part tariff structure that reflects the costs and benefits that net metering customers impose on and contribute to the system.")).

¹⁰ *Id.*

¹¹ *Id.*

Summary Judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.¹² With respect to the question of whether new rates as presented by RMP may be implemented outside of a general rate case there are no genuine issues of material fact. The proposed rates and rate structure are known. The proposed rates are different from existing rates both in rate design and in price. The proposed new rates are not one of the categories of rate changes statutory excepted from the general rule that rates may be changed only in a general rate case. Utah law requires such general rate changes to be made in general rate cases. The Division is entitled to judgment as a matter of law on the issue of whether the new rates for NEM customers may be implemented outside of a general rate case.

RMP has proposed a new Schedule No. 136 that would create both a new rate design as well as new rates for those customers that take service under Schedule No. 136. Base rates are the tariff rates set in each general rate case and do not include certain surcharges and surcredits that are statutorily excluded from the definition of base rates. Utah Code Ann. § 54-7-12(1)(a)(i) defines “base rates” as “those charges included in a public utility’s generally applicable rate tariffs, including a fare; a rate; a rental; a toll; or any other charge generally applicable to the public utility’s rate tariffs.”¹³ The proposed new tariff is a significant change from current rates for NEM customers. The issue of whether it is legal or just and reasonable to segregate NEM customers based on the date of their applications is likely to be at issue in this docket. However, regardless of whether the rate is applicable to only new NEM customers or all similar customers, it creates new base rates. The proposal includes a demand charge that is new to residential rates

¹² Utah R. Civ. P. 56(c).

¹³ The following Section 54-1-12(1)(a)(ii) provides a list of exceptions to base rates, none of which are applicable to the proposed new rates for NEM customers.

in Utah. It also includes different energy rates. Furthermore, it increases the fixed customer charge. All of these parts of the proposed rate changes are base rates.

The proposal will result in a general rate increase. Utah Code Ann. § 54-7-12(d) defines a “general rate increase” as “any direct increase to a public utility’s base rates” or “any modification of a classification, contract, practice, or rule that increases a public utility’s base rates.” Section 54-7-12(c) defines a “general rate decrease” with the same language reflecting a decrease in base rates. The proposal in the instant case is, by definition, a general rate increase. The proposed Schedule 136 will result in increases in base customer charge and a new demand charge that will be higher than previous rates while the proposed energy charge is lower. Additionally the purpose of such a change is to increase revenue collection from the NEM customers in order to reduce or eliminate the current cross subsidy NEM customers receive from the rest of the residential class that results from the current rates. Therefore, net revenue from the proposed rates is intended to be higher.

Utah Law requires a general rate case to implement any outcome of this docket. Utah Code Ann. § 54-7-12(2)(a) states in relevant part that “[a] public utility that files for a general rate increase or general rate decrease shall file a complete filing with the commission setting forth the proposed rate increase or decrease.” The Division has consistently supported rate changes that will fairly compensate NEM customers while also recovering fair revenue from NEM customers to pay for the cost to serve them. This docket may be very useful in determining the treatment of NEM customers in the next general rate case including the creation of a new class, the creation of a new rate structure, and possibly even the evaluation of what rates are likely to be. What cannot be done within the limits of Utah law is implement the new rates.

This conclusion is further supported by the common law prohibition on single issue ratemaking. Single issue ratemaking is prohibited by common law. Single issue ratemaking is not expressly proscribed in Utah code; however it is widely recognized by courts and the Commission. “The commission may adjust all figures, revenue, expense, and investment for anticipated changes, but it may not adjust one side or part of the equation without adjusting the other; unless there is a finding the particular expense is extraordinary.”¹⁴ Utah Code Ann. § 54-7-13.5(4)(c) recognizes that an energy balancing account that changes rates outside of a general rate case would otherwise be an impermissible single-issue ratemaking and expressly excludes such rate changes from the general prohibition. Similarly this Commission recognized that “[o]nly by acting within the bounds of the... statute can the Commission be assured it is not violating the Court’s general proscription of... single-issue ratemaking.”¹⁵

The purpose of the prohibition on single issue ratemaking is directly relevant to this proceeding. Single issue ratemaking is prohibited because the adjustment of rates on the basis of one individual issue tends to lead to unreasonable rates. 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 that provide sufficient revenue for the company to recover its costs and have an opportunity to earn a fair rate of return. During the rate effective period some customers and some customer classes will over or under perform. Similarly costs will be higher and lower than anticipated. Generally, the incentive for a utility is

¹⁴ *Utah Dept. of Business Regulation, Division of Public Utilities v. Public Service Commission*, 614 P.2d 1242, 1248 (Utah 1980).

¹⁵ *In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism*, Docket No. 09-035-15, (Report and Order at p. 9, March 2, 2011).

to request rate changes only related to issues that have reduced revenue or increased costs. The asymmetry in information leads to a resulting over earning by fixing only the issues that harm the utility's earnings while retaining those that help.

RMP has proposed a deferred accounting treatment of the differential revenue that will be collected by its proposed rate. The argument is that the revenue differential will be accounted for separately and allocated to the residential class of customers in the next general rate case. For this reason it may be argued that RMP is not putting the customers at risk of it overearning as anticipated by the prohibition on single issue ratemaking. This does not resolve the issue however. The foundational reason for the single issue rate making prescription is not to truly prevent a utility from excess earnings. Excess earnings are a concern because they are typically the result of overcharging customers.

While RMP may book additional revenue from its proposed tariff to a deferred account that will be credited to customers in some way, it still will be collecting that additional revenue. And customers will be subject to increased rates as a result. The recognized underpayment by NEM customers may be offset entirely by other cost savings or revenue that has diverged from the test year used during the previous general rate case. Evidence of a revenue shortfall from NEM customers alone does not inherently require a rate increase. Similarly evidence that NEM customers are being subsidized by other residential customers alone does not require a conclusion that other residential customers are being charged an unfair rate. It is plausible that it is actually another schedule of customers who are overpaying while the remaining residential class is currently paying a just and reasonable rate.

The evidence does support RMP's conclusion that NEM customers are not covering their cost of service based on the costs used in the 2014 general rate case. We simply do not have sufficient evidence outside of a general rate case to make a conclusive determination for example as to whether non-NEM residential customers are currently overpaying. The revenue shortfall from a single group may reveal nothing about the holistic view of the reasonableness of rates. Imposing a new rate increase without a comprehensive evaluation raises the types of concerns that the prohibition on single issue ratemaking was developed to prevent. Reliance on a deferred accounting treatment of the revenues to avoid a total-company revenue increase is not a sufficient protection from the pitfalls of single issue ratemaking.

For these reasons the Commission should grant partial summary judgment in favor of the Division clarifying for the parties that the new net metering rates cannot be implemented outside of a general rate case. The Commission may "make findings and orders that are just and reasonable with respect to the investigation." Utah Code Ann. §54-4-2. Thus, this proceeding may be helpful to investigate and analyze the net metering issue, even providing guidance as it has already. It may not impose new rates.

CONCLUSION

The proposal by RMP to implement new tariffs for net metering customers cannot be accomplished outside of a general rate case. The Commission should grant summary judgment in favor of the Division on this issue.

Submitted this 20th day of December, 2016.

/s/ Justin C. Jetter

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