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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>UTAH CLEAN ENERGY MOTION TO DISMISS ROCKY MOUNTAIN POWER'S COMPLIANCE FILING</p>
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Pursuant to Utah Administrative Rule § R746-100-3 and the Scheduling Order in the above-captioned proceeding, Utah Clean Energy hereby submits this motion to dismiss Rocky Mountain Power's Compliance Filing, which was filed with the Utah Public Service Commission on November 9, 2016. In support of this motion, Utah Clean Energy states as follows:

INTRODUCTION AND SUMMARY OF MOTION

The Company's November 9, 2016, Compliance Filing requests that the Commission make findings not only pursuant to the Commission's obligation under 54-15-105.1(1) (Subsection One), but also requests that the Commission make rate determinations regarding net metering customers (pursuant to 54-15-105.1(2) – Subsection Two) outside of a general rate case. The Commission should dismiss the Company's Compliance Filing and requested relief,

including the Subsection One analysis and the ratemaking proposal. The Company's Subsection One analysis does not comply with the Commission's analytical framework, and the Company's ratemaking proposal constitutes prohibited single item rate-making. Furthermore, the Company's proposed deferred accounting proposal does not relieve the Company of the obligation to file a general rate case in order to change rates for net metering customers. Therefore, the Commission cannot grant the relief requested by the Company in its Compliance Filing, and the Compliance Filing should be dismissed.

STATEMENT OF FACTS

Rocky Mountain Power's most recent general rate increase was approved on August 29, 2014. The Utah Public Service Commission ("Commission") approved a comprehensive, multi-year (two-step), settlement stipulation addressing cost of capital,¹ revenue requirement,² revenue spread, rate design, and deferred accounting treatment of certain costs: "We find approval of the Settlement Stipulation to be in the public interest and conclude it constitutes a reasonable and lawful basis for establishing just and reasonable rates." Utah PSC Docket No. 13-035-184, Report and Order (August 29, 2014), page 19 (hereinafter "2014 GRC Order").

In the same Order, the Commission declined to adopt (with one Commissioner dissenting) the utility's proposed "net metering facilities charge" because there was insufficient evidence to support the proposed charge. 2014 GRC Order, pages 60-66. The Commission also set in motion the process for undertaking the analysis required by Utah Code Section 54-15-105.1 – the net metering cost benefit analysis. While the Commission was sensitive to the cost concerns implicated by growing numbers of residential net metering customers, the Commission

¹ The Commission authorized a 7.57 percent rate of return on rate base, based in part on an allowed 9.8 percent rate of return on common equity.

² The revenue requirement was established using a test period ending June 30, 2015.

also noted, “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.”

Id. Although the Step 2 rate increase took effect in September 2015, there has not been a general rate case since rates were set in the 2014 GRC Order.

On November 10, 2015, the Commission issued an order establishing the analytical framework for evaluating the costs and benefits of Rocky Mountain Power’s (“Company”) net metering program, pursuant to its obligation under Utah Code Section 54-15-105.1(1) (hereinafter “Subsection One”).³ Previously, the Commission acknowledged that it would be necessary to conduct Subsection One analysis in steps, and that, following establishment of the analytical framework, “In a further phase, we will examine the costs and benefits that result from applying data to the approved analytical framework.” Utah PSC Docket No. 14-035-114, Report and Order (November 10, 2015), page 1 (hereinafter “November 2015 Order”).

While the Commission left some details unspecified, its order established the general analytical framework for conducting analysis pursuant to Subsection One, with the following specific directives: 1) utilize differential cost of service analyses (actual and counterfactual) to assess the costs and benefits of net metering; 2) show costs and benefits at the system, state, and class levels; 3) utilize the test period from the Company’s next general rate case; 4) do not utilize Schedule 37 (or another tariff) to impose a value on net metering excess generation; and 5) provide two evaluations at the customer level – one with net metering customers included as they are now, and one with net metering customers segregated as a separate class. November 2015

³ U.C.A. Section 54-15-105.1 Subsection One states that the Commission shall “determine, after appropriate notice and opportunity for public comment, whether the 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” (hereinafter “Subsection One analysis”).

Order, pages 5-12, 16. The Commission also declined to adopt specific cost and benefit categories to include in the analysis. November 2015 Order, page 12.

On November 9, 2016, the Company filed its net metering evaluation with the Commission in asserted compliance with the Commission's November 2015 Order ("Compliance Filing"). The Company performed an actual cost of service study (with net metering) and a counterfactual cost of service study (without net metering) for calendar year 2015, as well as a "NEM breakout study" within the residential class, to evaluate the costs and benefits of net metering. Compliance Filing, page 3. Hereinafter, this analysis will be referred to as the Company's "Subsection One analysis." The Direct Testimony of Company witness Robert Meredith describes how the Company conducted these cost of service analyses. The Direct Testimony of Michael Wilding describes the Company's net power cost analysis, used to support the cost of service analysis.

In its request for relief, the Company asks the Commission to 1) find that the counterfactual, actual, and net metering breakout studies are compliant with and fulfil the Commission's November 2015 Order; and 2) find that, based on the results of these analyses, the costs of the net metering program exceed its benefits. Compliance Filing, page 16.

The Company used the results of the calendar year 2015 NEM breakout study to develop a rate proposal for net metering customers, which is also included in the Compliance Filing. Compliance Filing, page 12. Specifically, the Company adjusted the 2015 calendar year cost of service results from the NEM breakout study to the revenue requirement approved in the 2014 GRC to establish new rates for net metering customers. Compliance Filing, page 12; Direct Testimony of Robert Meredith, page 29. As part of its rate proposal, RMP proposes to create a deferred account for the increased revenues associated with the rate change in order to make the

change revenue neutral for the Company.⁴ Direct Testimony of Joelle Steward, Page 37. The Company proposes to address amortizing the deferred balance in its next general rate case. *Id.*

The Company makes an additional four requests for relief based on its desire to change rates for net metering customers, which are as follows: 3) find that net metering customers have unique usage characteristics warranting distinct rate treatment; 4) find that current rates for NEM customers are unjust, unreasonable, and unfairly shift costs to other customers; 5) approve a new rate schedule for net metering customers; and 6) approve a waiver of net metering interconnection rules (to allow for an interconnection fee). Compliance Filing, page 16. Hereinafter, these latter four requests for relief will be referred to as the Company's "ratemaking proposal."

ARGUMENT

Utah Code Ann. Section 54-15-105.1 requires the Commission to

(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.

In its November 2015 Order, the Commission made it clear that the purpose of Docket No. 14-035-114 was the analysis required by Subsection One, and stated that "in a further phase, we will examine the costs and benefits that result from applying data to the approved analytical framework." November 2015 Order, page 1.

The Company's November 9, 2016, Compliance Filing requests that the Commission make findings not only pursuant to the Commission's obligation under Subsection One, but also

⁴ While the Company has proposed a waiver of the interconnection rules in order to collect an interconnection fee, the Company has not proposed deferred accounting treatment of these proposed revenues.

requests that the Commission make rate determinations regarding net metering customers pursuant to 54-15-105.1(2)—Subsection Two—(the ratemaking proposal) outside of a general rate case. The Commission should dismiss the Company’s Compliance Filing and requested relief, including the Subsection One analysis and the ratemaking proposal. The Company’s Subsection One analysis does not comply with the Commission’s analytical framework, and the Company’s ratemaking proposal constitutes prohibited single item rate-making. Furthermore, the Company’s proposed deferred accounting treatment does not permit single item ratemaking or relieve the Company of the obligation to file a general rate case in order to change rates for net metering customers.

I. The Company’s Subsection One analysis does not comply with the Commission’s direction to conduct the analysis in the next general rate case.

Paragraph Four of the ordering paragraphs of the Commission’s November 2015 Order states: “The period of time covered by each of the cost of service studies shall be commensurate with the test period in PacifiCorp’s next general rate case.” November 2015 Order, page 16. Despite this specific direction, the Company’s Subsection One analysis uses calendar year 2015 as the net metering evaluation study period. The Company’s Subsection One analysis does not provide a valid or sufficient basis for conducting the net metering evaluation required under U.C.A. 54-15-105.1(1) because it diverges from the specific requirements of the analytical framework established by the Commission in its November 2015 Order. Therefore, the Commission cannot grant the Company’s first request for relief, to find that the studies are compliant with and fulfil the Commission’s November 2015 Order.

Complying with the Commission’s analytical framework for evaluating the costs and benefits of net metering requires utilizing the tools available in a general rate case, such as test

period GRID analysis, in order to fully capture costs and benefits recognizable by the framework. Thus, the Company's net power cost analysis contained in its Compliance Filing is inconsistent with the direction to utilize a rate case test period, as well as the specific direction not to utilize Schedule 37 (or another tariff) in the net metering cost benefit analysis. In the November 2015 Order, the Commission stated,

We understand the point of preparing a CFCOS and comparing it to the ACOS is to obtain a picture of the utility's costs with and without the participation of net metering customers. It is not necessary at the cost modeling stage to rely on another tariff to impose a value on the net metering customers' excess generation. Rather, we expect the ACOS will capture any cost impacts associated with excess energy net metering customers provide to the system. In preparing the ACOS, PacifiCorp should not assign a price or value to the net metering customers' excess energy other than as recognized in the net power cost analysis. We will consider issues related to how net metering customers should be credited or compensated for their excess energy when we take up the Statute's rate setting implications under Subsection Two.

November 2015 Order, page 9.

The net power cost analysis contained in the Company's Compliance Filing fails to comply with this direction. Rather than utilizing the information available in a general rate case filing, and a general rate case test year GRID run, to establish the actual cost of service (with net metering) results, the Company's calendar year 2015 base case (with net metering) is the April 30, 2015, Schedule 37 GRID run adjusted by 2015 adjusted actual net power costs from the 2016 EBA docket. Direct Testimony of Michael G. Wilding, pages 2-3. The Company also utilizes Schedule 38 solar "integration costs" (as approved in the August 16, 2013 Order on Phase II Issues in Docket No. 12-035-100) to reduce the value of net metering excess generation. Direct Testimony of Michael G. Wilding, page 2, lines 37-39. None of this analysis is consistent with what would be used in a rate case. Avoided cost models are not used in a rate case. Net power cost actuals, which are compared against previous rate case test period projections are part of

EBA filings, not rate cases. Yet the Commission was clear the cost of service analysis should be done commensurate with the test period of the Company's next general rate case.

The Company's Subsection One analysis fails to comply with the Commission's essential direction to utilize the test period of the next general rate case. The Commission cannot grant the Company's first request for relief, to find that the studies are compliant with and fulfil the November 2015 Order. As a result, the Commission cannot grant the Company's second request for relief, to find that the costs of the net metering program exceed its benefits, which finding is based on the results of the Subsection One analysis.

II. The Company's rate application constitutes single item ratemaking contrary to Utah Code and case law.

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. In Utah, any single-issue rate change must be predicated on a finding that the change is just and reasonable, and that finding "must be supported by substantial evidence concerning *every significant element in the rate making components* (expense or investment) which is claimed by the applicant as the basis to justify a rate adjustment." Utah Dept. of Bus. Reg. v. Pub. Svc. Comm'n, 614 P.2d 1242, 1249-50 (UT 1980) (emphasis added) (hereinafter, "the Wage Case").

Rocky Mountain Power's Compliance Filing, specifically the ratemaking proposal, consists 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. The proposal is based on data from calendar year 2015, which is

inconsistent with both the November 2015 Order and the test period used in the 2014 GRC (which ended June 2015). The proposal does not contain information about other significant elements in ratemaking components. For example, it does not address capital structure, the cost of capital or risk conditions in current capital markets, projections of investments, expenses or revenues, updated net power cost estimates, or changes in expenses or revenues (or other factors that have changed since the most recent GRC test period projections, such as the extension of bonus depreciation).

In the Wage Case, the Utah Supreme Court found that, “when Mountain Fuel embarked on a new test year, projecting one item of expense (wages), it was impossible to determine whether the rates were just and reasonable without consideration of the other factors involved in making such a determination.” *Id.* at 1246. Here, the Company has essentially created a new test year (2015) for a single factor (net metering), and it is impossible to determine whether the rate proposal is just and reasonable without considering all the other factors involved in making such a rate determination. Significantly, scaling the NEM breakout results to the 2014 GRC basis does not cure this issue; it merely obscures the multitude of other factors implicated in ratemaking.

This Commission must review and consider all relevant factors, rather than just net metering, when determining the appropriateness of the Company’s ratemaking proposal. Utah’s utility statute requires this. Utah Code Section 54-7-12 clarifies that 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, including the minimum filing requirements established by Commission rule. U.C.A. 54-7-12(1), (2)(a). Base rates are defined as charges included in a public utility’s generally applicable rate tariffs, including a fare, a rate, a rental, a toll, or any other generally applicable charge. U.C.A. 54-7-12(1)(a). Unless specifically provided otherwise

by Commission order, base rates does not include charges in a deferred account, a balancing account, a major plant addition surcharge or sur-credit, a special contract, or a program offering.

Id.

The net metering tariff is generally applicable to any customer at any point on the Company's interconnected system (excluding high voltage customers), and costs and revenues associated with net metering are included in base rates. Rocky Mountain Power Electric Service Schedule 135 – Net Metering Service (Attachment A), page 1. The 2014 GRC Order was a final order on rates currently in effect, including rates paid by net metering customers. RMP's single item ratemaking proposal may call into question the reasonableness of current rates, but it does not, in itself, give the Commission authority to reset rates for a subset of customers without more comprehensive evidence or minimum filing requirements. The Company's net metering ratemaking proposal constitutes a general rate increase under Utah law and must be accompanied by a general rate case filing, complete with minimum filing requirements.

Recent Utah legislative proposals are instructive in showing that the Company must file its ratemaking proposal in a general rate case. In the 2016 Utah General Legislative Session, a number of versions of Senate Bill 115 were adopted before the "Sustainable Transportation and Energy Plan" was ultimately passed in its enrolled form. The first substitute bill stated that "a large-scale electric utility may file a request with the commission to initiate a cost of service proceeding for approval of a net metering tariff under Section 54-15-105.1." SB0115S01 compared with SB0115 (Attachment B), pages 20-21.⁵ The third substitute version stated, "The commission may authorize a change in the tariff rate for a net metering customer without initiating a general rate case proceeding." SB0115S03 compared with SB0115S02 (Attachment

⁵ All versions of the bill, including bill comparisons, are available at <http://le.utah.gov/~2016/bills/static/SB0115.html>.

C), pages 19-20.⁶ The final version of the bill struck any reference to a single-issue or cost of service proceeding for net metering. If the legislature had intended a specific single-item ratemaking exception for net metering customers, the legislature would have approved a final version of the bill that included such language.

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. Additionally, the Company has proposed to change the long-standing Commission-approved customer charge method⁷ for a specific category of customer (residential net metering customers) outside of a rate case. These are ratemaking decisions that must be made in a rate case where all other rate decisions are made in light of all other relevant factors.

The Company argues that because net metering is a "program" an immediate proceeding is appropriate. *See, e.g.*, Direct Testimony of Gary Hoogeveen, page 13, lines 260-76. However, the net metering "program" is generally applicable to all customers at any point on the interconnected system and the Company is proposing a change in base rates. Conducting so much rate setting precedent outside of a rate case is bad public policy. It will likely open the door to more single issue cases in the future, increasing rate uncertainty for specific categories of customers, particularly net metering customers, and additionally raises the specter of selection bias⁸ and discrimination. The Company is the gatekeeper to information, and rate cases (with

⁶ *Supra*, note 5.

⁷ For a discussion of this method, see Utah PSC Docket No. 09-035-23, Report and Order (June 2, 2010), pages 29-31).

⁸ "Selection bias is but one manifestation incident to the flow of, or access to, information concerning a utility's operations. The utility is truly the gatekeeper to information concerning what has happened, what is happening and what the utility anticipates can happen as its management continues pursuit of its business plans." Utah PSC Docket Nos. 06-035-163, 07-035-04, 07-035-14, Report and Order (January 3, 2008), page 19.

their minimum filing and process requirements) provide the appropriate forum for ensuring just and reasonable rate changes.

The Company's rate proposal constitutes a single item change to base rates and is not supported by substantial evidence of other significant ratemaking components or minimum filing requirements, contrary to Utah Code and case law. As a result, the Commission cannot grant any relief based on making a finding regarding the justness and reasonableness of rates, and the Company's ratemaking proposal must be dismissed.

III. The Company's deferred accounting proposal is an unlawful attempt to avoid a general rate case.

Most requests for deferred accounting are attempts to engage in single-issue ratemaking (to account for changed expenses or revenues) between rate cases; however, 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. *See* Utah PSC Docket Nos. 06-035-063; 07-035-04; 07-035-17, Report and Order (January 3, 2008), page 16. Consistent with this, 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". *See* MCI Telecom. Corp. v. Utah Pub. Srvc. Comm'n, 840 P.2d 765, 771-772 (Utah 1992); *see also* Utah PSC Docket Nos. 06-035-063; 07-035-04; 07-035-17, Report and Order (January 3, 2008).⁹

⁹ The Commission has also recognized an exception to the rule against retroactive ratemaking for events which may be known or foreseeable, but whose impact upon the revenues or expenses of the utility are unforeseeable and extraordinary or whose actual manifestations vary from their projections in an unforeseeable and extraordinary way. Utah PSC Docket Nos. 06-035-163, 07-035-04, 07-035-14, Report and Order (January 3, 2008), page 19.

Looking to the rule against retroactive ratemaking is appropriate with regard to the Company's deferred accounting proposal because it appears that the Company is proposing to collect rates from *current* net metering customers to offset a *future* rate increase for non-net metering customers, rather than filing a general rate case now. *See* Direct Testimony of Joelle Steward, page 16, lines 308-11 (“other customers' rates will increase in order to recover the same costs over fewer volumes. While the overall magnitude of the cost shifting is relatively small now, providing a separate rate schedule and a new rate structure for residential net metering customers will minimize the impact on other customers”); *see also* Compliance Filing at 12 (“The exponential growth of the net metering program and the findings from the comparison of the ACOS and CFCOS studies mandate this Compliance Filing before the preparation of the Company's next general rate case.”) It is just this type of revenue “correction” and refund that is typically prohibited by the rule against retroactive ratemaking, and for which exceptions are limited. It also violates the principle that revenues should be designed to match the utility's costs over a specific test year time frame (the matching principle).

If the Company asserts that filed rates are not just or reasonable three years after a general rate case, the remedy is a rate case, not a single-issue proceeding with deferred accounting. The Company is in control of when it files a rate case. Deferred accounting treatment should be reserved for unforeseeable and extraordinary circumstances, not circumstances that are within the utility's control. Deferred accounting, which raises negative implications of single item ratemaking, retroactive ratemaking, and selection bias, must not be used to avoid a general rate case filing.¹⁰ Selecting net metering customers for a single-issue rate

¹⁰ “We emphasize that the exception for unforeseeable and extraordinary events cannot be invoked simply because a utility experiences expenses that are greater or revenues that are less than those projected in the general rate proceeding.” MCI Telecommunications Corp. v. Utah Pub. Svc. Comm'n, 840 P.2d 765, 772 (Utah 1992).

increase and deferred accounting order several years after the most recent general rate case raises questions of discrimination and selection bias.

At this point (at the end of 2016), it is likely that most of the factors projected in the 2014 general rate case are out of date, including revenues, expenses, investments, and net power costs. Since the beginning of 2016, the company's energy balancing account has lost its risk sharing mechanism, impacting both shareholders and ratepayers. Additionally, the Company is in the process of developing an incentive program and time of use rate design for electric vehicle owners. Much has changed for the Company since the rate case, particularly since the passage of the Sustainable Transportation and Energy Plan in early 2016. It is not unreasonable to expect that the Company should file a rate case three years after the most recent one when so much has changed.

The Company's failure to file a rate case three years after its most recent one cannot be construed as unforeseeable.¹¹ The Company's deferred accounting proposal is merely a device to facilitate single-issue ratemaking and avoid a general rate case. Using deferred accounting simply to avoid a general rate case is unreasonable. In fact, it would be an inversion of the purpose of deferred accounting, which is to utilize accounting practices in the service of just and reasonable rates. To grant the Company's deferred accounting application would be to permit single item and retroactive ratemaking outside the bounds permitted by Utah law.

The Company's ratemaking proposal does not qualify for deferred accounting and must be evaluated as part of a general rate case.

¹¹ "In deciding whether to issue accounting orders, we will also take into consideration the time when the utility becomes aware of events or circumstances and when related expenses occur in relation to the timing of past and future ratemaking proceedings." Utah PSC Docket Nos. 06-035-163, 07-035-04, 07-035-14, Report and Order (January 3, 2008), page 18.

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 20th day of December, 2016.

UTAH CLEAN ENERGY

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