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Division of Public Utilities

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REPLY COMMENTS

To: Public Service Commission of Utah

From: Division of Public Utilities
Chris Parker, Director
Energy Section
Artie Powell, Manager
Bob Davis, Utility Analyst

Date: November 13, 2017

Re: Docket No. 14-035-114 – Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program. **Compliance Filing.**

RECOMMENDATION (APPROVAL)

The Division of Public Utilities (Division) has reviewed the parties' comments and recommends the Public Service Commission (Commission) approve PacifiCorp's dba Rocky Mountain Power (Company) Compliance Tariff Filing (Filing) for the Net Metering Program along with the modest changes recommended by the Office of Consumer Services (OCS).

ISSUE

On November 8, 2017, parties to the Settlement Stipulation filed comments with the Commission in regards to the Company's tariff compliance filing for Schedule No. 135 and Schedule No. 136. On the same day, the Commission issued a Notice of Reply Comment Period allowing any interested party to submit reply comments on or before noon on November 13, 2017. The Division submits the following reply comments in support of its recommendation.

DISCUSSION

The Commission should approve the Company's tariff filing with small modifications, despite the objections raised in other parties' comments and filings.¹ Neither the parties' Settlement Stipulation nor the Commission's order approving it are ambiguous. Further, the settlement terms, to which the tariff filing is faithful, were agreed upon as a package. It would be unreasonable to alter a term in isolation, potentially invoking the Stipulation's provision on material change and withdrawal. The Division is also concerned that some parties have unilaterally discussed the content of settlement negotiations, which are protected from disclosure by various rules and agreements, and in this docket, a Commission approved Settlement Stipulation. In the event the confidentiality protections were lifted, the Division would outline its disagreement with many of the factual averments contained in other parties' improper discussion of the settlement negotiations.

The Settlement Stipulation's Plain Language

The Settlement Stipulation's plain language requires distributed generation customers to pay the incremental metering cost.² A party's subjective prior impression of what the plain term means should not alter the stipulation's terms, or shift costs to other customers.

The Stipulation says the customer will "pay a metering fee equal to the incremental cost of the bi-directional meter."³ The stipulation contemplates that the Commission may determine what that incremental cost is. Indeed, the tariff filing will accomplish just that. This Stipulation does not contemplate the Commission simply choose an arbitrary value. The Commission may wish to further evaluate the incremental cost but it should not delay the tariff to do so. Utah Clean Energy suggests just such an approach.

The Utah Solar Energy Association (USEA) makes much of the purported difference between the bi-directional meter referred to in the Stipulation and the profile meter the Company suggests. The Division notes the profile meter is a type of bi-directional meter. Vivint and USEA also complain of having to pay a cost higher than they anticipated. Without divulging confidential discussions, the Division notes that it has always understood the agreement to cover the actual incremental cost of the different meter, not a specific amount.

USEA is also wrong that the \$60 application fee covers any added labor cost for meter changes. Conveniently renaming the Stipulation's "application fee" an "administrative fee", USEA elides

¹ The Division has no objection to the OCS's suggested edits and to Utah Clean Energy's request for accommodating meter aggregation, which the OCS addresses.

² Settlement Stipulation at ¶17.

³ Id.

the distinction between the customer's application for the program and its payment for additional metering costs.

The filing satisfies the Stipulation's plain language and contains adequate evidence supporting the proposed charge.

The Settlement Stipulation is a Package that Should Not Be Altered

The Stipulation was negotiated, agreed to, and approved by the Commission as a package.⁴ The Stipulation contains a term providing the parties may withdraw if the Commission materially alters terms or adds conditions. Vivint and USEA ask the Commission to shift actual incremental costs from distributed generation customers to other customers or the Company. This is a material change that could lead to parties withdrawing from the Stipulation. The Commission should not approve such a disruption, inviting relitigation of issues so recently settled.

Potential Violation of Confidentiality Provisions

Though apparently attempting to rely on their own impressions, USEA and Vivint arguably reveal confidential settlement discussions in their comments objecting to the Company's proposed metering charge. Settlement discussions depend on the promise of confidentiality to allow parties broad enough room to discuss, brainstorm, and explore options for reaching agreement without the fear that anything they say can and will be used against them. The Division is concerned that revealing settlement discussions could have a chilling effect on future settlement negotiations. Metering costs are clearly and plainly addressed in the Stipulation's language. That provision is sufficient to decide the issue in the tariff filing now before the Commission. The Division is not including its view of the metering cost discussions in these comments because of those confidentiality provisions. Nevertheless, in the event all parties waive the confidentiality provisions,⁵ the Division would offer additional information and evidence.

CONCLUSION

In short, the Commission should approve the Company's tariff filing with the modest changes recommended by the OCS. The filing, as modified, complies with both the Settlement Stipulation's and the Commission Order's plain language and has sufficient evidentiary support.

⁴ Id. at ¶45; Order Approving Settlement Stipulation at 21.

⁵ A separate confidentiality agreement exists governing discussions in this case. Some parties to that agreement have not filed comments on this matter or participated in other phases before the Commission.

CC Jeffrey K. Larsen, RMP
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