

Bruce Plenk (USB# 02613)
2958 N St. Augustine Pl.
Tucson, AZ 85712
Telephone: (520) 909-1389
E-mail: solarlawyeraz@gmail.com

Counsel for Sunrun and Energy Freedom Coalition of America

**BEFORE THE
PUBLIC SERVICE COMMISSION OF UTAH**

In the Matter of the PacifiCorp’s)
Revisions to Schedule 135, Net Metering)
Service and Proposal for New Schedule)
135A, Net Metering-Transition Service)

Docket No. 16-035-T14

**COMMENTS OF SUNRUN AND ENERGY FREEDOM
COALITION OF AMERICA ON ADVICE NO. 16-13**

Pursuant to the *Notice of Filing and Comment Period* issued in this proceeding on November 9, 2016, Sunrun and Energy Freedom Coalition of America (“EFCA”) respectfully submit these comments in response to Rocky Mountain Power’s (“Company’s”) Advice No. 16-13. Sunrun and EFCA are, concurrently, filing a *Motion to Dismiss or, in the Alternative, Suspend Rocky Mountain Power’s Advice No. 16-13* (“Motion”). As discussed in the memorandum in support of the Motion, Advice No. 16-13 cannot be approved as a matter of law. The notice the Company seeks to require to prospective net metering customers implicitly presumes that rate structures and the associated rates will change. As discussed in these comments, the presumption that rates will change is premature and any signal that the Company or the Commission sends to reinforce that perception will be detrimentally disruptive to the Utah solar industry. Analysis of net metering pursuant to Utah Code Ann. § 54-15-105.1(1) must be completed before any such presumption is justified and any tariff change can be considered.

I. Until the Company Carries Its Burden to Show that Current Rates Are Not Just and Reasonable, It Should Not Seek Tariff Changes that Substantially Modify the Rights of All Customers to Choose to Take Service Under Schedule 135.

Over the past three years, the Commission has seen several attempts by the Company to impose or signal its intent to impose a new rate structure or charge on net metering customers. The Company has not met, through any of these attempts, its burden to demonstrate that current rates for net metering customers are not just and reasonable. First, in early 2014 in Docket No. 13-035-184, the Company's last general rate case, the Company settled all other issues and proceeded to litigate the net metering issue as the sole remaining issue at hearing. Despite the singular focus on net metering, the Commission held that the record lacked sufficient evidence to make a determination on the costs and benefits of net metering and denied the Company's requested charge.¹ Second, in late summer 2015 in the proceeding opened to develop an analytical framework for analyzing the costs and benefits of net metering, the Company signaled its intent to move all residential net metering customers—prospective and existing customers—into a separate rate class and onto a new three-part rate design that would feature a demand charge. Ultimately, the Commission adopted an analytical framework, but declined to address the merits of the Company's proposed rate design, which were arguably out of scope of that phase of Docket No. 14-035-114. In its November 10, 2015 Order in that docket, the Commission made very clear that it was making no prejudgment on whether net metering customers might belong in a separate rate class.²

¹ *Report and Order* (August 29, 2014), Docket No. 13-035-184, at pp. 58-9 (noting that testimony and comments fell short of providing the Commission the substantial evidence necessary to make the determinations required under Utah Code Ann. § 54-15-105.1(1)).

² *Order* (November 10, 2015) at p. 11 (“To be clear, the Commission is not here concluding that a new rate class should be instituted for net metering customers.”).

The Commission has thus resisted previous attempts by the Company to make substantive changes to net metering without either (1) the necessary record of costs and benefits of net metering or (2) the appropriate procedural vehicle to seek tariff changes. Here, the Commission once again finds before it a premature proposal that lacks the necessary factual predicate (i.e., a Commission determination on the costs and benefits) and seeks the wrong procedural vehicle to achieve the desired relief.

Any change to the net metering tariff that limits or restricts the rights of customers³ is subject to the Commission's statutory duty to consider the justness and reasonableness of net metering rates in light of the costs and benefits of the net metering program. The Commission has consistently held that this cost-benefit determination is a necessary first step before any determination on the justness and reasonableness of rates can be made.⁴ The Advice filing, which comes at the front end of a parallel regulatory process (that may or may not result in the prerequisite step 1 cost-benefit determination), puts the proverbial cart before the horse. To the extent that the need for grandfathering will not even be ascertained until the Commission ultimately makes a cost-benefit determination and a subsequent order on the justness and reasonableness of rates, there is no basis for placing current and prospective net metering customers on separate tariffs with separate rights. This violates fundamental principles of

³ Commission Rule R746-405-2(E) ("Utility tariffs may 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, unless a showing has been made before and a finding has been made by the Commission that the increases or changes are justified.").

⁴ See, e.g., Docket No. 14-035-114: *Order re: Conclusions of Law on Statutory Interpretation and Order Denying Motion to Strike* (July 1, 2015) at p. 11 ("The Commission's Statutory Obligation under Step One to Conduct a Cost-Benefit Analysis of Net Metering is Separate from and Preliminary to Its Obligation to Establish a "Just and Reasonable" Rate under Step Two."); *Order* (November 10, 2015) at p. 8.

ratemaking and upends the presumption, under the filed-rate doctrine, that current rates are valid until otherwise set aside or demonstrated to be unjust and unreasonable.

Sunrun and EFCA suggest that a decision on grandfathering will only be possible and necessary at some time in the future if the Commission makes a significant structural change to the net metering program or the rates of net metering customers. The Commission retains full discretion to make a judgment on the appropriate parameters of grandfathering rights (e.g., deadline for applying to receive grandfathering rights, amount of time eligible customers are grandfathered) at that time.

The equitable factors associated with grandfathering net metering customers—e.g., the reasonable investment expectations of customers, the social policy goals advanced by private actors investing their own money, and the relative property interests of customers relying on the basic structure of a statutory program to invest in net metering systems—should be considered in determining the appropriate rate structure as well as whether changes to rate structures merit special considerations. If there is a determination that costs currently exceed the benefits, there should be no rush to judgment that the Company’s preferred three-part rate design is the only or best option, as other alternatives, such as increased minimum bills or time-variant rates, may balance the competing interests without upending the basic assumptions about the stability of rate structures.

The need for grandfathering, and the extent of grandfathering rights needed to protect customer’s investment expectations, cannot be determined at this time with so many potential pathways ahead for the Commission. Prejudging the need for grandfathering is tantamount to forecasting that fundamental rate changes are coming that upend customer’s basic assumptions about the stability of traditional residential rate structures. No matter the outcome of the cost-

benefit determination, a balanced compromise approach may be possible that avoids triggering the fundamental disruptions to the rate structure. Grandfathering should, thus, not be addressed until the Commission is at the threshold of determining a new rate for net metering customers.

II. The Company’s Messaging on the “Notice” of Its Proposed Net Metering Rate and the Prospect of Grandfathering Will Chill the Interest of Prospective Customers to Take Service under Schedule 135 and Is Anti-Competitive toward the Utah Solar Industry.

The Company’s public messaging regarding its proposed rate changes, in its “Compliance Filing,” portrays assurances to the public that customers applying for net metering before December 10th will not face the new rate structure.

Rocky Mountain Power is proposing new rates for Utah net metering customers. The proposed rates would apply only to customers who request a net metering connection after December 9, 2016. (<https://www.rockymountainpower.net/netmetering>)

In explaining the impact of its proposed rates, the Company downplays customer-sited solar and insinuates that utility-scale solar (potentially including some resources owned and controlled by the Company) and Company-run solar programs are a superior alternative:

Won't this change kill solar in Utah?

No. Customers with rooftop solar will still save money on their energy bills—about 35% compared to non-solar customers.

In addition, the vast majority of solar in Utah is from large solar farms and not from private rooftop systems. Twenty solar farms built in Utah over past two years **generate more than 8x the solar power** of all rooftop systems in Utah.

Energy from large solar farms is the most cost effective way to add solar to the grid. Here is a comparison of how much it costs to purchase solar energy from different sources:

- From large-scale solar farms: **3-4 cents** per kilowatt-hour
- From rooftop systems (at current net metering rate): **10.5 cents** per kilowatt-hour
- From rooftop systems (at new proposed net metering rate): **7.1 cents** per kilowatt-hour

Rocky Mountain Power's Subscriber Solar program allows customers to buy solar even if they rent or can't afford rooftop solar panels or don't want them on their homes.

- For customers who are already signed up, solar power will begin coming to the grid in 2017. The power comes from a new solar farm near Holden, Utah.
- The program is currently sold out, but we are planning to build additional solar farms which will open more opportunities for Rocky Mountain Power customers to sign up.

Beyond several glaring misconceptions—e.g., the Company does not purchase power from net metering customers, it credits customers at the retail rate and does not pass the cost through as purchased power—this selection smacks of anti-competitive behavior.⁵ The Company cannot be allowed to make customer-sited solar less attractive while simultaneously promoting its own programs as a direct substitution for customers who want to utilize solar power.

This public messaging is unwarranted and must stop immediately. First, the Company has no unilateral authority to make assurances of grandfathering and cannot recklessly mischaracterize such presumptions to the public. Indeed, each and every person visiting the Company's net metering webpage (www.rockymountainpower.net/netmetering) will view a note that essentially promises grandfathering. Of course, without prior Commission approval, those rights are not the Company's to give or promise. Second, the Company's characterization of the

⁵ Screenshot from <http://utahsolarworks.com/net-metering/> (last viewed November 19, 2016).

rate proposal notice casts the presumption that the new rate structure will apply to customers applying after December 10th. Based on this and other representations on the Company's websites, a customer can reasonably expect that engaging in net metering after December 10th will be significantly less economic and beneficial than engaging in net metering before December 10th.

Screen Shot from <http://utahsolarworks.com/net-metering/>:

What does this mean for customers?

Here is the difference for a typical customer who uses 1,000 kilowatt-hours per month and has a private rooftop solar system that offsets half of the household energy use:

- \$55/month – Average bill under **current** net metering rate
- \$74/month – Average bill under **new** net metering rate

The average energy bill without net metering is \$114 per month.

A typical new residential net metering customer would still save about \$40 per month (or 35%) compared to an average customer who isn't on net metering. By doing this, the subsidy paid by non-solar customers would be eliminated.

The Commission should examine the Company's public representations and require the Company to curtail any representations that unfairly cast a presumption that significant rate changes are imminent or that carry anti-competitive undertones suggesting that Company-owned solar or Company-directed solar programs are a superior alternative to net metering. Although a regulated monopoly has a statutory obligation to provide the public with notice of a proposed rate change, it cannot be allowed to engage in irresponsible speech regarding pending regulatory matters subject to this Commission's jurisdiction that directly and significantly interfere with the competitive industry offering solar services in Utah. Accordingly, it is appropriate to dismiss or reject the request to impose a new "notice" requirement on the net metering tariff, as it prejudices the outcome of future Commission determinations on rates (i.e., that there will be any change) and unnecessarily creates anxiety and uncertainty among prospective customers that are interested in going solar.

III. The Company's Proposal Pays Lip Service to Respect of Customers' Private Investment in Solar But Provides Little Details Regarding the Actual Scope of Proposed Grandfathering.

Even if the Commission were to entertain the merits of grandfathering at this time, the Company's filing offers no details about the parameters that grandfathering might take in Utah. The Company is well aware of the legal, regulatory, and public-relations challenges that followed the efforts of NV Energy to seek radical changes to the net metering program in Nevada. While, ultimately, grandfathering was adjudged to be appropriate under the circumstances in Nevada, it was not achieved without significant difficulties for all involved.

Sunrun and EFCA appreciate the Company's desire to "respect the customers' need for reasonable certainty for recovery of their investments,"⁶ but note that this proposal is premature and lacks the defined parameters to avoid needless repetition of the difficulties in Nevada. First, for the reasons stated throughout these comments and the Motion, the request is premature and not at all ripe. The time to address grandfathering will be at the time (if ever) the Commission determines new rates for net metering customers that modify their access to otherwise applicable rates or add substantial new charges specific to net metering customers. Second, the Company provides no indication of how long customers allowed to remain on Schedule 135 would continue to take service on the otherwise available tariff under the same conditions as the status quo. The Company merely states that it "expects this issue to be considered in a future proceeding."⁷ It is understandable that the Company wants to avoid the perception that it is opposed to grandfathering. The substance of what it proposes, however, gives no certainty to existing customers that their investment would be respected, assuming that some rate change actually does occur over the short term. Even if the time were right to address grandfathering, the

⁶ Advice No. 16-13 at p. 4.

⁷ *Id.*

Company's proposal merely creates confusion and fails to provide the measure of regulatory certainty necessary to truly respect customers' investments.

IV. CONCLUSION

Sunrun and EFCA appreciate the opportunity to submit these comments and request that the Commission grant the relief requested to dismiss or reject this Advice filing as contrary to law. In the event the Commission suspends Advice 16-13, Sunrun and EFCA request that the actual determination of an effective date distinguishing between existing and prospective customers be determined in a proceeding where the Commission makes a determination on the justness and reasonableness of net metering rates pursuant to Utah Code Ann. § 54-15-105.1(2). For the reasons stated herein, and in the Motion, Sunrun and EFCA request that the Commission dismiss or reject Advice 16-13.

Respectfully submitted this 22nd day of November, 2016.

Bruce Plenk (USB# 02613)
2958 N St. Augustine Pl.
Tucson, AZ 85712
Telephone: (520) 909-1389
E-mail: solarlawyeraz@gmail.com