

Sophie Hayes (12546)  
Utah Clean Energy  
1014 2<sup>nd</sup> Ave.  
Salt Lake City, UT 84103  
801-363-4046  
[sophie@utahcleanenergy.org](mailto:sophie@utahcleanenergy.org)  
*Attorney for Utah Clean Energy*

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of Rocky Mountain Power's Revisions to Schedule 135, Net Metering Service Proposal for new Schedule 135A, Net Metering-Transition Service	<b>DOCKET NO. 16-035-T14</b> <b>UTAH CLEAN ENERGY</b> <b>REQUEST TO REJECT ADVICE NO. 16-13</b>
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Pursuant to Utah Administrative Code R746-405-2 and the Commission’s Notice of Filing and Comment Period (Nov. 9, 2016), Utah Clean Energy hereby requests the Commission to reject Rocky Mountain Power’s (the Company) Tariff Advice No. 16-13, *Revisions to Schedule 135, Net Metering Service, Proposal for New Schedule 135A, Net Metering Transition Service*.

In support of this request, Utah Clean Energy states the following:

Utah Clean Energy is a state-based, non-profit, public interest organization working to create healthy, thriving communities, empowered and sustained by clean energy. Our mission is to lead and accelerate the clean energy transformation with vision and expertise. Utah Clean Energy prioritizes a more efficient, cleaner, and smarter energy future. We envision and enable increased utilization of energy efficiency, distributed generation and utility-scale renewable energy. Our vision of a smart energy future includes a more diversified and secure energy system

that can readily take advantage of new technology and expand the use of electric vehicles, distributed generation, demand response, energy storage, and information and control technologies

Utah Clean Energy has been actively involved in net metering in Utah since 2002. Utah Clean Energy has worked on Utah's net metering policies, interconnection standards, and related regulatory dockets. Most recently, Utah Clean Energy has participated in the Commission's ongoing investigation into the costs and benefits of Rocky Mountain Power's net metering program (Docket NO. 14-035-114). While Utah Clean Energy believes that increased utilization of distributed energy resources, such as rooftop solar, can help diversify and increase the reliability of our grid and mitigate costs and risks for all ratepayers, we understand that the rapid deployment of these resources raises customer equity concerns and warrants thoughtful examination.

On November 9, 2016, Rocky Mountain Power filed Advice No. 16-13 ("advice filing"), proposing to close Schedule 135 (Net Metering Service) to new customers and create Schedule 135A (Net Metering – Transition Service) for customers who apply for net metering service after December 9, 2016. Under the company's proposal, new net metering customers will take service under Schedule 135A until the Commission makes a final determination pursuant to Utah's net metering statute (on the costs and benefits of the net metering program).<sup>1</sup> Schedule 135A is identical to 135 in all respects except that it includes the following condition regarding the availability of the tariff:

Customers will be subject to all changes to net metering service including changes to credits, charges or rate structures offered herein and in related tariffs resulting from the final determination under Utah Code Ann. § 54-15-105.1 which may

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<sup>1</sup> See Utah Code Ann. Section 54-15-105.1.

include, without limitation, a transfer from this tariff to all new applicable service schedules approved by the Commission.<sup>2</sup>

Concurrently with its advice filing, the Company filed *Compliance Filing and Request to Complete All Analyses Required under the Net Metering Statute for the Evaluation of the Net Metering Program in Docket No. 14-035-114* (“compliance filing”). In this compliance filing, the company proposes to create Schedule 5, to be implemented at the conclusion of the evidentiary proceeding, to govern the rates of net metering customers. At that point, the Company intends to transfer customers on Schedule 135A to Schedule 5.

Rocky Mountain Power does not make a proposal, in either filing, for rate changes for existing net metering customers (those on Schedule 135). While “[t]he Company supports keeping the current net metering customers on the existing net metering program and their current rate schedule . . . [t]he Company expects this issue to be considered in a future proceeding.”<sup>3</sup>

The Company indicates that its Proposed Schedule 135A does 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,” pursuant to Commission Rule R746-405-2(E), and that, as a result, the Commission may implement Schedule 135A within 30 days from the date of filing.<sup>4</sup> According to the company,

Proposed Schedule 135A facilitates a transition to a future program *that includes an updated rate design* for residential customer generators. It leaves the same service, conditions and rates in place for new residential net metering applicants that are available under the existing tariff, but provides clear notice that transition

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<sup>2</sup> Advice No. 16-13, page 4.

<sup>3</sup> Advice No. 16-13, page 4 (emphasis added).

<sup>4</sup> Advice No. 16-13, page 2.

tariff, Schedule 135A, is subject to change once the Commission has fulfilled its duties under the Net Metering Statute.<sup>5</sup>

In this way, the Company clarifies its intention to make Schedule 135A customers subject to changed rates at the conclusion of the compliance filing evaluation (Docket No. 14-035-114).

As part of Advice No. 16-13, the Company also proposes changes to residential and commercial net metering interconnection agreements (levels 1-3). According to the Company, “The modifications clarify that new customers will be subject to any changes made to net metering service, consistent with the Commission’s ruling in the Company’s concurrent Compliance Filing.”<sup>6</sup>

For the reasons outlined below, Utah Clean Energy respectfully requests that the Commission reject Advice No. 16-13. Approval of the new tariff is premature and not authorized, will cause increased uncertainty in the solar market, and is not necessary to provide notice that net metering rates may change. Furthermore, it undermines the neutrality of the Commission as a fact-finder and decision-maker in the cost-benefit analysis and rate-making required by Utah Code 54-15-105.1.

**I. The company’s proposed tariff 135A is premature and cannot be authorized until after a showing has been made and the Commission makes a finding that the change is justified.**

- a. A tariff changing the conditions of a subset of net metering customers (new, Schedule 135A customers) is not authorized until after a showing has been made and the Commission makes a finding that it is justified.*

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<sup>5</sup> Advice No. 16-13, page 3 (emphasis added).

<sup>6</sup> Advice No. 16-13, page 4.

“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.”<sup>7</sup> While the Company argues that the Schedule 135A does not invoke the requirements of this rule, the impacts of the proposed advice filing, concurrent with the compliance filing, is a clear change of condition for new net metering customers.

On November 9, the Company made two filings. First, in Advice No. 16-13, the Company proposed a tariff that, in itself, does not change rates or conditions. It merely reclassifies new net metering customers as subject to Schedule 135A, as opposed to 135, and indicates that these customers will be subject to changed rates or new tariffs at the conclusion of the Commission’s net metering determination.<sup>8</sup> At the same time, the Company filed a compliance filing in Docket No. 14-035-114 that requests the creation of a new rate schedule (Schedule 5) and new rates for net metering customers, and requests new rates to take effect for customers on Schedule 135A at the conclusion of the docket. (The Company has not proposed to change rates for existing net metering customers – those on Schedule 135 – at this time.) Schedule 135A is an enforceable transition to a program that, according to Company’s advice filing, includes an updated rate design.<sup>9</sup>

It is impossible to separate Schedule 135A from the impacts its customers may see as a result of the compliance filing, and the Commission must consider both when evaluating whether it may approve the tariff absent a prior showing that the changes are justified. Because of the

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<sup>7</sup> Utah Admin. Code R746-405-2(E).

<sup>8</sup> Advice No. 16-13, pages 1-2.

<sup>9</sup> See supra, note 5.

company's rate application within the compliance filing, Schedule 135A changes the conditions of new net metering customers relative to existing net metering customers, effectively making the new tariff, 135A, subject to more restrictive conditions than 135.

While it may be possible to justify changing the conditions of new net metering customers relative to existing net metering customers, no such showing has been made. The Company indicates that it *supports* keeping existing customers on their existing rate schedule for a number of reasons: customers made investments based on the current rate structure and the Company respects customers' need for reasonable certainty for recovery of their investments, and transitioning these customers to the new schedule would be operationally and administratively challenging because current net metering customers generally do not have meters that are capable of billing the on-peak demand charge that is included in the proposed rate structure in the Compliance Filing.<sup>10</sup> Utah Clean Energy also supports these reasons for keeping existing customers on their current rate schedule; however, no *showing* has been made that new customers should not also be subject to existing net metering rate schedules, rather than the more restrictive Schedule 135A.

Pursuant to Rule R746-405-2(E), the Commission cannot approve such tariff changes without first making a finding, based on a showing, that the changes are justified. In this case, there is no factual or legal basis for making a finding that new net metering customers (as of December 10, 2016) should be subject to different (e.g, non-grandfathered) rates prior to the development of a full evidentiary record in support of just and reasonable net metering rates.<sup>11</sup> As discussed below, Utah Clean Energy believes that an evaluation of just and reasonable rates

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<sup>10</sup> Advice No. 16-13, page 4.

<sup>11</sup> Utah Clean Energy does not intend to raise substantive arguments for grandfathering within these comments. We believe these issues are not ripe before the Commission at this time.

for net metering customers has the potential to preclude Commission approval of Schedule 135A, making such a determination premature.

***b. The Commission should not make a finding regarding the rates, charges, conditions, or classifications for net metering customers until it has an evidentiary basis for completing the analysis required by Utah Code Section 54-15-105.1.***

Utah Code Section 54-15-105.1 requires the Commission to determine a just and reasonable “charge, credit, or ratemaking structure, including new or existing tariffs” in light of a prior determination regarding the costs and benefits of the Company’s net metering program (whether costs exceed benefits or benefits exceed costs).<sup>12</sup>

A tariff finding consistent with R746-405-2(E) should not be made *prior to* the establishment of a record supporting a finding of just and reasonable rates for net metering customers, as required by Utah Code Section 54-15-105.1. Rather, given that the net metering law requires that the Commission evaluate the costs and benefits of net metering and to establish just and reasonable rates in light of those costs and benefits, it is appropriate to reject Advice 16-13 as premature because it impacts the classification of new net metering customers and results in more restrictive conditions of service relative to other net metering customers prior to an evidentiary proceeding. The Commission should make decisions that impact net metering rates only after a record is developed and a showing made to justify changes.

Parties to the compliance filing will undertake a thorough investigation into the costs and benefits of net metering, for use in determining just and reasonable rates for Utah ratepayers, and the issues raised in the Company’s advice filing will be implicated in this investigation and should not be decided at the outset. For example, Utah Clean Energy believes it is likely that at

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<sup>12</sup> See Utah Code Ann. Section 54-15-101.1.

some point during the deliberations required by Section 54-15-105.1, or at any point thereafter, the issue of grandfathering certain net metering customers while changing rates for other net metering customers will arise. While it may be proper to grandfather existing customers (for example, in light of considerations raised in RMP's application<sup>13</sup> or other reasons), such a finding should be made *after* a thorough review of the law, facts, and public policy considerations impacting just and reasonable rates for net metering customers in Utah.

Closing 135 to new customers and creating 135A does not address the legal issue of grandfathering, which impacts all net metering customers and could preclude any decision the Commission makes with regard to Advice No. 16-13, contributing to greater rate uncertainty. Significantly, neither of the Company's applications addresses the issue of grandfathering directly, leaving the issue open for future dispute and litigation. In the advice letter, the Company indicates that while it supports keeping current net metering customers on their existing rates, it "expects this issue to be considered in a future proceeding."<sup>14</sup> Any future proceeding to address grandfathering may also impact customers on the proposed Schedule 135A, making its approval unwarranted and premature, and contributing to greater uncertainty about net metering rates in the interim.

**II. Closing 135 to new customers and implementing Schedule 135A will needlessly destabilize the solar market prior to any findings of fact, undermine the neutrality of the Commission as a fact-finder and decision-maker, and is unnecessary to provide notice that rates may change.**

*a. The Commission should reject the proposed tariff to avoid the impression of making a determination prior to making findings of fact.*

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<sup>13</sup> Advice No. 16-13, page 4.

<sup>14</sup> Advice No. 16-13, page 4.

Rocky Mountain Power's Advice filing will be, and already has been, disruptive to the rooftop solar market. While our evidence is primarily anecdotal at this point, we anticipate the likely impact of the Company's Schedule 135A proposal will be to create speculative and artificially high demand until December 9, followed by a dramatic decline in rooftop solar development thereafter.

It is Utah Clean Energy's experience that most customers and solar installers do not understand the distinctions between the advice filing and the compliance filing. For example, many net metering customers believe that their rates will change after December 9, 2016. Additionally, some prospective net metering customers believe that as long as their applications are submitted by December 9<sup>th</sup>, their rates (or even their systems) will be grandfathered at existing rates. The actual purpose and effect of Schedule 135A is unclear to the public. We have heard of customers hurrying to submit interconnection applications before the 9<sup>th</sup> of December (whether or not they intend to install solar in the near term). We have also heard of solar installers quitting their jobs to look for more stable markets.

Implementing Schedule 135A will undermine the neutrality of the Commission's net metering determination process by needlessly destabilizing the solar market before the substantive investigation even starts. Utah Clean Energy works to create a healthy, stable market for solar development in Utah. Understanding how the monopoly utility system works and is impacted by rooftop solar is critical in this effort, as is an understanding of utility rates and their impact on solar development. One of our primary interests in submitting comments on the Company's advice filing is to prevent rapid swings in the solar market and create a pathway for a fair and thorough examination of the costs and benefits of net metering, leading to a just and reasonable rate determination.

We anticipate that creating 135A will effectively halt development of rooftop solar projects in Utah after December 9, 2016, by establishing a presumption that rates will change before any evidence has been presented. Customers are unlikely to make the decision to install solar under such uncertain circumstances. The return on investment for a rooftop solar installation is one of the most, if not the most, significant considerations a utility customer makes when deciding to install solar. Customers with rooftop solar choose to pay for the upfront cost of a solar installation largely because they expect to pay back their initial investment through savings on their monthly utility bill. Although the cost of rooftop solar has dropped significantly, it may still take solar customers 10 years, or longer, to accrue enough savings to equal the cost of their initial investment. The anticipation of economic savings drives the decision to install solar for the majority of rooftop solar customers, and it is impossible for customers to make this critical determination without knowing if, when, or how their rates will change. Establishing and enforcing a fair and neutral process to determine just and reasonable rates for net metering customers is therefore critical for promoting market stability.

The advice filing has created further confusion and market disruption by creating an urgency to apply for net metering before December 9<sup>th</sup>. The development of a rooftop solar project can take significantly longer than 30 days, and there are many utility customers who have invested time and resources in the consideration of rooftop solar for their homes who are now left to an uncertain fate or scrambling to finish the process before December 9. For example, Utah Clean Energy is administering a community discount solar program, U Community Solar, which provides educational resources to help members of the University of Utah campus community evaluate the decision to go solar and offers attractive pricing for rooftop solar installations. Customers participating in this program may have invested significant time, energy,

interest, and resources in evaluating solar for their homes, but may find themselves unable to complete the steps necessary to submit an interconnection application by the December 9<sup>th</sup> deadline. Customers may now find themselves pressured to complete the many steps required to install solar – including performing a site visit, re-roofing their home, completing wiring or meter upgrades, or evaluating and applying for financing – on a faster than anticipated schedule in order to comply with the requirement to submit an interconnection application by December 9<sup>th</sup>.

Rather than approving Schedule 135A before beginning the examination required by Utah Code 54-15-105.1, the Commission should continue on its path for a fair and thorough net metering evaluation. Approving Schedule 135A now will improperly indicate to the public that the Commission has made a determination that new net metering customers' rates will change, prior to any findings of fact. Furthermore, based on our experience so far, we anticipate that the general public, lacking experience in regulatory proceedings, will assume that the Company's specific proposal will be adopted. Due to the confusion that already exists and the likelihood of market swings, Utah Clean Energy recommends that the Commission reject the tariff in the interest of promoting fair process and market stability while the Commission undertakes the analysis required by Utah Code 54-15-105.1 to set just and reasonable rates.

***b. Providing notice to existing and future net metering customers that rates are subject to change has already been accomplished by virtue of the Company's compliance filing and rate proposal in Docket No. 14-035-114.***

Providing notice to new net metering customers that their rates are subject to change seems to be the primary objective of Schedule 135A. In its Advice filing, the company explains that, while Schedule 135A does not change the rates or charges for new net metering customers,

it “provides clear notice that transition tariff, Schedule 135A, is subject to change once the Commission has fulfilled its duties under the Net Metering Statute.”<sup>15</sup>

There is no guarantee within Utah’s public utilities statutes that customer rates are not subject to change; rather there is a requirement that charges made, demanded, or received by a public utility are just and reasonable.<sup>16</sup> The Commission has the obligation and jurisdiction to enforce this requirement and make findings and take actions regarding rates after a hearing.<sup>17</sup> Customers must rely upon the Commission and utility regulators to make findings and set rates that are just and reasonable and consistent with the public interest.

Beyond giving the impression that net metering rates *are likely* to change (and likely to change according to the Company’s proposal), Schedule 135A does not change the duties of the Commission in upholding the public interest or setting just and reasonable rates. Therefore, the notice provided by Schedule 135A is unnecessary; furthermore, it is likely insufficient, given that an eventual grandfathering determination, discussed above, has the potential to make moot the distinction between 135 and 135A as proposed by the Company in its advice filing.<sup>18</sup>

The Company’s compliance filing, which proposes new rates for net metering customers and has already garnered much interest from solar customers, potential solar customers, and the solar installer community, has provided notice of the Company’s intention to change rates, and the Commission docket and scheduling order has provided notice of the Commission’s investigation thereof.

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<sup>15</sup> Advice No. 16-13, page 3.

<sup>16</sup> Utah Code Ann. Section 54-3-1.

<sup>17</sup> Utah Code Ann. Sections 54-4-1 and 54-4-4.

<sup>18</sup> The grandfathering issue does not necessarily moot the distinction between 135 and 135A, but it could. It is possible that in a grandfathering evaluation, both the group of customers and the date of grandfathering are at issue.

**III. Changes to net metering interconnection agreements are also premature at this point, and the Commission should likewise decline to implement the company's proposed changes.**

Consistent with the foregoing, Utah Clean Energy also requests that the Commission reject changes to the interconnection applications as proposed by Rocky Mountain Power. The changes assume that net metering customers will be subject, first, to Schedule 135A, then to an approved successor tariff, before the Commission has made any findings or conclusions pursuant to the compliance filing.

WHEREFORE, Utah Clean Energy respectfully requests that the Commission reject Rocky Mountain Power's Advice No. 16-13. Specifically, Utah Clean Energy recommends that the Commission reject the Company's proposal to close Schedule 135 to new customers, to create Schedule 135A, and to make changes to net metering interconnection applications at this time.

RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of November, 2016,

Utah Clean Energy

/s/ \_\_\_\_\_

Sophie Hayes

*Attorney for Utah Clean Energy*