



November 22, 2016

UTAH PUBLIC SERVICE COMMISSION
Heber M. Wells Building
160 East 300 South, 4th Floor
Salt Lake City, UT 84111

RE: Docket No. 16-035-T14 – In the Matter of PacifiCorp’s Revisions to Schedule 135, Net Metering Service and Proposal for New Schedule 135A, Net Metering – Transition Service

Background

Western Resource Advocates (“WRA”) appreciates the opportunity to submit comments in the above referenced matter. WRA is a regional non-profit conservation organization with programs and staff spanning the Intermountain West, including Utah. Our mission is to protect the land, air and water of our region, using law, science, economics, advocacy, education, and action. To this end, we work to improve air quality, curb climate change, and achieve environmentally sustainable management of energy, land, and water resources.

Procedural History

On November 9, 2016, PacifiCorp d/b/a Rocky Mountain Power (“the Company”) filed its Compliance Filing and Request to Complete All Analyses Required under the Net Metering Statute for the Evaluation of the Net Metering Program (“November 9, 2016 Compliance Filing”) in Docket No. 14-035-114. Also on November 9, 2016, the Company filed Advice No. 16-13, seeking revisions to Schedule 135, Net Metering Service and proposing a new Schedule 135A, Net Metering – Transition Service (“Advice No. 16-13”) in Docket No. 16-035-T14.

The November 9 Compliance Filing addresses the results of a study conducted by the Company, analyzing the costs and benefits of the Company’s Net Energy Metering (“NEM”) program, pursuant to Utah Code Ann. § 54-15-105.1 (the “NEM Statute”) and the Public Service Commission’s (“Commission”) November 10, 2015 Order (“November 10, 2015 Order”) issued in that docket. In its filing, the Company requests the Commission:

- find its Actual and Counterfactual Cost of Service Studies (“ACOS” and “CFCOS”) satisfy the requirements of the November 10, 2015 Order;
- find the costs of the NEM program under the current rate structure exceed its benefits;
- find the unique usage characteristics of NEM customers justify segregating them into a distinct class;
- determine the current rate structure for NEM customers is unjust and unreasonable;
- approve, as just and reasonable, the Company’s proposed Schedule 136, Net Metering Service, with modifications to NEM service and Schedule 5, Residential Service for Customer Generators, which includes a new three-part tariff structure; and
- approve a waiver of Utah Admin. R.746-312-13, pursuant to Utah Admin. R. 746-312-3(2) for changes to the application fee.¹

Concurrently with the November 9, 2016 Compliance Filing, the Company also filed Advice No. 16-13, which requests the Commission to close currently effective residential NEM Schedule 135 to new service and approve and implement Schedule 135A, effective December 10, 2016, on a temporary basis until the Commission issues its decision in Docket No. 14-035-114, pursuant to the requirements of the NEM Statute.² If the Commission approves the Company’s request in Advice No. 16-13, new NEM customers applying for NEM service beginning December 10, 2016 would be subject to Schedule 135A, which would essentially be the same as Schedule 135, but would put new customers on notice that their rates are subject to change, pending the outcome of the Commission’s final determination in Docket No. 14-035-114.

Comments

WRA recommends that the Commission *reject* the Company’s request in Advice No. 16-13 regarding proposed revisions to Schedule 135, Net Metering Service, and proposed new Schedule 135A, Net Metering – Transition Service (“tariff changes”). The Company’s proposed tariff changes are premature and not yet ripe for review – rather, these tariff changes are more appropriately considered as part of a general rate case. While transitional tariffs are commonly used (and approved by this Commission), particularly when the Company faces the risk of financial harm, there is no immediate risk to the Company in this instance and therefore, no need for a transitional tariff. Finally, approving these tariff changes now would immediately place the

¹ November 9, 2016 Compliance Filing at 2.

² *Id.* at 2-3.

state's solar industry and the Company's current and future NEM customers under a cloud of uncertainty, resulting in undue harm.

(1) The Company's request for these tariff changes is premature and will not be ripe for review until the preliminary legal issues in Docket No. 14-035-114 are resolved.

On November 17, 2016, the Commission held a Scheduling Conference to address the schedule for litigating the issues in the Company's November 9, 2016 Compliance Filing. At the Scheduling Conference, a number of parties raised the need for preliminary briefings to address at least one threshold legal issue – i.e., whether the Company should be required to address these types of tariff changes as part of a general rate case.³ On November 18, 2016, the Commission issued its Scheduling Order (“November 18 Scheduling Order”) in Docket No. 14-035-114, providing an extended schedule to permit interested parties adequate time to address this, and potential other threshold legal issues, and for the Commission to rule on these issues before moving forward with the remaining schedule.⁴

If the Commission ultimately determines the Company is required to address its proposed tariff changes as part of a general rate case, the Company would be required to submit an entirely new filing with a heightened evidentiary burden. For example, as part of a general rate case, the Company would be required to include supporting data and written testimony on capital structure, cost of capital, rate base, expenses, total revenue requirement, revenues, class cost of service, rate spread, rate design and service regulations. The Commission would then determine whether the Company has appropriately made the case for either a rate increase or rate decrease.

Consideration of the Company's request in Advice No. 16-13, which would approve changes to an existing schedule (Schedule 135) and approve a new temporary schedule (Schedule 135A), is premature. The validity of both schedule changes is entirely dependent on the resolution of threshold legal issues that will be considered in Docket No. 14-035-114. If the Commission resolves these threshold legal issues against the Company, the Company will likely be required

³ These parties included the Division of Public Utilities, the Office of Consumer Services, the Utah Association of Energy Users, Utah Clean Energy, Western Resource Advocates, and others. Only the Company opposed the need for an extended schedule to permit interested parties time to address threshold legal issues. The Division of Public Utilities supported the need to address threshold legal issues upfront, but remained neutral regarding the specifics of the final schedule.

⁴ In its Order, the Commission made the following finding: “[I]t is reasonable to address potentially dispositive legal issues before requiring the parties to expend significant resources preparing for hearing.” November 18 Scheduling Order at 2. Furthermore, this issue remains very much unresolved, as the Commission explicitly left open the possibility of addressing the ratemaking structure of the net metering program, “in a further phase of this docket, a general rate case, or other appropriate proceeding.” November 10, 2015 Order at 1.

to address its proposed tariff changes as part of a general rate case, thereby obviating the need for the Company's current proposed changes in Advice No. 16-13.

(2) Pursuant to Utah statute, the Company's requested tariff changes in Docket No. 14-035-114 and Advice No. 16-13 should not be addressed here, but rather as part of a general rate case.

Ultimately, whether the Company should be required to request its proposed tariff changes as part of a general rate case is an important threshold legal issue yet to be determined by the Commission in Docket No. 14-035-114. However, due to the interrelationship between the Company's requested tariff changes in both Docket No. 14-035-114 and the present docket, it is instructive to briefly address the general rate case issue here.

Utah Code Ann. § 54-7-12 governs public utility rate changes and requires public utilities in Utah to file a general rate case where the utility proposes changes to base rates that qualify as general rate increases or general rate decreases. The Company's proposed tariff changes address "base rates" – i.e., charges included in the Company's generally applicable rate tariffs.⁵ Further, because the Company's proposed tariff changes would significantly increase the fees charged to NEM customers, these changes qualify as a "general rate increase" in that they would result in a direct increase to the Company's base rates.⁶ Therefore, pursuant to Utah Code Ann. § 54-7-12, the Company should be required to make a "complete filing" at the Commission, subject to the requirements of Commission Rule 746-700.⁷

Commission Rule 746-700 establishes a number of standards and requirements necessary for a public utility to make a "complete" general rate case filing.⁸ Those requirements are not satisfied by either the Company's November 9, 2016 Compliance Filing or Advice No. 16-13. Because the Company's proposed tariff changes in its November 9, 2016 Compliance Filing and Advice No. 16-13 qualify as a general rate increase under Utah Code Ann. § 54-7-12(1)(d)(i), the Commission should require the Company to appropriately address these requested changes as part of a general rate case.

(3) While transitional tariffs are often permitted, particularly if the utility believes it faces the immediate risk of undue financial harm, there is no immediate risk to the utility in this instance and a transitional tariff is therefore unnecessary.⁹

⁵ Utah Code Ann. § 54-7-12(1)(a)(i)(B).

⁶ Utah Code Ann. § 54-7-12(1)(d)(i).

⁷ Utah Code Ann. § 54-7-12(2)(a).

⁸ Utah Admin. R. 746-700.

⁹ LOWELL E. ALT JR., ENERGY UTILITY RATE SETTING 101 (2006).

The Company claims that urgency has prompted its requested tariff changes in its November 9, 2016 Compliance Filing and in Advice No. 16-13 and offers the following arguments to support its claim of urgency:

- 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.¹⁰
- The 673 percent growth of the net metering program since 2013 mandates the Company’s request for the Commission to address the results of the cost/benefit analysis and to approve the proposed Schedule 136 and Schedule 5.¹¹
- The results of the ACOS and CFCOS studies show that current net metering customers are not covering their costs and will shift them to other customers or the Company if the current rate structure is left unchanged.¹²

By contrast, in the Direct Testimony of Joelle Steward, the Company admits that these cost shifts are not, in fact, an immediate threat to the Company or to its ratepayers: “[T]he overall magnitude of the cost shifting is relatively small now[.]”¹³ Ms. Steward’s testimony aligns with utility industry studies establishing that the effects of rooftop solar customers on utility revenues and non-rooftop solar customers are smaller at lower penetration levels.¹⁴ These studies show that cost shifts do not become a real threat to a utility until penetration levels substantially increase. In fact, a 2014 Lawrence Berkeley National Laboratory (“LBNL”) study found rooftop solar does not create negative effects on utilities’ earnings and shareholder returns until it is producing at least 2.5 percent of total retail sales.¹⁵

According to data provided by the Company and data publicly available through the Energy Information Administration (“EIA”), rooftop solar in Utah is currently at relatively low penetration levels, producing far less than 2.5 percent of total retail sales. By the end of 2016, the Company anticipates the total number of NEM customers in Utah will reach 17,000.¹⁶ The

¹⁰ November 9, 2016 Compliance Filing at 12.

¹¹ *Id.* at 13.

¹² *Id.* at 16.

¹³ November 9, 2016 Compliance Filing, Direct Testimony of Joelle R. Steward (lines 309-310).

¹⁴ FRANCISCO FLORES-ESPINO, COMPENSATION FOR DISTRIBUTED SOLAR: A SURVEY OF OPTIONS TO PRESERVE STAKEHOLDER VALUE, EXECUTIVE SUMMARY (National Renewable Energy Laboratory, 2015); ANDREW SATCHWELL, ET AL., FINANCIAL IMPACTS OF NET METERED PV ON UTILITIES AND RATEPAYERS: A SCOPING STUDY OF TWO PROTOTYPICAL UTILITIES, EXECUTIVE SUMMARY (Lawrence Berkeley National Laboratory, 2014).

¹⁵ ANDREW SATCHWELL, ET AL., FINANCIAL IMPACTS OF NET METERED PV ON UTILITIES AND RATEPAYERS: A SCOPING STUDY OF TWO PROTOTYPICAL UTILITIES, EXECUTIVE SUMMARY (Lawrence Berkeley National Laboratory, 2014).

¹⁶ November 9, 2016 Compliance Filing at 8.

Company serves 1.1 million customers in Utah, Wyoming and Idaho, with a vast majority of those customers (835,232) residing in Utah.¹⁷ Therefore, while rooftop solar in Utah is certainly on the rise, it is still at relatively low penetration levels, as the Company's NEM customers in Utah comprise only 2 percent of the Company's total customers in Utah. The Company further estimates that private NEM generation totaled 52,877 MWh annually in 2015.¹⁸ Using EIA Form 861, the Company's total retail sales in Utah in 2015 totaled 24,158,338 MWh.¹⁹ Therefore, the **energy produced by the Company's NEM customers comprises only 0.22 percent of the Company's total retail sales** – a far cry from the 2.5 percent figure cited by the LBNL study.

The above numbers show that of the total load the Company serves in Utah, the amount of production from NEM customers is very small. In fact, the Company would need at least 10 times more rooftop solar to create negative effects on its earnings and shareholder returns. With no real urgency to address cost shifting associated with NEM customers now, there is similarly no urgency for the Commission to approve the Company's Advice No. 16-13, enabling changes to the Company's current Schedule 135 and enabling a transitional Schedule 135A.

(4) Approving the Company's Advice No. 16-13 now without first resolving the threshold legal issues in Docket No. 14-035-114, would create significant uncertainty in Utah's rooftop solar market, harming the solar industry and NEM customers.

As a fundamental principle of rate design, rates should be simple, understandable and acceptable to customers, and should remain stable where possible to offer certainty to customers.²⁰ Approving the Company's Advice No. 16-13 at this time, without first resolving the threshold legal issues discussed above would create substantial uncertainty in Utah's rooftop solar industry and could result in constriction of the market for rooftop solar, job losses, higher costs of capital, and reduced investment.²¹ Additionally, abrupt changes to the manner in which rooftop solar

¹⁷ *Rocky Mountain Power Company Profile*, ROCKY MOUNTAIN POWER, <https://www.rockymountainpower.net/about/cf.html>; Jasen Lee, *Customers Could Soon Choose to Buy Solar from Rocky Mountain Power*, DESERET NEWS (Oct. 23, 2015), <http://www.deseretnews.com/article/865639783/Customers-could-soon-choose-to-buy-solar-power-from-Rocky-Mountain-Power.html?pg=all>.

¹⁸ Note that this number is provided over a 12-month period in 2015. Residential NEM only accounts for 28,304 MWh over that same time period. November 9, 2016 Compliance Filing, Direct Testimony of Robert M. Meredith (line 234).

¹⁹ Energy Information Administration Form 861, available at: <https://www.eia.gov/electricity/data/eia861/>.

²⁰ LOWELL E. ALT JR., ENERGY UTILITY RATE SETTING 82 (2006).

²¹ FRANCISCO FLORES-ESPINO, COMPENSATION FOR DISTRIBUTED SOLAR: A SURVEY OF OPTIONS TO PRESERVE STAKEHOLDER VALUE, EXECUTIVE SUMMARY (National Renewable Energy Laboratory 2015).

customers are compensated for their net energy could negatively impact the solar industry and existing rooftop solar customers.²²

Impacts like these were recently experienced in Nevada, where NV Energy, a utility owned by Berkshire Hathaway (the same company that owns Rocky Mountain Power), proposed a similar three-part rate structure for current and new NEM customers in 2015. Following the Nevada Public Service Commission's December 23, 2015 decision approving that rate structure, Nevada's solar industry essentially evaporated overnight. Several rooftop solar companies, including Sunrun, SolarCity and Vivint Solar, immediately issued press releases announcing layoffs and plans to leave the state.²³ Rooftop solar customers (both current and future) were also faced with uncertainty regarding the financial investments in their rooftop solar installations, including whether these installations can still be paid off in a reasonable period of time under the new rate structure. Perhaps more importantly, these same customers were left with uncertainty regarding how the new rate structure would impact their monthly utility bill and whether they would continue to realize savings.²⁴ The NEM battle in Nevada is still ongoing, after nearly a year of legal challenges and an attempted (but failed) referendum – all designed to clarify NEM policies and to offer some measure of certainty and protection to the state's solar industry and to NV Energy's rooftop solar customers.

This Commission should heed the lessons from Nevada and other states where regulatory uncertainty has negatively impacted customers and the solar industry. If the Commission were to approve the Company's Advice No. 16-13 now, without first resolving the threshold legal issues critical in Docket No. 14-035-114, the solar industry in Utah will be awash in uncertainty. This uncertainty will impact the solar industry, as well as current and future NEM customers in the state. If the Commission were to approve Advice No. 16-13 now, we may presume that current NEM customers would remain on Schedule 135 and be "grandfathered" in under any new NEM rate structure.²⁵ However, the legality of "grandfathering" utility rates in Utah remains uncertain

²² *Id.*

²³ Dan Hernandez, *Nevada Solar Industry Collapses after State Lets Power Company Raise Fees*, THE GUARDIAN, (Jan. 13, 2016), <https://www.theguardian.com/environment/2016/jan/13/solar-panel-energy-power-company-nevada>.

²⁴ Part of this uncertainty stems from the Commission's original decision to *not* grandfather existing NEM customers and then its later decision in February 2016 to transition rooftop solar customers to the new rate plan over a period of 12 years. Julia Pyper, *Nevada Supreme Court Blocks Rooftop Solar Referendum*, GREENTECH MEDIA (Aug. 8, 2016), <https://www.greentechmedia.com/articles/read/nevada-supreme-court-blocks-rooftop-solar-referendum>.

²⁵ Company Witness Gary W. Hoogeveen states the following in his pre-filed Direct Testimony: "The Company supports keeping the current net metering customers on the existing net metering program and their current rate schedule." November 9, 2016 Compliance Filing, Direct Testimony of Gary W. Hoogeveen (lines 224-225).

and must therefore be resolved in Docket No. 14-035-114.²⁶ New NEM customers will similarly face uncertainty as they are placed on Schedule 135A – a temporary tariff that may or may not substantially change their rates, depending on the Commission’s final determination in Docket No. 14-035-114.

Why would a potential NEM customer in Utah choose to invest in rooftop solar under a tariff structure that is so uncertain? Schedule 135A offers no clarity as to how the rooftop solar investment would be repaid over time or the impact upon a customer’s monthly utility bill. Such profound uncertainty creates an environment that is hostile, at best, to the Utah solar industry and to current and future rooftop solar customers. It also contravenes that critical principle of good rate design – i.e., that rates should be simple, understandable and acceptable to customers, and should remain stable where possible to offer certainty.

Conclusion

Due to the threshold legal issues that remain unresolved in Docket No. 14-035-114 and the interrelationship between those issues and the Company’s request in the present docket, WRA recommends the Commission *reject* the Company’s request in Advice No. 16-13 regarding proposed revisions to Schedule 135, Net Metering Service, and proposed new Schedule 135A, Net Metering – Transition Service. Advice No. 16-13 is not ripe for review until the Commission first determines whether the Company is required to file its requested tariff changes as part of a general rate case, a determination that will ultimately be made in Docket No. 14-035-114. To approve Advice No. 16-13 now, when there is no immediate financial threat to the Company, is not only premature, but creates significant uncertainty for both Utah’s solar industry and its customers, and violates an important principle of good rate design, causing undue harm to the Company’s ratepayers.

²⁶ Specifically, Utah Code Ann. § 54-3-8 prevents a public utility from implementing rates that create a preference or advantage to any person or that subject any person to any prejudice or disadvantage. It also prohibits a public utility from establishing or maintaining any unreasonable difference as to rates, charges, or service between classes of service. It is unclear whether Utah Code Ann. § 54-3-8 would prohibit the Company from keeping current NEM customers on Schedule 135 while moving new NEM customers to Schedule 135A, and eventually, Schedule 136 and Schedule 5. This threshold legal issue, and others, must still be resolved under Docket No. 14-035-114.

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