Jennifer Gardner (#15503)
Western Resource Advocates
150 South 600 East, Suite 2A
Salt Lake City UT 84102
801-413-7355
jennifer.gardner@westernresources.org

Attorney for Western Resource Advocates

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE INVESTIGATION OF THE COSTS AND BENEFITS OF PACIFICORP'S NET METERING PROGRAM	Docket No. 14-035-114 **RESPONSE OF WESTERN RESOURCE ADVOCATES TO OPPOSITION OF ROCKY MOUNTAIN POWER TO MOTIONS TO DISMISS**

TABLE OF CONTENTS

INTRODUCTION

Pursuant to Rule 12(b)(6) of the Utah Rules of Civil Procedure, incorporated by reference by Utah Admin. Code R746-100-1(C), Utah Admin. Code R746-100-3, and the Utah Public Service Commission's ("Commission") November 18, 2016 Scheduling Order, Western Resource Advocates ("WRA") hereby submits its Response to the Opposition of Rocky Mountain Power to Motions to Dismiss and for Summary Judgment ("Opposition Motion"), filed on January 12, 2017 by PacifiCorp dba Rocky Mountain Power ("the Company"). On December 20, 2016, WRA and a number of other interested parties (collectively, "Intervenors") filed dispositive motions in the present matter. The background and arguments set forth in WRA's Motion to Dismiss are incorporated by reference herein. This brief does not respond to issues that WRA believes were adequately discussed in the Motion to Dismiss, and further, WRA intends no waiver of those issues by not expressly reiterating them herein.

The Company's November 2016 Compliance Filing ("Compliance Filing") is not consistent with the scope of the Commission's November 2015 Order ("Order") in that it seeks to establish a new rate class and to implement a new rate design for net metering ("NEM") customers. In so doing, it seeks a general rate increase without satisfying the requirements for a complete general rate case filing under Utah Code Ann. § 54-7-12 and Commission Rule 746-700. Further, it does not qualify for any exception to the general rate case filing requirements under Utah Code Ann. § 54-7-12 and Commission Rule 746-700. As such, it fails to state a claim upon which relief can be granted and the Commission should therefore dismiss the Compliance Filing and order the Company to make a complete general rate case filing, consistent with Utah law.

In support of this Response, WRA alleges and represents as follows:

ARGUMENT

I. The Company's Compliance Filing Fails to Comply with the Commission's Order in this Proceeding.

As a general rule, compliance filings are limited in scope to executing the specific requirements of a Commission order. In *New Hampshire Elec. Coop., Inc.,* the state regulatory commission determined with regard to a utility's compliance filing, "the scope of [the] case was narrow, and *limited* to whether the filing was *consistent* with the orders of the Commission" (emphasis added).[1] As Intervenors have shown, the Company's Compliance Filing is not limited in scope to the Commission's directive in its November 2015 Order. Rather, the Company's so-called compliance filing is inconsistent with the Commission's Order and should be dismissed.[2]

The Commission is charged by the Utah State Legislature with implementing the requirements of Utah Code Ann. § 54-15-105.1 ("the NEM Statute"). The NEM Statute requires two stages of analysis by the Commission:

- 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 ("Subsection One"); and

[1] *New Hampshire Elec. Coop., Inc.*, 83 N.H. P.U.C. 465, 1998 WL 1120358 (N.H.P.U.C.) at *1; *see also, Tucson Electric Power Co.*, 91 FERC P 61158 (F.E.R.C.), 2000 WL 641222 at *2 (rejecting Tucson Electric's compliance filing for not being appropriately limited in scope to the revisions the Commission required the company to make to its load ratio methodology); *see also,* Motion to Dismiss or in the Alternative Motion for Summary Judgment of Utah Solar Energy Association, pgs. 3-11.

[2] *See, e.g.,* Motion to Dismiss of Sunrun and Energy Freedom Coalition of America ("EFCA"), pgs. 5-7; Motion to Dismiss or in the Alternative Motion for Summary Judgment of the Utah Solar Energy Association, pgs. 3-11; Motion to Dismiss of Vivint Solar, Inc., pgs. 3-5; Motion to Dismiss of Utah Clean Energy, pgs. 5-8; Motion to Dismiss or in the Alternative Motion for Order to Show Cause of the Office of Consumer Services, pgs. 3-4; and Motion for Partial Summary Judgment of the Division of Public Utilities, pgs. 3-9.

- Determine a just and reasonable charge, credit, or ratemaking structure, including new or existing tariffs, in light of the costs and benefits ("Subsection Two").[3]

In interpreting the legislature's directive in the NEM Statute, this Commission has consistently stated that it will proceed progressively, in steps: (1) first, establish the appropriate analytical framework under Subsection One; (2) second, examine the costs and benefits of the Company's NEM Program under Subsection One; and (3) third, make a determination regarding potential rate changes for the NEM program under Subsection Two.[4]

Taking into account this thoughtful and deliberately progressive approach, the Commission's 2015 Order intentionally made no requests of the Company under Subsection Two. While the Commission acknowledged the results of these studies would *later* be used to establish the rate structure for the NEM Program under Subsection Two, at no time did it order the Company to develop and propose a new rate structure. Rather, it simply required the Company to provide results from both an actual cost of service ("ACOS") study and a counterfactual cost of service ("CFCOS") study, with the following characteristics:

- A breakdown of costs at the system, state and customer class level;
- For the ACOS, two analyses of cost of service, one with NEM customers included in their existing class, and another with NEM customers segregated from their existing class; and
- A study period commensurate with the test period in the Company's next general rate case.[5]

[3] *See,* Utah Code Ann. §§ 54-15-105.1(1) & (2).
[4] *See,* July 2015 Order, 2015 WL 4155503 (Utah P.S.C.), 323 P.U.R.4th 261 at *6 ("The Commission's statutory obligation under [Subsection] 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 [Subsection] Two."); *see also,* November 2015 Order, 2015 WL 7348852 (Utah P.S.C.), 325 P.U.R.4th 453 at *1; *see also,* Notice of Sch. Conf., 2014 WL 6713287 (Utah P.S.C.) at *1-2; *see also,* 2014 General Rate Case Order, 2014 WL 4385636 (Utah P.S.C.) at *36 ("In other words, we interpret Utah Code Ann. § 54-15-105.1 as directing a determination under [S]ubsection [One] before the determination under [S]ubsection [Two] is made.")
[5] *See,* November 2015 Order, pgs. 15-16; *see also,* Opposition Motion at pg. 14.

The Company claims its overly broad Compliance Filing is "efficient."[6] But, in fact, the Compliance Filing is a blatant disregard for the explicit requirements of this Commission's Order. To say nothing of the shortcomings with the studies themselves, the Compliance Filing as a whole goes far and beyond the scope of the Commission's Order.[7] Specifically, it asks the Commission to not only approve the results of the Company's ACOS and CFCOS studies under Subsection One without proper vetting, but also to establish an entirely new rate class for residential NEM customers and to implement a new three-part rate design for these customers under Subsection Two.[8] The Company's Compliance Filing is not narrowly tailored to comply with this Commission's Order. Instead, the Compliance Filing completely disregards this Commission's Orders establishing a thoughtful, progressive approach for addressing the NEM Statute. Therefore, the Compliance Filing should be dismissed.

II. The Company's Compliance Filing Proposes to Increase Base Rates Outside of a General Rate Case in Violation of the Regulatory Principles Prohibiting Single-Issue Ratemaking and Retroactive Ratemaking.

Ratemaking generally has five functions: (1) capital attraction; (2) reasonably priced energy; (3) efficiency incentive; (4) demand control or consumer rationing; and (5) income transfer.[9] These five goals, while at times in conflict, attempt to serve the several interests of the utility, its shareholders, consumers, and the public generally.[10] As this Commission has acknowledged, ratemaking is a "dynamic process" that "must respond appropriately as the

[6] *See*, Compliance Filing at pg. 2.
[7] For example, as noted by other intervening parties, these studies fail to use the appropriate test period from the Company's next general rate case as required by the Order. *See, e.g.*, Motion to Dismiss of Sunrun and EFCA, pgs. 5-7; Motion to Dismiss of Vivint Solar, Inc., pgs. 3-5; Motion to Dismiss of Utah Clean Energy, pgs. 6-8; and Motion to Dismiss or in the Alternative Motion for Order to Show Cause of the Office of Consumer Services, pg. 3.
[8] The importance of properly vetting these studies has previously been acknowledged by this Commission: "Parties advocating for the inclusion of any particular costs will bear the burden of establishing it will increase the utility's cost of service, and parties seeking to include any particular benefit will bear the burden of demonstrating it will decrease the utility's cost of service." July 2015 Order, 2015 WL 4155503 (Utah P.S.C.), 323 P.U.R.4th 261 at *9.
[9] J. BONBRIGHT, A. DANIELSON & D. KAMERSCHEN, PRINCIPLES OF PUBLIC UTILITY RATES (2ND ED. 1988).
[10] *Id.*

demands customers place on the utility system change."[11] It logically follows that the Commission cannot approve new rate structures without first understanding the nature of the proposed rate changes. [12]

Evaluating a new proposed rate requires a full evidentiary record, in order to afford the Commission an opportunity to weigh the aims and impacts of a proposed rate and assess whether that rate is just and reasonable. This State's highest court has acknowledged the importance of appropriate ratemaking processes and procedures and the need to avoid both single-issue and retroactive ratemaking (except in very limited circumstances where the expense is "unforeseeable and extraordinary," such as in the case of a natural disaster, or where explicit statutory exceptions exist[13]):

> The basic approach in rate-making is to take a test year and determine the revenues, expenses, and investment for the test year. The test period results are adjusted to allow for reasonably anticipated changes in revenues, expenses or other conditions in order that the test-period results of operation will be as nearly representative of future conditions as possible. ***The commission may adjust all figures, revenue, expense, and investment for anticipated changes, but it may not adjust one side or part of the equation without adjusting the other; unless there is a finding that particular expense is extraordinary.*** There is no basis for adjusting a test year figure in the absence of finding the increased revenues expected in the future will not be sufficient to offset the investment and other increased investment and expenses. (emphasis added).[14]

[11] 2014 General Rate Case Order at *42.
[12] *See*, Utah Code Ann. § 54-7-12 (setting forth the definitions for "base rates, "general rate increase" and "complete filing"); *see also*, Commission Rule 446-700 (establishing the filing requirements necessary for a public utility to make a "complete filing" necessary for a general rate case).
[13] *See, e.g.*, Utah Code Ann. § 54-7-13.5(4)(c)("An energy balancing account or gas balancing account that is formed and maintained in accordance with this section does not constitute impermissible retroactive or single-issue ratemaking.")
[14] *Utah Dep't. of Bus. Reg. v. Pub. Svc. Comm'n*, 614 P.2d 1242, 1248 (UT 1980) (hereinafter "*Wage Case*").

A. The Company's Compliance Filing seeks to increase base rates outside of a general rate case and is an attempt at impermissible single-issue ratemaking, in violation of Utah Code Ann. § 54-7-12 and Commission Rule 746-700.

The Company's new tariff structure proposed in this docket will increase rates that it charges to certain classes of customers. A "general rate increase" is defined in Utah's general rate case statute (Utah Code Ann. § 54-7-12 or "GRC Statute") as "(i) any direct increase to a public utility's base rates; or (ii) any modification of a classification, contract, practice, or rule that increases a public utility's base rates."[15] A "base rate" includes "those charges included in a public utility's generally applicable rate tariffs, including … a rate… a toll … [or] any other charge generally applicable to a public utility's rate tariffs."[16] Irrefutably, Schedule 135 and the rates that apply to the Company's NEM customers are *generally applicable rate tariffs*.

The Company acknowledges that its proposed new rate structure for NEM customers will *increase rates* for NEM customers and result in higher revenues for the Company.[17] As such, it is required by law to make a *complete filing* necessary for a general rate case at the Commission.[18] Commission Rule 746-700 establishes the filing requirements for a public utility to make a complete filing necessary for a general rate case. The Company's Compliance Filing does not meet the extensive requirements found in Commission Rule 746-700. While styled as a Compliance Filing, the Company is improperly seeking to increase its base rates outside of a general rate case, in violation of the GRC Statute and Commission Rule 746-700 and the well-established regulatory prohibition against single-issue ratemaking.

[15] Utah Code Ann. § 54-7-12(1)(d).
[16] Utah Code Ann. § 54-7-12(1)(a)(i).
[17] *See*, Direct Testimony of Joelle R. Steward, lines 718-721; *see also*, Compliance Filing Exhibit RMP_(JRS-7)(Steward).
[18] "A public utility that files for a general rate increase or decrease shall file a complete filing with the commission setting forth the proposed rate increase or decrease." Utah Code Ann. § 54-7-12(2)(a).

The Company's Opposition Motion notes that the Commission has previously authorized changes to its NEM Program outside of a general rate case and should therefore do so in the present case.[19] The Company is correct that this Commission has previously made changes to the Company's NEM Program outside of a general rate case.[20] For example, in Docket No. 08-035-T04, the Commission approved a series of revisions to Schedule 135 proposed in part to reflect modifications to the NEM Statute resulting from the 2008 enactment of SB 84.[21] The approved revisions included: (1) an increase in the capacity limits for nonresidential net metering customers from 25 kW to two MW; (2) allowing net metering facilities to be controlled by either an inverter or switchgear; (3) an increase in the capacity limit for the net metering program from 3,516 kW to 4,615 kW; (4) revision and expansion of the definition of a renewable generating facility; (5) a change to the expiration date of unused credits from the end of the calendar year to March of each year; and (6) revised applicability of Schedule 135 from "any customer that owns or operates a fuel cell or renewable generating facility" to "any customer that owns or leases a customer-operated renewable generating facility."[22]

In relying on this previous action by the Commission, the Company fails to recognize that these prior changes were relatively minor and did not seek to establish an entirely new rate structure or an entirely new rate class for NEM customers. In contrast, the Company is proposing to establish a new rate structure and new rate class in this proceeding. Because these prior changes did not qualify as a *general rate increase* under Utah Code Ann. § 54-7-12(1)(d), the Commission appropriately authorized them outside of a general rate case. As a result, the

[19] *See*, Opposition Motion at pgs. 17, 22.
[20] *See, e.g., Id.* at 20.
[21] *See*, 2014 General Rate Case Order at *35; *see also, In the Matter of the Approval of Rocky Mountain Power's Tariff P.S.C.U. No. 47, Re: Schedule 135 - Net Metering Service*, Docket No. 08-035-T04 (Order Approving Tariff With Certain Conditions; June 13, 2008); (Tariff Approval Letter; August 13, 2008).
[22] *Id.*

Company's reliance on these previous Commission actions is unwarranted and should be disregarded.

B. The Company's argument it is exempt from the generate rate case filing requirement is unfounded.

The Company claims that it is exempted from filing a general rate case in the present matter for two reasons: (1) its NEM Program qualifies as a "public utility program offering," and (2) it is proposing deferred accounting treatment for its new NEM rates.[23] The Company errs in both arguments. The Company's NEM Program does not qualify as a utility program offering exception to a general rate case filing and the Company's proposed use of deferred accounting is an example of prohibited retroactive ratemaking.

i. The Company's NEM Program does not qualify as a "public utility program offering."

The Company is correct that the state's general rate case statute does not mandate a general rate case for routine changes made to "public utility program offerings."[24] However, both in its Compliance Filing and Opposition Motion, the Company assumes that its NEM Program qualifies as a utility program offering simply because it includes the word "program" in its title. This is simplistic and erroneous.

The GRC Statute provides no explicit definition for a public utility program offering. However, the Company's NEM program is readily distinguishable from other established public utility program offerings, which may be routinely changed outside of a general rate case. As an example, it is useful to compare the Company's NEM Program with its Demand Side Management ("DSM") Program.

[23] *See*, Utah Code Ann. § 54-7-12(1)(a)(ii)(A), (F); *see also*, Opposition Motion at pgs. 22-25.
[24] *See*, Utah Code Ann. § 54-7-12(1)(a)(ii)(F); *see also*, Opposition Motion at pgs. 22-23.

The Company's DSM Program is an example of a public utility program offering that is exempt from the requirement to file a general rate case. This is evident from the Commission's routine treatment of substantial changes to the DSM program outside of general rate cases. As the Commission noted in 2009:

> We are interested in streamlining the DSM review and approval processes to ensure adequate yet timely review of new programs and program changes. Further, ***we adopted a tariff rider for cost recovery of DSM program expenses in 2003, effectively removing review of DSM costs and benefits in general rate cases***, putting greater emphasis on the program approval and revision process. (emphasis added). [25]

And, more recently, in 2015:

> ***[W]ith the approval of the DSM tariff rider stipulation, DSM costs are removed from the revenue requirement in a general rate case*** and '[t]herefore we now rely primarily on the cost-effectiveness analysis contained in [PacifiCorp's] application for DSM program and tariff approval, which is prior to program implementation, and any comments received by other parties at that time, to determine prudence and approval of cost recovery.' (emphasis added).[26]

The Company's DSM Program (and its DSM cost adjustment) are not included in base rates. Instead, they are thoroughly examined in program and tariff approval and review processes, rather than as part of general rate cases.[27] In contrast to the DSM Program, the Company's NEM Program does not include a tariff rider or similar mechanism enabling the Company to routinely recover program-related costs outside of a general rate case. Further, simply because the Commission has authorized minor changes to the NEM program outside of a general rate case in the past does not mean that the Company's present proposal to change rates

[25] *Re: Utah Demand Side Resource Program*, 2009 WL 5852838 (Utah P.S.C.), Docket No. 09-035-27, Oct. 7, 2009, pg. 8.
[26] *In the Matter of the Request for a Home Energy Report Pilot Program*, 2015 WL 195806 (Utah P.S.C.), Docket No. 12-035-77, Jan. 8, 2015, pg. 4.
[27] *Re: Utah Demand Side Resource Program*, 2009 WL 5852838 (Utah P.S.C.), Docket No. 09-035-27, Oct. 7, 2009, pg. 8.

outside of a general rate case is valid and permissible.[28] Rather, because NEM customers are included in the revenue requirement established in the last general rate case, the GRC Statute *requires* the Company to file a general rate case in order to make changes to these customers' rates.[29]

Therefore, the Company's claim that its NEM Program, like its DSM Program, qualifies as a public utility program offering exception to a general rate case filing under § 54-7-12(1)(a)(ii)(F) is in error.

ii. The Company's proposal does not qualify as a "deferred accounting" exception to a general rate case filing pursuant to § 54-7-12(1)(a)(ii)(A).

Deferred accounting is the practice of allowing recovery of a cost item, that is both *unforeseen* and *extraordinary*, or that provides a future net benefit for ratepayers, in a rate case through amortization.[30] In theory, these costs are kept in a separate account until the next general rate case at which time those costs are included in the revenue requirement.[31] In the present case, the Company appears to propose a form of deferred accounting for the sole purpose of avoiding the general rate case filing requirements of the GRC Statute and Commission Rule 746-700. Specifically, the Company proposes to defer an amount equal to the difference between current rates and the new rates in Schedule 5.[32] If a customer switches to Schedule 5, the Company proposes to defer any additional revenue the Company is paid over what would have been paid under the previously existing NEM Program.[33] The Company proposes to use deferred

[28] *See*, discussion *supra* pgs. 6-8.
[29] As noted by the Commission's 2014 GRC Order: "We cannot determine from the record in this proceeding that [NEM customers are] distinguishable on a cost of service basis from the general body of residential customers." *See*, 2014 General Rate Case Order at *42; *see also* 2014 General Rate Case Order at *7 (referring to the attached Settlement Stipulation, ¶¶ 18, 20 & 22 and Exhibit C, pg. 8).
[30] LOWELL E. ALT JR., ENERGY UTILITY RATE SETTING 127 (2006).
[31] *Id.*
[32] *See*, Direct Testimony of Joelle R. Steward, lines 95-97; 707-730 ("Moreover, even if aspects of the deferred account still need to be fleshed out, the fact remains that the Company has offered and is willing to defer any increased revenues[.]")
[33] Opposition Motion, pg. 24.

accounting, while acknowledging that the details of its proposed deferred accounting treatment still "need to be fleshed out." [34]

The Company's proposed use of deferred accounting is merely theoretical at this stage. More importantly, its deferred accounting proposal is invalid and cannot qualify as an exception to the GRC Statute. Deferred accounting is generally viewed as a form of retroactive ratemaking in that it identifies specific expenses for future recovery that were not considered when rates were originally set. The Utah Supreme Court discourages retroactive ratemaking:

> ***To provide utilities with some incentive to operate efficiently, they are generally not permitted to adjust their rates retroactively*** to compensate for unanticipated costs or unrealized revenues. This process places both the utility and the consumers at risk that the rate-making procedures have not accurately predicted costs and revenues. (Emphasis added).[35]

While deferred accounting has been deemed appropriate in very limited cases where expenses are unforeseen and extraordinary,[36] the expenses tied to the Company's NEM Program are neither unforeseen nor extraordinary. The Company has had NEM customers on its system for *15 years*. During that time, federal, state, and Company policies have incented NEM program growth – the Company acknowledges as much in its pre-filed direct testimony.[37] The Company's claim today that this exponential growth was unforeseen is disingenuous.

Further, ***the energy produced by the Company's NEM customers comprises only 0.22 percent of the company's total retail sales.*** The Company's claim of harm from an extraordinary change in circumstances is simply not supported by fact.[38] Indeed, it is well

---

[34] *Id.*
[35] *Wage Case*, 720 P.2d 420 (Utah 1986).
[36] *See, e.g., MCI Telecom. Corp. v. Utah Pub. Serv. Comm'n*, 840 P.2d 765, 771-772 (Utah 1992) (noting that an exception to the rule against retroactive ratemaking exists where future rates can be influenced by "unforeseeable and extraordinary" changes in expenses or revenues, including natural disasters).
[37] *See*, November 9, 2016 Compliance Filing at 8; *see also*, Direct Testimony of Gary Hoogeveen, lines 278-288; *see also*, Direct Testimony of Joelle R. Steward, lines 117-131.
[38] *See*, WRA Comments at 4-6, Docket No. 16-035-T14 (Nov. 22, 2016).

established that the effects of rooftop solar customers on utility revenues and non-rooftop solar customers are smaller at lower penetration levels.[39] Company witness Joelle Steward affirms this in her pre-filed direct testimony: "[T]he overall magnitude of the cost shifting is relatively small now."[40] Ms. Steward's admission is not taken out of context, as the Company suggests in its Opposition Motion, but in fact aligns with the reality that present impacts to the Company from NEM customers are relatively minor.

Finally, there is no statutory exemption that justifies use of deferred accounting for NEM-related expenses.[41] The Company cannot propose to use a form of impermissible retroactive ratemaking simply to shortcut the robust evidentiary process required of Utah's GRC Statute.[42] That evidentiary burden exists for a reason – to establish a vigorous process for developing and setting fair and reasonable rates. If the Company wishes to address issues of net metering rate design, the only appropriate avenue is through a complete general rate case filing at the Commission.

III. Other Factors Germane to the Company's Operations Support Undertaking a General Rate Case.

As discussed above, the Company's net metering tariff proposal must be considered through a general rate case. Requiring a general rate case will also serve the interests of judicial

[39] *See, e.g.,* 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) (finding that 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).
[40] *See*, Direct Testimony of Joelle R. Steward, lines 309-310.
[41] *See, e.g.,* Utah Code Ann. § 54-7-13.5(4)(c), which sets forth a statutory exception for the Company's Energy Balancing Account, permitting retroactive ratemaking in this limited circumstance.
[42] As this state's highest court has noted: "The rule against retroactive rate-making was not intended to permit a utility to subvert the integrity of rate-making proceedings. The rule against retroactive rate-making was designed to ensure the integrity of the rate-making process[.]" *See, MCI Telecommunications Corp. v. Public Serv. Comm'n of Utah*, 840 P.2d 765, 775 (Utah 1992) (citing *Southwest Gas Corp. v. Public Serv. Comm'n*, 86 Nev. 662, 474 P.2d 379, 383 (1970)).

efficiency, as there are a number of other components of the Company's existing operations that warrant review in a general rate case.

A. The Company is overearning with less risk.

As noted in the Motion to Dismiss filed by Sunrun and Energy Freedom Coalition of America, the Company is overearning both with regard to its authorized return on equity ("ROE") and its authorized rate of return ("ROR").[43] The Company's authorized ROE for Utah was last set at 9.80 percent in August 2014 in Docket No. 13-035-184. The Company is currently earning in excess of that return in its Utah operations (specifically, 11.195 percent ROE on an unadjusted basis and 10.044 percent ROE on an adjusted basis).[44] Similarly, with regard to its ROR, the Company is authorized to earn 7.531 percent, but the Company is actually earning in excess of that (specifically, an ROR of 7.656 percent on an adjusted basis and an ROR of 8.244 percent on an unadjusted basis).[45]

While at first blush these differences may seem minimal, they are in fact significant when one views them in light of basis points. A basis point is generally defined as a unit of measurement to describe the *percentage* change in the value or rate of a particular financial instrument. In short, the fact that the Company is currently overearning by 24 basis points on its ROE and 12.5 basis points on its ROR ***translates to nearly $8 million in earnings over and beyond what the Commission has previously approved for the Company***.[46]

Additionally, the Company's Energy Balancing Account ("EBA") has been changed in a manner that substantially reduces the Company's risk profile.[47] The EBA was designed to

[43] *See*, Motion to Dismiss of Sunrun and EFCA, pgs. 14-17.
[44] *See, e.g.*, PacifiCorp's Results of Operations Reports: 2016, Docket No. 16-035-15; 2015, Docket No. 15-035-51; 2014, Docket No. 14-035-36.
[45] *See*, Motion to Dismiss of Sunrun and EFCA, pg. 16.
[46] *Id.*
[47] For a more detailed discussion of the history of the EBA, *see*, WRA Motion to Dismiss at pgs. 14-16.

balance the risk associated with net power costs, employing a 70-30 percentage risk sharing band. However, as a result of Senate Bill 115 (the Sustainable Transportation and Energy Plan, or "STEP"), the EBA's risk sharing band was removed.[48] The 70-30 risk sharing band mechanism was essential to the Commission's conclusion that risks could be fairly allocated and that the Company would have a meaningful financial incentive to minimize its net power costs. Because of these changes, ***the EBA now shifts all risk of fluctuating power and fuel costs from shareholders onto customers.*** As a result, the Company is overearning in the context of reduced risk for cost recovery. The Company does not deny this fact in its Opposition Motion.

Rather, in its Opposition Motion, the Company raises public policy concerns regarding pulling it into a rate case "based solely on a small variance between authorized rate of return and reported rate of return."[49] The Company's argument misses the mark. First, the fact that the Company is overearning by nearly $8 million is not a "small variance." Second, the fact that the Company is overearning *and* faces less risk are but two factors supporting the need for a general rate case. None of the intervening parties argue that these factors *alone* justify a general rate case. Rather, they are factors *in addition to* the Company's proposed rate changes for NEM customers that signal the need for a general rate case at this time. Intervenors' consideration of multiple factors aligns with precedent established by the *Wage Case*, where the Utah Supreme Court held that ratemaking is an all-inclusive process designed to determine just and reasonable rates. [50] Rates cannot be just and reasonable unless they are "supported by substantial evidence

[48] STEP, enacted in 2016, modifies Utah Code § 54-7-13.5 to remove the risk sharing band originally included in the EBA: "Beginning January 1, 2017, the commission shall allow an electrical corporation to recover 100% of the electrical corporation's prudently incurred costs as determined and approved by the commission under this section." Utah Code Ann. § 54-7-13.5(2)(d).
[49] *See*, Opposition Motion at pg. 35.
[50] *Wage Case*, 614 P.2d 1242 (UT 1980).

concerning *every significant element in the ratemaking components* (expense or investment) which is claimed by the applicant as the basis to justify a rate adjustment." (emphasis added).[51]

B. The Company's Net Power Costs are outdated and must be reset.

In its Opposition Motion, the Company does not counter WRA's assertion that the Company's net power costs are outdated and must be reset. WRA will not repeat that argument here, but notes the Company's historical base period and test year are out of date, and further, that the Company's participation in the Energy Imbalance Market ("EIM") has resulted in benefits to the Company in the form of reduced net power costs totaling nearly $65 million.[52] A rate case will not only set new base net power costs, but should further a more thorough understanding of the determination of net power costs in the context of PacifiCorp's participation in the EIM.

CONCLUSION

WHEREFORE, WRA respectfully requests that the Commission grant its Motion to Dismiss the Company's Compliance Filing and affirm that a general rate case is the only appropriate proceeding to seek the Company's proposed net metering rate changes.

This request for relief is warranted because: (1) the Company's Compliance Filing impermissibly seeks to increase base rates outside of a general rate case proceeding in violation of Utah's GRC Statute; and (2) because the Company is overearning with less risk *and* its net power costs are outdated and must be reset, there is ample evidence to support undertaking a general rate case at this time.

[51] *Id.* at 1250.
[52] For a more detailed discussion of needed adjustments to the Company's base net power costs, *see*, WRA Motion to Dismiss, pgs. 16-17.

Dated this 26th day of January 2017.

Respectfully submitted,

WESTERN RESOURCE ADVOCATES

_____

Jennifer E. Gardner (#15503)
Western Resource Advocates
150 South 600 East, Suite 2A
Salt Lake City UT 84102
801-413-7355
jennifer.gardner@westernresources.org