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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** **MOTION TO DISMISS OF WESTERN RESOURCE ADVOCATES**

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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), and the Utah Public Service Commission's ("Commission") November 18, 2016 Scheduling Order and Notices of Hearing and Public Witness Hearing ("November 18, 2016 Scheduling Order"), Western Resource Advocates ("WRA") hereby moves to dismiss the November 9, 2016 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") filed with Utah Public Service Commission by PacifiCorp dba Rocky Mountain Power ("the Company").

The Company's November 9, 2016 Compliance Filing requests a general rate increase but does not satisfy 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 as an exception to 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 November 9, 2016 Compliance Filing and order the Company to make a complete general rate case filing.

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

BACKGROUND

Rocky Mountain Power is a division of PacifiCorp doing business in Utah and is a public utility subject to the jurisdiction of this Commission.

WRA is a non-profit conservation organization dedicated to protecting the land, air and water of the West. WRA's Clean Energy Program develops and implements policies to reduce the environmental impacts of the electric power industry in the Interior West by advocating for a western electric system that provides affordable and reliable energy, reduces economic risks, and

protects the environment through the expanded use of energy efficiency, renewable energy resources, and other clean energy technologies. WRA has a Utah office, Utah representation on its board of directors, and supporters and donors who live in Utah and are PacifiCorp/Rocky Mountain Power ratepayers. WRA has participated in electric utility proceedings for over 20 years and has been granted intervenor status in multiple Utah Commission dockets. WRA intervened in this proceeding on December 6, 2016.

In Utah Code Ann. § 54-15-105.1 ("Net Metering or NEM Statute"), the Utah State Legislature required the Commission to:

> (1) 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; and
> (2) determine a just and reasonable charge, credit, or ratemaking structure, including new or existing tariffs, in light of the costs and benefits.

In its November 10, 2015 Order in this docket, the Commission refers to § 54-15-105.1(1) as "Subsection One" and § 54-15-105.1(2) as "Subsection Two."

On August 29, 2014, the Commission opened the present docket, Docket No. 14-035-114, to examine the costs and benefits of the Company's NEM program under Subsection One. In November 2014, the Commission explained the "necessity of conducting the Subsection One analysis in steps," noting that in the next step, it would establish the appropriate analytical framework "for making the required determinations."[1] The Commission further explained "[i]n a further phase of this docket, a general rate case or other appropriate proceeding, [we] will examine the costs and benefits that result from applying data to the approved analytical

[1] Docket No. 14-035-114, Notices of Comment Period and Scheduling Conference, at 2 (Utah P.S.C. November 21, 2014).

framework."[2]

On July 1, 2015, the Commission ruled that: (1) Subsection One of the NEM State is independent of Subsection Two; (2) the Commission will consider only the costs and benefits to current customers in their capacity as ratepayers; and (3) the Commission would not consider "costs and benefits that are either unquantifiable or not subject to reasonable verification.[3]

In its November 10, 2015 Order, the Commission noted the following: "We will consider issues related to how net metering customers should be credited or compensated for their excess energy when we take up the NEM Statute's rate setting implications under Subsection Two.[4]

The November 10, 2015 Order required the Company to file the following with the Commission, in compliance with Subsection One:

> (1) A comparison of two separate cost of service studies to determine the costs and benefits of the NEM program;
> (2) One study that creates a counterfactual scenario that assumes away the existence of NEM customers' power generation, meaning the Company must meet NEM customers' full load and these customers push no energy back to the grid – this is the "CFCOS" study; and
> (3) A second study that reflects the Company's actual cost of service inclusive of NEM customers' participation. Under this scenario, the Company meets only NEM customers' "net load" (i.e., NEM customers' total consumption less the amount they self-generate) and the model includes the excess energy NEM customers push back to the grid – this is the "ACOS" study.[5]

On November 9, 2016, the Company filed its Compliance Filing in the present docket.

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[2] Docket No. 14-035-114, Notices of Comment Period and Scheduling Conference, at 2 (Utah P.S.C. November 21, 2014).
[3] November 10, 2015 Order at 17-18.
[4] *Id.* at 9.
[5] The Commission also required both the CFCOS and ACOS studies to reflect costs at the system, state, and customer class level. It further required the period of time covered by each of the cost of service studies to be commensurate with the test period in PacifiCorp's next general rate case. November 10, 2015 Order at 16.

The Company presented results from the ACOS, CFCOS and NEM Breakout COS, using calendar year 2015 load and production data collected from the Company's load research study.[6]

The November 9, 2016 Compliance filing addresses the results of studies conducted by the Company, analyzing the costs and benefits of the Company's NEM Program, pursuant to the requirements of the NEM Statute and the Commission's November 10, 2015 Order. In its filing, the Company requests the Commission:

(1) find that its ACOS and CFCOS studies satisfy the requirements of the November 10, 2015 Order;
(2) find that the costs of the NEM program under the current rate structure exceed its benefits;
(3) find that the unique usage characteristics of NEM customers justify segregating them into a distinct class;
(4) determine that the current rate structure for NEM customers is unjust and unreasonable;
(5) 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 (collectively, "tariff changes"); and
(6) 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.[7]

Concurrent with the November 9 Compliance Filing, the Company also 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. Advice No. 16-13 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 the present docket,

[6] November 9, 2016 Compliance Filing at 3.
[7] *Id.*

pursuant to the requirements of the NEM Statute. [8]

Were the Commission to approve 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 the present docket.

On November 18, 2016, the Commission issued its Scheduling Order in the present docket, providing for an extended schedule to permit interested parties adequate time to address threshold legal issues, and for the Commission to rule on these issues before moving forward with the remaining schedule.[9] The Commission established December 20, 2016 as the deadline for dispositive motions; January 12, 2017 as the deadline for responses; and January 26, 2017 as the deadline for replies in support of dispositive motions.[10]

On November 22, 2016, a number of parties ("Intervenors") filed comments in Docket No. 16-035-T14, requesting the Commission either suspend or reject the Company's request in Advice No. 16-13.[11] Intervenors argued that Schedule 135A is premature and dependent on the Commission's determination in the present docket; that implementation of Schedule 135A will predetermine or indicate the Commission is predisposed on certain aspects of the Compliance Filing in the present docket; that the tariff changes requested in Schedule 135A (and the rate changes requested as part of the present docket) should be made as part of a general rate case;

[8] November 9, 2016 Compliance Filing at 2-3.
[9] 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, 2016 Scheduling Order at 2.
[10] *Id.* at 2-3.
[11] Formal comments were filed by the Division of Public Utilities ("Division"), the Office of Consumer Services ("OCS"), Salt Lake City Corporation, the University of Utah ("U of U"), Sunrun and Energy Freedom Coalition of America ("EFCA"), Utah Citizens Advocating Renewable Energy ("UCARE"), Utah Clean Energy ("UCE"), Utah Solar Energy Association ("USEA"), Vivint Solar ("Vivint"), and Western Resource Advocates.

and finally, that approving Schedule 135A in this manner would result in an immediate chilling effect on Utah's solar industry.[12]

On December 9, 2016, the Company filed a letter recommending the Commission suspend its requested tariff changes in Advice No. 16-13, pursuant to Utah Code Ann. § 54-7-12(5) & (6) while the Company and various stakeholders sought mutually acceptable resolutions.

Also on December 9, 2016, the Commission entered its Order Suspending Advice No. 16-13 ("December 9, 2016 Order"), indicating that the Commission will suspend the filing and await notification from the Company regarding whether "a stipulation is reached or if the attempt to resolve this matter becomes unfruitful." The Commission clarified that its December 9, 2016 Order does not modify the schedule in the present docket.

STANDARD OF REVIEW

The Utah Rules of Civil Procedure apply in this proceeding. R746-100-1(c). A complaint, petition, or request for relief shall be dismissed where it fails to state a claim upon which relief may be granted. Utah R. Civ. P. 12(b)(6). In ruling on a motion to dismiss for failure to state a claim, the Commission construes the complaint in the light most favorable to the complainant and indulges all reasonable inferences in its favor.[13]

ARGUMENT

I. The Issues Raised by the Company are More Appropriately Considered in a General Rate Case

The Company's Compliance Filing goes beyond the Commission's requested Subsection

[12] *See, e.g.*, Division Comments at 1, 4-5; OCS comments at 2-3; EFCA Comments at 1-6; UCARE comments at 1; U of U Comments at 2-3; UCE Comments at 4-6; USEA Comments at 1-2; Vivint Comments at 3-4, 5, 7-8; WRA Comments at 3-4, 6-8.
[13] *Cf. Mounteer v. Utah Power & Light Co.*, 823 P.2d 1055, 1058 (Utah 1991).

One analysis and seeks to implement a new tariff structure for future NEM customers. The Company's proposal significantly modifies NEM service for future customers by including a new three-part tariff structure that purports to reflect the costs and benefits that NEM customers impose on and contribute to the Company's system.[14] The new three-part rate structure, calculated based on the Company's 2015 test period and the 2014 general rate case requirement, will include a fixed monthly charge, a demand charge, and an energy charge.[15] The practical effect of these changes is to establish prices for future NEM service that, when multiplied by the related test period billing units, aids the Company in recovering its revenue requirement for each rate schedule.[16] The Company acknowledges that its proposed new rate structure for NEM customers will increase rates and result in higher revenues for the Company.[17]

These issues are more appropriately considered in a general rate case, for two reasons. First, the Company's filing constitutes a request for a *general rate increase* under Utah Code Ann. § 54-7-12(1)(d), and, as a result, the Company is required to make a complete filing necessary for a general rate case at the Commission. Second, as other western states have recognized, net metering policy considerations are, more broadly, issues of rate design and therefore are appropriately addressed in general rate cases.

A. The Company's Filing is Inconsistent with Utah Law

The Company's new tariff structure proposed in this docket will increase rates that it charges to certain classes of customers – as such, it qualifies as an increase to *base rates*.[18]

[14] November 9, 2016 Compliance Filing at 2.
[15] *Id.* at 4, 12.
[16] LOWELL E. ALT JR., ENERGY UTILITY RATE SETTING 81 (2006).
[17] *See*, Direct Testimony of Joelle R. Steward, lines 718-721; Compliance Filing Exhibit RMP_(JRS-7)(Steward).
[18] *See, In the Matter of the Application of Carbon/Emery Telecom, Inc. for an Increase in Utah Universal Service Fund Support*, Order on Motion to Vacate Hearing Dates, Docket No. 15-2302-02, 2015 WL 5769666 (Utah P.S.C.) (concluding that Carbon's request did not fall under the definition of a general rate case because Carbon had not proposed to change any rate it charges to a customer).

Under Utah Code Ann. § 54-7-12(1)(a)(i)(B), the Company is requesting a *general rate increase* as defined by Utah Code Ann. § 54-7-12(1)(d). As a result, the Company is required by law to make a *complete filing* necessary for a general rate case at the Commission: "A public utility that files for a general rate increase or general rate decrease shall file a complete filing with the commission setting forth the proposed rate increase or decrease."[19] Commission Rule 746-700 establishes the filing requirements necessary for a public utility to make a "complete showing" necessary for a general rate case.

Because the Company's requested tariff changes amount to a general rate increase under Utah Code Ann. § 54-7-12, the Company's Compliance Filing should be dismissed and the Commission should order the Company to make these requested changes as part of a general rate case, subject to the filing requirements of Commission Rule 746-700. The Company argues it is exempt from this requirement to make a "complete filing" because it proposes to create a deferred account for any differences in revenue. This argument must be rejected.

Utah Code Ann. § 54-7-12 provides an exception to the requirement that public utilities make a "complete filing" at the Commission to justify a general rate increase or general rate decrease. Specifically, § 54-7-12(1)(a)(ii)(A) establishes that the definition of "base rates" does not include a "deferred account," unless otherwise established by a Commission order.

The Company claims that its Compliance Filing will not result in increased revenues outside of a general rate case and states it is willing to defer any difference in revenues between current rates and the new rates for Schedule 5 by making a proposal for amortization of the deferral balance in its next general rate case.[20] Essentially, the Company is arguing that it should not be required to propose these significant rate changes as part of a general rate case because it

[19] Utah Code Ann. § 54-7-12(2)(a).
[20] Direct Testimony of Joelle R. Steward, lines 95-99; 725-729.

will use a deferred accounting methodology to postpone the realization of benefits from these increased rates.

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 an amortization.[21] These costs would be kept in a separate account until the next general rate case at which time the costs would be included in the revenue requirement.[22]

Deferred accounting is also a form of both single-item and retroactive ratemaking. By definition, it identifies specific expenses for future recovery that were not considered when rates were set. Deferred accounting establishes a vehicle for recovering isolated past expenses in future rates, without considering countervailing cost or revenue items from the same time period.[23]

Regulatory commissions recognize these concerns and therefore discourage using selective items to either increase or decrease rates. As noted by the New Mexico Public Service Commission:

> It would be completely unfair to ratepayers to allow a utility to selectively pick a few expense items, which may have increased over what had previously been allowed in rates, to justify a rate increase. The end result, after having reviewing the utility's cost of service study, may indicate that just and reasonable rates are something less than what the increases in the selective items would otherwise indicate. *Unless a complete picture is presented, the Commission cannot possibly fulfill its duty to determine just and reasonable rates.* (Emphasis added).[24]

Utah similarly discourages retroactive and single-item ratemaking. In *Utah Department*

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[21] LOWELL E. ALT JR., ENERGY UTILITY RATE SETTING 127 (2006).
[22] *Id.*
[23] *See*, Kevin Higgins Testimony, Utah Public Service Commission, Docket Nos. 07-035-04, 06-035-163, 07-035-145, pp. 7-8.
[24] *Re: Gas Co. of New Mexico*, Case No. 2361, 1992 WL 503187 (N.M.P.S.C.).

of Business Regulation v. Public Service Commission of Utah, the Utah Supreme Court noted the following:

> *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).[25]

This state's highest court and the Utah Public Service Commission have both noted limited exceptions to the general rules against retroactive and single-item ratemaking. In *MCI Telecommunications Corporation v. Utah Public Service Commission,* the Utah Supreme Court concluded 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.[26] Additionally, the Commission has found that balancing accounts can qualify as an exception. Utah's Energy Balancing Account statute explicitly states that a balancing account formed and maintained in accordance with its provisions "does not constitute retroactive ratemaking or single-issue ratemaking."[27]

However, because the Company's proposed use of deferred accounting does not satisfy the definition of an EBA (i.e., a "mechanism to recover energy-related costs and revenues" outside of a rate case) and similarly, does not satisfy the requirements of the state's Energy

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[25] *Utah Dep't of Business Regulation v. Public Serv. Comm'n,* 720 P.2d 420 (Utah 1986).

[26] Specifically, the Utah Supreme Court has held that the rule against single-item or retroactive ratemaking is a sound ratemaking principle, but that it only applies to missteps in the rate-making process. "It does not apply where justice and equity require the adjustments be made for unforeseen windfalls or disasters not caused by the utility." *MCI Telecommunications Corp. v. Public Service Commission*, 840 P.2d 765, 771-772 (Utah 1992).

[27] *See, In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism,* Docket No. 09-035-15 2011 WL 836438 (Utah P.S.C.) at *8, *vacated in part by In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations,* Docket Nos. 10-035-124, 09-035-15, 10-035-14, 11-035-46, and 11-035-47, 2011 WL 4430828 (Utah P.S.C.), 292 P.U.R. 4th 1 at *1 (where the Commission modified its previous order by allowing certain prudent financial swap transactions to be included in the EBA per the terms of the Settlement Stipulation); *see also,* Utah Code Ann. § 54-7-13.5(4)(c).

Balancing Account statute, it cannot qualify as a balancing account exception to the rule against retroactive and single-item ratemaking.[28]

Similarly, the Company's proposal cannot be justified as an unforeseen or extraordinary cost item necessary for a deferred accounting exception. Since 2002, the Company has had NEM customers on its system. [29] Exponential growth in the number of NEM customers cannot be said to be *unforeseen* when both state and federal policies incented such development – the Company acknowledges as much in its pre-filed testimony.[30] Furthermore, despite the Company's claim of harm due to the exponential growth of NEM customers on its system, when considering the energy produced by the Company's NEM customers comprises only 0.22 percent of the Company's total retail sales, no justifiable claim can be made that the Company's change in circumstances is *extraordinary.*[31]

The Company's proposal constitutes an impermissible request for single-issue rate making, in contravention of Utah statute and principles of rate design. As a result, the Company's Compliance Filing should be dismissed. If the Company wishes to address issues of net metering rates, it must do so through a general rate case.

B. NEM Policy is, Fundamentally, an Issue of Rate Design

As states across the West have recognized, NEM policy is fundamentally an issue of rate design and is thus best addressed in a general rate case. This jurisdiction is not the first to

[28] *See*, "The energy balancing account must pertain to some or all components of the Company's incurred actual power costs, including a) fuel, b) purchase power, and c) wheeling expenses; as well as the sum of the foregoing costs less wholesale revenues." *Id;* Utah Code Ann. § 54-7-13.5(1)(b).
[29] The Company's NEM program developed from a Commission order in Docket No. 97-035-01 and then legislation. L. Utah 2002, Ch. 6. *See also*, Docket No. 02-035-T05, Tariff Approval Letter (Utah P.S.C. June 24, 2002).
[30] *See*, November 9, 2016 Compliance Filing at 8; Direct Testimony of Gary Hoogeveen, lines 278-288; Direct Testimony of Joelle R. Steward, lines 117-131.
[31] *See*, WRA Comments at 4-6, Docket No. 16-035-T14 (November 22, 2016). *See also*, Direct Testimony of Joelle R. Steward, lines 309-310: "[T]he overall magnitude of the cost shifting is relatively small now."

address purported cost shifts attributable to NEM customers. In 2013, Arizona Public Service filed its Application for Approval of Net Metering Cost Shift Solution. Staff counsel to the Arizona Corporation Commission in Decision No. 74202 noted that:

> (1) Development of equitable rate structures that address the inherent disconnect between [NEM] and volumetric rates can be accomplished in a general rate case[.][32]
> (2) The NEM cross-subsidy issue has explicit public policy considerations, and therefore would be most appropriately addressed in the setting of a general rate case[.][33]
> (3) Any cost-shift issued created by [NEM] is fundamentally a matter of rate design. The appropriate time for designing rates that equitably allocate the costs and benefits of [NEM] is during a general rate case. Data on all utility costs are available within a rate case. In addition, the Commission has more options available within a rate case than it has outside of a rate case.[34]

The Commission then concluded that:

> *[A]ddressing the net metering cost shift issue would benefit from a detailed analysis of the costs and benefits of distributed generation systems, and therefore, it is in the public interest to consider these matters further in Arizona Public Service Company's next general rate case.* (Emphasis added).[35]

Likewise, in Colorado, net metering rate design issues have been addressed in the context of a general rate case.[36] This Commission should follow the example set forth by the Arizona Corporation Commission and other neighboring western states, and address changes to rates for NEM customers in the Company's next general rate case.

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[32] *In the Matter of the Application of Arizona Public Service Company's Application for Approval of Net Metering Cost Shift Solution*, Docket No. E-01345A-13-0248, Decision No. 74702 2014 WL 4257841 (Ariz.C.C.) Findings of Fact at ¶ 32.
[33] *Id.* at ¶ 33.
[34] *Id.* at ¶ 52.
[35] *Id.* at Conclusions of Law, ¶ 3.
[36] *See*, Colorado Public Utilities Commission, Proceeding No. 16AL-0048E.

II. Other Factors Support Undertaking a General Rate Case

Even setting aside net metering policy, there are other elements of the Company's existing operations that support undertaking a general rate case at this time.

A. The Company is Overearning with Less Risk

On March 3, 2011, the Commission issued its Corrected Report and Order ("EBA Order") approving a four-year Energy Balancing Account ("EBA") pilot program for the Company. The Company initially sought to establish an EBA due to the Company's perceived variability of net power costs ("NPC") and the need to recover those costs.[37] In essence, the EBA is a ratemaking technique used to adjust rates outside of a general rate case by recovering the differences between Actual NPC and wheeling revenues and Base NPC and wheeling revenues in rates.[38]

The EBA initially included a 70-30 percentage sharing ("risk sharing band") to equitably spread risks associated with fluctuating power and fuel costs between the Company's shareholders and ratepayers.[39] The Commission stated:

> *We find this design component provides an appropriate sharing of risk for the pilot period … especially given the difficulty in identifying controllable and uncontrollable components of net power costs.* Currently, when using forecasted net power costs to set rates, both customers and shareholders face 100 percent of the risk that actual costs will differ detrimentally and substantially from forecasted costs. This is a zero sum game, where all benefits flow to one group (customers or shareholders) at the expense of the other. *A balancing account designed to include the 70-30 sharing component described above for the approved net power costs will dampen this risk and improve the*

[37] *Re: Rocky Mountain Power,* Docket No. 09-035-15, 2012 WL 2511555 (Utah P.S.C.) at *6.
[38] *See, In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism,* Docket No. 09-035-15 2011 WL 836438 (Utah P.S.C.) at *6; Utah Code Ann. § 54-7-13.5(4)(c); *see also,* Modification Testimony of Michael G. Wilding, Docket No. 09-035-15, lines 45-46.
[39] *See*, In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism, Docket No. 09-035-15 2011 WL 836438 (Utah P.S.C.) at *70; Utah Code Ann. § 54-7-13.5(4)(c).

fairness of outcome for both customers and shareholders. (Emphasis added).[40]

The EBA pilot program was originally scheduled to sunset December 31, 2015. However, the Commission-approved settlement stipulation in Docket No. 13-035-184 extended the EBA pilot by one year – to December 31, 2016. Subsequently, the Commission approved revisions to tariff Schedule 94 that further extended the EBA pilot to December 31, 2019, to be consistent with recently passed legislation.[41] This legislation removed the risk sharing band originally included in the EBA before the expiration of the pilot program.[42] As a result, going forward, the EBA now shifts *all* risk of fluctuating power and fuel costs from shareholders onto customers.

The 70-30 sharing mechanism was essential to the Commission's conclusion that risks could be fairly allocated, and the Company would have a meaningful financial incentive to minimize net power costs.[43] The enactment of SB 115 affects the Commission's underlying analysis for concluding the EBA is in the public interest. Additionally, because of the removal of the risk sharing band, the Company is overearning in the context of reduced risk for cost recovery. Return is tied to risk. Because the Company is bearing less risk, it should earn a lower rate of return. These changed circumstances support evaluating the Company's authorized rate of

[40] *See, In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism,* Docket No. 09-035-15 2011 WL 836438 (Utah P.S.C.) at *70; Utah Code Ann. § 54-7-13.5(4)(c).
[41] Senate Bill 115, the "Sustainable Transportation and Energy Plan," or "STEP," modifies Utah Code § 54-7-13.5. Specifically, STEP removed the EBA's existing risk sharing band: "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).
[42] The STEP pilot was to conclude on December 31, 2016. Before the conclusion of the pilot, the Company sponsored the STEP legislation and through its passage, effectively removed the risk sharing band without due process at the Commission. As the Commission noted in its March 2, 2011 Order, it had planned to "review this level of sharing at the conclusion of the pilot period to determine whether it continues to be reasonable." *See, In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism,* Docket No. 09-035-15 2011 WL 836438 (Utah P.S.C.) at *70.
[43] *See, Id.,* at *67-70.

return on rate base as part of a general rate case.

B. The Company's Base Net Power Costs are Outdated and Must be Reset

Fuel costs generally comprise the majority of operating expenses for electric utilities.[44] The determination of a utility's "reasonable" cost of fuel therefore substantially affects the final revenue requirement that can be recovered from ratepayers.[45] Base NPC were last set for the Company in Docket No. 13-035-184 using a July 2014 through June 2015 forecast test year, based upon a July 2012 through June 2013 historical base period. Both the historical base period and test year are out of date. With the passage of time, the NPC baseline used for the subsequent EBA adjustments becomes increasingly out of date and needs periodic refreshing through a general rate case. Both the historical base period and test year are out of date. More significantly, since Base NPC were last set, the determination of the Company's NPC has shifted in a more fundamental manner, furthering the need to reset Base NPC.

The Company began participating in the California Independent System Operator's ("CAISO") Energy Imbalance Market ("EIM") on November 1, 2014.[46] The EIM uses CAISO's real-time energy market dispatch software to dispatch least-cost resources every five minutes taking into account actual transmission availability. Participating entities secure adequate capacity to meet their expected loads ahead of each hour. Within the hour, the CAISO's security-constrained economic dispatch algorithm produces a reliable, least-cost dispatch solution to meet the aggregated load and the pooled wind and solar output of the participating entities every five minutes.

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[44] Marc E. Lewis, Remarks at Proceedings of the 12th Annual Institute, Chapter 8: "The Authority of Regulatory Commissions to Review Coal Supply Agreements," Eastern Mineral Law Foundation, 12 E. Min. L. Found. §8.06 (June 20-22, 1991).
[45] *Id.*
[46] The Company began operations in the EIM in October. These operations became financially binding on November 1, 2014. CAISO, Western EIM Benefits Report, Q3 2016 at 3 (Oct. 26, 2016).

The Company's participation in the EIM lowers PacifiCorp's net power costs in two important ways. First, it improves the efficient dispatch of resources within the Company's Balancing Authority Area ("BAA"), known as intra-BAA efficiency. Second, it improves the efficient dispatch of resources between BAAs, known as inter-BAA efficiency. CAISO estimates benefits to the Company in reduced net power costs over the two-year period it has participated in the EIM approximate $67.4 million.[47] With the addition of new participants, the quarterly benefits are expected to grow.[48]

However, it is unclear whether these benefits are being passed through to customers. The Commission conducted a Technical Conference on December 12, 2016 "to allow interested parties an opportunity to gain better understanding of PacifiCorp's participation in the California Independent System Operator Energy Imbalance Market."[49] While the technical conference provided parties some information, a better understanding of the interplay between net power costs and the EIM is needed. A rate case will not only set new Base NPC, but should further a more thorough understanding of the determination of net power costs in the context of PacifiCorp's participation in the EIM.

C. The Company is Considering Other Rate Design Changes

In Docket No. 16-035-36, the Company is requesting Commission approval to implement a number of programs authorized by the STEP legislation.[50] One such program is an electric

[47] CAISO, Western EIM Benefits Report, Q3 2016 at 3 (Oct. 26, 2016).
[48] PacifiCorp and the CAISO were the initial EIM participants. However, since Fall 2014, three additional utilities have joined the market. NV Energy began participating in 2015, and Puget Sound Energy and Arizona Public Service in 2016. Portland General Electric will join in 2017. Idaho Power will join in 2018 and Seattle City Light in 2019. Other entities officially exploring future entry include the Los Angeles Department of Water and Power, the Sacramento Municipal Utility District, the Balancing Authority of Northern California, and Centro Nacional de Control Baja (Baja, Mexico).
[49] *In the Matter of the Application of Rocky Mountain Power for Approval of the 2016 Energy Balancing Account,* Docket No. 16-035-01, 2016 WL 6565827 (Utah P.S.C.) at *1.
[50] Utah Code Ann. § 54-20-101, et seq., also known as Senate Bill 115 – the Sustainable Transportation and Energy Plan Act ("STEP"), was signed into law on March 29, 2016.

vehicle ("EV") incentive pilot program, pursuant to Utah Code Ann. § 54-20-103, and approval of a new tariff Schedule 120.[51] Utah Code Ann. § 54-7-12.8(1)(b) requires the Company's EV pilot program to include "time of use pricing for electric vehicle charging."

A general rate case is the best forum in which to consider new TOU rates, as it allows for the full consideration of the revenue effects that accompany the creation of a new rate schedule.[52] In fact, this Commission has an established practice of implementing TOU rates during rate cases.[53] Additionally, TOU pricing for EV customers qualifies as a change to *base rates* pursuant to Utah Code Ann. § 54-7-12(1)(a)(i)(B). It is unclear at this early stage whether this change to base rates will qualify as a *general rate increase* or *general rate decrease* pursuant to Utah Code Ann. §§ 54-7-12(1)(c) & (d).[54] Regardless of how this rate change is ultimately classified, because it will change base rates, the Company should be required to make a *complete filing* necessary for a general rate case at the Commission.[55]

CONCLUSION

WHEREFORE, based on the foregoing, WRA respectfully requests that the Commission grant this 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.

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[51] *In the Matter of the Application of Rocky Mountain Power to Implement Programs Authorized by the Sustainable Transportation and Energy Plan Act*, Docket No. 16-035-36, 2016 WL 4943471 (Utah P.S.C.) at *3.
[52] *See e.g.,* Direct Testimony of Kevin C. Higgins, On Behalf of The Kroger Co., dba Fred Meyer and Smith's, Case No. IPC-E-03-13. Lines 19-21 (Feb. 20, 2004).
[53] *See e.g., In the Matter of the Application of PacifiCorp for Approval of its Proposed Electric Service Schedules and Electric Service Regulations*, Docket No. 03-2035-02, 2004 WL 233145 (Utah P.S.C.), 230 P.U.R.4th 193, at *9.
[54] The Company is currently considering a number of possible rate structures, including: (1) Option 1: a simple modification to the Company's current TOU rate (Schedule 2), which would be revenue neutral; (2) Option 2: the same as Option 1, except that tier blocks are removed, resulting in an energy charge that is the same for all levels of usage; (3) Option 3: a cost-based TOU rate design in which the tier blocks are eliminated, where the basic charge reflects the cost for transformers, services, meters, retail and misc., and the off-peak energy charge reflects the cost for energy-related production and transmission; and (4) Option 4: the same as Option 3, except the remainder of the costs are in an on-peak demand charge. Rocky Mountain Power, Utah Electric Vehicle "Straw Proposal," EV Workshop, November 10, 2016.
[55] Utah Code Ann. § 54-7-12(2)(a); Commission Rule 746-700.

This request for relief is warranted because the Company's Compliance Filing: (1) impermissibly seeks to increase base rates outside of a general rate case proceeding; and (2) other factors germane to the Company's current operations support undertaking a general rate case at this time (e.g., the Company is presently overearning with less risk, the Company's net power costs have decreased, and the Company is currently considering other rate design changes).

Respectfully submitted this 20th day of December 2016.

Respectfully submitted,

WESTERN RESOURCE ADVOCATES

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