



State of Utah

DEPARTMENT OF COMMERCE
Committee of Consumer Services

To: The Public Service Commission of Utah

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Date: December 23, 2008

Subject: Advice No. 08-10 Schedule 114 – Air-Conditioner Direct Load Control Program (A/C-DLC) (Cool Keeper Program).

Background

On November 26, 2008, Rocky Mountain Power (RMP or Company) filed proposed tariff sheets. The purpose of the filing is to request modifications to Schedule 114 – Air-Conditioner Direct Load Control Program (Cool Keeper Program). The operating characteristics and the payment scheme of the Program would remain intact. One additional option would be added to the Program and certain enrollment procedures would be changed. The proposed modifications are intended to retain customers and increase participation rates. The Committee provides its analysis and recommendations below.

Proposed Changes to Current Tariff

New Option for Small Commercial Customers

The Company proposes to add an option that would allow qualifying small commercial customers to receive a Digital Programmable Setback Direct Load Control Thermostat (Thermostat). Customers electing to receive the Thermostat would not qualify for the incentive payments offered under this Program.

New Opt Out Provision

Customer participation in the Program remains voluntary but with two significant changes:
1) Participants that relocate within the Control Signal Area and have a qualifying AC will

continue enrollment in the Program; 2) Non-participants that move into premises with an existing control device will be automatically enrolled in the Program if they have not opted out. Customers have the ability to opt out of participation within four weeks of a “Welcome to the Neighborhood” letter being mailed to the premises.¹ Beyond the four week opt-out period customers may discontinue participation at any time.

Discussion

Value of Program

The Committee has been, and continues to be, supportive of the Cool Keeper Program. It is our view that this Program offers benefits to all RMP customers by allowing the Company to reduce load in times of energy shortfalls or extremely high prices and to more efficiently use the existing electrical infrastructure. It appears to be one of the least cost programs as currently designed.

We recognize that opportunities are lost when DLC devices are attached to non-participant ACs and when participants relocate and do not re-enroll in the Program. Retaining and increasing the number of participants are laudable goals and we encourage the Company in that effort. However, the Committee does not generally favor opt-out provisions as they are difficult to manage in such a manner that consumer protections are maintained. Without strict compliance with disclosure and documentation rules and the consumer’s written acknowledgment, negative option plans in any contract, marketing plan, arrangement or agreement between a supplier and a consumer are presumed to be deceptive (see Utah Administrative Rule R152-11-12). The Committee is particularly concerned with the use of negative options in an agreement for service from a monopoly electric utility. The nature and continuity of a consumer’s utility service should never be subject to change because the consumer does not act.

Our specific concerns with the opt-out proposal the Company has proposed includes the adequacy and focus of customer communications, the partial change from a customer agreement to one binding on the premises, the potential mis-alignment of incentives resulting from use of sub-contractors, and the potential negative consequences of the opt-out provision.

Customer Communication

Rocky Mountain Power proposes to provide a “Welcome to the Neighborhood” letter to relocating participants and to non-participants moving into locations equipped with DLC units. Relocating participants will be informed that they are still enrolled in the Program and if there is currently a DLC device on the AC at the new location participation will continue uninterrupted. If the new residence does not have a DLC device one will be installed. Non-participant customers who relocate to a residence with an existing DLC device will be notified of its existence and provided with specific information about the

¹ The current Program includes an opt-out provision for multi-family homes. The Committee is uncertain as to when this change was made and if there has been any positive or negative feedback from customers.

Program. Enrollment in the Program will be automatic unless the customer chooses to opt out. Both relocating participants and non-participants will have four weeks from the time the “Welcome to the Neighborhood” letter is mailed to opt out of the Program. Although customers will be “enrolled” at the end of the four week opt-out period, all customers retain the right to opt out of the Program at any time.

The Committee has several concerns about the adequacy of this communication. It is unrealistic to believe that written communication at the time of a customer's relocation could be effective. Customers are likely to believe that their electric service is secured (by their phone call establishing it and the evidence of electrical connection in the home) and are not likely to focus on what may appear to be mass communication from the utility at a time when they are likely to be burdened by much paperwork and administrative details. Also, the timing by which a customer must act is troubling. It isn't clear when the four week timing begins (at the time the letter is sent or received) nor is it clear that even the most alert customer would have time to act within that time period.²

Partial Change Away from a Customer Agreement

RMP's proposed tariff changes are also concerning because they change the character of electric service from a customer agreement to one binding upon the premises regardless of who the customer is. Added language suggests that once a participant at a rental or owner occupied residence agrees to add a Cool Keeper fixture, the application of a negative option commits the premises to participating. The new occupant or owner would have to (1) realize that the fixture is attached and (2) understand that they may opt out, and both within a short time period. A customer's knowledge of the electric service agreement and right to determine terms of the agreement is left to chance. There will be no accompanying changes requiring notification of new owners or new renters at the time of sale or rental of the existence of the program at the premise.

Potential Mis-alignment of Incentives for Subcontractors

The Committee is concerned that all factors leading to the customer attrition in the Cool Keeper program have not been adequately examined. For example, RMP's program is administered by a third party. We believe that more attention could be paid to ensure that the incentives for that vendor are aligned with ensuring maximum benefits of the program for the system as a whole.

² Page 3 of the Advice letter accompanying the revised tariff sheets indicates that the opt-out period will begin on the day the Company sends (from New Jersey) the welcome kit to the customer. The Company's response to CCS DR 2.5 (c) indicates that “The four weeks allows customers ample time to receive the letter, seek more information if desired, and “opt out” should they elect not to participate in the program.” However, the Company's response to CCS DR 1.3(a) referring to existing customers states, “Upon receipt of the enrollment continuation kit, customers have four weeks in which to “opt out” if they elect not to continue their program participation”.

Potential Negative Consequences

As indicated earlier, the Committee supports efforts to retain current participants and increase enrollment in the Program. However, the opt-out provision, particularly without precise and adequate communication with customers, may have the opposite effect.

We believe that there will be any number of customers who, through their unwitting failure to opt out, will be enrolled or continue as participants in the Program without being aware. We are concerned that this could have a detrimental effect and harm Program expansion rather than enhance it.

If, as a result of a Company event, a customer notices that his AC does not seem to be performing as efficiently (cooling) as on previous days a technician may be called to service the AC not realizing that this is a function of the Cool Keeper Program. This could potentially cost the customer hundreds of dollars for an unnecessary service call.

The Committee has already heard from concerned citizens that have a certain distrust of the Program based on their view of how the Program operates.³ This gives us greater concern if the Company is removed from direct communication with the customer via opt-out provisions communicated solely by the third party vendors. Additionally, some customers have indicated they have been told that the warranty on their air conditioner will be voided if it is “tampered” with by adding the DLC unit.⁴ This would be especially concerning if the customer did not pro-actively enroll in the Program.

When asked why they do not participate in the Program one fairly common answer is that customers do not want to give control of their AC to the utility. If that choice is taken from them without adequate and careful communication there could be a negative backlash against the Program spreading through word of mouth and even resulting in bad press.

Proposed Remedy

The Committee's goal is for the Commission to approve a program that provides maximum benefits to customers in general while maintaining protections for individual customers. The Committee recommends that the best way to protect consumers is for the Commission to deny the request to implement an opt-out provision. Instead, the Company should be required to first address this serious problem of customer attrition in the Cool Keeper program through less draconian measures such as direct communication with these customers. For example, we would suggest that the Company could use similar information as proposed for the “Welcome to the Neighborhood” letter but rather than requiring customers to opt out they could be targeted to opt in through a mail in card and telephone number to have enrollment re-instated for existing participants or started for customers moving in to homes with DLC units.

3 One customer reported that he was told to go ahead and sign up and then just turn his thermostat down a couple of degrees to make up for the change in temperature when the DLC unit was operating.

4 The Committee's information is anecdotal and we can neither confirm nor refute that this would be the case.

The Committee believes that all reasonable options should be explored before authorizing a DSM program with a requirement to opt out in order to not participate. Perhaps the benefits of participation can be emphasized. Although the financial incentive for individual customers is not great some customers are willing to pay a premium to participate in programs they view as environmentally beneficial as evidenced by the Blue Sky Program. Perhaps the Company and the vendor should try placing more emphasis on the environmental and societal benefits that result from participation in the Cool Keeper Program, as well as better targeting relocating participants and non-participants that move into a location where a DLC unit is already in place.

However, if the Commission chooses to accept the Company's opt out proposal for the Cool Keeper tariff the customer notification process needs to be completely rewritten with the Committee's assistance to comply with Utah consumer law and with RMP's obligation as a public utility. The proposal to handle communication regarding the enrollment procedures only through a mailing does not offer customers adequate notification of their responsibility, nor time to respond should they choose to opt out. Considering the amount of activity involved with moving to a new residence the Committee believes that it is unreasonable to require customers to receive, open, and review the "Welcome to the Neighborhood" letter and, if desired, opt out of the Program within four weeks of its mailing.

Very clear, straightforward communication is required with each affected customer to provide consumer protections. The Company can not be released from its responsibility in this regard. We believe that this can be accomplished without much additional expense. Customers participating in the Program are known, as are the addresses of prior participants where in-active DLC units are in place. When a participating customer calls to shut off electrical service or restart service at a new residence the customer service representative should inform that customer that his status as a participant in the Program continues. Similarly, when a non-participant customer requests electrical service at a residence where a DLC unit is in place the customer service representative should inform him of the existence of the device, his potential enrollment in the Program, and refer the customer to sources of additional information about Program benefits and the opt out procedure.

Having this communication take place at the time of change of service and between the customer and a Company representative rather than a third party provides significant additional value. Of utmost importance, it informs the customer at a time when the customer's attention is specifically directed toward his own electric service. Also, it allows the Company to provide its message directly to the customer and removes potentially misaligned incentives that could be in place with a third party vendor.

Recommendations

The Committee recommends that the Commission:

- 1) Deny the Company's request to implement an opt-out provision; and
- 2) Require the Company to provide more targeted information to participants

who relocate and to non-participants that move into a residence with a DLC unit.

However, if the Commission approves the opt-out provision the Committee recommends:

- 1) The Company be required to put additional efforts into developing the communication associated with this program and report back to the Commission before commencing. The changes should include a requirement that the Company itself communicate directly with the affected customers regarding their participation in the Program. Communication should not be left to the third party provider.