

adequacy and focus of customer communications, 2) The partial change from a customer agreement to one binding on the premises, 3) The potential mis-alignment of incentives resulting from use of sub-contractors, and 4) The potential negative consequences of the opt-out provision. In addition, the Committee's comments included suggestions regarding efforts the Company might undertake to address the attrition rate in the program.

DESCRIPTION OF THE PROPOSED TARIFF CHANGES

The Company is concerned that many of the installed direct load devices are not being used. This occurs primarily for two reasons; first, participating customers move and the new customers moving into the home or apartment do not elect to participate; second, participating customers decide to no longer participate. In addition, the company is also concerned the overall participation rates in the program are too low. One contributing factor to the overall low participation rate occurs when participating customers move and forget to, or decide not to, enroll in the program at their new premise. To address the issue of idle control devices the Company has proposed to modify the program so participating customers who move are automatically re-enrolled in the program at their new location unless they opt out, and nonparticipating customers moving into a previously participating location will be automatically enrolled unless they opt out.

In addition, the Company proposes a provision to allow qualifying small commercial customers proposes 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. Neither the Division nor the Committee

opposed this provision.

PARTIES' COMMENTS AND RECOMMENDATIONS

The Division recommends approval of the proposed changes to Schedule 114.

The Division does however, note that additional analysis of the effectiveness of the program is needed and recommends that the Commission Order the Company to include this analysis in the upcoming annual Demand Side Management report. The Committee has several concerns regarding the protection of consumers' rights, the adequacy of the planned communication and the opt-out process. The Committee states:

We recognize that opportunities are lost when DLC [direct load control] devices are attached to non-participant ACs [air conditioners] 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.

DISCUSSION AND CONCLUSIONS

The Commission supports the goal of the Cool Keeper program. In general the Commission agrees that significant benefits for all of the Company's customers will occur as participation rates in this program increase. However, the Commission also share some of the Committee's concerns. Specifically the Commission see a distinction with a difference between a customer who has chosen to participate in the program who then moves, and a nonparticipating customer who happens to move into a premise which has a direct load control device already installed on their air-conditioning unit. In the first case the Commission finds it reasonable that a customer who has already opted to participate can be presumed to want to continue to participate. However, for customers who have not chosen to participate in the past, the same type of presumption about their willingness to participate cannot reasonably be made. Therefore, the adequacy of the communication must be examined. As the Committee points out, customers must contact the Company to establish service at their new premises. The Commission concurs that it is at that moment in time when the option of enrolling in Cool Keeper should be brought to the customer's attention. Relying on third parties to send written notifications, which may or may not be read by the customer, is not adequate. Therefore, the Commission cannot approve of this portion of the program without modifications.

Both the Division and the Committee are supportive of further efforts on the part of the Company to increase participation rates and reduce attrition rates. In addition, both are supportive of the program undergoing a full evaluation for cost effectiveness. The Commission directs the Company (or its third party contractors) to work with the Division and Committee to develop better customer information materials, and customer service practices and policies, in an effort to increase participation in this program and reduce attrition. We provide notice at this time of a technical conference to be held on January 15, 2009, in Room 401 at the Heber M. Wells building to begin the process of addressing both the policy issues raised by these proposed changes and the methods the Company uses to communicate with customers regarding this program.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The proposed changes to Schedule 114 – Air-Conditioner Direct Load Control Program related only to the current participants in the program are approved, subject to the comments and conditions in this Order.
2. The Company (or its designated representatives) will work with the Division, the Committee, and other interested parties to address the concerns raised by the Committee and this Order.
3. The Company shall file revised tariff sheets reflecting the modifications in this Order.
4. **A Technical Conference will be held on these matters on Thursday,**

January 15, 2009, at 9:30 a.m., in Room 401 on the Fourth Floor of the Heber M. Wells Building, 160 East 300 South, Salt Lake City, Utah.

Individuals wishing to participate by telephone should contact the Public Service Commission two days in advance at (801) 530-6716 or 1-866-PSC-UTAH (1-866-772-8824).

Individuals participating by telephone should call the Public Service Commission five minutes prior to the beginning of the hearing to ensure participation.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during the Conference should notify the Commission, at 160 East 300 South, Salt Lake City, Utah, 84111, (801) 530-6716, at least three working days prior to the Conference.

DATED at Salt Lake City, Utah, this 24th day of December, 2008.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

G#60227