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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>In the Matter of Rocky Mountain Power's Proposed Changes to Electric Service Regulation No. 3 to Indicate Customers are Responsible for Reasonable Court Costs, Attorneys Fees and/or Collection Agency Fees Incurred in the Collection of Unpaid Debt Following the Due Date of Their Closing Bill</p>	<p>DOCKET NO. 13-035-T08</p> <p>DIVISION OF PUBLIC UTILITIES' POST-HEARING BRIEF</p>
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Pursuant to directions set forth at July 1, 2013 hearing in the above-referenced docket, the Division of Public Utilities (Division) files its post-hearing brief addressing Rocky Mountain Power's (Company) application seeking Commission approval of a new tariff provision that states, in pertinent part, "Subsequent to the termination or suspension of service and following the due and payable period of the Customer's closing bill, the Customer will be responsible for any reasonable costs associated with the collection of unpaid accounts, including but not limited to: court costs, attorney's

fees and/or collection agency fees.”¹

The Division and the Office of Consumer Services filed memoranda, Salt Lake Community Action Program filed comments, and a hearing was held July 1, 2013. The issue to be briefed was read into the record as “Does the Commission have jurisdiction to set a collection percentage for a former Rocky Mountain Power customer after a delinquent account has been turned over to collections, or does Utah Code Annotated 12-1-1, et seq., preclude the Commission for doing so.”²

Whether or not the Commission has jurisdiction to set a collection percentage as stated in the issue set forth above and must, or should, incorporate such a change in a general rate case requires more detailed analysis, including consideration of the Commission’s role regarding the management of regulated public utilities and the correct implementation of Utah laws pertaining to collection agencies. Thus, both by whom a collection fee can be established and what the appropriate collection fee may be are at issue here.

The Commission’s jurisdiction over regulated public utilities is set forth at Utah Code Ann. § 54-4-1. The Division does not dispute that the Commission has jurisdiction to approve or disapprove the proposed tariff provision as filed by the Company in this docket. The Commission also has the jurisdiction to approve the provision outside of a rate case. The amount of dollars at issue is small, and is insufficient to constitute a material windfall to the Company until the Company files its next rate case in January 2014.³

¹ See First Revision of Sheet 3R.3 filed April 5, 2013.

² Hearing Transcript, July 1, 2013 (Transcript) at p.63, lines 18-23. See also Transcript at p. 65, lines 14-15.

³ See DPU Hearing Exhibit No. 2.

However, whether the Commission has jurisdiction to set a collection percentage requires further analysis. Numerous Commission decisions state that the Commission will not substitute its judgment for that of a regulated public utility regarding company management or will not micromanage a regulated public utility.⁴ Moreover, market conditions may require flexibility by the Company in making management decisions when negotiating contracts with collection agencies. The Commission has stated, “Second, setting pre-determined levels as suggested by the parties may impede the Company's flexibility to manage its resources wisely . . . market conditions change and it is not our intention to micro-manage the Company's operations.”⁵

Applying the principles set forth in the Commission decisions above results in a conclusion that the recoverable amount of collection fees negotiated and memorialized in a contract between the Company and a collection agency is a matter of company management as long as the amount complies with the limitations set forth in Utah Code Ann. § 12-1-1 et seq., which establishes public policy for collections. The Company is contracting with a third party to perform work, and in order for the contract to achieve its purpose, the amount paid, or here collected from the debtor, must be reasonable and sufficient for the collection agency to do the required work. If the remuneration is too low, it is likely that the effort put forth by the collection agency may be reduced commensurately. This, in turn, would reduce the benefit to all ratepayers because

⁴ See *Logan City v. Public Utilities Commission*, 296 P. 1006 (Utah 1931) and *Utah Power & Light Company v. Public Service Commission*, 152 P.2d 542 (Utah 1944)

⁵ 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 (March 3, 2013), 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*, (September 13, 2011) (NO. 09-035-15, 10-035-124, 10-035-14, 11-035-46, 11-035-47). See also *Prows v. Mountain States Telephone and Telegraph Company* where the Commission stated, “As to Respondent’s choosing to rely on one credit-reporting company as opposed to others, that is a business decision, within the utility management’s discretion. It is well settled utility law that the Commission cannot ‘micro manage’ the utility and substitute its business judgment for that of the company.” Docket No. 00-049-07, (August 17, 2000).

collected amounts are fully credited against unpaid debt expense. The Commission's limitation on the amount of interest that shall be paid by a utility to its ratepayers and by the ratepayers to the utility is distinguishable. Interest is payment for the use of money.

Next, certain Utah statutes pertaining to collection agencies should be analyzed to determine their effect, if any, upon the Commission's jurisdiction to set a collection percentage. The Utah legislature has established laws circumscribing the relationship between a debtor and creditor, and the use of collection agencies. Along with other criteria, a written agreement between the creditor and debtor must exist between the creditor and the debtor before the creditor may require the debtor to pay a collection fee in addition to the amount owed. That written agreement "(i) create[s] the debt; and (ii) provide[s] for the imposition of the collection fee in accordance with this section."⁶ Additionally, the Utah legislature has established that the lawful collection fee "may not exceed the lesser of: (a) the actual amount a creditor is required to pay a third party debt collection agency or licensed attorney, regardless of whether that amount is a specific dollar amount or a percentage of the principal amount owed to the creditor for a debt; or (b) 40% of the principal amount owed to the creditor for a debt."⁷

The proposed tariff provision would satisfy the requirement of a written agreement between the debtor and creditor creating the debt. The relationship between the Company and its customers reflects the unique relationship that is found between regulated utilities and their customers, and the Commission approved tariff represents the written agreement between the Company and its customers. The Commission initially approves a utility's tariff and then regularly approves changes to that tariff

⁶ Utah Code Ann. § 12-1-11(2)(d).

⁷ Utah Code Ann. § 12-1-11(3).

through a public, transparent process. Utah Code Ann. § 12-1-11 mandates that the creditor set the collection fee with the collection agency and this requirement would be met through the contract executed between the Company and the collection agency.⁸ As discussed above regarding managing a utility, if the contract between the Company and the collection agency complies with the cap set by Utah law, the Commission should not insert itself into the contracting process, substituting its desired collection fee amount for the amount negotiated and agreed to by the Company and the collection agency. With regard to notice, the Division believes that the proposed tariff satisfies the requirement of Utah Code Ann. § 12-1-11 and should be approved as filed.⁹

The Commission has the jurisdiction to approve the subject tariff provision outside of a general rate case and should do so. The small amounts affected by an approved tariff change would not constitute a windfall to the Company. Further, it is in the public interest to assign costs to those responsible for the costs. This provision accomplishes that through a collection regime that satisfies the state's statutory public policies and assigns collection costs to the delinquent customer. Accordingly, the proposed tariff provision should be approved.

Dated this ____ day of July 2013.

Respectfully submitted,

Patricia E. Schmid
Attorney for the Division of Public
Utilities

⁸ See Transcript, pp. 13-14.

⁹ Although at the hearing the Division did note that additional detail would be beneficial to the ratepayer, the Division believes that the submitted language is consistent with Utah law.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July 2013, a true copy of the foregoing document was sent via email to the following in Docket 12-035-T08, In the Matter of Rocky Mountain Power's Proposed Changes to Electric Service Regulation No. 3 to Indicate Customers are Responsible for Reasonable Court Costs, Attorneys Fees and/or Collection Agency Fees Incurred in the Collection of Unpaid Debt Following the Due Date of Their Closing Bill:

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