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State of Utah
DEPARTMENT OF COMMERCE
Office of Consumer Services

MICHELE BECK
Director

To: Utah Public Service Commission

From: Office of Consumer Services
Michele Beck, Director
Béla Vastag, Utility Analyst

Date: July 21, 2020

Re: Proposed Rulemaking Concerning Utah Code Ann. §§ 54-24-101 to -203,
Wildland Fire Planning and Cost Recovery Act - Docket No. 20-R315-01

Background

Utah Legislature House Bill (H.B.) 66, Wildland Fire Planning and Cost Recovery Act, became effective on May 12, 2020. H.B. 66 requires Rocky Mountain Power (RMP) to prepare and submit for approval a wildland fire protection plan and requires the Utah Public Service Commission (PSC) to review and approve the wildland fire protection plan. In addition, H.B. 66 allows RMP to recover, through rates, the capital investment and expenses prudently incurred to implement its wildland fire protection plan. H.B. 66 also requires RMP to annually report the prior year actual capital investments and expenses incurred for the implementation of a wildland fire protection plan to the PSC. This annual report will also include a forecast of expenditures for the current year and an assessment showing that RMP is in compliance with its current approved wildland fire protection plan.

Pursuant to Utah Code Ann. § 63G-3-301 (Utah Administrative Rulemaking Act), the PSC has 180 days following H.B. 66's effective date to initiate a rulemaking proceeding to enact rules that establish procedures for the review and approval of qualified utility wildland fire protection plans and costs, including any other rules that the PSC determines are necessary to protect the public interest. On May 12, 2020, the PSC issued a Request for Comments in this docket asking interested parties to submit comments on the specific issues to address in these new rules by June 16, 2020 and to submit reply comments and proposed rule language by July 21, 2020. As required by H.B. 66, on June 1, 2020, RMP filed its first wildland fire protection plan with the PSC in Docket No. 20-035-28. On June 16, 2020, RMP filed initial comments in this docket on potential procedures and proposed rule language for the review of wildland fire protection plans and plan costs. In accordance

with the PSC's schedule, the Utah Office of Consumer Services (OCS) submits these reply comments to RMP's initial comments.

OCS Reply Comments to RMP's Proposed Procedures and Rules

The OCS appreciates RMP's efforts to define new procedures and to propose new rule language for the review of wildland fire protection plans and for the review of the plan's expenditures. The OCS outlines below several areas or issues from RMP's proposal that we believe require additional clarification. The OCS proposes language to address each of these concerns in Attachment A to this memo, which is a redlined version of the proposed rules submitted by RMP in its initial comments (RMP Exhibit A).

- *Wildland Fire Protection Plan Filing and Approval, Section 2.(2)(iv)*¹ states that the PSC will issue an order on the plan within 120 days unless the PSC determines that additional time or another process is warranted. The OCS believes that the proposed rule should incorporate some language similar to what is used for Schedule 38 avoided cost updates where parties may file with the PSC to challenge non-routine updates and to seek a scheduling conference to set a schedule allowing enough time to address any challenged non-routine updates or changes. If the utility files a new wildland fire protection plan that in some way significantly deviates from the prior plan, parties will likely need a process that takes longer than 120 days to effectively respond.
- *Wildland Fire Protection Plan Annual Cost and Compliance Report, Section 3.(1)(iii)*² states that RMP will request deferral and collection of incremental wildland fire protection plan costs that are not included in base rates. To implement Sections 54-24-202(2) and (3) of the Wildland Fire Planning and Cost Recovery Act, the language in this section of the proposed rule must be expanded to require that RMP's cost and compliance report validate with detail what costs are incremental and what costs are already in base rates.
- *Wildland Fire Protection Plan Annual Cost and Compliance Report, Section 3.(3)*³ states that parties will have 30 days from the PSC's public notice of the annual report filing to file comments. The OCS feels that 30 days may not provide sufficient time for parties to analyze the expenditure details of the report. Also, 30 days would provide for a very tight timeline to develop and process necessary, and possibly complex, discovery requests. The OCS admits that in later years, the review of the annual cost and compliance report might become more routine. Nonetheless, 30 days is a short turnaround and could only be achieved if the PSC establishes the discovery response time at 10 calendar days prior to the filing, preferably in these proposed rules.

¹ RMP June 16, 2020 Wildland Fire Protection Plan Rule Comments, Exhibit A – page 1.

² Id., page 2.

³ Id., page 2.

- Wildland Fire Protection Plan Annual Cost and Compliance Report, Section 3.(5)⁴ states that the PSC will issue an order on the annual report within 90 days unless the PSC determines that additional time or another process is warranted. As described above for Section 2.(2)(iv), the OCS believes that this section of the proposed rule should also incorporate some language similar to what is used for Schedule 38 avoided cost updates where parties may file with the PSC to challenge non-routine updates and to provide more time to submit feedback and recommendations. The OCS notes that it will almost certainly take a longer timeframe to review the first filing made under these rules as it will be a new process.
- Wildland Fire Protection Plan Annual Cost and Compliance Report, Section 3.(1)(iii) and (5)⁵ reference RMP's request for both "deferral and collection" as well as the PSC's approval of both "deferral and collection." OCS asserts that it is inappropriate for these rules to reference collection. We acknowledge that the statute authorizes collection of all prudently incurred costs. However, the method of collection is at issue in RMP's current general rate case (Docket No. 20-035-04) and has not yet been approved. The rules should not reference approval of "collection" unless they can reference the approved method of collection and any relevant tariffs governing collection. Issues such as the proper allocation of deferred costs among customer classes and the method of requesting collection outside of a general rate case have not yet been addressed. Referencing approval of collection in these rules could imply that RMP does not have an obligation to have these issues adjudicated and ruled upon by the PSC, which it does.

Recommendation

The OCS recommends that the PSC incorporate the redlined changes to RMP's proposed rules, as shown in Attachment A to this memo, and as discussed above.

CC: Artie Powell, Division of Public Utilities
Joelle Steward, Rocky Mountain Power
Electronic Distribution List

⁴ Id., page 2.

⁵ Id., page 2.

R746-*-1. Wildland Fire Protection Plans Definitions.**

- (1) “Wildland Fire Protection Plan” is defined at UTAH CODE § 54-24-102(4).
- (2) “Qualified Utility” is defined at UTAH CODE § 54-17-801.
- (3) “Cost and Compliance Report” is the annual report submitted by a Qualified Utility under an approved Wildland Fire Protection Plan as further described under R746-***-3(1).

R746-*-2. Wildland Fire Protection Plan Filing and Approval.**

(1) A qualified utility shall submit a Wildland Fire Protection Plan that includes the items required by UTAH CODE § 54-24-201(2)(a) through (i) to the Commission for approval on June 1, 2020 and each October 1 every third year thereafter.

(2) The Commission shall provide public notice of the Wildland Fire Protection Plan filing, solicit input on such plan from State Division of Forestry, Fire, and State Lands, and hold a scheduling conference to allow time for a Commission decision within 120 days of a Qualified Utility’s submittal of a Wildland Fire Protection Plan, unless the Commission determines that additional time is warranted and is in the public interest.

(i) The Commission shall enter any input received from the State Division of Forestry, Fire, and State Lands into the record after 45 days, or indicate on the record that no such input was received.

(ii) ~~Within~~ Subject to R746-***-2(2)(iii) and (v), within the 30 days following entry of input from the State Division of Forestry, Fire, and State Lands into the record, or entry that no such input was received, interested parties may file comments on the Qualified Utility’s Wildland Fire Protection Plan.

(iii) ~~The~~Notwithstanding anything to the contrary in R746-***-2(2)(ii), within 21 days following entry of input from the State Division of Forestry, Fire, and State Lands into the record, or entry that no such input was received, any interested party may file a petition requesting the Commission to hold a scheduling conference to set a reasonable schedule to address any significant challenges or other issues for which the interested party establishes good cause that additional time is warranted and as in the public interest. In the event the Commission determines that additional time is not warranted and in the public interest, the Commission shall allow the interested party a reasonable time after the determination is made to file comments on the Qualified Utility’s Wildland Fire Protection Plan.

~~(iii)~~(iv) Subject to R746-***-2(2)(iii) and (v), the Qualified Utility shall have 15 days to respond to any comments.

~~(iv)~~(v) Unless the Commission determines that another process or additional time is warranted and is in the public interest, the Commission will issue an order within 120 days of a Qualified Utility's submittal of a Wildland Fire Protection Plan.

- (3) The Commission shall approve a Qualified Utility's Wildland Fire Protection Plan to the extent that the evidence in the record establishes that it:
- (i) is reasonable and in the public interest; and
 - (ii) appropriately balances the costs of implementing the plan with the risk of a potential wildland fire.

R746-*-3. Wildland Fire Protection Plan Annual Cost and Compliance Report.**

- (1) No later than June 1, 2021, and each year after 2021, a qualified utility shall submit a Cost and Compliance Report:
- (i) detailing the qualified utility's compliance with the qualified utility's approved Wildland Fire Protection Plan;
 - (ii) identifying the actual capital investments and expenses made in the prior calendar year and a forecast of the capital investments and expenses for the present year to implement the Wildland Fire Protection Plan approved under R746-***-2; ~~and~~
demonstrating that actual and forecast capital investments and expenses are incremental to costs already included in bases rates; and
 - ~~(iii)~~(iv) requesting the deferral ~~and collection~~ of the incremental revenue requirement for the capital investments and expenses to implement its approved Wildland Fire Protection Plan that is not included in base rates.
- (2) The Commission shall provide public notice of a Qualified Utility's filing of its Cost and Compliance Report.
- (3) ~~Within~~Subject to R746-***-3(4) and (7), within the 30 days following such public notice, interested parties may file comments on the Qualified Utility's Cost and Compliance Report.

(4) Notwithstanding anything to the contrary in R746-***-3(3), within 21 days following a Qualified Utility's filing of its Cost and Compliance Report, any interested party may file a petition requesting the Commission to hold a scheduling conference to set a reasonable schedule to address any significant challenges or other issues for which the interested party establishes good cause that additional time is warranted and as in the public interest. In the event the Commission determines that additional time is not warranted and in the public interest, the Commission shall allow the interested party a reasonable time after the determination is made to file comments on the Qualified Utility's Cost and Compliance Report.

(5) The Qualified Utility shall respond to discovery requests within 10 days, or such other period set forth in any scheduling order entered by the Commission in accordance with R746-***-3(4) or (7).

~~(4)~~(6) Subject to R746-***-3(4) and (7), the Qualified Utility shall have 15 days to respond to any initial comments filed with the Commission.

~~(5)~~(7) Within 90 days of a Qualified Utility's submittal of its Cost and Compliance Report, unless the Commission determines that another process or additional time is warranted and is in the public interest, the Commission will issue an order regarding the Qualified Utility's Cost and Compliance Report, and, to the extent requested by the Qualified Utility, approving any deferral ~~and collection~~ of the incremental revenue requirement reasonably demonstrated by such report.