

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Proposed Rulemaking Concerning Utah Code Ann. §§ 54-24-101 to -203, Wildland Fire Planning and Cost Recovery Act	<u>DOCKET NO. 20-R315-01</u> <u>NOTICE OF PROPOSED RULE</u>
--	--

ISSUED: October 8, 2020

On May 12, 2020, the Public Service Commission (PSC) issued a Request for Comments (“Request”), explaining that H.B. 66, Wildland Fire Planning and Cost Recovery Act (“Act”), would become effective on May 12, 2020 and that the PSC had 180 days following the bill’s effective date to initiate rulemaking proceedings. The Request invited interested parties to submit comments on the required rulemaking.

On June 16, 2020, Rocky Mountain Power (RMP) submitted proposed language for a new rule. RMP opined that “[m]any aspects of the Act are comprehensive, meaning that [PSC] rules are likely unnecessary to provide guidance to utilities and other interested parties as to what is required for compliance.” However, RMP noted the Act “specifically directs” the PSC to make procedural rules related to the review and approval of utilities’ “formal wildland fire protection plans, and review and approval of the annual wildland protection plan expenditures.”¹ RMP attached proposed language for a new rule (“RMP’s Proposed Rule”)² to satisfy the Act’s required rulemaking. The PSC received initial comments from no other party.

In response to RMP’s filing, the Office of Consumer Services (OCS) filed reply comments, and it was the only party to have done so. The OCS advocated for several modifications to RMP’s Proposed Rule. First, the OCS noted that RMP’s proposal provides that

¹ See Utah Code Ann. § 54-24-103.

² RMP’s Comments filed June 16, 2020 at Exhibit A.

the PSC will establish a schedule that allows time for a PSC decision on the utility's Wildland Fire Protection Plan within 120 days of submittal, and suggests the rule include 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 ... schedule allowing enough time to address any challenged non-routine updates or changes." OCS made the same point with respect to RMP's proposal that the PSC issue an order on Cost and Compliance Reports within 90 days. However, in both instances, RMP's Proposed Rule provides these as default periods with the caveat they apply "unless the [PSC] determines that additional time is warranted and is in the public interest." The PSC concludes this language ensures parties will have an opportunity to seek an extended schedule whenever appropriate and that adding additional language would be redundant, rendering the pertinent provisions needlessly more complex.

Second, OCS asserts RMP's proposed language should 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." On this point, the PSC notes the Act already requires the PSC to authorize deferral and collection of the incremental revenue requirement for qualified costs "not included in base rates." Utah Code Ann. § 54-24-202(3). That is, under the statute, it would be unlawful for RMP to seek recovery of costs already in base rates and adding additional language stating as much in the rule would be redundant. If any party has concerns about a cost RMP claims in the report for a particular year, it will have an opportunity to raise its concerns in the appropriate docket and to conduct appropriate discovery.

Third, OCS argues “it is inappropriate for these rules to reference collection.” However, the statute flatly requires the PSC to “authorize the deferral and collection of the incremental revenue requirement” for qualified, prudently incurred expenses. *Id.* at 54-24-202(3). RMP’s Proposed Rule simply establishes a default period (subject to change at the PSC’s discretion) for the PSC to issue the order the statute requires. There is no impropriety in complying with the statute.

Finally, noting the relatively short time frame (30 days) in which RMP’s Proposed Rule requires interested parties to submit comments on a utility’s annual Cost and Compliance Reports, the OCS suggests the rule include a requirement the utility respond to discovery within 10 days in such proceedings. The PSC concludes this is a useful addition that will facilitate prompt evaluation of the annual reports. The PSC further concludes it is reasonable and appropriate for a utility to respond to informal discovery requests within 10 days given that other parties must submit comments within 30 days of filing.

The PSC appreciates RMP’s and OCS’s efforts and input. In addition to the OCS’s suggestion regarding discovery, the PSC has made several other modifications to RMP’s proposed language that the PSC deemed appropriate and necessary to finalize a proposed rule that satisfies the PSC’s rulemaking responsibilities under the Act. The PSC gives notice it intends to publish the attached Notice of Proposed Rule in the November 1, 2020 Utah State Bulletin.

DOCKET NO. 20-R315-01

- 4 -

DATED at Salt Lake City, Utah, October 8, 2020.

/s/ Michael J. Hammer
Presiding Officer

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#315855

CERTIFICATE OF SERVICE

I CERTIFY that on October 8, 2020, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Email:

Data Request Response Center (datareq@pacificorp.com, utahdockets@pacificorp.com)
PacifiCorp

Jana Saba (jana.saba@pacificorp.com)
Emily Wegener (emily.wegener@pacificorp.com)
Rocky Mountain Power

Patricia Schmid (pschmid@agutah.gov)
Justin Jetter (jjetter@agutah.gov)
Robert Moore (rmoore@agutah.gov)
Victor Copeland (vcopeland@agutah.gov)
Assistant Utah Attorneys General

Madison Galt (mgalt@utah.gov)
Division of Public Utilities

Alyson Anderson (akanderson@utah.gov)
Bela Vastag (bvastag@utah.gov)
Alex Ware (aware@utah.gov)
ocs@utah.gov
Office of Consumer Services

Administrative Assistant

DOCKET NO. 20-R315-01

- 6 -

Exhibit A – Notice of Proposed Rule

R746. Public Service Commission, Administration.

R746-315. Wildland Fire Protection Plans.

R746-315-1. Definitions.

- (1) “Wildland fire protection plan” is defined at Section 54-24-102.
- (2) “Qualified utility” is defined at Section 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 Subsection R746-315-3(1).

R746-315-2. Filing and Approval.

(1) A qualified utility shall submit a wildland fire protection plan that includes the items required by Subsection 54-24-201(2) 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 the State Division of Forestry, Fire, and State Lands, hold a scheduling conference, and set a schedule that allows 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 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 qualified utility shall have 15 days to respond to any comments.

(iv) 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.

R746-315-3. 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 Section R746-315-2; and

(iii) 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 30 days following such public notice, interested parties may file comments on the qualified utility's cost and compliance report.

(4) The qualified utility shall respond to discovery requests within 10 days.

(5) The qualified utility shall have 15 days to respond to any initial comments filed with the Commission.

(6) 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, provided the Commission finds the cost and compliance report satisfies statutory requirements and that the reported costs were prudently incurred.

KEY: public utilities; wildland fire protection plan

Date of Enactment or Last Substantive Amendment: December 8, 2020

Authorizing, and Implemented or Interpreted Law: Utah Code Ann. § 54-24-103