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State of Utah
Department of Commerce
Division of Public Utilities

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Action Request Response

TO: PUBLIC SERVICE OF UTAH

FROM: DIVISION OF PUBLIC UTILITIES
Chris Parker, Director
Valarie Stewart, Office Specialist
Marialie Martinez, Customer Service Manager
Artie Powell, Energy Section Manager

DATE: November 7, 2011

RE: | Docket No. 11-035-180 – In the Matter of the Complaint of
Menlove-Johnson, Inc. Against Rocky Mountain Power

Recommendation: Based upon the Division's analysis of the formal complaint in this docket, the Division recommends the Public Service Commission schedule a hearing to determine the amount of refund due the Complainant from the Company.

Procedural History: Menlove-Johnson (Complainant) filed an informal complaint against Rocky Mountain Power (Company) on May 9, 2011, through the informal process with the Division of Public Utilities (Division). The Complainant, being unsatisfied with the Company's response, was given the option of filing a formal complaint or seeking resolution through the mediation process. Both parties agreed to

mediate the informal complaint with the Division acting as a neutral third party to facilitate the mediation.

On July 27, 2011 the mediation process convened. Present were, Wes Johnson, the Complainant and owner of Menlove-Johnson; Michael Busch, a representative of Cache Valley Electric assisting Mr. Johnson ; and Autumn Braithwaite and F. Robert Stewart representing the Company. A representative from the Division acted as the mediator. All parties signed the '*agreement to mediate*' form provided by the Division. The Complainant and Company did not resolve the dispute through mediation, but the Company committed to further review the complaint and negotiate directly with the Complainant in an effort to resolve the dispute. On August 10, 2011, Ms. Braithwaite, on behalf of the Company sent an e-mail to the Complainant reiterating the Company's decision to not adjust the Complainant's electric account. Ms. Braithwaite stated in that e-mail that the Company's decision was based on the contract and Electric Service Regulation No. 3.

On October 6, 2011 the Complainant by and through its attorney, Gary Dodge of Hatch James & Dodge, filed a formal complaint with the Public Service Commission of Utah (PSC). On October 13, 2011, the PSC issued an Action Request to the Division, requesting an *Analysis of Complaint*, with the Division's analysis due November 10, 2011.

Action Request – Analysis of Formal Complaint: After careful analysis of the formal complaint as well as all pertinent documentation provided to the Division by

the Complainant and the Company in the Informal Complaint Process regarding this matter, the Division provides the following analysis.

1. The Complainant's facility was under remodel construction in the time frame of late 2007 and 2008. According to schematics drafted by Cache Valley Electric on Complainant's behalf, the outdoor site lighting was configured and constructed to be on a separate meter and subject to the Company's applicable rate schedule for outdoor site lighting rather than a higher rate schedule for other electric service¹. Additionally, the Complainant and its electrical engineers consulted with the Company's representatives in designing the outdoor site lighting at the Complainant's facility in 2008.² Consequently, it is reasonable to assume the Company knew or should have known at that time the intent of the Complainant to be billed rates consistent with the applicable schedule for outdoor site lighting.

2. The Complainant entered into General Service Contract # 5135305, with Rocky Mountain Power on January 9, 2008, for the provision of electric service to Complainant's facility, with anticipated delivery of service later that year.³ Although this contract, under the "Contract Minimum Billing" paragraph, states that "Billings will be based on Rate Schedule No. 06 and superseding schedules", it is otherwise void of any

¹ The rate schedule for outdoor site lighting was not provided to the Division; however, it is documented in Mr. Busch's letter dated March 4, 2011, that although the current Schedule No. 15 was not available at the time of the contract being signed, it was available at the time Complainant began receiving electric service in October 2008.

² Letters dated January 28, 2011 and March 4, 2011, addressed to Wesley A. Johnson of Menlove Toyota-Scion from Michael H. Busch, P.E. of Cache Valley Electric Co.

³ This contract was partially provided during the informal complaint process to the Division; the full contract is attached to Complainant's formal complaint as Exhibit "3".

provisions regarding service classification, particularly when the Company knew or had reason to know there would be more than one meter at this facility specifically for different classifications of service at the facility.

3. Mr. Busch, an electrical engineer with Cache Valley Electric, stated in his letter of January 28, 2011 to the Complainant, that the design at Complainant's facility for the outdoor site lighting was designed so that site lighting would be on a separate meter and subject to the Company's Schedule No. 15 or the applicable rate schedule at that time. Mr. Busch also stated in that letter the site lighting at Complainant's facility was the same design and construction used at other car dealership facilities along the Wasatch Front which facilities are uniquely similar to complainant's facility. Those facilities designed their outdoor site lighting for the very reason of qualifying under Schedule 15 (or the applicable rate schedule at that time) for rates and their outdoor site lighting is billed pursuant to that schedule.

4. On November 17, 2010 the Complainant's representative from Cache Valley Electric requested the Company to review Complainant's facility electric service and further requested the Complainant's electric charges be based on the rates under Schedule No. 15. At that time, the overbilling was discovered and complainant made a claim for a refund, based on the overbilling, to the Company.

5. Schedule 15 reads in part:

Application: To lighting service provided to municipalities or agencies of municipal, county, state or federal governments for Traffic and Other Signal System Service, and for Metered Outdoor Nighttime Lighting Service, owned by the Customer.

6. Electric Service Regulation 3, paragraph 3 in part reads:

These Regulations and the applicable Electric Service Schedule are hereby made a part of each Electric Service Agreement, express or implied. In case of a conflict between any of the provisions of the agreement or contract, Electric Service Schedule and these Electric Service Regulations, the provisions of the Electric Service Schedule will take precedence followed by the provisions of these Electric Service Regulations.

7. Electric Service Regulation 3, paragraph 4 also states:

Where optional Electric Service Schedules are available, the Company will assist the Customer, upon request, in the selection of the Electric Service Schedule most favorable for his/her service requirements. The recommendation to the Customer will be based on his/her statement of the class of service required, the amount and manner of use, and other pertinent information.

8. Commission rule R746-310-9(A)(3) states:
 - A. Standards and Criteria for Overbilling—Billing under the following conditions constitutes overbilling: . . . 3. Incorrect service classification, if the information supplied by the customer was ***not erroneous or deficient*** [emphasis added].

9. Commission rule R746-310-9(C)(4) states:
 - B. Limitations . . . (4) A utility shall not be required to make a refund of, or give credit for, overpayment which occurred more than 24 months before the customer submitted a complaint to the utility or the Commission, or the utility actually became aware of an incorrect billing which resulted in overpayment.

10. In response to Division Data Request 1.1, “How many customers are on Rocky Mountain Power Tariff Schedule 15?”, the Company indicated that:

“There were about 2,774 customers on the Company’s tariff Schedule 15 in Utah as of September 30, 2011. Of these 459 are Metered Outdoor Nighttime Lighting customers and 2,315 are Traffic Signal Customers.”

In response to Division Data Request 1.2, "How many customers on Rocky Mountain Power Tariff Schedule 15 are car dealerships?," the Company indicated that:

"Rocky Mountain Power does not track customer accounts by SIC or NAICS codes to indicate a business type. Reviewing schedule 15 accounts, there appear to be ten customers with a total of 15 sites that could be a car dealership-type of account. Identification was made using customer name, and service or agreement descriptions if noted on the account."

11. It is the analysis of the Division that although there was a basis for the Company to bill Complainant under Schedule No. 6 because of the contract signed by the Complainant, the Complainant submitted to the Company for its review and approval a RMP Commercial/Industrial Customer Information Sheet in 2008 that listed its intent to use 3 meters for the project and a one-line diagram specifically designating the separate revenue meter for the circuit labeled SITE LIGHTING. Based upon its review of Complainant's proposed design for its electrical system for the facility including the 3 proposed separate meters, the Company knew or had reason to know that this meter was dedicated for outdoor site lighting only and should have been billed accordingly.

12. The correct schedule for billing Complainant for its outdoor site lighting would have been Schedule 15 and the service regulations clearly indicate that the Schedules and Regulations precede any contract language conflict.

13. Additionally, the Complainant brought the problem to the attention of the Company at which point the service classification should have been changed if needed and the customer was entitled to a refund at that time according to Commission rules.

14. Further, it is the Division's analysis that not billing the Complainant's outdoor site lighting under Schedule No. 15 and instead charging the Complainant higher rates under Schedule No. 6 for the same services received by similar customers is a discriminatory application of rate schedules.

Recommendation:

The Division recommends a refund to the Complainant for overbilling pursuant to R746-310-9. The Company used the incorrect service classification for billing the Complainant since October 2008, and this incorrect service classification was not due to any error or deficiency in the information provided by Complainant. Accordingly, the Complainant is entitled to a refund for all overbilling of the difference of billings pursuant to Schedule No. 6 and the rates under Schedule No. 15 for the twenty-four month period established under R746-310-9(C)(4).

cc: Gary Dodge, Attorney for Complainant
Michelle Beck, Director, Office of Consumer Services
Barbara Ishimatsu, Attorney for Rocky Mountain Power