

Barbara Ishimatsu  
201 South Main Street, Suite 2300  
Salt Lake City, Utah 84111  
Telephone: (801) 220-4640  
Fax: (801) 220-3299  
E-mail: [Barbara.Ishimatsu@PacifiCorp.com](mailto:Barbara.Ishimatsu@PacifiCorp.com)

*Attorney for Rocky Mountain Power*

**BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF UTAH**

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In the Matter of Menlove-Johnson, Inc.,	:	
	:	
Complainant,	:	Docket No. 11-035-180
	:	
vs.	:	
	:	<b>PACIFICORP'S ANSWER</b>
PACIFICORP,	:	
d/b/a Rocky Mountain Power,	:	
	:	
Respondent.	:	
	:	

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Comes now, PacifiCorp, d/b/a Rocky Mountain Power (“Rocky Mountain Power” or the “Company”), and provides its Answer in the above-captioned matter. In addition, the Company respectfully requests that the Public Service Commission of Utah (the “Commission”) find that Rocky Mountain Power has not violated any provision of law, Commission order or rule, or Company tariff. Rocky Mountain Power requests the Commission set a technical conference to discuss the applicability of the various service classifications and the obligations of the Company and customers under Electric Service Regulation No. 3, Section 4.

**I. APPLICABLE PROVISIONS OF COMMISSION RULES AND TARIFF**

**1. Electric Service Schedule No. 6:**

Application: This Schedule is for alternating current, single or three phase electric Service supplied at Company's available voltage, but less than 46,000 volts through a single point of delivery, for all service required on the Customer's premises.

**2. Electric Service Schedule No. 15:**

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.

**3. Electric Service Regulation No. 3, Section 4:**

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. The Company shall not be liable for any errors with respect to the information received from the customer. A Customer being billed under one or two or more optional Electric Service Schedules applicable to his/her class of service may elect to be billed on any other applicable Electric Service Schedule by notifying the Company in writing and the Company will bill the Customer under such elected Schedule from and after the date of the next meter reading.

**4. Commission Rule R746-310-9:**

Billing under any of the following conditions constitutes overbilling. . . . incorrect service classification, provided that the information supplied by the customer was not erroneous or deficient;

5. **Electric Service Regulation No. 8, Section 9(a), Standards and Criteria for Overbilling:**

Billing under any of the following conditions constitutes overbilling. . . .  
(3) incorrect service classification, provided that the information supplied by the customer was not erroneous or deficient;

**II. BACKGROUND**

1. On or about October 23, 2007, a request was made by Mr. Michael Busch P.E., an engineer with Cache Valley Electric on behalf of Menlove Toyota, aka Menlove Dodge Toyota<sup>1</sup>, (“Menlove”) to the Company for an overhead to underground conversion of line and to install a 750 KVA pad mounted transformer to provide services at or near a commercial operation at 2380 S. Highway 89, Bountiful Utah.

2. Commercial and Industrial customers provide the Company with information detailing the specifications of the equipment being installed, the expected uses of the property and equipment, and any special requests, commonly known as a load sheet. The load sheet is the basis of designing an electrical distribution system sufficient to meet the electrical requirements of the customer’s requested load. The Company’s practice is to obtain a separate load sheet for each service classification requested.

3. The load sheet included as Exhibit 1 to the Complaint was provided to the Company by Mr. Busch (the “Load Sheet”) requesting three meters for electrical service to a 67,000 square foot office, a 32,500 square foot shop, and 32,500 square feet of retail space. The Load Sheet neither separates the lighting load, identified as 200 kW, between indoor and outdoor lighting nor identifies that one of the three meters is exclusively for outdoor nighttime lighting.

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<sup>1</sup> Complainant, Menlove-Johnson, Inc. and the signer of the contract attached to the Complaint as Exhibit 3, Menlove Toyota, are not disputed to be the same entity.

4. Rocky Mountain Power has no record of receiving a one-line diagram. In addition, at the time of the request, Rocky Mountain Power did not require customers to provide a one-line diagram pursuant to the Electric Service Requirements (“ESR”) attached as **Exhibit A1**.<sup>2</sup>

5. Rocky Mountain Power did receive a site plan and profile, attached as **Exhibit B**, indicating that three buildings would be constructed on the premises. The location or purpose of meters is not identified. Rocky Mountain Power’s estimator received no information to determine that rather than using three meters for three buildings, Menlove intended one meter to be used for outdoor lighting. In the Company’s experience, almost all commercial customers have outdoor lighting and in 2007, very few customers went to the expense to install separate meters for such lighting.

6. Based on the information provided by Menlove, Electric Service Schedule No.6 was identified as an applicable Electric Service Schedule for all service required on the premises. Rocky Mountain Power had no indication that Menlove desired to use an optional rate schedule, such as Electric Service Schedule No. 6a, for its outdoor nighttime lighting rather than the generally applicable Electric Service Schedule No. 6.

7. The information contained in the Load Sheet was incorporated into one contract for retail electric service for all three meters. The General Service Contract between Menlove and the Company was executed by Menlove on or about January 9, 2008 (the “Contract”). The Contract is attached to the Complaint as Exhibit 3. Section 4 of the Contract states: “Billings will be based on Rate Schedule No. 6, and superseding schedules.” Electric Service Schedule No. 6 is still effective.

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<sup>2</sup> The ESR has since been revised to require customers to provide a one-line diagram. **Exhibit A2**.

8. The electric meters were installed on October 10, 2008 and the Company began billing Menlove, as contractually agreed, on Electric Service Schedule No.6.

9. More than two years later, on or about November 17, 2010, Mr. Busch contacted the Company on behalf of Menlove. Mr. Busch informed the company that one meter was serving only outdoor nighttime lighting and requested the rate schedule for that meter to be changed to Electric Service Schedule No. 15. He did not request any change for the other two meters covered by the Contract.

10. The Company considered Menlove's request as a request to be placed on an optional Electric Service Schedules pursuant to Electric Service Regulation No. 3, Section 4. The Company reviewed the applicability of Electric Service Schedule No. 15 to Menlove's outdoor nighttime lighting. The Company determined that although Electric Service Schedule No. 15 was not intended for non-municipal outdoor nighttime lighting<sup>3</sup>, commercial customers with separately metered outdoor nighttime lighting had been placed in this service classification. The Company found an estimated 21 percent of the approximately 2,774 customers then-listed on Electric Service Schedule No. 15 were non- governmental customers. The Company determined it would grant Menlove's request to avoid disparate treatment compared to similarly situated customers.

11. The Company changed the service classification of Menlove's metered outdoor nighttime lighting from Electric Service Schedule No. 6 to Electric Service

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<sup>3</sup> Prior to the creation of Electric Service Schedule No. 15, Metered Outdoor Nighttime Lighting was addressed in Electric Service Schedule No. 12. Electric Service Schedule No. 12 was changed to standardize the treatment of streetlighting across PacifiCorp states. Electric Service Schedule No. 15 was created for all of the governmental, non-streetlighting uses formerly classified under Electric Service Schedule No. 12. The Company structured the optional rate for outdoor nighttime lighting charges in order to benefit seasonally operated municipal ballparks according to the letter attached as **Exhibit C**.

Schedule No. 15 on January 20, 2011. The remaining two meters covered by the Contract remain on Electric Service Schedule No. 6.

12. In February 2011, the Company, through its analyst Ms. Braithwaite, advised Menlove the Company would be willing to make the service classification for that meter effective back to the date of Menlove's request, November 17, 2010, rather than from the date of the next meter reading as specified under Electric Service Regulation No. 3, Section 4, and would be willing to refund the difference between the two rates for the time that had elapsed between the date of Menlove's request and the date the rate was actually changed. The email from Braithwaite to Johnson dated March 31, 2011 is attached as **Exhibit D**. Menlove declined the offer.

13. During this time, Menlove assigned the Contract together with "all advance payments, rights and privileges included thereto" to Performance Automotive Utah LLC dba Toyota Bountiful on or about March 21, 2011. A copy of the assignment is included as **Exhibit E**.

14. Menlove requested a refund based on Electric Service Schedule 15 backdated to October 10, 2008 through an informal complaint filed with the Division of Public Utilities on May 9, 2011.

15. The Company responded to the informal complaint by again offering a billing adjustment to reflect Electric Service Schedule 15 between November 17, 2010 and January 20, 2011 but declined to make it effective back to October 10, 2008. A copy of the correspondence is attached as **Exhibit F**. Menlove declined the Company's offer.

16. On July 27, 2011, the Division of Public Utilities conducted mediation between the Company, and Menlove. Again, no resolution was found.

17. The formal Complaint was filed on October 13, 2011.

## **II. ANSWER**

Rocky Mountain Power responds to the specific allegations in the Complaint as follows:

1. Rocky Mountain Power has insufficient information to admit or deny the allegations contained in the first two sentences of paragraph 1 of the Complaint; therefore the same are denied. Rocky Mountain Power admits that Rocky Mountain Power received a copy of the Commercial/Industrial Information Sheet (“Load Sheet”) attached to the Complaint as Exhibit “1”. Rocky Mountain Power denies requesting or receiving a copy of the one-line diagram attached to the Complaint as Exhibit “2”. All other allegations in paragraph 1 are denied.

2. Rocky Mountain Power admits the Load Sheet identified a request for three separate meters but affirmatively states the Load Sheet contains insufficient information to determine that one of the three meters was specifically limited to outdoor nighttime lighting. All other allegations in paragraph 2 are denied.

3. Rocky Mountain Power admits the allegations in the first two sentences of paragraph 3. Rocky Mountain Power admits the only service classification specifically listed on the Contract was Electric Service Schedule No. 6. Rocky Mountain Power denies the “Contract Minimum Billing” section is the only section of the Contract addressing the rates or charges to be assessed. Rocky Mountain Power affirmatively states that other sections refer to the rates or charges to be assessed. For example, section 6 allows the Company to impose late charges, or require a deposit.

4. Rocky Mountain Power denies the allegations in paragraph 4. Rocky Mountain Power affirmatively states that service under the Contract was appropriately

placed on Electric Service Schedule No. 6 and that no billing for firm power and energy occurred prior to the October 10, 2008 meter installation.

5. The first sentence of paragraph 5 restates provisions of Commission Rule R746-310-9 and Electric Service Regulation No. 8 that speak for themselves. Rocky Mountain Power denies all other allegations. Rocky Mountain Power affirmatively states that Electric Service Schedule No. 6 is an applicable service classification. Menlove failed to provide sufficient information for Rocky Mountain Power to determine that one meter was intended to serve a circuit dedicated to outdoor nighttime lighting, failed to provide a separate Load Sheet for the lighting load it desired to be separated from the general building lighting load, and failed to request an optional service classification for that meter.

6. The first sentence of paragraph 6 restates provisions of Electric Service Regulation No.3 that speaks for itself. Rocky Mountain Power denies that Menlove relied upon and requested assistance from Rocky Mountain Power in determining the appropriate rate schedules and service classifications for its loads. Rocky Mountain Power denies all other allegations.

7. Paragraph 7 restates provisions of Utah Code Section 54-7-20 that speaks for itself.

8. Rocky Mountain Power denies the allegations in paragraph 8 and denies that Menlove is entitled to the relief requested. Rocky Mountain Power specifically denies that Menlove was charged discriminatory rates. Rocky Mountain Power denies that it has any obligation to backdate the effectiveness of Electric Service Schedule No.

15, since Electric Service Schedule No. 15 did not exist at the time.<sup>4</sup> Without admitting liability, Rocky Mountain Power affirmatively states any refund would be payable to Performance Automotive Utah, LLC dba Toyota Bountiful.

9. Rocky Mountain Power denies the allegations in paragraph 9.

10. Rocky Mountain Power admits that Menlove filed an informal complaint with the Division of Public Utilities (“DPU”) but denies that the DPU made any finding of improper, unlawful, or discriminatory conduct by Rocky Mountain Power. Rocky Mountain Power denies all other allegations. Rocky Mountain Power affirmatively states that, as settlement of disputed claims, it offered a refund backdated to the date that Menlove requested its outdoor nighttime lighting to be placed on an alternate rate schedule, rather than “from and after the date of the next meter reading” as specified under Electric Service Schedule No. 3, Section 4.

11. To the extent not expressly admitted herein, Rocky Mountain Power denies each and every allegation of the Complaint.

## **DEFENSES**

### **First Defense**

The Complaint fails to state a claim against Rocky Mountain Power upon which relief can be granted.

### **Second Defense**

The Complaint fails to state facts sufficient to support a claim upon which relief can be granted against Rocky Mountain Power.

### **Third Defense**

The Complaint fails to join an indispensable party.

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<sup>4</sup> Electric Service Schedule No. 15 became effective on October 10, 2008.

**Fourth Defense**

Menlove's claims are barred in whole or in part by its failure to mitigate.

**Fifth Defense**

Menlove's claims are barred in whole or in part by the doctrines of estoppel and waiver.

**Sixth Defense**

Menlove's claims are barred by the doctrine of laches.

**Seventh Defense**

Rocky Mountain Power asserts that it may have additional defenses not now known to it, but which may be discovered during the course of these proceedings. Rocky Mountain Power does not waive such defenses, and specifically asserts them hereby, reserving the right to amend and to plead other defenses as they become known.

**CONCLUSION**

WHEREFORE having fully answered Complainant's complaint and finding no violation of law, Commission rules, or Company tariffs to base an award of the relief requested, the Company prays that Menlove take nothing by way of the Complaint, that the Complaint be dismissed with prejudice, and for such other relief as the Commission may determine.

Dated this 10<sup>th</sup> day of November 2011,

Respectfully submitted,

By \_\_\_\_\_  
Barbara Ishimatsu

*Attorney for Rocky Mountain Power*

## CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **ANSWER OF PACIFICORP** to be served upon the following by electronic mail or U.S. postage to the addresses shown below on January 11, 2018:

Gary A. Dodge  
Attorney for Menlove-Johnson, Inc.  
HATCH JAMES & DODGE  
10 West Broadway, Suite 400  
Salt Lake City, UT 84101  
[gdodge@hjdllaw.com](mailto:gdodge@hjdllaw.com)

Paul Proctor  
Office of Consumer Services  
Heber M. Wells Bldg., Fifth Floor  
160 East 300 South  
Salt Lake City, UT 84111  
[pproctor@utah.gov](mailto:pproctor@utah.gov)

Cheryl Murray  
Dan Gimble  
Michele Beck  
Office of Consumer Services  
160 East 300 South, 2<sup>nd</sup> Floor  
Salt Lake City, UT 84111  
[cmurray@utah.gov](mailto:cmurray@utah.gov)  
[dgimble@utah.gov](mailto:dgimble@utah.gov)  
[mbeck@utah.gov](mailto:mbeck@utah.gov)

Dennis Miller  
William Powell  
Christopher Parker  
Division of Public Utilities  
Heber M. Wells Building  
160 East 300 South, 4<sup>th</sup> Floor  
Salt Lake City, UT 84111  
[dennismiller@utah.gov](mailto:dennismiller@utah.gov)  
[wpowell@utah.gov](mailto:wpowell@utah.gov)  
[chrisparker@utah.gov](mailto:chrisparker@utah.gov)

Michael Ginsberg  
Patricia Schmid  
Assistant Attorney General  
Utah Division of Public Utilities  
Heber M. Wells Bldg., Fifth Floor  
160 East 300 South  
Salt Lake City, UT 84111  
[mginsberg@utah.gov](mailto:mginsberg@utah.gov)  
[pschmid@utah.gov](mailto:pschmid@utah.gov)

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Ariel Son  
Coordinator, Regulatory Operations