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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

**In the Matter of:
The Application of Rocky Mountain Power
for Approval to Cancel Schedule 194**

Docket No. 13-035-136

**The Office of Consumer Services' Petition
for Review and Clarification**

COMES NOW The Office of Consumer Services (“Office”), pursuant to Utah Code Ann. §§ 54-7-15 and 63G-4-301 and Utah Administrative Code § R746-100-11 and hereby petitions the Utah Public Service Commission (“Commission”) for review and clarification of the Commission’s Order issued September 13, 2013, in Docket No. 13-035-136: The Matter of The Application of Rocky Mountain Power for Approval to Cancel Schedule 194 (“Order”). The Office respectfully requests review and clarification regarding the Commission’s apparent endorsement of the continuation of the Electric Service Schedule 114 - Air Conditioner Direct Load Control Program (“Cool Keeper”).

I. PROCEDURAL BACKGROUND

On August 14, 2013, Rocky Mountain Power (“Company”) filed an Application to cancel Schedule 194, a cost adjustment credit, originally intended to return an over-collected demand

side management surcharge to Utah ratepayers. Application of Rocky Mountain Power to Cancel Schedule 194 (“Application”), p. 3. The Commission had previously approved the Schedule 194 Demand-side Management Cost Adjustment Credit tariff on May 31, 2012, in Advice No. 12-07, and modified the cost adjustment credit in the February 27, 2013, Order issued in Docket No. 13-035-T01.

In response to the Application, the Office filed comments on August 29, 2013, expressing general support for the limited relief requested in the Application. The Utah Division of Public Utilities also filed comments expressing general support for the Application, while identifying areas of interest for future review and consideration. *See Conditional Approval Recommendation*, filed by Utah Division of Public Utilities, dated August 29, 2013. Similarly, Utah Clean Energy submitted comments supporting the concept of the cancellation requested in the Application. *See Comments of Utah Clean Energy*, filed August 29, 2013. Comverge, Inc. sought and received permission from the Commission to intervene in the proceedings, and filed initial comments on August 29, 2013, and reply comments on September 5, 2013. After a hearing conducted August 22, 2013, wherein all interested parties provided testimony and were afforded an opportunity to engage in cross-examination, the Commission issued the Order on September 13, 2013, approving the Company’s Application.

II. DISCUSSION

In the Order, in addition to approving the Application as described above, the Commission stated that, “[b]ased upon the Company’s testimony, we find the continuation of the Cool Keeper program...is reasonable, in the public interest, and will provide for a cost-effective resource for customers.” Order, p. 2. The Office believes a plain language reading of this

sentence may result in an endorsement of the reasonableness of the Cool Keeper program under the newly proposed structure and contract framework referenced by the Company in this proceeding. The Office submits it was not the intention of the Commission to make such a finding in this Docket. The Office further asserts that any such determination is improper, as it is beyond the relief requested by the Company and exceeds the scope of evidence presented in this matter. The reasonableness of the Cool Keeper program was not at issue in this Docket. Indeed, the Company specifically stated in sworn testimony that it was “not seeking approval of the new Cool Keeper contract in this docket.” Hearing Transcript, p. 16, ll. 5-6, September 12, 2013. The Office requests the Commission review and clarify the Order to remove any reference to approval of the reasonableness of the Cool Keeper program prior to the Company submitting program expenses and related data to the Commission for a proper reasonableness review in a separate proceeding.

In the application submitted in this Docket, the Company requested “authority to cancel Electric Service Schedule No. 194 – Demand Side Management Cost Adjustment Credit in order to fund improvements to Electric Service Schedule 114 – Air Conditioner Direct Load Control Program...” Application, p. 1. The Company did not present the whole of the Cool Keeper program for review and analysis, and specifically stated that it was “not seeking changes to the Cool Keeper program.” Id., ¶ 9. The Company’s witness, Jeffrey W. Bumgarner, stated in direct testimony that “the Company [was] not seeking approval of the new Cool Keeper contract in this docket.” Hearing Tr. p. 16, ll. 5-6. Mr. Bumgarner further stated that it was not the intention of the Company to present the proposed new framework for the Cool Keeper program for a reasonableness or “wise decision” review in the current docket. *See* Hearing Tr. p. 22, ll. 21-25.

Moreover, in responding to questioning by the Commission's Hearing Officer, Mr. Bumgarner explicitly stated that the Company did not have expectations that any changes to the Cool Keeper program would be approved pursuant to the current docket, Hearing Tr. p. 29, ll. 17-22, and that at a future time, the Company would present to the Commission the details of the Cool Keeper program for a cost-effectiveness evaluation. Hearing Tr. p. 30, l. 20 – p. 31, l. 1. Mr. Bumgarner reiterated the exclusion of a prudency review of the Cool Keeper program in the present docket through additional responses to the Hearing Officer:

BY THE HEARING OFFICER:

Q. Okay. And so, again, just so I can - - I'm kind of scratching my head a little bit. If the Commission approves the cancellation of Schedule 194, it's your testimony that ultimately any kind of review of prudence, et cetera, or [sic] cost recovery purposes would occur subsequent in a review or in the - - I guess I'm just trying to figure out the timing of the actual expenditures versus the Commission's review of those.

A. Yeah. I mean, I think that's - - I believe you are correct on that. I mean, just as for all of our programming expenses of the approved programs that are currently running in the state, they're generally reviewed post their expenditure and evaluated at that time and determined whether or not they are appropriate.

Hearing Tr. p. 32, ll. 1-15.

In preparing and submitting its August 29, 2013, comments to the Application in this Docket, the Office relied upon the representations contained in the Company's written materials submitted to the Commission. The Office restricted its comments, responses and recommendation to the precise and limited request for cancellation of Schedule 194 contained in the Application. *See* Comments of Office of Consumer Services, August 29, 2013, p. 2 ("The request is limited to cancellation of Schedule 194 and the Office's recommendation relates only to that request."). Furthermore, the Office relied upon the sworn testimony of the Company's

witness in direct testimony, and upon examination by the Hearing Officer and third parties as to the scope of the Company's requested relief in this matter. This testimony influenced the Office's decision to limit testimonial cross-examination. The Office submits that any expansion of the relief granted by the Commission beyond that requested by, or supported through, written submissions or sworn testimony is improper and prejudicial to the Office and ratepayers, as well as other parties.

The evidence in the record clearly establishes that the Company was not requesting a determination on the reasonableness of the continuation of the Cool Keeper program. Indeed, the Company's sworn testimony clarifies that the Company will present the new iteration of the Cool Keeper program, with any changes to the operational and/or contractual framework and related expenditures, for a prudence review in the future. *See* Hearing Tr. p. 30, l. 20 – p. 31, l. 1; Hearing Tr. p. 32, ll. 1-15. This limitation to the relief requested is supported by the Company's written Application wherein the Company's request is explicitly limited to "an order authorizing the Company to cancel Electric Service Schedule 194, Demand Side Management (DSM) Cost Adjustment Credit...." Application, p. 8. The relief contained in the Commission's Order should be limited to the scope of the matter as framed by the Company in its Application and evidence presented to the Commission. *See* Combe v. Warren's Family Drive Inns, Inc., 680 P.2d 733, 735 (stating a tribunal is not authorized to grant relief on issues neither raised nor tried). Accordingly, the Office requests the Commission clarify the Order to remove any and all references to a finding of the reasonableness of the continuation of the Cool Keeper program. Any such determination should be reserved until after a full and proper evaluation of the reasonableness of the Company's expenditures related to the program; a presentation the Company has promised to offer at a later date.

III. CONCLUSION

Based upon the forgoing, the Office requests that the Commission review and clarify its findings in Docket 13-035-136, and issue a revised order approving the Company's Application with an effective date of September 15, 2013. Further, the Office requests that the Commission's revised order remove any reference to the reasonableness of the continuation of the Cool Keeper program, including but not limited to the sentence: "Based on the Company's testimony, we find the continuation of the Cool Keeper program, as approved in Docket No. 11-035-T03, is reasonable, in the public interest, and will provide for a cost-effective resource for customers." Order, p. 2.

Submitted this 11th day of October, 2013.

/s/ Brent Coleman
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Counsel for the Office of Consumer Services

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of The Office of Consumer Counsel's Petition for Review and Clarification, in Docket No. 13-035-136 was sent to the following individuals as identified below, this 11th day of October, 2013.

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