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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

<p>In the Matter of Rocky Mountain Power's Proposed Changes to Electric Service Regulation No. 3 to Indicate Customers are Responsible for Reasonable Court Costs, Attorneys' Fees and/or Collection Agency Fees Incurred in the Collection of Unpaid Debt Following the Due Date of Their Closing Bill</p>	<p>Docket No. 13-035-T08</p> <p>UTAH OFFICE OF CONSUMER SERVICES' MEMORANDUM IN RESPONSE TO COMMISSION QUESTIONS</p>
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The Commission's ALJ requested briefing regarding the following issue: Does the Commission have jurisdiction to set the collection percentage for a former RMP customer after a delinquent account has been turned over for collection? The Office of Consumer Services will respond in four parts.

**1. The Commission clearly has jurisdiction to approve/disapprove collection percentages for RMP customers.**

The Utah Public Service Commission has broad power and jurisdiction to supervise and regulate all of the business of Rocky Mountain Power, including all things necessary or convenient in the exercise of this power and jurisdiction. Utah Code Ann. § 54-4-1 (2004). In particular, the Commission is required to consider whether any rates, fare, toll, rental, charge or

classification demanded, observed, charged, or collected by any public utility for or in connection with any service, product or commodity, or any rule, regulation, practice, or contract affecting the rates, fares, tolls, rentals, charges, or classifications, is unjust, unreasonable, discriminatory, preferential or “otherwise in violation of any provisions of law.” Utah Code Ann. 54-4-4 (Supp. 2012). Given the plenary character of the Commission’s authority and jurisdiction, no rational case may be made that the Commission does not have jurisdiction over the terms and conditions of Rocky Mountain Power service connection, disconnection, and billing and collection practices.

**2. Title 12 of Utah Code Ann. does not preclude the Commission from exercising that jurisdiction but RMP proposals regarding collection costs must comply with Title 12.**

Title 12 of Utah Code Ann. is entitled “Collection Agencies” and governs collections by collection agencies in Utah. Contracts between Rocky Mountain Power and whatever collection agencies it contracts with for collections in Utah must comply with Title 12. But there is nothing in Title 12 that deprives the Commission of its jurisdiction to approve or disapprove such contracts.

Title 12 allows the imposition of collection fees on debtors when certain conditions are met. Section 12-1-11 provides in relevant part:

- (2) A creditor may require a debtor to pay a collection fee in addition to any other amount owed to the creditor for a debt if:
  - (a) imposing a collection fee on the debtor or in relation to the debt is not prohibited or otherwise restricted by another federal or state law;
  - (b) the creditor contracts with a third party debt collection agency or licensed attorney to collect the debt;
  - (c) the third party debt collection agency with which the creditor contracts is registered under this title;
  - (d) there is a written agreement between the creditor and the debtor that:
    - (i) creates the debt; and
    - (ii) provides for the imposition of the collection fee in accordance with this section; and

(e) the obligation to pay the collection fee is imposed at the time of assignment of the debt to a third party debt collection agency or licensed attorney in accordance with an agreement described in Subsection (2)(d).

Accordingly, Section 12-1-11 imposes conditions precedent upon a creditor and third party debt collection agency who wish to impose a collection fee. The fee may not be prohibited or otherwise restricted by another federal or state law; for example, by the Commission exercising its authority and jurisdiction. There must be a written agreement between the creditor and the debtor that creates the debt and provides for the imposition of the collection fee. No such written agreement or provision exists between Rocky Mountain Power and a customer.

If RMP desires to pass the costs of collection on to delinquent debtors, RMP must comply with those provisions. But again, there is nothing in Title 12 that deprives the Commission of jurisdiction to approve/disapprove such arrangements or even establish a collection fee so long as it is below the cap articulated in Title 12.

There is a precedent for the Commission to reject a proposed tariff because it does not adequately protect consumers' under the public utility statutes or other statutes governing the rights of consumers. In the Matter of the Approval of Rocky Mountain Power's Tariff Air Conditioner Direct Load Control Program, Docket No. 08-035-T09 is instructive. There, the Commission ruled that "Without strict compliance with disclosure and documentation rules and the consumer's written acknowledgment, negative option plans in any contract, marketing plan, arrangement or agreement between a supplier and a consumer are presumed to be deceptive (see Utah Administrative Rule R152-11-12)." Just as Utah Administrative Rule R152-11-12 imposed conditions precedent upon the use of opt-out provisions in a consumer contract, Section 12-1-11 imposes conditions precedent upon a creditor and third party debt collection agency who wish to impose a collection fee. Utah Code Ann. 12-1-11(2).

**3. The fact that a delinquent debtor may no longer be a customer of RMP at the time of collection does not deprive the Commission of jurisdiction to approve/disapprove RMP's collection arrangements.**

The suggestion that the Commission somehow loses jurisdiction if the debtor is no longer a customer is a red herring. As set forth above, the Commission has jurisdiction over RMP's billing and collection practices. The Commission does not lose jurisdiction over RMP's billing and collection practices just because a customer doesn't pay the bill and is terminated from service.

Moreover, as set forth above, for RMP to be entitled to impose a collection fee on the debtor in the first place, there must be a written agreement between RMP and the debtor. Title 12 provides that agreement must "create the debt" and provide for the imposition of the fee. Utah Code Ann. 12-1-11(2)(d). Hence, the agreement must be made at the time the debt is created, i.e. before service is provided. Of course, the debtor is a customer of RMP at that time and it is irrelevant whether they later discontinue their status as a customer.

**4. While the Commission has the power to approve/disapprove the collection percentages, it is the responsibility of RMP and not the collection agency to set those percentages.**

In its proposed tariff, RMP suggests that the collection agency be allowed to set the fees for the cost of collection. Such would be in violation of Title 12. Title 12 requires:

- (3) **The creditor shall establish the amount of the collection fee** imposed under this section, except that the amount may not exceed the lesser of:
- (a) the actual amount a creditor is required to pay a third party debt collection agency or licensed attorney, regardless of whether that amount is a specific dollar amount or a percentage of the principal amount owed to the creditor for a debt; or
  - (b) 40% of the principal amount owed to the creditor for a debt.
- Utah Code Ann. 12-1-11(3)[emphasis added].

Of course, RMP is the creditor and it is RMP's responsibility to establish the amount of the collection fee subject to the approval/disapproval of the Commission.

## **Conclusion**

Reexamining the proposed tariff in light of questions from the bench, the Office is more convinced that the abbreviated procedures of this docket are not likely to lead to a just and reasonable tariff that conforms to Utah law. There may be some justification and benefit to all consumers from allocating certain costs of default from all customers to those who default. But, this proposed tariff, in its present form, is not the solution. If the tariff is not amended to comply with the law as set forth above, the requested relief should be denied.

RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of July 2013.

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