



State of Utah

Department of Commerce
Division of Public Utilities

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Action Request Response

To: Public Service Commission of Utah

From: Utah Division of Public Utilities

Chris Parker, Director

Artie Powell, Manager

Doug Wheelwright, Utility Technical Consultant Supervisor

Eric Orton, Utility Technical Consultant

Date: April 5, 2021

Re: **Docket No. 17-030-T01**, In the Matter of Moon Lake Electric Association, Inc.'s
Proposed Tariff Revisions.

Recommendation Acknowledge Tariff or Order Public Notice and Meeting

After considerable consultation with Moon Lake Electric Association, Inc. (Moon Lake), the Division of Public Utilities (Division) recommends that the Public Service Commission of Utah (Commission) acknowledge Moon Lake's tariff filing as substantially complete. Alternatively, the Commission could order Moon Lake to send a notice of a meeting and hold a Board Meeting to ratify its full tariff. The Division has no underlying concerns with the tariffs themselves and is convinced Moon Lake has attempted to comply with all requirements for its rate making proceedings. During discussions with Moon Lake, it has become clear that, at least with regard to the 2019 changes, the Division is responsible for some of the confusion about the tariff. The 2019 changes appear to have gone through the statutorily required process. Given that intervening ratification of the tariff as it then existed, statutory compliance has been obtained and the tariff should be acknowledged.

It is not in the public interest to seek any retroactive correction of rates or payments for any past deficiencies of notice. A cooperative is fit to govern itself. However, should the Commission believe it does not have the authority to acknowledge the tariff, it could order Moon Lake hold a properly noticed meeting under Section 54-7-12(7)(c) to ratify its existing tariff.

The Commission and Moon Lake should consider whether to seek legislation to modernize the notice requirements in light of the decreased importance of traditional mail for informing the public. Meaningful notice can likely be made in various ways.

Issue

In the February 16, 2021 order, the Commission restated that it had “Declined to Acknowledge Moon Lake’s 2017 Filing” based on the failure of Moon Lake to “mail a notice of the meeting to all of [its] customers and members not less than 10 days prior to the date that the meeting is held.’ Utah Code Ann. § 54-7-12(7)(c).” The Commission noted that it “does not have the authority or power to waive this requirement.”

In that same order, the Commission further clarified “it could not acknowledge any of Moon Lake’s revisions in the 2017 Filing until the relevant requirements of the Utah Code have been satisfied or Moon Lake provides supplemental clarifying information.” Additionally, it noted other shortcomings with Moon Lake’s filings and pointed out that “Though Moon Lake did not cure the issues that prompted the PSC to decline to acknowledge the 2017 filing, Moon Lake submitted correspondence requesting an additional change in November 2020.”

In the 2017 order, the Commission stated that Moon Lake “must bring its tariff into compliance with the law.” “Given that Moon Lake did not supplement its 2017 Filing or otherwise comply with the PSC’s 2017 Letter, significant questions exist as to whether Moon Lake has implemented changes to its tariff and rates in a manner consistent with the law.” and the Commission noted other shortcomings currently at issue with Moon Lake’s filings. The Commission pointed out that “The Legislature has imposed certain regulatory obligations on electrical cooperatives and charged the PSC with enforcing them, including the requirements to

hold a public meeting before increasing rates and to maintain a current copy of the tariff on file with the PSC.”

Specifically, the Commission ordered “Moon Lake to file a Report (“Report”) with the PSC no later than Wednesday, March 24, 2021” with at least five specific requirements that must be contained in the Report before the Commission would acknowledge Moon Lake’s tariff. Moon Lake was directed to file a Report addressing five specific issues and demonstrating that the Company is compliant with current statute. Item number five, of those five issues, addressed the 10 day public notice and, to the extent that any “...currently effective tariff contains revisions that were made effective without meeting all statutory requirements...” that Moon Lake provide a “plan for rectifying the deficiency or deficiencies, including but not necessarily limited to any public meetings Moon Lake intends to hold.”

Background

This matter began with an email to the Commission on July 3, 2017, with Moon Lake notifying the Commission of some changes it made at its Board of Directors meeting on June 21, 2017 and its “intention is to include a notice of this rate change in our next newsletter that will be sent to all members in approximately three months.” At that time it also notified the Commission that on May 10, 2017, its “Board of Directors changed the policy regarding Line Extensions.” That same day the Commission issued its Action Request to the Division directing it to provide analysis, evaluation results, and the basis for conclusions and recommendations, regarding proposed tariff revisions from Moon Lake.

On July 10, 2017, Moon Lake sent another email to the Commission clarifying that, “We realize our proposed order on the rate change was in reverse of the norm, but we were hoping since the change had no effect on any current customer, we could avoid the hassle and expense of the special notification and hearings. I assume from the list you sent we should follow the normal procedure of notification, hearings, and then followed by Board actions.”

Ultimately, on July 20, 2017, the Commission notified Moon Lake of “several inadequacies in Moon Lake’s filing.” The correspondence from the Commission concluded by stating, “Based

on the PSC's review of the filing and the DPU's comments, the PSC determines it cannot acknowledge Moon Lake's tariff changes until the relevant requirements of the Utah Code have been satisfied or Moon Lake provides supplemental clarifying information, including the changes to Schedule NM-3 and Regulation 17 as described above.” Therefore, the Schedule and Regulation changes have not been acknowledged by the Commission to date.

There was no other correspondence for over three years between Moon Lake and the Commission until a November 10, 2020 email from Moon Lake notifying the Commission of an action that it had taken nearly a year and a half earlier for “an updated Electric Service Regulation #17 that was effective on July 1, 2019.” Moon Lake concluded the email with this question, “We are wondering if since we are not materially changing the costs associated with this interpretation, could we file the interpretation as an addendum to the Electric Service Regulation #17 to help clarify and better implement the structure for our consumers or do we need to file a full filing process?” Moon Lake also provided “a snapshot below of the interpretation table for our proposal of interpreting the kVA to service amps.” No mention was made of the lack of acknowledgement of the previous filing.

Discussions with Moon Lake and a review of Division records have brought clarity to the 2019 changes and why they were unknown to the Commission before the 2020 filing. In a May 2019 letter (attached) from Moon Lake to Chris Parker, director of the Division, Moon Lake provided notification of the 2019 changes, which appear to have complied with the statute. At the time of receiving the letter, Mr. Parker filed it in the Division records, assuming it was also filed with the Commission and anticipating that a Commission filing would initiate an action request to the Division. Mr. Parker should have noticed the material was not filed with the Commission and requested that Moon Lake do so, but did not. Moon Lake attempted to comply with the statute by this correspondence with the Division.

On November 13, 2020, the Commission issued an Action Request directing the Division to investigate Moon Lake’s email and provide a recommendation. On November 30, 2020, the Division issued its response to the Commission concluding with the recommendation that “the Commission approve the request to allow Moon Lake to include a table materially the same as

the one provided in the snapshot... while still not acknowledging the tariff itself. The Company will need to provide a copy of the revised tariff and is encouraged to submit additional corrections to the Commission for review and approval.”

On February 16, 2021, the Commission ordered Moon Lake to submit a Report, on or before March 24, 2021. On March 1, 2021, the Commission received an email from Moon Lake dated February 18, 2021, with eight attachments in response to the Commission’s order. On that same day the Commission issued its Action Request to the Division directing it to investigate Moon Lake’s email and “to provide analysis, evaluation results, and the basis for conclusions and recommendations” and Review the Tariff for compliance. Since then, the Division has reviewed relevant materials and engaged in discussions with Moon Lake to evaluate Moon Lake’s actions, intentions and related filings.

Discussion

In its February 16, 2021 order, the Commission directed Moon Lake to provide a Report containing, at minimum, five specific items identified below. Moon Lake’s email, referenced above, was received by the Commission on March 1, 2020 and provided an attachment with eight exhibits purporting to provide the Commission “all of the requests outlined in the Docket Order,” concluding with the statement, “As a summary to the questions and reports requested in Docket No. 17-030-T01, the above description and the provided materials with this correspondence should provide all the necessary reporting and identification of changes to rate tariffs and electric regulations up to the effective date of July 1, 2019.”

Below is the quoted Commission directive (in bold) and a description of the information provided for each item the Commission required Moon Lake address.

1. A complete copy of Moon Lake’s currently effective tariff.

A complete tariff was provided attached as exhibit No. 1, while exhibit No. 2 contains the redline version of this same tariff. These current tariff sheets appear to be complete.

2. A record of all changes or revisions to Moon Lake’s tariff since January 1, 2016.

This information was provided attached as exhibit No. 2 and No. 3. These appear complete except that the attached tariff begins May 1, 2016, rather than January 1, 2016 as ordered by the Commission, which the Division believes is immaterial.

3. A record of the actions Moon Lake’s board of directors has taken to approve any changes or revisions to the tariff since January 1, 2016.

This information was provided as Exhibit Nos. 5, 6, and 7. Exhibit No. 5 is represented to be a redacted copy of the May 10, 2017 Board Meeting Minutes where a rate increase was approved. Exhibit No. 6 is represented to be a redacted copy of Board Meeting Minutes from a meeting held on June 28, 2017 where a rate increase was also approved. Exhibit No. 7 is represented to be a redacted copy of the May 8, 2019 Board Meeting Minutes where another rate increase was approved.

The Division followed up on these exhibits by asking Moon Lake if these three represented all the Board Meetings where rate increases were discussed “to approve any changes or revisions to the tariff since January 1, 2016” as the Commission directed. Moon Lake replied, “MLEA has monthly board meetings to discuss the needs of the utility and our members. However, over the past four years only 3 of those meetings discussed and approved revisions to the tariffs. The attached minutes from those meetings have already been submitted.” The Division sees no reason to disagree and concludes that this requirement has been met.

4. A record of all public meetings, and corresponding public notices, Moon Lake has held since January 1, 2016 pursuant to Utah Code Ann. § 54-7-12(7)(c).

What Moon Lake provided is attached as Exhibit No. 8 and is a copy of a public notice for one meeting held on May 22, 2019. Even though Moon Lake has provided this documentation of public notice for this particular Board Meeting, it did not provide evidence of any public meeting notices or public notices corresponding to the May 10, 2017 and the June 28, 2017 Board Meeting where the tariff increases mentioned above were approved. Therefore, only one of the three Board Meetings where tariff increases were discussed and approved have any record of public notice prior to the Board Meeting. While the public notices that Moon Lake provided as

Exhibit No. 8 are copies of public notices issued on May 14, 2019 and May 21, 2019, for meetings to be held on May 22, 2019 and May 23, 2019 respectively, Moon Lake's 2019 letter to Mr. Parker indicates that notice was mailed in accordance with the statute. The letter was a nearly contemporaneous record and the Division has no reason to question its assertions.

5. To the extent Moon Lake's currently effective tariff contains revisions that were made effective without meeting all statutory requirements, Moon Lake's plan for rectifying the deficiency or deficiencies, including but not necessarily limited to any public meetings Moon Lake intends to hold.

In response to Division questions, Moon Lake stated that it included "the various reports that address all of the requests outlined in the Docket Order." Furthermore, Moon Lake stated that these reports "provide evidence to support that MLEA followed the process as outlined in the applicable state laws for advertising and hold [sic] public hearings to review recommended changes." It is evident from Moon Lake's reply that it believes it has met the statutory requirements as specified by the Commission and no "revisions" are required.

The Division reviewed Moon Lake's email as well as its accompanying attached exhibits and had additional correspondence with Moon Lake as well as with the Utah Rural Electric Cooperative Association.

Utah Code Ann. § 54-7-12(7)(c) requires the cooperative to mail a notice of the change and meeting to its members at least 10 days before the meeting. This requirement appears to have been met for the 2019 changes. While the record is not so strong with regard to the 2017 changes, the intervening 2019 tariff approval likely remedied any deficiency in the 2017 proceedings. The requirement for mailing is becoming anachronistic, given electronic mailing and meeting advances. Statutory changes may be advisable.

Conclusion

The Division acknowledges that Moon Lake has substantially complied with the Commission's order and the statute, and recommends that the Commission acknowledge the latest tariff as filed.

Alternatively, the Commission could order Moon Lake to comply with Section 54-7-12(7)(c) by sending a proper meeting notice and holding a public meeting to ratify its existing tariff, which should be completed as soon as practicable. It is not in the public interest to seek any retroactive action concerning rates or collections. However, the Division also recommends that Moon Lake (perhaps through its trade association) and the Commission should consider whether to seek legislative changes to modernize the notice and meeting provisions in order to better reflect modern practices. The Division will work with Moon Lake and the Utah Rural Electric Cooperative Association to assist in complying with statutory requirements and avoid miscommunications in the future.

Cc: Patrick Corun, Manager Engineering, Moon Lake Electric Association, Inc.
Yankton Johnson, Assistant General Manager, Moon Lake Electric Association, Inc.
Jeff Peterson, Executive Director, Utah Rural Electric Cooperative Association