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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF BRINGARD MILLWORKS, LC, COMPLAINANT, VS. ROCKY MOUNTAIN POWER, RESPONDENT.	Docket No. 17-035-66 DIVISION OF PUBLIC UTILITIES’ MEMORANDUM IN OPPOSITION TO ROCKY MOUNTAIN POWER’S MOTION TO DISMISS.
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Pursuant to Utah Admin. Code r.746-100, the Division of Public Utilities (“Division”) files this Memorandum in Opposition to Rocky Mountain Power’s Motion to Dismiss. Rocky Mountain Power (“RMP”) misapplies its rule on metering adjustments. The Commission should deny RMP’s Motion to Dismiss.

RMP’s Answer and Motion to Dismiss provides a comprehensive background of the relevant facts to this Response and will not be repeated herein.

The Commission should deny RMP’s Motion to Dismiss. The “purpose of a rule 12(b)(6) motion is to challenge the formal sufficiency of the claim for relief, not to establish the facts or resolve the merits of a case.” *Capri Sunshine, LLC v. E & C Fox Investments, LLC*, 366 P.3d 1214, 1217, 2015 UT App 231, ¶ 11. A Motion to Dismiss under Rule 12(b)(6) “is justified only

when the allegations of the complaint clearly demonstrate that the plaintiff does not have a claim.” *Id.* The Complaint in this docket is sufficient to state a claim. The Commission should deny RMP’s Motion to Dismiss.

There appears to be no dispute that Bringard was under-metered for a period of time for energy it used. The issue in dispute is the treatment of that energy and whether RMP may collect from Bringard. Billing rules are contained in RMP Electric Service Regulation No. 8 (“ESR 8”). The rights and responsibilities with respect to metering and bill adjustments related to metering are set out in RMP Electric Service Regulation No. 7 (“ESR 7”). The Complaint includes claims of procedural errors in application of ESR 8, however the core issue in this complaint is whether this is a metering error or not.

ESR 8 is titled “Billings” and provides for general billing requirements such as monthly billing intervals, estimated billing, payment and late payment, and backbilling. Backbill is defined as that “portion of any bill... which represents charges not previously billed for service that was actually delivered to the customer during the period before the current billing cycle.” Backbilling is permitted in most cases for up to 24 months.

ESR 7 provides first that “[t]he company will install, own and maintain all meters and other metering devices... necessary for measuring electric power and energy used by the Customer.” It further provides for two types of bill adjustments for certain metering problems. First is for “meter error” where a meter is tested to be either faster or slower by a margin of 2 percent. The second type of error that permits a bill adjustment is for “failure to register”. Failure to register error occurs when a meter fails to correctly register the amount of energy used by a customer. In the event of a meter error, the company may bill the customer for the period

not exceeding six months unless it can be shown that the error was due to some cause with a known date. In the event of a failure to register the customer may be billed for the estimated energy used for a period of three months.

RMP asserts that neither provision of ESR 7 apply to limit the period that it may backbill the customer. The Division disagrees. RMP's argument that ESR 7 does not apply relies on the premise that the Company's current transformer circuit that reduces line voltage for metering purpose is not part of the meter or metering equipment. RMP's Motion to Dismiss explains the failure that it found upon investigation

[A] burned wire in the Current Transformer ("CT") cabinet was discovered. CTs reduce high voltage currents to a lower voltage. This provides a safer, more accurate measurement of energy. CTs are Company owned equipment and are installed in a cabinet on the utility side of the meter. Although a conduit connects the CTs to the revenue meter, the CT itself is not a meter. The CT installation for Bringard has three phases, A, B, and C, with each phase representing approximately one third of the energy consumed by Bringard.

The damaged wire in Bringard's CT was the wire for the "C" phase. As a result, Bringard's meter was only receiving and measuring electricity from phases "A" and "B", but not "C". Because it is possible for one of the three phases in a CT to fail without any disruption to the supply or use of energy, Bringard was receiving and consuming power on all three phases. In this case, the power continued to flow, but the meter only registered the portion of the energy used from phases "A" and "B". On July 28, 2017, the Company informed a Manager for Bringard, of the Company's findings and that repairs would need to be made.

The Commission should reject a narrow construction of the use of the term "meter" to only include the device that measures the energy flowing through it, but excluding the other necessary equipment that must also be used to facilitate the function of the measuring device. The current transformers are installed solely for the purpose of metering, are matched to the meter used, and are commonly either provided with the meter as part of a meter hardware

package. In short – they are every bit as much a part of the meter function as the meter’s internal electronic components. They simply are remotely mounted rather than being internally located for safety reasons to allow for smaller and less dangerous wiring to be run to the meter cabinet and to be measured. They should be considered part of the meter.

If a different meter were used with the full voltage passing through the meter and an internal circuit – similar to the wire in this case – was to fail, the result would be the same. One phase would fail to register. The result would fall plainly within the ESR 7 definition of failure to register. The same reasoning and interpretation should be applied in this instance. In both instances, the customer’s actual usage is not precisely known because the metering infrastructure failed to accurately record the use. Load is not always balanced among the phases. The meter should be considered to include the portion of the meter that records the information as well as the hardware that the meter relies on to produce the information.

The Complaint states a claim for relief that is within the jurisdiction of the Commission. RMP has failed to meet the burden required for a Motion to Dismiss. The arguments made by RMP do not clearly demonstrate that the customer filing this complaint does not have a claim to relief. The Commission should consider the hardware including the current transformers as part of the meter and apply the ESR 7 limitations on collection.

Submitted this 25th day of January 2018.

/s/ Justin C. Jetter

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Utah Division of Public Utilities