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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

**Request of Rocky Mountain Power for
Approval of a Utah Fire Fund**

Docket No. 25-035-61

**ROCKY MOUNTAIN POWER’S BRIEF
ON LEGAL AUTHORITY TO APPROVE
ROCKY MOUNTAIN POWER’S
REQUEST TO APPROVE A UTAH FIRE
FUND**

I. INTRODUCTION

PacifiCorp d/b/a Rocky Mountain Power (the “Company” or “RMP”) hereby submits its Brief in response to the Public Service Commission of Utah’s (“Commission” or “PSC”) direction, in its “Order Vacating Scheduling Order and Setting Deadlines,”¹ to “RMP and any party that wishes to challenge the PSC’s legal authority to approve the Request” to establish a Utah Fire Fund in this proceeding to file a brief:

[A]ddressing the following legal issue: Whether this proceeding to establish a fire fund surcharge can be determined to be a ‘rate case’ consistent with the statutory language in Utah Code § 54-24-301(3)(a) and adjudicated prior to RMP’s next ‘general rate case’ whenever such may be filed.”²

¹ Docket No. 25-035-61, Order Vacating Scheduling Order and Setting Deadlines, at 5 (Jan. 30, 2026) (the “Order”).

² Order at 5.

In the Order, the Commission found that legal question “potentially dispositive,” and that “the PSC will decide the preliminary legal issue as soon as is practicable.” Rocky Mountain Power urges that the Commission affirm that this proceeding can be determined to be a “rate case” consistent with the statutory language in Utah Code § 54-24-301(3)(a) and adjudicated prior to RMP’s next “general rate case.”

II. ARGUMENT

A. The Fire Fund Statute provides substantive and procedural standards for Commission approval of the creation of a fire fund.

The Company filed its request for approval of a fire fund as a request for Commission action, pursuant to Utah Code §63G-4-201(1)(b)³ and Utah Administrative Code R746-1-104.⁴ The filing initiating this proceeding was made consistent with Utah Code §§ 54-24-301—54-24-303 (the “Fire Fund Statute”). Section 54-24-301(2) states that “[a] large-scale electric utility may create a Utah fire fund by filing notice with the commission.”⁵ Rocky Mountain Power’s request for Commission action asked that the Commission approve, as stated in the statute, “a large-scale electric utility’s request to create a Utah fire fund.”⁶

The Fire Fund Statute identifies what is being “created” when the Commission approves a fire fund, in four ways. First, the statute defines “Utah fire fund” to mean “a fund that may be created under this section by a large-scale electric utility to serve as a resource to supplement

³ Section 63G-4-201(1) of the Utah Administrative Procedures Act provides that “all adjudicative proceedings shall be commenced by either: (a) a notice of agency action, if proceedings are commenced by the agency; or (b) a request for agency action, if proceedings are commenced by persons other than the agency.”

⁴ Section R746-1-104(2) provides that a “request for agency action ... shall be adjudicated as a formal proceeding,” unless the type of request is included in a designated category of “informal proceedings.” The request to approve a Fire Fund is not included in the list of requests for agency action eligible for informal proceedings.

⁵ Utah Code § 54-24-301(2)(a).

⁶ Utah Code § 54-24-301(4).

other forms of insurance to make eligible payments.”⁷ Second, the fire fund is further described at Utah Code § 54-24-301(3) by reference to its source of funding. “A Utah fire fund shall consist of: (a) a reasonable and prudent fire surcharge ... to be collected over a 10-year period from the date of the commission’s approval of the Utah fire fund; (b) investment income from the money in the fund; and (c) other amounts deposited into the fund as otherwise required by law.”⁸ Third, the statute notes that it is the determination of the “commission approved surcharge that establishe[s] the ... Utah fire fund,” and that the “effective date” of the Commission’s approval of the surcharge serves as the start date of the 10 year period during which the utility may collect the fire surcharge.⁹ Fourth, in § 54-24-302(1), the Fire Fund Statute identifies the requirements for “Utah fire fund administration,” that are required of a utility “[u]pon creation of a fire fund.”¹⁰ The “fire fund administration” requirements in § 54-24-302(1) are thus to be fulfilled by the utility once the fire fund is “created;” creation of a fire fund requires a request from a utility and approval by the Commission.

The standards for Commission approval of a utility’s “request to create a Utah fire fund”¹¹ are identified in § 54-24-301(4). The utility requesting creation of a fire fund must “demonstrate to the commission’s satisfaction ... that the fund”¹² is in the public interest, supports the utility’s financial health, and maintains or improves the utility’s ability to deliver safe and reliable services.¹³ In addition, the Commission must make a finding:

- (b) that the fire surcharge does not result in an increase over current rates:
 - (i) for all customers, more than 4.95%; and

⁷ Utah Code § 54-24-301(1)(e).

⁸ Utah Code § 54-24-301(3)(a) - (c).

⁹ Utah Code § 54-24-301(3)(a).

¹⁰ Utah Code § 54-24-302(1).

¹¹ Utah Code § 54-24-301(4).

¹² Utah Code § 54-24-301(4)

¹³ Utah Code § 54-24-301(4)(a)(i) - (iii).

- (ii) for an average residential customer more than \$3.70 a month.¹⁴

The Fire Fund Statute sets forth a process for a fire fund to “be created under this section,”¹⁵ and “this section” of the statute is Utah Code § 54-24-301. Approval of the collection of a fire surcharge, set at a level within the statutorily defined parameters, is a necessary element of approving the creation of a fire fund. A fire fund is not legally “established” until the Commission has approved the fire surcharge.¹⁶

The Fire Fund Statute says three things about establishing the fire surcharge when the Commission approves creation of a fire fund. First, as noted above, Subsection 54-24-301(4)(b) places limits on the extent of the “increase over current rates”¹⁷ that results from the addition of the fire fund surcharge to the utility’s rates. Second, § 54-24-302(3) establishes a structure for the termination of the utility’s collection of the fire surcharge:

*A surcharge described in Section 54-24-301 that funds a ... Utah fire fund shall terminate on the earliest of the following dates: (a) the date that is 10 years after the effective date of the commission approved surcharge that established the ... Utah fire fund; (b) the date on which the assets in the ... Utah fire fund reach an amount equal to 50% of the ... utility’s most recent approved general rate case; or (c) the date on which the commission determines, on the commission’s own motion, that the surcharge should terminate, regardless of the current balance in the Utah fire fund.*¹⁸

Third, the Fire Fund Statute states that the fire surcharge, “as approved by the commission in a rate case,” is “to be collected over a 10-year period from the date of the commission’s approval of the Utah fire fund.”¹⁹

¹⁴ Utah Code § 54-24-301(4)(b).

¹⁵ Utah Code § 54-24-301(1)(e).

¹⁶ Utah Code § 54-24-302(3)(a).

¹⁷ Utah Code § 54-24-301(4)(b).

¹⁸ Utah Code § 54-24-302(3) (emphasis supplied).

¹⁹ Utah Code § 54-24-301(3)(a).

The Fire Fund Statute thus governs the initiation and the termination of the fire fund surcharge. The standards and process for Commission *approval* of the fire surcharge, including its amount, are delineated in § 54-24-301. The standards and process for *termination* of the fire surcharge, either after ten years or an earlier date to be determined by the Commission, are set forth in § 54-24-302.²⁰ The rate increase authorized by the Fire Fund Statute is to be approved in the § 54-24-301 proceeding to create the fire fund; the rate decrease that results when the Commission orders termination of the fire surcharge is to be approved in the proceeding authorized in § 54-24-302. This is a distinctly different process than the general provisions in Utah Code 54-7-12 that govern filings for a general “rate increase or decrease,”²¹ and the result of fire fund approval will result in the increase of only a single charge: the fire surcharge collected to create the fire fund.

B. This proceeding is a “rate case” in which a fire surcharge may be approved pursuant to Utah Code § 54-24-301.

The Commission’s briefing order asks for input on whether “this proceeding to establish a fire fund surcharge can be determined to be a ‘rate case’ consistent with the statutory language in Utah Code § 54-24-301(3)(a).”²² This proceeding can properly serve as the “rate case” to establish the fire surcharge, for multiple reasons.

First, the Fire Fund Statute does not contemplate creation of the fire fund, and its associated surcharge, as requiring approval in a general rate case. The statute uses the term “rate case” rather than “general rate case” in describing the proceeding in which a fire surcharge is authorized. The term “rate case” is not specifically defined in statute, but the Legislature has

²⁰ Utah Code § 54-24-302(3).

²¹ Utah Code § 54-7-12, “Rate increase or decrease – Procedure – Effective dates – Electrical or telephone cooperative.”

²² Order at 5.

demonstrated that it knows the difference between the terms “rate case” and “general rate case,” both of which are used in the Fire Fund Statute.

In fact, the Fire Fund Statute uses three different terms to describe proceedings related to creation and administration of the fire fund. As noted, approval of the fire surcharge is to occur in a “*rate case*.” The statute also provides that a party may “challenge the amount of the disbursement from the ... Utah fire fund” in “a rate case or other appropriate proceeding.”²³ Finally, a party may bring a challenge to the utility’s compliance with its wildland fire protection plan in the area of a particular fire event as “a request for agency action under Title 63G, Chapter 4, Administrative Procedures Act.”²⁴

The only reference to a “*general rate case*” in the Fire Fund Statute addresses conditions that would justify termination of the fire surcharge. The fire surcharge may be terminated if assets in the fire fund exceed fifty percent of the utility’s revenue requirement “established in the ... utility’s most recently approved *general rate case*.”²⁵ The term “general rate case” is thus used not to describe an approval proceeding called for by the Fire Fund Statute,—but only as a reference to a utility’s general rate case that is already completed.

The canon of statutory construction *expressio unius est exclusio alterius* further supports this interpretation. The canon provides that the expression of one thing implies the exclusion of others, reinforcing the principle that each statutory term is deliberately chosen and should not be treated as surplusage.²⁶ Here, the Legislature used both “rate case” and “general rate case” within

²³ Utah Code § 54-24-302(4)(a).

²⁴ Utah Code § 54-24-303(7)(a).

²⁵ Utah Code § 54-24-302(3)(b).

²⁶ See e.g., *Nevarres v. M.L.S.*, 345 P.3d 719, 725 (2015) (“That implication follows from established canons of statutory construction. One such canon is the *expressio unius* principle of interpretation—the notion that the statutory expression of one term or limitation is understood as an exclusion of others.”)

the Fire Fund statute. Interpreting these terms as identical would disregard the Legislature’s deliberate decision to employ different terminology within the same statutory scheme.

Second, when it adopted SB 224, the Legislature not only drew distinctions between a “general rate case,” a “rate case,” and “other appropriate proceedings” in the fire fund provisions. In other sections of SB 224, the Legislature amended or added new statutory language that called out distinctions between a “general rate case” and other Commission rate proceedings. In sections of the Utah Code governing cost recovery for utility resource decisions, the statutes state that “the commission shall, in a general rate case or other appropriate commission proceeding, include in the affected electrical utility’s retail electric rates the state’s share of costs”²⁷ Similarly, the cost recovery provisions governing approval of other utility resource decisions provide the option for the Commission to incorporate costs into retail rates “in a general rate case or other appropriate commission proceeding.”²⁸ These were all provisions amended by SB 224, so were clearly before the Legislature when it made the changes in state law that included addition of the Fire Fund Statute.

Third, the absence in the Fire Fund Statute of legislative language that links Commission approval of the fire surcharge to a “general rate case” arising under Utah Code §54-7-12 contrasts with other legislative delegations of administrative authority to the Commission, in which the Legislature refers directly to “general rate case” proceedings. For example, the statute authorizing the utility low-income assistance program states that the “low-income assistance funding level shall be adjusted concurrently with the final order in a *general rate increase or*

²⁷ Utah Code §54-17-303(1)(a). Similar language is repeated in subsection (1)(b)(i) of the same statutory provision (“The commission shall, in a general rate case or other appropriate commission proceeding” include specified costs in the “utility’s retail electric rates.”).

²⁸ Utah Code §54-17-403(1)(a) (“cost recovery for . . . resource decision under § 54-17-402”). The same language is included at Utah Code § 54-17-1002(3) (“cost recovery for proven dispatchable generation assets”).

*decrease case under Section 54-7-12 ... or as determined by the [C]ommission.”*²⁹ Similarly, the statute authorizing energy balancing accounts (“EBA”), provides that an EBA “shall only become effective upon a commission finding that the energy balancing account is ... implemented at the conclusion of a *general rate case*.”³⁰ The statute establishing procedures for filing tariffs to implement gross receipts tax decreases directs that a utility file new tariffs “as part of its 2006 *general rate case* revenue requirement.”³¹ Those examples demonstrate that, when the Utah Legislature intends for the Commission to consider a particular matter only in a general rate case, or after it has conducted one, the Legislature directs the Commission using that specific language.

In other contexts, the Legislature has directed the Commission to conduct proceedings that involve rate changes without requiring that they be associated with a general rate case. For example, Utah Code §54-7.12.8 directed the Commission to “authorize a large-scale electric utility to implement a combined line item charge on the ... utility’s customers’ bills to recover” costs associated with “demand-side management” and “the sustainable transportation and energy plan.”³² The legislative directive required the rate changes involved be authorized by a date certain, but did not require they be made in a “general rate case” proceeding. Similarly, the Fire Fund Statute does not tie the Commission’s approval of the fire surcharge in a “rate case” to the filing of a general rate increase proceeding under Utah Code §54-7-12.

The Fire Fund Statute’s direction to approve a fire surcharge in a “rate case” separate from a “general rate case” is consistent with the Commission’s general authority to conduct a

²⁹ Utah Code §54-7-13.6(6)(c) (emphasis supplied).

³⁰ Utah Code §54-7-13.5(2)(b)(iii) (emphasis supplied).

³¹ Utah Code §54-7-12.9(2)(a) (emphasis supplied).

³² Utah Code § 54-7-12.8(3).

proceeding that changes rates when it finds the new rate just and reasonable. As the Utah Supreme Court has held:

[T]here is no provision in the Public Utilities Act, which precludes the authority of the P.S.C. to conduct an abbreviated proceeding to adjust a utility rate or charge, but any rate so adjusted must be predicated upon a finding that such adjusted rate is just and reasonable. In turn, this finding must be supported by substantial evidence concerning every significant element in the rate making components (expense or investment) which is claimed by the applicant as the basis to justify a rate adjustment.³³

The Fire Fund Statute requires a finding that the fund proposed by a utility must be found to be in the public interest,³⁴ and establishes specific limits on the permissible surcharge level.³⁵

The “basis to justify a rate adjustment”³⁶ in this proceeding is the legislative finding that creation of a fire fund should be approved if it meets the criteria identified in the Fire Fund Statute.

Unlike a general rate case proceeding, there are not offsetting “rate making components (expense or investment)”³⁷ that the Company contends underlie the need for the statutorily mandated fire surcharge. There are no changes to rate base involved, nor a request to revise the Company’s approved rate of return. Rather, the Company’s proposal is based on evidence supporting its proposed terms for creation of a fire fund, including the amount and collection period of the fire surcharge. This proceeding was filed as a request for Commission action in a formal adjudicated proceeding that will result in a change in rates when the fire surcharge is approved.

Moreover, in the Order, the Commission ordered Rocky Mountain Power provide the Intervening Parties with information the Commission found, as it put it in its Request for Comments, “necessary to allow the PSC to make the statutorily required findings to approve the

³³ *Utah Dep’t of Business Regulation, Div. of Pub. Utils. v. Public Serv. Comm’n*, 614 P.2d 1242, 1249-50 (Utah 1980).

³⁴ Utah Code § 54-24-301(4)(a)(i).

³⁵ Utah Code § 54-24-301(4)(b).

³⁶ *Utah Dep’t of Business Regulation, Div. of Pub. Utils.* 614 P.2d at 1249.

³⁷ *Id.*

proposed Fire Fund.”³⁸ This information, in addition to the Company’s filed testimony and discovery responses, along with evidence presented by the Intervening Parties, will provide the Commission the adjudicative record sufficient to determine whether approval of the fire surcharge is just and reasonable and satisfies the other criteria for approval identified in § 54-24-301. The consideration of the rate adjustment caused by collection of the fire surcharge does not require the comprehensive review of the Company’s expenses and rate base that comes with a filing for a general rate increase.

C. Principles of statutory construction support the determination that a fire fund may be approved in this proceeding.

Two basic principles of statutory construction support the conclusion that this proceeding is an appropriate vehicle for Commission consideration of the creation of a fire fund. The Utah Supreme Court has explained that “[w]hen interpreting a statute, our goal is to give effect to the words enacted into law by the legislature. We do not, however, read statutory text in isolation. We must read it in context, taking into consideration surrounding terms and associated provisions.”³⁹ This principle has been applied consistently in prior decisions of the Utah courts and the Commission.⁴⁰ As discussed above, examination of the context in which the term “rate

³⁸ Docket No. 25-035-61, Request for Comments and Scheduling Order and Notice of Hearing, at 5 (Dec. 17, 2025) (“Request for Comments”). The Commission required the Company to provide the specified information in the Order, at 5.

³⁹ *Utah Office of Consumer Servs. V. Pub. Serv. Comm’n of Utah*, 2019 UT 26, ¶ 30, 445 P.3d 464, 471 (2019).

⁴⁰ *See, e.g., Bryner v. Cardon Outreach, LLC*, 2018 UT 52 ¶ 9, 428 P3d 1096 (2018) (explaining that in pursuing the goal of statutory interpretation “to evince the true intent of the Legislature” Utah courts look first to “the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters” (internal quotation marks omitted)); *In the Matter of the Investigation of the Costs and Benefits of PacifiCorp’s Net Metering Program*, Docket No. 14-035-114, Order Re: Conclusions of Law on Statutory Interpretation and Order Denying Motion to Strike at 15 (Jul. 1, 2015) (interpreting a statute “in a manner consistent with its plain language and the Commission’s traditional role as utility regulator”); *Application of Dominion Energy Utah for Approval of a Natural Gas Clean Air Project and Funding for the Intermountain Industrial Assessment Center*, Docket No. 19-057-33, Order Denying Office of Consumer Services’ Motion to Dismiss Application at 15 (Apr. 27, 2020)

case” is used in Utah Code § 54-24-301(3)(a) demonstrates when the Legislature used “rate case” in the Fire Fund Statute, it did not mean “general rate case.”

In addition, a contextual reading of the Fire Fund Statute confirms that Commission approval of the creation of a fire fund includes the approval of the fire surcharge, *i.e.*, the “rate” that is central to the Company’s request in this proceeding. The statute itself recognizes that the rate case convened to consider the fire surcharge will “result in an increase over current rates,”⁴¹ in an amount delimited by statute. This authorization for the Commission to approve a rate increase in a “rate case” distinguishes a proceeding arising from the Fire Fund Statute from a general rate increase or decrease proceeding that is the subject of Utah Code § 54-7-12. In the Fire Fund Statute, the Legislature called for a focused proceeding for consideration of creation of a fire fund, a proceeding which would approve or disapprove the proposed fire fund, including the fire surcharge that makes the fund operative.

Even if the “rate case” language in the Fire Fund Statute is considered in conflict with the “rate increase or decrease” provisions in § 54-7-12 (which the Company does not contend it is) statutory construction principles dictate that the Fire Fund Statute language should prevail as the more specific of the two statutory provisions. As the Utah Supreme Court has held:

When interpreting a statute, it is axiomatic that this court's primary goal is to give effect to the legislature's intent in light of the purpose that the statute was meant to achieve. In circumstances ... where the operation of two statutory provisions is in conflict, the more specific provision will govern over that which is more general. This court looks first to the plain language of a statute when deciding questions of statutory interpretation and assumes that each term was used advisedly by the

(“Our primary goal in interpreting the statute ‘is to evince the true intent and purpose of the Legislature. We assume the legislature used each term advisedly and in accordance with its ordinary and accepted meaning.’” (Internal citation and brackets omitted.) (citing *State v. Martinez*, 2002 UT 80, ¶ 8, 52 P3d 1276, 1278)); *plication of E Fiber Moab, LLC and E Fiber San Juan, LLC for a Certificate of Public Convenience and Necessity to Provide Facilities-Based Local Exchange Service and be Designated as Carriers of Last Resort in Certain Rural Exchanges*, Docket No. 20-2618-01, Amended Order on Review at 12-13 (discussing statutory interpretation methodology and citing to a number of additional authorities).

⁴¹ Utah Code § 54-24-301(4)(b).

legislature. Similarly, statutory construction presumes that the expression of one should be interpreted as the exclusion of another. Therefore, omissions in statutory language should be taken note of and given effect.⁴²

In another Utah Supreme Court decision, the court held that “[w]hen two statutory provisions purport to cover the same subject ... our rules of statutory construction provide that ... the provision more specific in application governs over the more general provision.”⁴³ The Court continued by explaining that a statute that expressly applied only to a specific set of situations was “tailored precisely to address the documents and instruments at issue,” and was therefore the more specific statute compared to one “address[ing] every situation.”⁴⁴ “Further,” the Court held:

[A] statute is more specific according to the content of the statute, not according to how restrictive the statute is in application. Indeed, a specific statute may be either more or less restrictive than the statute more general in application, depending upon the intent of the legislature in enacting the more specific statute.⁴⁵

The Fire Fund Statute includes substantive and procedural guidance for the Commission’s review of a proposal to create a fire fund. The Fire Fund Statute is unquestionably the more specific (and most authoritative) source for determining the Legislature’s intent for how a fire fund is to be created and funded. To the extent there is any conflict regarding how a request to create a fire fund should be processed, statutory construction principles dictate that the terms of the Fire Fund Statute should govern. Rocky Mountain Power also submits that, while not a purely legal point, a determination that this proceeding should be jettisoned in favor of different procedural vehicle is inconsistent with the Commission’s statements recognizing “the public policy underlying Utah Code § 54-24-301” and its strong preference “to avoid any needless delay in consideration of RMP’s Request to implement a Utah fire fund.”⁴⁶ The Company has

⁴² *Biddle v. Washington Terrace City*, 1999 UT 110, ¶14, 993 P2d 875, 879 (1999).

⁴³ *Taghipour v. Jerez*, 2002 UT 74, ¶11, 52 P3d 1252, 1255 (2002).

⁴⁴ *Id.*, 2000 UT ¶14, 52 P3d 1256 (emphasis in original).

⁴⁵ *Id.*

⁴⁶ Order at 4, *quoting*, Request for Comments, at 6.

filed the testimony of five witnesses, presented a detailed study and a proposed tariff, and, as of the date this brief is filed, has responded to approximately 72 discovery requests from Intervening Parties. Significant time and resources have already been expended to develop the current record. Furthermore, when the previously agreed-to scheduling order was vacated, it provided more time for Intervening Parties to propound additional discovery requests and prepare their testimony. And to date, no party has moved to dismiss the Company's request for having been filed unlawfully. This proceeding is building the record the Commission will need to thoroughly consider whether to approve creation of a Utah fire fund. A decision to dismiss or postpone this proceeding, or to defer consideration of creation of the fire fund until the Company's next general rate case, will result in the needless delay the Commission expressed concerns about in its previous orders.

If the Legislature had written a law that says creation of a fire fund could only be considered in a general rate case, or if existing law prevented this proceeding to establish the fire fund and surcharge from being considered a "rate case," that delay would be unavoidable. But that is not the case. The Legislature provided the substantive standards and procedural tools necessary for the Commission to complete its duties under the Fire Fund Statute in this proceeding. The Company urges the Commission to conclude that this proceeding can be determined to be a "rate case" consistent with the statutory language in Utah Code § 54-24-301(3)(a) and adjudicated prior to RMP's next "general rate case."

III. CONCLUSION

For the reasons discussed above, Rocky Mountain Power respectfully requests that the Commission decide the "preliminary legal issue" identified in its Order Vacating Scheduling Order and Setting Deadlines by holding: (1) that this proceeding satisfies the requirement, stated in Utah Code § 54-24-301(3)(a), for approval of a fire surcharge in a "rate case;" and (2) that

approval of the creation of a fire fund can be adjudicated in this proceeding, prior to the Company's next general rate case. In addition, the Company requests the Commission order the parties to present a proposed procedural schedule for consideration by the Commission, to replace the schedule vacated by the Order.

Respectfully submitted this 13th day of February 2026.

ROCKY MOUNTAIN POWER



Carla Scarsella

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CERTIFICATE OF SERVICE

Docket No. 25-035-61

I hereby certify that on February 13, 2026, a true and correct copy of the foregoing was served by electronic mail to the following:

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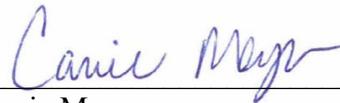
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