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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 Legal Brief

Pursuant to UTAH ADMIN. CODE r. 746-1, Utah Code § 54-10a-101, and the Public Service Commission of Utah’s (PSC) January 30, 2026, Order Vacating Scheduling Order and Setting Deadlines, the Office of Consumer Services (OCS) files this Legal Brief addressing the PSC question posed in the January 30th Order: “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[?]”

The OCS asserts that, under the relevant rules of statutory construction, the term “rate case” in section 54-24-301(3)(a) must be read to be synonymous with the term “general rate case.” Thus, the PSC cannot approve a surcharge or the creation of a Fire Fund outside the next general rate case. However, this does not mean that the instant docket must be dismissed. Section 54-24-301(3)(a) only provides that a surcharge must be approved in a rate case, not that the complete docket must be adjudicated within a general rate case. Therefore, it is statutorily

permissible and procedurally advisable to complete preliminary matters in this docket and then delay or stay the Rocky Mountain Power's (RMP) Request for approval of a surcharge and the creation of a Fire Fund until RMP's next general rate case.

Rules of Statutory Construction

The primary objective in interpreting a statute is to give effect to the intent of the legislature. *Croft v. Morgan County*, 2021 UT 46, ¶ 15, 496 P.3d 83. To do so, the PSC should look first to the statute's plain language. *Id.*; *Still v. Hart*, 2007 UT 45, ¶ 7, 162 P.3d 1099, 1102. The PSC must read “the plain language of a statute as a whole and interpret its provisions in harmony with other provisions in the same statute and with other statutes under the same and related chapters.” *Still*, 2007 UT 45, ¶ 7 (cleaned up); *see Croft*, 2021 UT 46, ¶ 15. This is because “a statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole.” *Still*, 2007 UT 45, ¶ 7 (cleaned up); *see Croft*, 2021 UT 46, ¶ 15.

In addition to the rule that terms in a statute must be harmonized, another important rule of construction in this case is the surplusage canon. *See, Croft*, 2021 UT 46, ¶ 32. This canon provides that “if possible, every word and every provision of a statute is to be given effect.” *Id.* (cleaned up) (quoting ANTONIN SCALIA & BRYAN A GARNER, *READING THE LAW: THE INTERPRETATION OF LEGAL TEXT* 174 (2012)). This rule is premised on the presumption that “the legislature did not intend to “adopt a nullity.” *Id.* “Statutes should be construed so that no part or provision will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another.” *State v. Jeffries*, 2009 UT 57, ¶ 9, 217 P.3d

265 (cleaned up). Applying these rules of construction, it becomes clear that the term “rate case” in section 54-24-301(3)(a) must be read to be synonymous to the term “general rate case.”

Analysis

Again, the PSC has asked the parties to answer the question of: “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’ . . .?” Section 54-24-301(3)(a) reads a fire fund shall consist of:

a reasonable and prudent fire surcharge that a large-scale electric utility may charge to the large-scale electric utility customers, as approved by the commission in a **rate case**, to be collected over a 10-year period from the date the commission approves the fire fund. (emphasis added).

Thus, the issue is whether the term “rate case” includes all cases where any rate is set, such as the instant case where the statute authorizes a surcharge, or whether the term “rate case” refers solely to a complete “general rate case.”

The resolution hinges on the fact that any argument that the term “rate case” in section 54-24-301(3)(a) is broad enough to encompass an application for a fire fund runs into structural difficulties within the statutes themselves. Moreover, such an approach is inconsistent with the use of the term “rate case” throughout Title 54. First, if the term “rate case” includes an application for a fire fund, then the entire term “as approved by the commission in a rate case” becomes surplusage. The Fire Fund statutes, section 54-24-301-303, provide all the procedures and requirements for the creation of a fire fund; it adds nothing to state that the surcharge must be approved in a case brought under the fire funds statutes. Interpreting “rate case” as encompassing a fire fund filing, leads to section 54-24-301(3)(a) reading the same with the provision “approved by the commission in a rate case” as it does without the provision—in both

cases section 54-24-301(3)(a) provides that a surcharge must be approved within a proceeding brought under the fire fund statutes.¹

This problem does not occur if we interpret the term “rate case” narrowly to mean only a general rate case. In this case, because a general rate case is an additional requirement to obtain approval of a surcharge, interpreting the term to be synonymous with general rate case provides meaning to the term “approved by the commission in a rate case.” Therefore, interpreting the term “rate case” narrowly as applying solely to a general rate case gives meaning to every term in the statute, whereas, interpreting the term “rate case” broadly to encompass a proceeding brought pursuant to the fire fund statutes does not. Accordingly, the broad interpretation of the term “rate case” must be rejected and in favor of adopting a narrow interpretation of the term to mean that commission approval of a surcharge may only take place within a general rate case.

The fire fund statutes also use the term “rate case” in section 54-24-302(4)(a), providing: “In a **rate case** or other appropriate proceeding, any party may challenge the amount of the disbursement from the large-scale electric utility’s Utah fire fund used for the settlement of a fire claim.” (emphasis added). Importantly, in this case the term “rate case” is modified by the term “or other appropriate proceeding.”

¹ Compare,

a reasonable and prudent fire surcharge that a large-scale electric utility may charge to the large-scale electric utility customers, as approved by the commission in a [Fire Fund Case], to be collected over a 10-year period from the date the commission approves the fire fund

with

a reasonable and prudent fire surcharge that a large-scale electric utility may charge to the large-scale electric utility customers, . . . to be collected over a 10-year period from the date the commission approves the fire fund.

Thus, under section 54-24-302(4)(a), the term “rate case” cannot be interpreted broadly to encompass all cases where any rate is set, including a proceeding brought solely under the fire fund statutes, because this would render the term “other appropriate proceedings” surplusage. That is, a broad reading of “rate case” to encompass other proceedings in addition to a complete general rate case renders the term “or other appropriate proceedings” unnecessary. To give the term “other appropriate proceedings” meaning the term “rate case” must refer to a singular proceeding, i.e., a general rate case. Therefore, to harmonize these sections, the term “rate case” in section 54-24-301(3)(a) must mean a singular proceeding of a general rate case to make it consistent with the term “rate case” used in section 54-24-302(4)(a).²

Moreover, not only do terms of a statute need to be harmonized with the terms within the statute itself but the terms should also be harmonized with terms in “other statutes under the same and related chapters.” *Still*, 2007 UT 45, ¶ 7. Here, when the term “rate case” appears in Title 54 and related statutes, the term refers to a general rate case. Therefore, to harmonize the term “rate case” with the Utility Code as a whole, it is necessary to interpret the term in section 54-24-301(3)(a) to be synonymous with the term “general rate case.”

² Section 54-24-302 also contains the term “general rate case,” in subsection 54-24-302(3)(b), which provides: “A surcharge described in Section 54-24-301 . . . shall terminate on the earliest of the following dates . . . (b) the date on which the assets in the large-scale electric utility’s Utah Fire Fund reach an amount equal to 50% of the large-scale electric utility’s Utah revenue requirement established in the large-scale utilities most recently approved **general rate case**,” (emphasis added).

It could be argued that because the terms “rate case” and “general rate case” appear in related statutory sections, it is reasonable to assume that the different terms have different meanings. However, as shown in this brief, the legislature uses “rate case” and “general rate case” interchangeably and therefore there is no compelling reason for the terms to have different meanings. Moreover, the competing argument presented above is not only based on the rule that terms in a statute must be harmonized but also on the surplusage canon. *See Croft*, 2021 UT 46, ¶ 21 (“multiple interpretive tools all point to the same resolute, they provide strong support to favor or disfavor a certain interpretation of a statute.”) Finally, at most, this fact creates a statutory ambiguity, and ambiguities are resolved by the rules of statutory construction, including the rules that terms in a statute must be harmonized and the rule against surplusage canon. *See id.*

The term “rate case” appears in Title 54 and related statutes at least 31 times in 19 specific statutes.³ In 22 instances in 13 statutes, the term “rate case” is encapsulated within the term “general rate case.”⁴ Of those 22 instances, 12 include the modifying term “or other appropriate commission proceedings” or “other appropriate proceedings.”⁵ The term “rate case” appears without connection with the term “general rate case” 9 times.⁶ Of those 9 times, the term “or other appropriate commission proceedings” or “other appropriate proceedings” modifies the term “rate case” in 3 instances.⁷

³ Utah Code §§ 54-4-13.4(2)(a), (2)(b)(ii), (iv) (“between general rate cases . . . most recent general rate case . . . next general rate case”); 54-7-12(4)(a)(iii) (in a rate case hearing”); 54-7-12.9(2)(a), (2)(a)(ii) (“general rate case . . . general rate case”); 54-7-13.4(1)(c), (2), (5)(a) (“most recent general rate case . . . general rate case . . . recovery in general rate cases;”); 54-7-13.5(2)(b)(iii) (“general rate case”); 54-8b-4.5 (3)(d)(“general rate case); 54-17-303(1)(a), (1)(b)(i) (“general rate case or other appropriate proceeding . . . general rate case or other appropriate proceeding”); 54-17-304(3), (4) (“general rate case or other appropriate proceeding . . . general rate case or other appropriate proceeding”); 54-17-403(1)(a), (1)(c)(iii) (“general rate case or other appropriate proceeding . . . most recent rate case.”); 54-17-404(3), (4) (“general rate case or other appropriate proceeding general rate case or other appropriate proceeding in a rate case or other appropriate commission proceedings”); 54-17-605(3)(a) (“a rate case under Sections 54-4-4 and 54-7-12”); 54-17-1002(3), (5)(a)(ii) (“general rate case or other appropriate commission proceeding general rate case or other appropriate proceeding); 54-17-1101(2) (“in an integrated resource plan filing, a general rate case, or other proceeding . . . proposes additions . . . to the transmission system,”); 54-24-301(3)(a) (approved by the commission in a rate case,”); 54-24-302(3)(b), (4)(a) (“general rate case, . . . rate case or other appropriate proceedings”); 54-26-602(4) (“rate case or other appropriate proceeding”); 63N-1a-304(1)(a) (“informed of significant rate cases and policy proceedings”); 79-6-303(5) (“rate case, integrated resource plan, or other submission that proposes the early retirement of an electric generation facility,”)

⁴ Utah Code §§ 54-4-13.4(2)(a), (2)(b)(ii), (iv); 54-7-12.9(2)(a), (2)(a)(ii); 54-7-13.4(1)(c), (2), (5)(a); 54-7-13.5(2)(b)(iii); 54-8b-4.5(3)(d); 54-17-303(1)(a), (1)(b)(i); 54-17-304(3), (4); 54-17-403(1)(a); 54-17-404(3), (4); 54-17-502(5)(d); 54-17-1002(3), (5)(a)(ii); 54-17-1101(2); 54-24-302(3)(b).

⁵ Utah Code §§; 54-17-303(1)(a), (1)(b)(i); 54-17-304 (3), (4); 54-17-403(1)(a); 54-17-404(3), (4); 54-17-502(5)(d); 54-17-1002(3), (5)(a)(ii); 54-24-302(4)(a); 54-26-602(4).

⁶ Utah Code §§ 54-7-12(4)(a)(iii); 54-17-403(1)(c)(iii); 54-17-502(6)(d); 54-17-605(3)(a); 54-24-301(3)(a); 54-24-302(3)(a); 54-26-602(4); 63N-1a-304; (1)(a) 79-6-303(5).

⁷ Utah Code §§; 54-17-502(6)(d); 54-24-302(4)(a); 54-26-602(4).

This review establishes that the legislature when referring to a proceeding that could take place in a general rate case but could also take place in other proceedings make that intent clear by expressly modifying the term “general rate case” with the term “other appropriate proceedings” or “other appropriate commission proceedings.” *See supra*, at n.5. The legislature also used this approach when using the term “rate case” in conjunction with “other appropriate proceeding.” *See supra*, at n.7. Therefore, to harmonize the provisions using the terms “rate case” as modified by the term “other appropriate proceedings” or “other appropriate commission proceedings” with the term “general rate case” as modified by these terms—it is necessary to interpret “rate case” to be synonymous with “general rate case.”

In addition to the harmonizing argument, and as discussed above, in the three cases where the term “rate case” is modified by the term “other appropriate commission proceeding” or “other appropriate proceedings,” the surplusage canon requires the term “rate case” to be interpreted to mean “general rate case.” *See Utah Code §§ 54-17-502(6)(d); 54-24-302(4)(a); 54-26-602(4)*. Again, this is because if the term “rate case” is given an expansive reading to mean any case where a rate is set, the term “other appropriate proceeding” would add nothing to the statute. Therefore, in the three cases where the term “rate case” is modified by the term “other appropriate proceedings,” it is unquestionable that the term is synonymous with the term “general rate case.”

This leaves six instances where the term “rate case” is used in a stand-alone basis, including the provision presently at issue.⁸ In two of these six cases, the provision is used in relation to the general rate case statute, Utah Code § 54-7-12, in a way that clearly indicates that

⁸ Utah Code §§ 54-7-12(4)(a)(iii); 54-17-403(1)(c)(iii); 54-17-605(3)(a); 54-24-302(3)(a); 63N-1a-304(1)(a); 79-6-303(5).

the term “rate case” is referring to a “general rate case.” Specifically, section 54-17-605(3)(a) provides: “The commission may allow an electrical corporation to use an adjustment mechanism or reasonable method other than a **rate case** under Sections 54-4-4 and **54-7-12 . . .**” (emphasis added. Here because the statute expressly provides that a “rate case” is conducted pursuant to the “rate case” statute, section 54-7-12, the statute expressly states that the term “rate case” means “general rate case.”

In addition, the general rate case statute itself contains the term “rate case.” Section 54-7-12(4)(a)(iii). Referring to the statute’s procedures for interim rates within a general rate case, the statute provides: “The evidence presented in the hearing held pursuant to this Subsection (4) need not encompass all issues that may be considered in a **rate case** hearing held pursuant to Subsection (2)(d), but shall establish an adequate prima facie showing that the interim rate increase or decrease is justified.” (emphasis added). *Id.* Again, the statutes expressly provides that the proceedings for a “rate case” are conducted pursuant to the general rate case statute section 54-7-12 (2)(d).⁹ Therefore, the term “rate case” in section 54-7-12 must refer to a general rate case.

This leaves four additional statutes with the term “rate case” standing alone, sections 54-17-403(1)(c)(iii); 54-24-302(3)(a); 63N-1a-304(1)(a); 79-6-303(5). Section 54-17-403(1)(c)(3) provides: “the applicable distribution non-gas revenue requirement is the annual revenue requirement determined in the gas corporation’s most recent **rate case**.” (emphasis added). Here, because “annual revenue requirements” are only set in general rate cases, not any case

⁹ Section 54-7-12(2)(d)(1) provides: “The commission shall, after reasonable notice, hold a hearing to determine whether the proposed rate increase or decrease, or some other rate increase or decrease, is just and reasonable.”

where a rate is set, the term “rate case” in section 54-17-403(1)(c)(iii) must mean “general rate case.”

Section 79-6-303(5), Forced retirement of electrical generation facilities, provides:

“Before authorizing or approving a **rate case**, integrated resource plan, or other submission that proposes the early retirement of an electrical generation facility, . . .” (emphasis added). In this case, the term “rate case” cannot mean any cases where a rate is set, including a fire fund case, because these cases would not involve the early retirement of an electrical generation facility. Thus, the term “rate case” in this provision must mean “general rate case.”

Section 63N-1a-304(1)(a), Executive director and the Public Service Commission, states:

“The executive director and Public Service Commission shall: (a) become generally informed of significant **rate cases** and policy proceedings before the Public Service Commission: . . .” (emphasis added). This provision may not be as clearly indicative of a “general rate case” as the other examples above and may be best described as ambiguous. However, as discussed above, ambiguity in terms is resolved through the rules of statutory construction, including the rule that terms in statutes must be harmonized. Here, because every other mention of the term “rate case” in Title 54 and related statutes uses the term as synonymous to “general rate case,” the term “rate case” in section 63N-1a-304(1)(a) must be read to mean “general rate case.”

This leaves section 54-24-302(3)(a), the provision the parties are tasked with interpreting, as the remaining provision where the term “rate case” is used without modification. As argued at length throughout this brief, because of the structural difficulties within the fire fund statutes themselves and the fact that where the term “rate case” is used in the Title 54 and related statutes the term is used as a synonym to “general rate case”—it is unarguable that the term “rate case” in section 54-24-302(3)(a) means “general rate case.” *Croft*, 2021 UT 46, ¶ 15 (terms of a statute

must be harmonized with other terms in the statute and related statutes; no interpretation should render a term surplusage); *Jeffries*, 2009 UT 57, ¶ 9 (same). Therefore, to answer the question posed by the PSC, section 54-24-301(3)(a) requires the setting of the fire fund surcharge and the approval of the fire fund to take place in RMP's next general rate case.

Disposition

As mentioned above, while section 54-24-301(3)(a) requires that the fire fund surcharge be approved in a general rate case, this does not mean that the instant docket must be dismissed. Section 54-24-301(3)(a) only requires that the surcharge must be approved in a general rate case, not that the entire fire fund proceedings take place within a general rate case. *See* Section 54-24-301(3)(a). Therefore, it is statutorily permissible to leave the instant docket open to conduct preliminary procedures for the approval of a fire fund and then stay the docket until the next general rate case, wherein the surcharge could be set and the fire fund approved.

Not only is such an approach permissible under the fire fund statutes, but this approach is procedurally advisable. General rate cases are large, complex, and time-limited proceedings. Adding additional procedures compounds the inherent difficulties presented in rate cases. Another significant issue adds to the workload of the parties and the PSC, putting undue pressure particularly on the parties with more constrained resources. This leads to more well-financed parties, typically utilities, gaining a tactical advantage simply by attrition. Thus, to diminish the negative effects of overloading a rate case, it is prudent to complete the preliminary matters in the instant docket.

However, it is not possible to approve the fire fund and wait until the next rate case to formally approve and implement the fire surcharge because section 54-24-301(3)(a) requires that the surcharge "be collected over a 10-year period from the date of the commission approval of

the Utah fire fund.” However, there are several preliminary issues that can be addressed in this docket.

Section 54-24-301(4)(a) provides that the PSC shall approve a fire fund if the PSC determines that the fund is in the public interest, supports RMP’s financial health, and maintains or improves RMP’s ability to deliver safe and reliable service. While the exact amount of the fire surcharge is intrinsically tied to the determination of whether the fire fund is in the public interest and would not be appropriate to determine in the instant proceeding, this is not necessarily true with the remaining two elements of section 54-24-301(4)(a). Proceeding with an examination of whether a fire fund supports RMP’s financial health and ability to provide reliable service is possible without determining the exact amount of the fire surcharge.

There are numerous issues that can be resolved, or advanced, in preliminary proceedings:

- cost allocation among PacifiCorp’s various jurisdictions, given the existence of a Utah fire fund, if RMP proposes additional mechanisms or funds for the payment of fire claims throughout its system, as is contemplated by section 54-24-301(2)(b);
- the meaning of the term “other amounts deposited into the fund as otherwise required by law,” contained in section 54-24-301(3)(c);
- other legal issues regarding the fire fund statutes that may arise;
- fire fund administration issues;
- reporting obligations including those required by section 54-24-302(1)(d);
- the information RMP must provide allow the PSC to make the required determinations under the fire fund statutes, as noted by the PSC in their Order, etc.

Again, the only things the fire fund statutes require to take place in a rate case are the setting and approval of the surcharge and approval of the fire fund.

What specific issues can be resolved, or advanced, prior to a rate case may evolve as issues arise during the progress of this docket as testimony is filed and any interim orders are issued. Addressing these issues in this docket would greatly ameliorate the substantial burden placed on the parties and the PSC that would otherwise result from an overloaded rate case. Accordingly, despite the fact that neither the surcharge nor the fund can be approved outside a rate case, this docket should not be dismissed. Rather, this docket should continue to address preliminary issues that can be decided—or advanced—prior to RMP’s next general rate case.

Conclusion

The fire fund statutes require that the final approval of the surcharge and fire fund take place in RMP’s next general rate case. However, this case need not be dismissed. The docket should remain open to conduct preliminary investigations into matters that can be decided, or advanced, prior to the next rate case. Such a result would be advisable given the complexity, magnitude, and time-limited nature of a general rate case. Indeed, overloading a rate case impedes the parties’ ability to argue for, and the PSC’s ability to set, just and reasonable rates.

DATED, February 13, 2026.

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