

Phillip J. Russell (10445)  
JAMES DODGE RUSSELL & STEPHENS P.C.  
545 East Broadway  
Salt Lake City, Utah 84102  
Telephone: (801) 363-6363  
Email: prussell@jdrsllaw.com

*Attorney for the Utah Association of Energy Users*

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

---

In the Matter of the Request of Rocky Mountain Power for Approval of a Utah Fire Fund	Docket No. 25-035-61
---	----------------------

---

**LEGAL BRIEF OF THE UTAH ASSOCIATION OF ENERGY USERS**

---

The Utah Association of Energy Users Intervention Group (“UAE”) hereby submits this legal brief in response to the Order Vacating Scheduling Order and Setting Deadlines issued January 30, 2026 (“Jan. 30 Order”) by the Utah Public Service Commission’s (“PSC”).

**BACKGROUND**

The PSC noted in the Jan. 30 Order that all parties in this docket other than Rocky Mountain Power (“RMP”) had, through comments submitted on January 16, 2026, “question[ed] or challenge[d] the PSC’s authority to approve RMP’s Request” in this docket to approve a fire surcharge “outside the context of a general rate case.”<sup>1</sup> In support of this challenge, each party cited Utah Code § 54-24-301(3)(a), which provides that a fire fund shall consist of “a reasonable and prudent fire surcharge . . . as approved by the commission in a rate case.” Noting that none of the parties raising this challenge had offered any arguments based on legal precedent or statutory construction, the PSC then directed parties to address the following legal issue: “Whether this

---

<sup>1</sup> Jan. 30 Order at 2.

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.”<sup>2</sup>

As set forth below, this docket to establish a fire fund surcharge cannot constitute the “rate case” referenced in Subsection-301(3)(a) and the surcharge cannot be approved in this docket.

## ARGUMENT

### **I. RMP’s Request to Approve a Fire Surcharge Does Not Constitute a “Rate Case” Within the Meaning of Utah Code § 54-24-301(3)(a).**

A docket in which the PSC is asked to approve a fire surcharge does not *ipso facto* constitute a “rate case” within the meaning of Subsection -301(3)(a), as such an interpretation would impermissibly render the phrase “in a rate case” to be inoperative and superfluous. The Utah Legislature authorized RMP to create a fire fund but required that it include “a reasonable and prudent fire surcharge . . . as approved by the commission in a rate case.”<sup>3</sup> This requirement limits the PSC’s broad regulatory authority over public utilities<sup>4</sup> such that the PSC may only approve a fire surcharge in a rate case.<sup>5</sup> The PSC must, then, determine whether this proceeding constitutes a “rate case” within the meaning of Subsection -301(3)(a).

When interpreting a statute, it is “axiomatic” that the “primary goal is to give effect to the legislature’s intent in light of the purpose that the statute was meant to achieve.”<sup>6</sup> “The best evidence of the legislature’s intent is the plain language of the statute itself.”<sup>7</sup> Courts “do not

---

<sup>2</sup> *Id.* at 5.

<sup>3</sup> Utah Code § 54-24-301(3)(a).

<sup>4</sup> *See* Utah Code § 54-4-1 (authorizing the PSC “to supervise and regulate every public utility in this state, and to supervise all of the business of every such public utility in this state.”).

<sup>5</sup> *See Heber Light & Power Co. v. PSC*, 2010 UT 27, ¶ 17, 231 P.3d 1203 (“When a specific power is conferred by statute upon a . . . commission with limited powers, the powers are limited to such as are specifically mentioned,” and “any reasonable doubt about the existence of any power must be resolved against the exercise thereof.” (internal quotation marks and citations omitted)).

<sup>6</sup> *Monarrez v. Utah Dept. of Transp.*, 2016 UT 10, ¶ 11, 368 P.3d 846, 852 (internal quotation marks omitted).

<sup>7</sup> *State v. Miller*, 2008 UT 61, ¶ 18, 193 P.3d 92 (internal quotation marks omitted).

interpret the ‘plain meaning’ of a statutory term in isolation.”<sup>8</sup> Rather, courts “determine the meaning of the text given the relevant context of the statute.”<sup>9</sup> “Thus, we read 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.”<sup>10</sup> Finally, courts “avoid ‘[a]ny interpretation which renders parts or words in a statute inoperative or superfluous’ in order to ‘give effect to every word of a statute.’”<sup>11</sup>

Application of these principles of interpretation yield a conclusion that this proceeding is not a “rate case” within the meaning of Subsection -301(3)(a) and that the PSC may not approve a fire fund surcharge within this docket, both because (A) an interpretation of Subsection -301(3) that any request to approve a fire surcharge is *ipso facto* a “rate case” renders the words “in a rate case” inoperative or superfluous; and (B) the term “rate case” as used throughout Title 54 of the Utah Code refers to a general rate case and this docket is not a general rate case.

A. An Interpretation of Subsection -301(3)(a) that Any Docket to Approve a Fire Surcharge is *Ipsa Facto* a “Rate Case” Renders the Words “in a Rate Case” Inoperative or Superfluous.

RMP’s request for approval of a fire surcharge does not, by itself, render this docket a “rate case” within the meaning of Subsection -301(3)(a). “[A] possible interpretation of a statutory term that undercuts the express language of the statute must be rejected because we give effect to every word of a statute, avoiding any interpretation which renders parts or words in a statute inoperative of superfluous.”<sup>12</sup> The Utah Supreme Court has invoked this principle of statutory construction to reject interpretations that would render parts or all of statutes inoperative or superfluous. In *State*

---

<sup>8</sup> *Olsen v. Eagle Mountain City*, 2011 UT 10, ¶ 12, 248 P.3d 465.

<sup>9</sup> *Id.*

<sup>10</sup> *Monarrez*, 2016 UT 10, ¶ 11 (internal quotation marks omitted).

<sup>11</sup> *Id.* (quoting *Turner v. Staker & Parsons Cos.*, 2012 UT 30, ¶ 12, 284 P.3d 600 (citation omitted)).

<sup>12</sup> *State v. Robertson*, 2017 UT 27, ¶ 32, 438 P.3d 491; *see also State v. Hinson*, 966 P.2d 273, 276-77 (Utah Ct. App. 1998) (“[W]e will construe the language so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another.” (internal quotation marks omitted)).

*v. Rushton*, the Court rejected an interpretation that would eliminate the distinction between the mandatory joinder and permissive joinder statutes.<sup>13</sup> In *State v. Stewart*, the Court rejected a defendant’s argument that all acts comprising a ‘pattern of unlawful activity’ must occur within the statute of limitations for a fraud claim because this interpretation would render inoperative and superfluous the five-year lookback period within the ‘pattern of unlawful activity’ statute.<sup>14</sup> In *Turner v. Staker & Parsons Companies*, the Court overturned a district court order granting a motion to dismiss on statute of limitations grounds, ruling that the defendant’s interpretations of the limitations statute would “render portions of [the statute] superfluous.”<sup>15</sup>

The Utah Supreme Court has even overturned its own prior interpretation of a statute on the grounds that it rendered the statute inoperative or superfluous.<sup>16</sup> *State v. Robertson* involved an appeal from a conviction for possession of child pornography in which the defendant argued that his prior federal court conviction for the same acts was prohibited by Utah Code § 76-1-404, which expressly bars state prosecution of a defendant who has previously been convicted in federal court “for the same offense or offenses.”<sup>17</sup> The Court had previously ruled in *State v. Franklin*<sup>18</sup> that this statute did *not* bar a state prosecution for murder following a federal conviction for the same act. The *Franklin* ruling was based on the Court’s interpretation that the statute incorporated the “dual sovereignty” doctrine, which “permits subsequent prosecutions by different sovereigns,

---

<sup>13</sup> *State v. Rushton*, 2017 UT 21, ¶ 16, 395 P.3d 92 (“Based on our principles of statutory construction, we cannot interpret the language ‘single criminal objective’ under the mandatory joinder statute to simply mean the same thing as conduct that is ‘connected together [with other conduct] in its commission’ or ‘alleged to have been part of a common scheme or plan’ under the permissive joinder statute.”)

<sup>14</sup> *State v. Stewart*, 2018 UT 24, ¶17, 438 P.3d 515 (“[W]hen faced with competing interpretations, we generally prefer the one that breathes meaning into each provision of the statute.”).

<sup>15</sup> *Turner*, 2012 UT 30, ¶ 16 (“We must avoid interpretations that effectively render[] parts or words in a statute inoperative or superfluous.” (internal quotation marks omitted)).

<sup>16</sup> See *Robertson*, 2017 UT 27, ¶ 33.

<sup>17</sup> *Id.*, ¶ 1.

<sup>18</sup> *State v. Franklin*, 735 P.2d 34 (Utah 1987).

even for the ‘same offense,’” therefore permitting the subsequent state prosecution.<sup>19</sup> The *Robertson* Court overruled its prior interpretation, ruling that the statute barring subsequent state prosecution “acts as an express, legislative rejection of th[e dual sovereignty] doctrine.”<sup>20</sup> Noting the principle that “we give effect to every word of a statute, avoiding [a]ny interpretation which renders parts or words in a statute inoperative or superfluous,”<sup>21</sup> the *Robertson* Court found that the prior interpretation in *Franklin* “requires us to read a meaning into the text that is directly contradicted by the text itself,” and “renders the statute a superfluity.”<sup>22</sup>

Applying this principle of statutory interpretation to the present docket, an interpretation of Subsection -301(3)(a) that renders the words “in a rate case” inoperative or superfluous must be rejected. Subsection -301(3)(a) requires that a Utah fire fund include a “fire surcharge . . . approved by the commission in a rate case.” RMP’s request that the PSC approve a fire fund surcharge in this proceeding does not render this docket a “rate case” as contemplated in Subsection -301(3)(a). If the Utah Legislature had intended to authorize the PSC to approve a fire surcharge in any docket in which RMP requests approval of the surcharge, it would not have required that such approval be made “in a rate case.” Rather, it would have simply stated that a fire fund must consist of a “fire surcharge . . . as approved by the Commission.” An interpretation of Subsection -301(3)(a) that any docket to approve a fire surcharge constitutes a “rate case” reads the words “in a rate case” out of the statute such that the phrase “approved by the commission” would have the same meaning as the phrase “approved by the commission in a rate case.” Such an interpretation renders the words “in a rate case” inoperative or superfluous and should be rejected.

---

<sup>19</sup> *Robertson*, 2017 UT 27, ¶ 2.

<sup>20</sup> *Id.*, 33.

<sup>21</sup> *Id.*, ¶ 32 (internal quotation marks omitted).

<sup>22</sup> *Id.* ¶ 33.

Subsection -301(3)(a) must be interpreted such that all of its words have meaning.<sup>23</sup> The provision states that a fire fund shall consist of a “fire surcharge . . . as approved by the commission in a rate case.”<sup>24</sup> The words “in a rate case” are inoperative and superfluous if the provision is interpreted such that any docket in which a fire surcharge is approved constitutes a “rate case.” RMP’s request for approval of a fire surcharge, standing alone, does not render this docket a “rate case” for purposes of Subsection -301(3)(a). This docket is not a “rate case” and, therefore, RMP’s request to approve a fire surcharge cannot be approved in this docket.

As set forth in Section I.B., below, the Utah Legislature generally uses the term “rate case” in Title 54 of the Utah Code to mean “general rate case” and nothing in Subsection -301(3)(a) suggests a different meaning was intended.

B. The Term “Rate Case” as Used Throughout Title 54 of the Utah Code Refers to a General Rate Case and This Docket is Not a General Rate Case.

The Utah Legislature uses the term “rate case” in Title 54 of the Utah Code as shorthand for “general rate case,” and does not use the term to refer to any proceeding in which a surcharge, such as the fire surcharge, is considered. Neither “rate case” nor “general rate case” are defined terms in the Utah Code. The term “general rate case” is used throughout the Utah Code to refer to a proceeding to modify base rates pursuant to Utah Code § 54-7-12.<sup>25</sup> The term “base rate” is defined to mean “charges included in a public utility’s generally applicable rate tariffs, including . . . a rate.”<sup>26</sup> Certain charges are excluded from the definition of “base rate,” such as charges

---

<sup>23</sup> *Id.*, ¶ 32 (noting that courts “give effect to every word of a statute, avoiding any interpretation which renders parts or words in a statute inoperative of superfluous.”)

<sup>24</sup> Utah Code § 54-24-301(3)(a).

<sup>25</sup> Utah Code § 54-7-12 references a “complete filing” for a “general rate increase or decrease” to modify base rates. Pursuant to this statute, the PSC has adopted rules to establish the minimum filing requirements for such a “complete filing.” *See* Utah Admin. Code R746-700. The Utah Supreme Court has referred to Utah Code § 54-7-12 as “the general rate case statute.” *See Utah Office of Consumer Services v. PSC*, 2019 UT 26, ¶ 11, 445 P.3d 464.

<sup>26</sup> Utah Code § 54-7-12(1)(a)(i).

included in deferred accounts, balancing accounts, special contracts, and major plant additions.<sup>27</sup> When referring to an increase or decrease in rates pursuant to Utah Code § 54-7-12, the Utah Legislature at times uses the phrase “general rate increase or decrease,”<sup>28</sup> and sometimes uses the term “rate increase or decrease.”<sup>29</sup> The Utah Legislature uses the term “rate hearing” to refer to hearings held pursuant to the general rate case statute.<sup>30</sup> The term “general rate case” (or “general rate cases”) appears 22 times in Title 54, and in each instance refers to a proceeding pursuant to Utah Code § 54-7-12. The term “rate case” appears seven times in Title 54.<sup>31</sup> As discussed below, each such use of the term “rate case” is used to refer to a general rate case.

The term “rate case” appears in the general rate case statute itself, in Utah Code § 54-17-12(4)(a)(iii). That provision references a “rate case hearing held pursuant to Subsection (2)(d)”<sup>32</sup> and contrasts the burden of proof required for an interim rate request made within a general rate case from the requirements for the issuance of final rates within that general rate case docket. Subsection (2)(d) of the rate case statute repeatedly refers to a “general rate increase” or a “general rate decrease.” As such, the reference to “rate case” in Utah Code § 54-7-12(4)(A)(iii) clearly refers to a general rate case.<sup>33</sup>

The term “rate case” is also used in Utah Code § 54-17-403(1)(c)(iii) to refer to a general rate case. That provision deals with rural gas infrastructure development and authorizes the PSC

---

<sup>27</sup> See *id.* § 54-7-12(1)(a)(ii).

<sup>28</sup> See, e.g., Utah Code § 54-7-13.6(6)(c) (directing that low-income assistance funding “shall be adjusted concurrently with the final order in a general rate increase or decrease under Section 54-7-12.”)

<sup>29</sup> See, e.g., Utah Code § 54-4-4(3)(b)(i) (limiting projected data that may be used in future test period to “20 months from the date a proposed rate increase or decrease is filed with the commission under Section 54-7-12.”); Utah Code § 54-7-1 (referencing “procedures involving rate increases as defined in Section 54-7-12.”)

<sup>30</sup> See, e.g., Utah Code § 54-17-303(1)(c), -402(5)(b), & -403(1)(b) (each referencing “a rate hearing under Section 54-7-12.”).

<sup>31</sup> See 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(4)(a); 54-26-602(4).

<sup>32</sup> Utah Code § 54-7-12(4)(a)(iii).

<sup>33</sup> See *Utah Office of Consumer Services*, 2019 UT 26, ¶ 32 (referring to Utah Code § 54-7-12 and stating that “[a]ll of subsection (4)’s provisions are interrelated and speak to imposing interim rates in a general rate case.”).

to “approve the inclusion of rural gas infrastructure development costs within base rates if . . . the applicable distribution non-gas revenue requirement is the annual revenue requirement determined in the gas corporation’s most recent rate case.”<sup>34</sup> As noted above, base rates are only modified in a general rate case. Similarly, annual revenue requirement is only determined in a general rate case. The reference to “rate case” in Utah Code § 54-17-403(1)(c)(iii) means “general rate case.”

The term “rate case” in Utah Code § 54-17-605(3)(a) also refers to a general rate case. That provision “allow[s] 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 to allow recovery” of certain costs. The provision expressly authorizes recovery mechanisms other than a general rate case, but the reference to “a rate case under Sections 54-4-4 and 54-7-12” refers to a general rate case.<sup>35</sup>

Sections 54-17-605(3)(a) and 54-26-602(4) use the term “rate case” in the phrase “in a rate case or other appropriate proceeding,” which appears throughout Title 54 to indicate the circumstances in which information or requests for cost recovery may or must be presented and to authorize the PSC to grant the requested relief in those circumstances. The PSC is given discretion to determine whether any given docket constitutes an “other appropriate proceeding” for the request at issue. Provisions that require PSC action “in a rate case” but do not authorize such action within some “other appropriate proceeding” do not grant such discretion and, therefore, limit the PSC’s authority. Section -301(3)(a)’s requirement that a fire surcharge be approved “in a rate case” does not include the “other appropriate proceeding” language.

Two references to “rate case” appear within Chapter 24, the Wildland Fire Planning and Cost Recovery Act, which among other things authorizes the PSC to approve a fire fund. The first

---

<sup>34</sup> Utah Code § 54-17-403(1)(c)(iii).

<sup>35</sup> Utah Code § 54-4-4 authorizes the PSC to adjust “rates, fares, tolls, rentals, charges,” etc., which mirrors the definition of “base rate” in Utah Code § 54-7-12, the general rate case statute. As such, the reference to a rate case under Utah Code § 54-4-4 is a reference to a general rate case.

instance, Subsection -301(3)(a), is the subject of this brief. The second instance, in Section 54-24-302(4)(a), states that a party may challenge RMP's disbursement of funds from the fire fund used for the settlement of a fire claim in "a rate case or other appropriate proceeding." Neither reference to "rate case" within Chapter 24 suggests that it is intended to have a different meaning than the rest of Title 54. As noted above, the Utah Legislature uses "rate case" to mean "general rate case" throughout Title 54, just like it uses "rate hearing" and "rate increase or decrease" to mean "general rate hearing" and "general rate increase or decrease." There is no reason to believe that it intended something different with its use of the term "rate case" in Subsection -301(3)(a).

Finally, the Utah Legislature does not use the term "rate case" to expressly refer to any docket other than a general rate case. Certain provisions in Title 54 identify ratemaking mechanisms that are not general rate cases, and the term "rate case" is not used in those provisions to refer to proceedings to set those rates. For example, Utah Code §§ 54-7-13.4 and -13.5 govern major plant additions and the energy balancing account, respectively. Rates established in proceedings pursuant to these statutes are not base rates<sup>36</sup> and may be set outside of a general rate case. Neither statute uses the term "rate case" to refer to proceedings to establish those rates or charges, and no other provision in the Utah Code uses the term "rate case" to refer to rates established pursuant to these two statutes. It is notable the Utah Legislature uses the term "rate case" to mean "general rate case" at times but does not use "rate case" to refer to ratemaking proceedings that are not a general rate case.

The Utah Legislature uses the term "rate case" to mean general rate case, and its use of the term "in a rate case" in Subsection -301(3)(a) means that a fire surcharge must be approved in a

---

<sup>36</sup> See Utah Code § 54-7-12(1) (defining "base rates" to exclude charges established in a balancing account and major plant addition increases and decreases).

general rate case. The current docket is not a general rate case and the PSC may not authorize a fire surcharge in this docket.

### CONCLUSION

A Utah fire fund consists of a “fire surcharge . . . approved by the Commission *in a rate case.*”<sup>37</sup> This docket is not a “rate case” as that term is used in Utah Code § 54-24-301(3)(a) and, therefore, the PSC may not authorize a fire surcharge in this docket.

DATED: February 13, 2026.

Respectfully submitted,



By:

\_\_\_\_\_  
Phillip J. Russell  
JAMES DODGE RUSSELL & STEPHENS P.C.

*Attorney for UAE*

---

<sup>37</sup> Utah Code § 54-24-301(3)(a) (emphasis added).

Certificate of Service  
Docket No. 25-035-61

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

ROCKY MOUNTAIN POWER

Carla Scarsella carla.scarsella@pacificorp.com  
Max Backlund max.backlund@pacificorp.com  
utahdockets@pacificorp.com  
datarequest@pacificorp.com

DIVISION OF PUBLIC UTILITIES

Chris Parker chrisparker@utah.gov  
Madison Galt mgalt@utah.gov  
Patricia Schmid pschmid@agutah.gov  
Patrick Grecu pgrecu@agutah.gov  
dpudatarequest@utah.gov

OFFICE OF CONSUMER SERVICES

Michele Beck mbeck@utah.gov  
Alyson Anderson akanderson@utah.gov  
Robert Moore rmoore@agutah.gov  
ocs@utah.gov

WESTERN RESOURCE ADVOCATES

Sophie Hayes sophie.hayes@westernresources.org  
Karl Boothman karl.boothman@westernresources.org  
Jessica Loeloff jessica.loeloff@westernresources.org  
Nancy Kelly nancy.kelly@westernresources.org

UTAH LARGE CUSTOMER GROUP

Michelle Brandt King mbking@hollandhart.com  
Austin W. Jensen awjensen@hollandhart.com  
Adele Lee aclee@hollandhart.com

NUCOR-STEEL UTAH

Peter J. Mattheis pjm@smxblaw.com  
Eric J. Lacey ejl@smxblaw.com  
Jeremy R. Cook jcook@ck.law

/s/ Phillip J. Russell