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<b>BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH</b>	
Request of Rocky Mountain Power for Approval of a Utah Fire Fund	Docket No. 25-035-61
<b>Division of Public Utilities' Legal Brief</b>	

## I. INTRODUCTION

Pursuant to Utah Code section 54-4a-1, Utah Administrative Code R746-1, and the Public Service Commission of Utah’s (“Commission” or “PSC”) Order Vacating Scheduling Order and Setting Deadlines issued January 30, 2026 (“Order”), the Division of Public Utilities (“Division” or “DPU”) files its legal brief addressing the Commission’s authority to approve Rocky Mountain Power’s (“RMP” or “the Company”) request for Commission approval of a Utah Fire Fund (“UFF”) in this docket.

## II. BACKGROUND

On November 26, 2025, the Company filed its Notice of Creation of Utah Fire Fund and Request for Commission Approval (“Application”) and supporting testimony, seeking Commission approval of its request to create a UFF and implement a UFF surcharge.<sup>1</sup> The Commission issued its Request for Comments and Scheduling Order and Notice of Hearing (“Request for Comments”) on December 17, 2025, which tentatively approved the stipulated schedule and requested parties in this docket to submit comments addressing

- (1) whether the PSC can approve the Fire Fund in the absence of information regarding the additional costs RMP will incur related to wildland fire liability risk and how those costs are to be allocated;
- (2) what additional kinds or categories of information, if any, are necessary to allow the PSC to make the statutorily required findings to approve the proposed Fire Fund; and
- (3) given the answers to the foregoing, whether the schedule and process established in this order will be sufficient for the PSC to reasonably and responsibly evaluate whether the statutory criteria are met and, if not, what changes to the process are necessary.<sup>2</sup>

In accordance with the Request for Comments, the Division, the Office of Consumer Services (“OCS”), the Utah Association of Energy Users (“UAE”), the Utah Large Customer

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<sup>1</sup> Appl. at 5-13.

<sup>2</sup> Request for Comments and Scheduling Order and Notice of Hr’g (Dec. 17, 2025) at 5.

Group (“ULCG”), and RMP filed responsive comments on January 16, 2026. After reviewing the parties’ comments, the Commission issued the Order, which vacated the tentatively approved schedule and set deadlines for briefing 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.”<sup>3</sup> The Division addresses this question in the sections below and concludes this proceeding cannot be determined to be a “rate case” consistent with Utah Code section 54-24-301(3)(a)’s language and cannot be fully adjudicated prior to the Company’s next general rate case because the Commission may not approve RMP’s proposed UFF surcharge outside of a general rate case.

### **III. ARGUMENT**

When construed in connection with other sections in Title 54 of the Utah Code, the term “rate case” as used in Utah Code section 54-24-301(3)(a) can only mean a general rate case. This proceeding, in which the Company seeks only approval of a UFF and the accompanying surcharge, is not a general rate case under Utah law. Accordingly, the Commission lacks the legal authority to approve the requested surcharge in this docket and must approve it in a future general rate case. However, the Division suggests that it may be useful to address certain issues related to the UFF in this docket to allow parties more time to address those issues than they otherwise would have in the context of a general rate case.

#### **A. RMP’s Application Doesn’t Meet the Statutory Requirement that the UFF Surcharge Be Approved in a General Rate Case.**

Under the Utah Wildland Fire Planning and Cost Recovery Act, the Company may seek to “create a [UFF] by filing notice with the [C]ommission[,]” which is subject to Commission

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<sup>3</sup> Order Vacating Scheduling Order and Setting Deadlines (Jan. 30, 2026) at 5.

approval and must meet the requirements set forth in section 54-24-301(4). The Commission shall approve the Company's request for a UFF if RMP

demonstrates to the [C]ommission's satisfaction:

(a) that the fund:

- (i) is in the public interest;
- (ii) supports the financial health of the large-scale electric utility; and
- (iii) maintains or improves the large-scale electric utility's ability to deliver safe and reliable services;

(b) that the fire surcharge does not result in an increase over current rates:

- (i) for all customers, more than 4.95%; and
- (ii) for an average residential customer more than \$3.70 a month.<sup>4</sup>

In addition, section 54-24-301 contains another provision that, among other things, states that the UFF "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 [C]ommission in a *rate case*, to be collected over a 10-year period from the date of the [C]ommission's approval of the [UFF]."<sup>5</sup>

In its Application, RMP claims that the Company's request satisfies the statutory requirements for Commission approval of a UFF.<sup>6</sup> However, the Company's Application lacks any explanation of how its request, which seeks Commission approval of a UFF surcharge in this proceeding, meets section 54-24-301(3)(a)'s requirement that the UFF surcharge be "approved by the [C]ommission in a rate case."<sup>7</sup> Furthermore, RMP's response to the Commission's Request for Comments lacks the same. The only analysis of this issue the Company provides in its response is

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<sup>4</sup> Utah Code Ann. § 54-24-301(4).

<sup>5</sup> Utah Code Ann. § 54-24-301(3)(a) (emphasis added).

<sup>6</sup> Appl. at 7-10.

<sup>7</sup> While it's possible that the Company could argue that the Commission could determine the appropriate UFF surcharge amount in this proceeding and later approve the Company's request to collect the surcharge in a later general rate case, that is not what the Company is requesting in this docket. In the Company's testimony, it requests the approval of a new Schedule 96, the Fire Fund Adjustment surcharge, with an effective date of May 1, 2026, for the new tariff. Direct Test. of Joelle R. Steward (Nov. 26, 2025) at 3:54-59. It proposes to "collect the Fire Fund" through the new Schedule 96. Direct Test. of Kenneth Lee Elder, Jr. (Nov. 26, 2025) at 2:29-31; Ex. RMP \_\_ (KLE-2) at 5.

the following:

To the extent the Commission’s question is whether it “*can approve* the Fire Fund” from a legal perspective, there is nothing in the Fire Fund Statute that prevents the Commission from moving forward based on the information the Company has presented, and that the Company and intervenors will offer during the course of this proceeding, that addresses each of the statutory criteria.<sup>8</sup>

The Division doesn’t see how any information that RMP or intervenors will provide in this proceeding will cure this legal deficiency.

As the Commission noted, “DPU, OCS, ULCG, and UAE all question or challenge the PSC’s authority to approve RMP’s Request outside the context of a general rate case.”<sup>9</sup> And as the PSC recognized, “[g]iven that RMP plainly intends its Request to authorize it to begin collecting a surcharge, it almost certainly would offer a different reading of the statute.”<sup>10</sup> The issue is that this different reading of the statute would be inconsistent with how the term “rate case” is used in every other section in Title 54.

**B. This UFF Proceeding Cannot Be Determined to Be a “Rate Case” as that Term Is Used in Utah Code Section 54-24-301(3)(a).**

To be read consistent with other provisions in Title 54, the term “rate case” as used in section 54-24-301(3)(a) must mean a general rate case. When the Commission is faced with a question of statutory interpretation, the “primary goal is to evince the true intent and purpose of the Legislature.”<sup>11</sup> This starts with “looking at the plain language of the statute itself because the statutory language is ‘the best evidence of the legislature’s intent.’”<sup>12</sup> “When the meaning of a statute can be discerned from its language, no other interpretive tools are needed.”<sup>13</sup>

Furthermore, the Utah Supreme Court has emphasized that

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<sup>8</sup> RMP’s Response to the Commission’s Request for Comments on Scope and Schedule (Jan. 16, 2026) at 9.

<sup>9</sup> Order Vacating Scheduling Order and Setting Deadlines (Jan. 30, 2026) at 2.

<sup>10</sup> *Id.*

<sup>11</sup> *Anderson v. Utah Dep’t of Com.*, 2025 UT 19, ¶ 14, 572 P.3d 373, 377.

<sup>12</sup> *Bagley v. Bagley*, 2016 UT 48, ¶ 10, 387 P.3d 1000.

<sup>13</sup> *Anderson*, 2025 UT 19, ¶ 14, 572 P.3d at 377.

[w]hen interpreting a statute, we do not view the operative statutory language in isolation. Instead, “we look at the provisions in the context of the entire statutory scheme.” Even if a particular provision, standing alone, might be “susceptible to competing interpretations,” it “may nevertheless be unambiguous if the text of the act as a whole, in light of related statutory provisions, makes all but one of those meanings implausible.”<sup>14</sup>

“[E]ach part or section must be construed in connection with every other part or section so as to produce a harmonious whole.”<sup>15</sup> “It is axiomatic that a statute should be given a reasonable and sensible construction and that the legislature did not intend an absurd or unreasonable result.”<sup>16</sup>

Section 54-24-301(3)(a) states that the UFF “shall consist of . . . a reasonable and prudent fire surcharge that [RMP] may charge to [its] customers, as approved by the [C]ommission in a rate case . . . .” Here, the plain language of the statute, when read within the context of the entire statutory scheme governing public utilities, indicates that the use of the term “rate case” in section 54-24-301(3)(a) means a general rate case.

**1. When Construed with Other Statutory Provisions in Title 54, “Rate Case” as that Term Is Used in Section 54-24-301(3)(a) Can Only Mean a General Rate Case.**

Although section 54-24-301(3)(a) uses the term “rate case,” in several other statutory provisions in Title 54 that term is used to refer to a “general rase case.” For example, the statute governing the procedure for general rate increases, i.e. general rate cases, uses the term “rate case” to mean a general rate case, the regulatory process used to set a public utility’s retail rates. In Utah Code section 54-7-12 (“the Rate Case Statute”), subsection (2)(d) provides that the Commission shall hold a hearing to consider a rate increase in a general rate case.<sup>17</sup> Also in the Rate Case Statute, subsection (4)(a)(iii) outlines the evidentiary requirements for a request for interim rates

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<sup>14</sup> *Id.* ¶ 15 (cleaned up).

<sup>15</sup> *Id.* (quoting *Hertzske v. Snyder*, 2017 UT 4, ¶ 12, 390 P.3d 307) (cleaned up).

<sup>16</sup> *Bd. of Educ. of Jordan Sch. Dist. v. Sandy City Corp.*, 2004 UT 37, ¶ 9, 94 P.3d 234 (quoting *State ex rel. Div. of Consumer Prot. v. GAF Corp.*, 760 P.2d 310, 313 (Utah 1988)).

<sup>17</sup> Utah Code Ann. § 54-7-12(2)(d)(i) (“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.”).

in the context of a general rate case. In that subsection, it states that “[t]he 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.”<sup>18</sup> It is clear that this subsection uses the term “rate case” to refer to a general rate case.

The Rate Case Statute isn’t the only section in Title 54 that also uses “rate case” to mean a general rate case. Section 54-17-605(3)(a) in the Energy Resource Procurement Act addresses a utility’s recovery of costs for clean energy activities. It sets forth that “[t]he [C]ommission 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 to allow recovery of [prudently incurred enumerated costs].”<sup>19</sup> Again, the legislature’s use of “rate case” means a general rate case, as it refers explicitly to the statutory provisions governing a general rate case.

There are many other examples. Utah Code section 54-17-403 uses multiple similar terms in subsection (1): “general rate case;”<sup>20</sup> “rate hearing” (referring to a general rate case hearing under the Rate Case Statute);<sup>21</sup> and “rate case.”<sup>22</sup> Although the statute uses slightly different terms, construed together the terms mean the same thing: a general rate case. Furthermore, section 54-17-502 uses the terms “general rate case”<sup>23</sup> and “rate case”<sup>24</sup> analogously. Section 54-24-302 similarly uses the terms “general rate case” and “rate case” interchangeably.<sup>25</sup> Lastly, section 54-26-602 also uses the term “rate case.”<sup>26</sup> And given the context in which it is used, namely

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<sup>18</sup> Utah Code Ann. § 54-7-12(4)(a)(iii) (emphasis added).

<sup>19</sup> Emphasis added.

<sup>20</sup> Utah Code Ann. § 54-17-403(1)(a).

<sup>21</sup> Utah Code Ann. § 54-17-403(1)(b).

<sup>22</sup> Utah Code Ann. § 54-17-403(1)(c).

<sup>23</sup> Utah Code Ann. § 54-17-502(5)(d).

<sup>24</sup> Utah Code Ann. § 54-17-502(6)(d).

<sup>25</sup> Subsection 54-24-302(3)(b) uses the term “general rate case” while subsection (4)(a) uses the term “rate case.”

<sup>26</sup> Utah Code Ann. § 54-26-602(4).

describing the operational data and characteristics and costs relating to large load contracts and how to exclude those costs from retail rates,<sup>27</sup> indicates that this also refers to a general rate case, as it is the proceeding in which the Commission sets a utility’s just and reasonable retail rates.<sup>28</sup>

As these examples demonstrate, to interpret the use of the term “rate case” in section 54-24-301(3)(a) consistent with the rest of Title 54, “rate case” means a general rate case proceeding. Importantly, the Division has found no instances where the term “rate case” is used to mean any proceeding other than a general rate case. Construing section 54-24-301(3)(a)’s use of the term “rate case” to mean anything other than a general rate case would be at odds with that term’s meaning in every other provision in Title 54.

## **2. As Utah Caselaw and Commission Orders Demonstrate, General Rate Cases Are Commonly Referred to as Rate Cases.**

Likely due to the consistent use of “rate case” to mean a general rate case throughout Title 54, Utah caselaw and Commission orders have routinely used the terms “general rate case” and “rate case” interchangeably. Utah courts often refer to general rate cases as “rate cases,”<sup>29</sup> and the Commission frequently uses either term to mean a general rate case.<sup>30</sup>

As these examples illustrate, the term “rate case” as used in section 54-24-301(3)(a) can only mean a general rate case proceeding. Accordingly, this proceeding to establish a UFF

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<sup>27</sup> Utah Code Ann. § 54-26-602(4)(a)-(d).

<sup>28</sup> Utah Code Ann. §§ 54-7-12, 54-4-4.

<sup>29</sup> *E.g.*, *Utah State Bd. of Regents v. Utah Pub. Serv. Comm’n*, 583 P.2d 609, 610 (Utah 1978); *Utah Dept. of Bus. Regulation v. Pub. Serv. Comm’n*, 614 P.2d 1242 (Utah 1980); *MCI Telecomms. Corp. v. Pub. Serv. Comm’n*, 840 P.2d 765, 770 (Utah 1992); *Salt Lake Citizens Congress v. Mountain States Tel. & Tel. Co.*, 846 P.2d 1245 (Utah 1992); *Mountain Fuel Supply Co. v. Pub. Serv. Comm’n*, 861 P.2d 414, 421 (Utah 1993); *Stewart v. Utah Pub. Serv. Comm’n*, 885 P.2d 759 (Utah 1994); *U.S. West Commc’ns v. Pub. Serv. Comm’n*, 901 P.2d 270, 276 (Utah 1995);

<sup>30</sup> *E.g.*, *Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations*, Docket No. 20-035-04, Order (Dec. 30, 2020); *Application of Dominion Energy Utah to Increase Distribution Rates and Charges and Make Tariff Modifications*, Docket No. 22-057-03, Order (Dec. 23, 2022); *Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations*, Docket No. 24-035-04, Order (Apr. 25, 2025) at 42; *Application of Enbridge Gas Utah to Increase Distribution Rates and Charges and Make Tariff Modifications*, Docket No. 25-057-06, Order (Dec. 24, 2025).

surcharge cannot be determined to be a general rate case and, as the surcharge is a necessary piece of the UFF, the Commission cannot legally fully adjudicate RMP's UFF request prior to the Company's next general rate case. However, it may be beneficial to address certain UFF issues in this docket to provide the parties more time to evaluate RMP's Application.

**C. While the Commission Lacks the Authority to Approve the UFF Surcharge in this Proceeding, It May Be Beneficial to Use this Docket to Address Certain Aspects of the UFF.**

Although it is the Division's position that the Commission lacks the legal authority to approve RMP's proposed UFF surcharge in this docket, the Division recommends that the Commission use this docket to address those UFF issues that can be considered outside of a general rate case. For instance, the Commission may wish to address certain UFF elements in this docket, such as the target amount for the fund, reporting requirements, the master trust agreement, accounting restrictions, investment plans, carrying charges, disbursement restrictions, or other UFF administration issues.

Leaving all UFF matters to be considered in a future general rate case would limit the amount of time and attention parties could dedicate to reviewing all the UFF issues. Addressing certain UFF aspects in this proceeding would allow the parties to dedicate more time and attention to the unique issues presented in RMP's UFF request than they would otherwise have in a general rate case.

#### **IV. CONCLUSION**

The plain language of Utah Code section 54-24-301(3)(a), construed with other sections in Title 54, inevitably leads to the conclusion that "rate case" as used in that section can only mean a general rate case. As a result, the Commission cannot determine that this UFF proceeding is a "rate case" and cannot approve RMP's Application or fully adjudicate the Company's request in this docket because under Utah law the Commission can only approve a UFF surcharge, a necessary

part of the UFF, in a general rate case. However, the Division recommends that the Commission use this proceeding to address the UFF issues that can be addressed outside of a general rate case, which would allow parties to focus on certain discrete issues unique to RMP's Application.

Respectfully submitted this 13th day of February 2026.

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