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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 THE UTAH LARGE CUSTOMER GROUP'S LEGAL BRIEF REGARDING THE PUBLIC SERVICE COMMISSION'S AUTHORITY TO APPROVE A FIRE FUND SURCHARGE AND MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STRIKE
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February 13, 2026

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I. INTRODUCTION

Pursuant to the Public Service Commission of Utah’s (“Commission”) January 30, 2026 Order, the Utah Large Customer Group (“UTLCG”) files this brief addressing the preliminary legal issue of whether the Commission has authority to approve Rocky Mountain Power’s (“RMP” or the “Company”) request to implement a fire fund surcharge through this proceeding. Specifically, the Commission seeks an answer to “[w]hether 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.”¹

As mentioned in the UTLCG’s Comments Regarding Scope and Schedule, filed January 16, 2026 in this docket, the fact that Utah statute only allows a fire fund surcharge to be approved in a “rate case” cannot be ignored.² Under Utah’s established statutory interpretation standards, the plain meaning of the statute controls, and the Commission is bound by such meaning. The statute’s plain language and the broader context of utility regulation in Utah make it clear that the present proceeding is not a “rate case.”

Common sense supports the conclusion that Utah law requires that a fire fund surcharge only be approved in a comprehensive rate case because such a requirement supports sound ratemaking practices. Considering RMP’s request for a fire fund surcharge in a standalone proceeding, such as the present docket, would severely hamper the Commission’s ability to evaluate the surcharge in the broader context of other customer charges. Such constrained evaluation would result in piecemeal ratemaking, risking unjust and unreasonable rates for customers.

¹ Order Vacating Scheduling Order and Setting Deadlines (Jan. 30, 2026), p. 5.

² See UTLCG’s Comments Regarding Scope and Schedule, p. 4.

The Commission only has authority to approve RMP’s requested fire fund surcharge in a comprehensive rate case proceeding, not a single-issue docket such as this proceeding. Such ratemaking treatment for the fire fund surcharge is also necessary to ensure the Commission, its Staff, and intervenors have an adequate opportunity to holistically evaluate and set the rates charged, and the balance of risk and benefit as between RMP, its shareholders, and its customers.

Therefore, the UTLCG moves to dismiss the portion of RMP’s application seeking imposition of the fire fund surcharge. Alternatively, the UTLCG moves to strike the same.

II. LEGAL BRIEF REGARDING COMMISSION AUTHORITY

A. Legal Standard

The legal issue posed by the Commission in its request for briefing in this proceeding is one of statutory interpretation. The Commission has previously applied well-established Utah statutory interpretation standards to its utility proceedings, and these standards similarly apply to the fire fund statute. The Commission’s “primary goal in interpreting the statute ‘is to evince the true intent and purpose of the Legislature.’”³ As the Commission seeks to “discern legislative intent” it must “look first to the statute’s plain language.”⁴ The Commission must “assume the legislature used each term advisedly and in accordance with its ordinary [and accepted] meaning.”⁵ The Commission “read[s] the plain language of the [statute] . . .” comprehensively, “interpret[ing] its provisions in harmony with other statutes in the same and related chapters.”⁶ However, the

³ Docket No. 19-057-33, Order Denying Office of Consumer Services’ Motion to Dismiss Application, or in the Alternative, Motion for Summary Judgment Denying Application, p. 16 (Apr. 27, 2020) (quoting *State v. Martinez*, 52 P.3d 1276, 1278 (Utah 2002)).

⁴ Docket No. 20-2618-01, Amended Order on Review, Rehearing, or Reconsideration, p. 15 (May 12, 2021) (quoting *LPI Servs. v. McGee*, 215 P.3d 135, 139 (Utah 2009)).

⁵ Docket No. 19-057-33, Order Denying Office of Consumer Services’ Motion to Dismiss Application, or in the Alternative, Motion for Summary Judgment Denying Application, p. 16 (Apr. 27, 2020) (quoting *Martinez*, 52 P.3d at 1278) (alteration in original).

⁶ Docket No. 20-2618-01, Amended Order on Review, Rehearing, or Reconsideration, p. 15 (May 12, 2021) (quoting *LPI Servs.*, 215 P.3d at 139).

Commission cannot “follow the literal language of a statute if its plain meaning works an absurd result.”⁷ When the Commission can discern legislative intent from the statute’s plain meaning, then the Commission need not turn to other forms of statutory interpretation.⁸ Only if the language of the statute is ambiguous should the Commission “look beyond the statute to legislative history . . . to ascertain [a] statute’s intent.”⁹ Upon applying these standards of statutory interpretation to the fire fund statute, the plain meaning of the term “rate case” is clear, and does not include the present, single-issue proceeding.

B. Argument

1. The Commission lacks legal authority to approve RMP’s fire fund surcharge request outside of a rate case, distinguishable from the present proceeding.

Utah statute clearly lays out the requirements for a utility to establish a fire fund. A Utah fire fund must include “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 . . .*”¹⁰ As the Commission noted in its request for briefing, the essential factor in determining whether the Commission has the authority to approve RMP’s requested fire fund surcharge in this proceeding depends on the statute’s meaning of the term “rate case.” Under the statutory interpretation standards, enumerated above, it is evident that the present fire fund proceeding does not amount to a “rate case.”

- a. The use of the term “rate case” in other Utah statutes differentiates a rate case from the present proceeding.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* (omission and alteration in original).

¹⁰ Utah Code Ann. § 54-24-301(3)(a) (emphasis added).

First, the Commission must evaluate the plain language of the statute comprehensively, “interpret[ing] its provisions in harmony with other statutes in the same and related chapters.”¹¹ The context of the use of the term “rate case” in the fire fund statute, and related statutes, evidences the Utah Legislature’s intent and purpose was to not allow fire fund surcharges to be approved in standalone, single-issue proceedings such as this.

In the same Title 54, Chapter 24 section of the Utah Code providing the “Wildland Fire Planning and Cost Recovery Act,”¹² the Legislature makes another reference to the term “rate case” in a separate section of the chapter.¹³ In this separate reference, the Legislature states “[i]n 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.”¹⁴ The phrasing compared to the fire fund surcharge statute is critical. By using the phrase “[i]n a rate case *or other appropriate proceeding* . . . [.]”¹⁵ the Legislature enunciates that it considers comprehensive rate cases and all other types of Commission proceedings to be distinct and different. To shoehorn both a comprehensive rate case and this single-issue proceeding into the generic category “rate case,” would strip the term of its basic meaning. Further, the fact that the fire fund surcharge statute does not include the opportunity for the Commission to approve the surcharge in some “*other appropriate proceeding*”¹⁶ indicates that only one type of proceeding, of the many overseen by the Commission, is appropriate for approving the fire fund surcharge: a comprehensive, general rate case. Additionally, throughout Title 54 of the Utah Code, the Legislature makes multiple, similar references to non-rate case proceedings as alternatives to a

¹¹ Docket No. 20-2618-01, Amended Order on Review, Rehearing, or Reconsideration, p. 15 (May 12, 2021) (quoting *LPI Servs.*, 215 P.3d at 139).

¹² Utah Code Ann. §§ 54-24-101 et seq.

¹³ *See id.* § 54-24-302(4)(a).

¹⁴ *Id.* (emphasis added).

¹⁵ *Id.* (emphasis added).

¹⁶ *Id.* (emphasis added).

“rate case.” In these instances, the statutes generally restate the same phrase: “rate case *or other appropriate proceeding . . .*”¹⁷ Again, this shows the Legislature’s deliberate effort to distinguish between a comprehensive rate case and the other proceedings that may come before the Commission when crafting Utah’s public utilities statutes, including the fire fund surcharge statute.

The importance of the distinction between rate cases and other proceedings is highlighted by *Utah Off. of Consumer Servs. v. Pub. Serv. Comm’n of Utah*.¹⁸ There, the Utah Supreme Court concluded that interim rate authority under the general rate case statute¹⁹ does not apply to Energy Balancing Account (“EBA”) proceedings.²⁰ Specifically, the Court held: “[S]ubsection (4)(a)(ii) authorizes the imposition of interim rates only in a general rate case and not in an EBA proceeding.”²¹ Similar rationale applies here. Section 54-24-301(3)(a) authorizes the imposition of a surcharge only in a rate case and not in some “other appropriate proceeding.” Indeed, the Court continued, noting “that the method by which PacifiCorp recovers its EBA costs shall ‘be incorporated into base rates in *an appropriate commission proceeding.*’”²² Because “[t]he [EBA] statute never fully defines what constitutes ‘an appropriate commission proceeding,’” the Court highlighted the Commission’s “broad discretion to develop the mechanism of recovery.” In contrast to the EBA statute, the fire fund statute does not confer the same broad discretion to establish a fire fund surcharge in “an appropriate commission proceeding,” instead limiting approval to a “rate case.”

¹⁷ *Id.* § 54-26-602(4) (emphasis added); *see also id.* § 54-17-303(1) (making the distinction between “a general rate case or other appropriate commission proceeding . . .”); *see also id.* § 54-17-605(3)(a) (stating in a separate context that “[t]he commission may allow an electrical corporation to use an adjustment mechanism or reasonable method other than a rate case . . .”); *see also id.* § 54-17-403(1) (making the distinction between “a general rate case or other appropriate commission proceeding . . .”).

¹⁸ 2019 UT 26 (2019).

¹⁹ Utah Code Ann. § 54-7-12 et seq.

²⁰ *See generally Utah Off. of Consumer Servs.*, 2019 UT 26.

²¹ *Id.* at ¶ 31.

²² *Id.* at ¶ 43 (quoting Utah Code Ann. § 54-7-13.5) (emphasis in original).

The absence of “other appropriate proceedings” in the fire fund surcharge statute is not oversight, but rather a specific indication that the Legislature determined only a typical, comprehensive rate case proceeding may be used to approve the surcharge. This interpretation of the term “rate case” in the fire fund surcharge statute is required in order to read the statutory section in harmony with other sections of Utah’s public utilities law. Accordingly, this is not a “rate case,” and the Commission lacks authority to approve the fire fund surcharge in this case.

- b. The ordinary and accepted meaning of “rate case” does not include standalone single-issue surcharge proceedings.

Second, in reviewing the fire fund statute, the Commission must “assume the legislature used each term advisedly and in accordance with its ordinary [and accepted] meaning.”²³ The primary and commonly understood meaning of “rate case” supports the finding that this fire fund proceeding is not one. Multiple sources in the public utility regulation arena, including the Commission, frequently refer to “rate cases” in the context of comprehensive rate proceedings; these sources do not include standalone single-issue surcharge proceedings in the term “rate case.”

The Commission has distinguished the term “rate case,” referring to comprehensive rate cases, from a surcharge proceeding. For example, upon evaluating an electric service agreement (“ESA”) between RMP and Nucor Steel-Utah, the Commission ordered: “RMP shall provide cost-of-service studies including Nucor as part of *any general rate case or surcharge proceeding* RMP files during the term of the Proposed ESA.”²⁴ Additionally, the Commission has previously described RMP’s rate cases as including issues like revenue requirement, cost of capital, and cost allocation,²⁵ which are fundamental to “rate cases” but absent here. Thus, just as the Legislature

²³ Docket No. 19-057-33, Order Denying Office of Consumer Services’ Motion to Dismiss Application, or in the Alternative, Motion for Summary Judgment Denying Application, p. 16 (Apr. 27, 2020) (quoting *State v. Martinez*, 52 P.3d 1276, 1278 (Utah 2002)) (alteration in original).

²⁴ Docket No. 21-035-69, Order Approving Electric Service Agreement, p. 6 (May 18, 2022) (emphasis added).

²⁵ See generally, e.g., Docket No. 08-035-38, Report and Order on Revenue Requirement (Apr. 21, 2009); Docket Nos. 08-035-08, 09-035-T07, Report and Order on Cost of Service and Revenue Spread (May 7, 2009).

recognized a distinction between “rate cases” and other types of proceedings, the Commission has noted this distinction as well. Given that RMP’s request for approval of a fire fund surcharge is a primary feature of this proceeding, that portion of the request is clearly differentiated from a “rate case” as that term is typically used by the Commission.

Public utility regulation, while varying from state to state, is generally founded on the same core principles. The National Association of Regulatory Utility Commissioners (“NARUC”) serves as a nationwide resource for state commissions that regulate public utilities. In its Desk Reference Manual, NARUC provides guidance on the fundamental components and principles of ratemaking.²⁶ The NARUC manual frequently references the term “rate case.”²⁷ Several of these references classify the term “rate case” synonymously with comprehensive rate cases, detailing characteristics of the “rate case.” For example, NARUC explains, “[i]n the rate case, the utilities generally submit a class cost of service study . . . [.]”²⁸ “[rate of return] is . . . one of the most controversial issues in rate case[s.]”²⁹ and “[r]iders, trackers, and decoupling mechanisms allow a utility to recover its actual costs for a specified function *outside* of a formal rate case.”³⁰ Relatedly, in a separate publication, NARUC and the Ohio Public Utilities Commission outline the “Rate Case Process and Rate-Based Ratemaking.”³¹ This publication highlights “Rate Case Steps” to include commission staff’s “investigat[ion of] the company’s expenses, revenues and investment[.]”³² It also notes that a rate case submission by a utility typically includes information regarding “Rate Base[,] Income Statement[,] Cost of Capital[,] Required Total Revenues[,] Class

²⁶ See *NARUC Desk Reference Manual*, NARUC (available at <https://www.naruc.org/commissioners-desk-reference-manual/about-the-naruc-desk-reference-manual/>).

²⁷ See generally *id.* § 3.

²⁸ *Id.* § 3.1.

²⁹ *Id.* § 3.3.

³⁰ *Id.* § 3.6 (emphasis added).

³¹ See generally *Rate Case Process and Rate-Based Ratemaking*, NARUC and Ohio Public Utilities Commission (available at <https://pubs.naruc.org/pub/5388D3F9-2354-D714-5151-B5BB5E4F9446>).

³² *Id.* at p. 7.

Cost of Service Study[, and] Rate Design and Tariff Changes[,]" among other topics.³³ Notably, nowhere in NARUC's application of the term "rate case" does it refer to standalone single-issue proceedings to address a requested surcharge. Rather, NARUC's use of the term—and therefore the prevailing common use of the term across the country among utility regulation professionals—focuses on the familiar concept of a comprehensive rate case. The fire fund surcharge request in this proceeding does not include any of the elements that NARUC identifies as fundamental to a "rate case." Accordingly, the "ordinary and accepted" usage of the term "rate case" does not include this single-issue proceeding.

Similarly, James C. Bonbright's *Principles of Public Utility Rates*, the influential work on the fundamentals of utility ratemaking that has guided public utility commissions for decades, applies a definition of "rate case" akin to NARUC's. When explaining the elements of ratemaking, Bonbright generally discusses the determination of rate base in "rate cases,"³⁴ the most contested element of a "rate case" being the rate of return element,³⁵ and the process of creating a rate structure in "rate cases."³⁶ Like NARUC, Bonbright uses the term "rate case" to refer to a comprehensive rate case that includes many elements not found in the fire fund surcharge request.

Other state utility commissions take a similar approach to the term "rate case." For instance, the Colorado Public Utilities Commission ("Colorado PUC") explains, on its public-facing website, that "investor-owned utilities in Colorado . . . must seek the [Colorado] PUC's approval for the rates charged to their customers. Known informally as an 'electric rate case',

³³ See *id.* at p. 16.

³⁴ James C. Bonbright, *Principles of Public Utility Rates*, p. 162 (Columbia Univ. Press 1961).

³⁵ *Id.* at p. 239.

³⁶ *Id.* at p. 292.

these proceedings are initiated by the utility in order to recover the costs of recent investments (e.g., safety, reliability, and integrity of the electric system) over a certain time period.”³⁷

Even other electric utilities provide public explanations of a “rate case” that are consistent with the definitions noted above. Xcel Energy, serving customers across several states in the Midwest and West, provides that it “file[s] a rate case request when the costs of providing safe and reliable . . . electricity exceed what customers are paying in rates . . . [Xcel is] required to provide a detailed forecast of how [Xcel] would structure our operations and make investments.”³⁸ Arizona Public Service Company (“APS”) explains to the public that a “rate case” includes a request for a “pricing adjustment” wherein “[r]easonable costs for electric service are defined and the amount of money [the Company] will collect through rates to provide that service is determined.”³⁹ APS further communicates that “rate cases” are necessary to adjust rates because those “rates supply APS with the revenue required to serve customers, fund day-to-day operations and maintain a safe, reliable grid.”⁴⁰ Thus, some of the largest utilities operating in the West recognize that a “rate case” refers to a comprehensive rate proceeding that impacts revenues for the entirety of the utility’s operations, not for standalone, single-issue surcharge proceedings.

The common use of “rate case” among the Commission, the public, scholars, and utility regulation professionals does not contemplate standalone surcharge proceedings as falling within the term. The “ordinary and accepted” meaning of “rate case” means comprehensive rate cases

³⁷ *Electric Rate Cases*, Colorado Public Utilities Commission (available at <https://puc.colorado.gov/puc-home/energy-and-water/electric-rate-cases>).

³⁸ *Rate Case Overview*, Xcel Energy (available at https://www.xcelenergy.com/company/rates_and_regulations/rates/rate_cases/rate_case_overview).

³⁹ *Rate Case Explained*, Arizona Public Service Company (available at <https://www.aps.com/-/media/APS/APSCOM-PDFs/About/Our-Company/Newsroom/RateCaseExplained.ashx?la=en&hash=314FFBD570A0644DEFA4E2F5FCF11ED6>).

⁴⁰ *Id.*

that determine all aspects of a utility's costs and rates beyond a singular surcharge. The Commission lacks legal authority to approve RMP's fire fund surcharge in this proceeding.

- c. Applying the plain reading of the term "rate case" in the fire fund surcharge statute leads to sound, not absurd, results.

Third, the Commission cannot "follow the literal language of a statute if its plain meaning works an absurd result."⁴¹ Applying the plain reading of "rate case" in the fire fund statute would not lead to an absurd result. Instead, RMP would be required to apply for, and the Commission would evaluate, the fire fund surcharge in a comprehensive rate case instead of the current proceeding. The UTLCG understands the Company is planning to file another rate case in the near term;⁴² thus, the delay in RMP's ability to collect the surcharge will be relatively minimal. Additionally, if RMP was concerned about the need to collect the surcharge in short order, the Company had, but did not pursue, the opportunity to seek approval of its Utah fire fund in its recently concluded rate case.⁴³ RMP cannot now claim that requiring approval of the surcharge in a comprehensive rate case would unduly delay its collections when the timing and means of its request was within its sole control. Evaluating the fire fund surcharge in a comprehensive rate case would not impact RMP's ultimate ability to implement its Utah fire fund, but it would ensure that the Commission properly considers the surcharge in context. This full vetting is necessary to the requirement of just and reasonable rates. Applying the plain reading of "rate case" in this instance would thus *prevent* an absurd result.

2. RMP's fire fund surcharge request should be considered in the context of a full rate case to avoid piecemeal ratemaking.

⁴¹ Docket No. 20-2618-01, Amended Order on Review, Rehearing, or Reconsideration, p. 15 (May 12, 2021) (quoting *LPI Servs. v. McGee*, 215 P.3d 135, 139 (Utah 2009)).

⁴² See UTLCG's Comments Regarding Scope and Schedule, p. 4.

⁴³ See generally Docket No. 24-035-04 (The Utah fire fund legislation was effective May 1, 2024 and RMP filed its last comprehensive rate case on June 28, 2024.).

Beyond the requirement to consider the fire fund surcharge in a “rate case” outside of the present proceeding, from a ratemaking perspective, the Commission’s consideration of the fire fund surcharge in a comprehensive rate case proceeding would also be more appropriate. As noted above in Section II.B.1.c., evaluating the fire fund surcharge in a standalone proceeding constitutes piecemeal and single-issue ratemaking, stripping the Commission of the contextual impact on customers and leading to unjust and unreasonable rates. Moreover, the Commission has historically preferred to address utility issues affecting rates in a comprehensive rate case, rather than in disparate dockets, as evidenced by the Commission’s addition of Phase III in RMP’s last comprehensive rate case to address excess liability insurance (“ELI”) and wildfire mitigation costs, allocation of those costs, and other issues from the fire plan docket.⁴⁴ It is both appropriate and necessary for the Commission to consider the fire fund surcharge request, in addition to typical comprehensive rate case issues, in RMP’s next comprehensive rate case.

Finally, the Commission’s January 30, 2026 Order Vacating Scheduling Order and Setting Deadlines directs RMP to provide parties with information related to wildfire costs, such as the Company’s ELI, in this docket in the near term. However, evaluating all of these costs, including the surcharge, in a comprehensive rate case would allow the Commission, Staff, and intervenors to holistically evaluate RMP’s costs and properly balance charges for customers. Just as it was proper to evaluate ELI costs in the context of RMP’s last comprehensive rate case, it is again proper to consider the surcharge in the context of its next comprehensive rate case. This more holistic process would lead to better and more thoughtful outcomes, for both RMP and its customers.

⁴⁴ See Docket Nos. 24-035-04, 23-035-40, 23-035-44, Order Adopting Alternative Process, p. 20 (Nov. 15, 2024).

III. MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STRIKE

A. Legal Standard

While the Commission rules do not include a standard for evaluating motions to dismiss or strike, “[t]he Utah Rules of Civil Procedure and case law interpreting these rules are persuasive authority in Commission adjudications unless otherwise provided.”⁴⁵ Utah Rule of Civil Procedure 12(b)(6) provides for dismissal for “failure of the pleading to state a claim upon which relief can be granted.” Facts alleged in the application must be taken as true, and all reasonable inferences must be viewed in the light most favorable to the applicant.⁴⁶ Further, Utah Rule of Civil Procedure 12(f) allows the Commission, upon motion, to “[strike] from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.”

B. Argument

The Commission’s January 30, 2026 Order not only noted that no intervenor “offered legal arguments to support their reading of the statute” and ordered briefing on the same, but the Order also highlighted that no intervenor “moved the PSC for summary relief.”⁴⁷ Based on the above legal briefing, the UTLCG hereby moves the Commission to dismiss for failure to state a claim upon which relief can be granted the portion of RMP’s application requesting implementation of the fire fund surcharge. It bears note that the rate case restriction appears in the statute with reference to only establishing “a reasonable and prudent fire surcharge that a large-scale electric utility may charge to the large-scale electric utility customers.”⁴⁸ Accordingly, to the extent the Commission desires to resolve non-surcharge issues in this proceeding, other aspects of establishing a fire fund may be considered outside of a rate case, such as determining a fire fund

⁴⁵ Utah Admin. Code R746-1-105.

⁴⁶ Docket No. 11-035-46, Order Denying Motion to Dismiss (June 20, 2011); *Armenta v. Unified Fire Auth.*, 2025 UT 26, n.1 (2025).

⁴⁷ Order Vacating Scheduling Order and Setting Deadlines (Jan. 30, 2026), p. 5.

⁴⁸ Utah Code Ann. § 54-24-301(3)(a).

size, finalizing an appropriate trust agreement, and establishing fire fund withdrawal and reimbursement procedures that balance customer and shareholder interests.

In the alternative, the UTLCG moves to strike the portions of RMP's application that seek implementation of the fire fund surcharge.⁴⁹ RMP's requested surcharge is immaterial and impertinent to the relief it is legally permitted to request outside of a rate case.

IV. CONCLUSION

The UTLCG appreciates the Commission's attention to and diligence in this matter. The Commission does not have legal authority to approve RMP's fire fund surcharge request in this proceeding; to comply with Utah law, RMP must present and the Commission must consider the surcharge in a comprehensive rate case. Moreover, the Commission's evaluation of the fire fund surcharge in a full rate case is necessary to ensure it is applying sound ratemaking practices, avoiding piecemeal ratemaking, and supporting just and reasonable rates. Therefore, the UTLCG respectfully requests that the Commission dismiss (or strike) the portion of RMP's application requesting implementation of the fire fund surcharge.

⁴⁹ There is some general disagreement among courts regarding whether a Rule 12(b)(6) motion can be used to dismiss a portion of a claim. Compare *Durham v. Lappin*, Case No. 05-cv-01282-MSK-MEH, 2006 U.S. Dist. LEXIS 72783, at *n.10 (D. Colo. Sep. 21, 2006) ("Fed. R. Civ. P. 12(b)(6) does not contemplate dismissal of portions of claims . . .") with *NCUA Bd. v. RBS Sec., Inc.*, Case No. 11-2340-JWL, 2015 U.S. Dist. LEXIS 22443, at *11 (D. Kan. Feb. 25, 2015) (rejecting argument that motion to dismiss cannot be "used to seek a dismissal of a portion of a claim or of particular allegations only"). However, the UTLCG was unable to find any Utah law on the subject and maintains that dismissal pursuant to Rule 12(b)(6) is the appropriate vehicle to dismiss the surcharge portion of RMP's application. Utah Admin. Code R746-1-105 ("Utah Rules of Civil Procedure and case law interpreting these rules are *persuasive authority* in Commission adjudications . . .") (emphasis added). Notwithstanding, to the extent the Commission prefers, it can strike the surcharge portion of RMP's application pursuant to Rule 12(f).

Respectfully submitted on February 13, 2026.

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I hereby certify that a true and correct copy of the foregoing *Utah Large Customer Group's Legal Brief Regarding the Public Service Commission's Authority to Approve a Fire Fund Surcharge*, was served this 13th day of February, 2026, to the following:

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**Indicates those with Confidentiality Agreements on file*