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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

Docket No. 25-035-61

**ROCKY MOUNTAIN POWER’S REPLY
BRIEF ON LEGAL AUTHORITY TO
APPROVE A UTAH FIRE FUND AND
OPPOSITION TO MOTION TO DISMISS
OR, IN THE ALTERNATIVE, TO
STRIKE**

I. INTRODUCTION

PacifiCorp d/b/a Rocky Mountain Power (the “Company” or “RMP”) hereby submits its Reply Brief in response to the Public Service Commission of Utah’s (“Commission” or “PSC”) “Order Vacating Scheduling Order and Setting Deadlines.”¹ RMP replies to briefs filed by the Division of Public Utilities (“DPU”), Office of Consumer Services (“OCS”), Utah Association of Energy Users (“UAE”), and the Utah Large Customer Group (“UTLCG”). Where Rocky Mountain Power is responding to arguments made in all the parties’ briefs, it will refer to the briefs of the “Intervening Parties.”

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

In addition, Rocky Mountain Power responds to the “Motion to Dismiss or, in the alternative, to Strike” (“UTLCG Motion”) filed by UTLCG together with its initial brief.

II. ARGUMENT

A. The arguments made by the Intervening Parties diminish the scope of the Commission’s statutory authority to establish just and reasonable rates.

In their Briefs, the Intervening Parties argue that if the term “rate case” used by the Legislature in Utah Code § 54-24-301(3)(a) does not mean the same thing as “general rate case,” then the term “rate case” in the statute is meaningless.² In essence, the Intervening Parties argue there can be no “rate case” under Utah law other than a “general rate case” (“GRC”).

Rocky Mountain Power disagrees with these arguments for several reasons. First, the state laws establishing the Commission’s authority grant the Commission the power to exercise that authority using several legal procedures. Utah law provides that the Commission “is charged with discharging the duties and exercising the *legislative, adjudicative, and rule-making* powers committed to it by law.”³ In other provisions, the Legislature recognizes that the Commission’s work generally includes “rate cases and policy proceedings.”⁴

The Commission’s authority to change rates requires an adjudicative hearing: “[t]he Commission shall take an action [to determine and fix rates], if the Commission finds after hearing that”⁵ such action is needed to ensure rates are just and reasonable. The statutes that authorize the Commission to set rates do not limit the Commission’s authority to set rates only in a GRC proceeding. The Legislature has not definitively defined the terms “rate case” or “general rate case,” but that does not mean that the Commission lacks the authority to set rates “after hearing”

² DPU Initial Brief, at 6-8; OCS Initial Brief, at 3-10; UAE Initial Brief, at 3-6; UTLCG Initial Brief, at 3-10.

³ Utah Code § 54-1-1(2) (emphasis supplied).

⁴ Utah Code § 63N-1a-304(1)(a).

⁵ Utah Code § 54-4-4(1)(a).

in a non-GRC adjudicative proceeding.⁶ As the Utah Supreme Court has held: “[T]here is no provision in the Public Utilities Act, which precludes the authority of the P.S.C. to conduct an abbreviated proceeding to adjust a utility rate or charge, but any rate so adjusted must be predicated upon a finding that such adjusted rate is just and reasonable.”⁷

Chapter 24 of Title 54 of the Utah Code, where the Fire Fund Statute and other provisions of the “Wildland Fire Planning and Cost Recovery Act” are codified,⁸ provides an example of how the Legislature authorizes use of adjudicative or rulemaking procedures in various contexts. In Utah Code § 54-24-103, the Legislature states that “the commission shall make rules to implement this chapter,” including “rules establishing the procedures for the review and approval of annual expenditures for the implementation of a wildland fire protection plan.”⁹ When it added the Fire Fund Statute as Part 3 of Chapter 24, however, the Legislature departed from its requirement that the Commission use rulemaking authority to “implement this chapter.” Rather, since implementation of a fire surcharge requires an “increase over current rates,”¹⁰ the Legislature indicated that the fire surcharge would be “approved by the commission in a rate case.”¹¹

Nothing in the language in Chapter 24 indicates that the Commission could only adjudicate approval of a fire surcharge in a GRC. In fact, as Rocky Mountain Power discussed in its Initial Brief, Section 54-24-301 comprehensively delineates how a fire fund proceeding is initiated, the standards by which the Commission is to determine whether to approve a fire fund proposal, and the specific statutory limits on the fire surcharge rate the Commission may approve.

⁶ Utah Code § 54-4-4(1)(a).

⁷ *Utah Dep’t of Business Regulation, Div. of Pub. Utils. v. Public Serv. Comm’n*, 614 P.2d 1242, 1249-50 (Utah 1980).

⁸ Utah Code §§ 54-24-301 – 303 (the “Fire Fund Statute”) is codified in Title 54, Chapter 24 (Wildland Fire Planning and Cost Recovery Act).

⁹ Utah Code § 54-24-103(2).

¹⁰ Utah Code § 54-24-301(4)(b).

¹¹ Utah Code § 54-301(3)(a).

The Legislature did not instruct the Commission to bifurcate approval of a fire fund between: (1) an adjudicated proceeding based on the statutory criteria included in § 54-24-301; and (2) the setting of the fire surcharge rate only in a future GRC. If that were the case, a utility could only create a fire fund by filing a GRC, since without approval of the fire surcharge there is no “fund” to support a fire fund. There is nothing in the Fire Fund Statute, or Chapter 24 in general, that mandates the bifurcated approach to implementing a fire fund.

B. Statutory construction principles do not support adding the term “general” to “rate case” when that term was not used in the Fire Fund Statute.

In general, the Intervening Parties and Rocky Mountain Power agree that there are widely recognized canons of statutory construction that the Commission should consider in making its determination in this proceeding. First, all the briefs submitted to the Commission recognize that, as the Utah Supreme Court has held: “[w]hen interpreting a statute, our goal is to give effect to the words enacted into law by the legislature.”¹² Second, the parties agree that statutory construction should presume that the expression of one thing implies the exclusion of another (in its Latin form: “*expressio unius est exclusio alterius*”). For this reason, each statutory term should be viewed as having been chosen deliberately by the Legislature, so no terms are treated as “surplusage.” Rocky Mountain Power parts ways with the other parties, however, regarding the application of several canons of statutory construction.

1. The Fire Fund Statute should be interpreted as written by the Legislature, including the omission of the term “general rate case.”

The Intervening Parties seek to gloss over the omission of the term “general rate case” where “rate case” is used instead in Utah Code § 54-24-301(3)(a). This is inconsistent with using

¹² *Utah Office of Consumer Servs. v. Pub. Serv. Comm’n of Utah*, 2019 UT 26, ¶ 30, 445 P.3d 464, 471 (2019).

the actual language in a statute as the key indicator of its meaning. As the Utah Supreme Court has held:

Because we will not alter the meaning of a statute by judicial fiat, we must try to interpret it in accordance with the legislature's intent. The best indication of legislative intent is the statute's plain language. In evaluating the language of a statute, we have long held that omissions in statutory language should be taken note of and given effect.¹³

In the Fire Fund Statute, the Legislature determined that a fire surcharge would be "approved by the commission in a rate case."¹⁴ The Legislature's omission of the word "general" in describing the fire surcharge "rate case" is an "omission in statutory language that should be taken note of and given effect."¹⁵ Statutory interpretation should "give effect to omissions in statutory language by presuming [them] to be purposeful."¹⁶

The Intervening Parties argue that the Legislature's omission of the term "general rate case" should be ignored (contrary to statutory construction principles) because the Legislature uses the terms "rate case" and "general rate case" interchangeably.¹⁷ For support, they point to the various uses of the terms "rate case" and "general rate case" in Title 54 of the Utah Code. None of these arguments, however, support the conclusion that the Legislature uses "rate case" and GRC interchangeably.

First, the Intervening Parties reference statutory provisions that use the term "rate case" which they contend should be interpreted to mean "general rate case." The problem with this approach is that many of the statutes that reference a "rate case" also include additional language that ties the use of the term "rate case" to the statute that describes the process for a GRC. For

¹³ *Flowell Elec. Ass'n v. Rhodes Pump, LLC*, 2015 UT 87, ¶ 34, 361 P.3d 91, 102 (2015) (internal citations and quotation marks omitted).

¹⁴ Utah Code § 54-24-301(3)(a).

¹⁵ *Flowell Elec. Ass'n*, 2015 UT ¶ 34.

¹⁶ *Riggs v. Georgia-Pacific LLC*, 2015 UT 17, ¶ 10, 345 P.3d 1219 (2015) (internal quotation marks omitted).

¹⁷ DPU Initial Brief, at 8-9; OCS Initial Brief, at 5-10; UAE Initial Brief, at 6; UTLCG Initial Brief, at 3-6.

example, DPU cites to Utah Code § 54-17-605(3)(a),¹⁸ but that statute’s use of “rate case” reads as follows: “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.*”¹⁹ The statute thus uses “rate case” only as a descriptor of the types of adjudicative cases authorized by § 54-4-4 and the GRC process set forth in § 54-7-12. The statutory language itself ties its use of “rate case” to proceedings that require adjudicative hearings or treatment as a GRC. If the Legislature always understands “rate case” to mean GRC, there would be no reason for it to distinguish the types of rate cases authorized by “Sections 54-4-4 and 54-7-12.”

The same is true of the argument that “rate hearing” can only mean a GRC hearing. In its Initial Brief, UAE contends that “[t]he Utah Legislature uses the term ‘rate hearing’ to refer to hearings held pursuant to the general rate increase statute.”²⁰ The language of the statutes cited by UAE (Utah Code §§ 54-17-303(1)(c), -402(b)(5), and -403(1)(b)) actually reference “a rate hearing *under Section 54-7-12.*”²¹ Thus the statutes themselves make clear they are referring to rate hearings conducted as GRC proceedings pursuant to Section 54-7-12. If these statutes say what UAE suggests they mean, there would be no reason for “rate hearing” to be modified by a reference to the GRC statute.

Other Intervening Parties’ briefs conflate the use of “rate case” and general rate case” in ways not supported by statutory language. For example, OCS argues that “[i]n 22 instances in 13 statutes, the term ‘rate case’ is encapsulated within the term ‘general rate case.’”²² A review of the statutes cited by OCS reveals this is uniformly incorrect. The statutes cited by OCS consistently

¹⁸ DPU Initial Brief at 7.

¹⁹ *Id.* OCS recognizes this issue in its Initial Brief, noting that in Utah Code § 54-17-605(3)(a), “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.’” OCS Initial Brief at 8.

²⁰ UAE Initial Brief, at 7.

²¹ *See* UAE Initial Brief, at 7, n.30 (emphasis supplied).

²² OCS Initial Brief at 6. The statutes cited by OCS for this proposition are listed in footnote 4.

use the term “general rate case,” with no indication they are “encapsulating” a description of any other type of proceeding. The fact that a statute uses the term “general rate case” does not support an argument that because the words “rate case” are part of the term “general rate case,” that the two terms are interchangeable.

The Intervening Parties also argue that statutes using the term “rate case or other appropriate proceeding” support the notion that “rate case” means a GRC. As discussed above, however, the Legislature may authorize the Commission to act using legislative, adjudicatory, or rulemaking proceedings. When legislation authorizes the Commission to determine the nature of the “other appropriate proceeding” that could be used in place of a “rate case,” the Commission could utilize a rulemaking process, “an abbreviated proceeding to adjust a utility rate or charge,”²³ or a “surcharge proceeding.”²⁴ The statutes cited simply do not support the view that because the Commission can execute its statutory duties using legal procedures other than a “rate case” that a “rate case” must necessarily be a GRC.

Perhaps the most telling evidence that the Legislature does not use “rate case” and “general rate case” interchangeably can be found in the Fire Fund Statute itself. In different sections, the statute uses the term “rate case,”²⁵ “most recently approved general rate case,”²⁶ and “rate case or

²³ *Utah Dep’t of Business Regulation, Div. of Pub. Utils.*, 614 P.2d at 1249-50 (Utah 1980).

²⁴ UTLCG cites a Commission order in which it held that “RMP shall provide cost-of-service studies including Nucor as part of any general rate case or surcharge proceeding.” See UTLCG Initial Brief, at 6, quoting, *Application of Rocky Mountain Power for Approval of Elec. Serv. Agreement between PacifiCorp and Nucor-Plymouth Bar Div., a Div. of Nucor Corp.*, Docket No. 21-035-69, Order Approving Electric Service Agreement, at 6 (May 8, 2022) (emphasis supplied).

²⁵ Utah Code § 54-24-301(3)(a).

²⁶ Utah Code § 54-24-302(3)(b).

other appropriate proceeding.”²⁷ When the Legislature uses three terms in the same statute, the argument that the Legislature thinks the terms mean the same thing is not credible.²⁸

Most importantly for the legal question posed by the Commission, Section 54-24-301(1)(e) provides that a “Utah fire fund may be created *under this section*.” The plain meaning of those words is that the fire fund is created pursuant to the terms of § 54-24-301. That is the section that includes the term “rate case” when describing the Commission proceeding to approve a fire surcharge. The references to “general rate case” and “rate case or other appropriate proceeding” are not in § 54-24-301 but instead appear in the following section of the statute, Utah Code § 54-24-302. The section of the statute that includes the process and standards for creating a fire fund refers only to a “rate case.”

2. *The provisions of the Fire Fund Statute are specific to establishment of a fire surcharge, and the statute’s use of “rate case” rather than “general rate case” should govern its interpretation.*

The Intervening Parties point to various statutory examples of where “rate case” and “general rate case” are used. When considering the import of the various provisions, statutory construction principles dictate that the Fire Fund Statute language should prevail as the more specific of the two statutory provisions. This principle was explained in the Utah Supreme Court’s decisions in *Biddle*²⁹ and *Tahipour*³⁰ discussed in Rocky Mountain Power’s Initial Brief.

²⁷ Utah Code § 54-24-302(4)(a).

²⁸ OCS recognizes that “[i]t 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.” OCS Initial Brief at 5, n.2. OCS argues that this reasonable assumption should be ignored because the “Legislature uses ‘rate case’ and ‘general rate case’ interchangeably and therefore there is no compelling reason for the terms to have different meanings.” *Id.* As discussed herein, the terms are *not* used interchangeably by the Legislature, and the assumption that different terms mean the same thing is contrary to principles of statutory construction.

²⁹ *Biddle v. Washington Terrace City*, 1999 UT 110, ¶14, 993 P2d 875, 879 (1999).

³⁰ *Taghipour v. Jerez*, 2002 UT 74, ¶11, 52 P3d 1252, 1255 (2002).

“When two statutory provisions purport to cover the same subject ... our rules of statutory construction provide that ... the provision more specific in application governs over the more general provision.”³¹

Word searches of the Utah statutes for “rate case” and “general rate case” will certainly yield many examples of both terms. From a statutory construction perspective, however, the focus should be on the specific terms and structure of Utah Code § 54-24-301, which delineates the substantive and procedural standards for the Commission’s review of a proposal to create a fire fund.

3. *The Intervening Parties’ appeals to the “ordinary and accepted” meaning of the term “rate case” do not explain the use of the term in the Fire Fund Statute.*

UTLCG argues that the “ordinary and accepted meaning of ‘rate case’ does not include standalone single-issue surcharge proceedings.”³² UTLCG cites reference manuals prepared by the National Association of Regulatory Utility Commissioners that use the term “rate case” when describing procedures common to GRC proceedings.³³ In addition, UTLCG references James Bonbright’s use of the terms in his treatise *Principles of Public Utility Rates*.³⁴

Under Utah law, the inquiry UTLCG suggests is unnecessary. Utah courts adhere to the general rule that “where a statute’s language is unambiguous and provides a workable result, [the court] need not resort to other interpretive tools, and [the] analysis ends.”³⁵ If a term is not defined in a statute, courts consider its plain meaning. As the Utah Supreme Court put it:

³¹ *Taghipour* 2002 UT 74, ¶11. The *Taghipour* decision’s holding regarding statutory construction was cited and affirmed in *Thomas v. Color Country Mgmt.*, 2004 UT 12, 84 P3d 1201 (Jan. 30, 2004).

³² UTLCG Initial Brief, at 6.

³³ *Id.* at 7-8.

³⁴ *Id.* at 8.

³⁵ *Garfield Cty. v. United States*, 2017 UT 41, ¶ 15, 424 P3d 46, 56 (2017) (internal brackets and quotation marks omitted).

When we interpret a word within a statute, we first consider its plain meaning. In looking to determine the “ordinary meaning of nontechnical terms of a statute, our ‘starting point’ is the dictionary.”³⁶

Adhering to that directive and referring to *Webster’s Third New International Dictionary*, the meanings of “rate” and “case” indicate that the legislature intended for utilities to raise the fire surcharge issue in a ratemaking proceeding.

The word “rate” has numerous common usage definitions, but only one that is particularly relevant in the context of an issue involving a public utility. *Webster’s Third* defines a “rate” as “a charge, payment, or price fixed according to a ratio, scale, or standard,” for example, “a charge per unit of a public-service commodity[.]”³⁷ That is, the word “rate” directly implicates the price charged by a utility for a particular service.

Likewise, the word “case” has several common usage definitions, a few of which are relevant here. For instance, a “case” is “a set of circumstances constituting a problem” or “a matter for consideration or decision,” as in one “requiring investigation or action[.]”³⁸ Other relevant definitions for the word “case” are “the matters of fact or conditions involved in a suit”³⁹ or “the body of evidence tending to support a conclusion or judgment[.]”⁴⁰ Together, and in the context of the Fire Fund Statute, the plain meaning of the word “case” is a set of circumstances requiring consideration or judgment as informed by investigation of a body of factual evidence.

Read together, the phrase “rate case” does not alter the meaning of either constituent word. Rather, adhering to the plain meaning of those words, a “rate case” is any “case” involving “rates,” or a set of circumstances requiring consideration or judgment about the price charged by a utility

³⁶ *Nichols v. Jacobsen Constr. Co.*, 2016 UT 19, ¶ 17, 374 P.3d 3, 8 (2016) (internal citation omitted).

³⁷ Definition of “Rate,” *Webster’s Third New International Dictionary* 1884 (3rd ed. 2002) (definition 3b).

³⁸ *Id.*, at 345, Definition of “Case” (definition 1b).

³⁹ *Id.*, at 345-46 (definition 5a).

⁴⁰ *Id.*, at 346 (definition 5b).

for a particular service as informed by investigation of a body of factual evidence. That description is sufficiently unambiguous to not require additional investigation into the meaning of a “rate case” using what UTLCG argues is its “ordinary and accepted” meaning.⁴¹

None of these “ordinary and accepted” usage claims overcome the principle that the words in a statute should be taken seriously and applied as they are written. In addition, the fact that a commonly used term in the world of utility regulation is given a shorthand name (*e.g.*, “rate case” rather than “general rate case”) or an acronym (“GRC” for “general rate case”) by state commissions and practitioners does not assist the Commission in interpreting specific statutory language. As discussed above, the Fire Fund Statute presents a specific statutory directive for how the Commission is to consider requests to establish a fire fund.

Moreover, the sources cited by DPU and UTLCG often use both terms to describe a rate setting proceeding. For example, UTLCG cites Bonbright’s treatise as describing a “rate case” in a manner that would include “general rate cases.” But Bonbright also uses the term “general rate case” to describe similar state proceedings. For example, UTLCG cites Bonbright using the term “rate case” on page 239 of his treatise, but on page 238, he substitutes the term “general rate case.”⁴² The fact that practitioners use a generic term, or acronyms to summarize what they mean by a term, does not explain what the Legislature meant when it used the term “rate case” in the Fire Fund Statute.

4. The term “rate case” must not be treated as surplusage in the Fire Fund Statute.

OCS correctly references the “surplusage canon” in statutory construction, which provides that “if possible, every word and every provision of a statute is to be given effect.”⁴³ As the Utah

⁴¹ See UTLCG Initial Brief, at 6.

⁴² James C. Bonbright, *Principles of Public Utility Rates*, at 238 (1961).

⁴³ OCS Initial Brief, at 2 (citations omitted).

Supreme Court has held, “[s]tatutes 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.”⁴⁴

OCS goes on to argue that based on 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.’”⁴⁵ OCS claims that “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.”⁴⁶

Rocky Mountain Power respectfully disagrees with this conclusion. The term “as approved in a rate case” indicates the Legislature is directing the Commission to conduct a rate setting proceeding to establish the fire fund surcharge. The Legislature could have directed the Commission to process fire fund approval as a rulemaking (as it did for other components of Chapter 24), instructed the Commission to consider creation of a fire fund in a utility’s next general rate case, or take up the issues in an “other appropriate proceeding.” It did not. The Legislature could have also directed the Commission to process fire fund approval as a rate case under Sections 54-4-4 and 54-7-12. It did not. Rather, the Legislature directed the Commission to conduct a rate case that would result in the implementation of the fire surcharge.

C. **Rocky Mountain Power agrees with DPU and OCS that this fire fund proceeding should not be dismissed.**

For all the reasons stated in its Initial Brief and in this Reply Brief, Rocky Mountain Power contends that “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).”⁴⁷ The Company

⁴⁴ *State v. Jeffries*, 2009 UT 57, ¶ 9, 217 P.3d 265 (2009).

⁴⁵ OCS Initial Brief, at 3.

⁴⁶ *Id.*

⁴⁷ Order at 5.

urges the Commission to re-establish a procedural schedule in this docket that will result in a Commission order that will fully “establish a fire fund,” including approval of a fire surcharge as the funding mechanism.

If the Commission determines that setting a fire surcharge must await Rocky Mountain Power’s next general rate case, however, this proceeding should provide the forum for making all the other findings and determinations the Commission must make to establish a fire fund. As OCS notes,” [g]eneral rate cases are large, complex, and time-limited proceedings” and it would be preferable to address issues that are specific to the fire fund in this separate proceeding. As DPU states, the Commission could use this proceeding to consider “the target amount for the fund, reporting requirements, the master trust agreement, accounting restrictions, investment plans, carrying charges, disbursement restrictions, or other [fire fund] administration issues.”⁴⁸ Given the resources already expended by Rocky Mountain Power to prepare its direct case, and the discovery already undertaken by the Intervening Parties, there is no reason to stop the progress toward establishing a fire fund altogether.

III. ROCKY MOUNTAIN POWER’S RESPONSE TO UTLCG’S MOTION TO DISMISS, OR, IN THE ALTERNATIVE, TO STRIKE

At the conclusion of its Initial Brief, UTLCG added a “Motion to Dismiss Or, In the Alternative, To Strike.”⁴⁹ RMP responds by addressing the motion in similar fashion and in compliance with Utah Admin. Code R746-1-301(1) requiring that any response to a motion “shall be filed within 15 days of the service date of the motion.”

Rocky Mountain Power agrees with UTLCG’s articulation that Commission rules incorporate “[t]he Utah Rules of Civil Procedure and case law interpreting these rules” as

⁴⁸ DPU Initial Brief, at 9.

⁴⁹ UTLCG Initial Brief, at 12.

persuasive authority unless otherwise provided by laws, rules, or orders directly applying to the Commission.⁵⁰ The Commission routinely applies Utah Rule of Civil Procedure 12(b)(6) when evaluating a motion to dismiss in a proceeding before the Commission.⁵¹ “In ruling on a motion to dismiss for failure to state a claim,” the Commission accepts “the factual allegations contained in the complaint as true and consider[s] all reasonable inferences to be drawn from those facts in the light most favorable to the complainant[,]” or in this case, the applicant, RMP.⁵² If an application raises “factual and policy issues” that the Commission “must examine in order to determine” a resolution, then dismissal is not justified.⁵³

Dismissal of any portion of RMP’s application is not appropriate here. For all the reasons stated in this brief and the Company’s Initial Brief, the Commission has the authority to consider RMP’s request to establish a fire fund and an associated surcharge in this proceeding. The factual record that RMP has provided in this case justifies establishing a fire fund and provides information from which the Commission must determine “a reasonable and prudent fire surcharge” to support the fire fund.

UTLCG moves in the alternative “to strike the portions of RMP’s application that seek implementation of the fire fund surcharge,” on the basis that the “requested surcharge is immaterial and impertinent to the relief it is legally permitted to request outside of a rate case.”⁵⁴ On the contrary, as discussed above, the Fire Fund Statute explicitly directs the Commission to review

⁵⁰ Utah Admin. Code R746-1-105.

⁵¹ See, e.g., *In the Matter of the Application of the Utah Industrial Energy Consumers for a Deferred Accounting Order Directing Rocky Mountain Power to Defer Incremental REC Revenue for Later Ratemaking Treatment*, Docket No. 11-035-46, Order Denying Motion to Dismiss, at 2 (Jun. 20, 2011) (applying the legal standard in 12(b)(6) to evaluate a motion to dismiss an application before the Commission).

⁵² See, e.g., *In the Matter of the Formal Complaint of Rod Stephens against Rocky Mountain Power*, Docket No. 14-035-52, Order Granting Rocky Mountain Power’s Motion to Dismiss, at 2 (Jun. 30, 2014) (applying the 12(b)(6) standard in evaluating a motion to dismiss).

⁵³ Docket No. 11-035-46, Order Denying Motion to Dismiss, at 2.

⁵⁴ UTLCG brief at 12, citing Rule 12(f).

and approve a public utility's filing for a fire fund and an associated surcharge "in a rate case." RMP's request for a surcharge is at the core of the statutory framework and the Company's application and is neither "immaterial" nor "impertinent" to the function and purpose of the Fire Fund Statute. Accordingly, a motion to strike that portion of the Company's application requesting a surcharge is not appropriate in this context and should be denied.

As discussed in this Reply Brief, Rocky Mountain Power urges the Commission to continue its consideration of fire fund issues in this proceeding, even if the Commission decides to defer establishing the fire fund surcharge until the Company's next general rate case. Granting UTLCG's Motion would defeat that effort to consider fire fund issues in as efficient a manner as possible.

IV. CONCLUSION

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

In addition, the Company requests the Commission order the parties to present a proposed procedural schedule for consideration by the Commission, to replace the schedule vacated by the Order.

Finally, Rocky Mountain Power urges the Commission to deny the Motion To Dismiss or Strike filed by UTLCG.

Respectfully submitted this 20th day of February 2026.

ROCKY MOUNTAIN POWER



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CERTIFICATE OF SERVICE

Docket No. 25-035-61

I hereby certify that on February 20, 2026, a true and correct copy of the foregoing was served by electronic mail to the following:

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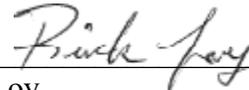
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