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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
Division of Public Utilities' Reply Brief and Response to Utah Large Customer Group's Motion to Dismiss	

I. INTRODUCTION

Pursuant to Utah Code section 54-4a-1, Utah Administrative Code R746-1, and the Public Service Commission of Utah’s (“Commission”) Order Vacating Scheduling Order and Setting Deadlines issued January 30, 2026, the Division of Public Utilities (“Division”) files this reply brief responding to Rocky Mountain Power’s (“RMP” or “the Company”) argument that this proceeding is a “rate case” as that term is used in Utah Code section 54-24-301(3)(a) and response to the Utah Large Customer Group’s (“UTLCG”) motion to dismiss the portion of RMP’s application requesting implementation of a Utah Fire Fund (“UFF”) surcharge in this docket.

In its legal brief, RMP argues that this UFF proceeding in which it seeks to establish a UFF surcharge is a “rate case” consistent with the statutory language in Utah Code section 54-24-301(3)(a) and that the Commission can approve the UFF surcharge in this docket prior to RMP’s next general rate case. For the reasons the Division provided in its initial legal brief and further explains below, this UFF proceeding cannot be a “rate case” as that term is used in section 54-24-301(3)(a). Correspondingly, the Division provides its response to UTLCG’s motion to dismiss for failure to state a claim upon which relief can be granted or, alternatively, to strike (“Motion”), and requests the Commission grant the motion to dismiss.

II. ARGUMENT

Contrary to RMP’s argument, this proceeding is not a “rate case” under section 54-24-301(3)(a). When interpreting the plain language of “rate case” as that term is used in that section in the context of the entire statutory scheme, “rate case” must mean a general rate case. The Company argues that “[t]his proceeding can properly serve as the ‘rate case’ to establish the fire surcharge, for multiple reasons.”¹ The Company claims that section 54-24-301 “does not

¹ RMP’s Brief on Legal Authority to Approve RMP’s Request to Approve a Utah Fire Fund (Feb. 13, 2026) at 5 (“RMP’s Legal Brief”).

contemplate creation of the fire fund, and its associated surcharge, as requiring approval in a general rate case . . . [because] [t]he statute uses the term ‘rate case’ rather than ‘general rate case’ in describing the proceeding in which a fire surcharge is authorized.”² It asserts that the use of “rate case” instead of “general rate case” was a deliberate choice by the legislature, which means that these terms have different meanings.³ RMP attempts to bolster its argument by providing examples of how other statutory provisions use the term “general rate case” and concludes that these examples “demonstrate that, when the Utah Legislature intends for the Commission to consider a particular matter only in a general rate case, or after it has conducted one, the Legislature directs the Commission using that specific language.”⁴ RMP states that “[i]nterpreting these terms as identical would disregard the Legislature’s deliberate decision to employ different terminology within the same statutory scheme.”⁵ Certainly it is reasonable to assume that different terms have different meanings. However, here the Company aims to create a distinction between the terms when there isn’t one.

As the Utah Supreme Court has held, “[i]t is well settled that when faced with a question of statutory interpretation, our primary goal is to evince the true intent and purpose of the Legislature.”⁶ When interpreting the plain meaning of a statutory term, the task “is to determine the meaning of the text given the relevant context of the statute (including, particularly, the structure and language of the statutory scheme).”⁷ Notably, RMP fails to square its reading of the term “rate case” in the statute with that term’s meaning in every other section in which it appears in Title 54. The Company provides examples of how the term “general rate case” is used,⁸ but

² *Id.* at 5.

³ *Id.* at 5-7.

⁴ *Id.* at 8.

⁵ *Id.* at 7.

⁶ *Anderson v. Utah Dep’t of Com.*, 2025 UT 19, ¶ 14, 572 P.3d 373.

⁷ *Olsen v. Eagle Mountain City*, 2011 UT 10, ¶ 12, 248 P.3d 465.

⁸ RMP’s Legal Brief at 7-8.

beyond its use in sections 54-24-301 and 54-24-302, fails to cite any of the several instances in which “rate case” is used in other sections of Title 54. And in all these instances “rate case” means a “general rate case,”⁹ undermining RMP’s argument that the legislature’s use of “rate case” instead of “general rate case” was a deliberate decision because the terms have different meanings. The Company’s isolated reading of “rate case” conflicts with how that term is used throughout Title 54. To construe “rate case” as used in section 54-24-301(3)(a) in harmony with the entire statutory scheme, the term “rate case” means a “general rate case.”¹⁰ To find otherwise would render the meaning of “rate case” in this section an anomaly in the comprehensive statutory scheme. Had the legislature intended the UFF surcharge to be approved in this proceeding, it easily could have said that instead of requiring the surcharge to be “approved by the [C]ommission in a rate case.”¹¹

While the Company cites precedent and statutory construction principles that should guide the Commission’s interpretation of the statute,¹² its deficient analysis that purports to interpret the text in the context of the statutory scheme to avoid surplusage instead creates it. In particular, section 54-24-302 states that “[i]n a rate case or other appropriate proceeding, any party may challenge the amount of the disbursement from the [UFF] used for the settlement of a fire claim.”¹³ To accept the Company’s argument would mean that the term “rate case” as used in section 54-24-301(3)(a) means this UFF proceeding because RMP seeks a “rate adjustment”¹⁴ and also means

⁹ Division’s Legal Brief (Feb. 13, 2026) at 6-8 (describing all the sections in which the term “rate case” is used to mean “general rate case”). To restate one example, Utah Code section 54-7-12, the statute governing general rate cases uses the term “rate case” to expressly refer to a general rate case proceeding. Utah Code Ann. § 54-7-12(4)(a)(iii); *Utah Office of Consumer Servs. v. Pub. Serv. Comm’n*, 2019 UT 26 ¶ 32, 445 P.3d 464 (noting that “[a]ll of subsection (4)’s provisions are interrelated and speak to imposing interim rates in a general rate case.”).

¹⁰ *See Anderson v. Utah Dep’t of Com.*, 2025 UT 19, ¶ 15, 572 P.3d 373.

¹¹ Utah Code Ann. § 54-24-301(3)(a).

¹² RMP’s Legal Brief at 6, 10-11.

¹³ Utah Code Ann. § 54-24-302(4)(a).

¹⁴ RMP’s Legal Brief at 9-10.

a general rate case, although the Company fails to address how “rate case” is used throughout Title 54 to expressly reference a general rate case proceeding. To interpret “rate case” broadly to mean a proceeding such as this one in which the Commission “adjusts a rate”¹⁵ and also a general rate case would render the words “or other appropriate proceeding” in section 54-24-302(4)(a) superfluous because they would be unnecessary to distinguish the type of proceeding.¹⁶

Furthermore, not only does the statutory text dictate this result, but sound ratemaking practice supports the determination that “rate case” in section 54-24-301(3)(a) means a “general rate case.” Single-issue ratemaking is generally prohibited. As the Commission has explained, “[w]e understand and acknowledge the general prohibition against single-issue ratemaking. Under circumstances where the legislature has not directed otherwise, a utility may not seek to adjust rates based on isolated issues without considering all relevant costs and revenues.”¹⁷ The Company seeks approval to implement a UFF surcharge in this proceeding and states that “fire fund approval will result in the increase of only a single charge: the fire surcharge collected to create the fire fund.”¹⁸ But as the Commission has already noted, RMP’s request to create a UFF implicates many other aspects of RMP’s business, including excess liability insurance costs, multi-state cost allocation methods, the financial health of RMP, and how the UFF helps maintain or improve RMP’s ability to deliver safe and reliable services.¹⁹ A general rate case is the typical ratemaking proceeding that allows the Commission to comprehensively review all of a utility’s revenues, costs, investments, and to set just and reasonable rates. Considering all the elements involved in

¹⁵ *Id.*

¹⁶ The phrase “in a rate case or other appropriate proceeding” occurs only twice in Title 54, once in section 54-24-302 and once in section 54-26-602. As explained in the Division’s Legal Brief, the use of “rate case” in section 54-26-602(4) strongly suggests that “rate case” means a general rate case. Division’s Legal Brief at 7-8.

¹⁷ *Investigation of the Costs and Benefits of PacifiCorp’s Net Metering Program*, Docket No. 14-035-114, Consolidated Order Denying Dispositive Motions (Feb. 23, 2017) at 12.

¹⁸ RMP’s Legal Brief at 5.

¹⁹ Request for Comments and Scheduling Order and Notice of Hr’g (Dec. 17, 2025) at 2-6.

this UFF proceeding, it would be more appropriate to evaluate the request to approve the surcharge in a general rate case to avoid single-issue ratemaking.

III. THE DIVISION'S RESPONSE TO UTLCG'S MOTION TO DISMISS

In its initial legal brief, UTLCG moved to dismiss for failure to state a claim upon which relief can be granted under Utah Rule of Civil Procedure 12(b)(6),²⁰ or in the alternative to strike, the “portion of RMP’s application requesting implementation of the [UFF] surcharge.”²¹ In accordance with Utah Administrative Code R746-1-301, the Division submits its reply to that motion to dismiss. The Division supports the Commission granting the dismissal of RMP’s request for Commission approval of the UFF surcharge in this proceeding.

In evaluating a motion to dismiss, the Commission “should grant a 12(b)(6) motion to dismiss ‘only if assuming the truth of the allegations in the [request] and drawing all reasonable inferences therefrom in the light most favorable to the [Company], it is clear that the [Company] is not entitled to relief.’”²² The “inquiry is concerned solely with the sufficiency of the pleadings, and not the underlying merits of the case.”²³ To put it simply, by requesting Commission approval of a UFF surcharge in this proceeding and not in a general rate case, the Company is seeking relief that is not permitted under section 54-24-301. As discussed above, the statutory language in section 54-24-301(3)(a) stating that RMP may charge to its customers a UFF surcharge “as approved by the [C]ommission in a rate case” requires that the Commission approve a UFF surcharge in a

²⁰ Unless otherwise provided in a Commission rule or order or in Title 63G, Chapter 4, Utah Administrative Procedures Act, the Utah Rules of Civil Procedure and interpreting case law are persuasive authority in Commission proceedings. Utah Admin. Code R746-1-105.

²¹ UTLCG’s Legal Brief at 12-13. UTLCG also moved to strike in the alternative. The Division supports either motion but concludes that the motion to dismiss is likely the most appropriate approach and therefore addresses only the motion to dismiss. However, if the Commission declines to dismiss, the Division’s analysis supporting dismissal also supports UTLCG’s motion to strike, as RMP’s request for approval of the UFF surcharge in this proceeding is immaterial to the relief it is legally permitted.

²² *League of Women Voters of Utah v. Utah State Legis.*, 2024 UT 21, ¶ 59, 554 P.3d 872 (citing *Castro v. Lemus*, 2019 UT 71, ¶ 11, 456 P.3d 750).

²³ *Id.* (citing *Oakwood Vill. LLC v. Albertsons, Inc.*, 2004 UT 101, ¶ 8, 104 P.3d 1226).

*general rate case.*²⁴ Therefore, RMP’s request to implement a surcharge does not meet the legal requirements under Utah law, and the Commission lacks the authority to approve a UFF surcharge in this proceeding. It is clear that RMP is not entitled to the relief it seeks with respect to implementing the UFF surcharge in this docket. Due to this deficiency, the Commission should grant UTLCG’s motion to dismiss.

IV. CONCLUSION

Despite RMP’s arguments, this UFF proceeding is not a “rate case” consistent with the language in section 54-24-301(3)(a) and RMP’s request to establish a UFF surcharge cannot be adjudicated prior to the Company’s next general rate case. The Company’s request for Commission approval of the surcharge in this docket is legally deficient, as it is not a general rate case, and therefore the Commission lacks the legal authority to approve the surcharge in this proceeding. Therefore, the Division supports UTLCG’s Motion and requests the Commission grant the motion to dismiss.

Respectfully submitted this 20th day of February 2026.

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²⁴ Utah Code Ann. § 54-24-301(3) (“A Utah fire fund shall consist of: (a) a reasonable and prudent fire surcharge that [RMP] may charge to [its] 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 Utah fire fund; . . .”).