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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Richard E. Drake,	:	
	:	
Complainant,	:	Docket No. 07-035-08
	:	
vs.	:	
	:	
ROCKY MOUNTAIN POWER, a	:	ROCKY MOUNTAIN POWER’S
division of PACIFICORP,	:	RESPONSE TO LETTERS OF
	:	RICHARD E. DRAKE
Respondent.	:	
	:	

Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or “Company”), hereby responds to the March 28, 2007 letter (“March Letter”) and April 9, 2007 letter (“April Letter”) (collectively, “Letters”) from Richard E. Drake (“Drake”) to the Commission. The March Letter rehashes the allegations in the Official Complaint (“Complaint”) of Drake dated February 12, 2007 and filed on February 20, 2007. Rocky Mountain Power has previously filed a Motion to Dismiss and Answer (“Motion”) dated March 20, 2007 and will not reargue the matters covered in the Motion. However, the Letters raise some new allegations and seek additional relief. In addition, at the May 1, 2007 technical conference in this matter, the substantial participation of David Ward

(“Ward”) in the Complaint and Letters was confirmed. This response opposes the amendment to the Complaint sought in the Letters and addresses the new allegations and requests for relief in the Letters and the repetitive nature of the Complaint, particularly in light of Ward’s participation.

BACKGROUND

I. CURRENT PROCEEDING

Drake filed the Complaint on February 20, 2007, alleging that Rocky Mountain Power had violated section 35 of the National Electric Safety Code (“NESC”) and that such violations had caused numerous blackouts on the weekend of February 11 and 12, 2007. Complaint at 1-2. The Complaint also alleged that the claimed violations resulted in hazardous conditions and had the potential to cause further outages. *Id.* The focus of the Complaint was alleged failed wood insulator pins known as “squatters” in a six square block area in the Millcreek neighborhood in Salt Lake County (“Neighborhood”).¹ *Id.*

Photos were attached to the Complaint purporting to show squatters on 29 poles in the Neighborhood. A drawing was also attached attempting to illustrate how problems arise from squatters. The Complaint assumed that similar conditions exist elsewhere on the system and castigated the Commission, the Division of Public Utilities (“Division”) and the Committee of Consumer Services (“Committee”) based on allegations that they were failing to require the Company to comply with the NESC and otherwise “engaged in willful neglect, a willful dereliction of their duty.” *Id.* at 2-3. The Complaint sought

¹ Drake lives at 2134 Lambourne Avenue in the Neighborhood. He attached a petition to the Complaint signed by approximately 32 other customers of the Company all of whom live on Lambourne Avenue or in close proximity.

imposition of penalties on Rocky Mountain Power for alleged violations of the NESC, claiming that the penalties could be used to fund independent utility experts to audit utilities and to pay the salaries of the Commission, Division and Committee. *Id.* at 3.

The Company filed the Motion on March 20, 2007, denying the allegations in the Complaint and affirmatively alleging that it was in compliance with the NESC. Motion at 4-7. The Motion pointed out that section 35 of the NESC deals with underground lines, rather than overhead lines, and that Rocky Mountain Power's overhead lines are in compliance with section 23, the applicable provision. *Id.* at 4. The Motion explained the cause of the unusually high number of incidents on the distribution circuits serving the Neighborhood from February 9 through 12, 2007 and further explained that the issues raised in the Complaint were not NESC violations and were not the major contributors to pole fires and outages that occurred during that period. Rather, the Motion explained that the incidents were caused by hardware contamination that resulted from a combination of the record air pollution during the extended inversions in the Salt Lake Valley in January 2007 and the light misting rain that occurred during the period in question. *Id.* at 2-3.

The Motion briefly discussed Rocky Mountain Power's system maintenance practices, including its classification of conditions on the system as priority A and B and C conditions. *Id.* at 6. "A" conditions are those "that pose[] an imminent hazard to the public or employees or risk loss of supply or damage to the electrical system." *Id.* They are corrected as soon as possible and in any event within an average of 120 days from the date discovered. *Id.* "B" conditions are those that "while there is a sign of defect or damage . . . do[] not pose an imminent hazard and [are] corrected as part of scheduled maintenance." *Id.* The Motion stated that squatters are B conditions. *Id.*

The Motion explained that the circuits serving the Lambourne Avenue area had experienced relatively few outages and that Drake had experienced only four outages in 2006, three of which were caused by weather conditions. *Id.* at 7. Five exhibits were attached to the Motion showing the causes of pole fire contamination and conditions showing the number of outage events on the circuits feeding the Lambourne Avenue area from January 1, 2006 through February 24, 2007. The Motion requested that the Complaint be dismissed.

Drake filed the March Letter purportedly in response to the Motion. The March Letter reiterates the claims in the Complaint and also alleges that Rocky Mountain Power is either attempting to confuse or deceive the Commission or does not understand the intent of the NESC. March Letter at 1. The March Letter also claims that the exhibits attached to the Motion do not reflect standard construction used by Rocky Mountain Power and its predecessors in Utah. The March Letter “lectures” the Commission about standard construction and disputes that the incidents in February of 2007 were caused by hardware contamination. The March Letter claims that the incidents were the result of “insulator failure caused by years of neglected maintenance on the wood pins supporting the insulator.” *Id.* at 3.

The March Letter characterizes Rocky Mountain Power’s discussion in the Motion relating to classification of squatters and floaters as class A or class B hazards as “beyond the pale,” claiming that they are safety hazards that must be addressed immediately.² *Id.* The March Letter cites the Review of PacifiCorp’s Storm Response

² “Squatter” refers to a “squatting insulator.” It occurs when wear on the wood pin holding an insulator above a cross arm causes it to sink down into the cross arm.

Report (“Division Report”) filed by the Division in Docket No. 04-035-01 on May 14, 2004, *id.* at 4, and attaches as exhibits several tables from the Division Report. The March Letter requests that the Commission take into custody “the cross arms, insulator pin supports, and insulators as they are removed from service by Rocky Mountain Power line crews,” *id.*, alleging the Rocky Mountain Power is destroying evidence. *Id.* at 5. The March Letter “instructs” the Commission on how this should be done for a particular cross arm, insulator pins and insulators at 2447 Fisher Lane. *Id.*

The March Letter comments on and in some cases criticizes the exhibits attached to the Motion, ultimately calling them and the Motion “farcical and support[ing] arguments made by others that [Rocky Mountain Power] no longer has the knowledgeable, competent management and engineering, and no longer has the linemen and service personnel to maintain the Rocky Mountain Power distribution system in the State of Utah.” *Id.* at 5-7. The March Letter purports to amend the Complaint “to require P.S.C. to order Rocky Mountain Power to inspect ground wires and repair where cut.” *Id.* at 6. In a section titled “Ineffectual regulatory bodies,” the March Letter is critical of Rocky Mountain Power, the Commission and the Division. *Id.* at 7-8. The March Letter then requests seven remedies, one of which, referring to the Division report in Docket No. 04-035-01, has seven subparts. *Id.* at 8-9. In a “Summary,” the March Letter refers to several items that it claims do not reflect well on the Commission, including general allegations about Rocky Mountain Power’s maintenance spending per customer and system reliability. *Id.* at 9-10. Throughout the March Letter, the constant mantra is that fines should be levied against Rocky Mountain Power because first PacifiCorp and then

Motion at 5. “Floater” is a term used commonly in the industry to refer to a situation when the pin holding the insulator breaks or is pulled out of the arm.

ScottishPower have allowed the distribution system to deteriorate since the original merger between Utah Power & Light Company and PacifiCorp in 1989.

On April 5, 2007, the Commission scheduled a technical conference for April 19, 2007 to allow the parties, the Commission, the Division, the Committee and any other interested persons to review and discuss the issues. The technical conference was thereafter rescheduled to May 1, 2007 because of a scheduling conflict.

Drake filed the April Letter on April 9, 2007. The purpose of the April Letter was to bring to the Commission's attention to what Drake characterized as an imminent safety hazard with regard to pole number 343911 located on the east side of Evergreen Park, about three blocks from Lambourne Avenue. The Letter requested that the Commission issue an "executive order" requiring Rocky Mountain Power "to replace and preserve the cross arms and insulator pins" on the pole. April Letter at 1-2.

The technical conference was held as scheduled on May 1, 2007. At the conference, Drake was accompanied by his brother-in-law, Ward. Ward is an electrical engineer and former distribution engineer for Rocky Mountain Power's predecessor.³ Ward spoke for Drake at the conference on technical issues including compliance of Rocky Mountain Power's system with the NESC and its maintenance practices. Thus, it became apparent that Ward is and has been the source of the technical information for the Complaint and Letters. Drake was also represented by legal counsel at the technical conference by his brother David O. Drake.

Rocky Mountain Power provided information at the conference in support of its position that the conditions which are the subject of the Complaint are not NESC

³ References to Rocky Mountain Power in this response will include its predecessors Utah Power & Light Company and PacifiCorp.

violations or imminent safety hazards. Rocky Mountain Power also explained that the claims in the Complaint and Letters are the same or similar to claims made in prior proceedings that have been resolved.

At the conclusion of the technical conference, the Commission scheduled another technical conference for June 14, 2007. The conference was scheduled on that date for two reasons: to allow Drake to conduct discovery and to accommodate Ward's schedule.

II. PRIOR PROCEEDINGS INVOLVING THE SAME OR SIMILAR CLAIMS

A. 2003 Winter Storm Outage Proceedings

Following significant and widespread outages that occurred as a result of a severe winter storm that commenced on December 25, 2003 and continued intermittently through January 2, 2004, the Commission initiated Docket No. 04-035-01 to investigate the storm, the outages and the Company's response. Rocky Mountain Power conducted its own investigation of the outages and response and cooperated with the Division, Committee and Commission staff in an investigation of the outages and related issues, including the Company's system reliability and maintenance practices and expenditures. The Division Report referenced in the March Letter was a result of that investigation. The Company filed a report on the same day as the Division Report ("Company Report"). Inconsistencies between the recommendations in the two reports were the subject of a series of public technical conferences. As a result of those technical conferences, the Division and its independent consultant, Williams Consulting, Inc. ("WCI"), were satisfied that the Company's implementation of the 28 recommendations contained in the Company Report and of certain recommendations contained in the Division Report had addressed their concerns. On June 24, 2005, the Commission issued a memorandum

concluding the investigation and directing parties to address further issues through the Service Quality Task Force, discussed below.

On April 29, 2004, five customers of the Company sought intervention in Docket No. 04-035-01 and made claims regarding a variety of factors related to alleged excessive outages resulting from claimed poor system maintenance and failure of the Company to comply with commitments made and conditions agreed upon in obtaining approval of the merger between Utah Power & Light Company and PacifiCorp in 1989 and the merger between PacifiCorp and Scottish Power in 1999. One of these customers was Ward's spouse, Janet B. Ward, residing at 3006 East Kempner Road in the Neighborhood. Another was William Van Cleaf, residing at 2136 Lambourne Avenue, apparently next door to Drake. Another was David Hiller, residing at 2129 East 3205 South, also in the Neighborhood. During the course of the proceeding, it became apparent that Ward was acting as a consultant to the petitioners and was the source of much of the information on which their allegations were based. The Commission granted intervention to the petitioners, but limited their intervention to participation in remaining aspects of the investigation.

On December 23, 2004, the five petitioners, joined by two insurance companies asserting subrogation claims in behalf of other unidentified customers, filed a second petition in Docket No. 04-035-70. The second petition was nearly identical to the petition in Docket No. 04-035-01. After extensive pleadings, motions and discovery, the parties filed a Stipulation to resolve all issues. In the Stipulation, the parties, including the three residents of the Neighborhood, one of whom is Ward's spouse, agreed, among other things, that:

29. Utah Power is obligated to provide safe, reliable and adequate service at just and reasonable rates consistent with meeting these obligations on a long-term basis. Utah Power is also entitled to recover in its rates all of its reasonable and prudent costs in providing safe, reliable and adequate service. Thus, there is a substantial relationship between the costs Utah Power incurs to maintain its electrical distribution system and the rates found just and reasonable by the Commission.

30. If Utah Power attempted to construct and maintain a system that was impervious to events such as the Storm and Outage, the costs of such a system would result in substantial increases in rates paid by Utah Power's customers. There is a relationship between the level of service provided and the rates charged that must be considered by the Commission and parties in the rate cases of the Company.

31. Although Utah Power attempts to provide continuous service to its customers, it is inevitable that some disruptions in service will occur. In approving Utah Power's tariff, the Commission has concluded that the bill credits for outages where power is not restored within 24 hours provided in Regulation 25 are just and reasonable. The Commission has also concluded that the exceptions to the Company's obligation to provide these bill credits are just and reasonable.

. . . .

37. Although the parties agree that the Storm and Outage was a Major Event and that the terms of additional goodwill credits provided in this Stipulation appropriately balance cost of service with system reliability for the time period of the Outage, the parties also agree that for the future it will be desirable for Utah Power to spend incrementally more on its system and maintenance, to prepare for the possibility of, and decrease the likelihood and severity of outages in the event of, a storm similar to the Storm in the future.

38. The parties agree that Utah Power has appropriately implemented the recommendations in the [Company] Report and [Division Report] as resolved by the Company, the Division and WCI . . . and that such implementation should mitigate the impact of a storm similar to the Storm in the future. The parties agree that the costs incurred in implementing the recommendations and Utah Power's commitments in paragraph 39 are the type of costs that should be recovered in rates.

39. Utah Distribution System Maintenance Commitments

a. . . .

b. From and after July 1, 2007⁴, Utah Power agrees that it will repair or correct all priority “A” conditions identified on its Utah distribution system that it is responsible to repair or correct within 120 days on average of the date the condition was identified. Priority “A” conditions are conditions such as leaking electrical equipment, burning electrical connections, broken insulators, trees in primary conductors, unsecured primary conductors and broken guy wires. Utah Power further agrees that it will provide semiannual reports of the status of its compliance with this commitment to all members of the Service Quality Task Force. If any semiannual report for a period after July 1, 2007 demonstrates that Utah Power is not in compliance with this commitment, Utah Power agrees to become compliant with this commitment within six months following the date of the report showing that it is not in compliance. Utah Power’s current estimate of the cost to inspect and maintain its distribution system in Utah in compliance with this commitment through December 31, 2011 is \$111 million. Notwithstanding this estimate, the parties agree that Utah Power’s commitment in this subparagraph is for performance of repair or correction of priority “A” conditions within 120 days of the date they are identified on average and is not an agreement to expend the estimated amount (or any other amount) of funds. Utah Power’s expenditure of funds for inspection and maintenance of its distribution system in Utah shall be in amounts it determines, in its sole discretion, are reasonable and prudent, provided recovery of such expenditures in rates is allowed by the Commission.

c. Utah Power’s commitments in the two foregoing subparagraphs shall be in effect through December 31, 2011. In addition, Utah Power agrees that it will not request any modification of the terms of the commitments through March 31, 2008.

40. The parties agree that Utah Power’s compliance with paragraph 39 of this Stipulation should be monitored by the Service Quality Task Force. Any issue regarding whether Utah Power has complied with its commitments under paragraph 39 of

⁴ Rocky Mountain Power began repairing and correcting all priority “A” conditions beginning August 1, 2006, nearly one year in advance of the distribution system maintenance commitments.

this Stipulation or whether remedies should be sought from the Commission based on a claim that Utah Power is not in compliance with its commitments under paragraph 39 shall be reviewed in the first instance by the Service Quality Task Force, and the Service Quality Task Force shall be free to make any determination and make any recommendation to the Commission that it deems reasonable after its review. If the Service Quality Task Force does not make a determination and recommendation to the Commission on any issue referred to it in accordance with the foregoing sentence within 120 days, any party shall be free to bring the issue before the Commission for resolution. If the Service Quality Task Force is discontinued for any reason, the provisions of this paragraph applicable to the Service Quality Task Force shall apply to the successor appointed by the Commission or, if no successor is appointed, to the Division.

....

45. The parties agree that Utah Power and its current and former officers, directors, shareholders, employees, representatives, agents, and affiliates (including parents, subsidiaries, and other entities with any degree of common ownership with Utah Power, and their current and former officers, directors, shareholders, employees, representatives, and agents) should be released from any and all claims, demands, and causes of action of any kind whatsoever, whether or not now known, suspected or claimed, which any customer of Utah Power ever had, now has, or claims to have had relating or connected to, or arising out of, the matters raised or that could have been raised in the First Petition or the Second Petition, including without limitation any and all claims that were raised or could have been raised regarding the Outage, Utah Power's electric service or rates, compliance with terms and conditions in the Merger Orders, real estate transactions, or coal mining practices, and any and all relief related to such claims whether in the form of penalties, damages, refunds, reparations, attorneys' fees, injunctive relief or any other form of relief whether at law or in equity, irrespective of the theory of recovery that could have been asserted.

....

47. While the Petitioners have asserted claims and asked to be permitted to pursue them as representatives of a class of customers of Utah Power, there has been no certification by the Commission or any other forum of any such class, nor a determination to allow any of the claims to be pursued on behalf of customers as a class. . . . The parties agree that approval of this Stipulation is in the

public interest and that its terms are just and reasonable as applied to all of Utah Power's customers.

Following a publicly noticed hearing at which the parties presented testimony in support of approval of the Stipulation, the Commission issued an order approving and adopting it on May 22, 2006.

As part of the resolution of the petitions in Docket Nos. 04-035-01 and 04-035-70, the Company agreed informally with the petitioners to do a visual, walk around inspection of its distribution system in both the Kempner Road neighborhood and the Lambourne Avenue neighborhood to identify and make repairs as deemed necessary by the Company in its professional judgment. Insulators were identified by the petitioners as specific issues to be considered in the inspections. The inspections were completed within a few months of approval of the Stipulation and repairs deemed necessary were made. Specifically, the squatters identified in the Complaint were noted. Squatters were identified as "B" conditions for repair during the next regularly scheduled maintenance of the circuits in the Neighborhood.

B. Complaint of Concerned Residents of Kempner Road

On January 7, 2004, an informal complaint was filed by Gordon Knight ("Knight") as chairman and representative of "Concerned Residents of Kempner Road," complaining of service outages and alleged failure to properly maintain the distribution system in their neighborhood. As noted above, Kempner Road is in the Neighborhood and is the road on which Ward resides. It is located just over one mile southeast from the home of Drake. The Division attempted to mediate the informal complaint pursuant to Utah Admin. Code R746-100-3.F.1.

Meetings were held by the Division at which the residents and the Company discussed the concerns of the residents and the Company's response. In addition, several letters were exchanged between the parties. During the course of this process, it became apparent that Ward was acting as a consultant to the Kempner Road residents. In addition, although the informal complaint did not involve the Lambourne Avenue neighborhood, Drake participated in meetings regarding the informal complaint. The public meeting referenced in the Complaint in this matter was part of the proceedings conducted by the Division in an attempt to mediate the dispute between the Kempner Road residents and the Company. In fact, the Complaint characterizes the meeting as having broader application than simply to Kempner Road and as involving the same issues raised in the Complaint.

Executive Douglas Bennion of PacifiCorp and Mrs. Rhea Peterson of the Utility Department personally promised me and members of the community attending a public meeting held at the Mill Creek Library in 2004 that the described electrical standard violations would be quickly corrected. Two years have elapsed with nothing being done to rectify the above described hazards.

Complaint at 2.

The Company took several actions, including making repairs and upgrades in response to the informal complaint and the meetings with customers. After a continuing exchange of correspondence in which Knight continued to raise issues and the Company responded that it had addressed the issues or that Ward refused to meet with it on site to review the claimed system inadequacies, the Division closed the informal complaint on March 22, 2005. In a letter to Knight that day, the Division reviewed the most recent letter from Knight and the Company's response to it. The letter quoted the Company as follows:

In an effort to provide excellent customer service and to be responsive to the Concerned Residents' issues, the Company has made every effort to resolve this informal complaint. We have worked, in good faith, with these customers for over a year and feel we have exceeded all of their reasonable demands. Their service is in compliance with the Company's Electric Service Regulations. Therefore, we see no benefit to continuing this informal inquiry and respectfully request that it be closed.

The Division agreed:

After reviewing the answers to the Concerned Residents questions and the efforts that have been taken by the Company to resolve this informal complaint, the Division with the concurrence of the Company, has determined that this informal complaint should be closed. The Concerned Residents can file a formal complaint with the Commission to have this matter reviewed. A form for that process is enclosed.

No formal complaint was filed.

C. Service Quality Task Force

As noted in the discussion of Docket Nos. 01-035-01 and 01-035-70 ("Outage dockets"), the Commission established a Service Quality Task Force (sometimes referred to as the Service Quality Review Group, hereinafter "Task Force") to review, among other things, the Company's service quality standards, its system performance and support and its ongoing investment and maintenance plans and to conduct a cost-benefit analysis of increasing the design and operational limits in the Company's distribution network, particularly in those areas that experience more frequent outages. The Task Force was created by the Commission's Report and Order issued February 25, 2005 approving the revenue requirement stipulation of the parties in Docket No. 04-035-42, a general rate case. The duties of the Task Force were augmented in the June 24, 2005 memorandum of the Commission in Docket No. 04-035-01 and referenced in the

Commission's Report and Order Approving Stipulation and Dismissing Petitions in Docket No. 04-035-70.

The Task Force held eight meetings chaired by the Division starting on June 2, 2005 and concluding on February 22, 2006. In addition, other meetings were held between the Division and the Company, and substantial discovery took place. The Task Force thoroughly reviewed the Company's service quality standards, inspection and maintenance programs and budgets and system performance. As part of this process, the Company began filing periodic service quality reports on July 21, 2005.

The Task Force issued a Report on September 13, 2006, providing a detailed report of its work and findings and the service quality reports being filed by the Company. Among other things, the report concluded:

[1] [D]uring the first half of FY 2006, the Company has performed close to [service quality] targets. The year to date actual SAIDI and SAIFI values were 138 minutes and 1.4 interruptions, respectively, as compared to the planned SAIDI and SAIFI values of 135 minutes and 1.4 interruptions. Year to date PacifiCorp restored power to 85% of its customers within 3 hours after an outage. The report also shows that the Company achieved its goal or was close to it in relation to the telephone service and response to Commission complaints. During this time, there were thunderstorm, heat and brush fire events which impacted the system's reliability. (Report at 12.)

[2] PacifiCorp has performed very well with its customer guarantees program [T]he success rate for all customer guarantees was over 99% for the first half of FY 2006. (*Id.*)

[3] The Company has adopted a comprehensive maintenance plan that is focused on inspection of distribution and transmission lines, as well as substations. . . . [A]ctual maintenance spending is slightly higher than was planned while the Company completed work that is 7% ahead of plan. (*Id.* at 15.)

[4] PacifiCorp provides more guarantees than the rest of the companies that provide some level of customer guarantees. Also,

it pays larger credit amounts for most of the guaranteed services in case it fails to provide the guaranteed level. (*Id.* at 28.)

[5] Since the number of outstanding NESC conditions is relatively high and the maintenance spending per customer is relatively low, the Task Force began to look into the costs and benefits associated with accelerating the correction of the NESC outstanding conditions to a correction rate faster than currently achieved by PacifiCorp. (*Id.* at 32.)

[6] [T]he Task Force believes that the annual 2% reliability improvement that the Company committed to is challenging but appropriate. (*Id.* at 34.)

[7] The Task Force believes that it is appropriate to closely monitor the network performance measures and standards. The network performance measures and standards can provide us with clear indication of system integrity and performance. (*Id.* at 34-35.)

[8] [T]he Task Force does not have any specific recommendations regarding possible improvements to the system except with respect to the continued improvement in SAIDI and SAIFI and that it be a subject for continued review and study, in anticipation of making recommendations for standards, if any, to be in effect on or after March 31, 2008. (*Id.* at 35.)

[9] PacifiCorp has agreed to provide the Division and the Committee with a quarterly Service Quality Review Report, the content of which has been approved by the Task Force. The Company has also agreed to meet quarterly with the Division and other interested parties to discuss the report and respond to any concerns that may arise. The Task Force members agree that the information contained in this report will allow the Division and other interested parties to monitor PacifiCorp's Utah distribution operation and maintenance expense expenditures and to track the Company's performance with respect to its service quality and reliability commitments. With the Service Quality Review Report and a quarterly meeting process now in place, the Task Force members recommend that the Task Force's work with respect to Docket Nos. 04-035-01 and 04-035-4[2] be concluded. However, for purposes of receiving the reports contemplated in Commitment U9 in the MEHC acquisition order, the semiannual reports contemplated in the Stipulation in Docket No. 04-035-70 and the quarterly reports specified above, the Task Force members recommend that the Task Force continue to monitor the reports. If members of the Task Force conclude that Task Force meetings

should resume based on the content of reports filed by the Company, they will notify the Commission. (*Id.* at 39.)

[10] The Task Force believes that it is appropriate to closely monitor the network performance measures and standards. The network performance measures and standards can provide us with clear indication regarding system integrity and performance. The Task Force does not have any specific recommendations regarding possible improvements to the system except with respect to continued review of the system performance in anticipation of making recommendations, if any, to be in effect on and after March 31, 2008. (*Id.*)

(Numbering added for convenience of reference.)

ARGUMENT

Rocky Mountain Power takes seriously its obligation to provide safe and reliable electric service to its customers. Correction of hazardous conditions posing an imminent safety risk to the public or the Company's employees is given the highest priority by the Company followed closely in priority by correction of conditions that pose a significant risk of interruption of service to customers. The Company welcomes customer input on outages and observed unsafe conditions such as downed lines because the input assists the Company in fulfilling these paramount responsibilities and in providing excellent service to its customers.

Unfortunately, the Complaint and Letters are something different than legitimate input of concerned customers based on conditions observed in normal course. Rather, the Complaint reflects ongoing dissatisfaction of Ward and his associates with the Company and its management following the 1989 merger and an attempt by Ward to micromanage the Company's distribution system maintenance. For example, it is unique in the Company's experience for a customer concerned about outages or safety hazards to survey and photograph 29 power poles in a six square block area looking for squatters. It

is also exceptional in the Company's experience for customer complaints to cite specific provisions of the NESC and to discuss standard Company construction practices.

Based on experience, Rocky Mountain Power doubts that it will ever be able to satisfy Ward regarding the adequacy of its management and system performance and maintenance. After addressing issues raised in the Kempner Road matter and conducting the inspections and repairs in the Outage matter, Ward through his relatives and neighbors now raises numerous allegations about squatters in the same area, conditions that obviously existed during the foregoing inspections and reviews. In addition, it now appears from the Letters that the Ward group intends to file monthly criticisms of the network, complaining of and demanding Commission action on each new perceived defect while bypassing the process contemplated by Rule R746-100-3.F.1 of first raising issues with the utility, followed by making an informal complaint to the Division, if not satisfied with the utility's response, followed by a formal complaint before the Commission only if the two foregoing steps do not yield a satisfactory result.

Rocky Mountain Power objects to this pattern and requests that the Commission dismiss the Complaint and instruct Ward and his associates to comply with appropriate procedures. The Company makes these requests based upon the fact that the new allegations in the Letters are not procedurally appropriate, that they, as well as the original allegations in the Complaint, are without merit, that the relief sought in the Letters, as well as the relief sought in the Complaint, is inappropriate and that the Complaint and Letters represent an inappropriate attempt by Ward and his friends to wrest day-to-day management of the Company from the board and shareholders of the Company and their selected management.

I. THE LETTERS' ATTEMPTED AMENDMENT TO THE COMPLAINT IS UNTIMELY AND PROCEDURALLY IMPROPER.

The Commission's rules of practice and procedure governing formal proceedings require compliance with the Utah Rules of Civil Procedure unless the rules otherwise provide or the Commission considers them unworkable or inappropriate. Utah Admin. Code R746-100-1.C. Rule 15 of the Utah Rules of Civil Procedure allows a party to amend his pleading once as a matter of course before a responsive pleading is served or within 20 days after service if no responsive pleading is permitted and the action has not been set for hearing. Otherwise, a party may amend his pleading only by leave of the Commission. U.R.C.P 15(a). The Letters were filed after Rocky Mountain Power filed its Motion, the responsive pleading to the Complaint, and more than 20 days after the filing of the Complaint. Yet, they purport to amend the Complaint, not once but twice, without seeking leave of the Commission to do so. Rocky Mountain Power objects to the purported amendments to the Complaint contained in the Letters and requests that they not be allowed. In addition, as will be demonstrated below, the amendments are without merit and inappropriate in any event.

II. NEW ALLEGATIONS IN THE LETTERS ARE WITHOUT MERIT AND NEW REQUESTS FOR RELIEF ARE INAPPROPRIATE.

The Letters contain new allegations and substantially expand the relief requested in the Complaint. These allegations are without merit and the additional relief requested is inappropriate.

A. Rocky Mountain Power Is Not Attempting to Confuse or Deceive the Commission and Understands the Intent of the NESC.

The March Letter claims that the Motion is either attempting to confuse or deceive the Commission or does not understand the intent of the NESC. March Letter at

1. The March Letter also claims that Rocky Mountain Power's position that squatters are "B" conditions that may be repaired during the next scheduled maintenance is "beyond the pale," *id.* at 3, and that its description of the causes of the incidents in the Neighborhood during February is "farcical and support[s] arguments made by others that [Rocky Mountain Power] no longer has the knowledgeable, competent management and engineering, and no longer has the linemen and service personnel to maintain the Rocky Mountain Power distribution system in the State of Utah." *Id.* at 5-7.

These claims are based on Rocky Mountain Power's assertion in the Motion that the squatter conditions identified in the Complaint do not constitute NESC violations and are "B" conditions. While ultimately acknowledging that the Company properly represented the requirements of the NESC, March Letter at 3 ("There is full agreement with PacifiCorp's statement from the N.E.S.C. that 'three inches of clearance must be maintained between the cross arm of the pole and the mid-point of the conductor.)'), the March Letter maintains that squatters "*may* be a violation of the 3 inch clearance mandated by the N.E.S.C." (emphasis added), and then diverts attention to a discussion of floaters rather than squatters. *Id.* In doing so, it argues extreme positions and ultimately resorts to name-calling and disparagement.

As stated in the Motion, the major contributor to pole fires was from contamination from poor air quality and not reduced wet flashover rating from squatters. It is also recognized that the NESC does not specify wet flashover ratings. The three alleged instances of circuit breaker failure at the East Millcreek substation during the past few months were not caused by squatters. While it is conceivable that a line can burn and

fall to the ground as a live wire when a line fuse or circuit breaker fails as claimed by the March Letter, this is not a likely outcome.

The legitimate dispute between the Motion and Ward's position as reflected in the March Letter is whether a squatter is a serious problem requiring immediate repair or whether it is a condition that may be repaired during the next scheduled maintenance cycle in the area. It appears that there is simply a difference of opinion on that issue. The NESC does not address the issue. It is one left to the sound judgment of the distribution engineer. Based on its experience with Ward as an employee, Rocky Mountain Power is not surprised that Ward believes every condition is serious and requires immediate repair. However, Ward continues to ignore the fact that the cost of operating such a system would be many times higher than the cost of operating the system as the Company does. The Company believes that its customers appreciate the balance between cost and perfection in its approach which has resulted in rates among the lowest in the nation. In addition, the Company believes its performance and safety record demonstrate the reasonableness of its approach. The "what ifs" portrayed in the March Letter simply have not happened and are unlikely to happen.

The Company agrees that floaters present a more serious condition than squatters. Floaters are classified as "A" conditions when discovered. Depending on the nature of the floater and the equipment available to the inspector or lineman when the condition is identified, the condition is either corrected immediately or is corrected as soon as reasonably possible given other conditions that compete for the immediate attention of repair crews.

The purpose of the NESC is to provide the minimum acceptable safety standards for an electrical system. Because the system is a dynamic, operating system exposed to outside forces, it is inevitable that conditions will arise that are not in compliance with the NESC. Violations occur only if the construction is not in compliance with the NESC under original construction installation or if a process is not in place to inspect and repair the equipment within a reasonable period of time as deemed reasonably necessary by the utility. Petitioners in the Outage dockets and the Task Force both reviewed the Company's inspection and maintenance cycles and expenditures and the Company's practice of prioritizing for repair defects and potential defects discovered on the system. Both found these procedures reasonable. Specifically, they agreed that it was satisfactory for the Company to correct "A" conditions within an average of 120 days from identification.

Finally, with regard to the claim that the exhibits to the Motion are "farcical," the Company does not dispute that the type of pins shown in the exhibits to the Motion are not the same type of pins currently in use in many parts of the Neighborhood. The Motion did not claim that they were. Rather, the purpose of the exhibits in the Motion was to explain how pole fires result from hardware contamination and to illustrate that they could occur even if the more modern insulators currently being installed had been installed in the Neighborhood.

B. The Division and WCI Are Satisfied that the Concerns Raised in the Division Report Have Been Appropriately Addressed by Implementation of Recommendations.

The March Letter discusses the Division Report in the Outage investigation for the proposition that the Company has shortchanged Utah with regard to maintenance as compared to Oregon. March Letter at 4. However, the March Letter fails to

acknowledge that the Division and WCI ultimately agreed with the Company that its implementation of the 28 recommendations in the Company Report together with certain recommendations in the Division Report fully satisfied their concerns. In other words, the differences in maintenance spending in Utah and Oregon caused concern to the Division and WCI. However, the Company implemented recommendations involving addressing maintenance issues more aggressively in Utah and the Division and WCI were satisfied with that implementation, subject to continued review of service quality reports and performance results. In other words, the issue was raised and successfully resolved through actions taken by the Company. It is inappropriate for Ward to continue to rely on the report as support for his claim that the Company is not appropriately maintaining its system currently.

C. Rocky Mountain Power's Replacement of the Cross Arm on Craig Drive Was in the Normal Course of Business and Was Not an Attempt to Destroy Evidence.

The March Letter discusses the replacement of a cross arm at 3003 East Craig Drive on the evening of March 27, 2007, the day before the letter was sent. March Letter at 4-5. The purpose of the discussion is to suggest that the Company intentionally destroyed evidence and to set up one of the new claims for relief that will be discussed below. This claim illustrates the conundrum the Company faces in its dealing with Ward. When the Company does not repair a condition, Ward chastises the Company for failing to do so. When it does repair a condition, he claims the Company is doing so to destroy evidence of the condition. It is apparent that Ward will challenge any action taken by the Company.

The Company replaced the cross arm at 3003 East Craig Drive on the evening of March 27, 2007. Earlier that day Mr. Drake called Rocky Mountain Power and the

Commission stating that he knew of a location where people would be killed as a result of a cross arm that had been burning for two years, but he would not give a location unless a subpoena was issued. After extensive discussion with Mr. Drake, Rocky Mountain Power employees were shown the location of the cross arm only after the Company agreed to sign a letter requiring that the cross arm be turned over to the Commission. During discussions between Rocky Mountain Power and Mr. Drake, a crew was dispatched to try and find the location of the alleged pole fire. Since the crew was dispatched to contend with a pole fire and was prepared with the necessary manpower and equipment, the cross arms were replaced that same evening in the way the Company typically replaces cross arms where conditions are found. No instructions were given to the line crew to replace it in an unusual or atypical way that would destroy evidence. During the removal of the cross arm, Mr. Drake and Mr. Ward were both in attendance. After the cross arm was removed and placed on the ground, Mr. Ward immediately began to remove hardware from the cross arm for closer examination. The next morning, the cross arm was delivered to the Division as requested.

The March letter also alleges that a cross arm at 2447 Fisher Lane needs to be removed since evidence on the cross arm at 3003 East Craig Drive was destroyed. In the April letter, Mr. Ward requested that the cross arm on pole identified as facility point 343911 be removed and that the cross arm at 2447 Fisher Lane no longer needs to be removed. The pole 343911 was inspected on April 12, 2007, and again on the morning of April 16, 2007. At 16:02 on April 16, 2007, a person who identified himself as Edward La Guardia contacted customer service and alleged that a pole was on fire in his vicinity with 12 failed insulator pins and four floating insulators. A troubleshooter was dispatched

immediately to assess the situation. The troubleshooter was unable to identify any pole fire in the location around the address in the system for Edward La Guardia. Customer service responded to the number from which the call was made and discovered the call had actually been made from David Ward's residence. The troubleshooter then contacted Mr. Ward directly who directed him to the location of the alleged pole fire.

Once on the scene, the troubleshooter discovered that a minor pole fire had occurred on pole 343911 but it appeared the fire was not recent nor was the cross arm causing an imminent hazard. Once again, because a crew was dispatched to contend with a pole fire and was prepared with the necessary manpower and equipment to replace a cross arm, the cross arm was replaced in the way the company typically replaces crossarms where conditions are found.

D. David Ward Continues to Cause Hazardous Conditions From Line Crews While Performing Work.

During the removal of the cross arm at 3003 East Craig Drive, Mr. Ward was repeatedly asked by Rocky Mountain Power crews to stay clear of the work area while the work was being performed. During the removal of the cross arm at facility point 343911, Mr. Ward again had to be reminded by Rocky Mountain Power crews to stay back from the work area. Mr. Ward was also taking pictures with a flash while the crew was performing work on the energized conductors. When an energized line is faulted, a flash usually occurs that is similar to the flash of a camera. While the crew was working, Mr. Ward was taking pictures which caused the crew to think a fault had occurred. This caused great distraction and safety hazard to the crew.

On March 3, 2007, Rocky Mountain Power responded to a vehicle accident that resulted in damage to a pole and an outage. The vehicle collision caused the secondary to

come in contact with the primary conductor. Shortly after Rocky Mountain Power crews arrived, a maroon mini-van, which appeared to be Mr. Drake's vehicle, arrived at the location of the accident. Rocky Mountain Power crews and the fire chief repeatedly asked the driver of that vehicle to stay back from the non-grounded conductor. The driver of the mini-van continued to come back and was eventually removed from the scene by a police officer. The driver resisted, claiming that he had authority from the Commission.

E. The Claim of Improper Grounding of Neutral Wires to Pole Ground Wires is Incorrect.

Relying on Exhibit C submitted with the Motion, the March Letter claims that "the introduction of ground wires in this exhibit allows Docket 06-035-20 to be expanded to the safety hazards caused by improper grounding of the neutral wire due to pole ground wires being cut by misguided power company personnel." March Letter at 6. Exhibit C to the Motion does not mention the grounding of the neutral wire but rather simply shows an overhead representation of the cross arm to illustrate how leakage current tracks down the cross arm and is dissipated from the through bolt into the pole possibly resulting in a pole fire. As part of the overhead view, the neutral wire and ground wire is shown but is not referenced on the exhibit.

The fact that this incidental showing of the ground wire on this diagram prompted a new claim based on alleged cutting of ground wires at an entirely different location on a single pole is revealing. Whether Ward has a list of supposed defects he is holding in reserve or whether he simply observed this cut ground wire on one of his apparently regular inspections of the distribution system in the Neighborhood since the Complaint was filed, this claim illustrates the slippery slope of entertaining the type of claims made in the Complaint and the Letters. Apparently, Ward is now looking for any excuse, no

matter how tenuous, to bring complaints about conditions on the distribution system, no matter how minor or isolated, directly to the Commission and in direct violation Commission Rule R746-100-3.F.1.

F. The New Relief Requested in the Letters Is Inappropriate.

The original relief requested in the Complaint was imposition of fines on Rocky Mountain Power to force it to comply with the NESC and to fund increased regulatory oversight, including the hiring of independent utility experts to audit system compliance. Complaint at 3. This request for relief demonstrates Ward's and Drake's lack of knowledge regarding the use of fines and penalties imposed on public utilities. Fines are not available to the Commission to use as it sees fit, they go into the General Fund. *See* Utah Code Ann. § 54-7-29.

The request is also unusual in the Company's experience with customer complaints. Customer complaints typically seek relief from payment of a portion of their bill, a blocking or disconnection or reconnection or correction of a claimed deficiency in their individual service or some combination of them. Other than the petitions in the Outage dockets, which were obviously instigated at least in part by Ward and which also sought substantial penalties, it is atypical for customers to seek to penalize the utility.

Now, the Letters seek substantial additional relief. The March Letter requests that the Commission order Rocky Mountain Power to immediately inspect East Millcreek Circuit No. 13, identifying all required maintenance and repairs and to complete all repairs and maintenance by December 31, 2007. March Letter at 8. Interestingly, Mr. Drake's service is from our South East Circuit No. 16 and is not mentioned in any of the documentation provided by the petitioners.

The March Letter requests that the Commission procure for personal examination the cross arms as taken down where NESC violations have been present and to direct that no evidence be destroyed in the process. *Id.* As already noted, the March Letter seeks this relief specifically for a pole at 2447 Fisher Lane, and the April Letter seeks this for pole 343911. Apparently, Ward wants this same relief for all cross arms replaced anywhere except for a relocation because the Company cannot conceive of the need to replace a cross arm other than in a relocation unless it needs to be replaced. Not only would this requirement expand the time and effort expended by line crews, it would require the Commission to acquire space to accommodate replaced cross arms and to obtain expertise to inspect them.

The March Letter requests that the Commission order a reorganization of Rocky Mountain Power, PacifiCorp and Mid-American Energy Holding Company (“MEHC”) so that Rocky Mountain Power no longer is part of PacifiCorp. *Id.* This requested relief sounds a lot like the relief sought in the Outage petitions. It seems apparent that Ward continues to wish for the good old days when Utah Power & Light Company was a stand-alone utility managed only out of Salt Lake City. Given that the Commission has in the course of three separate proceedings found, after exhaustive analysis, that mergers and acquisitions of the former Utah Power system were in the public interest, this request amounts to a prohibited collateral attack on prior Commission orders. *See Utah Code Ann. § 54-7-14.*

The March Letter calls for implementation of seven recommendations in the Division Report dealing with inspection, maintenance, prioritization of repairs and related budgets and expenditures. March Letter at 8. As discussed above, following the filing of

the Division Report, several technical conferences were held to attempt to resolve differences between the recommendations in the Company Report and the Division Report. If Ward had chosen to participate in that process as he was free to do, he would know that after much review and discussion, the Division and WCI agreed that the Company's implementation of its recommendations and of certain of the Division's recommendations fully addressed and satisfied their concerns. In addition, Ward is ignoring the stipulation of his spouse and clients, the petitioners in the Outage dockets, that the Company's implementation of the recommendations and its commitments related to service quality were satisfactory.

The last item of requested relief, "[c]ommit to reestablishing the integrity of the electrical distribution system in Utah," is an appropriate summarization of the real motivation for the Complaint. Simply put, Ward believes the distribution system has been neglected since the merger between Utah Power and PacifiCorp in 1989 and more particularly since his employment with the Company was terminated. The Complaint appears to be all about Ward's personal agenda.

G. The New Allegations and the New Requests for Relief Go Beyond the Legitimate Role of the Commission.

It is well established in public utility law that the Commission is not entitled to interfere in the day-to-day management of a public utility. *See, e.g., Missouri ex rel. Southwestern Bell Tel. Co. v. Public Service Comm'n*, 262 U.S. 276, 289 (1923) ("The commission is not the financial manager of the corporation, and it is not empowered to substitute its judgment for that of the directors of the corporation; nor can it ignore items charged by the utility as operating expenses, unless there is an abuse of discretion in that regard by the corporate officers.); *Utah Dep't of Administrative Services v. Public Service*

Comm'n, 658 P.2d 601, 618 (Utah 1983) (“Although the Commission is normally forbidden from intruding into the management of a utility, we have suggested that it can do so where ‘the policy and consequent expenditure is actuated by bad faith, or involves dishonesty, wastefulness, or gross inefficiency.’”) (quoting *Logan City v. Public Utilities Comm'n*, 296 P. 1006, 1008 (Utah 1931)).

The Commission regulates the Company’s rates and provision of service as a surrogate for competition in the market. *See, e.g., Utah Gas Service Co. v. Mountain Fuel Supply Co.*, 422 P.2d 530, 532-33 (Utah 1967). Therefore, if the Commission is not entitled to micromanage the utility, it should be apparent that the customers of the utility, whether former distribution engineers or not, are not entitled to do so.

In another context, the Commission has recognized the morass that would result if individual customers serially second-guess the work of the Committee and Division, who are the bodies designated by the Legislature to represent their interests in Commission proceedings and then other customers who have attempted to assume a role of private attorneys general. *See*, Order on Request to Intervene, Docket Nos. 04-057-04, 04-057-11, 04-057-13, 04-057-09, 05-057-01 (Utah PSC Jan. 6, 2006). If the Commission accepts Ward’s view that the distribution system should be gold-plated, what is to prevent another customer from complaining that rates are too high because the system is gold-plated. While it is entirely appropriate for individual customers to raise issues regarding the safety and reliability of their own service in customer complaints, to present issues to the Committee or Division for investigation or review or to provide public witness testimony in Commission proceedings, it is inappropriate for customers to attempt to

usurp the role of Company management through repeated complaints related to the same issues.

The appropriate Commission response to concerns about maintenance practices and policies, including those now raised for at least the third time by Ward and his associates, is the setting of service quality standards, review by the Task Force of the issue on a broad scale and the filing and review of periodic service quality reports. That, rather than a requirement that certain cross arms be replaced and the removed cross arms be preserved, is the appropriate level of regulatory oversight for the Commission.

III. THE COMPLAINT IS CONTRARY TO THE CONCLUSION OF PRIOR PROCEEDINGS.

The Company's system performance and maintenance has been the subject of significant scrutiny during the past several years. On a macro level, a Task Force established by the Commission and chaired by the Division has conducted a detailed review of the Company's system performance and operations and maintenance practices and spending. In addition, the Division, assisted by WCI, and the Committee have carefully reviewed the Company's distribution system performance and maintenance practices and budgets in the Outage investigation. Both of these reviews have concluded that with the implementation of recommendations resulting from the investigation of the Outage, the Company is performing well. The Task Force has considered the costs and benefits of higher network performance and reliability standards well aware that the Company is entitled to recover costs of reasonable system inspection and maintenance in its rates. The Task Force concluded that higher standards are not currently justified. The Task Force will continue to monitor the Company's performance and may make

recommendations for modifications in network performance standards in the future. However, for now, performance and plans are on target.

On a micro level, attention has been focused on the distribution system in the Neighborhood both as a result of the petitions filed in connection with the Outage and the informal complaint filed by Knight. As a result of these proceedings, the Company has specifically inspected and plans to correct defects and/or conditions identified to the distribution system in the Neighborhood outside the normal course of its inspection and maintenance program. As noted in the March 22, 2005 letter from the Division to Knight in the Kempner Road process, the Company, in the interests of providing excellent service to customers and of addressing customer concerns, has gone above and beyond its typical duties to inspect and repair issues of concern in the Kempner Road neighborhood. In response to similar complaints of petitioners in the Outage dockets, the Company has conducted a special inspection of circuits in the Lambourne Avenue neighborhood.

It is significant that the petitioners in the Outage dockets, including petitioners residing in the Neighborhood and attempting to represent the interests of all customers, ultimately recognized that there is a close correlation between level of service provided and rates paid by customers. In effect, they acknowledged that the perfect system which is the apparent goal of the Complaint is impractical and would require unreasonable expenditures which would result in substantial rate increases. It is even more significant that these same petitioners stipulated to a release of all claims against the Company relating to the issues raised or that could have been raised in their petition, including issues related to system maintenance.

As a result of these proceedings, the Commission already has a body and process in place to deal with issues related to distribution system performance and maintenance. The Company is filing periodic service quality reports with the Task Force, and the Task Force is reviewing them to determine if further meetings are needed or if recommended changes in standards or practices should be proposed. Therefore, the Company respectfully recommends that the Commission dismiss the Complaint, and, if deemed worthwhile, refer the allegations of the Complaint to the Task Force for review in the broader context of the issues it is monitoring.

CONCLUSION

Based on the foregoing, Rocky Mountain Power respectfully requests that its Motion be granted. Rocky Mountain Power does not ask the Commission to vacate the technical conference scheduled for June 14, 2007, but does request that following that technical conference and any reasonable follow up, the Complaint be dismissed. Rocky Mountain Power also requests that the Commission inform Ward, Drake and any others participating as customers or customer representatives in this matter that issues related to the current organization of Rocky Mountain Power are closed and that legitimate future concerns regarding safety or reliability of their service should first be brought to the attention of the Company and then to the Division in an informal process as required by Rule R746-100-3.F. Finally, similar to the Commission's direction to the customers' predecessors in Docket No. 04-035-01, Rocky Mountain Power requests that the Commission direct Ward, Drake and others who signed the petition in this docket, to direct any information regarding more general concerns with system reliability or safety to the Division for examination and investigation and any further action deemed

necessary through the Task Force already established by the Commission for that purpose.⁵

RESPECTFULLY SUBMITTED: February 21, 2018.

R. Jeff Richards.

Attorney for Rocky Mountain Power

⁵ See Order Granting in Part and Denying in Part Petition and Request to Intervene, Docket No. 04-035-01 (Utah PSC Jul. 6, 2004) at 3-4 (“The Individual Customers may present what detailed information they may have concerning their claims to the Division of Public Utilities (Division). The Division has statutory power to conduct its own investigations or studies upon complaint, Utah Code § 54-4a-1, and we believe that the Division will objectively consider the claims. Should the Division conclude that future Commission action is warranted, we trust that the Division will bring its recommendations to the Commission.”)

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **ROCKY MOUNTAIN POWER'S RESPONSE TO LETTERS OF RICHARD E. DRAKE** was served upon the following by electronic mail on February 21, 2018:

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