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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Richard E. Drake,

Complainant,

vs.

ROCKY MOUNTAIN POWER, a
division of PACIFICORP,

Respondent.

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Docket No. 07-035-08

**ROCKY MOUNTAIN POWER'S
RESPONSE TO MAY LETTER OF
RICHARD E. DRAKE**

Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or “Company”), hereby responds to the May 25, 2007 letter (“May Letter”) from Richard E. Drake (“Drake”) to the Commission. The May Letter, in addition to adding a new allegation and two new requests for relief to those raised in the Official Complaint (“Complaint”) of Drake dated February 12, 2007 and the March 28, 2007 letter (“March Letter”) and April 9, 2007 letter (“April Letter”) filed by Drake, mostly reargues matters raised in the Complaint and the prior letters. Rocky Mountain Power has previously filed a Motion to Dismiss and Answer (“Motion”) dated March 20, 2007 and a response to the prior letters and will not reargue the matters covered in those documents. This response

will be limited to the new event and requests for relief and will demonstrate how the May Letter confirms arguments made in the prior documents filed by Rocky Mountain Power. This response will also respond to procedural and standing issues that continue to be present and will clarify the alternative relief the Company seeks with respect to those issues.

BACKGROUND

Rocky Mountain Power provided a thorough review of the background in this matter in its response to the prior letters that is incorporated rather than repeated here.

ARGUMENT

I. THE ALLEGATIONS REGARDING THE MAY 3, 2007 INCIDENT ARE INCORRECT.

Richard Drake's May Letter describes what Mr. David Ward ("Ward") believes may have happened in an incident that occurred during the night of May 3, 2007 involving an outage caused by a car hitting a power pole on the north side of Millcreek Canyon Road. Ward is the "technical assistant" referred to in the fourth paragraph of the May Letter. Apparently, based Ward's observation of the scene, Drake believes that the car hit the pole because a high voltage wire fell into a lower voltage line causing a flash and explosion. He believes the driver of the car must have seen this flash and explosion and hit the pole because she was taking evasive action. He admits that Ward was unable to talk to the occupants of the vehicle and that, therefore, "it is difficult to validate what happened first." But he claims that the high voltage wire should not have fallen even if the pole on the north side of the street was hit first. He also claims that when the high voltage wire fell, it energized all of the house wiring in the area with 7200 volts of electrical power and that the houses and appliances were most likely all damaged. He

also claims that “[d]ue to a shortage of journeyman line crews, no line crew was available to work on the downed line until after mid-night.”

Rocky Mountain Power did not have anyone on the scene at the time the incident took place. Based on the observations of its line crew and subsequent investigation, including the police report taken that night, it is evident that Drake’s assertions as to the cause of the accident are unfounded and clearly false.

According to the police report, Lauren Gervais was traveling eastbound on Millcreek Canyon road. She had a puppy in her lap who became excited and reportedly bit her on the face. She then lost control of the vehicle, drove across traffic onto the left shoulder and collided with a utility pole. The pole tore utility wires from the house at 3003 E.

Rocky Mountain Power received an outage call at 21:40 on May 3. The troubleshooter arrived at the location of the outage call at 22:07 and was met by Drake and Ward. Ward told the troubleshooter that a re-closer was open down the street.

Shortly thereafter, Rocky Mountain Power dispatch then called the troubleshooter and provided him with the location of the vehicle accident. The troubleshooter traveled to the location and both Drake and Ward followed him there. While the troubleshooter was talking to the police officer, Ward and Drake began inspecting the pole and primary conductor on the ground causing a safety hazard to themselves and Rocky Mountain Power crews. Ward continued to get close to the un-grounded conductor and in one instance was within one foot of the downed line. The troubleshooter, police, and fire chief repeatedly asked Ward to stay back. Ward, however, resisted claiming that he had

authority from the Commission to inspect the facilities. . The police then told them that they would need to leave the scene on their own or that they would be escorted away.

The May Letter then goes on to suggest that Rocky Mountain Power engaged in “Gestapo tactics,” suggesting that by removing them from the vicinity of the downed power line and the accident scene where the crews were working were undertaken for the purpose of preventing Ward from verifying the facts surrounding the incident. In fact, what happened was that Ward, pursuing his avocation of field investigator for all things relating to the distribution system anywhere in the locale of his neighborhood, was removed in order to provide a safe work location for both the crews performing the work as well as for the protection of Ward and Drake.

This incident and Ward’s conduct in connection with it demonstrate Ward’s priorities and the problems created by his interference with the Company’s functions. As a former distribution engineer for the Company, Ward should have known that repairing the lines was more important than his inspection of an un-grounded wire in an effort to preserve evidence in support of a claim against the Company and even more importantly that public safety and his own safety should trump furtherance of his personal crusade against the Company.

II. THE NEW REQUESTS FOR RELIEF ARE INAPPROPRIATE AND UNTIMELY.

On page 4, the May Letter confusingly requests that “[i]f necessary . . . [t]he Utah State Auditor General [sic] review maintenance funding and expenses from 1995 until the present to determine how the money paid by Utah rate payers was spent,” and “[r]equire the PSC to interview all journeymen linemen in the State of Utah . . . as to the exact condition and safety hazards of the over-head power lines.” These requests for relief are

in addition to restatement of prior requests that the recommendations of the Review of PacifiCorp's Storm Response Report ("Division Report") filed in Docket No. 04-035-01 be implemented and that the Commission impose penalties on Rocky Mountain Power, "follow[ing] the lead of the Oregon PSC." The latter two requests for relief were addressed in the Motion and prior responses. The two new requests are inappropriate and untimely but will be addressed briefly in this response.

Rocky Mountain Power and its predecessors file detailed accounting reports with the Commission at least annually. The Company also files detailed accounting reports with the Federal Energy Regulatory Commission every year. These reports are filed under regulatory requirements assuring that they are forthright. They are carefully examined by regulators, and, in general rate cases, of which the Company has had 6 during the period starting in 1995, they are subjected to even more intense scrutiny by regulators and other interested parties. In light of these reports and examinations, the request in the May Letter that Utah State Auditor review the Company's expenditures is completely unnecessary. In addition, it is beyond the jurisdiction of the State Auditor. The State Auditor is charged by the Utah Constitution with the duty to "perform financial post audits of public accounts." Utah Const. art. VII, § 15(1). Chapter 3 of Title 67 of the Utah Code further specifies the functions and duties of the State Auditor as "the auditor of public accounts" and of state departments and funds. Utah Code Ann. § 67-3-1. The State Auditor has no role in audits of private corporations. In the case of public utilities, such audits are the responsibility of the Commission and the Division of Public Utilities ("Division"). *See, e.g., id.* §§ 54-4-21, 54-4-22, 54-4-23, 54-4-24, 54-4a-1(1)(d). Finally, the requested relief is barred by the relevant statutes of limitation, by the ban

against retroactive ratemaking, by res judicata and collateral estoppel and by other principles of finality.

The request that the Commission interview all journeymen linemen in the state is plainly excessive and would amount to a fishing expedition. Rocky Mountain Power has 445¹ journeymen linemen in the state employed by the Company. The Company also hires contract journeymen linemen working for various contract companies. These linemen have some knowledge of the Company's system. However, many others are employees of municipal power entities or cooperatives. These linemen would likely have little if any knowledge of the Company's system. More importantly, the Complaint and letters have demonstrated no need for embarking on this excessive fishing expedition.

In the prior response, Rocky Mountain Power explained that Drake is not entitled to amend the Complaint without leave of the Commission. Again, Drake is attempting to amend the Complaint without properly seeking leave of the Commission to do so. Accordingly, the Commission should reject the additional requests for relief in the May Letter.

III. THE MAY LETTER CONFIRMS ARGUMENTS IN ROCKY MOUNTAIN POWER'S PRIOR RESPONSE.

The May Letter makes two things apparent that confirm arguments in the prior response of Rocky Mountain Power. First, this case is really Ward's case. The summary of the facts, which is actually a summary of Ward's observations and assumptions, was clearly drafted by Ward. The wording of paragraphs numbered 2 and 6 on page three of the May Letter indicates that Ward probably drafted most of the letter (with the possible exception of the medical references), unless Drake switches between referring to himself in the first and third person in the body of the letter. One can only wonder why Ward

finds it necessary to hide behind various front-men, in this case, his brother-in-law Drake, rather than simply coming forward himself.

Second, this Complaint is clearly a continuation of the same claims previously asserted by Ward and his associates in prior proceedings. For example, paragraph numbered 1 on page three refers to the fact that the Company has already inspected the power lines in the Millcreek neighborhood. Although this statement is not entirely correct, it both confirms that this case is just a continuation of the prior dockets and undercuts Ward's allegations in this docket. The statement incorrectly alleges that the Company was required to do this inspection in Docket No. 04-035-01 and that 150 maintenance problems and safety hazards were found and repaired. In fact, the Company was not forced to do the inspection, but chose to do it "[i]n an effort to provide excellent customer service and to be responsive to [residents'] issues"¹ in connection with the Kempner Road informal complaint and as a voluntary and informal agreement made for the same purposes as part of the settlement in Docket No. 04-057-70. Nonetheless, the fact that Ward now admits that the Company thoroughly inspected these circuits and made extensive repairs undercuts his view that these same circuits have somehow been neglected for many years.

In addition, the May Letter parrots allegations made in petitioners' pleadings filed in Docket Nos. 04-035-01 and 04-035-70 ("Outage Dockets"). Paragraph numbered 6 on page 3 contains the same incorrect allegation made in the Outage Dockets that the Company "has admitted to over 18,000 violations of the National Electric Safety Code" ("NESC") and that fines associated with the violations "would exceed over 1 billion

¹ Letter from Division of Public Utilities to Gordon Knight, March 22, 2005.

dollars.” As previously explained in the prior response and in the Outage Dockets, identification of a condition is not an NESC violation. A violation occurs only if the condition is not repaired within a reasonable time as determined by the utility after discovery of the condition. Paragraph numbered 7 on page 4 contains the same incorrect allegation made in the Outage Dockets that “[r]atepayers are now being asked to pay a second time for work they already paid for, but was never done.” This statement is not only incorrect, it reflects Ward’s lack of understanding of ratemaking.

IV. THE MAY LETTER RE-RAISES ISSUES OF PROCEDURE AND STANDING ON WHICH ROCKY MOUNTAIN POWER SEEKS ALTERNATIVE RELIEF.

The May Letter re-raises three procedural and standing issues. Rocky Mountain Power responded to the Complaint with the Motion seeking dismissal of the Complaint in its entirety. That remains Rocky Mountain Power’s preferred disposition of this matter. However, if the Commission is not willing at this time to dismiss the Complaint, Rocky Mountain Power alternatively requests that the Commission address three issues.

First, Rocky Mountain Power requests alternatively that the Complaint be referred to its customer relations department for attempted resolution and failing resolution there be referred to the Division for investigation and mediation in accordance with the requirements of rule R746-100-3.F. The rule requires that customer complaints will not be entertained by the Commission prior to a referral of the complaint to the customer relations department of the public utility and then to the Division for mediation. The history of the Kempner Road complaint illustrates the merit of these requirements. The Complaint in this action was filed directly with the Commission and has never been referred to the customer relations department of Rocky Mountain Power or to the Division for investigation and mediation. This is a clear violation of rule R746-100-3.F.

If the Commission is not willing to dismiss the Complaint, it should not be entertained before satisfying these procedural prerequisites.

Second, Rocky Mountain Power alternatively requests that allegations in the Complaint not strictly limited to issues of service affecting Drake be dismissed. A customer complaint by its nature properly addresses issues affecting the service or billing to the customer filing the complaint. A customer has no standing to file a complaint in behalf of all customers throughout the state or in behalf of customers in an area of the state not affecting service to the complaining customer. As the Commission noted in its Order Granting in Part and Denying in Part Petition and Request to Intervene, issued July 6, 2004 in Docket No. 04-035-01, individual customers are to present information affecting broader issues to the Division for investigation. If the Division believes more broad-based action is warranted, it is to bring the matter to the Commission together with its recommendations. If the Commission is not willing to grant the Motion fully, it should at least dismiss all claims that do not relate to service to Drake because he is without standing to bring them.

Third, alternatively the Commission should determine that the Complaint is only the complaint of Drake. The May Letter continues to claim that Drake represents the interests of some 50 customers in his neighborhood. Drake has no authority to represent anyone's interests but his own. While his brother, who is an attorney, appeared at the first technical conference in this matter on May 1, 2007, he did not claim that he has been retained to represent the interests of 50 customers or any other group. The only indication the Commission has from anyone but Drake and Ward that they are involved in this matter is a petition signed by approximately 33 individuals or couples who purport

to be customers of Rocky Mountain Power and who “ask that the Public Service Commission immediately require Utah Power to come into compliance with the National Electric Safety Codes” and “that the PSC and all utility watchdog committees comply with State Statutes that require the leveling of fines and other penalties for placing the residents of Millcreek at risk because of failed insulator pins.” This petition does not comply with the requirement for a customer complaint; nor does it indicate in any way that the signers accept the allegations of the Complaint or the Letters or the wide variety of relief sought beyond the two items mentioned. Certainly, the signers of the petition have not indicated in any way that they seek any relief beyond that limited to service to them as customers of the Company. Accordingly, if the Commission is unwilling to dismiss the Complaint entirely at this point in time, it should at least recognize that the Complaint is filed only on behalf of Drake.

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. Alternatively, Rocky Mountain Power 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 or to past expenditures of Rocky Mountain Power are closed and that legitimate future concerns regarding safety or reliability of their individual 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. Alternatively, Rocky Mountain Power requests that claims related to

service to customers generally throughout the state be dismissed and that similar to the Commission's direction to the customers' predecessors in Docket No. 04-035-01, 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 Service Quality Task Force already established by the Commission for that purpose.² Finally, Rocky Mountain Power alternatively asks the Commission to make clear that the Complaint is filed only in behalf of Drake and that Drake has no authority to represent the interests of anyone but himself.

RESPECTFULLY SUBMITTED: February 21, 2018.

R. Jeff Richards.
Attorney for Rocky Mountain Power

² 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 MAY LETTER OF RICHARD E. DRAKE** was served upon the following by electronic mail on February 21, 2018:

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