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UTAH PUBLIC
SERVICE COMMISSION

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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE FORMAL COMPLAINT OF ROD STEPHENS AGAINST ROCKY MOUNTAIN POWER	DOCKET NO. 14-035-52 **COMPLAINANT'S REPLY ROCKY MOUNTAIN POWER'S ANSWER AND MOTION TO DISMISS**

Complainant, Rod Stephens, pursuant to Utah Code Ann. §§ 63G-4-204(1) and Utah Admin. Code R746-100-3 and -4, provides his Reply to the Answer of Rocky Mountain Power, a division of PacifiCorp (the "Company") to his Complaint. In addition, Complainant hereby responds to the Company's Motion to Dismiss.

I. REPLY

1. The Company's Answer to the Complaint relies upon self-serving languages and definitions that are not found in the Commission Rules. Moreover, the Company's explanation of the facts of this case are inaccurate and contradictory to the assertions made in the Company's Answer. Based on the plain language of the Commission Rules and a correct understanding of the facts in this case, Complainant is not responsible for the full cost of $5,468.00 to provide electric service to his home. Rather, he is only responsible for that portion (above the $350.00 allowance) of the cost directly related to running power from the upgraded, existing transformation facility to his newly-constructed home.

II. THE COMPANY'S RELIANCE ON LANGUAGE NOT FOUND IN THE RULES

2. In paragraphs 7 and 8 of the Background section of the Company's Answer, the Company states:

7. The Company's Distribution Manager advised Complainant the provision did not apply because he was not building on property in an area with a *subdivision distribution system* installed. The Company's Rule 12, Section 2(e) states:

2. RESIDENTIAL EXTENSIONS
(e) Transformation Facilities
When an existing residential Customer adds load, or a new residential Customer builds **in a subdivision where secondary service is available at the lot line** either by means of a transformer or a secondary junction box and the existing transformation facilities or service conductors are unable to serve the increased residential load:

1) the facilities upgrade shall be treated as a standard line extension if Customer's demand exceeds the capacity of the existing facilities;
2) the facilities upgrade shall be treated as a system improvement and not be charged to the Customer if the Customer's demand does not exceed the capacity of the existing facilities. (Emphasis added.)

8. The *subdivision distribution system* refers to the design of an electrical system with service to each lot, installed and funded by the developer, less the developer's extension allowance. A *subdivision distribution system* was never installed, so no subdivision exists for the purposes of application of the tariff and as such, Regulation 12, Section 2(e) is not applicable. (Emphasis added)

3. The Company's use of and reliance on the phrase: "subdivision distribution system" is not supported by the plain language of Regulation 12. This term is not defined or otherwise found in Regulation 12. The term subdivision is not even defined. The Company's use of this phrase is self-serving at best. In paragraph 8, when the Company states: "The subdivision distribution system refers to . . ." there is nothing in Regulation 12, Section 2(e) that this language actually refers to. Rather, the only thing this language refers to is the Company's own use of the same phrase in paragraph 7.

III. INACCURATE AND CONTRADICTORY FACTS

4. In paragraph 6 of the Company's Answer, the Company describes the Complainant's request for service as an "installation of new service." In paragraph 9 of the Company's Answer, the Company again refers to the Complainant's request as one for "new permanent single service." Additionally, in this same paragraph 9, the Company states that

the Complainant "is responsible to pay the cost to bring power to his lot . . ." Each of these statements make the erroneous factual claim that there was no existing secondary service available at the Complainant's lot line. In fact, as acknowledged and described by the Company itself: "The lot in question is bordered by a road paralleled by an existing distribution line on the same side of the road as the three lots referred to above. As part of that existing distribution line, a pole located in the right of way with a 10 kVA transformer mounted on it, served an existing home on the other side of the road." It should be noted that the pole and transformer "located in the right of way" are found on the corner of Complainant's lot – next to the lot line.

5. Finally, in paragraph 12 of the Company's Answer, the Company states: ". . . the Company reaffirmed the lot in question did not have electric service, the request was not for additional electrical load at an (sic) site with existing electric service, nor was the site in a subdivision where the Company had already installed electrical service to each lot." While it is true that the Company has not already installed service to <u>each</u> lot in the subdivision, there is secondary service available at the lot line on two of the three lots in the subdivision.

IV. COMPLAINANT'S RESPONSIBILITY UNDER REGULATION 12

6. In paragraph 9 of the Company's Answer, the Company correctly cites the definition of a line extension as found in Regulation 12, Section 1(d). However, in that same paragraph, the Company erroneously states that "Mr. Stephens is responsible to pay the cost of bringing power <u>to his lot</u> . . ." (Emphasis added). This statement is based, again, on the Company's continued assertion that there was no existing secondary service available at the lot line. This assertion is false. There was an existing power pole, with existing secondary service in the form of a 10 kVa transformer on it available on Complainant's property. Regardless of how the Company wants to characterize this existing service, they cannot deny the fact that they did not have to install a new pole or run a new power line to the pole.

Rather, the only thing the Company had to do in order to provide power to Complainant's lot was upgrade the existing transformer so it could handle the load from both the Complainant's new home and the existing home already being serviced across the street. They then had to extend or run the power from the upgraded transformer to the Complainant home. This sequence of events is exactly what is contemplated by the language in Regulation 12, Sections 2(a) and (e)(cited again for emphasis):

> **2. RESIDENTIAL EXTENSIONS**
> **(a) Extension Allowances** The Extension Allowance for permanent single residential applications is $1100. The Extension Allowance for a residential application <u>in a planned development where secondary voltage service is available at the lot line</u> is $350. The Applicant must advance the costs exceeding the Extension Allowance prior to the start of construction. (Emphasis added.)
>
> **2. RESIDENTIAL EXTENSIONS**
> **(e) Transformation Facilities**
> When an existing residential Customer adds load, or a new residential Customer builds <u>in a subdivision where secondary service is available at the lot line</u> either by means of a transformer or a secondary junction box and the existing transformation facilities or service conductors are unable to serve the increased residential load:
>
> 1) the facilities upgrade shall be treated as a standard line extension if Customer's demand exceeds the capacity of the existing facilities;
> 2) the facilities upgrade shall be treated as a system improvement and not be charged to the Customer if the Customer's demand does not exceed the capacity of the existing facilities. (Emphasis added.)

7. Complainant asserts that, based on the plain language of these sections of Regulation 12, the Company should be responsible for the cost of upgrading the existing transformer because Complainant's "demand does not exceed the capacity of the existing facilities." Moreover, Complainant asserts that he should only be responsible for any costs above the $350.00 allowance contemplated in Section 2(a) for extending the line from the upgraded transformer to his new home.

8. As outlined above, there is nothing in these sections that requires the secondary service available at the lot line to be part of "subdivision distribution system". Nor is there anything in these sections that requires the secondary services available at the lot line to be services installed and funded by the developer.

9. In paragraph 8 of the Company's Answer, the Company states: "A subdivision distribution system was never installed, so no subdivision exists for the purposes of application of the tariff and as such, Regulation 12, Section 2(e) is not applicable." The developer in this situation did not install the Company's self-defined "subdivision distribution system" because there was already existing secondary service available at the Complainant's lot line. The existence of this available secondary service is evidenced by the fact that the Company allowed temporary service from the existing secondary service to be connected to the Complainant's construction site during the construction of his new home. The Company did not require the installation of a "subdivision distribution system" by the developer prior to running temporary service to the Complainant's construction site.

III. RESPONSE TO COMPANY'S MOTION TO DISMISS

10. The Company has moved under Utah Rules of Civil Procedure, Rule 12(b)(6) for an Order dismissing the Complaint. In support of its motion, the Company alleges that the Complaint fails to establish that the Company violated Commission rules, Company tariffs or that its actions are unjust. Complainant disagrees with these assertions: the Company has violated the Commission rules and Company tariffs in that the Company is trying to treat the Complainant like he is the developer instead of an applicant for services to a single lot within an existing subdivision. Complainant alleges that there is a valid claim for relief precisely because of the Company's self-serving application of the Commission Rules and Company tariffs.

11. The Company cannot have it both ways: The Complainant is either an applicant requesting services to a single lot within a development, or he is a developer – not both. The Company is aware of, and has communicated directly with the developer of the subdivision in question (Mack's Place, three lot subdivision). The Company is aware of the fact that Morgan County has approved the development of this subdivision. To turn around and now assert that Complainant's lot is not part of a subdivision is inaccurate and contrary to the facts of this case.

12. Because the Complainant is not the developer, he should not be treated like one. Rather, he should be treated like an applicant requesting service to a single lot within a development. As already stated above, Regulation No. 12, Section 2(e) is applicable to Complainant because he is a "new residential Customer . . . in a subdivision where secondary service is available at the lot line . . ." And, as has already been stated above, there is nothing in this Section 2(e) that requires any of the following:

a. Electrical infrastructure provided by the developer to the lot line; or

b. Construction of the residence within a subdivision with a subdivision distribution system installed;

13. The Company, by its response to the Complaint and its Motion to Dismiss, appears to be trying to amend the plain language of Regulation No. 12, Section 2(e). By not following the plain language of this section, the Company is seeking an unfair action against the Complainant. More importantly, the Company's actions in this case have the effect of amending Regulation No. 12 without first seeking proper amendment of the tariff through the Public Service Commission.

14. The claim upon which relief can and should be granted in this matter rests on the fact that the Complainant is an applicant requesting service to a single lot within a

development where secondary service is available at the lot line. Regulation No. 12, Section 2(e) is applicable and should be followed in this case.

CONCLUSION

WHEREFORE, based on the foregoing, having fully replied to the Company's Answer to the Complaint and responded to the Company's Motion to Dismiss, Complainant requests that the Motion to Dismiss be denied and that this matter be scheduled for a hearing on the merits as requested in the Complaint.

Dated this 11th day of June 2014.

Respectfully submitted,

Rod D. Stephens
Complainant

DOCKET NO. 14-035-52

CERTIFICATE OF SERVICE

I CERTIFY that on the 11th of June, 2014, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

PacifiCorp
Attention: Data Request Response Center (datarequest@pacificorp.com)

Rocky Mountain Power
Dave Taylor (dave.taylor@pacificorp.com)
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Rod D. Stephens
Complainant