

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Formal Complaint of )  
Rod Stephens against Rocky Mountain ) DOCKET NO. 14-035-52  
Power ) ORDER GRANTING ROCKY MOUNTAIN  
) POWER'S MOTION TO DISMISS  
)  
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ISSUED: June 30, 2014

SYNOPSIS

The Commission grants the Company's motion to dismiss Mr. Stephens's complaint.

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ORDER GRANTING COMPANY'S MOTION TO DISMISS

I. BACKGROUND

1. On April 24, 2014, Rod Stephens (Mr. Stephens) filed a formal complaint in this docket against Rocky Mountain Power, a division of PacifiCorp (Company), alleging the Company failed to properly apply Electric Service Regulation No. 12, Section 2(e) to his situation.<sup>1</sup> Mr. Stephens alleges that he is a new residential customer, having purchased a lot in an approved three-lot subdivision, known as Mack's Place, in Morgan County, where secondary service is available on his lot in the form of an existing 10 kVA transformer on a power pole on his property that, when coupled with the service being provided to an existing home, would exceed the capacity of the existing facility.<sup>2</sup> Mr. Stephens further alleges that he is entitled to a refund of \$4,158 from the Company from an amount of \$5,468 he paid to have the Company

<sup>1</sup> See Formal Complaint of Rod Stephens, filed April 24, 2014.

<sup>2</sup> See *id.*

extend service to his home.<sup>3</sup> Mr. Stephens contends that Electric Service Regulation No. 12, Section 2(e) does not support the amount the Company charged.<sup>4</sup>

2. On May 5, 2014, in response to a Commission action request, the Division of Public Utilities (Division) filed a memorandum recommending the Commission schedule a hearing in this docket based on the parties' different interpretations of Electric Service Regulation No. 12.<sup>5</sup>

3. On May 27, 2014, the Company filed an answer and motion to dismiss Mr. Stephens's complaint.<sup>6</sup> The Company contends it has not violated any law, Commission order or rule, or Company tariff.<sup>7</sup> The Company further contends "Mr. Stephens does not understand the application of the Company tariffs, and [he] is responsible for the cost of \$5,468.00 to provide electric service to his home."<sup>8</sup>

4. On June 11, 2014, Mr. Stephens filed a reply to the Company's motion.<sup>9</sup>

## II. STANDARD OF REVIEW

Rule 12(b)(6) of the Utah Rules of Civil Procedure, which is incorporated by reference by Utah Admin. Code R746-100-1(C), permits a party to file a motion to dismiss for "failure to state a claim upon which relief can be granted."<sup>10</sup> In ruling on a motion to dismiss for failure to state a claim, we accept the factual allegations contained in the complaint as true and

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<sup>3</sup> See id.

<sup>4</sup> See id.

<sup>5</sup> See Division Memorandum, filed May 5, 2014.

<sup>6</sup> See Rocky Mountain Power's Answer and Motion to Dismiss, filed May 27, 2014.

<sup>7</sup> See id. at 1.

<sup>8</sup> See id. at 2, ¶ 1.

<sup>9</sup> See Complainant's Reply [to] Rocky Mountain Power's Answer and Motion to Dismiss, filed June 11, 2014.

<sup>10</sup> Utah R. Civ. P. 12(b)(6) (LexisNexis 2013).

consider all reasonable inferences to be drawn from those facts in the light most favorable to the complainant.<sup>11</sup>

### III. DISCUSSION

#### *A Plain Reading of Electric Service Regulation No. 12, Section 2(e) Justifies Dismissing Mr. Stephens's Complaint*

Electric Service Regulation No. 12 states, in pertinent part:

#### **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.<sup>12</sup>

Even if we accept Mr. Stephens's assertion that he meets the definition of a "subdivision" under Regulation No. 12, his claim still fails because he admits the facilities are unable to serve the increased load from his new home. As noted above, "the facilities upgrade shall be treated as a standard line extension if Customer's demand exceeds the capacity of the existing facilities."<sup>13</sup> Mr. Stephens admits "[t]he existing transformation facilities are unable to service the increased residential load[]" and his "line extension coupled with the [existing home serviced] would

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<sup>11</sup> Cf. Mounteer v. Utah Power & Light Co., 823 P.2d 1055, 1058 (Utah 1991).

<sup>12</sup> See Electric Service Regulation No. 12, Section 2(e) (emphasis added).

<sup>13</sup> Id.

exceed the capacity of the existing facilities.”<sup>14</sup> Accordingly, based on Mr. Stephens’s admissions, we find the facilities upgrade performed by the Company for Mr. Stephens constitutes a standard line extension for which Mr. Stephens is responsible in the amount the Company invoiced him.<sup>15</sup>

IV. ORDER

For the foregoing reasons, the Commission grants the Company’s motion to dismiss Mr. Stephens’s complaint.

DATED at Salt Lake City, Utah, this 30<sup>th</sup> day of June, 2014.

/s/ Melanie A. Reif  
Administrative Law Judge

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<sup>14</sup> Formal Complaint of Rod Stephens at 2, ¶ 4(4) and (5), filed April 24, 2014. Elsewhere Mr. Stephens argues that *his* demand does not exceed the capacity of the existing facilities, see Complainant’s Reply [to] Rocky Mountain Power’s Answer and Motion to Dismiss, at 4, ¶ 7, filed June 11, 2014. However, we reject this argument as it would render Regulation No. 12, Section 2(e) meaningless.

<sup>15</sup> We note the amount invoiced by the Company reflects a line extension allowance in the amount of \$1,100, see Rocky Mountain Power’s Answer and Motion to Dismiss at Exhibit A, filed May 27, 2014, which appears to be consistent with the extension allowance set forth in Regulation No. 12, Section 2(a). See Electric Service Regulation No. 12, Section 2(a) (“The [e]xtension [a]llowance for permanent single residential applications is \$1100....”).

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Approved and confirmed this 30<sup>th</sup> day of June, 2014, as the Report and Order of the Public Service Commission of Utah.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary  
DW#257595

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on the 30<sup>th</sup> day of June, 2014, a true and correct copy of the foregoing was served upon the following as indicated below:

By E-Mail:

Rod Stephens ([roddstephens@gmail.com](mailto:roddstephens@gmail.com))

Daniel Solander ([daniel.solander@pacificorp.com](mailto:daniel.solander@pacificorp.com))

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Rocky Mountain Power

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Administrative Assistant