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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

**In the Matter of Marian L. Seamons v.
Ticaboo Utility Improvement District**

**AMENDED FORMAL
COMPLAINT**

Docket No. 15-2508-01

COMES NOW MARIAN L. SEAMONS (“Complainant”), by and through her counsel of record from LAKEY HOGELIN, PLLC, pursuant to Utah Code Ann. § 63G-4-201(3)(a), and submits this Amended Formal Complaint against TICABOO UTILITY IMPROVEMENT DISTRICT (“TUID”), based upon the following:

QUALIFICATION FOR THE FILING OF A FORMAL COMPLAINT

On October 29, 2015, the Complainant caused to be filed an informal complaint with the Division of Public Utilities (“Division”). The Division recommended no action and informed that the Complainant could seek information for filing of a formal complaint with the Public Service Commission (“Commission”). *See Exhibit A, December 29, 2015 Memorandum.* As such, pursuant to the procedure for filing a formal complaint with the Commission, Complainant is qualified for the filing of the present formal complaint with the Commission.

I. BACKGROUND

Complainant moved to Ticaboo in 2000 and purchased ten lots. However, she moved from Ticaboo in 2010 to be closer to medical facilities due to her husband's failing health. Prior to moving from Ticaboo, the mining company, who at the time over saw the utilities, pulled the meters on her single trailer and the meters were never reconnected.

In 2012 TUID was formed and although Complainant no longer resided in Ticaboo, she maintained ownership of several lots which she sought to rent to tenants. In 2013, one of Complainant's tenants notified TUID that they only wished to use water and not electricity. Upon receiving notification of such request, TUID came to the property and removed both the water and electric meters, without any prior or later notification to Complainant. Likewise, Complainant has investigated using solar energy, although TUID notified her that all utilities must be paid or none of the utilities would be provided.

In March of 2014, Complainant filed an informal complaint with the Commission due to the fact that she has been billed for utilities on her vacant lots. During that process, Complainant discussed the issue of utility charges on the vacant lot with the District Manager of TUID, and explained that due to her fixed income and living off social security the utility fees on the vacant lot was a hardship. Complainant was informed that it was not TUID's problem. As such, in July of 2014, Complainant was able to find new renters and was charged \$1,875 for utility back fees on the lot, which didn't have any meters and the meters were only reinstalled after Complainant paid all of the back fees.

In September of 2015, Complainant was in Ticaboo to repair a water line under a home on her lot and there was difficulty shutting off the water at the meter. Upon requesting guidance from TUID, TUID's District Manager stated that TUID intended to charge Complainant for two

meters, instead of the one, and that all the water lines would need to be dug up by Complainant. TUID stated that this would be necessary due to the water line break and Complainant's attempts to fix it.

In October 2, 2015, TUID refused to provide any documentation to Complainant, through her daughter, regarding utility contracts and receipts. TUID informed Complainant that TUID does not keep copies of the contracts or receipts. Further, TUID has an open enrollment period that restricts signing up for utilities except in October.

Complainant understands that the Commission does not have authority concerning all of the aforementioned issues, although Complainant seeks to demonstrate the difficulties, as a land owner, she has had dealing with TUID.

I. INTRODUCTION

In 2013, TUID created and started enforcing standby fees. Complainant seeks for the Commission to find that TUID does not have authority to impose and collect standby fees, which are a severe burden and hardship on property owners and is not consistent with Utah law. As a result, standby fees should be eliminated and Complainant should be reimbursed any payment of standby fees, including the releasing of any liens on her properties.

Complainant has been informed that the issues raised in her Formal Complaint were not preserved properly and required a request for a review or rehearing 30 days after the latest revisions to the Electronic Service Regulations of TUID for Electric Service ("tariff") was found just and reasonable, although Complainant submits that notice was never received for Complainant to seek such action. *See Exhibit B, Tariff*. Complainant requests for the Commission to take action requiring TUID to provide notices to property owners who are not residing in Ticaboo since Complainant has not received the notices as required by the tariff.

Complainant also respectfully requests the Commission to find that TUID's requirement for property owners to pay and use all utilities, including the requirement for a standby fee, is an anticompetitive behavior by TUID. Further, Complainant requests for the Commission to find that if there is anticompetitive behavior by TUID, such behavior is not expressly granted by statute.

Complainant also requests for the Commission to find that TUID has not complied with its own tariff concerning having certain documents visible and accessible in TUID's office. Further, Complainant requests for the Commission to enforce TUID's tariff and have TUID comply with requirements for certain documents to be visible and accessible in TUID's office.

Complainant owns vacant and improved lots. Complainant requests for the Commission to find that the requirement for abandonment of utility service that is only allowed after 24 months, plus fees, is inconsistent with Utah Administration Code. As such, it is improper for TUID to require and enforce such requirement.

Complainant also requests for the Commission to find that it is unjust and unreasonable for owners of property in Ticaboo who are landlords to be responsible for utilities, particularly when there is an open enrollment period that forces landlords to maintain utilities to be able to find tenants.

Therefore, based upon the foregoing issues, Complainant is seeking for reimbursement of \$4,275, which is the amount Complainant has paid for standby fees, and to release liens on her properties that are requiring over \$20,000 to be paid to TUID.

II. ARGUMENT

Complainant provides argument and support for her requests for the Commission to take action, as follows:

A. Standby Fees

As previously stated, TUID established standby fees in 2013. *See Exhibit C, ¶ B, May 14, 2015, District's Response to Division of Public Utilities Action Request Response Dated April 13, 2015 as Requested by the Commission on April 24, 2015.* Standby fees are defined as “[t]he fee required to be paid for a standby connection within the District.” *See Exhibit B, § 02.01(52)* (bracket added). Standby Connection is defined as “[t]he connection, or a connection that would be available upon request, to any property within the District’s service area to which the District is obligated and prepared to deliver utility service on demand but to which the District does not currently provide utility service.” *See Exhibit B, § 02.01(51).* (Bracket added). The standby fees are \$154 per month, which is \$1,848 per year. *See Exhibit D, Divisions Action Request Response to TUID’s Revisions to its Tariff, p. 4.*

On April 13, 2015, the Division provided an Action Request Response (“Action Request Response”) requested by the Commission concerning TUID’s revisions to its tariff sheets and rate schedules. *See Exhibit D.* The Division stated that “[t]he requirement to continue payment for utility service [in the form of standby fees] for 24 months for disconnected or non-connected utility service may be inconsistent with [Utah Admin. Cod § 746-200-7(I)(1)].” *See Exhibit D, pp. 4-5, (brackets added).*

In response to the Division, TUID stated that “[t]he standby fees are the only way for inactive customers to pay their rightful share of the expenses incurred by the [TUID] to acquire and maintain the District’s utility infrastructure[.]” *See Exhibit C, ¶ B, (brackets added).* TUID cited to *McMullin v. Public Service Comm’n.* in support of its argument, although that case was allowing a utility from having to extend services to a new territory, so that the allocation of water “will be satisfactory, adequate and continuous service to the portion of the public the Utility is

undertaking to serve.” *See Ibid.*, 320 P.2d 1107, 1109 (Utah 1958). The citation by TUID fails to support the argument that without standby fees “the District would not be able to handle these wide swings of customers” since TUID is not requested or forced to provide service to new territories. *See Ibid.* Further, TUID argues that standby fees are necessary to conform with Utah Code Ann. § 54-3-1, which requires that all public utility charges “shall be just and reasonable.” *See Ibid.* TUID argues that if not allowed to charge standby fees, TUID will be caused to “violate its legal duty to provide just and reasonable service” and that any objection of standby fees is “ill conceived.” *See Ibid.*

Utah Code Ann. § 17B-1-103(2)(j) provides that local districts are granted the authority to impose “fees or other charges for commodities, services, or facilities provided by the district.” TUID is a district and derives all of its powers and authority from statute. *See Harmon v. Ogden City Civil Service Com’n.*, 917 P.2d 1082, n. 3 (Utah 1996) (“a statutorily created body [only has] those specific powers outlined in its enabling statute.”) (bracket added). However, a diligent search of the statute does not specifically provide for standby fees, which are regular monthly fees charged for merely having a “tap” on someone’s property. Complainant contends that by merely having a tap on her property is not “service provided” as stated by statute.

Utah Code Ann. § 17B-1-901, *et seq.*, provides procedures and processes involved in a local district’s imposition of service fees or charges, or rather the “Collection of Service Fees and Charges.” Utah Code Ann. § 17B-1-904 does not provide a definition for “service provided”, although “service fee” is defined as “an amount charged by a local district to a customer for a service, including furnishing water, providing sewer service, and providing garbage collection service, that the district provides to the customer’s property.” Utah Code Ann. § 17B-1-904(1)(g).

Utah Code Ann. § 17B-1-903(1)(b) states that if a customer does not pay for “water furnished or sewer service provided,” a local district may “discontinue furnishing water or providing sewer service.” The use of the terms “furnishing” and “providing” in both Utah Code Ann. § 17B-1-904(1)(g) & 903(1)(b) as used are not consistent with the mere existence of a tap on one’s property, particularly if the tap was never connected and turned on. Further, nowhere can Complainant find that TUID refers as to providing commodities or facilities, rather only the term “services”.

Also, any argument that standby fees are proper for operations and maintenance of an infrastructure is not consistent with the statute. Utah Code Ann. § 11-42-201 states that local entities are allowed to levy an assessment on property to pay the cost of “performing operations and maintenance benefitting the property.” However, the standby fee is a monthly charge, much like a regular service fee, not a structured assessment or a one-time impact fee. As such, standby fees are inconsistent with fees used for operations and maintenance of an infrastructure.

Finally, Utah Admin. Code § 746-200-7(I)(1) states that “[t]he public utility shall disconnect the service within four working days of the requested disconnect date. The customer shall not be liable for the services rendered to or at the address or location after the four days, unless access to the meter has been delayed by the customer.” (Bracket added). Due to the fact that standby fees are enforced upon property owners, including Complainant, beyond four days after any requests for disconnection, TUID’s standby fees directly conflict with the Utah Administration Code. Since TUID’s power and authority must come only from statute and their policy of standby fees conflicts with the Utah Administration Code, TUID does not have the power and authority to enforce the standby fees. The Division agreed that TUID lacks authority

concerning standby fees in the Action Request Response, which the Commission characterized by stating:

The Division recommends the Commission require the District to refund any fees collects under the revised tariff. The Division recommends the District reconsider its revised requirement holding property owners responsible for all service accounts. The Division recommends the Commission prohibit the District from collecting utility fees on disconnected properties in a manner that is inconsistent with Utah Administrative Code 746-200-7(I)(1).

See Exhibit E, April 24, 2015 Letter to TUID. The Commission further requested TUID to file revised tariff sheet complying with the law or rule or explain how the revised tariff is lawful. *See Exhibit D.* TUID did respond to the Commission's letter, although the unlawful provisions, unlawful as deemed by the Commission and the Division, remain in the tariff today.

As a result of the unlawful actions by TUID, Complainant has been injured by either paying money directly to TUID for enforcement of standby fees or having liens put on her properties by TUID for past owed standby fees. Therefore, since TUID's standby fees are not a power granted from statute, and actually conflicts with Utah Administration Code, TUID should be barred from enforcing standby fees and restitution should be made to Complainant by TUID for the amounts paid for standby fees and the liens released from her properties.

TUID is a local district and is strictly confined to the powers and authority granted by statute. Standby fees simply are not specifically provided by statute for TUID to apply. Likewise, the statute seems to contemplate that the term "service" that is something actively used, not just merely something "tapped in." Further, standby fees are burdensome and cause hardship for property owners who do not reside in Ticaboo. This is especially true where the tariff prohibits tenants from contracting utilities with TUID and open enrollment is only in October. *See Exhibit B, § 08.02.* TUID's use of standby fees are likely not legal since the fees themselves are not just and reasonable, pursuant to Utah Code Ann. § 54-3-1. Standby fees are not really a fee, but

rather a tax hidden by the term “fee.” Therefore, TUID’s argument that without standby fees it would violate its legal duty, despite a finding that standby fees are unlawful, has no merit since the application of standby fees is itself a violation of TUID’s legal duty to provide just and reasonable charges. Complainant should be reimbursed for any standby fees paid and any liens, stemming from standby fees owed, attached to her properties should be removed.

B. TUID’s Requirement For Property Owners to Pay For All Utility Services (Electric, Water, Wastewater, and Solid Waste) If Only One Service is Desired Is Likely an Anti-Trust Violation

TUID requires that a property owner cannot just sign up for any one utility, rather if a property owner signs up for electric, they have to contract for all of the other utilities offered. *See Exhibit B*, § 08.01. Likewise, if a property owner uses solar energy, they are required to contract for electric if they want to use any of the other utilities provided by TUID.

In *Kay Elec. Co-op. v. City of Newkirk*, the 10th Circuit Court of Appeals addressed how state imposed restraints of trade are immune from the Sherman Act’s anti-trust laws. 647 F.3d 1039, 1042 (10th Cir. 2011). The Court stated that municipalities, which in this case local districts are comparable, are not the same and only share in the state’s anti-immunity “when it is implementing anticompetitive policies authorized by the state. *Id.* In providing how explicit a state must be in authorizing anticompetitive policies, the Court states that “a municipality’s authority to suppress competition must be clearly articulated and affirmatively expressed in state legislation” or if anticompetitive actions are the “foreseeable (if not explicit) result of state legislation.” *Id.*

The Court stated specific rules, including: (1) “a state’s grant of traditional corporate charter to a municipality is not enough to make the municipality’s subsequent anticompetitive conduct foreseeable;” (2) the fact that a state may have authorized some forms of municipal

anticompetitive conduct isn't enough to make all forms of anticompetitive conduct foreseeable;" and (3) "when asking whether the state has authorized the municipality's anticompetitive conduct we look to and preference the most specific direction issued by the state legislature on the subject." *Id.* at 1043-44.

Improvement districts are expressly granted the authority to acquire and operate (1) water systems; (2) sewage systems; (3) storm water systems; (4) electricity systems; and (5) natural gas systems. Utah Code Ann. § 17B-2a-403. The statute does not require that an improvement district is only allowed to provide one service and it is likely that many districts provide a combination of up to four services. *See* Utah Code Ann. § 17B-1-202(3) (provides that unless the district was providing more than four services before 2007, they are limited to providing no more than four).

Allowing a district to acquire and operate more than one service is certainly not the same as requiring a property owner to use or pay for all the service provided by the district, particularly when the property owner is only interested in using one of the services. It is likely inconsistent for a district to require to pay and use all of its services when the statute simply provides that a district can acquire and operate more than one service. Clearly, the statute does not specifically provide that the property owner is required to use all of the services provided by the district, however many there may be.

TUID's requirement for property owners to pay and use all of its utilities if a property owner contracts for only one of the services is likely anticompetitive behavior since the statute only provides that a district can have multiple services, which is not the same as requiring a property owner to have and to use and pay for all the services. A property owner who seeks to use solar power should not be forced to have to contract for electric if that same property owner

wishes to use any other utility offered. Similarly, a property owner who seeks to contract for electric should not be forced to contract for all other services. Likewise, the enforcement of standby fees is also likely anticompetitive behavior and prohibited. Therefore, since TUID's policy to require payment for all services as a condition to purchase, use, or tap is likely a violation of federal anti-trust laws, TUID's policy should be unenforceable and Complainant should be reimbursed for all fees paid despite only requesting certain utility services.

C. TUID Has Failed to Comply With § 9.1 of The Tariff

Section 9.1 of the tariff states:

The District will mail or deliver a copy of this pamphlet to its residential Customers annually in September or October. Copies of this pamphlet will be prominently displayed in the District office and furnished to consumers upon request. The District will inform its Customers of significant amendments to those [Commission's] rules.

(Bracket added).

Complainant has not received the pamphlet annually, either by mail or delivery from TUID. Due to TUID's failure to provide Complainant with the aforementioned pamphlet annually, Complainant has not received notice of all the dealings concerning TUID. Further, since Complainant has not received the pamphlet as prescribed by the tariff, it supports the claim that Complainant did not receive any notice required for her to request a rehearing or a review of the Commission's approval of the tariff. In fact, when TUID initiated standby fees, Complainant did not get notice of such fees until after six months, when she received a bill for six months' worth of standby fees. TUID fails to give proper notice in all aspects of its business. Therefore, Complainant should be able to bring forward her formal complaint and the information therein addressing inconsistencies by TUID as to the tariff, statutes, and rules.

D. TUID Is In Violation of the Tariff's Requirement For Certain Documents to be Visible And Accessible In The Office

Section 1.3 of the tariff states that “[a] copy of the effective Tariff will be maintained and open for public inspection at the District’s office at all times. The District will post in a conspicuous place in its office a notice to the effect that copies of the schedule of applicable rates in the District are on file and may be inspected by anyone desiring to do so. (R746-405-2(F)).” (Bracket added).

Section 9.1 states that “[c]opies of this pamphlet will be prominently displayed in the District office and furnished to consumers upon request” and “The Statement of Rights and Responsibilities will be a single page document [and] will be prominently displayed in the District office. (R746-200-1(G)).” (Bracket added).

None of the aforementioned documents are visible and accessible. They are not posted in a conspicuous place or prominently displayed in the TUID’s office. Complainant does not reside in Ticaboo and has not received all of the notices or pamphlets required by the tariff. Since Complainant does not reside in Ticaboo and has not received a pamphlet annually, Complainant is prejudiced when she does go to Ticaboo and is not able to view the aforementioned documents that are required to be displayed in a prominent and a conspicuous place in TUID’s office. TUID should be required to comply with the tariff and display in a prominent and conspicuous place the documents required in the tariff and Complainant should be allowed to bring forth her claims due to the lack of notice.

E. TUID's Requirement For Property Owners to be Responsible For Utility Bills Is Unreasonable, Overburdensome, And Unjust

Section 08.02 of the tariff states:

All accounts will be created and held by the Property Owners or Property Owner’s designated Landlord. Tenants may not create an account with the

District, nor will the Tenant be held responsible for any payment of utility service on a monthly basis to the District. The Property Owner, or their designated Landlord, will be responsible for all aspects of the District's utility services, including but not limited to, service and regulation charges.

The Division noted that TUID felt it was necessary for only property owners to be liable for all utility bills, instead of any tenants, due to the transient nature of "visitors to Ticaboo." *See Exhibit C*, p.5. However, the Division had many concerns with this provision of the tariff, including whether such a requirement is a violation of TUID's "obligation to serve customers in the service territory" and whether such requirement "would prohibit service to the majority of residents," particularly based upon the Division's understanding that "most of Ticaboo's residents are on surface leases of Utah State lands and are therefore tenants not owners." *See Ibid.* The Division also believe that "it is unlikely that the State of Utah will agree to take responsibility for utility payments." *See Ibid.* The Commission reiterated the Division's recommendation by stating that "[t]he Division recommends the District reconsider its revised requirement holding property owners responsible for all service accounts." *See Exhibit E.*

Aside from the Division's concern with the State of Utah, Complainant agrees with the Division that TUID has an obligation to provide service for customers in its service territory. Further, TUID's policy that the property owners are liable is unreasonable, overburdensome, and unjust, including to Complainant. This is especially true given TUID's open enrollment policy, which only allows for signing up for utilities in October. Complainant, who is on a fixed income and lives off social security, must carry TUID's utility service year round, despite the fact of whether she has tenants or not. Also, if the tenants leave, she is ultimately responsible, despite whether or not the tenants comply with any rent duration agreement.

This is burdensome to Complainant and is simply unfair. It is especially inequitable for property owners who, like Complainant, reside hundreds of miles away and seek to rent out their

properties. Actually, it is likely TUID's policy is stunting the growth of Ticaboo as a persuading factor for individuals not to purchase property. Nevertheless, Complainant agrees with the Division that TUID is not fulfilling its obligations to customers of its service territory, the tenants. TUID's policy regarding property owner's responsibility for the utilities should be found to be a violation and TUID should be forced to withdraw said policy. Complainant has been injured by paying for utilities when no tenants were contracted to live on the properties and by paying fees, including standby fees. TUID has also injured Complainant by attaching liens upon her property. Therefore, since TUID's policy for property owners to be liable for utilities is likely a violation of their obligation to the customers in its service territory, TUID should provide restitution to Complainant for the payment of utilities during period when she could not have tenants, reimbursed for all fees, and have the liens on her property removed.

F. TUID's Abandonment Policy Violates Utah Administration Code

Section 03.12 of the tariff provides that "[a]bandonment of utility services will only be allowed if the property has been vacant for 24 months, payment of a \$75 application fee and all monthly standby fees have been paid in full." *See Exhibit C*, p. 4. The Division found that § 03.12 of the tariff may be inconsistent with Utah Admin. Code § 746-200-7(I)(1), which states that "[t]he public utility shall disconnect the service within four working days of the requested disconnect date. The customer shall not be liable for the services rendered to or at the address or location after the four days, unless access to the meter has been delayed by the customer." (Bracket added). Further, the Commission supported the Division's finding by stating that "[t]he Division recommends the Commission prohibit the District from collecting utility fees on disconnected properties in a manner that is inconsistent with Utah Administrative Code 746-200-

7(I)(1)” and that “[t]he Division recommends the Commission require the District to refund any fees collected under the revised tariff.” *See Exhibit E* (bracket added).

Complainant is not only in agreement with the Division that this may be a violation, Complainant contends that it is a violation, not only as to § 03.02 of the tariff, but also as to standby fees. It has been established earlier in this Amended Formal Complaint that a local district’s power and authority is directly provided and limited by statute. Accordingly, since TUID’s proclaimed authority to require 24 months for abandonment of an utility is inconsistent with the Utah Administration Code, TUID does not have such authority and should be barred from enforcing its abandonment policy. Further, we would ask for any liens to be released and money to be refunded to and on behalf of Complainant as a result from this policy or as a result from the standby fees. Therefore, TUID’s abandonment policy is in direct conflict with the Utah Administration Code and should be found unenforceable, with a result of restitution for enforcement upon Complainant.

G. TUID Violated Complainant’s Due Process By Removing Meters Without Notice

Complainant has a number of disagreements with TUID in the administering of the utilities. On a number of occasions, including in 2013, Complainant has notified or made requests to TUID concerning her intention to not use all of TUID’s provided utilities or disagreed with a charged amount for a particular service. In response, TUID has come to Complainant’s property and removed the meters, or the taps, without any prior notice to Complainant. TUID’s actions in removing the meters and taps without notice is not only inappropriate, but it is a violation of Complainant’s due process. Further, it is reckless and has the appearance of holding Complainant hostage instead of following proper and civilized actions to afford Complainant the opportunity to formally contest an issue.

There is no legally based reason that TUID should have the ability to remove meters or taps from Complainants property without due process. TUID should be required by the Commission to be cognizant in observing the importance and necessity of Complainants constitutional rights. Complainant has been injured in the disregard for due process in having to pay fees, including standby fees, and the loss of tenants. Therefore, since TUID disregarded Complainants due process, TUID should provide restitution to Complainant.

H. The Tariff, In Its Present Form, Is Unlawful

It is clear that the Division, which was supported by the Commission, determined that certain provisions of the tariff is unlawful and TUID does not have the authority to enforce those provisions. *See Exhibit D & E.* In fact, it was recommended that “the Commission require the District to refund any fees collected under the revised tariff.” *See Exhibit E.* Nevertheless, the tariff, in its unlawful state, remains and is enforced by TUID.

The enforcement of unlawful provisions by TUID is unjust and causes injury to Complainant. Complainant has been charged unlawful standby fees, including the attaching of liens on her properties for arrears on standby fees. Complainant simply seeks for the Commission to undo the injustice of the fees imposed upon her by reimbursing those fees and releasing the liens from her property.

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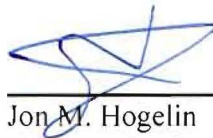
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III. CONCLUSION

Therefore, based upon the foregoing, Complainant respectfully requests for the Commission to find certain provisions of the tariff unlawful and that TUID lacks authority to enforce certain provision of the tariff. Further, Complainant requests for the Commission to find that Complainant is entitled to a reimbursement of the standby fees paid by her, in the amount of \$4,275, from TUID and that any liens upon her properties as a result of standby fees arrears be released.

DATED AND SIGNED this 10th day of March, 2016.

LAKEY HOGELIN, PLLC



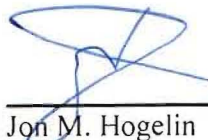
Jon M. Hogelin
Attorney for Complainant

CERTIFICATE OF DELIVERY

I hereby certify that on this 10th day of March, 2016, prior to filing the foregoing **AMENDED FORMAL COMPLAINT**, a true and complete copy was provided to the following, in the form provided:

Utah Public Service Commission
In Person

J. Craig Smith
Adam S. Long
Attorneys for Ticaboo Utility Improvement District
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Jon M. Hogelin
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