



*Daniel E. Solander  
Senior Attorney  
1407 West North Temple, Suite 320  
Salt Lake City, UT 84116  
801-220-4014 Office  
daniel.solander@pacificorp.com*

April 15, 2019

***VIA ELECTRONIC FILING***

Public Service Commission of Utah  
Heber M. Wells Building, 4<sup>th</sup> Floor  
160 East 300 South  
Salt Lake City, UT 84114

Attention: Gary Widerburg  
Commission Secretary

**RE: Docket No. 19-035-10 – In the Matter of the Formal Complaint of Community Advocacy for Safety and Public Rights against Rocky Mountain Power**

Dear Mr. Widerburg:

Rocky Mountain Power (“Company”) hereby submits for filing its Answer and Motion to Dismiss in the above referenced matter. The Company respectfully requests that all formal correspondence and requests for additional information regarding this filing be addressed to the following:

By E-mail (preferred): [datareq@pacificorp.com](mailto:datareq@pacificorp.com)  
[jana.saba@pacificorp.com](mailto:jana.saba@pacificorp.com)

By regular mail: Data Request Response Center  
PacifiCorp  
825 NE Multnomah, Suite 2000  
Portland, OR 97232

Informal inquiries may be directed to Jana Saba at (801) 220-2823.

Sincerely,

Daniel E. Solander  
Senior Attorney

Enclosures

Cc: Service List (w/ enclosures)

Daniel E. Solander (11467)  
Rocky Mountain Power  
1407 West North Temple, Suite 320  
Salt Lake City, Utah 84116  
Telephone: (801) 220-4014  
Fax: (801) 220-3299  
[daniel.solander@pacificorp.com](mailto:daniel.solander@pacificorp.com)

*Attorney for Rocky Mountain Power*

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

---

In the Matter of Community Advocacy for Safety and Public Rights (CASPR LLC),	:	
	:	
Complainant,	:	Docket No. 19-035-10
	:	
vs.	:	
	:	<b>ROCKY MOUNTAIN POWER’S</b>
	:	<b>ANSWER AND</b>
Rocky Mountain Power,	:	<b>MOTION TO DISMISS</b>
	:	
Respondent.	:	
	:	

---

Rocky Mountain Power, a division of PacifiCorp (“RMP” or the “Company”), pursuant to Utah Code Ann. §§ 63G-4-204(1) and Utah Admin. Code R746-1-203, R746-1-206, and R746-1-301, provides its Answer to the formal complaint (“Complaint”) filed by Community Advocacy for Safety and Public Rights (“CASPR” or “Complainant”) with the Public Service Commission of Utah (the “Commission”). In addition, the Company moves that the Complaint be dismissed in its entirety, with prejudice, because Rocky

Mountain Power has not violated any provision of law, Commission order or Rule, or Company tariff.

## I. PRELIMINARY MATTERS

Communications regarding this Docket should be addressed to:

By e-mail (preferred): [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)  
[jana.saba@pacificorp.com](mailto:jana.saba@pacificorp.com)  
[daniel.solander@pacificorp.com](mailto:daniel.solander@pacificorp.com)  
[heidi.gordon@pacificorp.com](mailto:heidi.gordon@pacificorp.com)  
[bret.reich@pacificorp.com](mailto:bret.reich@pacificorp.com)

By mail: Data Request Response Center  
Rocky Mountain Power  
825 NE Multnomah St., Suite 800  
Portland, OR 97232

Jana Saba  
Rocky Mountain Power  
1407 West North Temple, Suite 330  
Salt Lake City, UT 84116  
Telephone: (801) 220-2823

Daniel Solander  
Rocky Mountain Power  
1407 West North Temple, Suite 320  
Salt Lake City, UT 84116  
Telephone: (801) 220-4014

## II. BACKGROUND

1. On November 20, 2018, residential customer of Rocky Mountain Power, Jana Fullmer, filed an informal complaint related to a public open house held by Rocky Mountain Power on July 16, 2018 in South Jordan, Utah regarding its plans to upgrade its 46 kilovolt (“kV”) transmission line in the area to 138 kV. Ms. Fullmer stated that she wanted information including “detailed standards and regulations RMP states they abide

by for safety precautions, easement requirements, clearances, and guidelines for the 138 kV line.” Ms. Fullmer also requested “that the Public Service Commission consider making regulations that RMP be held accountable to the 2010 Planning Handbook” and that she “would like to know the exact impact on vegetation, structures, and my home that are within the [easement width].”

2. On November 28, 2018, Rocky Mountain Power provided a response to the informal complaint. The Company noted that the transmission line upgrade project was anticipated by the Salt Lake County Electrical Plan, and explained that additional easements are not required as the existing easements are adequate for the upgrade. Before and after the informal complaint was filed, Rocky Mountain Power’s regional business manager was in contact with Ms. Fullmer, and provided the easement information and a link to the National Electric Safety Code.

3. On December 6, 2018, Ms. Fullmer responded to the Company and the Division of Public Utilities (“Division”) that the Company’s response did not fully address her concerns, and on December 10, 2018, the Division provided the documentation required for a formal complaint.

4. Prior to Ms. Fullmer’s informal complaint, on July 16, 2018, July 17, 2018, and August 7, 2018, Rocky Mountain Power held public meetings in the area affected by the proposed transmission upgrade to discuss the project and meet with concerned stakeholders.<sup>1</sup>

---

<sup>1</sup> On July 16, RMP held a Public Open House at South Jordan City Park. On July 17, 2018, RMP made an informational presentation on the project to the city council during a regularly scheduled City Council Meeting at South Jordan City Hall. On August 7, 2018, RMP attended a regularly scheduled City Council Work Session to discuss the project with the Mayor, Council, and Citizens. This meeting was held at the Bingham High School Library to accommodate all interested parties.

5. On August 6, 2018, Rocky Mountain Power filed a Conditional Use Permit (“CUP”) application with the City of South Jordan, Utah Planning Commission (the “Planning Commission”), proposing to upgrade the transmission line from the South Jordan substation located at 10735 Redwood Road to the Draper substation located at approximately 500 West 12300 South. Together with the application, Rocky Mountain Power submitted a map referencing all recorded easements showing it has rights to perform the proposed work at the proposed location. Rocky Mountain Power has previously upgraded the transmission line from 46 kV to 138 kV north of the area included in the CUP application.

6. On March 12, 2019, Rocky Mountain Power presented its application and proposed scope of work to the Planning Commission. As noted in the Planning Commission’s Written Decision for Rocky Mountain Power’s CUP Application, attached hereto as Exhibit A, “many residents raised concerns (both as a group and individually) regarding the proposal.”<sup>2</sup>

7. Also on March 12, 2019, an applicant identified as Community Advocacy for Safety and Public Rights (“CASPR”) filed a formal complaint with the Commission. The Complaint included a number of questions about the Company’s easement. The Complaint requested a formal investigation by the Public Service Commission related to safety, and requested the Commission “determine a just, reasonable, safe, proper route for this high voltage line and consider prescribing reasonable regulations on high voltage transmission line upgrade projects.”<sup>3</sup>

---

<sup>2</sup> Written Decision for Rocky Mountain Power’s CUP Application, p. 1.

<sup>3</sup> Formal Complaint, p. 2.

8. On March 26, 2019, the Planning Commission issued its Written Decision for Rocky Mountain Power’s CUP Application. The Planning Commission made a number of findings of fact, including, but not limited to: (1) RMP provided sufficient and credible evidence that it had easements for the location of the proposed work; (2) the City of South Jordan has not adopted any standards on electromagnetic field (“EMF”) levels or EMF mitigation. There are no state or federal laws or agencies that regulate EMFs; (3) general concerns about transmission lines or the operation and maintenance of power lines by other power companies are not evidence that this proposal will not meet all applicable standards; (4) RMP provided a letter from a licensed and registered professional engineer who stated that the proposal will meet and/or exceed all industry and PacifiCorp standards and best practices for ensuring public safety, including adhering to the 2017 NESC; and (5) no evidence was presented showing the proposal will not meet all applicable standards, including the NESC.<sup>4</sup>

9. Based on the information and evidence presented, the Planning Commission unanimously approved the Company’s CUP application, subject to the following condition:

In the event that a final determination is made by a court of competent jurisdiction that the easements are not sufficient for RMP to perform its proposed work, RMP shall legally acquire sufficient easements for the proposed work. “Acquire” may include, among other things, RMP’s statutory rights to obtain such easements through the use of eminent domain or through negotiated agreements with the property owners. As part of the condemnation process and in accordance with Utah law, RMP shall pay just compensation for the properties that a court determines are devalued.<sup>5</sup>

---

<sup>4</sup> Written Decision for Rocky Mountain Power’s CUP Application, p. 3-5.

<sup>5</sup> *Id.* at 5.

10. On April 1, 2019, CASPR filed a “Request to Hold Project” requesting the Commission “place a hold on Rocky Mountain Power’s Draper to South Jordan Project while there is a formal investigation on the safety of this project.”

11. On April 8, 2019, CASPR supplemented its complaint with a Primary Arguments and Documents and Exhibit Index, accompanied by 64 attachments primarily relating to the Company’s easement.

12. The Complaint does not allege that Rocky Mountain Power has violated any provision of law, Commission Order or Rule, or Company tariff. The Complaint does not allege that Rocky Mountain Power has violated any requirements from the Planning Commission, or any other governmental entity that has jurisdiction over the proposed transmission upgrade.

### **III. ANSWER AND MOTION TO DISMISS**

13. As an initial matter, Rocky Mountain Power moves that the Commission reject CASPR’s “Request to Hold Project” as a matter of law. Without discussing whether the Commission has the authority to “hold” the project, CASPR has not alleged, much less demonstrated, that it will suffer irreparable harm unless a preliminary injunction or “hold” is placed on the project, and it has not shown a substantial likelihood that it will prevail on the merits of its underlying claim.<sup>6</sup>

---

<sup>6</sup> Rule 65A(e) of the Utah Rules of Civil Procedure sets forth the elements an applicant for preliminary injunction must satisfy in most cases:

- (1) The applicant will suffer irreparable harm unless the order or injunction issues;
- (2) The threatened injury to the applicant outweighs whatever damage the proposed order or injunction may cause the party restrained or enjoined;
- (3) The order or injunction, if issued, would not be adverse to the public interest; and
- (4) There is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation.

14. The Company moves under Utah Rules of Civil Procedure, Rule 12(b)(6) for an Order dismissing the Complaint. As noted above, the Complaint does not include any allegations that Rocky Mountain Power has violated any provision of law, Commission Order or Rule, or Company tariff. Further, the Complaint does not allege that the proposed project will violate any applicable NESC standards, and in fact, the decision from the Planning Commission includes in its findings of fact that there is *no evidence* that the project will violate *any* safety standards.

15. Utah Code Ann. § 54-7-9(2) states a complaint against a public utility “shall specify the act committed or omitted by the public utility that is claimed to be a violation of the law or a rule or order of the commission” As noted above, CASPR’s complaint fails to meet this standard.

16. Although the Commission has broad jurisdiction, granted to it by Utah Code Ann. §54-4-1, “to supervise and regulate every public utility in this state and to supervise all of the business of every such public utility” the Utah Supreme Court has stated that “the primary purpose of the Commission is to fix the rates that a public utility may charge its customers.”<sup>7</sup> The test for whether a utility activity is Commission-jurisdictional is “whether the activity the Commission is attempting to regulate is closely connected to its supervision of the utility’s rates and whether the manner of the regulation is reasonably related to the legitimate legislative purpose of rate control for the protection of the consumer.”<sup>8</sup> In this case, the question of whether the Company’s easements and construction standards are

---

<sup>7</sup> *Bear Hollow Restoration, LLC v. Pub. Serv. Comm’n of Utah*, 2012 UT 18 (Utah 2012), citing *Kearns-Tribune Corp. v. Pub. Serv. Comm’n*, 682 P. 2d 858, 859 (Utah 1984).

<sup>8</sup> *Id.* at ¶ 32.



adequate do not meet this standard. In addition, the Commission has previously noted that property disputes, such as this one, are properly initiated in District Court.<sup>9</sup>

17. Rocky Mountain Power appreciates and understands the concerns of CASPR and its other customers in the area of the proposed project regarding the upgrade of the transmission line. Rocky Mountain Power has met with its customers and others in the area to explain why the upgrade is needed, and how it is working to minimize the impacts of the upgrade. This Complaint, however, appears to be an attempt at a second bite of the proverbial apple following the approval of the CUP by the South Jordan Planning Commission.

18. In its application for a CUP, Rocky Mountain Power demonstrated to the Planning Commission that the proposed upgrade will meet all applicable safety standards, and the CUP was approved by the Planning Commission. The one condition imposed by the Planning Commission, on the issue of whether the Company has sufficient easements to perform the upgrade, is not an issue over which the Public Service Commission has jurisdiction. Likewise, the request in the Complaint that the Commission determine the proper route for the transmission line is not an issue over which Commission has jurisdiction.

19. In the absence of *any* evidence that the proposed upgrade will not meet safety standards, vague allegations regarding safety concerns are not sufficient grounds for the Commission to consider this formal complaint further.

---

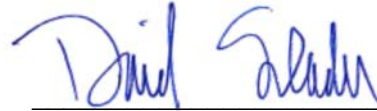
<sup>9</sup> See, e.g., Formal Complaint of Brent E. Hill against Rocky Mountain Power, Order Dismissing Complaint, Docket No. 17-035-49, issued February 14, 2018.

#### IV. CONCLUSION

WHEREFORE, having fully answered Complainant's complaint and finding no violation of law, Commission rules, or Company tariffs to base an award of the relief requested, the Company prays for the dismissal of the Complaint with prejudice.

Dated this 15<sup>th</sup> day of April, 2019.

Respectfully submitted,



---

Daniel E. Solander

*Attorney for Rocky Mountain Power*

# Exhibit A

---

## BACKGROUND, FINDINGS, AND CONCLUSION

---

Application: Rocky Mountain Power  
South Jordan to Draper Transmission Line Upgrade

File No: PLCUP201800742

Applicant: Rocky Mountain Power c/o Lisa Romney

---

### BACKGROUND

Rocky Mountain Power (RMP) filed a Conditional Use Permit (CUP) application proposing to upgrade an existing power line (transmission line) from 46 kV to 138 kV and to upgrade 29 pole structures (generally referred to as “proposed work” or “proposal”). The location of the proposal will run from the South Jordan substation located at 10735 South Redwood Road to the Draper substation located at approximately 500 West 12300 South. The proposal will follow the same path as the existing lines, generally through and adjacent to the rear, side and sometimes front property lines of lots and parcels. RMP submitted a map that references all the recorded easements that show that it has rights to perform the proposed work at the proposed location. RMP already upgraded this transmission line from 46 kV to 138 kV north and south of the area designated on the current CUP application.

On March 12, 2019, RMP presented its application and proposed work to the Planning Commission. The Planning Commission held a public hearing and many residents raised concerns (both as a group and individually) regarding the proposal.

### LEGAL STANDARD

City Code § 17.18.050.F states:

The Planning Commission shall approve a conditional use permit application if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed conditional use in accordance with applicable standards.

The Planning Commission may deny a conditional use permit application if the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards.

*See also* Utah Code § 10-9a-507.

Residents raised many issues before and during the hearing. Some issues were appropriate for the Planning Commission to consider while other issues were outside the Planning Commission’s scope and purview when reviewing a land use application. The issues outside the scope and purview related to (1) alternative routes/options and (2) RMP’s compliance with its own policy and guidelines. Therefore, those issues are addressed below.

Some residents claimed that the Planning Commission could not consider the application because their questions about the scope and sufficiency of RMP's easement, among other concerns, meant that the application was not "complete" under Utah Code § 10-9a-509.5. However, a "complete application" is a legal term defined by Utah Code. Accordingly, RMP's application was "complete" as defined by Utah Code because it was "in a form that complies with the requirements of applicable ordinance and [RMP] pa[id] all applicable fees." *See* Utah Code § 10-9a-509(1)(c).

## FINDINGS OF FACT

The Planning Commission considered information and evidence submitted by RMP, the residents and City staff. While many issues were raised, the Planning Commission makes specific findings to only the main and potentially relevant issues raised. If an issue was raised on the record but not discussed below, it is because the Planning Commission did not find the issue would cause any additional detrimental effects beyond the detrimental effects listed below. Accordingly, the Planning Commission makes the following findings of fact with respect to this application:

A. RMP may not have recorded easements at the location of the proposed work.

1. RMP provided sufficient and credible evidence that it had easements for the location of the proposed work.
2. Any disagreements about the sufficiency of RMP's easements must be resolved between property owners and RMP. It is beyond the Planning Commission's scope and purview to review the sufficiency of RMP's easements beyond the evidence RMP provided.

B. RMP may not have legal right to perform the proposed work.

1. The City requires some proof of a legal right to that the use or ownership of any property that is the subject of a land use application before it will process an application. The "legal right" may be in a form of an option to purchase, owner's consent form, etc.
2. One difference between a developer and RMP is that RMP has statutory condemnation authority in order to obtain any necessary legal right to use or own property. This statutory right would be analogous to an "option to purchase" by a developer.
3. The following substantial evidence was presented showing a detrimental effect for this issue:
  - i. The pending dispute before the Ombudsman indicates there is a legitimate dispute between RMP and the owners of property that are subject to RMP's easements.
  - ii. The presentation by attorney Brett Hastings.

C. Devaluation of property values.

1. A purpose of the Planning and Zoning Code is to "maintain or improve property values." City Code § 17.04.020.C.

2. Substantial evidence was presented by Paula Gordon that a decrease in properties values could occur by the proposed work including, but not limited, there may be mortgage lending restrictions on properties under the transmission line.

D. Safety - EMFs.

1. A requirement of conditional uses (under both City Code and Utah Code) are “to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.” Utah Code § 10-9a-507 (underlining added). Additionally, “...imposition of reasonable conditions [are] to achieve compliance with applicable standards...” *Id.* (underlining added). The question then becomes, “What are the applicable standards for EMFs”?

2. The City has not adopted any standards on EMF levels or EMF mitigation. Additionally, although the City requires that conditional uses comply with “state and federal laws” (City Code § 17.18.050.(I)(1)(c)) there are no state or federal laws or agencies that regulate EMFs.

3. Accordingly, no evidence was presented to the Planning Commission showing what applicable standards apply to EMF. Furthermore, even if there were an applicable standard for EMFs, no evidence was presented showing the proposal was not in compliance with that standard or that the City has the authority to enforce that standard.

E. Other safety concerns (clearances, structure strength, foundation design, lightning strikes, power line fires, earthquakes, and stray voltage).

1. As stated above, a requirement of conditional uses (under both City Code and Utah Code) is “to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.” Utah Code § 10-9a-507 (underlining added). Additionally, “...imposition of reasonable conditions [are] to achieve compliance with applicable standards...” Utah Code § 10-9a-507 (underlining added). The question then becomes, “What are the applicable standards for 138 kV transmission lines”?

2. General concerns about transmission lines or the operation and maintenance of power lines by other power companies are not evidence that this proposal will not meet all the applicable standards. *See Kilgore Companies v. Utah County Bd. of Adjustments*, 2019 UT App 20 (finding that the residents’ general health and safety concerns were related to the operation of the bonded asphalt batch plant and were not focused on the health and safety concerns from the additional height increase of two silos that were the subject of the conditional use permit).

3. RMP provided a letter from a licensed and registered professional engineer who stated that the proposal “will meet and/or exceed all industry and PacifiCorp standards and best practices for ensuring public safety. This includes adhering to the 2017 National Electric Safety Code (NESC).”

4. While evidence was presented that the proposal may not meet or exceed PacifiCorp’s internal company standards, no evidence was provided showing that PacifiCorp’s standards are “industry” standards or are required by state or federal law.

5. Accordingly, no evidence was presented showing the proposal will not meet all applicable standards, including the NESC.

### **CONCLUSIONS OF LAW**

Based on the above findings of fact, the Planning Commission makes the following conclusions of law:

- A. There is substantial evidence on the record showing RMP may not have sufficient easements to do the proposed work.
- B. There is substantial evidence on the record showing the proposed work may decrease the property values of adjacent properties.
- C. No other detrimental effects were found.

### **DECISION**

F. Based on the information and evidence submitted by RMP, the residents, and City staff, the Planning Commission unanimously approves File No. PLCUP201800742 with the following condition:

- 1. In the event that a final determination is made by a court of competent jurisdiction that the easements are not sufficient for RMP to perform its proposed work, RMP shall acquire legally sufficient easements for the proposed work. "Acquire" may include, among other things, RMP's statutory rights to obtain such easements through use of eminent domain or through negotiated agreements with the property owners. As part of the condemnation process and in accordance with Utah law, RMP shall pay just compensation for the properties that a court determines are devalued.

**CERTIFICATE OF SERVICE**

Docket No. 19-035-10

I hereby certify that on April 15, 2019, a true and correct copy of the foregoing was served by electronic mail to the following:

Community Advocacy for [sojoneighbors@gmail.com](mailto:sojoneighbors@gmail.com)  
Safety and Public Rights

**Utah Office of Consumer Services**

Cheryl Murray [cmurray@utah.gov](mailto:cmurray@utah.gov)

Michele Beck [mbeck@utah.gov](mailto:mbeck@utah.gov)

**Division of Public Utilities**

Erika Tedder [etedder@utah.gov](mailto:etedder@utah.gov)

**Assistant Attorney General**

Patricia Schmid [pschmid@agutah.gov](mailto:pschmid@agutah.gov)

Justin Jetter [jjetter@agutah.gov](mailto:jjetter@agutah.gov)

Robert Moore [rmoore@agutah.gov](mailto:rmoore@agutah.gov)


Steven Snarr [stevensnarr@agutah.gov](mailto:stevensnarr@agutah.gov)

**Rocky Mountain Power**

Data Request Response [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)  
Center

Jana Saba [jana.saba@pacificorp.com](mailto:jana.saba@pacificorp.com);  
[utahdockets@pacificorp.com](mailto:utahdockets@pacificorp.com)

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



Katie Savarin  
Coordinator, Regulatory Operations