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Formal Complaint of W. Michael Sessions against Rocky Mountain Power	<u>DOCKET NO. 19-035-31</u>
	<u>ORDER</u>

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ISSUED: May 21, 2020

**1. Procedural Background**

On August 12, 2019, W. Michael Sessions (“Complainant”) filed a formal complaint (“Complaint”) with the Public Service Commission (PSC), alleging Rocky Mountain Power (RMP) provided him with inaccurate information and overcharged him with respect to services RMP performed to reconnect his electrical service. On September 11, 2019, RMP filed an Answer and Motion for Summary Judgment (“Answer”).

On October 18, 2019, the PSC issued its Order Denying Motion for Summary Judgment and Notice of Hearing, setting the matter for hearing on November 19, 2019.

On November 18, 2019, the Complainant submitted correspondence to the PSC indicating he would not be able to participate in the next day’s hearing. Consequently, the PSC canceled the hearing. Based on subsequent submissions from both parties, the PSC issued a notice on January 30, 2020, again setting the matter for hearing on February 13, 2020.

The PSC conducted a hearing on February 13, 2020 wherein RMP and Complainant presented testimony and evidence. During the hearing, the parties discussed a Cost Summary<sup>1</sup> that RMP had provided to Complainant, which failed to clearly distinguish between costs RMP assigned to Complainant and related costs for which Complainant was not responsible. RMP’s

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<sup>1</sup> Complainant attached a copy of the Cost Summary to his Complaint, but it has no exhibit or attachment number.

witness testified that it could supplement the record with a clearer summary, and Complainant concurred that such a supplement would be useful.

On February 20, 2020, the PSC issued an Order to Supplement Record, requesting RMP supplement the record with an itemization of the actual costs RMP assessed to Complainant, allowing Complainant an opportunity to file comments on the supplement, and giving RMP an opportunity to reply. RMP submitted its Supplemental Information Filing on March 4, 2020, and Complainant filed a response on March 10, 2020. RMP did not submit a reply.

## **2. Factual Background**

In 2017, Complainant bought a home (the “Residence”) in Riverdale, Utah, intending to remodel it. (Hr’g Tr. at 6:12-13.) Subsequently, Complainant completed an extensive remodel, transforming the approximately 1,250 square foot, century-old home into a 3,200 square foot home with a basement apartment. (*Id.* at 6:15-16, 27:9-15.) Before commencing construction in earnest on the remodel, Complainant contacted RMP and requested it disconnect the power. (*Id.* at 17:19-25.) As part of the remodel, Complainant installed “two 100-amp service panels rather than one 200-amp panel so the upper and lower floors could be metered and measured independently, should the basement be rented out in the future.” (Complaint at 1.)

After the requisite work on the remodel was complete, Complainant contacted RMP to reconnect electrical service. Complainant testified that RMP first told him that reconnection would require underground installation owing to the overhang of the roof and angle of the line coming off of RMP’s pole. (*See* Hr’g Tr. at 7:10-19.) Complainant subsequently incurred costs to dig a trench and prepare for underground installation. (*Id.*)

Later, RMP notified Complainant that the pole was defective, would need to be replaced, and would be moved such that the angle would no longer pose a problem such that reconnection could proceed overhead. (*See id.* at 19:8-14.) RMP further notified Complainant that, owing to the remodel, the service would need to be upgraded, including the replacement of the existing 10 kV transformer with a 25 kV unit. RMP testified that it determined the cost to Complainant for this upgrade according to its line extension policy. (*See, e.g., id.* at 8:22-24; *see also* Answer at 3.)

Complainant disagreed with the need for an upgraded transformer, and he maintains that he received conflicting information from RMP about the costs for which he was responsible. Nevertheless, on or about May 24, 2018, Complainant and RMP entered into a Multi-Family Unit Contract (“Contract”) for electric service, wherein Complainant agreed to pay \$4,637 in costs associated with the upgrade. (Hr’g Tr. at 14:20-22; *see also* Answer at 3.) Complainant paid the \$4,637 on or about June 20, 2018. (Hr’g Tr. at 14:20-22; *see also* Answer at 3.) Complainant testified he signed the Contract and paid the sum because he effectively had no alternative, as he needed power and could not otherwise obtain it. (Hr’g Tr. at 14:8-25.) Subsequently, on or about June 30, 2018, RMP completed installation of the upgraded equipment. (*See* Answer at 3.)

RMP testified at hearing that it determined the size of the required transformer based on its adopted construction standards and introduced a copy of the policy, titled “DA 411.” (Hr’g Tr. at 31:3-32:9.) RMP emphasizes that it must size a transformer based on the potential load that an occupant may impose, not on a particular customer’s usage history. (*See, e.g.* Supplemental

Information Filing, filed March 4, 2020, at 4.) RMP further maintains the project costs assigned to Complainant were calculated in standard fashion, using RMP's Retail Construction Management System software. RMP represented in its supplemental filing that "to provide additional verification that the costs assigned ... were correctly calculated, [RMP] re-ran" the pole replacement costs Complainant alleges were too low and confirmed their accuracy. (Supplemental Information Filing at 4.)

To suggest RMP does not consistently apply its policy, Complainant testified that examples exist in his neighborhood of multiple homes being served by a single 10 kV transformer. Similarly, Complainant offered testimony from a neighbor who upgraded his service, but RMP did not require him to upgrade the transformer. With respect to other homes being served by smaller transformers, RMP explained that decades old homes in the neighborhood are grandfathered. (Hr'g Tr. at 35:3-12.) As to the specific example of Complainant's neighbor, RMP emphasized that Complainant's renovation drastically increased the square footage of his Residence whereas his neighbor's "basically stayed the same."

Complainant maintains that the Residence did not require a 25 kV transformer and that the costs RMP assigned to him in connection with the upgrade were inflated and unreasonable. Additionally, Complainant believes RMP inappropriately assigned some portion of the pole replacement costs to him. On October 22, 2018, Complainant initiated a small claims, civil action against RMP. (*See Answer at 3.*) In January 2019, after the small claims action was dismissed, Complainant filed an appeal in state district court, which ultimately granted RMP summary judgment on August 1, 2019. (*Id.* at 3-4.)

### **3. Discussion, Findings, and Conclusions**

While Complainant plainly and sincerely believes the construction standard and the attendant costs RMP assigned to him are excessive, RMP presented evidence showing that it determined the transformer capacity pursuant to its applicable construction standard. Moreover, RMP presented evidence showing it calculated and assigned the costs associated with Complainant's upgrades using its standard software and estimating practices.

Having reviewed the parties' written submissions and the testimony and evidence admitted at hearing, the PSC cannot find any violation of applicable rule, statute, or tariff. Still, the PSC appreciates Complainant's frustration. If RMP had discovered the issues with the existing pole and considered repositioning it at the inception of the process, Complainant could have avoided the costs he incurred to prepare for underground installation. However, Complainant cites no regulatory statute, rule, or tariff provision that requires RMP to offset charges as a result, and the PSC is not aware of any such requirement. If a civil remedy exists for damages arising out of the miscommunication, it must exist in civil court. Apparently, Complainant has pursued this course without success.

The PSC also notes the Cost Summary RMP provided to Complainant was unnecessarily confusing, as it intermixed costs for which Complainant was responsible with those he was not in single line items. This likely exacerbated Complainant's frustration with the process. Though RMP could have more effectively communicated the charges, the evidence does not support a finding that RMP incorrectly assessed the charges it imposed. The PSC finds RMP assessed the

DOCKET NO. 19-035-31

- 6 -

charges consistent with its line extension policy using its standard software and estimating practices.

For the foregoing reasons, the PSC finds and concludes RMP did not violate any statute, rule, or tariff provision within the PSC's purview and, therefore, declines to take further action on the Complaint.

DATED at Salt Lake City, Utah, May 21, 2020.

/s/ Michael J. Hammer  
Presiding Officer

Approved and confirmed May 21, 2020, as the Order of the Public Service Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#313933

DOCKET NO. 19-035-31

- 7 -

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 written order by filing a request for review or rehearing with the PSC 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 PSC 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 PSC'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 May 21, 2020, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

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Administrative Assistant