

**Docket No. 19-035-41 – In the Matter of the Formal Complaint of the Poplar Grove  
Neighborhood Alliance against Rocky Mountain Power**

**RESPONSE to RMP Motion to Dismiss (see RMP response 12/09/19, *italicized below*)**

**II. BACKGROUND**

*1. On November 13, 2019, Michael Clara filed an informal complaint on behalf of PGNA stating its opposition to the Beck Street Transmission Project (the “Project”). PGNA stated several reasons for its opposition, including: (1) its members are working to obtain funding to build an overpass on 900 West at the South Temple railroad crossing; (2) its members are concerned about tree removal; (3) it intends to petition the Salt Lake City Planning Commission to exercise its authority under the conditional use process to ensure that provisions of the franchise agreement are adhered to; (4) it believes the Project is in violation of the 2010 County plan; and (5) that the Project is contrary to the legislative purpose of Utah Code Title 54, Chapter 8, Underground Conversion of Utilities.*

**ADMIT**

*2. On November 15, 2019, Rocky Mountain Power provided a response to the informal complaint. The Company noted that it evaluated several options with Salt Lake City, and the route was selected because a large percentage of the route has an existing transmission line that will be replaced with the upgraded line. The Company’s response stated that the Company has already obtained additional easements from individual property owners needed to complete the Project. The Company also noted that it held several public meetings and open houses in the area to discuss the Project in detail, and that construction had been approved and began in October 2019.*

**DENY:** As indicated in our formal complaint, in violation of Rule 746, Rocky Mountain Power did not respond to the informal complaint. Additionally, no “employee” of the Division of Public Utilities investigated or facilitated a resolution. See 11/20/19, Division of Public Utilities email exchange. When Michael Clara advises the Division that no written response was received from RMP, they send information on how to file the formal complaint. We believe that had RMP provided a written response on 11/15/19 as stated above, the Division of Public Utilities would have provided Poplar Grove Neighborhood Alliance with a copy of the response. To date, no one within the Alliance has seen this 11/15/19, RMP response.

The following is on page 2 and 3 of the Poplar Grove Neighborhood Alliance formal complaint: We would also request that the Commission review the informal complaint process as set forth in Rule 746: A person who is unable to resolve a dispute with the utility concerning a matter subject to Public Service Commission jurisdiction may obtain informal review of the dispute by a designated employee within the Division of Public Utilities. This employee shall investigate the dispute, try to resolve it, and inform both the utility and the consumer of his findings within five business days from receipt of the informal review request. Upon receipt of a request for informal review, the Division employee shall, within one business day, notify the utility that an informal complaint has been filed. Absent unusual circumstances, the utility shall attempt to resolve the complaint within five business days. In no circumstances shall the utility fail to respond to the informal complaint within five business days. The response shall advise the complainant and the Division employee regarding the

results of the utility's investigation and a proposed solution to the dispute or provide a timetable to complete any investigation and propose a solution.... We are perplexed as to why the procedure set forth in this Rule do not apply to us. To our knowledge no informal review was conducted by a "designated employee within the Division of Public Utilities". As of this writing, this aspect of the Rule has not been followed: "This employee shall investigate the dispute, try to resolve it, and inform both the utility and the consumer of his findings within five business days from receipt of the informal review request". Moreover, this aspect of the Rule has also been violated: "Absent unusual circumstances, the utility shall attempt to resolve the complaint within five business days. In no circumstances shall the utility fail to respond to the informal complaint within five business days".

*3. On November 22, 2019, PGNA filed its Formal Complaint with the Commission. The Complaint reiterates its statements from the informal complaint related to building an overpass on 900 West; removal of trees; the Salt Lake City Planning Commission conditional use process; the 2010 County Plan; and the legislative purpose of Utah Code Title 54, Chapter 8, Underground Conversion of Utilities. The Complaint also states the PGNA believe that Salt Lake City should exercise its authority as set forth in the Franchise Agreement to ensure that the transmission lines are not subjecting residents to hazardous levels of electromagnetic fields.*

**ADMIT**

*4. The Complaint does not allege that Rocky Mountain Power has violated any provision of law, Commission Order or Rule, or Company tariff under the jurisdiction of the Commission*

**DENY** – see the words written in the Poplar Grove Neighborhood Alliance, twelve-page, formal complaint dated 11/22/19

*III. ANSWER AND MOTION TO DISMISS*

*5. 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 under the jurisdiction of the Commission, Commission Order or Rule, or Company tariff. Further, the Complaint does not allege that the proposed project will violate any applicable NESC standards related to clearance or safety.*

**DENY** – see the words written in the Poplar Grove Neighborhood Alliance, twelve-page, formal complaint dated 11/22/19

*6. 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 described above, PGNA’s complaint fails to meet this standard.*

**DENY** – see the words written in the Poplar Grove Neighborhood Alliance, twelve-page, formal complaint dated 11/22/19

*7. 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.” 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.” In this case, the allegations in PGNA’s Complaint related to the construction of an overpass on 900 West, removal of trees, the Salt Lake City Planning Commission conditional use process, the 2010 County Plan, and the legislative purpose of the Utah Underground Conversion of Utilities Law do not meet this standard. None of the concerns raised in the Complaint contain allegations of a violation of a law, rule, or Order under the jurisdiction of the Commission.*

**DENY** – see the words written in the Poplar Grove Neighborhood Alliance, twelve-page, formal complaint dated 11/22/19

*8. With respect to clearances that may be specified in Rocky Mountain Power’s franchise agreement with Salt Lake City, there is no allegation that the Project will not meet applicable National Electrical Safety Code standards, which are the governing standards for electrical safety and construction.*

**DENY** – see the words written in the Poplar Grove Neighborhood Alliance, twelve-page, formal complaint dated 11/22/19

*9. Rocky Mountain Power appreciates and understands the concerns of PGNA 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.*

**DENY** – RMP does not “*appreciate and understand the concerns of PGNA and its other customers...*”. In order to meet that standard, RMP would need to honor the Franchise Agreement they entered into with their customer’s elected municipal officials (see page 4 of the 11/22/19, Formal Complaint). In order to meet that standard, RMP would need to honor the provisions set forth in the Powering Our Future -Salt Lake County Electrical

Plan they entered into with their customer's elected county officials (see page 8 of the 11/22/19, PGNA, Formal Complaint). In order to meet that standard, RMP would need to honor the provisions set forth in the Powering Our Future -Salt Lake County Electrical Plan they entered into with their customer's elected State officials (see page 10 of the 11/22/19, PGNA, Formal Complaint).

*10. Rocky Mountain Power has already received all required permits for the Project and began construction in October 2019. In addition, Rocky Mountain Power has obtained all necessary easements from private landowners for the construction of the Project. Any concerns related to property rights associated with the Project are not issues over which Commission has jurisdiction.*


**DENY** -This is false! RMP did not receive permits from Salt Lake City until after PGNA filed their informal complaint on 11/13/19 (see SLC Permit ENG2019-02371 and ENG2019-02281)

**As set forth in the forgoing RMP has violated statutes that fall within the jurisdiction of the Commission. Accordingly, RMP motion to dismiss should be denied. Poplar Grove Neighborhood Alliance requests a hearing with respect to subject docket.**

**Additionally, it is felt that this project constitutes disparate treatment of the three affected Westside communities based on the racial, ethnic and economic standing of their residents. Further this effort was misrepresented in writing to residents and the public generally on Rocky Mountain Power's web site, handouts, public presentations and meetings with residents and community leadership officials. Finally, this project represents an uncompensated "taking" with respect to property values that will see significant reduction**

(as researched by the National Board of Realtors) based on the proximity of these lines to the affected parties' residences. These parties have a right to due process.

Submitted on behalf of Poplar Grove Neighborhood Alliance:



01/07/2020

Richard Holman

01/07/2020 13:20 PM