
Formal Complaint of the Poplar Grove Neighborhood Alliance against Rocky Mountain Power	<u>DOCKET NO. 19-035-41</u> <u>ORDER DISMISSING COMPLAINT</u>
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ISSUED: February 12, 2020

1. Procedural History

On November 22, 2019, the Poplar Grove Neighborhood Alliance (“Complainant”) filed a Formal Complaint (“Complaint”) with the Public Service Commission (PSC) against Rocky Mountain Power (RMP). Generally, the Complaint opposes RMP’s Beck Street Transmission Project (the “Project”) in northwest Salt Lake City. Complainant believes the Project will have a negative impact on the community and may interfere with possible construction of an overpass that Complainant is hoping to see constructed to alleviate problematic traffic in the area. Complainant asks the PSC to require RMP to install the Project underground as opposed to “expand[ing] its footprint above ground.” (Complaint at 11.) Complainant manifests its intention “to petition [the] Salt Lake City Planning Commission to exercise its authority under the conditional use process” and invokes Salt Lake City’s Franchise Agreement with RMP, arguing that Salt Lake City should exercise authority to ensure RMP adheres to its provisions. (*Id.* at 8.) Complainant also asserts the Project is inconsistent with the “2010 County plan,” which Complainant explains disfavors locating transmission lines in residential neighborhoods. (*Id.*)

On December 19, 2019, RMP filed an Answer and Motion to Dismiss (“Motion”). RMP quotes Utah Code Ann. § 54-7-9(2), asserting the law requires a complaint to “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 [PSC].” (Motion at 4.) RMP argues Complainant has failed to meet this standard

because the Complaint does not contain allegations that RMP violated any “law, rule, or Order under the jurisdiction of the [PSC].” (*Id.* at 5.) Additionally, RMP represents it “evaluated several options with Salt Lake City” before identifying the Project’s route and that RMP has “received all required permits” and “necessary easements” for the Project” (*Id.* at 3, 5.)

On January 7, 2020, Complainant filed a reply (“Reply”) that largely refers the reader back to its Complaint. The Reply appears to concede RMP has received the necessary permits though the Reply emphasizes this occurred after Complainant filed its informal complaint. (*See* Reply at 6.)

2. Findings, Conclusions, and Order

While the PSC has relatively broad jurisdiction to supervise the business of public utilities,¹ land use, including the placement of utility infrastructure, is generally a matter of local government regulation. *See generally*, Utah Code Ann. § 10-9a-101, *et seq.* With respect to utilities’ construction of facilities, including overhead transmission lines, the law expressly allows local governments to “require or condition [such] construction . . . in any manner” provided, among other things, the “local government pays for the actual excess cost resulting from the requirements or conditions.” Utah Code Ann. § 54-14-201.

As we have previously concluded,² the PSC is not a forum for locally affected residents to challenge placement of utility infrastructure. The Utah Code plainly reflects the Legislature’s

¹ *See* Utah Code Ann. § 54-4-1 (vesting the PSC with power and jurisdiction to “supervise and regulate” public utilities).

² *See, e.g., Formal Complaint of Community Advocacy for Safety and Public Rights against RMP*, Docket No. 19-035-10 (Order issued May 10, 2019.)

determination that local governments, elected by and politically accountable to their constituents, are best suited to regulate such issues, including the placement of transmission lines.

Indeed, when a conflict arises between a local government and a public utility concerning construction or placement of utility infrastructure, the law does not contemplate the parties submit their dispute to the PSC for resolution. Instead, the Legislature created the Utah Facility Review Board (“Board”) for the express purpose of resolving such disputes. *See id.* at § 54-14-101, *et seq.* The statute allows either a local government or a utility to seek review from the Board. The PSC concludes this, again, reflects the Legislature’s intention that placement of utility infrastructure is primarily a matter to be resolved between local governments and utilities, with the Board providing a dispute resolution mechanism when necessary.

The PSC is not unsympathetic to the Complainant’s desire to see the Project installed underground. As noted above, the Utah Code plainly allows local governments to impose conditions on the installation of transmission lines, including burying them, provided the local governments are willing to pay the additional costs associated with burial. The record is unclear whether Salt Lake City considered its right to impose this requirement and elected not to exercise it. In fact, neither Complainant nor RMP meaningfully addresses any role Salt Lake City has played in the Project, though RMP suggests Salt Lake City participated in selecting the Project’s route.³ Complainant makes vague assertions about whether the Project is consistent with Salt

³ RMP “note[s] 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.” (Motion at 3.)

Lake City's Franchise Agreement and the "2010 County plan," but these are issues to be resolved by those respective governments and potentially an appropriate court, not the PSC.

In sum, the PSC understands that Complainant would prefer the Project be constructed underground. However, the decision whether to require RMP to bury the Project rested with the local government. The PSC does not have jurisdiction to compel a local government to do so nor does the statutory framework contemplate the PSC compelling a utility to do so where a local government has declined to impose such a condition.

Having reviewed the Complaint, Motion, and Reply, the PSC finds Complainant has failed to allege that RMP has violated any provision of applicable statute, regulation, or tariff. Therefore, the PSC concludes the Complaint contains no allegation of fact giving rise to an issue within the PSC's jurisdiction to be resolved at hearing. The Motion is granted and the Complaint is dismissed.

DATED at Salt Lake City, Utah, February 12, 2020.

/s/ Michael J. Hammer
Presiding Officer

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Approved and Confirmed February 12, 2020, as the Order of the Public Service
Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#312093

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 February 12, 2020, a true and correct copy of the foregoing was served upon the following as indicated below:

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