
Formal Complaint of Scott Macdonald against Rocky Mountain Power	<u>DOCKET NO. 20-035-24</u> <u>ORDER DENYING MOTION TO DISMISS</u> <u>AND FOR SUPPLEMENTAL</u> <u>INFORMATION</u>
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ISSUED: August 5, 2020

1. Background

On May 21, 2020, Scott Macdonald (“Complainant”) filed a formal complaint (“Complaint”) with the Public Service Commission (PSC) against Rocky Mountain Power (RMP). The Complaint and attached materials, including correspondence generated during the parties’ attempted resolution of an informal complaint, contain allegations that Complainant’s home has experienced flickering lights since he moved in approximately a year ago.

In its response to Complainant’s informal complaint, RMP acknowledged the home “has been experiencing power quality issues or flicker events for several months” and “apologize[d] for the inconvenience.” In that correspondence, RMP represented it “is able to confirm equipment belonging to a transmission customer near [Complainant’s] area as the cause of the flicker.” RMP further represented it “has provided official notice to this transmission customer verifying [its] equipment as the cause of the flicker events and have requested [its] strategy and timeline in order for [it] to bring [its] equipment into compliance.”

On June 22, 2020, RMP filed its Answer and Motion to Dismiss (“Motion”). The Motion acknowledges RMP “has been in discussions with [Complainant] about the issues he alleges in his complaint since late summer in 2019.” Though it moves to dismiss the Complaint, RMP asserts it “is nevertheless committed to working with him to resolve his concerns” and that RMP

“will continue to work towards a resolution in the interest of providing a high level of customer service.”

In the Motion, RMP “neither admits nor denies the allegation that power it supplies to [Complainant’s] home caused LED lighting fixtures in that home to flicker.” RMP concedes it “is aware of increased flicker measurements on its distribution system in the vicinity of [Complainant’s] home,” but contends “it is impossible to determine whether those measurements are directly responsible for the flickering lights” or some other cause is responsible.

Regardless, RMP asserts that “it has no obligation under any provision of law, [PSC] order or Rule, or [RMP] tariff to prevent flicker from occurring.” RMP further “denies the allegation that it is contractually obligated to ‘supply power within certain levels’” and argues no provision of law or tariff “addresses flicker levels.”

RMP cites Electric Service Regulation No. 25, which contains certain customer guarantees, and notes “there are no guarantees specific to LED lights flickering.” RMP adds “the only potentially relevant element in [RMP’s tariff] appears in Electric Service Regulation 5, which generally relates to installations on the customer’s side of the meter” and generally disavows RMP’s responsibility for maintaining conditions on the customer’s side.

In his Reply, Complainant alleges RMP’s representative made certain representations to Complainant, including (1) the representative has compared the dates and times that Complainant has reported experiencing flicker with those that RMP has detected attendant problems on its system and that “the times correlate well”; (2) and RMP has a responsibility to

meet “a certain quality of power” and the representative told him RMP should meet an objective, measurable standard that renders flicker invisible to the human eye.

2. Discussion

Like RMP, the PSC has located no provision of statute, rule, or tariff that specifically addresses acceptable flicker levels. However, RMP unquestionably has a responsibility to provide “adequate” service pursuant to Utah law. Utah Code Ann. § 54-3-1 (“Every public utility shall furnish, provide and maintain such service ...as will be in all respects adequate, efficient, just and reasonable.”); *see also* Utah Code Ann. § 54-4-7.

Additionally, the PSC notes allegations exist, and are supported in RMP’s correspondence during the informal complaint process, that another customer is responsible for the issues Complainant is experiencing. Electric Service Regulation No. 12(2)(e) provides that “[u]pgrades and modifications to correct service quality issues *such as flicker* are done at the expense of the Customer causing the service quality issue.” (Emphasis added.) Further, Electric Service Regulation No. 5(2)(e) pertains to highly fluctuating loads and grants RMP the right “to refuse to supply service to loads of a character which may seriously impair service to any Customer and shall have the right to discontinue service to the Customer who shall continue to use appliances or apparatus detrimental to the service to any customer after being notified thereof in writing by [RMP].”

Having examined the Complaint and attached materials, the Motion, and Complainant’s reply, the PSC finds and concludes that questions of fact and law exist that preclude dismissal of the Complaint.

Typically, the PSC would notice the Complaint for hearing at this juncture. Here, however, the PSC believes the parties and the process would be better served by narrowing and clarifying some issues beforehand. This should advance the interest of both parties. RMP will have the time and opportunity to thoughtfully consider and respond to the legal questions the PSC raises below, rather than facing potentially surprising legal questions and attempting to form impromptu responses at hearing. Additionally, the Complainant, a residential customer that does not appear to have retained counsel or an expert witness, will surely benefit from having the additional information in advance.

Therefore, the PSC directs RMP to file with the PSC, on or before Wednesday, September 2, 2020, a written response that addresses the following questions:

- (1) Is there a quantitative standard by which RMP measures flicker, *e.g.* flicker frequency, flicker index, or flicker percentage? Is there a parameter or range of parameters for any such measurement that RMP considers to be acceptable or problematic?
- (2) Has RMP performed any test or investigation to measure the flicker that Complainant alleges he is experiencing? If so, what were the results?
- (3) RMP's Motion indicates it is "aware of increased flicker measurements on its distribution system in the vicinity of [Complainant's] home." Please provide the measurements to which RMP refers and explain their source.
- (4) As suggested in RMP's correspondence during the informal complaint process, has RMP identified another customer or party whose actions or equipment RMP believes

is or is likely to be responsible for creating flicker issues in Complainant's area? If so, please explain what, if any, action RMP has taken to resolve the issue, including but not limited to communications with the identified customer or party.

- (5) Please explain RMP's position as to whether Electric Service Regulation No. 12(2)(e) and Electric Service Regulation No. 5(2)(e) pertain to the issues Complainant raises.
- (6) Does RMP maintain that no level or measure of flicker could be sufficiently severe as to render its residential service inadequate under Utah Code Ann. § 54-4-7 or other applicable law? If not, what level does RMP conclude is unacceptable and how would it be measured?

3. Order

RMP's Motion is denied. The PSC directs RMP to submit the information described in the preceding section by **Wednesday, September 2, 2020**.

DATED at Salt Lake City, Utah, August 5, 2020.

/s/ Michael J. Hammer
Presiding Officer

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#314903

CERTIFICATE OF SERVICE

I CERTIFY that on August 5, 2020, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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