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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Complaint of Rocky Mountain Power, a division of PacifiCorp, Against Heber Light & Power Regarding Unauthorized Service by Heber Light & Power in Areas Certificated to Rocky Mountain Power	Docket No. 07-035-__ COMPLAINT
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Rocky Mountain Power (“Rocky Mountain”), pursuant to Utah Code Ann. § 63-46b-3 and Utah Admin. Code R746-100-3, hereby complains against Heber Light & Power Company (“HL&P”), alleging as follows:

PARTIES

1. Rocky Mountain, a division of PacifiCorp, an Oregon corporation, is authorized to do business in the state of Utah. Rocky Mountain is an electrical corporation holding a certificate of public convenience and necessity (“Certificate”) issued by the Commission authorizing it to provide electric service to customers in many parts of the state of Utah, including Wasatch County. Rocky Mountain is the successor in interest to Utah Power & Light Company, which previously provided electric service

for decades pursuant to the Certificate and prior certificates of public convenience and necessity issued by the Commission. Hereinafter references to Rocky Mountain will include as applicable Utah Power & Light Company.

2. HL&P is an interlocal agency formed under the Interlocal Co-Operation Act by Heber City, Midway, and the Town of Charleston (“Member Cities”) for the purpose of providing electric service to residents of the Member Cities. Wasatch County is a political subdivision in the state of Utah. Utah Code Ann. §§ 11-13-101 et seq.

JURISDICTION

3. The Commission has jurisdiction over this complaint because HL&P is providing retail electrical service to customers outside the municipal boundaries of its Member Cities (“Municipal Boundaries”) in violation of Rocky Mountain’s Certificate and Utah law. The electrical service provided by HL&P is not the temporary sale of surplus power, but is rather part of a pattern of providing permanent, continuous, and expanding retail service in the normal course of business to customers outside the municipal boundaries of the Member Cities.

4. Although the Commission does not have jurisdiction over municipalities providing utility service within their municipal boundaries or making legitimate temporary wholesale sales of surplus product outside of their municipal boundaries, the Commission is authorized to prohibit retail service by municipalities outside of their municipal boundaries because in so doing the municipalities are not engaged in a municipal function authorized by Utah Code Ann. § 10-8-14 and because customers of the municipalities located outside of their municipal boundaries have no control over the policies and actions of the municipalities because they are not able to vote for the elected public officials who set such policies and authorize such actions.

GENERAL ALLEGATIONS

5. Rocky Mountain provides electric service to approximately 1,000 customers in unincorporated Wasatch County.

6. On information and belief, Rocky Mountain alleges that HL&P has significantly expanded its retail service to customers outside the Municipal Boundaries. HL&P currently provides electric service to approximately 8,800 customers. Of that number, approximately 2,700 customers are located outside the municipal boundaries of the Member Cities.

7. HL&P is currently aggressively competing with Rocky Mountain for service to major new land developments in unincorporated Wasatch County with the stated desire to serve all residents within the Heber Valley.

8. For example, HL&P is currently seeking to provide retail electric service to a major proposed development of approximately 4,000 homes in the area known as the North Village in unincorporated Wasatch County. This is an area that can readily be served by Rocky Mountain and lies squarely within its certificated service territory.

9. In furtherance of its duty to serve customers in Wasatch County, Rocky Mountain has sought and obtained franchises from Wasatch County at least as early as 1917 authorizing it to install its facilities in public rights-of-way in Wasatch County and to do other things necessary to provide electric service to customers in Wasatch County. The most current franchise from Wasatch County was granted to Rocky Mountain in 1960 and expires in 2010.

10. Rocky Mountain has fulfilled all of its obligations under its franchise agreement with Wasatch County.

11. Rocky Mountain was recently informed by a developer that Wasatch County has indicated that it would not approve any development in the North Village if electric service to the development is proposed to be provided by Rocky Mountain.

12. On information and belief, Wasatch County is working with HL&P to permit HL&P to commence service in developing areas of Wasatch County within Rocky Mountain's existing service area and to the detriment of Rocky Mountain's business.

13. Indeed, on April 13, 2007, Wasatch County notified Rocky Mountain that the Wasatch County Council will consider and may take action on the following matter at its meeting on Wednesday, April 18, 2007, at 3:00 p.m.: "Modification and partial revocation of franchise granted April 14, 1960 to Utah Power & Light, its successors and assigns." No justification for this modification was provided. (A copy of the letter from Wasatch County is attached as Exhibit A.)

14. On information and belief, during the same Wasatch County Council meeting, the County Council will consider whether to approve an ordinance granting to HL&P a franchise to install facilities to provide electric service covering the same area for which it is proposing to revoke Rocky Mountain's current franchise.

15. On April 13, 2007 and again on April 16 and 17, 2007, Rocky Mountain contacted Wasatch County requesting a copy of the proposed ordinance associated with the agenda item for the April 18, 2007 meeting of the Wasatch County Council. Rocky Mountain was informed that the ordinance and an accompanying ordinance to grant a franchise to HL&P were not available because they were being drafted by HL&P and had not yet been provided to the County Council.

16. On information and belief, during the April 18, 2007 County Council meeting, the County Council intends to approve the ordinance revoking Rocky Mountain's franchise to install facilities necessary to provide electric service to areas within unincorporated Wasatch County, and grant to HL&P a franchise to install facilities to provide electric service to areas within unincorporated Wasatch County that are also within the area covered by Rocky Mountain's Certificate.

17. On information and belief, HL&P is acting in concert with Wasatch County to attempt to determine Rocky Mountain's service territory in Wasatch County in contravention of the Commission's authority.

18. If Wasatch County revokes Rocky Mountain's franchise and grants a franchise to HL&P to serve the area in the certificate granted to Rocky Mountain, it will amount to an unlawful taking.

19. If Wasatch County illegally revokes Rocky Mountain's franchise and grants a franchise to HL&P to serve the area in the certificate granted to Rocky Mountain, it will create legal uncertainty with respect to Rocky Mountain having legal authority to serve new customers that request service outside the Municipal Boundaries.

20. The actions of HL&P in expanding service outside of the Municipal Boundaries is a taking of Rocky Mountain's property interests.

**FIRST CAUSE OF ACTION
(Violation of Rocky Mountain's Certificate)**

21. Rocky Mountain incorporates the allegations of paragraphs 1 - 20 above as if fully set forth herein.

22. Rocky Mountain was granted the Certificate authorizing it to provide electric service in Wasatch County and requiring it to provide service to customers in

Wasatch County in accordance with the terms and conditions of its tariffs and regulations on file with and approved by the Commission.

23. Rocky Mountain has made substantial investments in facilities, including the Jordanelle Substation, in anticipation of fulfilling its obligation to provide electric service to customers in its service area.

24. HL&P's actions in providing service to customers outside the municipal boundaries of the Member Cities and in seeking to further expand its service to customers outside the municipal boundaries of the Member Cities are in violation of the Certificate.

25. Rocky Mountain is entitled to an order of the Commission that HL&P must cease providing electric service to customers outside the Municipal Boundaries in contravention of Rocky Mountain's Certificate and that Rocky Mountain has the exclusive right to serve those 2,700 customers outside of the Municipal Boundaries allowing these customers a forum with both the Commission and Rocky Mountain for rate justification, service quality, and reliability standards.

**SECOND CAUSE OF ACTION
(Usurpation of Commission Jurisdiction)**

26. Rocky Mountain incorporates the allegation of paragraphs 1 - 25 above as if fully set forth herein.

27. Through its actions with Wasatch County, HL&P is attempting to determine Rocky Mountain service area.

28. The Commission has exclusive jurisdiction to determine the service area of a public utility.

29. Rocky Mountain is entitled to an order of the Commission declaring that the actions of HL&P in concert with Wasatch County to attempt to determine Rocky

Mountain's service area are unlawful and are in violation of the Commission's exclusive jurisdiction.

**THIRD CAUSE OF ACTION
(Violation of the "Municipal Code")**

30. Rocky Mountain incorporates the allegation of paragraphs 1 - 29 above as if fully set forth herein.

31. The "Municipal Code" of the state of Utah provides that a "city may (a) construct, maintain and operate waterworks, sewer collection, sewer treatment systems, gas works, *electric light works*, telecommunications lines, cable television lines, or public transportation systems; . . . and (d) *sell and deliver surplus product* or service capacity of any works or system listed in Subsection 1 . . . not required by the city or the city's inhabitants, to others *beyond the limits of the city.*" Utah Code Ann. § 10-8-14 (Emphasis added).

32. The Municipal Code expressly limits a municipality's authority to sell electricity to customers within the boundaries of the municipality, unless sold and delivered under the "surplus product" exception.

33. HL&P is currently providing retail electric service to customers located outside of its municipal boundaries of the Member Cities from capacity in HL&P's system that does not constitute "surplus product."

34. Rocky Mountain is entitled to an order of the Commission declaring that the electric service provided by HL&P to retail customers outside of the municipal boundaries of the Municipal Boundaries is not "surplus product," and, is therefore, unauthorized and in violation of the Municipal Code.

**FOURTH CAUSE OF ACTION
(Violation of Interlocal Cooperation Act)**

35. Rocky Mountain incorporates the allegations of paragraphs 1 - 34 above as if fully set forth herein.

36. The “Interlocal Cooperation Act” requires that “before proceeding with construction of any electrical generating plant or transmission line, each interlocal entity . . . shall first obtain from the public service commission a certificate, after hearing, that public convenience and necessity requires such construction and in addition that such construction will in no way impair the public convenience and necessity of electrical consumers of the state of Utah at the present time or in the future.” Utah Code Ann. § 11-13-304(1) (2006).

37. On information and belief, HL&P has constructed electrical generating plant and transmission lines to provide service to customers located outside the Municipal Boundaries without obtaining a certificate of public convenience and necessity from the Commission as required by the Interlocal Cooperation Act.

38. Rocky Mountain is entitled to an order of the Commission declaring that HL&P has failed to obtain one or more certificates of public convenience and necessity from the Commission to construct electrical generating plant or transmission lines in violation of the Interlocal Cooperation Act.

**FIFTH CAUSE OF ACTION
(Violation of Article 1, Section 22 of the Utah State Constitution)**

39. Rocky Mountain incorporates the allegation of paragraphs 1 - 38 above as if fully set forth herein.

40. Under the Certificate, Rocky Mountain has a legally cognizable right and expectation to exclusively provide electric service within the Rocky Mountain service area.

41. Article 1, Section 22 of the Utah Constitution requires just compensation for taking private property for a public purpose. Utah Const. art. 1, § 22. A municipality cannot exercise its powers in derogation of specific rights protected under Article 1, Section 22.

42. HL&P's service to retail customers outside of the Municipal Boundaries and the within Rocky Mountain's service area unlawfully encroaches on the exclusive right to serve granted Rocky Mountain under the Certificate in violation of Article 1, Section 22.

43. Rocky Mountain is entitled to an order of the Commission declaring that the electric service provided by HL&P to retail customers within Rocky Mountain's service area is an unlawful encroachment on the exclusive area granted under the Certificate and amounts to a taking of Rocky Mountain's property for a public purpose without just compensation.

PRAYER FOR RELIEF

WHEREFORE, Rocky Mountain prays for the Commission to order as follows:

1. On Rocky Mountain's First Cause of Action, an order declaring that HL&P must cease providing electric service to customers outside the Municipal Boundaries in contravention of Rocky Mountain's Certificate and that Rocky Mountain has the exclusive right to serve those 2,700 customers outside of the Municipal Boundaries allowing these customers a forum with both the Commission and Rocky Mountain for rate justification, service quality, and reliability standards.

2. On Rocky Mountain's Second Cause of Action, an order declaring that the actions of HL&P in concert with Wasatch County to attempt to determine Rocky Mountain's service area are unlawful and are in violation of the Commission's exclusive jurisdiction.

3. On Rocky Mountain's Third Cause of Action, an order declaring that the electric service provided by HL&P to retail customers outside of the Municipal Boundaries is not of "surplus product," and, is therefore, unauthorized and in violation of the Municipal Code.

4. On Rocky Mountain's Fourth Cause of Action, an order declaring that HL&P has failed to obtain one or more certificates of public convenience and necessity from the Commission to construct electrical generating plant or transmission lines in violation of the Interlocal Cooperation Act.

5. On Rocky Mountain's Fifth Cause of Action, an order declaring that the electric service provided by HL&P to retail customers within the Rocky Mountain service area is an unlawful encroachment on the exclusive area granted under the Certificate and amounts to a taking of Rocky Mountain's property for a public purpose without just compensation.

6. For such further relief as is deemed by the Commission to be just and equitable in the premises.

DATED: February 21, 2018.

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Rocky Mountain Power

Attorneys for Rocky Mountain Power

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing
COMPLAINT to be served upon the following by electronic mail and by mailing a copy
of the same in the United States Mail to the addresses shown below on February 21,
2018:

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