

Douglas J. Parry (#2531)
DORSEY & WHITNEY LLP
136 S. Main Street, Suite 1000
Salt Lake City, Utah 84101
Telephone: (801) 933-8918
Facsimile: (801) 933-7373
parry.douglas@dorsey.com

Attorney for Uranium One Ticaboo Inc.

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Complaint of Uranium
One Ticaboo Inc., Against the Ticaboo
Electric Improvement District

Docket No. _____

COMPLAINT

Uranium One Ticaboo Inc. (“Uranium One”), pursuant to Utah Code Ann. § 63G-4-201 and Utah Admin. Code R746-100-3, hereby complains against the Ticaboo Electric Improvement District (the “District”), alleging as follows:

PARTIES

1. Uranium One is a Delaware corporation, authorized to do business in the state of Utah. Uranium One is the owner of commercial facilities located within the Ticaboo townsite, including the Ticaboo Lodge, a restaurant, a gas station / convenience store, a RV park, and a boat storage facility.

2. The District is a political subdivision of the State of Utah holding a Certificate of Public Convenience and Necessity (“Certificate”) issued by the Public Service Commission (the

“Commission”), authorizing it to provide electric service to customers within the District’s boundaries, including the Ticaboo townsite.

JURISDICTION

3. Because the District is a Public Utility as defined by Utah Code Ann. § 54-2-1.(16), the Commission has jurisdiction over this complaint under Utah Code Ann. § 54-1-1.

GENERAL ALLEGATIONS

4. Uranium One is the lessee under a Ground Lease and Development Agreement (“Development Lease”), dated September 1, 2008, by and between the State of Utah acting by and through the Utah School and Institutional Trust Lands Administration (“SITLA”), which allows for commercial and residential development of state lands, including those lands covering the Ticaboo townsite.

5. While holding the Development Lease prior to the establishment of the District, Uranium One provided electric service to the townsite through the use of diesel generators, transformers, and distribution lines (“Power Assets”) owned by Uranium One. During the period it provided electric service at Ticaboo, Uranium One subsidized the cost of electricity for all users within the townsite.

6. In August of 2009, Uranium One was approached by Garfield County to assist in the formation of the District. As part of the process of establishing the District and acquiring the appropriate governmental authorizations, Uranium One entered into a binding Memorandum of Understanding (the “MOU”) under which Uranium One agreed to donate to the District the Power Assets, valued at over \$500,000.00, on condition that the District agree, among other things, to supply electric service to customers within the Ticaboo townsite at a uniform price to all customers for such service. (The MOU is attached hereto as Exhibit 1.)

7. The MOU provided that: "... the District will charge a uniform price to all of its customers within the Ticaboo Townsite, including . . . Uranium One regardless of residential, commercial, industrial or municipal classification." This Agreement was attached to and incorporated into the District's Application for a Certificate of Convenience and Necessity (the "Application"). (The District's Application is attached hereto as Exhibit 2.)

8. The MOU was signed by Wilford Kay Randall as Chair of the District's Board of Trustees, and attested by Justin Fischer, the District's Secretary.

9. On the basis of the representations made to the Commission as set out in the District's Application for a Certificate of Convenience and Necessity, including inter alia, that "the District will charge a uniform price to all its customers . . . regardless of residential commercial industrial or municipal classification," the Commission granted a Certificate to the District on November 30, 2009. (A copy of the Order Granting the Certificate is attached as Exhibit 3.)

10. Pursuant to the terms of the MOU accepted and recognized by the Commission in granting the certificate and in reliance on the District's promise to charge a uniform price to all customers, Uranium One conveyed the Power Assets to the District effective December 31, 2009 and the District began providing electrical services within the Ticaboo certificated area on January 1, 2010.

11. In February of 2010, Uranium One received an invoice dated January 31, 2010 in the amount of \$16,977.43, the first invoice from the District for charges for electric service. Although Uranium One's facilities were closed for the entire month of January, the invoice included a charge for usage of 19,347 kWh's for Uranium One's facilities. Historical usage for the facilities during January and other off-season months averaged approximately 2,000 kWh's

per month, and invoices for services averaged approximately \$2,000.00. (Copies of the District's Invoices to Uranium One for the months at January, 2010, through May, 2010 are attached as Exhibit 4.)

12. In March of 2010, Uranium One received an invoice dated February 27, 2010 from the District in the amount of \$6,520.56 for electric service provided in the month of February. As with the January invoice, the February invoice contained usage charges far exceeding Uranium One's historical charges for electrical service during similar off-season months.

13. On March 31, 2010, Uranium One received a letter via regular U.S. Postal Service with a "New Rate Schedule" for the District. The letter was postmarked March 29, 2010. The letter informed Uranium One that a "New Rate Schedule" had been adopted by the District's Board of Trustees at the March 11, 2010, Board meeting and would become effective the next day, April 1, 2010. The March 29, 2010 letter was the first communication of any kind received by Uranium One regarding new electric service rates. This "Notice" provided less than 24 hours notice of the alleged rate change. (A copy of the New Rate Schedule is attached as Exhibit 5.)

14. These new rates were adopted in violation of the public meeting and notice requirements of Section 17B-2a-406 6(a)(iii) and (iv) of the Utah Code Ann. and Section 10.1.2 of the Districts Rules and Regulations. A public meeting was not held and no notice to the public was given. (The District Rules and Regulations are attached as Exhibit 6.)

15. The improperly adopted New Rate Schedule established separate rates and fees for "residential" and "commercial" users and included significant new fee charges for commercial users not imposed on residential users. The new commercial fees include an "Active Base Fee" per "Equivalent Residential Unit" (ERU) of \$500.00 and an "Inactive Base Fee per

ERU” of \$500.00. In comparison, residential users under the invalid rate schedule are subject to an “Active Base Fee” of \$50.00 and an “Inactive Base Fee” of \$50.00. Based solely upon the base fees noted above and regardless of its actual electrical usage, under the April 1, 2010 fee structure, Uranium One would be required to pay monthly base fees for its commercial facilities of \$12,500.00 per month, an amount almost ten time more than Uranium One’s typical electrical costs for off-season months using the approved rates, and roughly 10 times more than the District’s residential and municipal customers. The adoption of such rates and charges was contrary to the provisions of the MOU between the District and Uranium One, the representations in the District’s Application and the District’s approved Tariff. (A copy of the approved Tariff was attached to the Application as an Exhibit and is attached here to as Exhibit 7.)

16. The New Rate Schedule also conflicted directly with representations made by the District to the Commission in the District’s Application for a Certificate. The MOU and the District’s approved Tariff, requiring uniform prices for residential and commercial customers, was included in and constituted an integral part of the District’s Application. As such, the adoption of the invalid rate schedule by the District was contrary to direct representations made to the Commission by the District, representations upon which the Certificate was issued.

17. Upon receipt of the letter informing it of the adoption of the New Rate Schedule, Uranium One immediately contacted the District to express its concern regarding the legality and enforceability of the rate changes. The District would not discuss an attempt to resolve the dispute through negotiation.

18. Despite the dispute between Uranium One and the District concerning the amount of charges for electric service during January and February and the New Rate Schedule, Uranium One paid, under protest, the January and February invoices in full on April 2, 2010.

19. On April 7, 2010, Uranium One and the District discussed the New Rate Schedule. During the conference the representatives for Uranium One voiced their concerns about the legality of the rate schedule and informed the District that Uranium One considered the rates unenforceable. Uranium One also expressed its concerns that under the newly proposed electrical rates, the only commercial facilities located within the Ticaboo townsite, which are owned by Uranium One, would not be financially viable. In light of the financial struggles of the District and the requirement of the MOU, Uranium One proposed that the District eliminate the base fees and instead raise the electric rates per kWh uniformly for all users in a manner consistent with the rates in effect at nearby communities (such as Bullfrog, Utah) and mandated by the MOU and the District's approved Tariff.

20. The District represented that the New Rate Schedule would be re-examined by the District's Secretary, with the involvement of various other parties.

21. On April 8, 2010, Uranium One received an invoice dated March 31, 2010, in the amount of \$23,953.44 from the District. Despite its concerns about the accuracy of the invoice, Uranium One paid, under protest, the full invoice amount on April 30, 2010.

22. On May 3, 2010, Uranium One received an invoice dated April 30, 2010, from the District in the amount of \$20,643.24. The April invoice was calculated using the New Rate Schedule adopted by the District without notice and a public meeting and contrary to the provisions of the MOU and the District's approved Tariff.

23. On May 3, 2010, the District reported to Uranium One on the reexamination of the New Rate Schedule. The District stated that the preliminary findings indicated that the price per kWh would range from \$.39 to \$.42 and that the active and inactive base fees would be eliminated. To date no further progress has been made on the examination or adoption of a valid rate schedule.

24. On May 21, 2010, Uranium One paid \$1,459.64 to the District, the uncontested portion of the April invoice. This amount was calculated using the District's Tariff attached to its Application.

25. On or about the first week of June, 2010, the District rejected Uranium One's payment on the April invoice and returned Uranium One's check because of the restricted endorsement indicating that the check was in full payment of the April invoice.

26. Upon receipt of the rejected payment, Uranium One contacted the District and volunteered to submit a replacement check without the restricted endorsement.

27. On June 3, 2010, without any prior notice, the District disconnected Uranium One's commercial facilities, including the Ticaboo Lodge, from the District's electric service. This act was in direct violation of Section 11.8.1 of the District's Rules and Regulations, which provides that "[a]t least 10 calendar days before a proposed termination of service, the District will give written notice of disconnection for non-payment to the customer." No such notice was provided to Uranium One. At the time of the disconnection of electric service to the Ticaboo Lodge, several guests were staying at the Lodge.

28. Uranium One immediately attempted to contact the District Manager concerning the disconnection, but he was unavailable, as he had left on a vacation immediately after the disconnect. In an effort to have the services immediately reconnected Uranium One contacted

the Garfield County Attorney, who indicated that he was unaware that the District had disconnected Uranium One's electric service and that neither he nor the Garfield County Commissioners had authorized the disconnection of services. Uranium One was unable to obtain reconnection of electric service until the evening of June 3, 2010.

29. On June 4, 2010, Uranium One received an invoice from the District dated May 31, 2010 in the amount of \$27,346.35. The invoice was calculated using the New Rate Schedule again ignoring Uranium One's dispute concerning the District's billings and alleged New Rate Schedule. On June 14, 2010, Uranium One again paid the uncontested portion of the May invoice, \$4,120.91, and resubmitted a check for the April invoice without restrictive endorsement.

30. On Friday, June 11, 2010, Uranium One received notice from the District that electric service would be cut off to all of Uranium One's commercial properties included the Ticaboo Lodge on June 16, 2010, if payment of at least \$9,838.58 was not received by the District by that time.

31. With the District's refusal to negotiate or even discuss Uranium One's dispute over the rates and the District's threat to disconnect service to Uranium One's commercial facilities, including the Ticaboo Lodge. Uranium One sought help in resolving the dispute and on June 14, 2010 notified the Division of Public Utilities by telephone that it would request an Informal Review on the matter by the Utah Division of Public Utilities.

32. In less than 24 hours after notification of Uranium One's intent to seek informal review and help in resolving the dispute, and with little or no investigation or attempt to resolve the dispute and to receiving the written explanation of the dispute and Uranium One's concerns

and position, on June 15, 2010, Uranium One was advised by the Utah Division of Public Utilities that:

In reviewing all information provided by both parties we did not find Ticaboo Electric Service District to be in violation of their or Public Service Commission statutes or rules.

(A copy of the PSC's decision is attached as Exhibit 8.)

33. Uranium One does believe that under the circumstances as outlined in this formal complaint, mediation would be unsuccessful.

34. Uranium One now seeks Formal Agency Review of this dispute.

FIRST CAUSE OF ACTION

(Violation of Utah Law)

35. Uranium One realleges the allegations contained in paragraphs 4 through 37 above.

36. The District's failure to hold a public meeting and to provide notice of such meeting to the District's customers including Uranium One violated Utah law. Utah Code Ann. § 17B-2a-406(6)(b)(iii) provides that, prior to the implementation of any rate increases, the District must "[hold] a public meeting for all its customers to whom mailed notice of the meeting is sent at least ten days prior to the meeting."

37. No public meeting was held in regards to the adoption of the New Rate Schedule, and Uranium One received no notice of a meeting or of the alleged rate changes prior to the letter received March 31, 2010 for rates allegedly to go into effect on April 1, 2010.

38. The procedure employed by the District in adopting the New Rate Schedule violated Utah Code Ann. § 17B-2a-406(6)(b)(iii) by failing to hold a “public meeting” and failing to mailed notice of the meeting sent at least ten (10) days prior to the meeting to all District electric service customers including Uranium One.

39. The proposed New Rate Schedule is null and void and unenforceable.

40. The District, by its failure to comply with the requirements of U.C.A. 17B-2a 406(6)(b)(iii), is subject to the rate making provisions of U.C.A. 54-7-12. Thus, the New Rate cannot become effective until after completion of a hearing on the proposed rates before the Commission and a final order has been issued.

SECOND CAUSE OF ACTION

(Violation of District Rules and Regulation)

41. Uranium One realleges the allegations contained in paragraphs 4 through 40 above.

42. Prior to the implementation of the New Rate Schedule, the District did not hold a public meeting concerning the adoption of the new rates and charges and it did not give its customers including Uranium One notice, mailed at least ten days prior to the meeting nor did it file the April 1, 2010 New Rate Schedule with the Commission.

43. The procedure employed by the District in adopting the New Rate Schedule as set forth above violated Section 10.1.2 of the District’s Rules and Regulations by failing to hold a public meeting and failing to provide proper notice.

44. Further, the District violated Section 11.8.1 of the District’s own Rules and Regulations by improperly cutting off electric service to Uranium One properties, without notice.

45. As a result of the District's failure to abide by the provisions of Subsection 10.1.2 District's Rules and Regulations on site with the Commission in adopting its New Rate Schedule of April 1, 2010 and therefore the April 1, 2010 rate schedule is invalid and unenforceable.

THIRD CAUSE OF ACTION

(Breach of Contract The Memorandum of Understanding)

46. Uranium One realleges the allegations set forth in paragraphs 4 through 45 above.

47. The District adopted the invalid rate schedule in breach of the Memorandum of Understanding with Uranium One and contrary to representations made by the District to the Commission.

48. The New Rate Schedule adopted by the District breach the District's obligations under the MOU by proposing a fees schedule and charging non-uniform rates and charges for electric service among its residential and commercial customers.

49. Therefore, the April 1, 2010 New Rate Schedule is void and unenforceable.

PRAYER FOR RELIEF

WHEREFORE, Uranium One prays for an Order from the Commission as follows:

A. Declaring that the District's proposed New Rate Schedule is null and of no affect, for the District's failure to abide by the procedure of U.C.A. 17B-2a-406(6) and the District's Rules and Regulations, Tariff and Rate Schedules, Section 10.1.2, by failing to hold a public meeting regarding the adoption of new rate and give notice thereof, and by violating provisions of paragraph 11, of the Memorandum of Understanding requiring that all rates and charges be uniform among all classes of customers.

- B. Requiring that the District abide by the Schedule of Rates and Charges on file until the District in adopting new rates and charges complies with the requirements at U.C.A. § 17B-22-406 and the District's Rules and Regulations Section 10.1.2 and the provisions of paragraph 11 of the Memorandum of Understanding.
- C. For such further relief as the Commission deems to be just and equitable.

DATED this 24th day of June, 2010.

DORSEY & WHITNEY LLP

By: _____
Douglas J. Parry
Attorneys for Uranium One Ticaboo Inc.