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**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF UTAH**

In the Matter of Caithness Condominium HOA	:	
	:	
	:	Docket No. 12-035-86
Complainant,	:	
	:	
vs.	:	
	:	
PACIFICORP,	:	PACIFICORP’S ANSWER,
d/b/a Rocky Mountain Power,	:	MOTION TO DISMISS AND MOTION TO
	:	VACATE HEARING
	:	
Respondent.	:	

PacifiCorp, d/b/a Rocky Mountain Power (“Rocky Mountain Power” or the “Company”), provides its Answer to the complaint filed by Caithness Condominium HOA with the Public Service Commission of Utah (the “Commission”) on June 21, 2012 (the “Complaint”). The Complaint requests the Commission to find that a binding agreement arose out of an alleged conversation in 2010, although no proof of such agreement or conversation exists and the alleged agreement would be in violation of the approved tariff. Furthermore, the Company moves that the Complaint be dismissed in its entirety, with prejudice, because Rocky Mountain Power has not violated any provision of law, Commission order or rule, or Company tariff. Rocky

Mountain Power also moves to vacate the hearing set for July 26, 2012 to discuss Complainant's request for master metering because Complainant has not made a written request to the Company and has not prepared a cost-benefit study as required by Commission Rules, R746-210-3.

PRELIMINARY MATTERS

Communications regarding this Docket should be addressed to:

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BACKGROUND

1. Caithness Condominium HOA is located at 86 B Street, Salt Lake City, Utah, and has been a customer of record at the location since 2004. The site is master metered with one meter providing service to the building. The Company's records indicate the meter was set up prior to 1989 and serviced a 33-unit hotel. The meter is billed on Utah Electrical Service Schedule 1.

2. On or about June 10, 2010, Mr. Joel Smith met with the Company about upgrading the service to the building as part of a remodeling project. Nothing in the Company's

records indicate the employees who met with Complainant were aware the building had been converted from a hotel to condominiums, or that any employee granted a waiver to allow master metering of condominiums. The Company told Mr. Smith he needed to provide an electrical load sheet with information on the type of electrical equipment being installed and the projected electrical load in order to determine the equipment needed to provide power to the building adequate to meet any proposed increase in electrical load. The Company did not receive any additional information from Mr. Smith, did not receive a load sheet from Mr. Smith, and after several unanswered phone calls to Mr. Smith, the Company closed the work order.

3. On November 2, 2011, Mr. Smith again met with the Company to inquire about upgrading the electrical service from 200 amp to 1200 amp service to allow for air conditioning and additional capacity. During this conversation, Mr. Smith indicated the building had been converted to condominiums. The Company advised Mr. Smith that with the change in service and load, he would be required to bring the building up to code and follow the tariff including installing a meter on each unit. Company records indicate the employee stated additional information was needed to complete an estimate, including a load sheet and desired panel size. Mr. Smith avoided discussing the metering, and only wanted the requirements for an underground conduit in order to finish work on the sidewalk near the building. Mr. Smith stated he would contact the Company after he hired an electrician. Again, the Company did not receive any additional information from Mr. Smith, did not receive a load sheet, and closed the request due to no follow up by Mr. Smith.

4. In April and May of 2012, two electrical contractors who were preparing bids for the upgrade to the building contacted the Company. Both electrical contractors were informed of the requirement to meter each condominium unit individually, and each electrical contractor was

asked to submit a standard electrical load sheet detailing the desired upgraded loads. No information was provided to the Company and the request was closed due to no follow up by Mr. Smith or the two electrical contractors.

5. At this time, the Company has not received load information that would allow it to make a final determination on metering requirements. The Company has not provided an estimate and no written agreement exists between Mr. Smith or his contractors and the Company for electrical service to the building.

6. On May 8, 2012, Mr. Smith on behalf of Caithness Condominium HOA, initiated an informal complaint with the Utah Public Service Commission and the case was given to the Utah Division of Public Utilities (“DPU”) for investigation. Mr. Smith alleged the Company verbally agreed that the location could continue with a master meter. The Company responded to the informal complaint on May 11, 2012. The informal complaint investigation found “no record of a verbal agreement to allow for master metering.” Informal Complaint Report, Index No. 4457. The DPU closed the informal complaint on May 11, 2012.

MOTION TO DISMISS

The Company moves under Utah Rules of Civil Procedure, Rule 12(b)(6) for an Order dismissing the Complaint. In support of this motion, the Company states the complaint fails to establish the Company violated Commission rules, Company tariffs or that its actions are unjust.

It is undisputed the building has been converted from a hotel to condominiums. Master metering is restricted by the federal Public Utility Regulatory Policy Act (PURPA) – Standards for Master-Metered Multiple Tenancy Dwellings, adopted by the Commission as R746-210-1. Although hotels, motels, nursing homes and other “transient multiple occupancy buildings” are

exempted under R746-210-3, condominiums must be individually metered¹. The rules apply to existing buildings whenever a building permit is obtained.

Complainant alleges during a verbal discussion held in 2010, the Company granted an enforceable waiver to the metering requirement, but presents no evidence to support this contention. Under Utah law, a waiver is the “intentional relinquishment of a known right.” *Westside Dixon Associates LLC v. Utah Power and Light and Cmm’n*, 44 P.3d 775, ¶20 (Utah 2002) (discussing waiver under R746-210) (internal citations omitted). Complainant presents no evidence the Company knew in 2010 that the building had been converted to condominiums or that it intentionally relinquished its right under R746-210 to object to master metering.

The company has no documentation of a 2010 conversation as stated by Complainant, nor any indication the Rocky Mountain Power employee was aware in 2010 the building had been converted to condominiums. The informal complaint investigation found “no record of a verbal agreement to allow for master metering.” Informal Complaint Report, Index No. 4457, P.1. The Company’s records indicate it was first informed of the conversion to condominiums in November 2011. A statement in 2010 that master metering could continue would be an accurate representation of the company’s requirements for a building it thought was a *hotel* rather than a waiver of individual metering requirements for *condominiums*.

The Company could not have determined whether master metering could continue without first receiving load information. Without load information, the Company is unable to determine if the existing facilities are sufficient to accommodate the customer’s request for increased load, which might qualify it for an exemption under R746-210-2(2). Without the information to make a determination of the metering requirements, the Company could not have

¹ Depending upon the actual load request and other facts not presently of record, condominiums may qualify for an automatic exemption to individual metering under R.746-210-2(a)(2)

known what its rights were under R746-210. The alleged waiver is nothing more than an unsubstantiated preliminary conversation, which is not sufficient to manifest a knowing, intentional waiver.

Moreover, such verbal waiver cannot be made by the Company. “The utility has no discretion in granting an exemption” unless the customer qualifies under the exemptions set forth in the rules. *Id.* at ¶20. There is no evidence the Company has made any official determination of the metering requirements, which would be one of several prerequisite steps to the exemption process outlined in R746-210-3. Any such exemption must be based upon a cost-effectiveness test, with the burden of proof falling on the “person requesting exemption.” Utah Admin. Code R746-210-3. The Utah Supreme Court has previously held:

“To qualify for a case-specific exemption from the master metering prohibition, a party must engage in a two-step procedure: (1) it must make a request in writing to the utility using a benefit-to-cost ratio analysis showing that master metering costs are less than separate metering costs, and (2) in employing the methodology specified in the rule, which requires a showing that ‘the benefit-to-cost ratio is less than one with respect to separate metering using the cost effectiveness test guidelines,’ it must ‘demonstrate that the long-run benefits of individual metering to the electric consumer are less than the costs of purchasing and installing separate meters.’” Utah Admin. Code Rule 746-210-3. *Id.* at ¶14.

There is no written request and no cost benefit study. The Complaint fails to establish any violation of Commission rules, tariffs, or that its actions are unjust. The Complaint is simply premature. The Company concurs in the July 5, 2012 recommendation of the Division of Public Utilities and moves the Commission to dismiss the Complaint.

ANSWER

In the event the Company’s Motion to Dismiss is not granted, the Company answers the Complaint as follows. Complainant alleges during a verbal discussion held in 2010, the Company granted an enforceable waiver to the metering requirement. The Company denies this

allegation. No contract exists between Complainant and the Company, and no official determination was ever made regarding master or individual metering. If Complainant provides the information needed for the Company to verify the electrical service requirements for the building and enters into a contract, the Company will design a system and review the applicable metering requirements. If Complainant does not qualify for the automatic exemption under R746-210-2 and submits a study demonstrating the long term benefits of individual metering to the consumer are less than the costs of installing such meters, the Company will make a determination under R746-210-3. After the Company “denies the exemption request,” the Commission may “initiate proceedings arising out of a formal complaint.” *Id.* Until such time, any Commission relief is premature.

CONCLUSION

WHEREFORE having fully answered Complainant’s complaint and finding no violation of law, Commission rules, or Company tariffs to base an award of the relief requested, the Company prays for the dismissal of the Complaint with prejudice. The Company respectfully requests the hearing set for July 26, 2012 be vacated until such time as Complainant complies with the process contemplated by R746-210-3.

Dated this 20th day of July 2012.

Respectfully submitted,

Barbara Ishimatsu

Attorney for Rocky Mountain Power

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **PACIFICORP'S ANSWER AND MOTION TO DISMISS** to be served upon the following by electronic mail or U.S. postage to the addresses shown below on July 20, 2012.

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Michael Snow, Rocky Mountain Power