

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Formal Complaint of )  
Rod Stephens against Rocky Mountain ) DOCKET NO. 14-035-52  
Power ) ORDER  
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ISSUED: November 4, 2014

SYNOPSIS

The Commission suspends its decision on the Company's motion to dismiss, pending an opportunity for Mr. Stephens to submit a survey establishing that the power pole at issue is "at the lot line" or on his property.

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I. BACKGROUND

On June 30, 2014, the Commission issued an order granting PacifiCorp's, dba Rocky Mountain Power (Company), motion to dismiss in this docket.<sup>1</sup> Rod Stephens (Mr. Stephens) subsequently filed a request for review of that order,<sup>2</sup> and the Company responded.<sup>3</sup>

On August 7, 2014, the Commission granted Mr. Stephens's request for review and scheduled the matter for hearing.<sup>4</sup> The hearing was held on September 16, 2014.<sup>5</sup> Mr. Stephens appeared together with his counsel, Jared Bingham.<sup>6</sup> Yvonne Hogle represented the Company, and was accompanied by the Company's witness, F. Robert Stewart (Mr. Stewart), senior regulatory specialist.<sup>7</sup> The Administrative Law Judge (ALJ) for the Commission heard

<sup>1</sup> See Order Granting Rocky Mountain Power's Motion to Dismiss, issued June 30, 2014.

<sup>2</sup> See Complainant's Request for Review, filed July 22, 2014.

<sup>3</sup> See Rocky Mountain Power's Response to Complainant's Request for Review, filed August 6, 2014.

<sup>4</sup> See Order Granting Request for Review and Notice of Hearing, issued August 7, 2014. The hearing was subsequently rescheduled at the request of the parties. See also Notice of Rescheduled Hearing, issued September 4, 2014.

<sup>5</sup> See Notice of Rescheduled Hearing, issued September 4, 2014.

<sup>6</sup> See Hr'g Tr. 5:13-14.

<sup>7</sup> See id. 6:1-4; 37:19-20.

testimony from both Mr. Stephens and Mr. Stewart. Both parties also presented exhibits, which are part of the record.<sup>8</sup>

## II. ELECTRIC SERVICE REGULATION NO. 12 AND ITS HISTORY

This matter involves a dispute about the Company's Electric Service Regulation No. 12 and, more specifically, Section 2(e) of that regulation.<sup>9</sup> Section 2(e) states:

### **2. RESIDENTIAL EXTENSIONS**

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#### **(e) Transformation Facilities**

When an existing residential Customer adds load, or a new residential Customer builds in a subdivision where secondary service is available at the lot line either by means of a transformer or a secondary junction box and the existing transformation facilities or service conductors are unable to serve the increased residential load:

- 1) the facilities upgrade shall be treated as a standard line extension if Customer's demand exceeds the capacity of the existing facilities;
- 2) the facilities upgrade shall be treated as a system improvement and not be charged to the Customer if the Customer's demand does not exceed the capacity of the existing facilities.<sup>10</sup>

The Company filed initial and amended applications to modify Regulation No. 12, Section 2(e) with the Commission on July 15, 2008, and September 23, 2008, respectively, in Docket No. 08-035-T05.<sup>11</sup> The letter accompanying the Company's filing states that "Section

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<sup>8</sup> Counsel for Mr. Stephens moved for admission of exhibits at the hearing, see id. at 36:17-22, and the Company moved for admission of its exhibits by stipulated motion filed after the hearing. See Stipulated Motion for Admission of Exhibits and Pleadings into the Record, filed September 17, 2014. Both sets of exhibits are attached to the transcript of the hearing. See Hr'g Tr., Complainant's Exhibits 1-9, and Company's Exhibits 1-7.

<sup>9</sup> Electric Service Regulation No. 12 is available, in its entirety, at: [https://www.rockymountainpower.net/content/dam/rocky\\_mountain\\_power/doc/About\\_Us/Rates\\_and\\_Regulation/Utah/Approved\\_Tariffs/Rules/Line\\_Extensions.pdf](https://www.rockymountainpower.net/content/dam/rocky_mountain_power/doc/About_Us/Rates_and_Regulation/Utah/Approved_Tariffs/Rules/Line_Extensions.pdf).

<sup>10</sup> Electric Service Regulation No. 12(2)(e).

<sup>11</sup> See In the Matter of Rocky Mountain Power is proposing changes to Electric Service Regulations 2 (General Definitions), 4 (Supply and Use of Service), 5 (Customer's Installation) and 12 (Line Extensions) (Docket No. 08-

2(e) Transformation Facilities, has been added to clarify the customer's and the Company's responsibilities when it is necessary to upgrade existing transformer or service conductor capacity. This proposed section makes it [the Company's] responsibility to upgrade the capacity if a residential customer only contributes to the overload. However[,] if the residential customer's load alone is more than the existing capacity[,] the upgrade will be treated as a regular line extension."<sup>12</sup>

Section 2(e) has remained unaltered since the Commission approved modification to it on October 28, 2008, and it is the basis for the disagreement between the parties in this docket.<sup>13</sup>

### III. PARTIES' POSITIONS

#### A. Mr. Stephens's Position

Mr. Stephens argued that under the plain language of Section 2(e) above he should prevail in his request for a refund from the Company to upgrade the transformer that services his home in Morgan County. The refund Mr. Stephens requests is \$4,158.<sup>14</sup> This amount is broken down as follows:

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035-T05). The Commission takes administrative notice of this docket. The Company's witness also acknowledged this docket at hearing. See Hr'g Tr. 79:3.

<sup>12</sup> Letter from Jeffrey K. Larsen, Vice President, Regulation, to Commission (July 15, 2008), filed in Docket No. 08-035-T05 on or about July 15, 2008 (emphasis added), available at: <http://www.psc.utah.gov/utilities/electric/elecindx/2006-2009/08035T05indx.html>.

<sup>13</sup> The Company's witness testified that he filed Regulation No. 12 with the Commission and the changes thereto over the last 15 years. See Hr'g Tr. 38:1-5. He also testified that he filed Section 2(e) of Regulation No. 12 with the Commission in 2008. See id. 38:6-9.

<sup>14</sup> See Formal Complaint at 2, filed April 24, 2014.

<b><u>Item and Amount Charged</u></b>	
Material Salvage	-\$ 262
Removal Labor	\$ 739
Bird guard, grounding & bolts	\$ 866
Jumpers, fusing, clamps	\$ 998
Riser and brackets	\$ 664
Transformer	\$1,497
Ovh service connectors & labor	\$ 406
Underground service conductor & elbows	\$1,522
Meters	<u>\$ 138</u>
	\$6,568
Line extension allowance	<u>-\$1,100</u>
<b>Total amount paid</b>	<b>\$5,468</b>
Credit for contested, shaded items above	\$5,170
Credit for secondary voltage at the lot line	\$ 350 <sup>15</sup>
Material Salvage to offset credit above	-\$ 262
Line extension allowance to offset credit above	<u>-\$1,100</u>
<b>Total refund requested</b>	<b>\$4,158<sup>16</sup></b>

Mr. Stephens testified that he satisfies Section 2(e) because he is a new residential customer<sup>17</sup> who built in a subdivision<sup>18</sup> where secondary service is available at the lot line<sup>19</sup> by means of a transformer<sup>20</sup> and the existing transformation facilities were unable to serve the increased residential load.<sup>21</sup> Further, Mr. Stephens testified that he is entitled to a refund because Section 2(e)(2)<sup>22</sup> requires the facilities upgrade (i.e., the new transformer) to be treated as a

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<sup>15</sup> Mr. Stephens asserted that this credit is supported by Electric Service Regulation No. 12(2)(a). See Formal Complaint at 2 (stating that “[The Company] should provide a[] . . . \$350 credit to me since the secondary voltage service is available at the lot line . . .”). Section 2(a) states: “The Extension Allowance for permanent single residential applications is \$1100. The Extension Allowance for a residential application in a planned development where secondary voltage service is available at the lot line is \$350. The Applicant must advance the costs exceeding the Extension Allowance prior to the start of construction.” Electric Service Regulation No. 12(2)(a) (emphasis added).

<sup>16</sup> See Formal Complaint at 2, filed April 24, 2014. See also Hr’g Tr. 19:16-25; 20:1-4; 28:6-12, 18-25; 29:3-6.

<sup>17</sup> See Hr’g Tr. 33:2-4.

<sup>18</sup> See Hr’g Tr. 33:5-6.

<sup>19</sup> See Hr’g Tr. 33:7-10.

<sup>20</sup> See id.

<sup>21</sup> See Hr’g Tr. 33:11-13.

<sup>22</sup> See Hr’g Tr. 32:19-22 (Mr. Stephens testifying that he falls under Regulation No. 12(2)(e)(2)).

system improvement and not charged to him because his demand does not exceed the capacity of the existing facilities.<sup>23</sup>

B. The Company's Position

The Company argued Mr. Stephens should not be allowed to prevail, and the Company's motion to dismiss should be granted, because there is no secondary service at the lot line.<sup>24</sup>

The Company testified that Section 2(e) "addresses . . . a situation where . . . a customer request[s] service from existing facilities, and those facilities . . . are not large enough to serve the[] [customer]."<sup>25</sup> The Company also testified that Section 2(e) was filed because "people were converting from swamp coolers to air conditioning units. And [the Company's] tariff, at that time, did not have this clause in there. . . . And it was desirable to reach a consistency of who would have to pay and who wouldn't when a customer's already served from a transformer; or in the situation of a subdivision where the developer provided service to the lot line already where [the Company] had designed the size of [the] facilities, that [the Company] wanted to have it determined whether or not the customer building on that lot would have to pay for upgrading the transformers being shared with other lots. . . . [S]o [the Company] filed [Section 2(e)] . . . that addressed existing residential customers and new customers who build in a subdivision where secondary service is available at the lot line as given in the section on developers [namely, Section 4(b)]."<sup>26</sup>

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<sup>23</sup> See Hr'g Tr. 34:4-5, 9-11.

<sup>24</sup> See Company's Opening Statement, Hr'g Tr. 6:25; 7:1-7.

<sup>25</sup> Hr'g Tr. 44:10-13.

<sup>26</sup> Hr'g Tr. 44:18-20; 45:4-15.

According to the Company, it limits application of Regulation No. 12(2)(e) to new customers in subdivisions with secondary service at the lot line.<sup>27</sup> The Company asserted the reason for this is found in Section 4(b) of Regulation No. 12, which requires a subdivision developer to contract with the Company to make primary service available to each lot.<sup>28</sup> Because the developer of Mr. Stephens's subdivision did not enter into an agreement with the Company under Section 4(b),<sup>29</sup> the Company argued Section 2(e) does not apply to him.<sup>30</sup> Consequently, according to the Company, secondary service is not available at the lot line.<sup>31</sup> Further, the Company argued that even after Mr. Stephens contracted with the Company to bring permanent service to his home, "there . . . still isn't any transformer secondary box at the lot line."<sup>32</sup> The Company, however, acknowledged that "it's true there's power right there [at the pole on which Mr. Stephens paid to have the transformer replaced]"<sup>33</sup> but the Company's position is that the issue is "what provisions of the tariff apply to getting power from that point."<sup>34</sup>

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<sup>27</sup> Hr'g Tr. 46:3-8.

<sup>28</sup> The Company testified that "when a developer requests power to [a] subdivision, we design it. We decide how big the transformers are. . . . [T]he understanding is that we're going to design that transformer to be big enough to serve all the lots that it's serving and that the customers won't have to pay to upgrade it, unless . . . they exceed the capacity of that by themselves." Id. 46:15-21.

<sup>29</sup> See Hr'g Tr. 50:1-7.

<sup>30</sup> See Hr'g Tr. 47:9-17.

<sup>31</sup> See Hr'g Tr. 47:18-19. The Company argued that "there's [sic] transformer poles in the road right-of-way but not . . . at [the] lot lines of any of the lots." Id. 47:24-25; 48:1. The Company also argued that "had we been requested to serve [Mack's Place Subdivision] by a developer, we would have installed a transformer that could serve these three lots. We would have then run secondary to secondary boxes so that there would be . . . secondary power . . . available to each lot line from which each of those customers, when they built on their lot, could have connected to and served their homes. There would have been secondary at the lot line and then the customer would have fallen under the provisions of a new customer on a lot in a subdivision." Id. 49:3-12.

<sup>32</sup> Hr'g Tr. 48:2-5.

<sup>33</sup> Hr'g Tr. 50:14.

<sup>34</sup> Hr'g Tr. 50:18-19.

The Company asserted it is treating Mr. Stephens in the same manner as it would any other similarly situated residential customer.<sup>35</sup> The Company argued that the plain reading of Section 2(e) when read together with the “parallel” provision contained in Regulation No. 12, which the Company identified as Sections 2(a) and 4(b), does not allow Mr. Stephens to prevail because secondary service is not available at the lot line.

#### IV. STANDARD OF REVIEW

Rule 12(b)(6) of the Utah Rules of Civil Procedure, which is incorporated by reference by Utah Admin. Code R746-100-1(C), permits a party to file a motion to dismiss for “failure to state a claim upon which relief can be granted.”<sup>36</sup> In ruling on a motion to dismiss for failure to state a claim, we accept the factual allegations contained in the complaint as true and consider all reasonable inferences to be drawn from those facts in the light most favorable to the complainant.<sup>37</sup>

#### V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The regulation governing this dispute is the Company’s Electric Service Regulation No. 12. As noted above, Section 2(e) states as follows:

##### **2. RESIDENTIAL EXTENSIONS**

....

##### **(e) Transformation Facilities**

When an existing residential Customer adds load, or a new residential Customer builds in a subdivision where secondary service is available at the lot line either by means of a transformer or a secondary junction box and the existing transformation facilities or service conductors are unable to serve the increased residential load:

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<sup>35</sup> Hr’g Tr. 56:8-11.

<sup>36</sup> Utah R. Civ. P. 12(b)(6) (LexisNexis 2014).

<sup>37</sup> Cf. Mounteer v. Utah Power & Light Co., 823 P.2d 1055, 1058 (Utah 1991).

- 1) the facilities upgrade shall be treated as a standard line extension if Customer's demand exceeds the capacity of the existing facilities;
- 2) the facilities upgrade shall be treated as a system improvement and not be charged to the Customer if the Customer's demand does not exceed the capacity of the existing facilities.<sup>38</sup>

Therefore, we address the complaint under this regulation and, in doing so, we address each of its component parts.

**A. Part I of Regulation No. (2)(e)**

**Is Mr. Stephens “a new residential Customer”?**

Mr. Stephens provided a copy of the executed residential service contract he entered into with the Company to provide new service to his home,<sup>39</sup> and he testified that he is a new residential customer.<sup>40</sup> The Company did not dispute this issue.<sup>41</sup> Therefore, we conclude Mr. Stephens is a new residential customer for purposes of Regulation No. 12(2)(e).

**Did Mr. Stephens “build[] in a subdivision”?**

Both parties presented evidence that Mr. Stephens's home is located in Mack's Place Subdivision, which was recorded by the Morgan County Recorder on May 16, 2013.<sup>42</sup> Mr. Stephens also presented a letter from the Company to the developer of Mack's Place Subdivision, in which the Company refers to the “subdivision” and the work and payment that will be required to bring power to the property.<sup>43</sup> The letter further states: “All single lot

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<sup>38</sup> Electric Service Regulation No. 12(2)(e).

<sup>39</sup> See Hr'g Tr., Complainant's Exhibit 6.

<sup>40</sup> See Hr'g Tr. 33:2-4.

<sup>41</sup> See Hr'g Tr. 83:3 (“he was a new residential customer”).

<sup>42</sup> See Hr'g Tr., Complainant's Exhibit 2. See also *id.* Company's Exhibit 1.

<sup>43</sup> See Hr'g Tr., Complainant's Exhibit 4.



applicants will be subject to the line extension rules and regulation 12.”<sup>44</sup> Mr. Stephens testified he understood this letter to mean that Regulation No. 12(2)(e) would apply to him.<sup>45</sup>

The Company does not dispute that Mr. Stephens built his home in Mack’s Place Subdivision. However, the Company disputes what “*subdivision*” means in Section 2(e). The Company argues that the word “*subdivision*” means that, under Section 4(b) the developer of the Mack’s Place Subdivision was required to sign a contract with the Company to provide power to each of the lots.<sup>46</sup>

The plain language of Section 2(e) makes no mention of Section 4(b). Further, Regulation No. 12(1)’s “conditions and definitions” contains no definition for the term “*subdivision*.” However, Regulation No. 12(4)(a), which precedes Section 4(b), refers to a “*subdivision*” as “areas where groups of buildings or dwellings may be constructed at or about the same time,” and this is consistent with the Company’s “general definitions” in Regulation No. 2.<sup>47</sup> Thus, the plain language of Section 2(e) does not support the Company’s limited interpretation of what “*subdivision*” means.

If the Company intended the word “*subdivision*” in Section 2(e) to mean only areas where a developer has contracted with the Company pursuant to Section 4(b), the

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<sup>44</sup> Id.

<sup>45</sup> See Hr’g Tr. 16:8-10.

<sup>46</sup> We note Sections 4(a) and (b) specify what will happen when a subdivision developer executes a written contract and pays a non-refundable advance to make secondary voltage service available to each lot. However, these sections are silent on what happens in the event the subdivision developer does not do these things.

<sup>47</sup> See Regulation No. 2(33) (defining “*subdivision*” as “[a]n area identified by filed subdivision plats in which a group of dwellings may be constructed at about the same time”).

Company could have clarified that in its regulation, but it has not done so.<sup>48</sup> Thus, based on the plain language of Section 2(e) along with the undisputed evidence submitted that Mr. Stephens's home is in Mack's Place Subdivision – we conclude Mr. Stephens meets the “subdivision” requirement of Regulation No. 12(2)(e).

**Is “secondary service . . . available at the lot line . . . by means of a transformer or a secondary junction box”?**

Mr. Stephens testified that the power pole with the transformer that he paid to upgrade is on his property.<sup>49</sup> He testified that the developer of Mack's Place Subdivision pointed out the power pole and told him that it was on his lot.<sup>50</sup> Mr. Stephens also clarified that even though his reply to the Company's motion to dismiss stated that the power pole and transformer “are found on the corner of [his] lot next to the lot line[,]” he testified that “[i]t's not quite the corner. It's more in the middle of my lot. . . . [I]t's inside my lot.”<sup>51</sup> Mr. Stephens's testimony is consistent with what he alleged in his formal complaint.<sup>52</sup>

The Company testified that the power pole was in existence before Mack's Place Subdivision existed<sup>53</sup> and that it is located in the dedicated roadway right-of-way seven feet away from Mr. Stephens's property line.<sup>54</sup> The Company also testified that the power pole was

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<sup>48</sup> The Commission further notes that Regulation No. 12(4)(a) refers to a “*subdivision*” as “areas where groups of buildings or dwellings may constructed at or about the same time.” Thus, Section 4(a) itself does not support the Company's limited interpretation of what “*subdivision*” means.

<sup>49</sup> See Hr'g Tr. 11:25; 12:1-3. See also *id.* 26:19-21, and *id.* 27:17-18.

<sup>50</sup> See Hr'g Tr. 16:15-16.

<sup>51</sup> See Hr'g Tr. 23:10-17. See also *id.* 24:10-11 (stating that what was stated in the reply brief was in error).

<sup>52</sup> Formal Complaint at 2 (stating that “[t]here is an existing transformer on a [utility] pole that sits on my property...”).

<sup>53</sup> See Hr'g Tr. 38:25; 39:1-4.

<sup>54</sup> See Hr'g Tr. 40:5-9, 24-25. See also Hr'g Tr. 42:3-5.

installed pursuant to a franchise agreement with the county,<sup>55</sup> but the Company's witness testified he had never read the franchise agreement and could not confirm whether such an agreement existed.<sup>56</sup> According to the Company, there is secondary service available in the road right-of-way, but not at the lot line.<sup>57</sup> The Company further maintained that even after providing service to Mr. Stephens pursuant to the residential service contract there is still no secondary service – i.e., “[a] transformer secondary box [or secondary pedestal] at the lot line.”<sup>58</sup>

The Company argued “*secondary service*” means that, under Section 4(b), the developer of the Mack’s Place Subdivision was required to sign a contract with the Company to provide power to each of the lots and, since the developer failed to do that,<sup>59</sup> secondary service does not exist.<sup>60</sup> The Company asserted that without a “secondary box” or “secondary pedestal” that extends from the transformer and is placed on the customer’s lot line, secondary service does not exist. However, on cross-examination, the Company acknowledged that Section 2(e) refers to “either . . . a transformer or a secondary junction box”<sup>61</sup> and “[b]oth . . . are used to define secondary service”;<sup>62</sup> so, either will satisfy Section 2(e).<sup>63</sup> And when Mr. Stephens’s counsel asked the Company what the result would be if the existing transformer was found to be on Mr.

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<sup>55</sup> See Hr’g Tr. 40:20-23; 66:2-4.

<sup>56</sup> See Hr’g Tr. 79:17-18; 80:4-11.

<sup>57</sup> See Hr’g Tr. 47:20-25; 48:1. See also *id.* 55:19-21 (testifying that it is correct that there is no overlap between the transformer pole and Mr. Stephens’s property).

<sup>58</sup> Hr’g Tr. 48:2-5. See also *id.* 50:22-25; 51:1-13 (discussing both “secondary boxes” and “secondary pedestals” interchangeably).

<sup>59</sup> See Hr’g Tr. 50:1-7.

<sup>60</sup> See Hr’g Tr. 47:20-23.

<sup>61</sup> Hr’g Tr. 59:16-17, 20-21 (emphasis added).

<sup>62</sup> Hr’g Tr. 60:1-2.

<sup>63</sup> See *id.* 60:5-7.

Stephens's property,<sup>64</sup> the Company first responded that "[i]t ties back to the language [of Section 4(b)],"<sup>65</sup> but then the Company stated "maybe it's not as explicitly clear as we thought it was. ...."<sup>66</sup> Further, when the ALJ asked how a customer would know that Section 2(e) meant what the Company asserted it meant, the Company suggested, "if [a customer] did not know what it meant, the[] [customer] would have to ask the company for assistance to understand that."<sup>67</sup>

The Company argued that the phrase "*at the lot line*" means "*on*" or "*touching*" the lot line.<sup>68</sup> In support of its interpretation, the Company relied on Sections 2(a) and 4(b) of Regulation No. 12.<sup>69</sup> Section 2(a) refers to a \$350 "[e]xtension [a]llowance for a residential application in a planned development where secondary voltage service is available at the lot line...."<sup>70</sup> In addition to Section 2(e), sections 2(a) and 4(b) both use the phrase "*at the lot line*." Mr. Stephens testified the power pole is "*on*" his property, while the Company testified it is *near* his property (i.e., that it is located some seven feet from Mr. Stephens's property line). Yet the Company maintains "*at the lot line*" means "*on the lot line*," and that is how the Company has applied the regulation since its inception. We find it is reasonable to interpret the phrase "*at the lot line*" to mean "on the lot line," "touching the lot line," or "on the customer's property."

Further, while both parties testified that the transformer in question exists, it is unclear whether it exists in the dedicated roadway right-of-way or on Mr. Stephens's property.

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<sup>64</sup> Hr'g Tr. 68:9-15.

<sup>65</sup> Hr'g Tr. 68:16.

<sup>66</sup> Hr'g Tr. 68:21-22.

<sup>67</sup> Hr'g Tr. 78:13-18.

<sup>68</sup> Hr'g Tr. 75:19.

<sup>69</sup> Hr'g Tr. 76:2, 10-11.

<sup>70</sup> Regulation No. 12(2)(a) (emphasis added).

The Company submitted a photo showing the power pole in question is located outside of a fence line that runs parallel to Morgan Valley Drive. This picture suggests the pole is outside the boundaries of Mr. Stephens's property, but neither party provided a survey.<sup>71</sup> A survey would show whether the pole is, in fact, on Mr. Stephens's property as he testified. Therefore, we find that allowing Mr. Stephens an opportunity to file a survey within 60 days of this order is appropriate.

If Mr. Stephens submits a survey showing the power pole is "at the lot line" or on any portion of his property – whether it be in the utility easement or some other area that is part of his property's legal description – then the power pole will be deemed to be *at the lot line* for purposes of Regulation 12(2)(e) and the remainder of our analysis will apply. Alternatively, if Mr. Stephens does not submit a survey within the time permitted, or if the survey does not show the power pole is on his property, then our analysis ends here and Mr. Stephens's complaint will be deemed denied and the Company's motion granted.

**Are "the existing transformation facilities . . . unable to serve the increased residential load"?**

Mr. Stephens testified that he understood this provision to mean that the old transformer "[could not] pull the load of both [his] home and the [other] home [the Company is serving]."<sup>72</sup>

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<sup>71</sup> See Hr'g Tr. 27:24-25; 28:1-4. See also *id.* 63:23-25; 71:24-25; 71:1-2 (company testifying it did not perform a survey).

<sup>72</sup> See Hr'g Tr. 35:11-17.

This issue is undisputed. The Company required the upgraded transformer because the existing transformer was unable to serve the load of Mr. Stephens's new home.<sup>73</sup> Thus, we conclude this requirement is satisfied.

**B. Part II of Regulation No. 12(2)(e)**

In the event a survey demonstrates the power pole and transformer are "at the lot line" or on Mr. Stephens's property, then Regulation No. 12(2)(e) is satisfied. We next determine whether "1) the facilities upgrade shall be treated as a standard line extension if Customer's demand exceeds the capacity of the existing facilities; [or] 2) the facilities upgrade shall be treated as a system improvement and not be charged to the Customer if the Customer's demand does not exceed the capacity of the existing facilities."<sup>74</sup>

Mr. Stephens testified that he meets the second prong above,<sup>75</sup> and therefore he is entitled to a refund.

**Does "[Mr. Stephens's] demand exceed[] the capacity of the existing facilities"?**

It is undisputed that Mr. Stephens's demand does not exceed the capacity of the existing facilities.<sup>76</sup> Accordingly, pursuant to Section 2(e)(2) of Regulation No. 12, "the facilities upgrade shall be treated as a system improvement and not be charged to the Customer . . . ."

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<sup>73</sup> See Hr'g Tr. 14:11-13. See also *id.*, Complainant's Exhibit 9 (email from Autumn Braithwaite, to Mr. Stephens, stating that "The transformer currently in place is a 10 kVa transformer currently loaded at 80%. Based on the load information provided for the home you are building, you will exceed the capacity of the existing transformer."). See also Formal Complaint, attached email from Autumn Braithwaite, to Mr. Stephens (Mar. 25, 2014; 4:49 PM) (stating that "[the transformer] do[es] not have enough capacity to provide electric service to your home").

<sup>74</sup> Electric Service Regulation No. 12(2)(e)(1)-(2).

<sup>75</sup> See Hr'g Tr. 35:20-25; 36:1-3.

<sup>76</sup> See Hr'g Tr., Complainant's Exhibit 9 (email from Autumn Braithwaite, to Mr. Stephens, stating that "The transformer currently in place is a 10 kVa transformer currently loaded at 80%. Based on the load information

VI. ORDER

For the foregoing reasons, the Commission suspends a final order in this docket pending receipt of a survey from Mr. Stephens showing the power pole at issue is “at the lot line” or on his property. Mr. Stephens may file the survey with the Commission within 60 days of this order. If Mr. Stephens fails to file a survey, or if the survey does not establish that the power pole in question is on his property, his complaint will be deemed denied and the Company’s motion granted. Alternatively, if the survey shows the power pole is on his property, then he will have met the requirements of Regulation No. 12(2)(e) and he will have demonstrated his entitlement to the relief requested.

DATED at Salt Lake City, Utah, this 4<sup>th</sup> day of November, 2014.

/s/ Melanie A. Reif  
Administrative Law Judge

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provided for the home you are building, you will exceed the capacity of the existing transformer.”) (Emphasis added).

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Approved and confirmed this 4<sup>th</sup> day of November, 2014, as the Report and Order  
of the Public Service Commission of Utah.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary  
DW#261871



CERTIFICATE OF SERVICE

I CERTIFY that on the 4<sup>th</sup> day of November, 2014, a true and correct copy of the foregoing was served upon the following as indicated below:

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