



*Daniel E. Solander
Senior Attorney
1407 West North Temple, Suite 320
Salt Lake City, UT 84116
801-220-4014 Office
daniel.solander@pacificorp.com*

August 7, 2017

VIA ELECTRONIC FILING

Public Service Commission of Utah
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, UT 84114

Attention: Gary Widerburg
Commission Secretary

RE: In the Matter of the Formal Complaint of Rulon Crosby Against Rocky Mountain Power –
Docket No. 17-035-42

Dear Mr. Widerburg:

Rocky Mountain Power (“Company”) hereby submits for filing its Answer and Motion to Dismiss in the above referenced matter.

The Company respectfully requests that all formal correspondence and requests for additional information regarding this filing be addressed to the following:

By E-mail (preferred): datareq@pacificorp.com
bob.lively@pacificorp.com

By regular mail: Data Request Response Center
PacifiCorp
825 NE Multnomah, Suite 2000
Portland, OR 97232

Informal inquiries may be directed to Bob Lively at (801) 220-4052.

Sincerely,

Daniel E. Solander
Senior Attorney

Enclosures

Cc: Service List (w/ enclosures)

Daniel E. Solander (11467)
Rocky Mountain Power
1407 West North Temple, Suite 320
Salt Lake City, Utah 84116
Telephone: (801) 220-4014
Fax: (801) 220-3299
daniel.solander@pacificorp.com

Attorney for Rocky Mountain Power

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Rulon Crosby,	:	
	:	
Complainant,	:	Docket No. 17-035-42
	:	
vs.	:	
	:	ROCKY MOUNTAIN POWER’S
Rocky Mountain Power,	:	ANSWER AND
	:	MOTION TO DISMISS
Respondent.	:	
	:	
	:	
	:	

Rocky Mountain Power, a division of PacifiCorp (the “Company”), pursuant to Utah Code Ann. §§ 63G-4-204(1) and Utah Admin. Code R746-100-3 and -4, provides its Answer to the complaint filed by Rulon Crosby (“Complaint”). In addition, 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.

I. PRELIMINARY MATTERS

Communications regarding this Docket should be addressed to:

By e-mail (preferred): datarequest@pacificorp.com
bob.lively@pacificorp.com
daniel.solander@pacificorp.com

By mail: Data Request Response Center
Rocky Mountain Power
825 NE Multnomah St., Suite 800
Portland, OR 97232

Robert C. Lively
Rocky Mountain Power
1407 West North Temple
Salt Lake City, UT 84116
Telephone: (801) 220-4052

Daniel E. Solander
Rocky Mountain Power
1407 West North Temple
Salt Lake City, UT 84116
Telephone: (801) 220-4014

II. BACKGROUND

1. Mr. Crosby is currently the customer of record for the electric service at 1593 S. Bear Lake Blvd, Garden City, Utah (“residence”).

2. Mr. Crosby made a request to Rocky Mountain Power on June 19, 2017, to inquire about providing new electric service for a music and dinner operation located adjacent to his residence.

3. On June 20, 2017, Mr. Scott Jessen (Estimator, Rocky Mountain Power) contacted Mr. Crosby regarding his request for new electric service and provided a ball park estimate of approximately \$3,000.00. Mr. Crosby advised he would not pursue this option due to the costs.

4. On July 5, 2017, Rocky Mountain Power was notified that Mr. Rulon Crosby was on an aluminum ladder and the ladder was placed against a Rocky Mountain Power owned power pole. A picture of a person on the ladder is attached as **Exhibit A**. It is the Company's understanding Mr. Crosby was on the ladder to attach an electric service from the residence to another location on the property without authorization from the Company. A picture of the wires attached to the power pole is attached as **Exhibit B**.

5. Later in the day on July 5, 2017, Mr. Lance Bourne (Local Agent, Rocky Mountain Power) called Mr. Crosby to investigate the report of a ladder and person in close proximity to the power lines. Mr. Crosby stated it was his property, and he could attach to a pole on his property. Mr. Crosby was advised of several issues: (1) the danger of being on a conductive ladder in close proximity to electricity; (2) that customers are prohibited from attaching to the Company's property; (3) all work on the Company's property must be compliant with Occupational Safety and Health Administration ("OSHA"); and (4) that all work on Company-owned poles must be done by the Company or with Company consent and supervision. Mr. Bourne advised he would be removing the ladder and the wires. Mr. Crosby advised Mr. Bourne that Rocky Mountain Power does not have permission to access his property and if we did access his property, he would consider it a trespass on his property. The conversation escalated and Mr. Crosby was very upset and in order to remove the safety hazards quickly, the Sheriff's office was contacted to witness the removal of the ladder and wires, as well as to protect the safety of the employee. Mr. Bourne discovered the ladder was actually two ladders tied together, and the wires connected to the service on Mr. Crosby's residence and strung on the power poles were

insulated extension cords. It appears the cords were intended to be energized to provide electricity from the home to another part of the property.

6. On July 6, 2017, a meter reader was unable to obtain a meter read from the meter at the residence, and the meter did not have a display. It appeared as if the meter had been removed and burn marks indicated an arc may have damaged the circuitry of the meter. Mr. Bourne was contacted to inspect the meter and the meter was exchanged although it did appear some wires were installed on the customer's side of the meter base, and appeared to be the wires attached to the utility pole.

7. On July 6, 2017, Mr. Crosby contacted Rocky Mountain Power and escalated his concerns, and requested documentation of an easement allowing Rocky Mountain Power to access his property.

8. On July 6, 2017, Mr. James Burton, (manager, Rocky Mountain Power) contacted Mr. Burton to discuss his concern. The poles on Mr. Crosby's property have been in place for over twenty years, and accordingly, Rocky Mountain Power has a prescriptive easement for the overhead lines and poles. Mr. Crosby disputed the prescriptive easement and stated he was going to restrict access to the Company's equipment on his property. Mr. Crosby has also made threats about what he would do to Mr. Bourne if he came on his property including tampering with his vehicle while he was up in the bucket attachment of the vehicle.

9. On July 7, 2017, Mr. Crosby escalated his concerns to the Utah Public Service Commission and the formal complaint was docketed.

III. ANSWER AND MOTION TO DISMISS

10. 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 Complainant has failed to establish the Company violated Commission rules, Company tariffs or that its actions are unjust.

11. The Complainant first states that there is nothing in the Utah criminal or civil codes concerning the attaching of anything on a utility pole by the owner of the land, upon which the pole is located. Public Service Commission of Utah (“Commission”) administrative rule R746-345, governing pole attachments addresses this concern. In Utah, “a public utility must allow any attaching entity nondiscriminatory access to utility poles at rates, terms and conditions that are just and reasonable.” Utah Admin. Code R746-345-1(B)(2). An attaching entity is a “public utility, wireless provider, cable television company, communications company, or other entity that provides information or telecommunications services that attaches to a pole owned or controlled by a public utility.” Utah Admin. Code R746-345-2(A). Mr. Crosby by definition is not an attaching entity, and therefore would not be allowed to attach anything to Rocky Mountain Power’s power pole, even if he had followed the correct procedures for applying for a pole attachment agreement. There is nothing in the rules or tariffs that provides a right for a non-attaching entity to attach anything, including power lines or extension cords to Company property. Mr. Crosby’s actions are trespassory, in addition to being extremely unsafe.

12. The Complainant next argues that OSHA rules apply to the safety workplaces for employees, not home owners who are doing projects on their own property. OSHA Standard (1926.956) applies to all work on exposed live parts, or near enough to

them to expose the employee to any hazard they present. Mr. Crosby trespassed on a power pole belonging to Rocky Mountain Power as he did not seek nor was he given permission to access our facilities. The Rocky Mountain Power facilities are the workplace of its employees; anyone conducting work on property belonging to Rocky Mountain Power is by extension required to maintain OSHA safety standards at all times. He created a safety hazard not only to himself, but to anyone who may have had access to the pole while the ladder was placed on the pole.

13. The Complainant finally argues that there is no recorded easement which allows the power company to cross his land in order to access our equipment. Rocky Mountain Power's Regulation 6, Section 2 (a-d) states:

2. COMPANY FACILITIES ON CUSTOMER'S PREMISES

- (a)** All materials furnished and installed by the Company on the Customer's premises, shall be, and remain, the property of the Company. The Customer shall not break the Company's seals. In the event of loss or damage to the Company's property, arising from neglect, carelessness, or misuse by the Customer, the cost of necessary repairs or replacement shall be paid by the Customer.
- (b)** Customer without expense to the Company shall make or procure conveyance to the Company of satisfactory Rights-of-Way Easements across the property owned or controlled by the Customer for the Company's lines or extensions thereof necessary or incidental to the furnishing of service to the Customer.
- (c)** The Customer shall provide safe, unobstructed access to Company representatives at all hours to maintain the Company's electric distribution facilities. The Customer shall also permit the Company to trim trees and other vegetation to the extent necessary to avoid interference with the Company's lines and to protect public safety. Safe and unobstructed access is defined as free of any obstructions including, but not limited to, obstructions caused by structures, trees, vegetation, landscaping, equipment or vehicles, driveways or installed foundations, debris or animals.
- (d)** The Customer shall provide safe, unobstructed access to Company representatives at reasonable times, for the purpose of reading meters, inspecting, repairing or removing metering

devices and wiring of the Company. Safe and unobstructed access is defined as free of any obstructions including, but not limited to, obstructions caused by structures, trees, vegetation, landscaping, equipment or vehicles, driveways or installed foundations, debris or animals.

The power poles located on Mr. Crosby's property have been in place for over 20 years. The Commission, in previous orders, has recognized its limited scope of jurisdiction. The easement matter raised by Mr. Crosby are beyond the scope of the Commission's jurisdiction and are properly raised in a district court.

IV. 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.

Dated this 7th day of August, 2017.

Respectfully submitted,



Daniel E. Solander

Attorney for Rocky Mountain Power

Exhibit A



Exhibit B



CERTIFICATE OF SERVICE

Docket No. 17-035-42

I hereby certify that on August 7, 2017, a true and correct copy of the foregoing was served by electronic mail to the following:

Rulon Crosby – ruloncrosby@msn.com

Utah Office of Consumer Services

Cheryl Murray - cmurray@utah.gov

Michele Beck - mbeck@utah.gov

Division of Public Utilities

Chris Parker - ChrisParker@utah.gov

William Powell - wpowell@utah.gov

Erika Tedder - etedder@utah.gov

Assistant Attorney General

For Division of Public Utilities

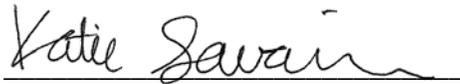
Patricia Schmid - pschmid@agutah.gov

Justin Jetter - jjetter@agutah.gov

For Utah Office of Consumer Services

Robert Moore – rmoore@agutah.gov

Steven Snarr - stevensnarr@agutah.gov



Katie Savarin
Coordinator, Regulatory Operations