



PublicService Commission <psc@utah.gov>

**(no subject)**

1 message

**Rulon Crosby** <ruloncrosby@msn.com>

Tue, Aug 22, 2017 at 4:04 PM

To: "datarequest@pacificorp.com" <datarequest@pacificorp.com>, "bob.lively@pacificorp.com" <bob.lively@pacificorp.com>, "daniel.solander@pacificorp.com" <daniel.solander@pacificorp.com>, Rulon Crosby <ruloncrosby@msn.com>, PublicService Commission <psc@utah.gov>

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

In the Matter of Rulon Crosby, : Docket No. 17-035-42

Complainant,

:

vs.

: Rulon Crosby's Answers to

Rocky Mountain Power, : Rocky Mountain Power's

Respondent. : Motion to Dismiss

:

(Pacific Corp motion is in black. **Mr. Crosby's responses are in red.** Mr. Crosby is recovering from knee replacement surgery which has prohibited him from doing a final edit on this document but the essential information has been

imparted.)

## BACKGROUND

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

I am identified as a customer, but not treated as one.

I estimate, that I have paid UP&L/PacifiCorp over \$50,000 for electricity, since I moved to Utah in 1978, but a monopoly power supplier does not treat it's rate payers like customers who have a choice about buying from another supplier.

We are treated like ungrateful minions, of the condescending utility, who should be grateful that the company deigns to bestow their precious commodity upon us.

If I were treated, like a customer, instead of an adversary, PacifiCorp would have contacted me for a calm, rational, discussion about whether I, as a property owner have the prerogative to attach a low voltage, insulated conductor to an existing abandoned cable TV fixture, already on the pole, or whether a ladder, extending only part way up the pole, actually posed any danger of exposure to the high voltage conductors, located over fifteen feet above the top of the ladder.

Instead of initiating a rational discussion, with a (supposedly) valued customer, PacifiCorp provoked an acrimonious confrontation, committed trespass, made untrue claims, called the sheriff's department, and damaged my property.

The small conductors, I attached to the pole, were not energized. Neither the attached conductors, or the ladder constituted any imminent risk to any person or property.

The matter could have been settled, the next day, by a thirty minute rational conversation, but instead PacifiCorp's lineman proceeded to immediately, against my explicit instructions, to trespass on my property, destroy my installation, cause damage, and intimidate my tenants.

These are the actions of an arrogant, belligerent, autocracy, not the actions of a rational, concerned, company, looking to appropriately accommodate the needs of a long time loyal customer. The line, I was installing would have resulted in the sale of additional kilowatt hours, at no additional facility cost to the company, or any damage to it's installations.

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.

I own two pieces of adjoining property. A small lot, with a residence thereon, and a 2.6 acre strip of undeveloped land. The possible music show venue would be at the back of the undeveloped property, over 700 feet from the 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.

Scott Jesson, has, so far, been the only PacifiCorp employee, though difficult to contact, with whom I've been able to have an amicable company/customer conversation.

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**.

I demand, that PacifiCorp identify the notifying witness and the person, who took the photograph. I demand the right to confront these alleged witnesses at a PUC hearing.

Neither the UTAH PUC, nor any regulatory agency has given PacifiCorp the authority, to demand authorization for a property owner to lean a ladder against a powered company pole. Neither the ladder, or the person, thereon, posed any risk, or caused any damage to any power company property.

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.

The ladder was not in close proximity to the power lines. It was over fifteen feet from the high voltage lines, which is over five times the distance between the high voltage conductors, and over five times the margin considered to be safe for humans to operate, as evidenced by the fact that the telephone and cable TV were placed at this level, and had previously been accessed, by ladders, by telephone and cable TV personnel.

There is no published prohibition by any competent regulatory agency, against customers attaching to company property, nor is there any requirement, that all work on company owned poles, be done with company permission and/or supervision.

There is no OSHA regulation, requiring that all work on company property be compliant with OSHA rules. OSHA rules apply to companies, such as PacifiCorp, to assure that their employees are furnished with a safe work environment. OSHA rules do not apply to private property owners, doing work on their own property.

Lance Borne's entry, onto my property, without a proper access agreement, against my specific instructions, constituted criminal trespass.

There were no safety hazards, which justified quick removal of the ladder or conductors.

There was no violation of any criminal statute, so there was no need for the sheriff to witness anything. Against whom, or what was the sheriff, protecting lineman borne? I was 120 miles away. The only threat, I made, was one to hold him responsible for criminal trespass.

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.

trespass.

The problem with the meter had nothing to do with the installation of the secondary conductor, which wasn't even connected to the electrical supply. I never had occasion to remove the meter. My tenant was told that there were arc

burns on the front of the meter, which would indicate exposure to a high voltage surge, such as lightning. Does PacifiCorp allege that I called down fire from heaven, to cook their meter?

The problem with the meter incident is, that it occurred a day after I had explicitly told lance borne, and his supervisor, James Burton, that they were denied permission to access my property, unless they notified me and obtained permission, which they did not do. Lance Borne's exchanging of the meter, constituted second act of criminal trespass.

The meter exchange incident is another evidence, that PacifiCorp prefers confrontation over calm conversation and customer conciliation.

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.

So, going up the chain of command, constitutes and "escalation"?

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.

When I asked Jim Burton, if PacifiCorp had a right of way for the power line, on my land, and further, if PacifiCorp has an easement, across my land, to access the power line, he responded, that he was sure that the company had copies of these agreements, which he would be willing to furnish me. I expected to hear from him, the next day, July 7th.

I've never heard back from Burton, on the subject of rights of way, or easements.

Two weeks later, I finally received an admission from Ms. Melissa Nottingham, Manager, Customer Advocacy and Tariff Policy, from PacifiCorp Portland, that a search for an easement had been conducted, but no recorded rights of way, or easements, could be found.

Does PacifiCorp know which predecessor utility built the line? If so, who was it. When was it built? Who were the property holders, across who's land the line was constructed? The line was built across four separate lots, or properties. Does PacifiCorp have the names of any of these original owners? Does PacifiCorp have any evidence, that any of these owners were contacted, before the line was built?

It has been established, that PacifiCorp's predecessor did not record a right of way, in Rich County, before constructing the line in question.

Upon learning of this oversight, PacifiCorp now wishes to assert a prescriptive easement. To do so, PacifiCorp must prove continuous use for at least twenty years, but the company cannot even say who constructed the line, or when the construction took place. A prescriptive easement is defined as being adverse to the property owners interests, and/or being built without the property owner's permission, or approval.

If the original property owners, granted any kind of informal approval, for the line's construction, then the adversarial requirement for a prescriptive easement is not met. If permission was granted, then permission can also be rescinded.

I assert, that PacifiCorp does not meet the requirements for a prescriptive easement, unless and until, a competent court has decided that such an easement exists.

Even if an appropriate court should decide that the existing line, deserves a prescriptive right of way, this does not mean that PacifiCorp necessarily has an easement to access their power line, across my property, most of which is a considerable distance from the power line.

The power line runs along the boundary, between my property and the property of my neighbor to the north. The power line is easier to access, across my neighbor's property. Based on my investigation, all of the maintenance of this line, has been accomplished by way of access across my neighbor's land.

A requirement for a prescriptive easement, is continuous use of an access across another individual's property for at least 20 years. I challenge PacifiCorp to provide details, dates and personnel names, for any maintenance access across my property, in the last twenty years.

The notorious requirement, which requires that the general public know that the property is being used to access the power line, is not met either. I have owned the property for 12 years, in which time neither I nor my tenants, have ever observed PacifiCorp equipment or personal, on my property for power line maintenance purposes.

I have informed PacifiCorp, through their registered agent, that it may not enter my property, for any reason, without my prior permission, or some emergent condition, such as a house fire, earthquake, or flood.

If I find any PacifiCorp personnel in their line truck bucket, on my property, without my permission, I will turn off the key to the line truck, thereby stranding the trespasser in his elevated bucket, to contemplate the consequences of his criminal action.

PacifiCorp does not have a recorded or a prescriptive easement across my property. PacifiCorp is banned from an authorized access to my property.

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.

PacifiCorp unjustly committed criminal trespass, twice, by accessing my property, after I had officially forbidden them to do so. They unjustly damaged my property and destroyed an installation, I was lawfully working on. They unjustly accused me of violating non applicable OSHA rules, by the manor of my installation. They unjustly and falsely informed the Sheriff's office, that I had committed some criminal act, worthy of the sheriff's intervention, thus damaging my reputation with local law enforcement.

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.

I am exactly the sort of other entity, which PUC rules give permission to access utility poles for providing information and other services, to my own property.

PacifiCorp has the temerity to suggest I am guilty of trespassory actions, by climbing a ladder, located on my own land, which was in contact with a pole, which was illegally installed, by the utility, on property, for which a right of way agreement, was not obtained.

My actions were no more unsafe, than the actions of the cable TV crew, who installed the pole attachment, in the first place. In any case, nowhere does the public service commission or any other regulatory agency, give PacifiCorp the authority to judge or regulate the safety of my personal actions.

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.

I did not trespass on PacifiCorp's illegal pole. I don't need permission access my own property.

The contention, that I fall under OSHA requirements, because I might be working on some facility or project, which PacifiCorp personnel might eventually also work on, is specious and absurd.

OSHA's purpose is to promote workplace safety, by regulating employers, not employees, and certainly not uninvolved private third parties.

I didn't create a safety hazard for anyone, including myself. If lineman Borne, felt unsafe in removing my ladder or wires, he shouldn't have performed these actions. If PacifiCorp were to require lineman Borne to do something unsafe, then PacifiCorp is in violation of OSHA, not I, who had warned Borne to stay off of my property, thus freeing him from any risk, whatsoever, to be found on my property.

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:

I have signed no contract, with PacifiCorp, obligating me in any way to comply with any regulations, they have unilaterally promulgated. I am not subject to PacifiCorp regulation 6, Section 2.

## **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. Any such agreement, should have been negotiated, with the original customer/property owners, before the power line was constructed. PacifiCorp cannot obligate subsequent owners, many years after the fact, to provide a rights of way, which should have been in place, before construction began.

**(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. I've never agreed to this requirement. PacifiCorp cannot unilaterally impose contract provisions, I've never seen before and have not agreed to.

**(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. I've never agreed to this requirement. PacifiCorp cannot unilaterally impose contract provisions, I've never seen before and have not agreed to.

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. **PacifiCorp has offered no proof of who built the power line, or when it was constructed. The company must prove, that the poles have been in place for twenty years.**

**PacifiCorp must offer documentation that the PUC has recognized its "limited scope of jurisdiction". Whether the poles on my property meet the requirements for a prescriptive easement, is a question, which could be considered by a district court, but this fact doesn't mean, that the Utah PUC does not also have jurisdiction over utility right of way requirements.**

#### **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 7<sup>th</sup> day of August, 2017.

**PacifiCorp unjustly and unlawfully committed criminal trespass, twice, by accessing my property, after I had officially forbidden them to do so. They unjustly damaged my property and destroyed an installation, I was lawfully working on. They unjustly and unlawfully accused me of violating non applicable OSHA rules, by the manor of my installation. They unjustly and falsely informed the Sheriff's office, that I had committed some criminal act, worthy of the sheriff's intervention, thus damaging my reputation with local law enforcement.**

## **RE: In the Matter of the Formal Complaint of Rulon Crosby Against Rocky Mountain Power**

**Docket No. 17-035-42**

**PacifiCorp's request that my formal Complaint be dismissed, is based on obfuscation, distorted reasoning, misinterpretation, and bluster.**

**I submit, that my complaint deserves a full, formal, hearing, wherein I would have the opportunity to confront all complainants and witnesses.**

**Specifically, I wish to challenge lineman Borne about his bias against me, in his role as head of the Garden City Planning commission, as a result of our conflicts about the planning commission's rejection of a subdivision, I have been trying to get approved, for several years.**

**Was it just coincidence, that one week after lineman Borne's outrageous trespass on my property, I was scheduled for a trial in District Court, to settle the question of whether the Garden City Planning commission, had unlawfully violated my development rights?**

**Lineman Borne is a bearded bundle of biased befuddlement! (I love alliteration)**

**I ask the PUC to order PacifiCorp to pay me for damages to my property and installation in the amount of \$2000, and to order PacifiCorp, henceforth, not to trespass on my property, without my prior permission.**

**The PUC was established to protect Utah citizens from arrogant exploitation, and abuse, by public utility monopolists. I pray that the PUC grants me the compensation and protection, I have requested and deserve.**

**Rulon Crosby**

**PS. PacifiCorp has condescendingly asserted, that they needed to intervene to protect me from the consequences of my ignorance of electricity technology and the advisable safety precautions.**

**I had a 35 year career with Westinghouse Electric Corporation, in power plant construction, and technical sales.**

**I was working on the construction of a Swiss nuclear power plant, when lineman Borne and supervisor Burton were still in diapers.**

**I have sold many hundreds of the kind of distribution transformers, which hung on the pole above me. Including many to PacifiCorp. I have gone to schools about their design, watched them being built, and have taught many courses in distribution transformer connections and applications, to various power company, REA, and municipal utility linemen in Montana and the Dakotas.**

**I do not need, and do not want, the kind of arrogant, condescending, supposed, protection, which PacifiCorp seems to feel it should impose upon it's customers.**

