
Formal Complaint of Brent E. Hill against Rocky Mountain Power	<u>DOCKET NO. 17-035-49</u> <u>ORDER DISMISSING COMPLAINT</u>
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ISSUED: February 14, 2018

BACKGROUND

On December 12, 2017, the PSC dismissed Mr. Hill's complaint against Rocky Mountain Power (RMP) in this docket. Our rationale was grounded in Mr. Hill's failure to timely respond to RMP's Answer and Motion to Dismiss (Motion). However, after we issued our dismissal, we realized Mr. Hill had timely served his response on RMP and the Division of Public Utilities, but failed to file his response with the PSC. Accordingly, we vacated our dismissal, finding Mr. Hill's error harmless, and set a deadline for RMP to reply to Mr. Hill's response. We now revisit RMP's Motion, having the benefit of reviewing both Mr. Hill's response and RMP's reply to it.

As explained below, we now dismiss Mr. Hill's complaint for failure to allege a violation of statute, rule, or PSC order, under Utah Code Ann. § 54-7-9(2), and for failure to satisfy Utah Admin. Code R746-1-201(2). First, however, we discuss the party positions involved in this docket.

A. Mr. Hill's Complaint

On September 5, 2017, Mr. Hill filed a formal complaint against RMP, alleging difficulties getting power to a vacant lot (Lot) in the Highland View Subdivision in Riverdale, Utah that has been in his family since the 1970s. Mr. Hill alleges that when the subdivision was originally platted -- sometime around 1950 -- the original developer paid to bring power to each lot, including Mr. Hill's Lot. Between then and now, however, Mr. Hill alleges that RMP and its

predecessor, Utah Power, placed power poles in areas outside of the utility easements, making it difficult for him to now bring power to his property unless he pays for it (along with an additional easement). Mr. Hill alleges RMP should resolve this problem at its expense, not his.

B. The DPU's Recommendation

On October 4, 2017, the Division of Public Utilities (DPU) filed an action request response recommending dismissal for lack of jurisdiction, unless Mr. Hill demonstrates RMP failed to comply with PSC rules, tariffs, or other laws. Barring that demonstration by Mr. Hill, the DPU notes that the authority and control of an easement falls outside of PSC jurisdiction.

The DPU further notes that RMP's tariff states in pertinent part:

Routes, Easements and Rights-of-Way -- The Company will select the route of an Extension in cooperation with the Applicant. The Applicant will acquire and pay all costs of obtaining complete unencumbered rights-of-way, easements, or licenses to use land, and will pay all costs for any preparation or clearing of land the Company may require. Any required easements will be prepared on Company-provided forms. If requested by the Applicant, the Company will assist in obtaining rights-of-way, easements or licenses as described above at the Applicant's expense.

Electric Service Regulation No. 12, Line Extension at 1(1).

C. RMP's Answer and Motion to Dismiss

On October 6, 2017, RMP filed its Answer and Motion to Dismiss. RMP argues Mr. Hill's complaint should be dismissed, under Utah Admin. Code R746-1-201(2), because the DPU determined that PSC action is not warranted. Further, RMP argues dismissal is appropriate because it has not violated any PSC order, rule, law. According to RMP, it provided Mr. Hill a copy of Electric Service Regulation No. 12, Line Extension quoted above.

D. Mr. Hill's Response to RMP's Motion

On December 6, 2017, Mr. Hill responded to RMP's Motion. The crux of Mr. Hill's response is that he maintains it is RMP's responsibility to provide power to his Lot based on prior easement agreements that predate when the homes in the Highland View Subdivision were built and power was brought to them. In response to RMP's assertion that Mr. Hill has failed to establish a violation of PSC rule or tariff, or that PSC action is warranted under Utah Admin. Code R746-1-201(2), Mr. Hill acknowledges these deficiencies (see discussion below), and alleges RMP's actions amount to a taking without just compensation, which he intends to address with the State Ombudsman. In conclusion, Mr. Hill pleads as follows:

...Please consider the expense of RMP requiring one small building lot owner to upgrade their lines to provide power to one building lot. These services were provided and promised to all the lots in [the Highland View] subdivision since 1946.

RMP saved thousands of dollars by placing their [p]oles and lines outside the existing easements.

[RMP] want[s] me to buy easements, put in taller poles [and/or] upgrade the existing lines to provide power to my [L]ot. . . .RMP should have done [these things it is asking of me] in the 1940[s]. If RMP would have stayed inside the[] easements or moved their lines to the easement areas[,] it would have solved my current problem. Now they are asking me to solve the problem they created.

...[B]y not conforming to the original easement[,] RMP has benefitted for over 60 years.

Please do not grant this dismissal.

E. RMP's Reply to Mr. Hill's Response

On December 21, 2017, RMP filed its reply to Mr. Hill's response to RMP's Motion. In sum, RMP argues Mr. Hill's reply offers no new disputes of fact that would allow him to

overcome a dismissal on summary judgment. RMP further notes that Mr. Hill's request for electric service to the Lot is a line extension request subject to RMP's line extension rules approved by the PSC. Accordingly, because Mr. Hill alleges no violation of law, PSC rule, or RMP tariff, RMP requests dismissal of his complaint.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Utah law states a complaint against a public utility "...shall specify the act committed or omitted by the public utility that is claimed to be in violation of the law or a rule or order of the [PSC]." Utah Code Ann. § 54-7-9(2). Mr. Hill's complaint filed against RMP fails to meet this standard. Further, Mr. Hill himself acknowledges this deficiency, stating, in part: "I am not an attorney and have not studied all the rules and [statutes] sufficiently to know if any of [t]he actions of RMP are contrary to these rules or [statutes]...."¹ Accordingly, Mr. Hill provides no legal basis over which we have jurisdiction to assess his complaint.

In addition, R746-1-201 of the Utah Admin. Code includes the following requirement: "A person [who] files a complaint with the [PSC] shall demonstrate . . . that the [DPU] has reviewed the complaint and determined that [the PSC] action is warranted[.]" Utah Admin. Code R746-1-201(2). Here, the DPU's recommendation does not satisfy this requirement. Rather, the DPU's recommendation supports the opposite finding – that Mr. Hill's complaint should be dismissed for lack of jurisdiction for failure to establish RMP has violated a rule, tariff, or other law. Further, the DPU notes, authority and control over easement agreements falls outside the PSC's jurisdiction. We agree. Disputes over easements are properly initiated in the District

¹ Brent Hill Answer to Rocky Mountain Power['s] (RMP) Answer[] and [M]otion to Dismiss, dated December 6, 2017.

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Court.² Likewise, a takings claim (which Mr. Hill raised late in this proceeding) is properly filed in the District Court.³

Accordingly, for the reasons stated above, we dismiss Mr. Hill's complaint.

DATED at Salt Lake City, Utah, February 14, 2018.

/s/ Melanie A. Reif
Presiding Officer

Approved and Confirmed February 14, 2018, as the Order of the Public Service Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#300049

² See, e.g., *Pickett v. California Pac. Utils.*, 619 P.2d 325 (Utah 1980) (affirming trial court's dismissal with prejudice of property owner's complaint against a utility company after utility company sought to establish a permanent utility easement across property owner's land).

³ Cf. *Salt Lake City Corp. v. Evans Dev. Grp., LLC*, 2016 UT 15, ¶ 18 (reviewing district court's ruling in eminent domain takings case).

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on February 14, 2018, a true and correct copy of the foregoing was served upon the following as indicated below:

By U.S. Mail:

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