

April 29, 2019

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: Docket No. 19-035-10 – In the Matter of the Formal Complaint of Community Advocacy for Safety and Public Rights against Rocky Mountain Power

The following Complainants' response to the document provided by Pacificorp, d/b/a Rocky Mountain Power ("**RMP**") on April 15, 2019, titled Rocky Mountain Power's Response and Motion to Dismiss (the "**Motion**") in regards to the Complaint submitted by Complainant Community Advocacy for Safety and Public Rights LLC ("**CASPR**") to the Public Service Commission of Utah Docket number 19-035-10.

ISSUE

In its responsive pleading, RMP moves the Commission to dismiss the Complaint asserting 1) that Complainants failed to state a claim upon which relief can be granted, and 2) that the Utah Public Service Commission (the "**Commission**") has jurisdiction only to hear matters regarding utility rates. RMP is incorrect on both counts and, therefore, their request to dismiss the Complaint must be denied as a matter of law.

RULE OF LAW

The Commission is “vested with power and jurisdiction to supervise and regulate every public utility . . . and to supervise all of the business of every such public utility in this state, and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction” Utah Code § 54-4-1 (West)

“The grant of a motion to dismiss pursuant to rule 12(b)(6) is a question of law.” Fadel v. Deseret First Credit Union, 2017 UT App 165, ¶ 15, 405 P.3d 807, 812. “A motion to dismiss should be granted only if, assuming the truth of the allegations in the complaint and drawing all reasonable inferences therefrom in the light most favorable to the [complainant], it is clear that the [complainant] is not entitled to relief.” Rusk v. Univ. of Utah Healthcare Risk Mgmt., 2016 UT App 243, ¶ 5, 391 P.3d 325, 326–27. “A district court should grant a motion to dismiss only if it is clear from the allegations that the non-moving party would not be entitled to relief under the set of facts alleged or under any facts it could prove to support its claim.” O’Hearon v. Hansen, 2017 UT App 214, ¶ 10, 409 P.3d 85, 89.

I. THE COMMISSION HAS JURISDICTION OVER THIS MATTER

RMP states, or at least strongly implies, that the Commission can only hear matters regarding utility rates. RMP is incorrect.

The Commission is vested with expansive “power and jurisdiction to supervise and regulate every public utility in this state, and to supervise **all of the business** of

every such public utility in this state, **and to do all things, whether herein specifically designated or in addition thereto**, which are necessary or convenient in the exercise of such power and jurisdiction” Utah Code § 54-4-1 (emphasis added).

Under this extremely broad statutory authority, it is readily apparent that the Commission has jurisdiction over construction of the 138 kVa transmission line at issued and the accompanying disputed property rights, construction safety issues, operational safety issues, and maintenance safety issues because such are obviously part of RMP’s business.

II. COMPLAINANTS HAVE STATED A CAUSE OF ACTION

Contrary to the assertion of RMP, the Complaint multiple claims upon which Complainants are entitled to relief.

It is well established, under Utah Law, that a “claim need not be specific, rather, under Utah’s liberal notice pleading requirements, all that is required is that the pleadings be sufficient to give fair notice of the nature and basis of the claim asserted and a general indication of the type of litigation involved.” Busche v. Salt Lake County, 2001 UT App 111, ¶ 6, 26 P.3d 862. Additionally, “if there is any doubt about whether a claim should be dismissed for lack of factual basis, the issue should be resolved in favor of giving the party an opportunity to present its proof.” Zisumbo v. Ogden Reg’l Med. Ctr., 2015 UT App 240, ¶ 9, 360 P.3d 758, 760.

Complainants have asserted that RMP’s proposed project violates Utah law or is, otherwise, improper for several reasons, including without limitation, the following:

- 1) RMP erroneously asserts easement rights that it does not have, and has affirmatively stated that it will move forward with the project based upon the erroneous easement rights claimed.
- 2) RMP is unable, or unwilling, to adhere to applicable standards for the installation, operation, and maintenance of a 146 kVa transmission line in the residential corridor at issues.
- 3) Based on the claims stated above, Complainants have a legal right to request an order enjoining the project until easement, safety, and other concerns are resolved. Complainants will file an injunctive motion (hearing requested), at an appropriate time and with the necessary factual evidence.

It is important to remember that, in considering RMP's motion to dismiss, the Commission must assume the "truth of the allegations in the complaint," and must "draw[] all reasonable inferences therefrom in the light most favorable to [Complainants]." Rusk v. Univ. of Utah Healthcare Risk Mgmt., 2016 UT App 243, ¶ 5, 391 P.3d 325, 326–27. Under this standard, it is readily apparent that Complainants have stated a claim upon which relief can be granted. For example, assuming that RMP does not have sufficient easements for the project, moving forward with the project would, obviously, violate Utah law. Additionally, failing to adhere to all applicable safety and other standards during construction, operation, and maintenance of the project would similarly be improper.

The Commission has jurisdiction over this matter, including jurisdiction to regulate and the safe construction, operation, and maintenance of the 146 kVa

transmission line at issue in this case. Assuming the truth of the factual allegations in the Complaint and drawing all inferences in favor of Complainants, as the Commission must do at this stage, it is readily apparent that the Complaint states multiple claims upon which relief can be granted. Accordingly, RMP's motion to dismiss must be, as a matter of law, dismissed in its entirety.

Additional responses to RMP's Motion are provided below in numbered paragraphs corresponding with the numbered paragraphs in RMP's Motion.

ADDITIONAL BACKGROUND

Members of the CASPR LLC who purchased or built their homes were provided a plat map indicating a 10-foot easement with a signature of the city engineer and in one particular subdivision plat map, a signature of Utah Power and Light (RMP's predecessor). The homeowners purchased or built their homes respecting that 10-foot easement. Owners have subsequently built pools, garages and planted vegetation all in accordance to the 10-foot easement.

In 2014 vegetation specialists came through the neighborhood to clear the easement right of way (ROW). To the surprise of many residents, this was the first time any of them knew that the line was anything more than a distribution line. One particular owner called into question the vegetation specialist's authority to remove their mature tree. After measuring the distance of the tree with the RMP specialist and verifying that the tree was outside of the 10-foot easement, the specialist rescinded its objective to remove the tree and merely request that the owner trim the tree appropriately.

Other members of CASPR LLC had dramatic tree removals done by RMP of their mature trees. While this is understandably a safety measure taken by RMP – as homeowners, we were concerned to hear that RMP has an “unlimited width easement” that they planned to upgrade with a line that would require from NESC standards a 60 foot easement.

Residents and members of CASPR LLC on several occasions have requested RMP to provide in a **measurable width** the easement that this new project would assume. The responses from RMP are vague and undefined. This provides no clarity for homeowners on their property rights, security for their vegetation, as well as safety for themselves and their property. This causes dramatic concern for personal safety when there are homes, structures and pools all within the 60-foot easement that a RMP expert stated was necessary for “Safety”.

As per **54-4-1.5**. CASPR LLC believes that the complaint and request for investigation are totally and entirely within the scope of the PSC jurisdiction.

“the Public Service Commission may, with respect to any matter within its jurisdiction, order the director of the Division of Public Utilities to: (1) conduct research, studies, and investigations; (2) provide information, documents or records in compliance with the provisions regarding ex parte communications set forth in Section 54-7-1.5; (3) conduct audits and inspections or take other enforcement actions to assure compliance with commission decisions and state and federal laws; and (4) make recommendations regarding public utility regulations.”

RESPONSES TO NUMBERED PARAGRAPHS

1. The complaint filed was not adequately responded to by RMP.

2. From the words of Mr. Ben Clegg the Project Manager from RMP, the Salt Lake County Electrical Plan is “**not binding**” and therefore, even if the project was anticipated in 2010, that does not give this route any precedence, or negate the need for RMP to use alternate and safer routes that would not contradict the best practices outlined in the same Salt Lake County Electrical Plan. RMP did not fully respond to the complaint. For one, Lisa Romney, the regional business manager merely provided a copy of the easement document, and not a clearly defined and measurable width and its impacts on property, vegetation and safety. Providing a link to purchase a NESC code book for \$200 is not an adequate response. To date, this first informal complaint has not been adequately responded.

3. No comment.

4. Please notice in the footnote the date of the final meeting held with “*concerned stakeholders*” was on August 7, 2018. It was held at Bingham High School Library because the meeting immediately following was in the auditorium for Truth in Taxation and needed a larger venue. This meeting was arranged by the Mayor and City Council in response to the questions and concerns raised by residents at the South Jordan City Council meeting held on July 17, 2018.

5. Please take notice of the belligerent and disrespectful attitude that RMP took by filing their Conditional Use Permit on August 6, 2018, PRIOR to the special working meeting arranged by the city. RMP had been requested to hold off on filing a permit until things could be discussed and reviewed. RMP totally disregarded this request and by filing the permit prior to the meeting, arrogantly pronounced its

behavior that they would push forward irrespective of any efforts to work together or accommodate the interests of the community. RMP did not show to South Jordan City *“it has rights to perform the proposed work at the proposed location”*. As evidenced in Exhibit N - PSC Exhibit No Pole.pdf – How does RMP plan to put a pole where there is explicitly NO POLE allowed?

“Rocky Mountain Power has previously upgraded the transmission line from 46 kV to 138 kV north of the area”

This our opinion, this is not a respectful and forthcoming attitude given by RMP. Merely because other homeowners were not informed, the city was not educated, and the CUP process is a fast-pass for RMP to push unsafe projects dangerously close to homes, does not justify that this unsafe project should move ahead unchecked.

6. No comment

7. No comment

8. These claims are not true in their entirety and will be highlighted below

8.1 As indicated in item 6, many residents provided compelling and NEW information at the March 12, 2019 meeting. Chairman Mark Woolley even commented during the public comment period that the residents had provided a lot of new information to digest (See audio file www.sjc.utah.gov/media/PCAudio/pca-2019-03-12.mp3). Each member of the South Jordan Planning Commission (SJPC) and City staff was

presented with a hard copy of the presentation, citations and speaker notes, along with a thumb-drive of referenced materials to thoroughly review.

None of this evidence was considered at the time the SJPC voted on the CUP. A better understanding of why the vote was pushed through without proper due diligence is shown in the meeting minutes of a private meeting held on March 12th, 2019 with the SJPC and city staff just prior to the public hearing. Here are a few excerpts taken from the city website: (Source

<http://www.sjc.utah.gov/planningminutes/pcm-2019-03-12.work.pdf>)

Staff Attorney Sheeran said when Greg is going through the staff report he will then turn time over to me and I will go over my complete analysis. Here is a sheet (Attachment A) of my proposed language. I printed off extra copies to have available for the residents to show what staff is proposing.

...

Planning Director Schaefermeyer said my only comment is to give as much direction to Todd on what needs to be in the decision so when he drafts it there are no surprises.

Staff Attorney Sheeran said I believe you will be asked to consider things that are outside of your purview and in the staff report I point to two things, both the alternative route study and the scorecards, ultimately that's a City Council determination. I would anticipate certain things coming up that is not properly before you. I would be prepared to discuss it and you can ask me questions.

...

*Commissioner Holbrook asked if someone submits new information and one of us wants to read that information in detail, can we not vote tonight or what? Staff Attorney Sheeran said you can, the issue then becomes the shot clock. RMP verbally agreed to us on the phone that they are willing to extend the time for one or two meetings. Mr. Schaefermeyer said I would give an opportunity for RMP to respond as well. We can request some additional information; **the challenge is how does it not get to where they provide additional evidence and we are continually arguing around a subject that just needs to be decided.***

It is our belief that RMP had been pressuring South Jordan City leaders to push through this permit, insinuating fear of a possible lawsuit against the city, or worse, impacting the image of the city negatively by enacting the “rip-cord” statute. We have heard this fear stated multiple times by the City Leaders and Staff.

Residents along with their attorney presented sufficient evidence to even have the RMP attorney admitted that our information merits review by a legal court (See audio file: <http://www.sjc.utah.gov/media/PCAudio/pca-2019-03-12.mp3>) SJPC did not even take the time to adequately review the information presented in order to understand adequate easements.

8.4 What are the “Best Practices” this engineer is considering to ensure public safety?

8.5 What are the “Applicable Standards”?

9. Once again, as mentioned in 8.1 – the SJPC was pressured into making a decision and was presented with a condition, pre-drafted and crafted PRIOR to the public hearing. The vote is currently being appealed and should not be considered valid until after the appeal process held by the South Jordan Hearing Officer.

10.No comment

11. Easements are made to ensure safety. This is why there is information regarding easements. We present this information to the Public Service Commission as the body that can ensure public safety.

12. No comment

13. “CASPR has not alleged, much less demonstrated, that it will suffer irreparable harm”

What is the definition of irreparable harm? We feel there is irreparable harm as outlined below:

1) Irreparable harm as our homes will become ineligible for financing from government lending companies and limit our homes from 96.3% of potential buying pool. (See Exhibit M previously provided)

2) Irreparable harm as our home values will decline. *Exhibit Q - RMP Response 13.2 Property Value.pdf* Taking the information provided by RMP to SJPC to indicate impact, the overall impact on homes due to this project will see a decrease in value to around \$6 Million dollars. The existing power line is a medium voltage line that is similar in appearance to a distribution line of that equal classification. The project proposal will increase it to a high voltage transmission line classification and appearance which will drastically impact the homes in the area. (See Exhibit 1.6.1)

3) Emotional irreparable harm from concerns of safety with having towering poles near our homes when there is a wind storm and fear of these poles falling, having excessive line sway, and the dangers affiliated with high power lines. (See Exhibit 2.10.1 – where massive destruction came from wind speeds much less than South Jordan experiences and had almost exactly one year ago -

<https://fox13now.com/2017/04/13/thunderstorms-strong-winds-to-impact-travel-on-i-80/>),

also (See Comments and affiliated Exhibits previously provided 3.4, 3.6, and 11)

We believe we meet all the requirements for hold according to Rule 65A(e) of the Utah Rules of Civil Procedure.

14. *“Planning Commission includes in its findings of fact that there is no evidence that the project will violate any safety standards”*

SJPC and South Jordan City Officials and staff have repeatedly informed residents and members of CASPR LLC that they do NOT have the jurisdiction, expertise or knowledge to ensure the safety of this project. In the absence of any specific city ordinance for safety, the city was relying on the state level of review to ensure safety. The comment above is misconstrued to show that the city verified the safety of the project. In the meeting notes of the SJPC Public Hearing, it states :

“Commissioner Holbrook said after asking these three individuals to give us additional information it was on easement, safety, and home values. We are not the court. We can’t decide on those issues. I don’t know why we would table this for two weeks if we can’t act on the information.”

(<http://www.sjc.utah.gov/planningminutes/pcm-2019-03-12.pdf> see page 25)

Exhibit P - pcm-2019-03-12.pdf, where in fact the city directed all questions regarding safety back to the CUP applicant. SJPC only relied on RMP to state their compliance.

South Jordan City Planner sent an email to RMP representative further indicating that ensuring safety was clearly not within the city's scope:

"...the citizens raised safety concerns that they believe constitute detrimental effects. Because Rocky Mountain Power (RMP) is regulated by state and federal agencies that monitor and approve certain aspects of RMP's plans and operations, the City believes that a letter, opinion or other information provided directly from these agencies that address the safety issues (potential detrimental effects) would be helpful. Because the City does not interact with these agencies it is willing to discuss what exactly RMP could request and what would be most responsive to the residents' concerns. Regardless of what is ultimately provided from these agencies, the City believes a response to these safety concerns is necessary.

(Source <http://www.sjc.utah.gov/wp-content/uploads/2019/01/EMAIL-CITY-REQUEST-FOR-RESPONSE-REGARDING-SAFETY-CONCERNS-FROM-PUBLIC.pdf>)

Exhibit O -

MAIL-CITY-REQUEST-FOR-RESPONSE-REGARDING-SAFETY-CONCERNS-FROM-PUBLIC.pdf

15. *"...specify the act committed or omitted by the public utility that is claimed to be a violation*

of the law or a rule or order of the commission"

How can a monopolistic public service state in printed materials the requirements for safety and blatantly disregard them? How can a company that states they abide by national standards, yet other power companies who abide by them honor the same national rules have clearly defined safety zones and easements which they honor. (See link of EAP Ohio Power Company who rerouted their transmission line upgrade project 3 miles to run outside of the populated Hillsboro city area to provide safer easements

and distances. They also retired and removed the old transmission lines. Link <https://aeptransmission.com/ohio/Liberty-Buckskin/>).

16. “the primary purpose of the Commission is to fix the rates that a public utility may charge its

Customers”. Who ensures the safety of the people? South Jordan City pushed this responsibility to the state.

17. Please note that the CUP permit is in an appeal process.

18. There has been sufficient reason to question the safety of this project and investigation is expected. RMP has an option to resolve the irreparable harm, ensure safety, and maintain the route, which is to bury the line from 10775 South to 11400 South.

19. No comment

Conclusion - The public utility company has come nowhere near answering the questions and concerns presented by CASPR LLC. We also pray for the non-dismissal of this complaint without prejudice. If the utility project proceeds, it will have irreparable harm for the residents in our great state.

Comments regarding Exhibit A - Written Decision for Rocky Mountain Power's CUP
Application

There were two detrimental effects of these projects that were identified: B.3.i and C.2

In E.4 Why does RMP provide in writing about easements and ROW if they don't even follow these guidelines? They are lying to the public about their concern for safety if they blatantly ignore their own safety standards.

5. "All applicable standards". Where has RMP provided this information

Conclusions of Law

Item C "No other detrimental effects were found" contradicts the findings in B.3.i and C.2

CONCLUSION

The Commission has jurisdiction over this matter, including jurisdiction to regulate and the safe construction, operation, and maintenance of the 138 kV transmission line at issue in this case. Assuming the truth of the factual allegations in the Complaint and drawing all inferences in favor of Complainants, as the Commission must do at this stage, it is readily apparent that the Complaint states multiple claims upon which relief can be granted. Accordingly, RMP's motion to dismiss must be, as a matter of law, dismissed in its entirety.

In the event the Commission believes the Complaint is insufficient, in any way, Complainants reserve the right to amend the Complaint, in accordance with the Utah Rules of Civil Procedure and the administrative rules of the Commission.

Respectfully submitted this 29th day of April 2019.



Jana Fullmer
CASPR LLC Board Member



Chris Nelson
CASPR LLC Board Member