
Formal Complaint of Community Advocacy
for Safety and Public Rights against Rocky
Mountain Power

DOCKET NO. 19-035-10
ORDER DISMISSING COMPLAINT

ISSUED: May 10, 2019

1. Procedural History

On March 15, 2019, Community Advocacy for Safety and Public Rights (“CASPR”) filed a formal complaint (“Complaint”), expressing numerous concerns associated with PacifiCorp’s intention to upgrade a transmission line (the “Upgraded Line”) in South Jordan, Utah. On April 1, 2019, CASPR submitted an email, styled as a “Request to Hold Project,” requesting the Public Service Commission (“PSC”) “place a hold” on the Upgraded Line “while there is a formal investigation on the safety of this project.” On April 8, 2019, CASPR submitted voluminous assorted materials in support of its Complaint.

On April 15, 2019, PacifiCorp filed an Answer and Motion to Dismiss, arguing CASPR had not provided “any evidence that the proposed upgrade will not meet safety standards,” CASPR had not alleged that PacifiCorp has “violated any provision of law, [PSC] Order or Rule, or [PacifiCorp] tariff,” and that the City of South Jordan Planning Commission (“Planning Commission”) had, after opportunity for public comment, unanimously approved PacifiCorp’s application for a Conditional Use Permit for the Upgraded Line. (PacifiCorp’s Answer and Motion to Dismiss at 5, 7-8.)

Also on April 15, 2019, the Division of Public Utilities filed a short memorandum indicating it “has no recommendation regarding this docket.”

On April 29, 2019, CASPR filed a response, arguing (1) “[PacifiCorp] erroneously asserts easement rights that it does not have”; and (2) “[PacifiCorp] is unable, or unwilling, to adhere to applicable standards for the installation, operation, and maintenance of [the Upgraded Line].” (Complainant’s Response at 4.)

2. Findings and Conclusions

While the PSC has relatively broad jurisdiction to supervise the business of public utilities,¹ land use is generally a matter of local government regulation. *See generally*, Utah Code Ann. § 10-9a-101, *et seq.* With respect to utilities’ construction of facilities, including overhead transmission lines, the law expressly allows local land use authorities to “require or condition [such] construction ... in any manner” provided, among other things, the “local government pays for the actual excess cost resulting from the requirements or conditions.” Utah Code Ann. § 54-14-201. Significantly, when a conflict arises between a local government and a public utility concerning the use of land, Utah law does not contemplate the parties submit their dispute to the PSC for resolution. Instead, the Legislature created the Utah Facility Review Board for the express purpose of resolving such disputes. *See id.* at § 54-14-101, *et seq.* All of which is to underscore the PSC’s conclusion that matters of land use generally are not within its regulatory purview.

Here, CASPR has expressed numerous concerns about the propriety of the Upgraded Line’s route and alleged the Upgraded Line exceeds the parameters of PacifiCorp’s existing easements. With respect to CASPR’s allegations relating to the parameters of PacifiCorp’s

¹ *See* Utah Code Ann. § 54-4-1 (vesting the PSC with power and jurisdiction to “supervise and regulate” public utilities).

easements, the PSC plainly has no jurisdiction to determine real property rights. Such disputes must be adjudicated in an appropriate court that has jurisdiction to determine real property rights and to enjoin any trespass or other potential infringement.

Regarding CASPR's broad allegations concerning the propriety of running the Upgraded Line on the proposed route, the PSC concludes these are matters properly subject to regulation of the local land use authority and fall outside the PSC's jurisdiction. No dispute exists that PacifiCorp sought a Conditional Use Permit ("CUP") from the Planning Commission for the Upgraded Line and that the Planning Commission (unanimously) approved the CUP. CASPR represents the Planning Commission's approval is presently being appealed through South Jordan City's administrative process. (Complainant's Response at 10.) The PSC concludes such local government review and any attendant right to judicial review provide the appropriate venues for CASPR to challenge the Planning Commission's decision. The PSC is not a lawful or appropriate venue for second guessing or undermining those processes.

In sum, the PSC appreciates CASPR's concerns about the impact of the Upgraded Line on its community but concludes jurisdiction over those concerns lies with the local land use authority and, potentially, any reviewing court. Additionally, the PSC finds CASPR has failed to make any specific allegation that PacifiCorp has violated any particular provision of applicable law, regulation, or tariff. In the absence of such an allegation, the PSC concludes the Complaint contains no allegation of fact giving rise to an issue within the PSC's jurisdiction to be resolved at hearing.

3. Order

For the foregoing reasons, the PSC grants PacifiCorp's Motion to Dismiss. CASPR's Complaint is dismissed and its request the PSC direct PacifiCorp not to proceed is denied.

DATED at Salt Lake City, Utah, May 10, 2019.

/s/ Michael J. Hammer
Presiding Officer

Approved and confirmed May 10, 2019 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#308202

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 May 10, 2019, a true and correct copy of the foregoing was served upon the following as indicated below:

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