



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

September 11, 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 Administrator

**RE: Docket No. 19-035-31 – In the Matter of the Formal Complaint of W. Michael Sessions
against Rocky Mountain Power**

Dear Mr. Widerburg:

Rocky Mountain Power (“Company”) hereby submits for filing its Answer and Motion for Summary Judgment 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
jana.saba@pacificorp.com

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

Informal inquiries may be directed to Jana Saba at (801) 220-2823.

Sincerely,

A handwritten signature in blue ink that reads "Daniel E. Solander".

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 W. Michael Sessions,	:
	:
Complainant,	: Docket No. 19-035-31
	:
vs.	:
	:
Rocky Mountain Power,	: ROCKY MOUNTAIN POWER’S
	: ANSWER AND
Respondent.	: MOTION FOR SUMMARY JUDGMENT
	:
	:
	:

Rocky Mountain Power, a division of PacifiCorp (“RMP” or the “Company”), pursuant to Utah Code Ann. §§ 63G-4-204(1) and Utah Admin. Code R746-1-203, R746-1-206, and R746-1-301, provides its Answer to the formal complaint (“Complaint”) filed by W. Michael Sessions (“Complainant”) with the Public Service Commission of Utah (the “Commission”). In addition, the Company moves that the Commission find that Rocky Mountain Power is entitled to summary judgment, pursuant to Rule 56 of the Utah Rules of Civil Procedure, because it is undisputed that Rocky Mountain Power fully performed

its obligations under the contract at issue in this case, and further that 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
jana.saba@pacificorp.com
daniel.solander@pacificorp.com

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

Jana Saba
Rocky Mountain Power
1407 West North Temple, Suite 330
Salt Lake City, UT 84116
Telephone: (801) 220-2823

Daniel Solander
Rocky Mountain Power
1407 West North Temple, Suite 320
Salt Lake City, UT 84116
Telephone: (801) 220-4014

II. BACKGROUND

1. Mr. Michael Sessions is a residential customer in Riverdale, Utah. As described in his formal complaint, Mr. Sessions purchased an older home in November 2017. Mr. Sessions constructed a new building on the site and converted the single family residence into a multi-family residence with two separate meters. When he requested Rocky Mountain Power connect service to the multi-family residence, he was upset with

the amount that would be charged to complete the work. To service two residences, the new service required an upgrade of existing electrical equipment, including the purchase of a higher capacity transformer. The estimated cost for the upgraded equipment was calculated according to the Company's line extension policy.

2. Before any work was performed, Mr. Sessions filed an informal complaint, on March 28, 2018. After extensive correspondence explaining that the Company was in compliance with its line extension policy, Mr. Sessions chose not to pursue a formal complaint at that time.

3. On May 24, 2018, Mr. Sessions and Rocky Mountain Power entered into a Multi-Family Units Contract for electric service to his property. The contract required Mr. Sessions to pay \$4,637. On June 20, 2018, Mr. Sessions paid \$4,637. The contract required Rocky Mountain Power to provide 120/240 volt, single-phase electric service to two residences located at 4587 S. 1150 W., Riverdale, Utah.¹

4. On June 30, 2018, Rocky Mountain Power completed installation of the equipment necessary to provide service to the two residences.

5. On October 22, 2018, Mr. Sessions initiated an action by filing a Small Claims Affidavit, dated October 22, 2018, claiming that Rocky Mountain Power overcharged him for reconnecting electric service at his home. On December 21, 2018, a small claims trial was held, and the Small Claims Affidavit was dismissed.

6. On January 28, 2019, Mr. Sessions filed a Notice of Appeal, appealing the final judgment entered in the small claims proceeding to the Utah Second District Court, Weber County, Ogden City Department. On June 28, 2019, Defendant Rocky Mountain

¹ A copy of the contract was included with Mr. Sessions' formal complaint.

Power filed a Motion for Summary Judgment. On August 1, 2019, the Second District Court granted Rocky Mountain Power's Motion for Summary Judgment.²

III. ANSWER AND MOTION FOR SUMMARY JUDGMENT

7. As described in great detail in the correspondence attached to Mr. Sessions' informal complaint, the Company correctly followed Electric Service Regulation No. 12 – Line Extensions when providing service to Mr. Sessions. The added load of the multi-family residence required a transformer upgrade, which is treated as a standard line extension when an existing customer adds load and the demand exceeds the capacity of the existing facilities.

8. With respect to Mr. Sessions' claim that the Company presented him with "the wrong contract and refused to correct their mistake,"³ it appears that Mr. Sessions is making a claim for a breach of contract. "The elements of a prima facie case for breach of contract are (1) a contract, (2) performance by the party seeking recovery, (3) breach of the contract by the other party, and (4) damages." *Carmichael v. Higginson*, 2017 UT App 139, ¶ 10 n.5, 402 P.3d 146, 149 n.5 (Utah Ct. App. 2017) (quoting *Bair v. Axiom Design, LLC*, 2001 UT 20, ¶ 14, 20 P.3d 388).

9. According to the undisputed facts, Rocky Mountain Power has fully performed its obligations under the Contract. Mr. Sessions has not alleged any material facts to show a breach of contract by Defendant.

10. With respect to Mr. Sessions' claim that he entered into the agreement under duress, "two elements must be shown to exist in order to prove duress. First, there

² A copy of the Ruling is attached hereto as Exhibit A.

³ Formal Complaint, p. 2.

must be some improper threat made by the defendant. Second, that threat must leave the victim/plaintiff with no reasonable alternative but to consent to the contract.” *Boud v. SDNCO, Inc.*, 54 P.3d 1131, 1137, 2002 UT 83, ¶ 23 (Utah 2002).

11. Mr. Sessions cannot prove duress; he has not alleged any material facts to show an improper threat. In addition, “the mere loss of a potential bargain does not leave a plaintiff with ‘no reasonable alternative.’” *Id.* at ¶ 25.

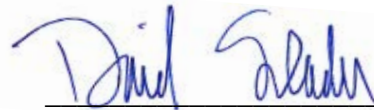
12. Mr. Sessions’ formal complaint is simply a restatement and third attempt to seek relief which has already been denied in both the Riverdale small claims court, and by the Second District Court, Weber County, Ogden City Department. Mr. Sessions’ claims fail as a matter of law, and should be dismissed with prejudice.

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 11th day of September 2019.

Respectfully submitted,



Daniel E. Solander

Attorney for Rocky Mountain Power

**Exhibit A – Second District Court Ruling on
Defendant’s Motion for Summary Judgment**

FILED

AUG 01 2019

SECOND
DISTRICT COURT

**IN THE SECOND JUDICIAL DISTRICT COURT, STATE OF UTAH
WEBER COUNTY, OGDEN DEPARTMENT**

W. MICHAEL SESSIONS

Plaintiff,

vs.

ROCKY MOUNTAIN POWER,

Defendant.

**RULING ON DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**


Case No. 198900002

Judge Camille L. Neider

This matter came before the court on Defendant's Motion for Summary Judgment filed on June 28, 2019. Plaintiff filed a Memorandum Opposing the motion on July 12, 2019. Plaintiff filed a Reply on July 26, 2019. The Court has carefully reviewed the pleadings, the contract between the parties and the case law surrounding this issue and is now prepared to enter issue a ruling without further hearing. The Court grants Defendant Motion for Summary Judgment and finds that Defendant is entitled to judgment as a matter of law.

The Court adopts the legal reasoning and briefing of Defendant. Counsel is to prepare a Findings of Fact and Conclusions of Law and an Order on the Motion. Counsel is also to prepare a proposed Final Judgment for the Court's signature.

Dated this 30th day of July, 2019.



Camille L. Neider
District Court Judge

CERTIFICATE OF MAILING

~~July~~
AUGUST

I hereby certify that on the 1st day of ~~July~~, 2019, I delivered a true and correct copy of the foregoing ruling as follows:

Timothy Clark
Pacifcorp
Tim.clark@pacifcorp.com

W. Michael Sessions
4587 S. 1150 W.
Riverdale, UT 84405



Deputy Court Clerk

CERTIFICATE OF SERVICE

Docket No. 19-035-31

I hereby certify that on September 11, 2019, a true and correct copy of the foregoing was served by electronic mail to the following:

W. Michael Sessions wmsessions@aol.com

Utah Office of Consumer Services

Cheryl Murray cmurray@utah.gov

Michele Beck mbeck@utah.gov

Division of Public Utilities

Madison Galt mgalt@utah.gov;
dpudatarequest@utah.gov

Assistant Attorney General

Patricia Schmid pschmid@agutah.gov

Justin Jetter jjetter@agutah.gov

Robert Moore rmoore@agutah.gov

Steven Snarr stevensnarr@agutah.gov

Rocky Mountain Power

Data Request Response datarequest@pacificorp.com
Center

Daniel E. Solander daniel.solander@pacificorp.com

Jana Saba jana.saba@pacificorp.com;
utahdockets@pacificorp.com



Mary Penfield
Adviser, Regulatory Operations