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Salt Lake City, Utah 84114

June 22, 2020

***VIA ELECTRONIC FILING***

Utah Public Service Commission  
Heber M. Wells Building, 4<sup>th</sup> Floor  
160 East 300 South  
Salt Lake City, UT 84114

Attention: Gary Widerburg  
Commission Administrator

**RE: Docket No. 20-035-24**  
In the Matter of the Formal Complaint of Scott Macdonald Against Rocky Mountain Power

Dear Mr. Widerburg:

Rocky Mountain Power (“Company”) hereby submits for filing its Answer and Motion to Dismiss 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): [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)  
[utahdockets@pacificorp.com](mailto:utahdockets@pacificorp.com)  
[jana.saba@pacificorp.com](mailto:jana.saba@pacificorp.com)  
[jacob.mcdermott@pacificorp.com](mailto:jacob.mcdermott@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,

Joelle Steward  
Vice President, Regulation

Enclosures

Jacob A. McDermott (16894)  
Rocky Mountain Power  
1407 W North Temple, Suite 320  
Salt Lake City, UT 84116  
Telephone: (801) 220-2233  
Facsimile: (801) 220-4615

*Attorney for Rocky Mountain Power*

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the formal complaint of	)	
Scott MacDonald against Rocky	)	Docket No. 20-035-24
Mountain Power	)	
	)	<b>ANSWER AND MOTION TO DISMISS</b>
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	)	
	)	

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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, and R746-1-301, hereby moves to dismiss in its entirety, with prejudice, the formal complaint (“Complaint”) filed by Scott MacDonald with the Public Service Commission of Utah (the “Commission”), because Rocky Mountain Power has not violated any provision of law, Commission order or Rule, or Company tariff.

**I. PRELIMINARY MATTERS**

Communications regarding this Application should be addressed to:

By e-mail (preferred): [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)  
[jana.saba@pacificorp.com](mailto:jana.saba@pacificorp.com)  
[utahdockets@pacificorp.com](mailto:utahdockets@pacificorp.com)  
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By mail: Data Request Response Center  
Rocky Mountain Power  
825 NE Multnomah St., Suite 2000  
Portland, OR 97232

Jana Saba  
Rocky Mountain Power  
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## **II. BACKGROUND**

1. On May 21, 2020, Scott MacDonald filed a formal complaint regarding “dirty power” he alleges is supplied by the Company. Mr. MacDonald alleges that the power supplied by the Company to his home is causing light emitting diode (“LED”) light fixtures in his home to flicker. Mr. MacDonald also alleges that the Company is contractually obligated to “supply power within certain limits” and finally alleges that the Company has failed to supply power within the alleged contractual limits.

2. The Company has been in discussions with Mr. MacDonald about the issues he alleges in his complaint since late summer in 2019. While the Company asserts in this answer and motion to dismiss that Mr. MacDonald has made no claim against the Company for which relief can be granted by the Commission, the Company is nevertheless committed to working with him to resolve his concerns. If the Company’s motion to dismiss is granted it will continue to work towards a resolution in the interest of providing a high level of customer service, even though Utah law is silent on LED light flicker.

## **III. ANSWER**

3. Rocky Mountain Power responds to each allegation in Mr. MacDonald’s complaint as follows:

a) The Company denies the allegation that it supplies “dirty power” to Mr. MacDonald’s home. The Company is not aware of an industry standard definition of “dirty power,” and maintains that it supplies power to Mr. MacDonald in a manner consistent with its reporting under Commission’s Electrical Service Reliability Rules (*see, R746-313-1 et. al*).

b) The Company neither admits nor denies the allegation that power it supplies to Mr. MacDonald’s home caused LED lighting fixtures in that home to flicker, the Company also asserts the affirmative defense that it has no obligation under any provision of law, Commission order or Rule, or Company tariff to prevent flicker from occurring. The Company is aware of increased flicker measurements on its distribution system in the vicinity of Mr. MacDonald’s home, but, without a detailed analysis of the LED light fixtures themselves and the MacDonald’s home electrical system, it is impossible to determine whether those measurements are directly responsible for the flickering lights alleged, or if the LED lighting or the MacDonald’s home wiring have design defects that cause the problem, or if there a combination of these variables is at play.

c) The Company denies the allegation that it is contractually obligated to “supply power within certain levels.” There is no provision of Utah law, Commission order or Rule, or Company tariff that addresses flicker levels, and the Company has not entered into any contractual arrangement with Mr. MacDonald beyond its standard residential service arrangements.

d) The Company denies that it has failed to meet a contractual obligation to “supply power within certain levels.” There is no provision of Utah law, Commission order or Rule, or Company tariff that addresses flicker levels, and the Company has not entered into any

contractual arrangement with Mr. MacDonald beyond its standard residential service arrangements.

#### IV. MOTION TO DISMISS

4. The Company hereby moves under Utah Rules of Civil Procedure, Rules 12(b)(1) & 12(b)(6) for an Order dismissing the Complaint. As noted above, the Complaint does not include any allegations that Rocky Mountain Power has violated any provision of law under the jurisdiction of the Commission, Commission Order or Rule, or Company tariff. The Company notes that should the Commission deny this Motion it will respond to the Complaint with an answer to the allegations within 14 days as provided under Utah Rules of Civil Procedure, Rules 12(a)(1).

5. Utah Code Ann. § 54-7-9(2) states a complaint against a public utility “shall 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.”

6. Although the Commission has broad jurisdiction, granted to it by Utah Code Ann. §54-4-1 “to supervise and regulate every public utility in this state and to supervise all of the business of every such public utility” the Utah Supreme Court has stated that “the primary purpose of the Commission is to fix the rates that a public utility may charge its customers.”<sup>1</sup> The test for whether a utility activity is Commission-jurisdictional is “whether the activity the Commission is attempting to regulate is closely connected to its supervision of the utility’s rates and whether the manner of the regulation is reasonably related to the legitimate legislative purpose of rate control for the protection of the consumer.”<sup>2</sup>

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<sup>1</sup> *Bear Hollow Restoration, LLC v. Pub. Serv. Comm’n of Utah*, 2012 UT 18 (Utah 2012), citing *Kearns-Tribune Corp. v. Pub. Serv. Comm’n*, 682 P. 2d 858, 859 (Utah 1984).

<sup>2</sup> *Id.* at ¶ 32.

7. In this case, the allegations in Mr. MacDonald's Complaint relate to his belief that the Company has violated an obligation regarding flicker issues he claims to be experiencing with certain LED lighting in his home. None of the concerns raised in the Complaint contain allegations of a violation of a law, rule, or Order under the jurisdiction of the Commission.

8. The Company has examined the Utah Code, the Commission Rules, specifically R746-313-1 et. al, and Commission Orders and is unable to identify any standard or requirement relating to Mr. MacDonald's allegations. The Company has also examined its tariffs and specifically its Electric Service Regulations, and was unable to find any provision relating to the allegations, or requiring the Company to correct the flicker issues Mr. MacDonald's complaint alleges. For example in Electric Service Regulation No. 25, which contains the Company's guarantees to its customers, there are provisions related to service outages and interruptions, but there are no guarantees specific to LED lights flickering. Moreover, the only potentially relevant element in the Company's tariffs appears in Electric Service Regulation 5, which generally relates to installations on the customer's side of the meter. Section 4 of that regulation includes the following disclaimer of liability related to Customer equipment:

Nothing in these Electric Service Regulations shall be construed as placing upon the Company any responsibility for the condition or maintenance of the Customer's wiring, current consuming devices or other equipment, and the Company shall not be held liable for any loss or damage resulting from defects in the Customer's installation and shall not be held liable for damage to persons or property arising from the use of the service on the premises of the Customer.

9. Because the Complaint fails to include any allegations that Rocky Mountain Power has violated any provision of law under the jurisdiction of the Commission, Commission Order or Rule, or Company tariff, it must be dismissed in its entirety, with prejudice.

#### IV. CONCLUSION

WHEREFORE the Company respectfully requests the Commission either:

- a) Dismiss the Complaint in its entirety, with prejudice; or
- b) if the complaint is not dismissed, find that the Company has not violated any provision of law under the jurisdiction of the Commission, Commission Order or Rule, or Company tariff.

DATED this 22<sup>nd</sup> day of June, 2020

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Jacob A. McDermott', written over a horizontal line.

Jacob A. McDermott  
*Attorney for Rocky Mountain Power*

**CERTIFICATE OF SERVICE**

Docket No. 20-035-24

I hereby certify that on June 22, 2020, a true and correct copy of the foregoing was served by electronic mail to the following:

Scott MacDonald [bones3mac@gmail.com](mailto:bones3mac@gmail.com)

**Utah Office of Consumer Services**

Cheryl Murray [cmurray@utah.gov](mailto:cmurray@utah.gov)

Michele Beck [mbeck@utah.gov](mailto:mbeck@utah.gov)

**Division of Public Utilities**

[dpudatarequest@utah.gov](mailto:dpudatarequest@utah.gov)

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**Rocky Mountain Power**

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Katie Savarin  
Coordinator, Regulatory Operations