

October 19, 2020

VIA ELECTRONIC FILING

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

Attention: Gary Widerburg
Commission Administrator

RE: Docket No. 20-035-40
In the Matter of the Formal Complaint of Brian Osborne Against Rocky Mountain
Power

Dear Mr. Widerburg:

Rocky Mountain Power (“Company”) hereby submits for filing its 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
utahdockets@pacificorp.com
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By regular mail: Data Request Response Center
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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

By mail: Data Request Response Center
Rocky Mountain Power
825 NE Multnomah St., Suite 2000
Portland, OR 97232

Jana Saba
Rocky Mountain Power
1407 W. North Temple, Suite 330
Salt Lake City, UT 84116
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BACKGROUND

1. On September 17, 2020, Brian Osborne filed a formal complaint against Rocky Mountain Power seeking approval of a line extension to Mr. Osbourne's property from Mt. Pleasant City Power Dept. ("Mt. Pleasant Power").
2. Mr. Osbourne's property is located in an unincorporated area near the City of Mount Pleasant, Utah; thus, the property is located in Rocky Mountain Power's service territory.
3. Because Mr. Osbourne's property is located somewhat close to the municipal boundary of the Mount Pleasant City, Utah, it is also located somewhat close to facilities owned by Mt. Pleasant Power, a municipal electric company operating within the boundaries of the Mount Pleasant City, Utah.
4. Mr. Osbourne desires to obtain a line extension from Mt. Pleasant Power, which would then facilitate ongoing electric service to his property from Mt. Pleasant Power.
5. Mr. Osbourne must, however, obtain electric service from Rocky Mountain Power, because his property is in Rocky Mountain Power's service territory.
6. Rocky Mountain Power refused to allow Mt. Pleasant Power to make a line extension to Mr. Osbourne's property.

7. Mr. Osbourne contends that Rocky Mountain Power's refusal is illegal, unjust or improper, because, Mr. Osbourne, speculates that there is "a personal grudge between someone in Richfield and Mt. Pleasant City." (Osbourne Formal Complaint at ¶ 4.)

8. Mr. Osbourne does not, however, offer any alleged facts supporting the speculation of a personal grudge; instead, his attached explanation outlines an exchange of communications between Mr. Osbourne and Mt. Pleasant Power and between Mr. Osbourne representatives of Rocky Mountain Power.

9. In summary, Mr. Osbourne believes that he can obtain a line extension from Mt. Pleasant Power at a lower cost (although the bid from Mt. Pleasant Power is an estimate subject to a true-up, and actual costs may be greater than Mr. Osbourne believes). Mr. Osbourne further believes that he should be allowed to pursue this option because other property owners in the unincorporated areas outside the City of Mt. Pleasant have obtained service from Mt. Pleasant Power. Rocky Mountain Power, on the other hand, has explained to Mr. Osbourne that Mr. Osbourne's property is located in Rocky Mountain Power's service territory.

MOTION TO DISMISS

The Commission should dismiss the Complaint because it fails "to state a claim upon which relief can be granted." Utah Rules Civ. Proc. R. 12(b)(6). Under Utah Code Ann. § 54-7-9(2), 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." Even accepting that all allegations made in the Complaint are true, such allegations do not establish that Rocky Mountain Power has violated any provision of law under the jurisdiction of the Commission, Commission order or rule, or Company tariff.

This matter revolves around determining which electric company should provide service to Mr. Osbourne's property, Rocky Mountain Power or Mt. Pleasant Power. Mr. Osbourne's Complaint acknowledges that the property is located within Rocky Mountain Power's service territory. This single fact is dispositive, and the Complaint must be dismissed.

The integrity of an exclusive service territory is a bedrock legal principle for electric public utilities. Mr. Osbourne's Complaint does not, and cannot, dispute that the property is located within the service territory for Rocky Mountain Power, established under the authority of the Commission. The Commission's authority to do so has long been recognized by the Utah Supreme Court, which explained:

The very purpose of the Utilities Act is to prevent one public utility from destroying another. When, therefore, it is made apparent to the commission that the increase of the number of vehicles or trips by a common carrier which is using the public streets and highways must necessarily result in seriously affecting the ability of another utility to render service, or perhaps destroy its ability to do so, where the service is rendered by the other public utility partly in the same territory and partly in territory extending beyond the territory served by the utility first mentioned, the commission undoubtedly may interfere to prevent such disastrous results. The commission was created for that very purpose, and, where its orders are within its jurisdiction and the bounds of reason, and are not capricious and arbitrary, this court cannot interfere.

Gilmer v. Pub. Utilities Comm'n of Utah, 67 Utah 222, 247 P. 284, 289–90 (1926). Service territory boundaries are well-established and long-standing. Such boundaries should not be disrupted on an *ad hoc* basis, in response to individual complaints.

Mt. Pleasant Power's actions are inexcusable and reflect an unlawful attempt to intrude on Rocky Mountain Power's service territory. Mt. Pleasant Power is, of course, aware of its service territory boundaries. Thus, Mt. Pleasant Power should not have ever submitted any bid to Mr. Osbourne. If it desires to serve Mr. Osbourne's property, Mt. Pleasant Power has the well-known option to seek annexation by the City of Mt. Pleasant. This would have been the proper

avenue to expand its service territory. Mt. Pleasant Power has needlessly confused Mr. Osbourne and wasted his time by giving him a bid for a line extension. If Mr. Osbourne is to be granted any relief as a result of the circumstances described in the Complaint, such relief, should come from Mt. Pleasant Power.

Rocky Mountain Power is merely seeking to serve a customer in its certificated territory, in accordance with Commission approved tariffs. The Complaint acknowledges this dispositive fact. Rocky Mountain Power has not violated any provision of law under the jurisdiction of the Commission, Commission order or rule, or Company tariff, and the Complaint should be dismissed in its entirety, with prejudice.

DATED this 19th day of October, 2020.

Respectfully submitted,

/s/ Timothy K. Clark

Timothy K. Clark

Attorney for Rocky Mountain Power

CERTIFICATE OF SERVICE

Docket No. 20-035-40

I hereby certify that on October 19, 2020, a true and correct copy of the foregoing was served by electronic mail to the following:

Brian Osborne brian.osborne@imail.org

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Katie Savarin
Coordinator, Regulatory Operations