

January 13, 2022

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. 21-035-67
In the Matter of the Formal Complaint of Kip Swan and David Thompson Against
Rocky Mountain Power
Rocky Mountain Power's Motion to Dismiss and Answer

Pursuant to the Notice of Filing and Comment Period issued by the Public Service Commission of Utah on December 15, 2021, Rocky Mountain Power ("Company") hereby submits for filing its Motion to Dismiss and Answer and Declaration of Tyler Sorensen 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
jana.saba@pacificorp.com
emily.wegener@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
Senior Vice President, Regulation

Enclosures

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Stephanie Barber-Renteria (8808)
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Attorneys for Rocky Mountain Power

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Formal Complaint of Kip Swan and David Thompson against Rocky Mountain Power)	DOCKET NO. 21-035-67
)	MOTION TO DISMISS
)	AND ANSWER

Pursuant to Utah Code Ann. § 63G-4-204(1) and Utah Admin. Code §§ R746-1-203, R746-1-206, and R746-1-301, and Utah Rules of Civil Procedure 12(b)(6), Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or the “Company”) hereby provides its answer to the formal complaint (“Complaint”) filed by Kip Swan and David Thompson (“Complainants”) with the Public Service Commission of Utah (“Commission”) on December 14, 2021. In addition, the Company moves to dismiss the Complaint in its entirety because Rocky Mountain Power has not violated any provision of law, Commission order or rule, or Company tariff.

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INTRODUCTION

Pursuant to the Company's Vegetation Management Policy, the Company regularly maintains its rights-of-way to ensure that there is adequate clearance between vegetation and the Company's facilities. The Company denies that its contractor cut more than necessary to maintain clearance and specifically denies that its contractor cut the lower branches as alleged by the Complainants. Additionally, this Complaint exceeds the Commission's jurisdiction, which is limited to rates charged by public utilities and does not extend to alleged torts such as trespass and property damage. Therefore, the Commission should dismiss the Complaint.

BACKGROUND & RESPONSE TO COMPLAINANTS' ALLEGATIONS

1. Electric Service Regulation No. 6 permits the Company "to trim trees and other vegetation to the extent necessary to avoid interference with the Company's lines and to protect public safety." (Electric Service Regulation No. 6, ¶ 2(c).) The Company maintains Vegetation

Management Standard Operating Procedures that set forth how and when the Company trims trees located near its facilities, which are available on the Company's website at <https://www.rockymountainpower.net/outages-safety/vegetation-management.html>. (Declaration of T. Sorensen, ¶ 3, January 13, 2022, attached hereto as Exhibit A "Sorensen Decl.") In accordance with its policy, the Company's contractor, Trees, LLC ("Contractor") performed regular vegetation management work in the area around 2900 East and 4500 South on or around April 2021. (Sorensen Decl. ¶ 5.)

2. On December 14, 2021, Complainants filed a Complaint with the Commission against the Company alleging that on April 26, 2021, Contractor trimmed tree branches that were not impeding the power lines overhead, which diminished their privacy. The trees at issue were within the Company's right-of-way, as established in the recorded plat map. (Sorensen Decl. ¶ 7.) The Company denies that it cut any branches that were not necessary to maintain its clearance and denies that it or its Contractor trimmed any of the branches on the lower portion of each tree, as alleged by Complainants.

3. The Company's Senior Utility Forestry Arborist, Tyler Sorensen, met with Complainants on May 6, 2021 to assess the situation.¹ (Sorensen Decl. ¶ 6.) Based on Mr. Sorensen's visual inspection from the ground, he determined that the cuts to the upper portion of the trees within the easement were necessary to maintain clearances. He determined that the cuts made on the lower portion of the trees at issue were made long before Contractor was on site. (Sorensen Decl. ¶ 8.) Specifically, Mr. Sorensen noted there was an excessive amount of sap fully covering the wounds on the lower portion of the trees. It takes a substantial amount of time for a

¹ The Company believes that Mr. Sorensen was misidentified as "Corey" in the Complaint.

tree to complete this degree of healing. (Sorensen Decl. ¶ 9.) When Mr. Sorensen raised these issues to Mr. Swan, he became angry and instructed Mr. Sorensen to leave the property, which he did. (Sorensen Decl. ¶ 10.) Complainants then filed an informal complaint with the Division of Public Utilities.

4. The Company attempted to resolve the complaint through various discussions with Complainants, including a discussion between Complainants and customer service representative James Ingram on May 11, 2021. Complainants sent a letter from their arborist on June 23, 2021, but the letter from the arborist did not opine on when the cuts took place, only that they were below the necessary clearance. Complainants proposed a solution on November 8, 2021, requesting that the Company pay for extensive decorative fencing. This solution was not acceptable to the Company. (Sorensen Decl. ¶ 11.)

5. The Company denies that it agreed to pay for Complainants to hire their own arborist. However, as stated in the letter, dated November 10, 2021 from Kerry Favero, Director – Vegetation Management to Mr. Swan, the Company offered to have Complainants’ arborist meet with one of its department foresters on site and evaluate the situation together using a Company bucket truck. To address Mr. Swan’s concerns, the Company was willing to provide use of a bucket truck. However, the Complainants did not take the Company up on their offer.

6. The Company denies all factual allegations in the Complaint not specifically admitted herein.

MOTION TO DISMISS

7. Complainants fail to allege or establish the Company violated applicable law, Commission rules or Company tariffs. Contractor trimmed trees within the Company’s easement and according to its Vegetation Management Standard Operating Procedures. The Company has

the right to conduct vegetation management activities according to its procedures.² Complainants do not claim that the trees were outside the Company's right-of-way, only that the tree trimming activities exceeded what is necessary. As established in the Sorensen Declaration, the Contractor only engaged in vegetation management activities necessary to maintain clearance from the Company's facilities.

8. To the extent the Company's vegetation management activities went beyond what was required by the Vegetation Management Standard Operating Procedures (which the Company denies), such an allegation is not within the Commission's jurisdiction and the Commission does not have authority to award damages for any violation.³ 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."⁴ Here, any claim for damages as a result of the Company's alleged conduct is not related to the Commission's supervision of the utility's rates. Therefore, the Commission should dismiss the Complaint.

CONCLUSION

For the foregoing reasons, the Company requests that the Commission dismiss the Complaint with prejudice.


² See *In the Matter of the Formal Complaint of Bryan Taylor v. PacifiCorp*, Docket No. 03-035-05, 2003 WL 24141720, Report and Order (Utah P.S.C. September 30, 2003) (denying Complainant's request to bar or limit tree trimming activities on his property).

³ See *In the Matter of the Formal Complaint of Jeff McCollin against Moon Lake Electric*, Docket No. 14-030-02, 2014 WL 4960958, Order Dismissing Complaint (Utah P.S.C. September 26, 2014) (holding that "criminal trespass" claim is outside the Commission's jurisdiction).

⁴ *Bear Hollow Restoration, LLC v. Pub. Serv. Comm'n of Utah*, 2012 UT 18 ¶ 32, 274 P.3d 956 (citing *Kearns-Tribune Corp. v. Pub. Serv. Comm'n of Utah*, 682 P.2d 858, 860 (Utah 1984)).

DATED this 13th day of January, 2022.

Respectfully submitted,
ROCKY MOUNTAIN POWER



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Exhibit A

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Attorneys for Rocky Mountain Power

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Formal Complaint of Kip Swan and David Thompson against Rocky Mountain Power)	DOCKET NO. 21-035-67
)	DECLARATION OF TYLER SORENSEN

I Tyler Sorensen state and affirm the following:

1. I am the Senior Utility Forestry Arborist of PacifiCorp.
2. In this capacity, I am responsible for managing day to day operations in the Salt Lake valley and surrounding territories for all Rocky Mountain Power Utility Vegetation Management activities. I have 19 years in the industry and have been a Certified Arborist and Utility Specialist recognized by the International Society of Arboriculture for over a decade.
3. The Company maintains Vegetation Management Standard Operating Procedures that set forth how and when the Company trims trees located near its facilities.
4. As part of my responsibilities, I ensure that the Company adheres to its Vegetation Management Standard Operating Procedures and direct our contractor, Trees, LLC, to perform work in certain areas in compliance with our procedures. Trees, LLC maintains control over the time and manner that the work is performed, as long as it meets the procedures.

5. Trees, LLC performed regular vegetation management work in the area around 2900 East and 4500 South in April 2021.

6. On May 6, 2021, after learning that Mr. Swan had concerns, I met with Mr. Swan to discuss the vegetation management work done by Trees, LLC.

7. I visually inspected the trees at issue from the ground. The trees appeared to be within the Company's right-of-way, as set forth in the plat map attached hereto as Exhibit 1.

8. Based on my visual inspection, I determined that the cuts made to the upper portion of the trees within the Company's easement were necessary to maintain the Company's clearance requirements from its facilities. I determined that the cuts made on the lower portion of the trees at issue were made long before Trees, LLC was on site.

9. I reached this conclusion, because there was excessive amount of sap fully covering the wounds on the lower portion of the trees, which takes a substantial amount of time for a tree to complete this degree of healing.

10. During my meeting with Mr. Swan, I tried to explain this reasoning, but the discussion was cut short when Mr. Swan became angry and instructed me to leave the property.

11. I reviewed Mr. Swan's request for resolution, which he sent to James Ingram on November 8, 2021. Because Trees, LLC did not cause the alleged damage, the Company denied this request.

I declare under criminal penalty of the State of Utah that the foregoing is true and correct.

EXECUTED and signed on this 13th day of January, 2022.

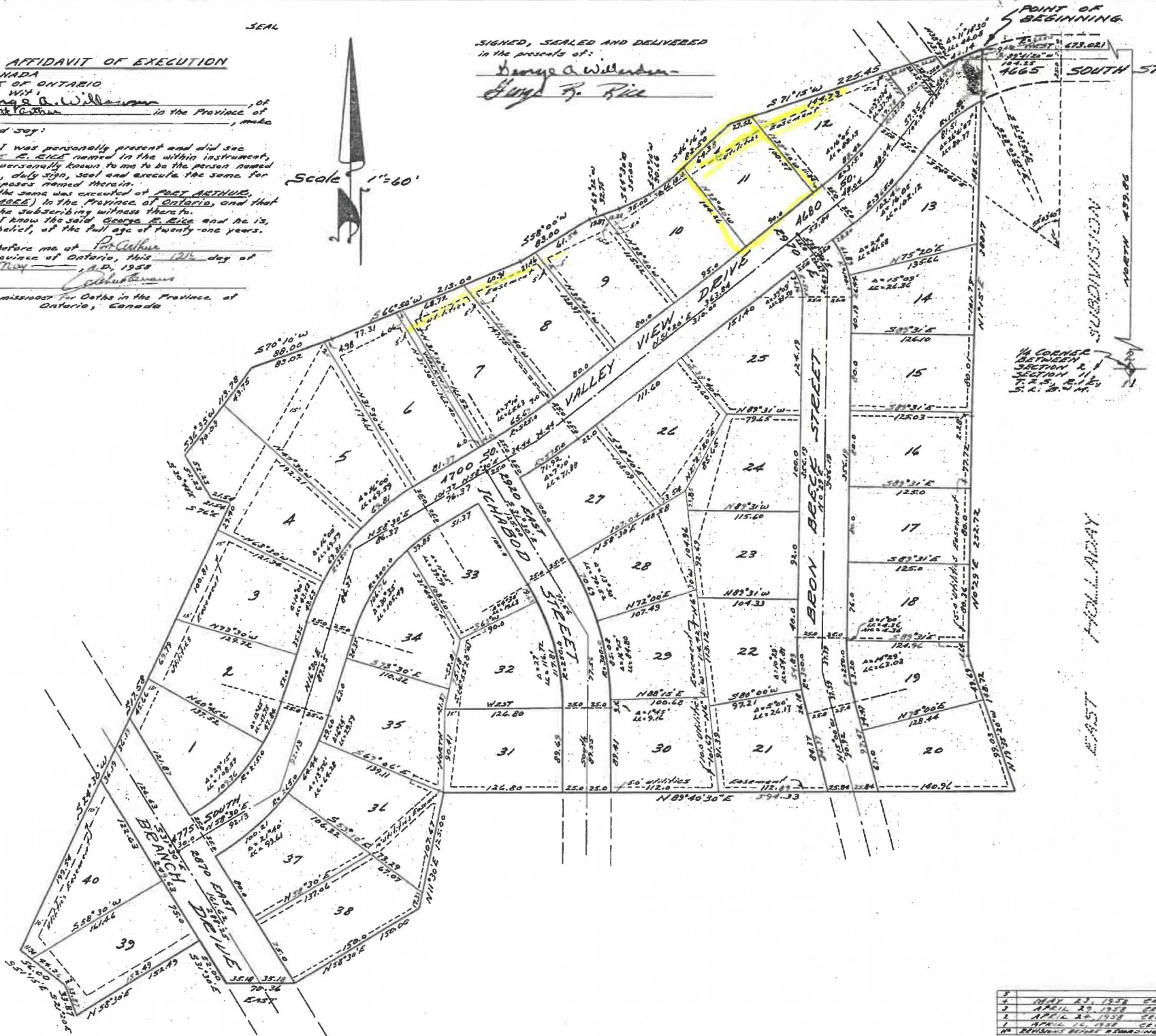

Tyler Sorensen

Exhibit 1

AFFIDAVIT OF EXECUTION
 CANADA
 PROVINCE OF ONTARIO
 To wit:
 I, George A. Willenden, of
Ontario, in the Province of
 Ontario, do hereby certify:
 1. THAT I was personally present and did see
George E. Rice named in the within instrument,
 who is personally known to me to be the person named
 therein, duly sign, seal and execute the same for
 the purposes named therein.
 2. THAT the same was executed at FORT ARTHUR,
(DUMFRIES) in the Province of Ontario, and that
 I am the subscribing witness thereto.
 3. THAT I know the said George E. Rice and he is,
 in my belief, of the full age of twenty-one years.
 SWORN before me at Fort Arthur,
 in the Province of Ontario, this 11th day of
May, A.D. 1958
[Signature]
 A Commissioner for Oaths in the Province of
 Ontario, Canada

SIGNED, SEALED AND DELIVERED
 in the presence of:
George A. Willenden
George E. Rice

Scale 1"=60'



SURVEYOR'S CERTIFICATE
 I, Robert B. Jones, do hereby certify that I am a Registered Professional Engineer and/or Land Surveyor, and that I hold certificate No. 1525, as prescribed under the laws of the State of Utah. I further certify that by authority of the Owners, I have made a survey of the tract of land shown on this plat and described below, and have subdivided said tract of land into lots and streets, hereafter to be known as SLEEPY HOLLOW SUBDIVISION, and that same has been correctly surveyed and staked on the ground as shown on this plat.

BOUNDARY DESCRIPTION
 Beginning at a point on a curve on the North line of a County Road said point being North 439.86 feet and West 473.02 feet from the 1/4 corner between Section 2 and Section 11, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and chasing thence southwesterly 44.12 feet along an arc of said curve to the left the center of which is 321.0759 feet, thence N 88° 45' W 13.35 feet; thence S 71° 15' W 225.45 feet; thence S 44° 16' W 82.50 feet; thence S 55° 10' W 30.66 feet; thence S 64° 30' W 35.00 feet; thence S 69° 32' W 33.75 feet; thence S 59° 00' W 83.00 feet; thence S 61° 50' W 219.00 feet; thence S 70° 10' W 88.00 feet; thence S 36° 35' W 118.72 feet; thence S 30° 40' E 52.23 feet; thence S 74° 5' 21.52 feet; thence S 88° 30' W 217.52 feet; thence S 54° 15' E 26.00 feet; thence S 21° 40' E 33.87 feet; thence N 52° 30' E 152.42 feet; thence S 31° 30' E 32.00 feet; thence East 70.36 feet; thence N 50° 10' E 150.00 feet; thence N 130° E 125.00 feet; thence N 60° 40' E 234.33 feet; thence N 11° 35' 20' W 141.22 feet; thence N 0° 29' E 252.72 feet; thence N 11° 5' 388.12 feet to the point of beginning.

PREPARED BY
 BUSH & GODDARD, INC., ENGINEERS
 250 South 2nd East Street
 Salt Lake City, Utah
 DATE: April 11, 1958

OWNER'S DEDICATION
 Know all men by these presents that we, the undersigned owner (s) of the above described tract of land, having caused same to be subdivided into lots and streets to be hereafter known as the

SLEEPY HOLLOW SUBDIVISION

do hereby dedicate for perpetual use of the public all parcels of land shown on this plat as intended for Public use.

In witness whereof we have hereunto set our hands, this 16 day of April, A.D., 1958

- | | |
|---------------------------------------|---|
| <u>[Signature]</u>
GEORGE E. RICE | <u>[Signature]</u>
CAROL A. RICE |
| <u>[Signature]</u>
ANITA E. RICE | <u>[Signature]</u>
CAROL A. RICE |
| <u>[Signature]</u>
CHARLES E. INCE | <u>[Signature]</u>
MABLE E. INCE, his wife |
| <u>[Signature]</u>
JACK T. LASHLEY | <u>[Signature]</u>
PATRICIA H. LASHLEY, his wife |
| <u>[Signature]</u>
JACOB M. MOORE | <u>[Signature]</u>
BOUVIE S. MOORE, his wife |
| <u>[Signature]</u>
NED H. JOHANSEN | <u>[Signature]</u>
ALICE JOHANSEN, his wife |
| <u>[Signature]</u>
NORMAN B. MOORE | <u>[Signature]</u>
STACY MOORE, his wife |

ACKNOWLEDGMENT

STATE OF UTAH }
 County of Salt Lake } S.S.

On the 16 day of April, A.D., 1958, personally appeared before me, the undersigned Notary Public, in and for said County of Salt Lake in said State of Utah, the signer(s) of the above Owner's dedication, 13 in number, who duly acknowledged to me that they signed it freely and voluntarily and for the uses and purposes therein mentioned.

MY COMMISSION EXPIRES Oct. 17, 1958
[Signature]
 NOTARY PUBLIC
 RESIDING IN SALT LAKE COUNTY

SLEEPY HOLLOW SUBDIVISION

A SUBDIVISION LOCATED IN THE
 3/4 3/4 SECTION 2 AND NW 1/4 SECTION 11,
 TOWNSHIP 2 SOUTH, RANGE 1 EAST,
 SALT LAKE BASE & MERIDIAN

COUNTY PLANNING COMMISSION APPROVAL
 APPROVED THIS 22 DAY OF April, A.D. 1958, BY
 THE SALT LAKE COUNTY PLANNING COMMISSION.
[Signature]
 CHAIRMAN, SALT LAKE CO. PLANNING COMM.

COUNTY SURVEYOR'S CERTIFICATE
 I HEREBY CERTIFY THAT I HAVE HAD THIS PLAT, AND SAID TRACT, AS STAKED, EXAMINED BY THIS OFFICE, AND IT IS CORRECT AND IN ACCORDANCE WITH INFORMATION ON FILE IN THIS OFFICE.
June 10, 1958
[Signature]
 SALT LAKE COUNTY SURVEYOR

APPROVAL AS TO FORM
 APPROVED AS TO FORM THIS 3rd DAY OF July, A.D. 1958
[Signature]
 DEPUTY SALT LAKE COUNTY ATTORNEY

COUNTY COMMISSION APPROVAL & ACCEPTANCE
 PRESENTED TO THE BOARD OF SALT LAKE COUNTY COMMISSIONERS THIS 17th DAY OF July, A.D. 1958, AT WHICH TIME THIS SUBDIVISION WAS APPROVED AND ACCEPTED.
[Signature]
 SALT LAKE COUNTY CLERK
[Signature]
 CHAIRMAN, BOARD OF SALT LAKE CO. COMM.

RECORDED # 1599799
 STATE OF UTAH, COUNTY OF SALT LAKE, RECORDED AND FILED AT THE REQUEST OF
SECURITY TITLE COMPANY
 DATE: JULY 8, 1958 TIME: 8:30 a.m. BOOK S PAGE 79
[Signature]
 SALT LAKE COUNTY RECORDER

CERTIFICATE OF SERVICE

Docket No. 21-035-67

I hereby certify that on January 13, 2022, a true and correct copy of the foregoing was served by electronic mail to the following:

Utah Office of Consumer Services

Michele Beck mbeck@utah.gov
ocs@utah.gov

Division of Public Utilities

dpudatarequest@utah.gov

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Rocky Mountain Power

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Emily Wegener Emily.wegener@pacificorp.com

Complainants

Kip Swan kip@1stutah.com
David Thompson denimbird@aol.com



Mary Penfield
Adviser, Regulatory Operations