

---

Formal Complaint of Kip Swan and David Thompson against Rocky Mountain Power	<u>DOCKET NO. 21-035-67</u>
	<u>ORDER</u>

---

ISSUED: March 3, 2022

**1. Procedural History**

On December 14, 2021, Kip Swan and David Thompson (“Complainants”) filed a Formal Complaint (“Complaint”) with the Public Service Commission (PSC) against Rocky Mountain Power (RMP). On January 13, 2022, RMP filed a Motion to Dismiss (“Motion”) and Answer. The same date, the Division of Public Utilities filed comments indicating it has no recommendation regarding the docket. On January 25, 2022, Complainants submitted a reply (“Reply”) in support of their Complaint.

**2. Complainants’ Allegations**

Broadly, the Complaint alleges RMP’s contractor, Trees, LLC (“Trees”), unnecessarily and excessively pruned vegetation at their residence on April 26, 2021. Complainants allege the pruning has adversely affected enjoyment of their property.

Complainants initially contacted Trees about the incident and allege Trees subsequently sent a supervisor, Mr. Webb, to inspect the work on April 28, 2021. Complainants allege Mr. Webb voiced general agreement with Complainants’ assessment that unnecessary pruning had occurred and that Mr. Webb assured them an agent of Trees with authority to resolve the issue would contact them. Having received no follow-up communication from Trees, Complainants contacted RMP.

On May 6, 2021, RMP's senior arborist, Mr. Sorenson, conducted an inspection at Complainants' residence. Complainants allege Mr. Sorenson told them the cuts about which they were complaining had been made years earlier. Believing Mr. Sorenson was not paying appropriate attention to the affected area and that the meeting was otherwise unproductive, Complainants asked Mr. Sorenson to leave the property.

Complainants' subsequent efforts to resolve the matter with RMP have been unsuccessful. They attach a letter from RMP, dated November 10, 2021, to their Complaint stating: "At this time ... [RMP] has concluded that Trees, LLC performed its work correctly and did not prune the branches at issue." On December 14, 2021, Complainants submitted their formal Complaint to the PSC. On the standard complaint form, where prompted to identify the relief sought, Complainants responded "[t]rellis system that we received bid on from decorwork + cost of freight, labor to install + cost of vegetation to plant around trellises (TBD)." Complainants attached a bid for the trellis in the amount of \$12,945.78, emphasizing this sum does not include shipping, labor, and vegetation costs.

### **3. RMP's Motion and Complainants' Reply**

RMP's Motion alleges the trees at issue were within RMP's right-of-way and denies it cut any branches that were not necessary to maintain appropriate clearance. RMP denies its contractor cut any branches on the lower portions of the trees. RMP alleges its Senior Forestry Arborist, Mr. Sorenson, determined cuts made on the lower portion of the trees at issue occurred long before the April 2021 pruning, evidenced by accumulation of sap over the wounds that could only have accumulated over a long period of time. RMP alleges it has remained open to

communication with Complainants and offered to provide a company-owned “bucket truck” to assist Complainants’ arborist in evaluating the trees. According to RMP, Complainants declined to accept such assistance. Having concluded its contractor made no unnecessary cuts, RMP denies any liability and has rejected Complainants’ demand to “pay for extensive decorative fencing.” (Motion at 4.)

Additionally, though RMP denies its contractor performed work inconsistent with RMP’s Vegetation Management Standard Operating Procedures, RMP argues any allegations it has violated such policy are not within the PSC’s jurisdiction, emphasizing the PSC does not have authority to award money damages for any such violation. Finally, RMP argues Complainants have alleged no violation of statute, rule, or tariff, and the Complaint must therefore be dismissed.

In their Reply, filed January 25, 2022, Complainants concede the trimmed vegetation fell within RMP’s right-of-way. They explain “[w]hat is in great dispute is the attitude of the contractor hired by RMP, and the liberty he took, which damaged our privacy under this very broad scope that RMP uses in [its] utility [right-of-way] and ‘Vegetation Management Policy.’” (Reply at 1.) Complainants argue RMP is “out on a limb to think that the [PSC] does not hold jurisdiction” over the matter. Complainants suggest Mr. Webb, the Trees’ employee who visited their property on April 28, 2021 and allegedly voiced agreement with Complainants’ assessment, prepared a report.<sup>1</sup> Complainants criticize RMP’s failure to address such report in its Motion.

---

<sup>1</sup> The PSC cannot discern whether Complainants intend to allege they witnessed Mr. Webb prepare a written report, received assurances from Mr. Webb that he would generate a written report, or are assuming he did so in conjunction with his inspection.

Complainants' Reply does not specify any provision of statute, rule, or tariff they allege RMP has violated.

#### **4. Discussion, Findings, and Conclusions**

The scope of the PSC's jurisdiction to hear complaints regarding public utilities is specifically enumerated in Utah Code Ann. § 54-7-9. By statute, any such complaint must "specify the act committed or omitted by the public utility that is claimed to be in violation of the law or a rule or order of the [PSC]."²

Here, the Complaint fails to specify any law, rule, or order RMP has violated and Complainants did not remedy this deficiency in their Reply. The PSC does not conclude, as RMP argues, it categorically has no jurisdiction in matters related to alleged violations of RMP's Vegetation Management Standard Operating Procedures. Title 54 is clear the PSC has broad regulatory authority to supervise the business of public utilities.³ The PSC is aware of no authority that omits vegetation management policies from the PSC's relatively broad regulatory purview. Of course, Utah law recognizes the PSC's authority is not without limits, carefully scrutinizing exercises of the PSC's authority that are highly attenuated from its essential ratemaking function.⁴ By necessity, the jurisdictional question often requires analysis on a case-by-case basis.

---

² Utah Code Ann. § 54-7-9(2).

³ See Utah Code Ann. § 54-4-1.

⁴ See, e.g., *Kearns-Tribune Corp. v. Pub. Serv. Comm'n*, 682 P.2d 858, 860 (Utah 1984).

However, the PSC unquestionably has no authority to adjudicate liability for common law tort claims (*e.g.* negligence, trespass, etc.) and no authority to award money damages for associated harms.

Here, Complainants have not specified any rule, law, or administrative order RMP allegedly violated. The PSC recognizes Complainants are not represented by counsel and would not dismiss the Complaint on a mere formality if the PSC were able to discern such a violation from Complainants' allegations. Yet, having reviewed the Complaint, Motion, and Reply, the PSC is unable to identify any allegations that constitute a violation. Moreover, the only relief Complainants request is money damages to remediate allegedly reduced enjoyment of their property. The PSC simply has no lawful authority to grant such relief.

The PSC acknowledges Complainants' apparently sincere frustration with these circumstances as well as RMP's apparently good-faith efforts to work with Complainants to resolve the issue. The PSC encourages RMP to continue to do so. However, if the parties are unable to resolve their dispute, the PSC is not the lawful forum for its adjudication.

For the foregoing reasons, the Complaint is dismissed.

DATED at Salt Lake City, Utah, March 3, 2022.

/s/ Michael J. Hammer  
Presiding Officer

DOCKET NO. 21-035-67

- 6 -

Approved and Confirmed March 3, 2022 as the Order of the Public Service Commission  
of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#322641

Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the PSC within 30 days after the issuance of this 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 does not grant a request for review or rehearing within 30 days after the filing of the request, 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 §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on March 3, 2022, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Email:

Kip Swan ([kip@1stutah.com](mailto:kip@1stutah.com))  
David Thompson ([denimbird@aol.com](mailto:denimbird@aol.com))

Data Request Response Center ([datareq@pacificorp.com](mailto:datareq@pacificorp.com)),  
([customeradvocacyteam@pacificorp.com](mailto:customeradvocacyteam@pacificorp.com))  
PacifiCorp

Jana Saba ([jana.saba@pacificorp.com](mailto:jana.saba@pacificorp.com))  
Autumn Braithwaite ([autumn.braithwaite@pacificorp.com](mailto:autumn.braithwaite@pacificorp.com))  
Emily Wegener ([emily.wegener@pacificorp.com](mailto:emily.wegener@pacificorp.com))  
Rocky Mountain Power

Patricia Schmid ([pschmid@agutah.gov](mailto:pschmid@agutah.gov))  
Justin Jetter ([jjetter@agutah.gov](mailto:jjetter@agutah.gov))  
Robert Moore ([rmoore@agutah.gov](mailto:rmoore@agutah.gov))  
Assistant Utah Attorneys General

Madison Galt ([mgalt@utah.gov](mailto:mgalt@utah.gov))  
Division of Public Utilities

Alyson Anderson ([akanderson@utah.gov](mailto:akanderson@utah.gov))  
Bela Vastag ([bvastag@utah.gov](mailto:bvastag@utah.gov))  
Alex Ware ([aware@utah.gov](mailto:aware@utah.gov))  
([ocs@utah.gov](mailto:ocs@utah.gov))  
Office of Consumer Services

---

Administrative Assistant