
Formal Complaint of Glenn Mickelson
against Rocky Mountain Power

DOCKET NO. 23-035-23

ORDER SUSPENDING ORDER DISMISSING
COMPLAINT AND NOTICE OF LIMITED
HEARING

ISSUED: September 29, 2023

1. PROCEDURAL BACKGROUND

a. The Complaint

On May 19, 2023, Glenn Mickelson (“Complainant”) filed a formal complaint (“Complaint”) with the Public Service Commission (PSC) against Rocky Mountain Power (RMP). The Complaint alleges the existence of an exposed high voltage line (“Line”) on or near an unpaved road in the area of the Yellow Fork Trailhead in Salt Lake County (“County”). On the date the Complaint was filed, the PSC issued a Notice of Filing and Comment Period (“Notice”), asking RMP to submit a written response to the Complaint on or before June 20, 2023, and the Complainant to file a reply on or before July 5, 2023. Because of the alleged imminent threat to public safety, the Notice also asked RMP to submit a statement on an expedited basis to address whether RMP owns or operates the Line and any risks to the public associated with the Line.

b. RMP’s Expedited Response

On May 23, 2023, consistent with the Notice, RMP filed its Response Addressing Safety Risks (“Expedited Response”), stating RMP installed the Line more than thirty

years ago and did so consistent with relevant safety and engineering protocols. RMP further represented the County exposed the Line when it regraded the road on or about May 4, 2023, causing a power outage. RMP stated it responded to the outage and covered the Line the same date, May 4. However, snow around and above the Line subsequently melted, eroded the road, and re-exposed the Line in various areas. Finally, RMP represented it was currently working on an interim solution for the re-exposed Line, which was likely to include marking the area with caution tape, barricades, backfill, steel plates, or other means to notify and protect the public from the exposed portions of the Line. RMP emphasized the Line does not present a “per se electrocution risk” because it is encased in plastic conduit.

c. RMP’s Motion and the PSC’s Order Dismissing the Complaint

On June 20, 2023, RMP filed its Answer, Status Update, and Motion to Dismiss (“Motion”). In its Motion, RMP again represented “the line was initially installed correctly, and has been correctly repaired and re-buried at various times over the years since.”¹ RMP emphasized the County “owns, operates, and otherwise maintains the road under which [RMP’s] [L]ine is buried” and “by no fault of [RMP], due to a combination of continual erosion and routine road maintenance and repairs by the County ... the line [was] re-exposed as of the date of the Complaint.”² RMP further argued it “lacks adequate access to the road as it is located almost entirely behind a

¹ Motion at 2.

² *Id.* at 2-3.

gate that is locked with access controlled by [the] County.”³ RMP represented the problem with the Line is a recurring issue, which RMP, the County, and Complainant have been working on intermittently for over two decades.

The Motion also provided an update with respect to RMP’s effort to implement interim and long-term solutions to the issue. RMP represented it “completed work on an interim solution that included covering the exposed line splices with dirt and road base.”⁴ RMP also represented it conducted an on-site investigation with representatives from the County, and the County assured RMP it has prioritized filling and regrading the pertinent portion of the road as soon as possible.

Finally, RMP represented it is investigating long-term solutions, including encasing the Line in a more durable material, reburying the Line, and relocating the Line. RMP states it is taking steps to study and select the best alternative and anticipates implementing a long-term solution by the end of 2023.

Complainant did not file a response to the Motion.

On August 17, 2023, the PSC issued its Order Dismissing Complaint, noting the Complainant had failed to file a response to the Motion and finding the information available in the record suggested the County exposed the Line and RMP was working responsibly with the County to remediate the issue.

³ *Id.* at 3.

⁴ *Id.*

d. Complainant's Request for Review

On August 31, 2023, Complainant filed a Request for Review and/or Rehearing ("Request for Review"). The Request for Review raises several points in opposition to RMP's Motion that should have been raised in a timely response to the Motion, including disputing RMP's claim that it properly installed the Line in the first instance, that Salt Lake County caused the Line's exposure on or about May 4, 2023, and that the pertinent portion of the Line is located on property owned and controlled by Salt Lake County. Troublingly, Complainant also alleges the Line is not encased in plastic conduit, has no encasement conduit, and "remains ... an electrocution hazard and constitutes an imminent public safety emergency." (Request for Review at 2.)

The Request for Review also alludes to RMP's "Right of Way problem," raises questions to whether the Line possesses a lawful right of way, and demands RMP produce its "recorded Utility Right of Ways relating to this [C]omplaint." (*Id.* at 3.)

RMP did not file a response to the Request for Review.

2. DISCUSSION AND ORDER

As discussed in the PSC's Order dismissing the Complaint, the Complaint does not specify any provision of rule, statute, tariff, or order that RMP has violated. In its Request for Review, Complainant has not remedied this deficiency with any specificity and raises factual objections that should have been raised in a timely response to RMP's Motion.

The PSC would be inclined to deny the Request for Review and allow RMP to work through the process it outlined in its Expedited Response and Motion to remediate the issue with the Line, but the Request for Review contends RMP's representation the Line is encased in plastic conduit is false and further alleges the Line poses "an electrocution hazard and constitutes an imminent public safety emergency." Complainant contends included photographs substantiate this claim.

Given the unanswered alleged imminent threat to public safety raised in the Request for Review, the PSC finds a hearing is warranted to ascertain the status of the Line. The PSC has jurisdiction to issue "general or special orders" and "rules or regulations" to require public utilities to maintain their systems "in such manner as to promote and safeguard the health and safety of ... the public." Utah Code Ann. § 54-4-14.

The PSC notes the parties' various filings allude to some amount of long-standing controversy regarding the Line, including Complainant's arguments relating to portions of the Line that fall on private (as opposed to County) property and the existence of certain rights of way. The PSC emphasizes its jurisdiction is limited to the powers and responsibilities granted to it under Title 54 of the Utah Code. Complainant cites no authority providing the PSC with jurisdiction to adjudicate the existence of rights of way, and the PSC is aware of no such authority. At this juncture, the sole

issue raised in the Request for Review that is legibly defined and subject to the PSC's jurisdiction is whether the Line is a threat to public safety.

Accordingly, the PSC suspends its Order dismissing the Complaint for the purpose of holding a limited hearing on the issue of whether the Line represents a threat to public safety. The PSC asks RMP to come prepared to testify as to the state of the Line and its compliance with applicable safety codes and industry standards. The PSC will not hear evidence relating to ancillary matters raised in the Complaint or Request for Review. The sole issue of the hearing shall be whether the Line constitutes a threat to public safety and what, if any, action is required to expeditiously remediate the problem. Because the PSC is noticing this hearing without the benefit of input from the parties as to their schedules, the PSC notices it as a virtual hearing, allowing for remote participation. If either party believes an in-person hearing is necessary, they may file a request to convert the hearing to be in-person on or before **Tuesday, November 7, 2023**.

Contemporaneous with the issuance of this order, the PSC is issuing an Action Request to the Division of Public Utilities to investigate the Line and provide input as to whether it constitutes a threat to public safety.

NOTICE OF LIMITED HEARING

The PSC will conduct a limited hearing to hear evidence relating to the status of the Line and whether it constitutes a threat to public safety on **Wednesday, November**

29, 2023, beginning at 9:00 a.m. The hearing will be conducted via Google Meet at the following link: meet.google.com/cte-wcnp-bzt. All parties must have their witnesses in attendance and prepared to testify.

The PSC requests that attorneys and witnesses make themselves available by both video and audio during the portions of the hearing in which they will be actively participating. Participants are free to deactivate video, and should always mute audio, when not actively participating. In the event of unresolvable technological problems related to the hearing's video conferencing, participants should use the following audio-only participation information: 209-779-0174 PIN: 498 935 207#.

Individuals needing accommodations during the hearing should notify the PSC at 160 East 300 South, Salt Lake City, Utah 84111, (801) 530-6716, at least three working days prior to the hearing.

DATED at Salt Lake City, Utah, September 29, 2023.

/s/ Michael J. Hammer
Presiding Officer

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#330084

CERTIFICATE OF SERVICE

I CERTIFY that on September 29, 2023, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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