
Formal Complaint of Ian McCubbin, David Goldsmith, Tim Watcke, Laurie Hoffman, and David Classen against Rocky Mountain Power

DOCKET NO. 23-035-41
ORDER GRANTING MOTION TO DISMISS COMPLAINT

ISSUED: December 12, 2023

1. Procedural History

On September 5, 2023, Ian McCubbin, David Goldsmith, Tim Watcke, Laurie Hoffman, and David Classen (“Complainants”) filed a formal complaint (“Complaint”) with the Public Service Commission (PSC) against Rocky Mountain Power (RMP). The PSC issued an Action Request to the Division of Public Utilities (DPU) on September 6, 2023, requesting DPU review the Complaint and indicate whether it had a recommendation on the matter. The PSC issued a Notice of Filing and Comment Period on September 8, 2023, providing a schedule for RMP to respond and Complainant to file a reply.

On October 5, 2023, DPU filed its response to the PSC’s Action Request, stating it had no recommendation regarding the docket.

On October 10, 2023, RMP filed an Answer and Motion to Dismiss (“Motion”). Complainants filed their response (“Complainants’ Reply”) on October 25, 2023.

2. The Complaint

The Complaint alleges Complainants have requested RMP to replace and bury above ground power lines and associated infrastructure located in their neighborhood (the “Lines”). Complainants allege the Lines are in an extreme wildfire risk zone

according to the Utah Department of Natural Resources. The Complaint requests the PSC order RMP to upgrade and replace the existing Lines with underground Lines. Complainants further request RMP pay the associated costs for which Complainants would otherwise be responsible pursuant to Electric Service Regulation No. 12 (“ESR 12”). Complainants argue ESR 12 is inapplicable because the Lines are outdated and in an extreme fire risk zone.

3. The Motion and Complainants’ Reply

In its Motion, RMP explains it began working with Complainants to address their concerns in 2019, leading to an informal complaint with the DPU that was resolved in April 2019. RMP alleges it has worked with Complainants since that time to resolve their concerns but has been unsuccessful because Complainants are unwilling to pay the costs associated with burying the Lines and related infrastructure.

RMP alleges it initiated a process (identified internally as Request 6717938) and developed design and cost estimates by September 9, 2019, proposing to either bury the Lines or rebuild them using covered conductors as a more cost-effective approach that is consistent with best practices. RMP calculated the cost to rebuild the Lines with covered conductors to be \$65,068 and the cost to bury the Lines to be \$199,760. RMP alleges it offered to bury the Lines for the difference between the two costs (hereafter, the “incremental cost”), \$134,692, and that Complainants were unwilling to pay this cost. RMP alleges Complainants requested RMP delay the work

to discuss alternative accommodations and consider alternative options. RMP alleges it had continued discussions with Complainants, including a town hall meeting with residents in their area in February of 2020. RMP states Complainants informed RMP they were not moving forward with their request to bury the Lines in late September 2020 and RMP subsequently closed Request No. 6717938.

RMP alleges Complainants raised the issue again several months later, in March 2021. RMP alleges it initiated another process (Request No. 8007219) in response, had several more discussions with Complainants, and provided them with a second proposal. RMP states this proposal was consistent with the first, offering to bury the Lines provided Complainants paid the difference between covering the conductors and burying the Lines with an updated incremental cost to Complainants of \$140,833.

RMP alleges Complainants requested additional time to consider this second proposal, during which time Complainants filed another informal complaint with DPU that was subsequently resolved.

RMP states it has continued to work with Complainants to resolve their concerns, including multiple on-site visits and in-person and virtual discussions from March 2022 through the present. RMP alleges, most recently, on August 10, 2023, it updated its cost estimates to reflect current costs. RMP alleges Complainants

indicated on August 15, 2023, that they were interested in discussing the revised proposal. Shortly thereafter, Complainants filed the instant Complaint.

RMP asks the PSC to dismiss the Complaint, citing its Electric Service Regulations (ESRs), specifically ESR 12, which provides that property owners are responsible for the costs to bury, relocate, and extend power lines unless the work is required by local ordinance.

RMP argues Complainants' assertion ESR 12 does not apply because the Lines are in an extreme fire risk zone has no merit. RMP concedes the Lines are located within a Fire High Consequence Area (FHCA), as defined in RMP's PSC-approved Wildland Fire Protection Plan ("Wildfire Plan").¹ However, RMP represents it has 210 miles of overhead transmission lines and 489 miles of overhead distribution lines located within a FHCA in Utah, and RMP's Wildfire Plan does not contemplate or require relocating all those lines underground because burying lines "can be prohibitively expensive." (Motion at 6.) RMP contends, consequently, it has substantially rebuilt most lines in a FHCA with new conductors and poles.

RMP points out the costs it prudently incurs through its Wildfire Plan to mitigate wildfires are ultimately recovered from Utah ratepayers through the Wildfire Mitigation Balancing Account and disputes Complainants' assertion that its decision not to pay the costs to bury the Lines serves the interests of RMP's shareholders. RMP

¹ See *RMP's Utah Wildland Fire Protection Plan*, Docket No. 20-035-28, Utah Wildland Fire Protection Plan filed June 1, 2020 (hereafter "Wildfire Plan").

argues it is endeavoring to be a good steward of customer funds and providing Complainants the requested relief would set a precedent for all customers located in a FHCA to expect similar treatment, unreasonably and unfairly increasing costs to all Utah customers.

Complainants' Reply disputes RMP's representation that Complainants have been unwilling to pay the incremental costs to bury the Lines. Complainants argue confusion and uncertainty have existed regarding the incremental cost Complainants would have to pay to bury the Lines owing to the COVID-19 pandemic and the existence of telecommunications cables on some of the pertinent poles. Complainants argue RMP has provided an estimate of costs but has refused to guarantee costs associated with relocating lines of other companies that use RMP's poles. Nevertheless, Complainants' Reply reiterates Complainants' request the PSC order RMP to bury the Lines and direct RMP to bear the associated costs.

4. Discussion, Findings, and Conclusions

The PSC is well aware of the danger wildland fires pose in Utah and across the West. In October 2020, the PSC reviewed and approved RMP's current Wildfire Plan, after receiving input from other state utility regulators and the Utah Division of Forestry, Fire, and State Lands.² The PSC appreciates Complainants' concern about wildfires given that their residences are in a FHCA. Unfortunately, Complainants are

² See *RMP's Utah Wildland Fire Protection Plan*, Docket No. 20-035-28, Order issued October 13, 2020.

far from alone, as wide swaths of territory across the state fall within a FHCA, including many neighborhoods in the Salt Lake City metropolitan area, Park City, and other regions scattered throughout the state.³ The Wildfire Plan indicates, as RMP has cited in this docket, that 489 miles of distribution lines, 210 miles of transmission lines, and 26 substations are located within a FHCA. The Wildfire Plan contemplates numerous strategies and infrastructural upgrades for mitigating fire risk in FHCAs, including selective undergrounding, replacing poles, and covering conductors, among other alternatives.

Complainants' desire to see the Lines buried is understandable. Most residents prefer utility lines be placed underground for aesthetic purposes, and Complainants' concerns about wildfire risk in their specific area are legitimate. RMP's Wildfire Plan acknowledges underground installation "is the most effective design to most dramatically reduce the risk of any utility-related ignition."⁴ However, the Wildfire Plan also concludes the high cost attendant to burying so much infrastructure (and other operational constraints) simply preclude undergrounding from "widespread application as a wildfire mitigation strategy."⁵ Consequently, the Wildfire Plan commits to assessing each project in a FHCA to determine an appropriate approach. While the Wildfire Plan anticipates selective undergrounding will occur where it is

³ See, e.g., Wildfire Plan at 13.

⁴ *Id.* at 58.

⁵ *Id.*

cost effective and functional, the plan provides, “[a]s a practical matter, the great majority” of projects in a FHCA will entail covering conductors to mitigate wildfire risk.⁶

RMP’s approved ESAs, along with rate schedules for its various customer classes, comprise its tariff on file with the PSC, which the PSC has approved and, consistent with Utah law, provides transparent, non-discriminatory terms of service to all Utah customers.⁷ The ESAs are intended to ensure, among other things, that no customer receives preferential or discriminatory treatment.

Generally, ESA 12 governs circumstances where a customer seeks to extend a line or convert an existing overhead line to be underground, and ESA 12 plainly states that customers are responsible for paying the costs associated with their requests.

Nevertheless, the Complaint requests the PSC direct RMP to bury the Lines without requiring Complainants to pay the associated costs otherwise applicable under ESA 12.⁸ The Complaint argues ESA 12 does not apply to Complainants because

⁶ *Id.*

⁷ See Utah Code Ann. §§ 54-3-2, 54-3-7.

⁸ Complainants’ Reply reiterates this request for relief. This is noteworthy because Complainants also assert in their Reply that they have, in fact, been willing to pay RMP’s estimated costs but have not done so owing to RMP’s unwillingness to guarantee costs associated with relocating lines belonging to certain other telecommunications companies that may use RMP’s poles. Yet, Complainants’ Reply does not ask the PSC to take any action other than to order RMP to bury the Lines and to “cover the costs,” clarifying Complainants agree they are responsible only for paying the costs associated with connecting their individual residences to the newly buried infrastructure. (Complainants’ Reply at 8.)

of the area's status as an extreme wildfire risk zone. However, Complainants cite no legal authority to support their argument, and the PSC is aware of no such authority.

As RMP's Wildfire Plan makes clear, a significant amount of RMP's service territory in Utah is in a FHCA, presenting RMP with a significant challenge in allocating its investments to mitigate fire risk across a substantial area. The existing Wildfire Plan, the PSC's annual dockets to review the cost and compliance reports RMP has filed since implementing that plan,⁹ and RMP's recent filing of its Utah Wildfire Mitigation Plan for 2023-2025,¹⁰ all evidence that RMP has substantially invested and plans to continue to substantially invest in wildland fire mitigation. RMP must do so to comply with Utah law, which requires electric utilities to engage in wildland fire planning and mitigation.¹¹ The law requires Utah ratepayers, not RMP, are ultimately responsible for bearing RMP's prudently incurred investments to mitigate wildland fire risk, and available resources are finite.¹² RMP must endeavor to allocate the available funds in a manner that maximizes wildfire mitigation, including implementing strategies that are more cost effective and practical at scale than

⁹ See generally *RMP's 2023 Wildland Fire Cost and Compliance Report*, Docket No. 23-035-27; *RMP's 2022 Wildland Fire Cost and Compliance Report*, Docket No. 22-035-28; and *RMP's 2021 Wildland Fire Cost and Compliance Report*, Docket No. 21-035-35.

¹⁰ See *RMP's 2023 Wildland Fire Protection Plan*, Docket No. 23-035-44, Utah Wildfire Mitigation Plan for 2023-2025 filed September 25, 2023.

¹¹ See Wildland Fire Planning and Cost Recovery Act, codified at Utah Code Ann. § 54-24-101, et seq.

¹² See Utah Code Ann. § 54-24-202 (providing utilities shall recover in rates all prudently incurred investments and expenses made to implement a PSC-approved wildland fire protection plan).

burying all existing infrastructure in a FHCA, such as replacing lines with covered conductors and other strategies discussed in the Wildfire Plan. Simply put, if being in a FHCA were a sufficient condition to require RMP to bury existing infrastructure at RMP's cost, then a very large contingent of customers would be eligible to make such a demand at tremendous cost to Utah's ratepayers despite the existence of more cost-effective alternatives.

The PSC concludes ESA 12 applies to Complainants' request. The PSC further finds and concludes Complainants have not alleged facts suggesting RMP violated any statute, administrative rule, or tariff provision to support their Complaint.

5. Order

RMP's Motion is granted, and the Complaint is dismissed.

The PSC encourages RMP to continue to work with Complainants to resolve any outstanding issues and to bury the Lines provided Complainants pay the associated costs consistent with ESA 12. The PSC emphasizes that to the extent RMP has identified the Lines as targets for remediation under its Wildfire Plan, the public interest requires RMP not unduly delay undertaking whatever work it deems appropriate and consistent with its Wildfire Plan to mitigate fire risk associated with the Lines, including covering the conductors, replacing the poles, etc.

DOCKET NO. 23-035-41

- 10 -

DATED at Salt Lake City, Utah, December 12, 2023.

/s/ Michael J. Hammer
Presiding Officer

Approved and confirmed December 12, 2023, as the Order of the Public Service
Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ John S. Harvey, Ph.D., Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#331220

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this written order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the 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 fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, 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 Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on December 12, 2023, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Email:

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