

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Formal Complaint of Joseph Ybarra against
Rocky Mountain Power

DOCKET NO. 25-035-53
COMPLAINANT'S MEMORANDUM IN
OPPOSITION TO RESPONDENT'S
MOTION TO DISMISS

Complainant respectfully submits this Memorandum in Opposition to Rocky Mountain Power's Motion to Dismiss. The Motion should be denied because: (1) the Complaint alleges multiple statutory violations for which the Commission has clear authority to grant relief; (2) Respondent's "no violation alleged" argument is contrary to the record and contradicted by Respondent's own admissions; (3) Respondent's federal-permitting argument is unsupported, factually incorrect, and legally irrelevant to dismissal; and (4) even if federal permitting applied, the Complaint alleges misconduct independent of §54-18 that remains fully actionable under Title 54 and Commission rules. (including violations of Utah Code §§ 54-3-1, 54-4-1, 54-7-25, 10-9a-509, 17-27a-508, and 76-8-504)

I. INTRODUCTION

Respondent's Motion asserts two grounds for dismissal. First, Respondent claims the Complaint "fails to allege" any violation of law, rule, or tariff. Second, Respondent argues that alleged federal permitting under NEPA extinguishes all state-law noticing obligations under §54-18, thereby rendering the Complaint moot.

Both arguments fail. The Complaint alleges multiple, specific violations of §§54-18-301 and 54-18-302—violations that remain fully enforceable. It also alleges independent violations of Utah Code §§10-9a-509 and 17-27a-508, which require truthful, accurate, and non-misleading submissions from applicants in municipal and county land-use proceedings, including prohibitions on (1) misrepresentations, contradictions, and misleading public-outreach practices, and (2) failure to provide project-specific information required for land-use review. Respondent's own Motion admits at least two violations. Respondent provides no evidence that NEPA has begun. And even if NEPA were active, that would not retroactively erase state-law violations or immunize deceptive or misleading conduct during local permitting.

Dismissal with prejudice is neither justified nor permissible under the standards governing motions to dismiss.

II. LEGAL STANDARD

A motion to dismiss under a 12(b)(6)-style standard is granted only when, assuming all allegations as true, the pleading fails to state a claim upon which relief may be granted. Utah courts and the Commission require only “a short and plain statement” showing entitlement to relief. Dismissal is improper where factual disputes exist, where statutory violations are alleged, or where the requested relief falls within the Commission’s authority.

III. ARGUMENT

A. The Complaint states multiple violations of applicable law. Respondent’s claim that “no violation was alleged” is demonstrably false.

Respondent asserts that dismissal is proper because the Complaint “failed to allege or establish that the Company has violated any applicable law.” This is incorrect.

1. Violations of §54-18-301 (defective 60-day notice)

The Complaint alleges that Respondent’s 60-day notice failed to include a statutory address for the contact person and failed to include the required corridor map, not simply a “study map”. These omissions violate §54-18-301(4)(b). The statute is unambiguous: the address and corridor map must be included. Respondent did not include them.

2. Violations of §54-18-301(3) (failure to notice affected landowners)

The Complaint identifies more than 50 parcels located within 250 feet of the preferred alignment whose owners received no statutory notice. Respondent admitted to never sending notice to these affected landowners in their answer to the formal complaint 20. Section 54-18-301(3) requires notice to each “affected landowner,” defined by being located in a proposed corridor—not by whether the utility chooses to seek an easement. Rocky Mountain power has defined the corridor as 250 ft on each side of the center line of the proposed route.

Respondent’s attempt to redefine “affected landowner” as “only those from whom we intend to purchase rights-of-way” contradicts the plain text of the statute §54-18-102(2). A motion to dismiss cannot be granted where the respondent admits the violation.

3. Violations of §54-18-302(2) (failure to publish required newspaper notices)

The Complaint alleges that Respondent falsely represented that newspaper notices for public workshops were published. Respondent now admits:

“the 14-day notice... was never published.”
—RMP Motion, 21

Failure to publish the notices required by §54-18-302(2) is a statutory violation. A motion to dismiss cannot be granted where the respondent admits the violation.

4. Violations of §§10-9a-509 and 17-27a-508 (Misrepresentations, contradictions, and misleading public-outreach practices)

The Complaint alleges contradictory and misleading claims regarding underground feasibility (“20× cost” vs. “don’t know how”), inaccurate or misleading statements to land-use authorities, and statements to the public discouraging participation. Misleading outreach by a regulated utility is independently actionable under Title 54 and Commission rules requiring accurate, complete, and non-deceptive representations. Such conduct also conflicts with Utah Code §§10-9a-509 and 17-27a-508, which require truthful and accurate submissions in land-use applications.

5. Violations of §§10-9a-509 and 17-27a-508 (Failure to provide project-specific information required for land-use review)

The Complaint identifies missing project-specific analyses, including EMF/noise modeling, wetlands/avian impacts, stormwater, and construction routing. Utilities may not seek government approvals based on incomplete or misleading submissions. Such conduct violates Utah Code §§10-9a-509 and 17-27a-508, which require truthful, complete, and accurate submissions from applicants in land-use proceedings.

These allegations state violations of regulated-utility obligations.

Because the Complaint alleges multiple statutory and regulatory violations, Respondent’s assertion that no violation was alleged is without merit.

B. Respondent improperly relies on disputed factual assertions.

A motion to dismiss must accept the well-pleaded allegations as true and may not resolve factual disputes. Respondent attempts to defeat the Complaint by injecting its own factual assertions, contradicting the allegations, and offering new statements not supported by evidence. Such arguments are improper on a motion to dismiss.

Submitting or relying on disputed or unsupported factual assertions in regulatory proceedings violates Utah Code §§54-3-1 and 54-4-1, and where knowingly false, also implicates Utah Code §76-8-504 (false statements to public servants).

C. RMP violated state noticing laws long before any alleged federal permitting activity occurred, and the Company cannot retroactively excuse those violations by claiming NEPA “would begin.”

Respondent asserts that because it filed an SF-299 and “BLM confirmed the NEPA process would begin,” state noticing obligations “became null” under §54-18-201(3).

This argument fails for multiple independent reasons:

1. NEPA has not actually begun—and RMP provides no evidence to the contrary.

NEPA begins only when a federal agency publishes a Notice of Intent (NOI) in the Federal Register or initiates formal public scoping.

Respondent has submitted no NOI, no BLM ePlanning project page, no scoping notice, no Federal Register publication, and no NEPA docket number.

Respondent has produced no evidence that NEPA has begun.

It is Respondent’s burden—not the Complainant’s—to prove the applicability of §54-18-201(3). A motion to dismiss cannot be granted based on unsubstantiated extra-record assertions.

Until Respondent provides actual evidence of NEPA initiation, its NEPA argument is both legally irrelevant and factually defective.

2. Even if NEPA later begins, it does not retroactively erase statutory violations already committed under §54-18.

Respondent committed the alleged violations while it acknowledges it was following state noticing procedures. Section 54-18-201(3) does not state that federal permitting retroactively absolves past violations. Retroactivity cannot be implied.

Even if Respondent later produces an NOI, the violations already occurred and remain enforceable. A utility cannot cleanse past statutory violations by subsequently filing an SF-299.

D. RMP’s “federal permitting makes state law void” argument is unsupported, misleading, and legally incorrect.

Respondent asks the Commission to conclude that a private meeting with BLM, the submission of an SF-299, and an alleged private communication stating NEPA “would begin” extinguish the applicability of §54-18. None of these events constitute federal permitting.

Federal permitting begins only upon formal initiation of NEPA. Respondent has produced no evidence that NEPA has been formally initiated. Accepting Respondent’s argument would create a loophole large enough to nullify the entire statutory scheme.

E. Even if the Commission accepted Respondent’s unsupported assertion that NEPA has begun, dismissal would still be improper because the Complaint alleges misconduct enforceable irrespective of §54-18.

The Complaint alleges:

- Misrepresentations to government officials;
- Misrepresentations to citizens;
- False claims regarding statutory notice compliance;
- Contradictory and misleading feasibility statements;
- Attempted discouragement of public participation;
- Submission of defective, misleading, or incomplete information into government processes.

These allegations implicate Title 54’s prohibitions on deceptive or misleading conduct by regulated utilities and Commission rules governing accuracy, completeness, and transparency. Specifically, these acts violate Utah Code §§54-3-1, 54-4-1, and 54-7-25, all of which impose affirmative duties of honesty, non-deception, and accuracy in all utility dealings with the public and with regulatory bodies.

They further violate the accuracy requirements applicable to land-use submissions under Utah Code §§10-9a-509 and 17-27a-508, and where knowingly false, implicate Utah Code §76-8-504 (false statements to public officials).

Federal permitting does not immunize a utility from these obligations.

Thus, even if NEPA applied, dismissal would be improper.

F. Respondent admits at least two statutory violations, which alone defeats its Motion.

Respondent admits that the 14-day newspaper notice required by §54-18-302(2) “was never published” and, referring to the residents of Salem Park neighborhood, that the “company did not provide them notice” required by §54-18-301(3)(c).

Such admissions are incompatible with the argument that the Complaint alleges “no violation.” This alone requires denial of the Motion.

These admissions also reinforce the broader pattern of deceptive and misleading conduct prohibited under Utah Code §§54-3-1 and 54-7-25, and further demonstrate why Respondent’s representations cannot be credited under §54-4-1 or the land-use accuracy requirements of §§10-9a-509 and 17-27a-508.

G. At minimum, dismissal with prejudice is improper.

Even if the Commission found any deficiency in the pleading (none exists), the proper remedy would be leave to amend. Dismissal with prejudice is contrary to Commission practice and Utah procedural standards. To the extent the Commission identifies any pleading deficiency, Complainant respectfully requests leave to amend the Complaint pursuant to the Commission’s authority to permit amendments in the interest of justice. Nothing in this Opposition should be construed as waiving Complainant’s right to amend.

IV. CONCLUSION

The Motion to Dismiss should be denied because Respondent has admitted a statutory violation, the Complaint alleges multiple additional violations of law and Commission-regulated duties, Respondent has provided no evidence that federal permitting has begun, and even if it had, the allegations of misconduct and statutory noncompliance remain fully actionable including violations outside of §54-18.

Respondent’s conduct further violates the independent utility-conduct obligations codified in Utah Code §§54-3-1, 54-4-1, and 54-7-25, the land-use accuracy requirements in §§10-9a-509 and 17-27a-508, and the prohibition on materially false statements to public officials under §76-8-504.
