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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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NWR LIMITED PARTNERSHIP,

DOCKET NO. 22-035-58

vs.

**NWR OPPOSITION TO RMP MOTION  
TO DISMISS**

ROCKY MOUNTAIN POWER,

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Pursuant to Utah Code Annotated (“UCA”) § 63G-4-204 and Utah Admin. Code § R746-1-301, NWR Limited Partnership (“NWR”), by and through its undersigned counsel, hereby submits NWR’s Opposition to RMP Motion to Dismiss (“Opposition”).

Respondent Rocky Mountain Power’s (“RMP”) Answer and Motion to Dismiss (“RMP’s Motion”) is a document containing RMP’s answer to NWR’s Complaint, and a Motion to Dismiss, both in the same document. In RMP’s Motion, it requests that the Commission dismiss NWR’s Complaint under Utah R. Civ. P. 12(b)(6). However, Utah R. Civ. P. 12(b) instructs that “[a] motion making any of these defenses must be made before pleading . . . . If . . . matters outside the pleading are presented to and not excluded by the court, the motion must be treated as one for summary judgment. . . .” RMP answered NWR’s Complaint first, and then in the same

document requested dismissal under Utah R. P. 12(b)(6). Therefore, RMP's motion to dismiss must be treated as a rule 56 motion for summary judgment, and NWR will oppose it accordingly.

RMP's Motion consists of paragraphs comprised of a mixture and combination of facts and argument. Herein, NWR will address all paragraphs as statements of fact, admitting or denying each, and then address the argument portion afterward.

### **NWR RESPONSE TO RMP STATEMENTS OF FACT**

1. In or around May 2014, Rocky Mountain Power and Washakie Renewable Energy ("WRE") signed an Engineering Servicing Agreement ("2014 ESA") to build a substation and related facilities (together "Facilities") in Plymouth, UT (the "Property"). Parties to the 2014 ESA are: (1) Rocky Mountain Power; (2) Rachel Kingston with WRE Feed and Mill, LLC as the Facilities Owner; and (3) Berry Dixon with Block United, LLC as the Deduct Customer.

**NWR RESPONSE:** Deny. RMP states that a 2014 document exists, but references and includes a document that is a 2018 Engineering Services Agreement ("2018 ESA"), which is not for the purpose of building a substation, and does not have Block United, LLC as a party. NWR is unaware, and therefore denies, that a 2014 ESA exists.

2. In or around May of 2014, Rocky Mountain Power and WRE also executed a Master Services Electric Agreement ("2014 MESA"). The Company assumes Complainant is intending to reference this 2014 MESA when Complainant references a 2015 MESA in the Complaint; the Company only executed a MESA with WRE in 2014, not 2015.

**NWR RESPONSE:** Deny. The document RMP references and includes in its Answer and Motion to Dismiss ("RMP's Motion") is titled "Master Electric Service and Work Release

Agreement”. This document is what NWR referred to as the 2015 MESA, and will refer to it herein as the “2014 MESA”.

3. The 2014 MESA included an allowance and contract minimum billing for the Company to recover the cost of the Facilities over a 10-year period. From 2014 to present, the customer receiving power from the substation has changed several times and with each change, the Company has updated the “account holder.”

**NWR RESPONSE:** Deny. The 2014 MESA includes a 15 year period to recover costs (see 7.02).

NWR is only aware of WRE and NWR receiving power for the overall facilities from RMP, and therefore denies this statement of fact.

4. On or around June 1, 2015, WRE set up service at the Property under Rocky Mountain Power Service Schedule No. 9 – General Service-High Voltage.

**NWR RESPONSE:** Deny. WRE did set up service, but the 2014 MESA does not subject the service to Service Schedule No. 9. It states that Service Regulation No. 12 shall govern the service.

5. On or around April 1, 2018, WRE’s account at the Property was transferred when WRE Feed and Mill, LLC set up service at the Property.

**NWR RESPONSE:** Deny. NWR is unaware of any power service to WRE Feed and Mill, LLC, and therefore denies this statement of fact.

6. On or around May 18, 2018, at the Customer’s request, the Company and the customer executed a Deduct Agreement. Parties to the Deduct Agreement are (1) Rocky Mountain Power, and (2) Isaiah Kingston, CFO for WRE Feed and Mill, and (3) Barry S. Dixon, CEO

of Block United. Rachel Kingston was listed as the Project Manager with WRE Feed and Mill, LLC on behalf of Washakie Renewable Energy, LLC.

**NWR RESPONSE:** NWR is unaware that any customer requested execution of a Deduct Agreement, and therefore denies the allegations in Statement of Fact #6.

7. On or around October 12, 2018, WRE Feed and Mill's service was transferred when NWR Limited Partnership ("NWR") set up service at the Property. According to the Company's records, NWR's request for service was submitted by Rachel Kingston.

**NWR RESPONSE:** Deny. The power service was not ever transferred to NWR. NWR contracted for new service pursuant to the 2019 MESA. NWR is unaware of a request by Rachel Kingston, and RMP has not submitted any evidence to support its allegation regarding thereto, and therefore NWR denies the remaining allegations in Statement of Fact #7.

8. On or around September 19, 2019, Rocky Mountain Power and NWR executed a Master Electric Service Agreement (referred to as the "2019 MESA" in the Complaint). Parties to this contract were NWR and Rocky Mountain Power.

**NWR RESPONSE:** Admit.

9. The purpose of the 2019 MESA was to reduce the load under the 2014 MESA, as requested by NWR. While the 2019 MESA covered NWR's adjustment in power, it also served as a supplemental agreement to the 2014 ESA for building the Facilities and the 2014 MESA, for which NWR assumed when the service was transferred to NWR and NWR ratified the 2014 MESA through payments.

**NWR RESPONSE:** Deny. As evidenced by the wording of the 2019 MESA, it was not to reduce any load or adjust any power or supplement any agreement. It was a new agreement which by its own wording stated all terms included in the agreement. NWR did not assume the 2014 MESA, which by its own terms cannot be assigned without written permission from RMP and WRE.

10. In or around 2019 and 2020, the United States government placed restraining orders on WRE's assets. A restraining order is part of the asset forfeiture process, which gathers assets to liquidate and pay victims back. The purpose of the post-indictment restraining order is to restrict the alleged defendant(s) and prevent the defendant(s) from getting rid of those assets. The assets are protected under the restraining order until sentencing and conviction are complete. This type of restraining order is used in federal criminal cases to preserve property or proceeds that have a nexus to the alleged criminal activity pending final disposition of the criminal case.

**NWR RESPONSE:** This allegation is a legal argument and requires no response. Therefore, NWR denies Statement of Fact #10.

11. NWR made sporadic payments towards contract minimum billing under the 2014 Agreement and its payments for power under the 2019 MESA. According to the Company's records, payments were made towards NWR's account with a business checking account under the name of Washakie Renewable Energy, while NWR assumed the service from various account holders including WRE, WRE Feed and Mill, NWR, and others.

**NWR RESPONSE:** Deny. NWR did not make any payments under the 2014 Agreement, and Washakie Renewable Energy did not pay towards NWR's account.

12. On or around September 13, 2024, a notice of disconnect was delivered to the Property due to nonpayment. Subsequently, on or around October 1, 2024, NWR's service was terminated, and the Company discontinued power to the Facilities on the Property due to nonpayment.

**NWR RESPONSE:** Admit.

13. In 2024, the Company discovered an unauthorized power line attached to the substation, leading across Interstate 15, to the Property, and serving load to multiple residences and industrial equipment on the Property. When the Company contacted Complainant, Complainant claimed they received approval for the power line from representatives of Box Elder County.

**NWR RESPONSE:** Deny. There was not an unauthorized power line attached to the substation. There was a power line leading to the areas stated, but it was authorized by RMP previously.

14. The Company requested proof from Complainant of formal approvals from Box Elder County. The Company disconnected power to the substation when Complainant failed to respond or provide any proof of approval from Box Elder County.

**NWR RESPONSE:** NWR admits that RMP requested proof of approvals from NWR. NWR denies the balance of the allegations. RMP disconnected power due to non-payment, as alleged in ¶12, not due to any failure to provide proof of approvals. The service of power was already disconnected before any questions or discussion about the power line even began.

15. Due to the unauthorized wire's risks to public safety and the suspect nature of the wire leading from the substation to the Property, the Company believes this wire constituted tampering under the Company's tariffs and unlawful use of the Company's service and facilities.

**NWR RESPONSE:** Deny. NWR is unaware of RMP's beliefs, and therefore denies ¶15.

16. On or around October 10, 2024, the Company received a letter from David Kingston on behalf of NWR, requesting a change in rate classification from industrial to agricultural.

**NWR RESPONSE:** Admit.

17. The Company responded to David Kingston, on or around October 28, 2024, and explained the qualifications required when applying for service under Electric Service Schedule No. 10 (Irrigation and Soil Drainage Pumping Service) and Electric Service Schedule No. 22 (Indoor Agricultural Lighting Service). The Company further explained that based on inspections the Company performed and information known by the Company, the Property does not qualify for Schedule 10 alone as the energy utilized for agricultural purposes would have to account for 75 percent of the overall usage and does not qualify for Schedule 22 because the energy that is utilized for purposes other than irrigation exceeds the 10 percent threshold. The Company offered to schedule an additional inspection once the minimum amount to reconnect is paid, and the power is restored.

**NWR RESPONSE:** Admit.

18. After months of attempting to resolve this issue with Complainant, the Company again explained in a letter dated August 28, 2025 to Aaron and Lynn Kingston, that the Company is willing to reconnect service if NWR: (1) pays its outstanding balance; and (2) pays to install

safe electric facilities in adherence to the Company's tariffs replacing the illegal power line the Company discovered tapped into the substation and connected to several residences and irrigation equipment on the Property.

**NWR RESPONSE:** Admit.

19. In the August 28, 2025 letter, the Company expressly stated the unauthorized power line that was tapped into the substation and running power to several homes and irrigation equipment on the Property is an illegal use of Rocky Mountain Power's service and a serious safety hazard, preventing the Company from establishing power to the area.

**NWR RESPONSE:** NWR admits that the letter contained said allegations, but denies that allegations contained in the letter that there was any illegal use, unsafe use, or hazardous use of any power lines by NWR. Therefore, other than the existence of the inaccurate wording in the letter, NWR denies all allegations in Statement of Facts #19.

20. On or around September 24, 2025, NWR filed an informal complaint with the Division of Public Utilities ("DPU"), explaining some of the history, issues, and ongoing discussions between the Company and NWR.

**NWR RESPONSE:** Admit.

21. On around October 15, 2025, the Company responded to DPU. The Company provided a background of the various agreements and service transfers. The Company explained that until NWR pays its outstanding balance under the 2014 MESA and pays to install safe electric facilities to residences and irrigation equipment, the Company will not resume service to the Facilities.

**NWR RESPONSE:** Admit.

22. On or around October 19, 2025, NWR filed a formal complaint (“Complaint”). In the Complaint NWR makes the following requests: (1) issue an emergency order, requiring the Company to restore power to NWR immediately; (2) require the Company to install separate meters to NWR’s residents, agricultural tenants, and industrial tenants; (3) issue an order requiring the Company to issue a credit to NWR equal to the outstanding amount due on NWR’s account; (4) issue an order requiring the Company to issue NWR a refund for all minimum use charges assess on the bills since 2019, including a credit to apply toward future bills; (5) issue an order requiring the Company to issue NWR a refund for any other unlawful charges; and (6) declare that NWR is entitled to damages resulting from loss of power.

**NWR RESPONSE:** Admit.

23. In the Complaint, NWR makes formal requests for actions to be taken by the DPU. The Company assumes Complainant means to request the Commission take these actions. Under this assumption, the Company responds as follows:

**NWR RESPONSE:** Admit.

24. The Company requests that the Commission dismiss the Complaint with prejudice under Utah Rule of Civil Procedure 12(b)(6) because Complainant has failed to allege or establish that the Company has violated any applicable law, Commission rule, or Company tariff for which relief can be sought.

**NWR RESPONSE:** ¶24 is a legal argument for which no response is required, and therefore, NWR denies all allegations in Statement of Fact #24.

25. Complainant requests an order that requires the Company to restore power to NWR immediately. The Company initially disconnected Complainant's power to the property in adherence with Company tariffs. Under Rocky Mountain Power Electric Service Regulation No. 10(1), the Company may discontinue service if a non-residential customer fails to pay an unsecured bill for service. As explained in paragraphs 8 and 9, the Company disconnected service to the Property due to Complainant's nonpayment.

**NWR RESPONSE:** NWR Admit's that the power was disconnected, but denies The remaining allegations in Statement of Facts #25. RMP's disconnection of the service of power was not in adherence with the governing tariffs because the power was not only servicing non-residential customer.

26. Although the Company initially disconnected service to the Property for nonpayment, it will not restore power to the substation until the unsafe and hazardous tampering to the substation is remediated. The Company also shut off power to the substation to protect public safety and prevent further tampering of the wiring and facilities. This is consistent with Rocky Mountain Power Electric Service Regulation No. 5(3)(a), where the Company has the right to disconnect service or to refuse to connect or supply service: when the Customer's wiring or facilities are in the Company's judgment unsafe or hazardous to the Customer or others found to be in violation of applicable laws, ordinances, rules or regulations. Under Rocky Mountain Power's Electric Service Regulation No. 10(1)(d) – Termination of Service to Non-Residential Customers, the Company reserves the right to discontinue service upon notice for tampering with any service wires, meter, seal, or any other facilities of the Company.

**NWR RESPONSE:** NWR admits that RMP shut off the power due to non-payment, but denies the balance of the allegations in ¶26. The lines are safe and legal.

27. Furthermore, the 2019 MESA expressly states:

“Provided, should Rocky Mountain Power at any time reasonably determine that Customer’s operations pose a threat to the safety of Rocky Mountain Power’s employees or the public, pose an imminent threat to the integrity of Rocky Mountain Power’s electric system, or may materially interfere with the performance of Rocky Mountain Power’s service obligations, Rocky Mountain Power shall attempt to provide notice to Customer that Customer must change its operations. If Customer fails to take corrective action on a timely basis, or if notice cannot be provided by Rocky Mountain Power to Customer, prior to the time when corrective action must occur, then Rocky Mountain Power may perform such work and/or take such corrective action that is necessary, including disconnection, without additional notice to Customer and without subjecting itself of any liability provided Rocky Mountain Power has acted reasonably.”

**NWR RESPONSE:** NWR Admits that said wording exists in the agreement, but denies that there is any illegal wires or tampering and denies all other allegations in Statement of Facts #27.

28. The Company believes that disconnecting service to the substation is appropriate due to an unauthorized power line that was unlawfully tapped into the substation, leading across Interstate 15, and connecting to multiple residences and industrial equipment on the Property as a significant safety concern. The Company is concerned about unlawful use of the Company’s electric service, and more importantly, the public safety risks associated with reconnecting service to the substation.

**NWR RESPONSE:** NWR is unaware of RMP’s beliefs and concerns, and therefore denies all allegations in ¶28.

29. Complainant requests an order requiring the Company to install the necessary infrastructure to provide separate power to residents, agricultural tenant operations, and industrial tenant operations. As stated in the Company's letter on August 28, 2025, the Company is willing to restore power on two conditions: (1) the Complainant pays the outstanding balance, and (2) the current customer pays to install safe electric facilities to provide power to the irrigation equipment and residences.

**NWR RESPONSE:** ¶ is not a statement of fact, and requires no response, therefore, NWR denies any allegations in ¶29.

30. The Company is willing to provide safe and reliable service if the Customer pays costs associated with appropriately building out facilities to serve these customers in accordance with Rocky Mountain Power's Electric Service Regulation No. 12 – Line Extensions. Furthermore, under Rocky Mountain Power's Electric Service Regulation No. 7(4)(b), "if the Company finds that the meter has been tampered with, the Customer shall pay for such estimated usage together with the expense for restoring the Company's equipment to its normal operating conditions and correcting Company billing records."

**NWR RESPONSE:** NWR is not aware of what RMP is willing to do, and therefore denies this statement of fact.

31. Between April 2025 and September 2025, the Company and NWR engaged in extensive discussions to resolve this matter. The Company has repeatedly informed Complainant that the Company can serve residents, agricultural tenants, and industrial tenants through separate

meters; however, Complainant is responsible for the costs associated with the benefits of receiving service.

**NWR RESPONSE:** NWR admits that RMP and NWR engaged in extensive discussions to resolve the matter, but denies that RMP repeatedly informed NWR that RMP can serve residents, agricultural tenants, and industrial tenants through separate meters. In or around April of 2024, NWR and its tenants repeatedly requested the amount and cost it was required to pay to add the infrastructure and separate meters, but RMP would not provide it even after multiple meetings. NWR denies all other allegations in ¶31

32. Complainant requests an order requiring Rocky Mountain Power: (a) issue a credit to NWR equal to the outstanding amount due on NWR's account; (b) issue a refund for all minimum use charge assessed since 2019, including all late fees, with remaining credit applied to future bills; and (c) issue a refund for any other unlawful changes that may be applied to any amount owed by NWR with application toward separation of meters. Complainant relies on a variety of contract theories as to why it should not be responsible for payments under the 2018 Agreement, including breach of contract and force majeure.

**NWR RESPONSE:** Admit.

33. As to breach of contract, Complainant specifically states NWR was not a party to the 2014 Agreement, which covered costs associated with building the substation to provide power to the Property. However, the Company believes this is a misleading statement. Rachel Kingston was signatory to the 2014 Agreement, listed as the Facilities Owner in the 2018 Agreement, and was the individual who requested service to the Property on behalf of NWR.

**NWR RESPONSE:** NWR admits it wasn't a party to the 2014 Agreement and it stated that. NWR denies that Rachel Kingston was signatory to the 2014 Agreement. NWR admits that Rachel Kingston was listed by RMP as the Facilities Owner in a 2018 Deduct Agreement, which is irrelevant to this case because it was to provide power to Block United, not to NWR. There is no evidence showing who requested service to the Property on behalf of NWR, and therefore denies the remaining allegations in ¶33.

34. Although Complainant claims it was not party to the 2018 Agreement, Rachel Kingston was the representative for each of the three parties to the three agreements. The Company believes Complainant continually attempts to avoid paying its bills by applying for new services under new business names, by the same individuals on the same property. As described in paragraphs 1, 3, and 5 above, Rachel Kingston was a representative for all three businesses, requesting service to the same Property from the same substation.

**NWR RESPONSE:** Deny. Rachel Kingston was not a representative of three parties to three agreements. Only one agreement is relevant to this hearing, the 2019 Mesa. Rachel Kingston was not a representative of any parties in this contract. NWR is unaware of what RMP believes and therefore denies the remaining allegations of ¶34.

35. Complainant also claims that due to the integration clauses within the 2014 Agreement and 2019 MESA, the 2014 Agreement does not apply to NWR. What Complainant does not include in the Complaint, is Complainant's repeated payments toward the 2014 Agreement, for which NWR received service.

**NWR RESPONSE:** NWR admits that it claims that the integration clause defeats any reliance on the 2014 Agreement. NWR denies the remaining allegations in ¶35.

36. As the account holder and beneficiary of the electric service, the Company believes NWR is still responsible for contract minimum billing under the 2014 Agreement, for which NWR ratified when it made multiple payments for contract minimum billing under the 2014 Agreement.

**NWR RESPONSE:** Deny. NWR was not ever the account holder or beneficiary of the electric service under the 2014 Agreement. NWR also did not ever ratify the 2014 Agreement. All payments on contract minimum billings made by NWR were a result of NWR not understanding that RMP was unlawfully and illegally mischarging NWR outside of the terms of its contract.

37. Additionally, despite the integration clause Complainant references in the 2019 MESA, obligations of the Company's electric service regulations are incorporated in the 2019 MESA. Under Article VIII of the 2019 MESA for Jurisdiction of Regulatory Authorities, "Rocky Mountain Power's currently applicable, effective Electric Service Schedule, and Electric Service Regulations, are incorporated herein and by reference made a part thereof. Customer acknowledges that it is familiar with the Electric Service Schedule and Electric Service Regulations and agrees to abide by them and all amendments and changes thereto so approved by the Commission."

**NWR RESPONSE:** NWR admits that RMP's applicable service regulations are incorporated into the 2019 MESA. NWR denies that there are any valid applicable service regulations that

provide for contract minimum billing charges under the 2019 MESA, and denies all other allegations in ¶37.

38. Under Regulation No. 12, the Company may charge contract minimum billing. Regulation No. 12 is an Electric Service Regulation, as referenced in Article VIII of the 2019 MESA. Therefore, Complainant is obligated to adhere to Company schedules and regulations, which includes contract minimum billing under Regulation No. 12.

**NWR RESPONSE:** NWR admits that contract minimum billing may be charged under Regulation No. 12, if the MESA wording describes such minimum billings. NWR denies that Regulation No. 12 is applicable to adding minimum billings to the 2019 MESA, and therefore contract minimum billing charges cannot be assessed to the 2019 MESA pursuant to Regulation No. 12. The 2019 MESA doesn't make any reference to Regulation No. 12. Regulation No. 12 is applicable to contracts involving line extensions, of which there are none in the 2019 MESA. NWR denies all other allegations in ¶38

39. Through no fault of the Company, the customer(s) taking service at the Property, specifically through the Facilities and correlating 2014 ESA, has changed many times over the last 10 years. The Company accommodated those changes and continued to provide the electric service until late 2024 when NWR stopped paying its electric bill under the 2019 Agreement.

**NWR RESPONSE:** Deny. NWR is aware of only three customers taking service at the Property, and RMP has provided no evidence of any more. Only two customers are relevant to a service change (WRE and NWR) because the third (Block United), received service in addition to WRE and directly from RMP. NWR admits that RMP provided service until late 2024 when

NWR stopped paying its bill under the 2019 Agreement. NWR denies all other allegations in ¶39

40. Complainant claims it is entitled to a refund or a credit for payments made toward minimum contract billing. However, Complainant fails to provide any evidence that the Company's billing practices are incorrect or that the Company did not bill Complainant in accordance with the Company's tariffs or rules for service provided.

**NWR RESPONSE:** NWR admits that it claims it is entitled to a refund or credit. NWR denies that it failed to provide evidence of incorrect billing practices. As stated above,

- the 2019 MESA did not reference any tariff or regulation allowing for minimum billing charges;
- RMP has failed to provide any tariff or regulation applicable to the 2019 MESA that allows for minimum billing charges;
- Regulation No. 12 is not applicable to the 2019 MESA and so cannot be relied on, and even if it was, Regulation No. 12 of itself cannot add minimum billings that are not described in a MESA or other agreement;
- NWR has argued that the integration clause in the 2019 MESA excludes any other contract from controlling any charges made under the 2019 MESA; and
- NWR has argued that the assignment clause and integration clause requiring written permission from RMP and WRE prevents the 2014 MESA from transferring to any other party, including NWR.

41. Complainant claims that under Schedule No. 9's Force Majeure provisions, the force majeure event "excuses NWR from liability for all amounts not paid which is still outstanding on the account today." However, the Company believes Complainant incorrectly applies Schedule No. 9's force majeure to the 2019 MESA. Complainant argues that events triggered claims of contractual force majeure when the government placed restraining orders on WRE in 2019 and 2020. The restraining orders stem from criminal conduct by business members of WRE, for which the United States government prosecuted. The restraining orders resulting from the prosecution were not "beyond the reasonable control" of NWR, and in fact were the cause of NWR's and others' actions.

**NWR RESPONSE:** Deny NWR did not have control of WRE actions or any other person that was the cause of the restraining orders and ¶41 is a legal argument, for which no response is required.

42. A restraining order resulting from criminal activity which seizes the assets of the Complainant does not relieve the Complainant of its obligation to pay its energy bill. While the language in Schedule 9's Force Majeure provision states a "(b) restraining order, injunction or similar decree of any court" is a triggering event for this provision, this refers to such an order that would directly prevent the Company from providing power or that specifically states that a customer should not pay for service. A forfeiture from a restraining order does not relieve contractual obligations between a defendant and third parties. The purpose of 21 § 853(e)(1)(A) restraining order is to preserve assets and assure the availability of property pending disposition of the criminal case. Therefore, the Company does not believe that

criminal fraudulent activity of a tenant is sufficient grounds for claim force majeure excusing NWR from their obligations under the MESAs.

**NWR RESPONSE:** ¶42 is a legal argument, for which no response is required.

43. Finally, NWR requests a declaration “that NWR is entitled to damages resulting from the loss of power, in an amount to be determined before the Utah Division of Public Utilities.” Complainant fails to provide evidence that the Company has incorrectly billed Complainant for services Complainant used. The Company billed Complainant correctly, per the 2014 Agreement, 2014 MESA, and 2019 MESA, Company tariffs and rules.

**NWR RESPONSE:** NWR admits it requested the said declaration. NWR denies that it failed to provide the necessary evidence. See NWR response to ¶40. NWR also denies that RMP billed NWR correctly. NWR denies all other allegations in ¶43

44. In addition to disconnecting service for nonpayment, the Company disconnected service for the unlawful and unsafe tampering of the Facilities. The Company’s continued request for Complainant to pay the outstanding balance and pay to install safe electric facilities to provide power to the Property are reasonable conditions to resume service and provide power to the Property.

**NWR RESPONSE:** NWR admits that RMP disconnected service for non-payment. NWR denies that RMP disconnected service for unlawful and unsafe tampering of the Facilities. NWR denies that RMP’s continued requests are reasonable. NWR denies all other allegations in ¶44

45. The Company requests the Commission dismiss the Complaint with prejudice because the Company has not violated any provision of law, Commission order or rule, or Company tariff for which relief can be sought.

**NWR RESPONSE:** ¶45 is a legal argument and request for which no answer is required.

## **ARGUMENT**

### **1. RMP's Motion Should Be Denied Because There are Numerous Genuine Material Facts in Dispute.**

Utah R. Civ. P. 56 instructs that the “court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.” Herein, NWR denied 63% of RMP’s overall statements of fact, and denied 72% of the statements of fact under the heading “Motion to Dismiss”. That includes numerous genuine material disputes of material facts, and therefore, RMP’s Motion must be denied. Some of these disputes of material facts are addressed in more depth below.

#### **a. Only One Agreement is Relevant to NWR’s Formal Complaint.**

The 2019 MESA is the complete agreement between RMP and NWR. It includes an integration clause which specifically excludes any other agreement, previous contract, or understanding.

In RMP’s Motion, RMP barely acknowledges, and fails to adequately address, NWR’s Complaint argument that the 2019 MESA integration clause precludes any additional terms or amendments other than what is within the document itself. RMP alleges that the 2019 MESA is

supplemental to the 2014 MESA. However, the 2014 MESA includes an assignment clause which prevents the customer from assigning its service to another entity without the express **written** approval of RMP. RMP has not provided any written evidence of a transfer, an assignment, or an amendment of its 2014 MESA. Also relevant is the fact that RMP drafted both documents, and so the plain wording of the documents reflects the true intention and actions of RMP.

RMP alleges that because NWR paid RMP's unlawful incorrect power bills under the 2019 MESA, it agreed that the 2019 MESA was supplemental to the 2014 MESA. Not true. NWR's payment of an incorrect power bill does not equate to NWR having knowledge that RMP is creating and sending unlawful and incorrect bills. NWR trusted RMP, and RMP, either mistakenly or knowingly took advantage of that trust.

The 2019 MESA (drafted by RMP), contains the complete agreement between NWR and RMP, and specifically declares that in its integration clause. It doesn't reference any other document and RMP hasn't provided evidence of any amendment. The 2014 MESA is not part of NWR's agreement with RMP.

RMP mentions numerous documents, at least one (2014 ESA) of which it failed to produce in its answer. RMP also alleges numerous service account entity changes, but again fails to provide any evidentiary support. RMP provided four agreements, but only two (the 2014 MESA and the 2019 MESA) are agreements to provide power to the overall facilities. The other two (2018 agreements) are for improvements and power service to Block United, which was for

service through a separate meter to a separate entity at or near the facilities, but which didn't change the existing customer using power for the overall facilities.

b. The 2019 MESA Does Not Include or Allow for Minimum Charges.

RMP argues that its minimum billing charges to NWR are correct pursuant to the 2014 MESA or its published tariffs and schedules. They are not correct. As argued above, the 2014 MESA is not part of the 2019 MESA, and so cannot govern. RMP cited Service Regulation No. 12 as another possible governing document applicable to the 2019 MESA. Service Regulation No. 12 is specifically addressing line extensions and the recovery of costs therefrom, but the 2019 MESA does not include any line extensions or improvements that would warrant cost recovery. RMP simply does not have grounds to support its unlawful and incorrect minimum billings charges to NWR.

c. NWR Did Not Steal Power or Install Unauthorized Power Lines.

RMP alleges that NWR tampered with and/or installed unauthorized power lines which took power from RMP. The power lines referenced were on NWR's side of the meter, so regardless of whether the lines were authorized or not, NWR was billed for all power it used at all times.

The time the line at issue was installed was over 20 years ago, and so there is not much evidence available. NWR believes it did receive authorization from both RMP and the county. However, to resolve any issues of safety, NWR hired an electrical company to inspect and correct all alleged deficient portions of all lines that RMP is concerned about. Attached Exhibit A is the report of the electrical company stating that all of the concerns have been corrected.

Upon resolution of this Complaint, power should again be transmitted to that portion of the property.

**2. The Materially Disputed Facts Exist Even if the Commission Views RMP's Motion as a 12(b)(6) Motion to Dismiss.**

Even if the Commission were to exclude the portion of RMP's Motion unrelated to the request to dismiss NWR's Complaint under rule 12(b)(6), there is still materially disputed facts requiring RMP's Motion to be denied. The disputes regarding the facts relating to which agreements control the service to NWR and which documents apply that might allow or disallow minimum billing charges are central to NWR's complaint. In addition, numerous other disputes of fact emerged from RMP's Motion, including:

- The cause of the service disconnection;
- Unauthorized installation of power lines and use of power;
- Account representatives; and
- Negotiations with RMP regarding restoration of agricultural and residential power, including the fact that NWR and its tenants repeatedly requested the amount and cost it was required to pay to add the infrastructure and separate meters, but RMP would not provide it even after multiple meetings.

Therefore, regardless of whether the Commission views RMP's Motion as a 12(b)(6) motion, or a Rule 56 summary judgment motion, it fails due to the materially disputed facts which require a trial to resolve.

**3. Summary**

RMP's Motion should be viewed as a motion for Summary Judgment. NWR respectfully requests the Commission to deny RMP's Motion because there are numerous disputes of material fact preventing summary judgment.

DATED January 16, 2026

Lynn M. KINGSTON

/s/ Lynn M. Kingston

Lynn M. Kingston,

Attorney for NWR Limited Partnership

## CERTIFICATE OF SERVICE

I certify that on January 16, 2026 copies of the above were served via e-mail to the following:

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/s/ Lynn M. Kingston