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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Formal Complaint of NWR Limited Partnership against Rocky Mountain Power	DOCKET NO. 25-035-58 ROCKY MOUNTAIN POWER'S RULE 56(d) MOTION TO DEFER BRIEFING AND RULING ON MOTION FOR PARTIAL SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR ADDITIONAL TIME TO RESPOND
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Pursuant to Sections R746-1-105 and R746-1-301 of the Utah Administrative Code and Utah Rule of Civil Procedure 56(d), Rocky Mountain Power (“Rocky Mountain Power” or the “Company”) moves the Public Service Commission of Utah (the “Commission”) to defer briefing and a ruling on complainant NWR Limited Partnership’s (“NWR” or “Complainant”) Motion for Partial Summary Judgment (the “Summary Judgment Motion”) until after the Company has been able to conduct discovery necessary for the Company to respond to the Summary Judgment Motion. In the alternative, if the Commission is inclined to proceed with briefing on and consideration of the Summary Judgment Motion before discovery is conducted, the Company moves the Commission to extend the Company’s response time until 15 days after a ruling on this Motion.

INTRODUCTION

On December 1, 2025, and in response to NWR’s Formal Complaint (the “Complaint”) in this matter, the Company filed its Motion to Dismiss the Complaint (“Motion to Dismiss”). After seeking and obtaining an extension of time to respond to the Company’s motion, NWR eventually filed its opposition to the Motion to Dismiss on January 16, 2026, which it later amended on January 20, 2026. The Company’s Motion to Dismiss is ready for the Commission’s consideration and decision.

On February 17, 2026, a month after briefing on the Company’s Motion to Dismiss had been finalized, NWR filed its Summary Judgment Motion. In that motion, NWR requests for the Commission to rule “that the Master Electric Service Agreement signed by NWR and Rocky Mountain Power on or around September 29, 2019 (‘2019 MESA’) is the complete agreement of the Parties, governing all issues between the parties in this appeal, and that no other agreement is relevant.”¹ However, NWR’s Summary Judgment Motion implicates a number of factual issues that RMP has not yet had the opportunity to probe during discovery in this matter because of the Motion to Dismiss and the fact that a discovery schedule has not yet been put in place. Those factual issues are not only important for the Commission’s consideration of the Summary Judgment Motion, but the Company submits they will demonstrate that the Summary Judgment should be denied.

As the Commission knows, “[t]he Utah Rules of Civil Procedure and case law interpreting [those] rules are persuasive authority in Commission adjudications” unless otherwise directed by the Utah Administrative Procedures Act, Utah’s Administrative Code, or Commission order.²

¹ Summary Judgment Motion at 1.

² Utah Admin. Code § R746-1-105.

Under Utah Rule of Civil Procedure 56(d), the Commission may defer consideration of a motion for summary judgment where a nonmoving party “shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition.”³ Where the non-moving party makes this showing, the Commission may “defer considering the motion or deny it without prejudice; . . . allow time to obtain affidavits or declarations or to take discovery; or . . . issue any other appropriate order.”⁴

As set forth in the Declaration of Katherine Smith, attached as Exhibit A, RMP needs discovery to respond to the arguments made in NWR’s motion, as various facts are important to the Commission’s consideration of and ruling on the Summary Judgment Motion and those facts are either in NWR’s possession or the possession of affiliates of NWR or third parties.

NWR would have the Commission believe that the only relevant consideration in this proceeding is the text of the 2019 MESA. But NWR’s own actions and communications regarding the amounts and issues in dispute (as set forth in the Company’s Answer), and its affiliation with related entities that have sought service from the Company at the very same location, are not only relevant to but dispositive of the Summary Judgment Motion. For instance, various facts regarding the 2014 Master Electric Service Agreement (“2014 MESA”), which NWR has previously acknowledged and under which NWR has paid for the Company’s services, are relevant to demonstrating that NWR is required to pay the past due amounts that have accrued from the Company’s services to NWR’s property. The Company obviously has its own information (as set forth in the Motion to Dismiss) but does not yet have access to the relevant information from

³ Utah R. Civ. P. 56 (d).

⁴ *Id.*

NWR's records or those of its affiliates or financial institutions to provide the facts that are essential to the Company's opposition to NWR's motion.

Accordingly, Rocky Mountain Power asks the Commission to defer briefing on and consideration of the Summary Judgment Motion until after RMP has been able to conduct the discovery necessary to respond to that motion. Alternatively, if the Commission intends to proceed at this time to consider the Summary Judgment Motion, the Company asks the Commission to set a due date for the Company's opposition that is 15 days after the Commission rules on this Motion.

BACKGROUND

On October 29, 2025, NWR filed its formal Complaint with the Commission, arguing that RMP shut off its power in violation of the 2019 Master Electric Service Agreement (the "2019 MESA").⁵ In the Complaint, NWR states that RMP signed the 2014 MESA with Washakie Renewable Energy ("WRE"), allegedly a tenant of NWR.⁶ It then states that, because WRE ceased to exist after a government investigation and criminal convictions of certain of its principals, RMP signed the 2019 MESA with NWR to deliver power to the property.⁷ *Id.* NWR then states that only the 2019 MESA is relevant to this proceeding. *Id.*

Rocky Mountain Power disputes NWR's recitation of the events and facts. The 2014 MESA was indeed originally executed with WRE. However, as noted in the Company's Answer and Motion to Dismiss, WRE's account under the agreement was transferred to WRE Feed and Mill, LLC, for service at the same property, on approximately April 1, 2018.⁸ Then, on October 12, 2018, WRE Feed and Mill's service at that property was transferred to NWR when NWR

⁵ Formal Complaint at 4.

⁶ *Id.* at 2.

⁷ *Id.*

⁸ Answer and Motion to Dismiss ¶ 6.

instructed the Company to set up service in NWR's name.⁹ Thereafter, the Company provided service to NWR under the 2014 MESA, and NWR confirmed as much by making payments for service provided under that agreement.¹⁰ While the account transferred between these entities, the representative for each of the three entities was the same, and payments under the 2014 MESA continued from a business checking account under the name of WRE.¹¹ The purpose of the 2019 MESA was not to supplant the 2014 MESA but was to reduce the load under the 2014 MESA, as requested by NWR.¹²

Based on these and other facts, Rocky Mountain Power maintains that NWR is responsible for the obligations under the 2014 MESA. While the Company does have record of the source of some payments from NWR and the communications NWR had with the Company, the Company does not have in its possession information such as (1) how WRE, WRE Feed and Mill, and NWR (or other affiliates) were operated relative to one another, (2) internal documentation regarding how funding sources and operations were handled between those entities, including particularly whether funding and operations were comingled, (3) which entities were taking and using power provided by the Company during the relevant period, (4) what authority representatives of each of the entities, including, in particular, the roles various alleged employees played and who they were acting on behalf of when they communicated with the Company, and (5) which entity or entities unlawfully connected a line into the Company's system to provide power to the NWR property. Discovery will permit the Company to obtain this information and provide it to the Commission.

⁹ *Id.* ¶ 7.

¹⁰ *Id.* ¶ 9.

¹¹ *Id.* at ¶ 11, ¶ 34.

¹² *Id.*

ARGUMENT

NWR's Summary Judgment Motion seeks a determination that the 2019 MESA is the only contract relevant to this proceeding. In the motion, NWR argues that the 2019 MESA governs "all issues between the parties in this appeal, and that no other agreement is relevant."¹³ But RMP claims otherwise and needs discovery to respond to NWR's arguments. Discovery is necessary to demonstrate various things, including that WRE, WRE Feed and Mill, NWR and other entities are affiliated, that they were operated in a comingled fashion, that they were run by the same individuals, and that payments were made from common funding sources under the 2014 MESA, including from NWR. Consequently, NWR is responsible for the past due amounts owing for Company services under the 2014 MESA.

I. The Commission Can and Should Defer Briefing and Consideration of the Summary Judgment Motion Under Utah R. Civ. P. 56(d).

Rule 56(d) provides:

When facts are unavailable to the nonmoving party. If a nonmoving party shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(d)(1) defer considering the motion or deny it without prejudice;

(d)(2) allow time to obtain affidavits or declarations or to take discovery; or

(d)(3) issue any other appropriate order.

Under that rule, district courts "enjoy wide discretion in their consideration of requests for additional time to conduct discovery" and should consider "the specific circumstances of each

¹³ Motion at 1.

case,” including whether “the discovery sought will uncover disputed material facts that will prevent the grant of summary judgment. . . [and] whether the requesting party has had adequate time to conduct discovery.”¹⁴ The Commission has similarly applied Rule 56(d) to defer briefing and consideration of a motion for summary judgment pending discovery necessary to respond to that motion.¹⁵ As discussed below, discovery is necessary for the Commission to be able to address the factual issues (and disputes) presented by the Summary Judgment Motion.

II. Discovery is Necessary to Resolve the Factual Disputes Presented by the Summary Judgment Motion.

A. Discovery is Needed to Show Who is Responsible for Amounts Owing Under the 2014 MESA.

The Company believes NWR is responsible for paying the outstanding amounts owing under the 2014 MESA and that the Company was entitled to cease service when NWR failed to make payment. Specifically, as set forth in the attached Declaration of Katherine Smith, RMP needs discovery from NWR and its affiliates to demonstrate facts regarding the relationship between WRE, WRE Feed and Mill, NWR and others, including how they have been operated; the manner in which NWR operated under the 2014 MESA; the sourcing of the funding for each entity; those authorized to act on each entity’s behalf; and the comingling that the Company has witnessed over the years in providing service. The Company believes they were comingled entities or alter egos, which would render NWR a successor or otherwise responsible entity for the amounts owing under the 2014 MESA.

¹⁴ *GeoMetWatch Corp. v. Utah State Univ.*, 2023 UT App 124, ¶¶ 42-43, 538 P.3d 933, 944 (quoting Utah R. Civ. P. 56(d)).

¹⁵ See Order, *Application of E Fiber Moab, LLC and E Fiber San Juan, LLC for a Certificate of Convenience and Necessity to Provide Facilities-Based Local Exchange Service and Be Designated as Carriers of Last Resort in Certain Rural Exchanges*, Dkt. No. 20-2618-01 at 2 (Sept. 1, 2020) (granting Rule 56(d) request).

As noted above, in 2014, the Company entered into a MESA with WRE, which was allegedly NWR's tenant. WRE set up service at their facility in Plymouth, Utah in 2015. WRE then transferred the service account for the Property to WRE Feed and Mill in 2018, and then to NWR in that same year. Although NWR claims that each of these entities that took over the service account were distinct, each transfer was facilitated by and executed by Rachel Kingston and the services were provided to the same location.

Throughout these changes, payments towards the contract minimum billing under the 2014 MESA continued and, according to the Company's records, were made with a business checking account under the name of WRE, even as the account holder name was changed. These facts indicate that NWR took over the obligations of the 2014 MESA, but further factual discovery is necessary to obtain information directly from WRA, WRE Feed and Mill, and NWR, as well as their financial institutions to demonstrate what Rocky Mountain Power believes occurred. This discovery may include such things as communications between the entities (or their representatives), financial records regarding their operations, the composition and ownership of each entity, and those authorized to act on behalf of each entity.

B. Discovery is Needed to Confirm How the Unauthorized Power Line Was Installed and by Whom.

Additionally, further discovery is necessary to address the unauthorized power line that was unlawfully tapped from the Company's substation to the property at issue.¹⁶ This unauthorized power line, which leads across Interstate 15 to serve multiple residences and industrial equipment on the property, was claimed to have been approved by Box Elder County.¹⁷ No evidence supporting that claim has been provided. The Company was required to disconnect that improper

¹⁶ Motion to Dismiss ¶¶ 28, 44.

¹⁷ *Id.* at ¶¶ 13–34.

connection and maintains that it had the right to cease service in part due to this improper conduct. Discovery on this issue is necessary to identify how the improper connection was done, who participated in it, and whether safety issues have been addressed to allow the Company to restart service through a proper connection.

C. NWR's Arguments Do Not Eliminate the Necessity of Discovery.

NWR argues in its Summary Judgment Motion that the Commission can simply rule as a matter of law on its 2019 MESA arguments because (1) the 2019 MESA could not be amended because it contains a clause stating that amendments had to be made in writing, and (2) the 2019 MESA had an integration clause.¹⁸ Setting aside the fact these arguments ignore the successor-liability or alter ego arguments raised by Rocky Mountain Power in its Motion to Dismiss, neither of the arguments made by NWR in its motion are correct under Utah law.

1. *Parties to a contract can verbally or through their actions modify a contract, even in the face of a provision stating that modifications must be in writing.*

“In Utah, parties to a written agreement may not only enter into separate, subsequent agreements, but they may also modify a written agreement through verbal negotiations subsequent to entering into the initial written agreement, even if the agreement being modified unambiguously indicates that any modifications must be in writing.”¹⁹ They may also modify a contract through their actions, “regardless of any requirement for that modification to be written.”²⁰ The parties’ course of conduct, including complying with an agreement that is not reduced to writing, is

¹⁸ Motion at 3-4.

¹⁹ *R.T. Nielson Co. v. Cook*, 2002 UT 11, 40 P.3d 1119, 1124 n.4 (citations omitted).

²⁰ *iDrive Logistics LLC v. Adagio Teas Inc.*, 2022 UT App 115, ¶ 16, 519 P.3d 912, 917; *Createrra, Inc. v. Sundial, LC*, 2013 UT App 141, ¶ 12, 304 P.3d 104, 108 (parties may modify a written contract “by oral or verbal agreement” even where a contract restricts “changes or modification in its terms” because “it is the parties’ intentions, not the form of the modification, that controls.”) (citations omitted).

sufficient to demonstrate “the parties’ intention to modify their agreement and the mutual assent to do so.”²¹

Because Utah law clearly recognizes the right and ability to modify a contract verbally or through their actions even if a provision of the contract otherwise requires such changes to be made in writing, the discovery the Company seeks is highly relevant to its response to the Summary Judgment Motion. Specifically, NWR’s position is that it is not liable under the 2014 MESA or that the terms of the 2014 MESA are irrelevant. That argument would be incorrect if, for example, NWR agreed, through its words or action, to be bound by that agreement, to assume obligations under that contract, made payments under that contract, or accepted services when the 2014 MESA account was transferred to NWR, all of which Rocky Mountain Power claims did in fact occur.

2. *The existence of an integration clause in the 2019 MESA does not preclude the Company from seeking recovery from NWR under the 2014 MESA.*

Similarly, the 2019 MESA’s integration clause does not preclude the Company from arguing either that NWR is bound by the 2014 MESA or that the 2019 MESA augmented the terms of the 2014 MESA but did not displace them. While an integration clause can mean that the parties did not have prior agreements or understandings that would be in force after an agreement is signed, parties can modify the terms of an existing agreement to incorporate or continue a prior agreement even in the face of an integration clause.²² Furthermore, an integration clause does not

²¹ *Id.* at ¶ 17 (citations omitted) (finding an intention to be bound by rates not included in written contract where the party made payments under new rate).

²² *Jones v. American Coin Portfolios, Inc.*, 709 P.2d 303, 306-07 (Utah 1985) (holding that the parties’ prior agreement was not extinguished by a later revised agreement because the parties prior agreement was made part of the revised agreement by the parties’ statements and actions, notwithstanding the revised agreement containing an integration clause); *ASC Utah, Inc. v. Wolf Mountain Resorts, L.C.*, 2010 UT 65, ¶ 38, 245 P.3d 184, 196 (“[P]arties to written contracts may modify, waive or make new terms regardless of provisions in the contracts to the contrary.”) (citations omitted).

necessarily eliminate the enforceable nature of a prior agreement where the parties did not intend that prior agreement to be superseded.²³

Discovery is necessary to establish how both the 2014 and 2019 MESAs were performed and modified. As explained above, RMP believes that NWR is responsible for obligations under the 2014 MESA due to its relationship with WRE and WRE Feed and Mill and its confirmation of that agreement through its words and conduct. Furthermore, even after the 2019 MESA was in place, the Company maintains that NWR continued to reaffirm the binding nature of the 2014 MESA.

NWR cannot claim that discovery is not necessary to resolve these issues. Its own Complaint discusses the 2014 MESA, and the issues around who is obligated to make payments under that agreement. Discovery on these issues is necessary and “should be liberally permitted.”²⁴ Given that the Summary Judgment Motion presents a number of issues that can only be adequately addressed after the necessary discovery has been conducted, it would be premature to address the motion now. The Company requests that the Commission defer consideration of the Summary Judgment Motion until after the Company has had the opportunity to conduct the discovery set forth in this Motion and the supporting declaration.

III. If the Commission Does Not Grant the Company’s Motion, It Should Grant the Company Additional Time to Respond to the Summary Judgment Motion.

If the Commission is not inclined to defer consideration of the Summary Judgment Motion, RMP requests that the Commission extend the Company’s time to respond to that motion by 15

²³ *Digecor, Inc. v. E.Digital Corp.*, 2007 WL 185477, at *3 (D. Utah Jan. 19, 2007) (“[M]erger clause of the later agreement does not alone allow it to supersede the obligations under the prior one”); *Slicex, Inc. v. Aeroflex Colorado Springs, Inc.*, 2006 WL 2088282, at *2 (D. Utah July 25, 2006) (finding that agreement “was not meant to supersede the parties’ prior agreements entirely and the integration clause in the [latter] Agreement does not eliminate the prior [agreement’s] provisions.”).

²⁴ *Macris & Assocs., Inc. v. Neways, Inc.*, 2006 UT App 33, ¶ 10, 131 P.3d 263, 266 (holding that further discovery was needed to determine whether defendant was an alter ego or successor corporation).

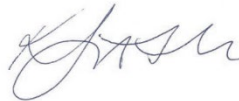
days to allow the parties to first know the Commission's ruling on this Motion. This request is reasonable given that the Summary Judgment Motion was filed before any discovery could be conducted in this proceeding.

CONCLUSION

For the reasons stated above, the Commission should defer ruling on NWR's Summary Judgment Motion until after the necessary discovery has been completed. In the alternative, if the Commission determines not to defer consideration of the Summary Judgment Motion, the Company should be granted an extension on its response until 15 days after the Commission rules on this Motion to allow the issues presented in this Motion to be adjudicated before a response is prepared.

Dated this 6th day of March 2026,

ROCKY MOUNTAIN POWER



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CERTIFICATE OF SERVICE

Docket No. 25-035-58

I hereby certify that on March 6, 2026, a true and correct copy of the foregoing was served by electronic mail to the following:

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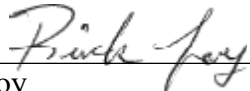
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Declaration Page

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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Formal Complaint of NWR Limited
Partnership Against Rocky Mountain
Power

DOCKET NO. 25-035-58

**DECLARATION OF KATHERINE
SMITH IN SUPPORT OF ROCKY
MOUNTAIN POWER’S RULE 56(d)
MOTION TO DEFER BRIEFING AND
RULING ON MOTION FOR PARTIAL
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, FOR ADDITIONAL
TIME TO RESPOND**

I, KATHERINE SMITH, declare and state as follows:

1. I am a member of the Utah State Bar and an attorney for Rocky Mountain Power in this proceeding. I have personal knowledge of the facts and circumstances set forth in this declaration and could testify to the matters stated herein if called upon to do so.

2. I submit this declaration in support of Rocky Mountain Power’s Rule 56(d) Motion to Defer Ruling on Motion for Partial Summary Judgment or, in the Alternative, for Additional Time to Respond (the “Motion”).

3. In order to respond to NWR’s Motion for Partial Summary Judgment, Rocky Mountain Power is RMP cannot present facts certain essential to its opposition to NWR’s motion at this time because the documents and information necessary to demonstrate those facts are in the

possession of NWR or third parties, and Rocky Mountain Power has not had the opportunity to conduct discovery to obtain those documents pr that information.

4. The discovery needed to allow the Company to respond to NWR’s Motion for Partial Summary Judgment would include data requests to NWR, subpoenas to NWR affiliates and financial institutions, and potentially, depositions of one or more NWR or affiliate witnesses concerning the following issues, among others:

- a. How Washakie Renewable Energy, WRE Feed and Mill, LLC, and NWR Limited Partnership (collectively, the “Entities”) have been and are owned, managed and operated, including whether they have comingled operations or fund.
- b. Who were and are the authorized representatives of the Entities during the relevant period of time.
- c. How the Entities internally used the services provided under the 2014 Master Electric Services Agreement (“2014 MESA”).
- d. How the Entities internally treated the obligations under the 2014 MESA, and which of the Entities paid for the services and with what funding.
- e. How the Entities internally viewed the relationship and obligations between the 2014 MESA and the 2019 Master Electric Service Agreement (“2019 MESA”).
- f. When the unauthorized power line was placed, who installed the unauthorized line and which of the Entities received power through that unauthorized line.
- g. The safety conditions associated with the property from which NWR operates.

[Signature Page Follows]

I declare under penalty of perjury under the laws of the State of Utah that the foregoing is true and correct.

Executed this 6th day of March 2026, in Salt Lake City, Utah.



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