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13 March 2026

VIA ELECTRONIC FILING

Utah Public Service Commission  
Heber M. Wells Building, 4th Floor  
160 East 300 South  
Salt Lake City, UT 84114  
Attention: Gary Widerburg  
Commission Administrator

Re: Docket No. 26-035-04---Formal Complaint of Ian McCubbin against Rocky  
Mountain Power

Answer and Opposition to the Motion to Dismiss.

Pursuant to the Notice of Filing and Comment Period issued by the Public Service Commission of Utah on January 28, 2026, Ian McCubbin (Complainant) hereby submits for filing its Answer and Opposition to the Motion to Dismiss in the above referenced matter.


The Complainant respectfully requests that all formal correspondence and requests for additional information regarding this filing be addressed to the following:

By E-mail (preferred): [imccubbin@gmail.com](mailto:imccubbin@gmail.com)

By regular mail:

Ian McCubbin  
555 Northmont Way  
Salt Lake City , UT 84103

Sincerely

A handwritten signature in black ink, appearing to be 'Ian McCubbin', written over a horizontal line.

Ian McCubbin

## **BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

### **Formal Complaint of Ian McCubbin against Rocky Mountain Power**

**DOCKET NO. 26-035-04**

### **ANSWER AND OPPOSITION TO MOTION TO DISMISS**

**Pursuant to Utah Code Ann. § 63G-4-204(1) and Utah Admin. Code §§ R746-1-206, and R746-1-301, Ian McCubbin (“Complainant”) hereby answers the motion to dismiss filed by Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or the “Company”), with the Public Service Commission of Utah (“Commission”).**

### **BACKGROUND AND RESPONSE TO COMPANY’S ALLEGATIONS**

Rocky Mountain Power (the Company), a PacifiCorp subsidiary of Berkshire Hathaway Energy, is confronting escalating wildfire risks. Berkshire Hathaway successfully advocated for Utah legislation that limits utility liability, provided the Company adheres to state-approved mitigation plans. CEO Warren Buffett has publicly noted that wildfire risk complicates investments in Western utilities, thereby encouraging “conservative and safer operating practices” to minimize financial exposure, which consequently influences the Company's Utah infrastructure investments. Infrastructure in Salt Lake City and surrounding areas has not been sufficiently hardened, preemptive power shut-offs have not been consistently implemented, nor have power lines in the wildland-urban interface been consistently buried.

Berkshire Hathaway successfully advocated for Utah laws that cap utility liability contingent upon adherence to state-approved mitigation plans. Utah Code § 65A-3-4 establishes a statutory “safe harbor” and a financial mechanism that substantially limits RMP's financial exposure. Utah H.B. 66 (2020) established a non-negligence standard for RMP provided the utility completes mitigation work specified within its comprehensive Wildland Fire Protection Plans (e.g., vegetation management, equipment inspections, and repairs). The Utah Fire Fund (S.B. 224, 2024) serves as a self-insurance layer for claims surpassing the Company's commercial insurance coverage. This fund is capitalized through a surcharge levied on customer bills. Salt Lake City and surrounding areas have not seen adequate hardening of RMP infrastructure, implementation of preemptive power shut-offs, or burial of power lines in the wildland-urban interface (WUI).

The Company represents a powerful lobbying presence in Utah. Given its status as the state’s sole rate-regulated electric utility, its advocacy occurs both in the State Legislature (affecting lawmaking) and before the Public Service Commission (PSC) (affecting rate setting). As of early 2026, the Company's lobbying strategy has significantly focused on shifting wildfire liability and costs onto ratepayers, using the WUI (Wildland Urban Interface) and H.B. 48 as partial justification. RMP has been a vocal proponent of H.B. 48 (the WUI law) because it redistributes the narrative of “fire safety” to include the property owner or the state as partially responsible, rather than focusing solely on the utility company whose lines may have ignited a fire.

In Utah, the Company is subject to criticism regarding its aging electrical grid and insufficient investment, particularly within high-fire-risk zones. In July 2024, the Company’s poorly

maintained infrastructure initiated a fire on Ensign Peak. Furthermore, this year, the Company scheduled helicopter pole replacement activities on a day with high fire risk, leading to the issuance of evacuation notices. Despite requests from homeowners, the Company has declined to bury power lines in a neighborhood officially designated as a wildfire-risk area.

The most destructive wildfires in the Western United States typically result from a confluence of failures in electrical infrastructure and underlying environmental factors. Leading causes include sparks from power lines and utility equipment, with three of the five most destructive wildfires in the Western U.S. having been ignited by electrical infrastructure. Fires originating from electrical infrastructure tend to start closer to homes in the Wildland-Urban Interface (WUI), thereby leading to greater property loss and loss of life. A power line can precipitate an urban conflagration when it arcs and ignites dry vegetation or other materials, often due to factors such as fallen trees, high winds, conductor slap, or equipment failure.

There are numerous well-documented and catastrophic examples of urban or near-urban conflagrations caused by electrical infrastructure failures. These incidents frequently occur in the Wildland-Urban Interface (WUI), which are areas where residential and community developments abut or are integrated with flammable wildlands. High winds, arid vegetation, and aging utility equipment collectively create a high-risk environment. Prominent examples include:

1. **Camp Fire (2018) – Paradise, California.** An investigation conducted by the California Department of Forestry and Fire Protection (Cal Fire) concluded the fire was caused by defective electrical transmission equipment owned by Pacific Gas & Electric (PG&E). Specifically, a deteriorated “C-hook” on a transmission tower failed, causing a high-voltage line to drop and arc, thereby igniting the dry vegetation below.
2. **Lahaina Fire (2023) – Maui, Hawaii.** Multiple investigations and legal actions allege that the fire was ignited by downed power lines owned by Hawaiian Electric. It is posited that energized lines, felled by extreme winds, ignited dry grass, commencing the blaze.
3. **Marshall Fire (2021) – Boulder County, Colorado.** The official investigation by the Boulder County Sheriff’s Office concluded that one of the two fires that merged to form the conflagration was ignited by sparks emanating from an Xcel Energy power line.
4. **Thomas Fire (2017) – Ventura & Santa Barbara, California.** Cal Fire determined the fire originated from Southern California Edison (SCE) power lines making contact during high winds, showering the ground below with molten metal and sparks.
5. **Woolsey Fire (2018) – Los Angeles & Ventura Counties, California.** An investigation determined the fire was caused by SCE equipment. A guy wire (a tensioned cable used to stabilize a pole) arced against an energized jumper wire, generating sparks that ignited nearby brush.
6. **Smokehouse Creek Fire (2024) – Texas Panhandle.** The utility company Xcel Energy acknowledged that its equipment appeared to be involved in the ignition of the fire. Investigations indicated that a decaying wooden utility pole failed and fell, initiating the fire.
7. **Santiam Canyon Fire (2020) – Oregon.** This event was one of the most destructive in Oregon’s history. A landmark 2023 jury trial found PacifiCorp liable for negligence and recklessness for failing to de-energize power lines during a predicted windstorm on Labor Day 2020.

H.B. 48 is a Utah statute designed to mitigate wildfire risks in areas where residential developments interface with wildland (WUI). The legislation focuses on reducing wildfire risks in

the WUI and establishes new obligations, standards, and fees for property owners, municipalities, and counties. The Complainant's homes, situated on the north side of Northmont Way in Salt Lake City, are now officially designated within the WUI under Utah's H.B. 48, as the new state law mandates the use of a unified, data-driven system to precisely map and categorize properties based on their wildfire risk exposure. Since the Complainant's residences fall within the High-Risk WUI boundary, they are subject to several mandatory requirements created by H.B. 48 and its related codes:

- **Local Code Requirements:** Salt Lake County and City are obligated to adopt and enforce the Utah Wildland Urban Interface Code.
- **Annual Fees:** As the Complainant's properties are classified in the highest risk category on the FFSL's triage scale, they will be assessed an annual mitigation fee, which contributes to the state's fire prevention fund.
- **Insurance Use:** Insurance companies are required to utilize the official UWRAP boundary when underwriting and setting rates related to wildfire risk.

RMP Schedule 97 constitutes the active regulation that authorizes the Company to charge customers for wildfire prevention work. The Wildfire Mitigation Balancing Account (WBA) is a mechanism that permits the recovery of prevention costs that exceed the amounts already budgeted in base rates. When the Company utilizes Schedule 97 funds for grid "hardening," it may include undergrounding for wildfire risk mitigation purposes. Undergrounding involves the complete burial of power lines, which virtually eliminates fire risk. The Company is selectively implementing this in exceptionally high-risk areas, such as the Park City to Judge project and portions of the Salt Lake City Foothills. Schedule 97 provides for the funding of undergrounding for wildfire mitigation. If the Company's prevention expenditures surpass expectations (due to high fire risk seasons), these additional costs are tracked and subsequently recovered from customers via this schedule.

## **OPPOSITION TO MOTION TO DISMISS**

The Complainant requests that the Commission deny the Company's motion to dismiss under Utah Rule of Civil Procedure 12(b)(6) because the Company has allegedly violated applicable law, Commission rule, or Company tariff for which relief may be sought.

Given the substantial fire risk to the Complainant's home and the risk of urban conflagration to the local community, the Complainant requests that the Company convert the existing above-ground power lines to an underground system. The Complainant asserts that the only acceptable option to mitigate wildfire risk for his neighborhood is the burial of the distribution power line. It is understood that the only overhead distribution lines the Complainant is requesting to be buried are those situated within the high-risk WUI Zone of the Complainant's home. There are also high-voltage above-ground lines within 700 feet of the Complainant's property and primary above-ground power lines within 140 feet of the Complainant's property. All three lines are situated within a High to Very High Wildfire Hazard Potential area, based on the official report by the State of Utah Department of Natural Resources (DNR) Forestry, Fire, and State Land (FFSL).

The Company does not dispute that the Complainant's line is in a Fire High Consequence Area ("FHCA"); however, the Complainant refers to the applicability of the WUI designation, which the Company does not formally recognize. The Company employs the FHCA designations when determining which infrastructure requires mitigation efforts to reduce wildfire risk under

its Wildland Fire Protection Plan. The term “High Consequence Area” (HCA) is primarily utilized in the context of pipeline safety regulations. Outside of pipeline regulation, the term “HCA” may appear in other, less standardized contexts related to fire safety, such as Wildfire Mitigation. The Fire High Consequence Area (FHCA) is a classification developed solely by Rocky Mountain Power and PacifiCorp to concentrate resources where the potential damage from a utility-caused wildfire is greatest. FHCAs are geographic areas characterized by a high likelihood of wildfires in proximity to population centers.

The Wildland-Urban Interface (WUI) Code comprises specialized building and land-use regulations, often based on the International Wildland-Urban Interface Code (IWUIC), and adopted by various jurisdictions. Its objective is to preserve life and property from wildfire where development meets wildland. The code focuses on two primary goals: rendering structures fire-resistant (“Harden Structures”) and reducing nearby flammable material (“Manage the Environment”) to slow fire spread and facilitate defense. H.B. 48 standardizes and provides legal standing to the WUI designation across Utah, directly linking local compliance to state financial support and creating a mandated structure for risk mitigation efforts. While H.B. 48 emphasizes “defensible space” for homeowners (Zones 1 and 2), Rocky Mountain Power is governed by Utah Code § 54-24, which requires electric utilities to develop and adhere to Wildfire Mitigation Plans (WMP).

Utah Administrative Code R746-200 delineates the rules governing residential utility services in Utah. This code focuses on consumer protections, including billing practices, termination of service, and the rights and responsibilities of both the utility company and the customer. The Complainant's dispute with Rocky Mountain Power, previously detailed in Docket No. 23-035-41, was filed under Utah Administrative Code R746-200 and challenged RMP Electric Service Regulation (ESR) No. 12. The RMP ESR is merely the utility's approved set of regulations that must operate within the scope and mandates of R746-200. R746-200 and the RMP ESRs do not directly address wildfire risk mitigation. Instead, wildfire mitigation for utilities is covered by a separate legislative act, Utah Code Title 54, Chapter 24, which requires qualified utilities to develop and submit specific wildfire protection plans to the Public Service Commission (PSC). Utah Code Title 54, Chapter 24, constitutes the legal authority that mandates RMP's fire safety planning and grants the company the right to pass the associated costs onto customers, while the Rocky Mountain Power Rate Tariffs serve as the regulatory instrument used to calculate and collect those specific fire-related costs from consumers.

While R746-200 governs the relationship between utilities and residential customers, wildfire risk mitigation is addressed under a distinct legal framework. The Wildland Fire Planning and Cost Recovery Act (Utah Code Title 54, Chapter 24) mandates that qualified utilities, such as Rocky Mountain Power, must develop comprehensive Wildland Fire Protection Plans (WFPPs). Utah Code Title 54, Chapter 24, establishes regulations for electric utilities concerning wildland fire risks and liability. This state law, particularly Part 2, requires Rocky Mountain Power to implement proactive measures to mitigate the risk of utility infrastructure starting or contributing to a wildland fire. It mandates WFPPs for RMP and outlines cost recovery procedures for plan implementation. The chapter is focused on fire prevention, mitigating the effects of fires, and ensuring continuity of electric service while protecting the public interest.

RMP is obligated to develop and submit wildland fire protection plans to the Public Service Commission, detailing strategies for fire prevention and management. These plans must include a description of areas with a high risk of wildfire, procedures for infrastructure

inspection and vegetation management, and protocols for de-energizing power lines to prevent fires. These plans are submitted to the Public Service Commission for review and approval and must be regularly updated. Utah Code Title 54, Chapter 24, establishes a separate and focused set of requirements for utilities to address the growing threat of wildfires and requires utility companies to collaborate with local communities on wildfire mitigation. Utilities are permitted to recover approved expenses for implementing their wildland fire protection plans through a fire surcharge on customers, subject to PSC approval.

Specifically, the law outlines these requirements in several key areas:

- **Community Outreach and Awareness:** A qualified utility's Wildland Fire Protection Plan must include a description of “community outreach and public awareness efforts before and during a wildland fire season.”
- **Potential Participation:** The plans must also include a description of “potential participation, if applicable, with state or local wildland fire protection plans.” This provision emphasizes the role of collaboration with existing community plans.
- **Commission Review:** When the Public Service Commission reviews and approves a utility's plan, it is required to “consider input from...any other appropriate federal, state, or local entity that chooses to provide input; and...other interested persons who choose to provide input.” This provision allows for local governments, fire departments, and community members to participate in the process.

The Rocky Mountain Power (RMP) Foothills Wildfire Mitigation Project in Salt Lake City is a multi-phase infrastructure project designed to reduce wildfire risk along the wildland-urban interface. The project primarily entails replacing aging wooden 46-kilovolt (kV) transmission structures with taller, fire-resistant 138-kV weathering steel poles and installing “covered conductors” (insulated lines) to prevent sparks. Phase 1 was completed in 2024-2025 in the Upper Avenues area of Salt Lake City. This included the installation of 138-kV weathering steel poles and the undergrounding of lines on Northmont Way.

The Complaint asserts that the commission should review the approval timeframe and the level of detail provided in the Company's 2023 Wildfire Prevention Plan (WFPP). Furthermore, the Company's 2023 WFPP was not approved during 2024–2025, a period when phase 1 of the Foothills Mitigation Project was undertaken. The Company's 2023 WFPP lacks sufficient detail for the Complainant to ascertain the scope of work planned, implemented, or approved under the Company's WFPP, which itself had not received approval from the Public Service Commission (PSC) in 2024. Residences along Northmont Way, situated in the high-risk Wildland-Urban Interface (WUI), face an elevated threat from wildfires attributable to the Company's electrical service, and the Fire Hazard Classification Assessment (FHCA) is deemed an inadequate classification system for this high-risk zone. The Company has failed to comply with Utah Code Title 54, Chapter 24 and H.B. 48. Additionally, by issuing mandatory evacuation notices without proper postage, the Company allegedly violated the Mailbox Restriction Law (specifically *18 U.S. Code § 1725*) and Utah Code § 53-2a-205 (which reserves the authority to issue an evacuation order to specific government officials). The Company has also failed to engage the local community along Northmont Way as related to Utah Code Title 54, Chapter 24.

## **CONCLUSION**

For the foregoing reasons, the Complainant respectfully requests that the Commission must assume all facts presented in the complaint are true. Should the Commission find the current

Complaint to be deficient, the Complainant respectfully requests Leave to Amend the Complaint. The Complainant seeks Leave to Amend pursuant to Utah Rule of Civil Procedure 15. The Motion to Dismiss with Prejudice should be denied because the Complaint articulates a valid claim requiring the Company to underground and modernize the outdated above-ground power lines that pose a significant fire risk to the Complainant's home and local community within the Wildland Urban Interface (WUI). This request is supported by the precedent set in *Haynes v. Department of Public Safety*, which establishes that the Commission must accept all material allegations in the complaint as true.

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**Ian McCubbin**

**Dated this 13th day of March 2026**