

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)
Saina Carey against Rocky Mountain Power)
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)

DOCKET NO. 11-035-10
REPORT AND ORDER

ISSUED: March 15, 2011

SYNOPSIS

The Commission grants the Company's Motion to Dismiss and dismisses the formal complaint with prejudice.

By The Commission:

This matter is before the Commission on the formal complaint of Saina Carey against Rocky Mountain Power. Ms. Carey complains that 1) the Company "has a power pole and line illegally on my property and outside of the subdivision utility easement"; 2) the Company's placement of the pole in the easement it claims is unsafe as the "power lines go directly over [her] house and garage, which violate Moab City Subdivision and Moab City Zoning laws"; 3) the placement of the power line creates an illegal encumbrance on her property; 4) the Company has been illegally cutting limbs away from the power lines; 5) the Company's trimming of her tree reduces shade for her house, increasing her power bills. The Company offered to move its facilities, if Ms. Carey paid for the relocation, per the Company tariff, Regulation 12, Schedule 6. Ms. Carey declined the offer and instead demanded the Company move the line at its own cost. The Company also stated it was trimming trees near the power line because of the safety hazard they posed. The Company affirmed that it was trimming trees in accordance with its tariff.

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The Commission, in previous orders has recognized its limited scope of jurisdiction. The matters raised by Ms. Carey, i.e. issues regarding violations of zoning laws, trespass, easements, illegal encumbrances, property devaluation, and other torts, are beyond the scope of the Commission's jurisdiction and are properly raised in a district court. *See e.g.* *McCune v. Mountain Bell Tel.*, 758 P.2d 914 (Utah 1988) (holding that the "district court, not the Commission, . . . has jurisdiction to consider claims for . . . torts committed by a public utility"); *see also Atkin Wright & Miles v. Mountain States Tel. & Tel. Co.*, 709 P.2d 330, 334 (Utah 1985) (holding that a utility's actions which give rise to tortious or contractual liability and which do not call in question the validity of orders of the PSC or trench upon its delegated powers are subject to the jurisdiction of the district court). The only issues before the Commission which would impact Commission Rules and the Company's tariff, are the issues of tree-trimming. The Company's arborist communicated with Ms. Carey and reviewed the tariff provision governing the trimming of trees. He reiterated that the Company tried to minimize tree-trimming to preserve shade where possible, but while still protecting public safety.

The Division submitted its recommendation on February 7, 2011, recommending the Commission dismiss the formal complaint, finding no violations of Utah law, Commission Rules, or Company tariff.

Therefore, the Commission must find that the formal complaint provides no basis for jurisdiction, except on the issue of tree-trimming. As to the issues of tree-trimming, the Commission finds no violations of Utah law, Commission Rules, or Company tariff.

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ORDER

The formal complaint is dismissed with prejudice and the Company shall be free to remove any vegetation that may interfere with the safe and reliable operation of its facilities, in accordance with Utah law, Commission Rules, and applicable tariff provisions.

Pursuant to Sections 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the Commission within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a request for review or rehearing within 20 days after the filing of the request, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of Sections 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 15th day of March, 2011.

/s/ Ruben H. Arredondo
Administrative Law Judge

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Approved and confirmed this 15th day of March, 2011, as the Report and Order of
the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#71257