Decision No. R24-0893-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24F-0204E

HOWARD KIYOTA,

      COMPLAINANT,

V.

UNITED POWER INC.,

      RESPONDENT.

**INTERIM DECISION
DENYING MOTION**

Issued Date: December 5 , 2024

I.   <u>STATEMENT</u>

A.   **Procedural Background**

1.   On May 7, 2024, Complainant Howard Kiyota filed a Complaint against United Power Inc. ("United Power"). Mr. Kiyota generally alleges that United Power changed his service lateral in 2022 and this has resulted in numerous electrical issues.

2.   On May 8, 2024, the Commission issued its Order Setting Hearing and Notice of Hearing ("Notice"), which set this matter for an evidentiary hearing on July 22, 2024, before an Administrative Law Judge ("ALJ").

3.   On May 15, 2024, the above captioned proceeding was referred by minute entry to an ALJ.

4.   On May 23, 2024, United Power filed its Motion to Dismiss.

5.   On June 21, 2024, by Decision No. R24-0441-I, the evidentiary hearing was vacated.

6.   On June 24, 2024, Mr. Kiyota filed his Response to Interim Decision of Administrative Law Judge Robert I. Garvey Vacating Evidentiary Hearing.

7.   On June 27, 2024, Mr. Kiyota filed a document titled Extension August 1, 2024 to reply to United Power's Motion to Dismiss.

8.   On July 29, 2024, Mr. Kiyota filed Attachments for Howard Kiyota Formal Complaint.

9.   On August 1, 2024, Mr. Kiyota filed an amendment to his Response to United Power's Motion to Dismiss.

10.   On September 17, 2024, by Decision No. R24-0651-I, the Motion to Dismiss was denied and a prehearing conference was scheduled for October 15, 2024.

11.   On October 17, 2024, by Decision No. R24-0651-I, a procedural schedule was adopted, and an evidentiary hearing was scheduled for January 28, 2025.

12.   On November 14, 2024, Mr. Kiyota filed his Motion for an Order Appointing Staff Engineer ("Motion").

13.   On December 2, 2024, United Power filed its Response in Opposition to Howard Kiyota's Letter Motion ("Response").

II.   MOTION FOR APPOINTMENT OF A STAFF ENGINEER

14.   In his Motion, Mr. Kiyota requests that the undersigned ALJ appoint a staff engineer "to analyze a wiring diagram produced and provided by United Power."[1] Mr. Kiyota argues that "[t]he use

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[1] Motion for an Order Appointing Staff Engineer, p1.

of a CoPUC engineer to perform this analysis, hopefully will not be extensive and will provide an independent and impartial analysis for the Commission and your Honor. It will also prevent a financial hardship of me having to hire an engineering professional."[2]

15.   United Power objects to the Motion arguing that the request "improperly seeks to involve the Commission in the preparation of Mr. Kiyota's affirmative case."[3]

III.   DISCUSSION

16.   The undersigned ALJ agrees with United Power that Mr. Kiyota's request seeks to have the Commission Staff become an active part in the preparation of the Complaint's case.

17.   The Commissioners or an ALJ may use Advisory staff to provide technical analysis and policy advice; manage cases and assist the Commissioners or ALJ in reaching a decision[4].

18.   There is not a provision for Advisory staff to assist a complainant in preparation of its case. A complainant is responsible for providing evidence to meet its burden in a complaint proceeding.

19.   If the undersigned ALJ believes that additional technical analysis is appropriate in the above captioned case, he shall seek assistance from Commission Advisory Staff.

20.   The Motion is denied.

IV.   ORDER

A.   It Is Ordered That:

1.   The Motion for an Order Appointing Staff Engineer filed by Mr. Kiyota on November 19. 2024, is denied.

2.   The Parties shall be held to the advisements in this Decision.

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[2] Id.
[3] Response in Opposition to Howard Kiyota's Letter Motion, p.1.
[4] Rule 1004(e) of the Rules of Practice and Procedure, 4 Code of Colorado Regulations ("CCR") 723-1.

3.   This Decision shall be effective immediately.

(S E A L)   THE PUBLIC UTILITIES COMMISSION
                                                   OF THE STATE OF COLORADO

                                                        ROBERT I. GARVEY

                                        _____

                                                      Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director

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