

Decision No. C25-0485

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24F-0204E

HOWARD KIYOTA,

COMPLAINANT,

V.

UNITED POWER INC.,

RESPONDENT.

**COMMISSION DECISION DENYING EXCEPTIONS TO
RECOMMENDED DECISION NO. R25-0156**

Issued Date: June 26, 2025
Adopted Date: April 23, 2025

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I. BY THE COMMISSION

A. Statement

1. By this Decision the Commission, denies the exceptions to Recommended Decision No. R25-0156 (“Recommended Decision”) filed by *pro se* Complainant, Mr. Howard Kiyota (“Complainant” or “Mr. Kiyota”), against United Power, Inc. (“United Power” or “the Company”). The exceptions take issue with the decision of the Administrative Law Judge (“ALJ”) to dismiss the complaint for failure to meet the required burden of proof necessary to sustain the underlying complaint. As discussed below, the Commission, upon considering the exceptions and underlying record as a whole, upholds the findings of facts and conclusions of the Recommended Decision.

B. Background

2. On May 7, 2024, Mr. Kiyota, a United Power member-customer, filed a formal complaint against the Company generally alleging United Power changed his service lateral in 2022¹, and this has resulted in numerous electrical issues (“Complaint”). In the Complaint, Mr. Kiyota details the appliances he claims have been affected by the power issues caused by the service lateral. Mr. Kiyota states United Power has been unable to fix his electrical issues for two years and alleges United Power may be giving preferential treatment to certain member-customers. Mr. Kiyota attached several exhibits to the Complaint including screenshots of ChatGPT answers to Mr. Kiyota’s questions, email correspondences with United Power representatives, and

¹ United Power Inc.’s Report (Hearing Exhibit 200) states the service lateral was replaced in 2020.

photographs demonstrating malfunctioning appliances and measurements taken by Mr. Kiyota of the length of the service lateral in question.

3. On May 15, 2024, the Commission referred the matter to an ALJ by minute entry.

4. On May 23, 2024, United Power filed a Motion to Dismiss the Complaint for lack of subject matter jurisdiction and failure to exhaust administrative remedies. United Power argued that, as an electric cooperative that has invoked the statutory exemption from Commission regulation under § 40-9.5-103, C.R.S., its own complaint regulation and procedures displace the Commission's complaint process.

5. On September 17, 2024, by Decision No. R24-0651-I, the ALJ denied the Motion to Dismiss. The ALJ concluded that although electric cooperatives are generally not subject to Commission jurisdiction, Mr. Kiyota's allegations of preferential treatment were sufficient to give the Commission jurisdiction over the Complaint under one of the exceptions to that general rule under § 40-9.5-106(2), C.R.S.²

6. On January 28, 2025, the ALJ held a one-day remote evidentiary hearing.

7. On February 13, 2025, Mr. Kiyota filed a Motion to Supplement the Record ("Motion to Supplement") in which he sought admission of various photos and calculations related to the length and performance of his service lateral, an invoice from an electrician, additional ChatGPT screenshots concerning voltage drop calculations, and a statement from Namaste, the company who installed Mr. Kiyota's solar system.

² Providing "[n]o cooperative electric association, as to rates, charges, service, or facilities or as to any other matter, shall make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No cooperative electric association shall establish or maintain any unreasonable difference as to rates, charges, service, or facilities or as to any other matter, either between localities or between any class of service. Notwithstanding section 40-6-108(1)(b), any complaint arising out of this subsection (2) signed by one or more customers of such association shall be resolved by the public utilities commission in accordance with the hearing and enforcement procedures established in articles 6 and 7 of this title."

8. On February 18, 2025, United Power filed a Response to the Motion to Supplement the Record (“Motion to Supplement”). On February 27, 2025, Mr. Kiyota filed a Reply in Support of Complainant’s Motion to Supplement the Record. On February 27, 2025, United Power filed a Response in Opposition Mr. Kiyota’s Reply. On March 4, 2025, through the Recommended Decision, the ALJ dismissed the Motion to Supplement and the Complaint.

9. On March 21, 2025, Mr. Kiyota filed exceptions to the Recommended Decision. On April 2, 2025, United Power filed its Response to Mr. Kiyota’s exceptions. Consistent with the discussion below, this Decision denies Mr. Kiyota’s exceptions, in full.

C. Recommended Decision

1. Motion to Supplement

10. In the portion of the Recommended Decision addressing Complainant’s Motion to Supplement, the ALJ found the information contained in the supplemental exhibits was foreseeable to be necessary prior to the hearing. The ALJ explained Mr. Kiyota was aware before the hearing that he disagreed with the distance United Power had in its pre-filed exhibits concerning the distance from the transformer to the pole. To that end, the ALJ further explained Mr. Kiyota testified about this discrepancy and cross-examined multiple United Power witnesses about the discrepancy during the hearing. Moreover, United Power filed several exhibits showing communications from Company representatives to Mr. Kiyota in which they stated they believed any power issues he was having were on his side of the meter and that the wiring in Mr. Kiyota’s residence and/or the installation of Mr. Kiyota’s solar system were the cause of the power issues. Therefore, the ALJ found that it was easily foreseeable that exhibits to rebut these propositions would be necessary.

11. Furthermore, the ALJ concluded the introduction of the supplemental exhibits would create an unfair advantage for Mr. Kiyota because United Power would not have the ability to question or even object to the admission of the exhibits. Finally, and most importantly, the ALJ concluded the exhibits did not address what is at issue in the Proceeding—whether United Power subjected Mr. Kiyota to a prejudice or disadvantage in the electrical service he was provided.³

12. As to Mr. Kiyota’s motion for leave to reply to United Power’s response, the ALJ concluded Mr. Kiyota did not meet the standards to reopen the record set out by Commission Rule 1003(a), 4 *Code of Colorado Regulations* (“CCR”), 723-1 and denied the motion.

2. Findings of Fact

13. In the Recommended Decision, the ALJ made certain findings of fact as set forth below.

14. United Power is a not-for-profit electric distribution cooperative serving more than 110,000 residential and commercial members along Colorado's I-25 and I-76 corridors from Mead to northern Commerce City (north to south) and Keenesburg to Broomfield (east to west). United Power also serves a portion of Coal Creek Canyon.⁴

15. Mr. Kiyota’s residence has been owned by his family since the early 1930s. He has lived in the house for the last 64 years.⁵ In the early 1980s, Mr. Kiyota “gutted and remodeled” the house.⁶

16. Mr. Kiyota has had power quality issues following a modification to his electrical service lateral three years ago.⁷

³ Decision No. R25-0156 at p. 6, issued in Proceeding No. 24F-0204E (March 4, 2025).

⁴ Hr. Ex. 200, United Power Inc.’s Report, p. 4.

⁵ *Id.* at p. 11:18-11.

⁶ *Id.* at p. 11:11-14.

⁷ *Id.* at p. 10:14-17.

17. Mr. Kiyota stated that he has had issues with many electrical devices in his home including, but not limited to, the following: his microwave oven, his home theater system, and ultrasonic humidifiers.⁸

18. In 2020, United Power completed a work order to extend service to a residence adjacent to Mr. Kiyota's property. The work was completed on August 25, 2020, with a final inspection on September 2, 2020.⁹

19. United Power changed the service lateral to Mr. Kiyota's property from an 85-foot overhead loop to a 220.9 mixed wire underground overhead loop.¹⁰

20. The service lateral that runs to Mr. Kiyota's property uses two different wire sizes.¹¹

21. There was no contact between Mr. Kiyota and United Power concerning power issues in 2021.¹²

22. On August 19, 2022, Mr. Kiyota contacted United Power and stated he was experiencing power surges and was concerned that his service drop was not in compliance with an on-line guide. United Power sent an employee to test the service at Mr. Kiyota's residence and found good voltage at the meter. The service order was closed on August 22, 2022.¹³

23. On December 26, 2022, United Power installed a temporary recording voltmeter at Mr. Kiyota's property to monitor the quality of power being provided by United Power through Mr. Kiyota's meter. The installation attempt failed, as the unit was faulty due to a bad battery. United Power reinstalled a new meter in March 2023.¹⁴

⁸ Hr. Ex. 195; Hr. Ex. 117; Hr. Ex. 197; Hr. Ex 190.

⁹ Hr. Ex. 200, p. 7-8.

¹⁰ Hr.Tr. January 28, 2025, p.11:15-18.

¹¹ *Id.* at p. 37:10-15.

¹² Hr. Ex. 200 at p. 8.

¹³ *Id.*

¹⁴ *Id.* at p. 9.

24. On April 21, 2023, a United Power employee took pictures of Mr. Kiyota's breaker and stated that he believed that the solar system wiring was incorrect.¹⁵

25. On May 15, 2023, United Power recommended to Mr. Kiyota that he have an electrician check his side of the meter.¹⁶

26. On October 5, 2023, a United Power employee went to Mr. Kiyota's property and conducted testing which showed Mr. Kiyota's meter was performing at 96 percent accuracy.¹⁷

27. On December 6, 2023, Mr. Kiyota emailed United Power about power quality issues.¹⁸

28. On December 7, 2023, two United Power employees went to Mr. Kiyota's property and conducted additional testing.¹⁹

29. Mr. Kiyota is aware that United Power has utilized mixed wire sizes on service laterals to his greenhouse and office.²⁰

30. Various types of wire are installed throughout United Power's system.²¹

31. Virtually every United Power member has a mixed wire into their residence.²²

There are no United Power standards that require that service laterals not have mixed wire and it is standard industry practice to have mixed wires.²³

¹⁵ *Id.* at p. 10.

¹⁶ *Id.* at p. 11.

¹⁷ *Id.* at p. 13.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Hr. Tr. January 28, 2025, p.79:1-80:4.

²¹ *Id.* at p. 87:20- 25.

²² *Id.* at p. 89:24-90:8.

²³ *Id.* at p. 94: 6-12; *Id.* at p.135:25-136:9.

3. Recommended Decision Findings and Conclusions

32. The ALJ found the evidence showed Mr. Kiyota has had trouble with his electrical service that has led to the destruction of numerous appliances. United Power has also attempted to resolve the issue several times and has not identified an issue with the service lateral in front of the meter, meaning Mr. Kiyota's power difficulties are caused by issues within his residence, such as incorrect wiring of his rooftop solar system or a problem with his circuit breaker box.

33. Regarding Mr. Kiyota's burden of proof, the ALJ explained that generally, under § 40-9.5-103, C.R.S., electric cooperatives like United Power are not subject to Commission jurisdiction. However, the legislature has provided for Commission jurisdiction in some electric cooperative complaint cases under § 40-9.5-106, C.R.S., which in part provides that "[n]o cooperative electric association, as to rates, charges, service, or facilities or as to any other matter, shall make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage." The ALJ therefore explained that Mr. Kiyota was required to show by a preponderance of the evidence that United Power made or subjected Mr. Kiyota to prejudice or disadvantage in the electrical service he was provided. The ALJ cited Consolidated Proceeding Nos. 19F-0620E & 19F-0621E as an example of an allegation of prejudice or disadvantage upheld by the Commission. That consolidated case concerned allegations by United Power and La Plata Electric Association ("La Plata") against an electric generation and transmission cooperative, Tri-State Generation ("Tri-State"), regarding exit charges assessed by Tri-State. There, the Commission found Tri-State's actions, in providing an excessive exit fee to United Power and not providing one to La Plata, were discriminatory and that United Power and La Plata showed by a preponderance of evidence they were "treated in a discriminatory manner" by Tri-State.

34. The ALJ reiterated that the Commission has limited jurisdiction over the Complaint under § 40-9.5-106(2), C.R.S., because Mr. Kiyota alleged United Power is giving preferential treatment to other members. The ALJ concluded Mr. Kiyota's failure to provide evidence that other United Power members had been given preferential treatment by not having a mixed wire service lateral is fatal to the Complaint. At the evidentiary hearing, Mr. Kiyota did not present evidence that any other United Power members had different service lateral configurations. When asked by the ALJ if he was aware of other mixed wire lines used by United Power, Mr. Kiyota responded that there was one servicing the greenhouse business, owned by Mr. Kiyota, adjacent to his residence.²⁴ Multiple United Power witnesses then testified that mixed wire service laterals are extremely common across United Power's service area and across other utilities, generally. Mr. Kiyota did not offer evidence supporting the allegation that United Power had acted in a discriminatory manner when using a mixed wire in Mr. Kiyota's service lateral and the ALJ therefore denied the Complaint because Mr. Kiyota failed to show by a preponderance of the evidence that United Power made or subjected Mr. Kiyota to a prejudice or disadvantage in the electrical service he was provided.

D. Mr. Kiyota's Exceptions

35. Mr. Kiyota raises three related arguments on exceptions, each of which contends the Recommended Decision did not sufficiently develop the factual record.

36. First, Mr. Kiyota argues the ALJ lacked a factual basis for determining non-discrimination. Mr. Kiyota asserts the ALJ's conclusion is not supported by sufficient factual findings because the record contains no evidence establishing how many other United Power customers have a mixed wire electric service lateral of the same configuration as Mr. Kiyota's.

²⁴ Hearing Transcript January 28, 2025, p. 79:3-80:10.

37. Second, Mr. Kiyota argues the Recommended Decision failed to adequately consider the technical implications of mixed wire service laterals in excess of 220.9 feet. Mr. Kiyota asserts the ALJ's finding of non-discrimination is "premature and unjustified" because his mixed wire electric service lateral configuration is uncommon or possibly unique.

38. Third, Mr. Kiyota argues the Recommended Decision is arbitrary because of the absence of factual findings on comparable United Power mixed wire electric service lateral installations.

39. As relief, Mr. Kiyota requests the Commission (1) remand the Proceeding for further fact-finding; (2) require United Power to provide data on other customers with comparable mixed wire electric service laterals; (3) have a PUC engineer calculate the low voltage and ampacity calculations using the correct wire sizes and correct wire lengths; and (4) review the information provided in Mr. Kiyota's Motion to Supplement—which the ALJ dismissed in the Recommended Decision.

E. United Power's Response

40. United Power asserts Mr. Kiyota has not met his burden of proof. The Company emphasizes that its testimony and the written report filed in the Proceeding show it has run numerous tests on Mr. Kiyota's service lateral and that all measurements were within nominal ranges. United Power asserts this means the source of the issues is behind the meter, in Mr. Kiyota's home, and therefore outside United Power's control.

41. Regarding Mr. Kiyota's first argument—that the Recommended Decision lacks a factual basis because there was no evidence as to the exact number of other United Power members who have a substantially identical service lateral to the one serving his property—United Power argues Mr. Kiyota is attempting to reverse the burden of proof. The Company maintains it is

Mr. Kiyota who has the burden of presenting evidence supporting his allegation and that he failed to present any such evidence.

42. The Company further argues the Recommended Decision relied on sufficient record evidence to support its conclusions. United Power emphasizes the ALJ's reliance on un rebutted testimony that United Power's system includes numerous mixed wire service laterals and highlights the following findings by the ALJ: there are various types of wire installed throughout United Power's system; virtually every United Power member has a mixed wire into their residence; there are no United Power standards that require service laterals not have mixed wire and it is standard practice to have mixed wires. The Company maintains these findings and the record evidence cited by the ALJ are more than sufficient to affirm the Recommended Decision, and notes Mr. Kiyota does not challenge the findings in his exceptions. United Power also notes Mr. Kiyota did not attempt to cross-examine United Power's witnesses regarding the statements underlying the ALJ's findings.

43. Regarding Mr. Kiyota's second argument—that the Recommended Decision did not adequately consider the technical implications of mixed wire service laterals in excess of 220.9 feet, United Power asserts Mr. Kiyota failed to develop evidence in support of his allegation that his service lateral configuration is uncommon or unique. The Company acknowledges the ALJ did not make specific findings regarding the technical specifications of Mr. Kiyota's service lateral but points to the "extensive record of technical analysis" of Mr. Kiyota's service lateral, which, it states, demonstrates that every piece of United Power's equipment is functioning properly.

44. The Company emphasizes that this technical analysis is based on testing the actual system serving Mr. Kiyota's property and further highlights the testimony provided by its witnesses who installed the actual testing equipment, analyzed the results, and confirmed that the

design of Mr. Kiyota's service lateral meets United Power's standards and applicable external standards. United Power states that Mr. Kiyota's allegations that the length of his service lateral creates an improper drop in voltage between the transformer and his residence are based on calculations performed by ChatGPT and therefore should not be given any weight by the Commission. To that point, United Power asserts it has measured the actual voltage drop across Mr. Kiyota's service lateral, and it is within acceptable tolerances.

45. United Power characterizes Mr. Kiyota's third argument—that the ALJ's decision was arbitrary because it did not analyze whether similarly situated customers received different treatment—as a variation of his first two and reiterates the Company's assertion that Mr. Kiyota did not meet his burden of proof. Again, United Power asserts it presented unrebutted evidence that mixed wire service laterals are common and that the use of one at Mr. Kiyota's property was not differential treatment.

46. United Power also argues Mr. Kiyota's requests for relief are not warranted or necessary. Regarding remand for additional factfinding, United Power asserts Mr. Kiyota was already given ample opportunity in discovery and at the hearing to procure and present evidence of discrimination. As to the "specific" configuration of his system and whether it meets "low voltage" specifications, United Power states it has measured the voltage drop and found that Mr. Kiyota's voltage is slightly above normal meaning there is no need for additional factfinding. Regarding Mr. Kiyota's request for United Power to provide data about other customers who have service laterals of similar lengths, the Company states this is a "burdensome" exercise that would not result in any evidence probative of discrimination because the ALJ found that mixed wire service laterals are common. United Power similarly argues Mr. Kiyota's request that Commission

Staff make certain calculations relating to his service lateral is also unnecessary, as the Commission can rely on the actual data presented by United Power in the Report and attachments.

47. Finally, regarding Mr. Kiyota's request for reconsideration of his motion to supplement the record, United Power reiterates the arguments from its initial responses to the motion; Mr. Kiyota's new evidence comes too late, does not indicate that there is any issue with United Power's equipment, and is not material to the question of whether United Power has engaged in any discriminatory treatment of Mr. Kiyota.

F. Commission Findings and Conclusions

48. We first note, as did the ALJ, that it is clear from the record Mr. Kiyota is experiencing issues with his electrical service. However, as was highlighted by both the ALJ in the Recommended Decision and United Power in its response, under § 40-9.5-106(2), C.R.S., the Commission's jurisdiction over electric cooperatives like United Power is limited by statute. As the ALJ correctly identified, the Commission's jurisdiction here is to determine whether United Power made or granted any preference or advantage to any corporation or person or subjecting any corporation or person to any prejudice or disadvantage. Because Mr. Kiyota's Complaint and his response to the Company's motion to dismiss both allege preferential treatment, we agree with the ALJ and find that the Commission has jurisdiction over the Complaint. We also agree and uphold the ALJ's finding that Mr. Kiyota failed to meet his burden of proof to show preferential treatment. The Recommended Decision contains sufficient factual findings to support its dismissal of the Complaint.

49. Mr. Kiyota's case primarily concerns the quality of his service, and more specifically, that the cause of his service issues is the length of the mixed-wire service lateral

installed by United Power.²⁵ Mr. Kiyota's primary contention with the service lateral is that it is causing his voltage drops and that United Power is not measuring the service lateral correctly in making its voltage calculations.

50. United Power presented multiple witnesses at hearing who testified that mixed wire service laterals are common across United Power's service territory.²⁶ For example, when asked by the ALJ if Mr. Kiyota's mixed-wire service lateral was "something that other customers have," United Power witness, Mark Gabriel, United Power's President and Chief Executive Officer, responded "virtually every member has [one] and virtually every utility."²⁷ United Power witness Adam Dillon, United Power's Vice President of Operations testified he made two to three visits to Mr. Kiyota's property to try to identify the cause of Mr. Kiyota's issues. Mr. Dillon affirmed Mr. Gabriel's testimony and reiterated that mixed wire service laterals happen "across United Power's system and other utilities."²⁸

51. Mr. Kiyota did not produce any evidence to show that the service lateral configuration was unique to his residence. When asked by the ALJ if he was aware of other mixed wire service laterals used by United Power, Mr. Kiyota responded affirmatively and said there was a mixed wire lateral servicing his family's greenhouse business adjacent to his property.²⁹

52. Under Rule 1500, 4 CCR 723-1, as the complainant, Mr. Kiyota bears the burden of proof to show, by a preponderance of the evidence, that United Power discriminated against him in the provision of his electrical service. We agree with the ALJ that the unrebutted witness

²⁵ Hearing Transcript January 28, 2025, pp. 158:2-13 and 149:18-21.

²⁶ *Id.* at pp. 90:3-16, 102:1-11, 108:4-8, and 135:23-136:9.

²⁷ Hr. Tr. at p. 90:8-9.

²⁸ *Id.* at p. 102:7-11.

²⁹ *Id.* at 80:5-10 (Mr. Kiyota: "This mixed service that goes to our greenhouse from here is just for some lights and fans." The Court: "So are you aware of other mixed wires that United Power uses – mixed wire lines?" Mr. Kiyota: "There is one here.")

testimony and record evidence in this Proceeding show Mr. Kiyota has failed to carry his burden. Moreover, it is clear from the record that United Power has engaged several times with Mr. Kiyota to try and remedy his power issues.³⁰ The record contains no evidence of discriminatory action by United Power against Mr. Kiyota. It seems clear to the Commission that United Power responded to Mr. Kiyota's communications and demonstrated a commitment to resolve the power quality issues, to the extent it was able. We therefore deny Mr. Kiyota's exceptions and uphold the ALJ's findings and conclusions in the Recommended Decision in their entirety.

53. We note, however, that the Commission understands Mr. Kiyota's frustrations and we encourage Mr. Kiyota to take United Power up on its offer to have a third-party electrician and a United Power representative come to his residence to troubleshoot any issues that may be occurring on Mr. Kiyota's side of the meter.³¹

II. ORDER

A. **The Commission Orders That:**

1. The exceptions filed by Mr. Howard Kiyota on March 21, 2025, are denied, consistent with the discussion above.

2. The 20-day time period provided by § 40-6-114, C.R.S., to file an Application for Rehearing, Reargument, or Reconsideration shall begin on the first day after the effective date of this Decision.

³⁰ Hr. Ex. 200, p. 17:16-20:10; Hr. Tr. at p. 154:13-155:18.

³¹ Mr. Kiyota confirmed at hearing that he did not initially take United Power up on its offer due to his frustration with his electrical issues. Hr. Tr. at p. 75:17-77:9. While we understand his frustrations, we also take note of Mr. Adam Dillon's testimony that the thing to do is have an electrician and a United Power representative inspect Mr. Kiyota's system beyond the metering point. *Id.* at p. 116:8-16.

3. This Decision is effective immediately upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 23, 2025.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Rebecca E. White'.

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners