

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24F-0204E

HOWARD KIYOTA,

COMPLAINANT,

V.

UNITED POWER INC.,

RESPONDENT.

**RECOMMENDED DECISION
DENYING COMPLAINT**

Issued Date: March 4, 2025

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I. STATEMENT**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.

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

14. On December 5, 2024, through Decision No. R24-0893-I, the Motion for an Order Appointing Staff Engineer was denied.

15. On January 28, 2025, the above captioned proceeding was called. Mr. Kiyota represented himself; Matt Larson, Sam Eisenberg, Andre Kaiser and Robin Meidhof appeared for the Respondent.

16. The undersigned ALJ explained the hearing procedures to the parties at the start of the hearing. Mr. Kiyota offered the testimony of Mark Gabriel, Jan Kulman, Ginny Buczek and himself. Adam Dillion, Deidre Gregg-Donovan, Tyler Bain and Jack York testified on behalf of the Respondent. Hearing Exhibits 100-128, 130-191, 193-195, 197-199 and 200-216¹ were admitted by stipulation. At the conclusion of the evidence the record was closed, and the matter was then taken under advisement.

17. On February 13, 2025, Mr. Kiyota filed his Motion to Supplement the Record ("Motion to Supplement").

18. On February 18, 2025, United Power filed its Response to the Motion to Supplement the Record ("Response").

19. On February 27, 2025, Mr. Kiyota filed his Reply in Support of Complainant's Motion to Supplement the Record ("Reply").

¹ There was no exhibit 129,192 or 196.

20. On February 27, 2025, United Power filed its Response in Opposition to Howard Kiyota's February 26, 2025 Request To File Reply Brief.

21. In reaching this Recommended Decision the ALJ has considered all arguments presented, including those arguments not specifically addressed in this Decision. Likewise, the ALJ has considered all evidence presented at the hearing, even if the evidence is not specifically addressed in this Decision.

22. Pursuant to § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record of the hearing and a written recommended decision in this matter.

II. MOTION TO SUPPLEMENT THE RECORD

23. Mr. Kiyota requests that additional exhibits be included in the record for the hearing held on January 28, 2025. Mr. Kiyota states that it was not reasonably foreseeable that it would be necessary to include the exhibits attached to the Motion to Supplement at the time of hearing².

24. Mr. Kiyota also asked leave to file a reply to United Power's Response in a subsequent filing. Mr. Kiyota provides further information about the exhibits he wishes to supplement the record with, encourages the undersigned to consider truth over timing and lists expenses he has incurred.

25. United Power objects to the additional exhibits being admitted into the record of the proceeding. United Power argues that the information was available prior to the hearing and that United Power would have no opportunity to respond to this information. United Power also objects to the request to file a reply.

26. Rule 4 CCR 723-1400(e) states:

A movant may not file a reply to a response unless the Commission orders otherwise. Any motion for leave to file a reply must demonstrate:

(I) a material misrepresentation of a fact;

² Motion to Supplement, p. 1

- (II) accident or surprise, which ordinary prudence could not have guarded against;
- (III) newly discovered facts or issues, material for the moving party which that party could not,
- (IV) with reasonable diligence, have discovered at the time the motion was filed; or an incorrect statement or error of law.

27. The Complainant has not demonstrated or alleged any of the reasons necessary to allow for a reply to the response filed by United Power. Due to the failure of the Complainant to meet the requirements of Rule 4 CCR 723-1003(a), the request to file a reply filed by Mr. Kiyota on February 27, 2025, is denied.

28. Rule 4 CCR 723-1003(a) states:

Before an appeal has been taken to district court, the record may be reopened for good cause shown by the hearing Commissioner or Administrative Law Judge, on motion of a party before a recommended decision has been entered, on motion of a party before a Commission decision has been entered, or by the Commission on its own motion.

29. Contrary to the statement of Mr. Kiyota, the information contained in the supplemental exhibits was foreseeable to be necessary. 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. Mr. Kiyota testified about this discrepancy and cross-examined multiple United Power witnesses about the discrepancy during the hearing.

30. The other exhibits concern artificial intelligence printouts concerning voltage drop calculations, an invoice from an electrician and a statement from Mr. Kiyota's solar panel installers³. All these exhibits were foreseeable to be necessary prior to the hearing.

31. United Power exhibits contain numerous instances in which they communicated to Mr. Kiyota that they believed any power issues he was having were on his side of the meter. They specifically stated the wiring in the residence and the installation of the solar panels as the cause

³ Mr. Kiyota does not currently have this document, but intends on having it soon.

of the issues. The possibility that exhibits to rebut these propositions would be necessary was easily foreseeable.

32. In addition, the introduction of these exhibits creates an unfair advantage for Mr. Kiyota. United Power does not have the ability to question or even object to the admission of these exhibits.

33. Finally, as shown in this Decision, these exhibits do not address what is at issue in this proceeding. These exhibits do not make it more or less likely that United Power subjected Mr. Kiyota to a prejudice or disadvantage in the electrical service he was provided.

34. The Motion to Supplement is denied.

III. FINDINGS OF FACT

35. Mr. Kiyota worked for Xcel Energy for 30 years where he engineered gas and electrical distribution subdivisions. Hearing Transcript January 28, 2025, p. 10:24-11:3.

36. 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. United Power has a rich 86-year history of providing its members with safe and reliable energy. Hr. Ex. 200 p. 4.

37. 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. *Id.* at p. 11: 1 8-11. In the early 1980s Mr. Kiyota "gutted and remodeled" the house. *Id.* at p. 11:11-14.

38. Mr. Kiyota has had power quality issues following a modification to his electrical service lateral three years ago. *Id.* at p. 10: 14-17.

39. Mr. Kiyota stated that he has had issues with many electrical devices in his home including, but not limited to: his microwave oven, his home theater system, and ultrasonic humidifiers. Ex. 195, Ex. 117, Ex. 197, Ex 190.

40. 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. Ex. 200, p. 7-8.

41. 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. Hr.Tr. January 28, 2025, p.11:15–18.

42. The service lateral that runs to Mr. Kiyota's property uses 2 different wire sizes. *Id.* at p. 37:10-15.

43. There was no contact between Mr. Kiyota and United Power concerning power issues in 2021. Ex. 200 at 8.

44. 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. *Id.*

45. On December 6, 2022, United Power received a call from Mr. Kiyota regarding power quality issues. A United Power employee visited Mr. Kiyota's property on December 8, 2022. Mr. Kiyota was present. United Power exchanged Mr. Kiyota's utility meter, meter socket, and multiple connections. The United Power employee reported back that he "didn't find anything definitive but we now know it [*e.g.*, the problem] is not outside his house." *Id.* at p. 9.

46. 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. *Id.* at p. 9

47. 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. *Id.* at p.10.

48. On May 15, 2023, United Power recommended to Mr. Kiyota that he have an electrician check his side of the meter. *Id.* at p.11.

49. 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. *Id.* at 13.

50. On December 6, 2023, Mr. Kiyota emailed United Power about power quality issues. *Id.*

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

52. Mr. Kiyota is aware that United Power has utilized mixed wire sizes on service laterals to his greenhouse and office. Hr. Tr. January 28, 2025, p.79:1-80:4.

53. Various types of wire are installed throughout United Power's system. *Id.* at p. 87:20-25.

54. Virtually every United Power member has a mixed wire into their residence. *Id.* at p. 89:24-90:8. There are no United Power standards that require that service laterals not have mixed wire and it is standard practice to have mixed wires. *Id.* at p. 94: 6-12; *Id.* at p.135:25-136:9.

IV. APPLICABLE LAW

55. The Colorado Legislature has defined a Public Utility in of C.R.S. § 40-1-103 as follows:

40-1-103. Public utility defined

(a) (I) The term "public utility", when used in articles 1 to 7 of this title, includes every common carrier, pipeline corporation, gas corporation, electrical corporation, telephone corporation, water corporation, person, or municipality operating for the purpose of supplying the public for domestic, mechanical, or public uses and every corporation, or person declared by law to be affected with a public interest, and each of the preceding is hereby declared to be a public utility and to be subject to the jurisdiction, control, and regulation of the commission and to the provisions of articles 1 to 7 of this title.

56. Generally, electric cooperatives are not subject to Commission jurisdiction:

Except as otherwise provided in this part 1, the provisions of the "Public Utilities Law," articles 1 to 7 of this title, shall not apply to cooperative electric associations which have, by an affirmative vote of the members and consumers pursuant to section 40-9.5-104, voted to exempt themselves from such provisions and to be subject to the provisions of this part 1. The period of exemption shall begin on the date the election results are filed with the public utilities commission. § 40-9.5-103, C.R.S.

57. Although the legislature has provided for Commission jurisdiction in some electric cooperative complaint cases.

No 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. (*"emphasis added"*) 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. § 40-9.5-106, C.R.S.

V. ISSUE

58. Has Mr. Kiyota shown by a ponderance of evidence that United Power made or subjected Mr. Kiyota a prejudice or disadvantage in the electrical service he was provided?

VI. DISCUSSION

59. There is no question from the evidence presented that Mr. Kiyota has had trouble with his electrical service. These problems have led to the destruction of numerous appliances.

60. There is also no question that since the service lateral was changed to Mr. Kiyota's residence in 2022, United Power has attempted to rectify the issue many times.

61. Clearly, something is not right with the electricity in Mr. Kiyota's residence. While Mr. Kiyota is sure that it has to do with the change in the service lateral, United Power is equally as sure that any power difficulties are a result of incorrect wiring of Mr. Kiyota's rooftop solar system or the need for a new circuit breaker box.

62. Unfortunately for Mr. Kiyota, as far as this proceeding is concerned, the reason for the electrical problems is not at issue. The Commission has a very limited jurisdiction in complaint cases involving electric cooperatives. That jurisdiction is limited to instances where "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." § 40-9.5-106, C.R.S.

63. An example of an allegation of prejudice or disadvantage upheld by the Commission occurred in Consolidated Proceeding Nos. 19F-0620E & 19F-0621E. In the consolidated proceeding, the Commission found it had jurisdiction in a complaint proceeding against an electric cooperative, Tri-State Generation ("Tri-State"), and after a hearing, found in favor of the moving parties United Power and La Plata Electric Association ("La Plata").

64. United Power filed a complaint against Tri-State alleging that when they requested an exit charge to leave Tri-State, they had been discriminated against based on the exit charge they were

given by Tri-State. This allegation was based on a comparison to the exit charge paid by a different cooperative to leave Tri-State a few years earlier.

65. La Plata alleged that Tri-State failed to provide an exit charge when it requested one from Tri-State. La Plata argued that the failure to provide any exit charge while other cooperatives were given exit charges was a discriminatory action⁴.

66. In both cases the complainants alleged a Tri-State member was being treated different from other members (discriminated against) that allowed the complainants to fall under Commission jurisdiction.

67. After an evidentiary hearing, the ALJ found that the actions of Tri-State were discriminatory. United Power and Las Plata showed by a preponderance of evidence that by the action of providing an excessive exit fee to United Power and not providing La Plata, they were “treated in a discriminatory manner” by Tri-State.⁵

68. In the instant case the Motion to Dismiss was denied because Mr. Kiyota in his pleadings alleged the following:

- a) Preferential treatment for United Power Executives and Board members isn't right, all customers should be treated equally.
- b) I'm praying the State of Colorado's Public Utilities Commission will review the preferential treatment between UP's customers who have service laterals that meet UP's Standards for Electric Installation and Use versus the "unique" 220.9' hybrid service lateral engineered and installed by United Power at my home

69. These allegations by Mr. Kiyota were that other members were being treated in a different manner than he was concerning the service lateral to his residence. In both allegations by Mr. Kiyota, he states that preferential treatment is being given other members. His burden to prevail in this

⁴ These individual complaint cases were consolidated before hearing.

⁵ Decision No. R20-0502 at ¶ 19 issued in Consolidated Proceeding Nos. 19F-0620E & 19F0621E on July 10, 2020. As a remedy the ALJ approved an exit fee proposed in the hearing.

complaint case was to show by a preponderance of evidence that preferential treatment (discrimination) was given to other members or United Power Executives and Board members. Failure to show preferential treatment is fatal to Mr. Kiyota's complaint.

70. Mr. Kiyota argued during the hearing that the mixed wire, in conjunction with low voltage or on its own, was the cause of his power troubles.

MR. KIYOTA:

So, Your Honor, this is to show the cause and effect of the issues I'm having and the power quality events that could cause these issues. Combining the low voltage power quality issues with the mixed wire quality power quality issues, all the events I have listed are about a power quality issue related to low voltage and/or a mixed wire electric service lateral.

In conclusion, I respectfully request that the Public Utilities Commission direct United Power to fix the noncompliant mixed wire service lateral or provide a stamped license engineer's report confirming that installation meets the necessary standards and does not compromise power quality or safety.⁶

71. To prevail in his complaint Mr. Kiyota was required to show by a preponderance of the evidence that United Power, by using a mixed wire service lateral to Mr. Kiyota's residence, was an act of discrimination. In other words, that other United Power members had been shown preferential treatment by not having a mixed wire service lateral.

72. The undersigned ALJ asked witnesses if there was anything unusual about the service lateral to Mr. Kiyota's residence or if other members were treated differently regarding mixed wire service laterals.

BY THE COURT:

Q. On the mixed wire sizes, do you know if that's—if any other customers have that for United Power?

⁶ Hearing Transcript, January 28, 2025, p. 58:4–18.

MR. KIYOTA:

A. I don't.

Q. And if you go back to the motion to dismiss, if you remember the reason why I didn't dismiss was because you alleged there was a difference between what comes into your house and what other folks have. Do you have any evidence that that is the case?

A. Well, you know, what, Your Honor, it's hard to say because if we had a query that United Power said how many service laterals you got over 200 feet that are a mixed wire, their calculations are inaccurate. So you don't have a base to go on. But I did try to search and find out if there are other mixed wire—like, Your Honor, there is a mixed wire right here for our greenhouse business—our 66-year-old greenhouse. It comes underground and goes up overhead. But the only thing that is serving are some lights and some fans. United Power has another service on the other side of our greenhouse that provides power to the office where there is a refrigerator for the workers. There is a TV. There is a microwave. There is a computer. But that's on a whole different line. This mixed service that goes to our greenhouse from here is just for some lights and fans.

Q. So you are aware of other mixed wires that United Power uses—mixed wire lines?

A. There is one here.⁷

BY THE COURT:

Q. I have one question for you, and you might not be able to answer it. But is the mixed wire that Mr. Kiyota is talking about—is that something that other customers have, or is he the only one that has that?

MR. GABRIEL

A. Virtually every member has and virtually every utility. If you think about it, we go from big transmission wire down to smaller distribution wires all the way to wiring in the home. Just as you would a water system or an electric system.

That is not unusual at all. In fact, if you think about it, you couldn't take a big transmission wire into your home into your electrical panel. That is just standard industry practice.⁸

⁷ *Id.* at pp. 78:21–80:4.

⁸ *Id.* at pp. 89:24–90:12.

BY THE COURT:

Q. There's been also some testimony about mixed wires. Do you have any—are you a good witness to ask something about that, too?

MS. GREGG-DONOVAN

A. Yes, to a certain extent, yes.

Q. Okay. Is that a common practice? Do you know of other—is it common to have the mixed wires, or is Mr. Kiyota's property unique in that respect?

A. It is very common across our service territory and along—or within other utilities.⁹

73. While there is overwhelming evidence that something is not right with the power to Mr. Kiyota's residence, there is no evidence that other members are receiving preferential treatment.

74. No evidence was offered that supported the allegation that United Power had acted in a discriminatory manner when using a mixed wire in Mr. Kiyota's service lateral. In addition, there was no evidence presented that Mr. Kiyota was treated in a discriminatory manner in any other aspect of his electric service. The failure to show a discriminatory action by United Power is fatal to Mr. Kiyota's complaint.¹⁰

VII. CONCLUSION

75. Mr. Kiyota has failed to show by a preponderance of evidence that United Power made or subjected Mr. Kiyota a prejudice or disadvantage in the electrical service he was provided.

76. Mr. Kiyota's complaint is denied.

⁹ *Id.* at pp. 135:23-136:9.

¹⁰ The ALJ hopes that the parties can work towards a resolution of Mr. Kiyota's power issues. It has already been shown that the parties can work together. During the hearing both parties showed respect and were congenial to each other and the court. Cooperation and working together is the best path forward for both parties. Good luck.

VIII. ORDER**A. It Is Ordered That:**

1. The Complaint filed by Howard Kiyota on May 7, 2024, against United Power Inc, is denied.
2. The Motion to Supplement the Record filed by Howard Kiyota on February 13, 2025, is denied.
3. The Motion to Reply in Support of Complainant's Motion to Supplement the Record filed on February 27, 2025, is denied.
4. Proceeding 24F-0204E is now closed.
5. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.
6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.
 - a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
 - b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

7. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

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

Rebecca E. White,
Director