

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)
Ami Hines against Rocky Mountain Power)

DOCKET NO. 13-035-146

) ORDER AFFIRMING DISMISSAL OF
) COMPLAINT
)

ISSUED: November 1, 2013

SYNOPSIS

The Commission declines to vacate its order granting Rocky Mountain Power's motion to dismiss at the October 17, 2013, hearing.

By The Commission:

ORDER OF DISMISSAL

I. INTRODUCTION

Ami Hines ("Ms. Hines") seeks to have a hearing rescheduled after the Commission verbally dismissed her complaint and granted Rocky Mountain Power's, a division of PacifiCorp ("Rocky Mountain Power" or "Company"), motion to dismiss for failure to state a claim upon which relief can be granted ("Motion") at the hearing held on October 17, 2013. The Company argues in its Motion that Ms. Hines's formal complaint fails to establish the Company "violated any provision of law, Commission order or rule, or Company tariff."¹

II. BACKGROUND

1. On August 28, 2013, Ms. Hines filed a formal complaint against Rocky Mountain Power, claiming 1) the Company placed her in its "Cool Keeper" program without her consent,

¹ Rocky Mountain Power's Answer and Motion to Dismiss at 1, filed September 26, 2013.

and 2) the climate control box associated with the “Cool Keeper” program damaged the furnace blower where she resides and caused her electric bill to increase.²

2. Ms. Hines claims it cost \$531.00 to repair the furnace blower.³

3. Ms. Hines further alleges, “My rights have been violated. Damages have incurred due to the [Cool Keeper] program. A large inflation of my electric bill has occurred because of this program. I am seeking reimb[ur]sement for all these things. Laws have been broken, damages occur[r]ed and inflation of my bill. . . .”⁴

4. Ms. Hines’s complaint does not specify which laws have allegedly been broken.⁵

5. On August 29, 2013, in response to the Commission’s action request, the Division of Public Utilities (“Division”) submitted a memorandum recommending the Commission schedule a hearing. The Division offered the following rationale in support of holding a hearing: “Based on Ms. Hines’[s] allegations of increased usage of electricity caused by the Cool Keeper box, and the offer from Rocky Mountain Power to monetarily compensate Ms. Hines with a flat fee, the Division believes that a hearing should be set so that testimony of both sides can be evaluated by the Commission.”⁶

6. On September 20, 2013, the Commission noticed this matter for a hearing on Thursday, October 17, 2013, at 9:00 a.m.⁷

² See Formal Complaint, filed August 28, 2013.

³ See *id.* at 2.

⁴ *Id.* at 3.

⁵ See *id.*

⁶ See Division Memo at 2, filed August 29, 2013.

⁷ See Notice of Rescheduled Hearing and Response to Request for Leave to File a Reply Brief, issued September 20, 2013.

7. On September 26, 2013, Rocky Mountain Power filed an Answer and Motion to Dismiss (“Motion”).⁸ Rocky Mountain Power argues its Motion should be granted “because [it] has not violated any provision of law, Commission order or rule, or Company tariff.”⁹

8. On October 4, 2013, the Commission issued a courtesy notice, notifying Ms. Hines of the Company’s Motion.¹⁰ The notice states, in part: “In accordance with Utah Admin. Code R746-100-4, Ms. Hines has until 5:00 p.m., Friday, October 11, 2013, to file a response to the Company’s filing.”¹¹ A copy of this notice was sent to Ms. Hines and the Company.¹²

9. On October 5, 2013, Ms. Hines filed a response, noting she “would like to still proceed with the filing.”¹³ Ms. Hines’s response further states:

If my phone records are subpoenaed[,] it w[i]ll prove that no call was ever made to or from my phone to enroll me into the volunteer program. Also[,] if the court subpoenas the [air conditioning] company that performed the work on the furnace[,] [it] can testify [as to] the damage that the cool keeper caused the furnace. . . .¹⁴

10. On October 17, 2013, the Administrative Law Judge (“ALJ”) for the Commission held a duly-noticed hearing in this docket.¹⁵ Daniel Solander and Megan McKay appeared on behalf of Rocky Mountain Power, and were accompanied by Bill Comeau, program manager, and Autumn Braithwaite, regulatory analyst. Ms. Hines did not appear. Based on Ms. Hines’s

⁸ See Rocky Mountain Power’s Answer and Motion to Dismiss, filed September 26, 2013.

⁹ Id. at 1.

¹⁰ See Notice of Filing of Answer and Motion to Dismiss, issued October 4, 2013.

¹¹ Id.

¹² See id.

¹³ E-mail from Ami Hines, to Utah Public Service Commission (Oct. 5, 2013; 5:45 a.m.).

¹⁴ Id.

¹⁵ See Transcript of Hearing, held October 17, 2013.

failure to appear, the ALJ granted the Company's Motion.¹⁶ The dismissal was without prejudice.¹⁷

11. After the hearing, the Commission became aware of a telephone message from Ms. Hines in which she indicated she would not be able to attend the hearing due to a family emergency and she requested the hearing be rescheduled.

12. On October 21, 2013, Ms. Hines contacted the Commission via e-mail to request a new hearing date based on her inability to attend the October 17, 2013, hearing.¹⁸

13. In light of Ms. Hines's request for the matter to be rescheduled for hearing, the Commission reexamines its decision to dismiss her complaint and grant the Company's Motion at the October 17, 2013, hearing.

III. STANDARD OF REVIEW

Rule 12(b)(6) of the Utah Rules of Civil Procedure, which is incorporated by reference by Utah Admin. Code R746-100-1(C), permits a party to file a motion to dismiss for "failure to state a claim upon which relief can be granted."¹⁹ In ruling on a motion to dismiss for failure to state a claim, the Commission construes the complaint in the light most favorable to the complainant and indulges all reasonable inferences in her favor.²⁰

¹⁶ See *id.* at 3, lines 23-25; 4, lines 1-2.

¹⁷ See *id.* at 4, lines 5-6.

¹⁸ See E-mail from Ami Hines, to Utah Public Service Commission (Oct. 21, 2013; 5:10 a.m.).

¹⁹ Utah R. Civ. P. 12(b)(6) (LexisNexis 2010).

²⁰ Cf. Mounteer v. Utah Power & Light Co., 823 P.2d 1055, 1058 (Utah 1991).

IV. DISCUSSION

A. Ms. Hines Has Failed to State a Claim Upon Which Relief Can Be Granted

Viewing the facts in the light most favorable to the complainant, Ms. Hines has failed to specify “the law or a rule or order of the commission” allegedly violated by the Company.²¹ Even assuming the truth of all the facts Ms. Hines alleges, the Commission sees no apparent violation in her complaint. Further, Ms. Hines failed to rebut the information filed by the Company; namely, that she failed to establish the Company violated any provision of law, Commission order or rule, or Company tariff. Ms. Hines bears the burden of proving her case; it is not the Commission’s responsibility to prove her case for her as she implies in her response to the Company’s Motion.²² Accordingly, we decline to vacate the decision to dismiss her complaint for failure to state a claim upon which relief can be granted.

B. The Commission Lacks Jurisdiction to Address Ms. Hines’s Damages Claim

Ms. Hines alleges, “My rights have been violated. Damages have incurred due to the [Cool Keeper] program. A large inflation of my electric bill has occurred because of this program. I am seeking reimb[urse]ment for all these things. Laws have been broken, damages occur[r]ed and inflation of my bill. . . .”²³ The Commission does not have jurisdiction to consider claims for damages allegedly caused by a public utility.²⁴ Accordingly, we lack jurisdiction to consider Ms. Hines’s damages claim, and we affirm our prior dismissal of her complaint.

²¹ Utah Code Ann. § 54-7-9(2).

²² See supra Section II, Paragraph 9.

²³ Formal Complaint at 3.

²⁴ See McCune v. Mountain Bell Telephone, 758 P.2d 914, 916 (Utah 1988).

C. Ms. Hines is Not Prejudiced by the Commission's Order

Although the Commission originally scheduled this matter for hearing based in part on the recommendation of the Division, in reexamining the Division's recommendation, we believe the reasons stated there do not necessarily warrant a hearing; thus, we decline to reschedule this matter for another hearing as requested by Ms. Hines. First, as explained above, Ms. Hines's allegations of increased usage of electricity caused by the Cool Keeper box are not supported by an allegation that the Company violated any provision "of the law or a rule or order of the commission" as required by Utah Code Ann. § 54-7-9(2). Further, Ms. Hines fails to make out her claim for overbilling inasmuch as she fails to allege any of the conditions which constitute overbilling under Utah Admin. Code R746-310-9.²⁵

Second, an offer of settlement, even if one occurred in this matter, does not constitute an admission of wrongdoing.²⁶ Thus, it would be inappropriate to infer evidence of the Company's alleged offer to Ms. Hines to prove or disprove the Company's liability, and we reject the Division's suggestion to the contrary. Further, by affirming our dismissal of this matter now, before additional resources are expended by the parties and the Commission, our decision promotes administrative efficiency and judicial economy. We also note that this dismissal is without prejudice and Ms. Hines may re-file her complaint with the specific information missing in her current complaint if she chooses to do so. Thus, she is not prejudiced by the Commission's order.

²⁵ See Utah Admin. Code R746-310-9.

²⁶ See Utah R. of Evid. 408.

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ORDER

For the foregoing reasons, the Commission declines to vacate its earlier order granting the Company's Motion. As noted above, this matter is dismissed without prejudice.

DATED at Salt Lake City, Utah this 1st day of November, 2013.

/s/ Melanie A. Reif
Administrative Law Judge

Approved and confirmed this 1st day of November, 2013, as the Order of Dismissal of the Public Service Commission of Utah.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#248356

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Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the 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 fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, 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 Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on the 1st day of November, 2013, a true and correct copy of the foregoing was served upon the following as indicated below:

By U.S. Mail:

Ami Hines


By E-Mail:

Ami Hines (cookienut77@gmail.com)

Data Request Response Center (datarequest@pacificorp.com)
PacifiCorp

Dave Taylor (dave.taylor@pacificorp.com)
Yvonne Hogle (yvonne.hogle@pacificorp.com)
Daniel Solander (daniel.solander@pacificorp.com)
Rocky Mountain Power

Patricia Schmid (pschmid@utah.gov)
Justin Jetter (jjetter@utah.gov)
Brent Coleman (brentcoleman@utah.gov)
Utah Assistant Attorneys General

By Hand-Delivery:

Division of Public Utilities
160 East 300 South, 4th Flr.
Salt Lake City, Utah 84114

Office of Consumer Services
160 East 300 South, 2nd Flr.
Salt Lake City, Utah 84114

Administrative Assistant