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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

**In the Matter of Marian L. Seamons v.
Ticaboo Utility Improvement District**

**COMPLAINANT’S OMNIBUS
MEMORANDUM IN OPPOSITION
TO MOTION TO DISMISS AND
REPLY TO TICABOO UTILITY
IMPROVEMENT DISTRICT’S
RESPONSE TO FORMAL
COMPLAINT**

Docket No. 15-2508-01

COMES NOW MARIAN L. SEAMONS (“Complainant”), by and through her counsel of record from SALCIDO LAW FIRM, PLLC, and submits her Omnibus Memorandum in Opposition to TICABOO UTILITY IMPROVEMENT DISTRICT’S (“TUID”) Motion to Dismiss (“Motion”) and a Reply to TUID’s Response to Complainant’s Formal Complaint, based upon the following:

RESPONSE TO MOTION TO DISMISS

TUID caused to be filed with the Public Service Commission (“Commission”) its Motion, pursuant to Utah R. Civ. P. 12(b)(6), which provides for a defense for “failure to state a claim upon which relief can be granted.” In so doing, TUID asserts that Complainant “misunderstands, misconstrues, and misapplies” a previous Action Request Response found in Commission Docket No. 15-2508-T01. *See Motion*, p. 6. TUID claims that neither the

Commission, nor the Division of Public Utilities (“Division”), provided that the Commission has any authority as to Complainant’s issues in her Formal Complaint, although the Commission has authority as to whether the tariff was properly filed. *See Motion*, p. 6. As such, TUID claims, since the Commission has no authority as to Complainant’s Formal Complaint claims, the Formal Complaint should be dismissed. However, TUID misapplies the statutory provisions concerning the Commission’s authority in regards to addressing Complainant’s claims.

I. STANDBY FEES

Complainant does not dispute that the Commission’s jurisdiction is limited to what is provided by statute, although Complainant does dispute that the Commission does not have authority concerning the determination of the legality of standby fees. However, TUID does not dispute that Utah Code Ann. § 17B-2a-406(2) does provide that TUID is subject to the Commission’s jurisdiction.

TUID argues that that the Commission’s limited authority, provided under Utah Code Ann. § 54-7-12 (process for rate increase or decrease) & 17B-2a-406(6)(a) (exemption for rate changes found in § 54-7-12), prohibits the Commission from taking action on standby fees. Complainant is not contesting a rate increase or decrease of standby fees, rather Complainant is contesting the standby fee itself, particularly since it is inconsistent with Utah Admin. Code § 746-200-7(I)(1), which provides that utilities shall be disconnected “within four working days of the requested disconnect date” and that “the customer shall not be liable for the services rendered to or at the address or location after the four days.” In other words, Complainant asserts that Utah Code Ann. § 17B-2a-406(6)(a) is inapplicable since Complainant is not directly challenging an increase or decrease of a fee, but rather the fee itself.

It is not in dispute that Utah Code Ann. § 17B-2a-406(2) provides that “[a]n electronic improvement district is a public utility and subject to the jurisdiction of the commission.” Despite TUID’s argument that the Commission’s authority and jurisdiction is limited by Utah statute,¹ TUID fails to show that legislation limits the Commission from enforcing Utah Admin. Code § 746-200-7(I)(1)&(2), which is in direct conflict with the use of standby fees. It is important to note that administrative rules are authoritative and that “[a]ll courts shall take judicial notice” of the administrative rules, pursuant to Utah Code Ann. § 63G-3-701. Therefore, since Utah legislation, or the Utah Constitution, does not specifically provide that “electric improvement districts”, like TUID, are exempt from Utah Admin Code § 746-200-7(I)(1)&(2), the Commission does have jurisdiction and authority to find that standby fees are in direct conflict with present law and should be terminated.

Complainant does request for damages, which TUID argues is outside of the scope of the Commission. Regardless of whether the Commission can provide for damages, the Commission does have the authority to determine that standby fees are improper, including a retroactive finding to their inception and provide billing adjustments for Complainant accordingly. Such billing adjustments can include any liens or other actions used to seek collection of standby fees, which will relieve Complainant of the improper fees. Therefore, since the Commission does have proper authority to rule on standby fees, and any adjustment of billing concerning standby fees, the claim of standby fees should not be dismissed.

II. ANTI-TRUST

¹ Utah Code Ann. § 54-1-1 states that “The Public Service Commission is charged with discharging the duties and exercising the legislative, adjudicative, and rule-making powers committed to it by law and may be sued and be sued in its own name.”

TUID argues that Complainant's anti-trust issue is not relevant and beyond the scope of the Commission's jurisdiction. *See Motion*, p. 7. Further, TUID argues that the Commission is not tasked with enforcement of Utah and Federal laws. *Ibid.* However, TUID fails to show that the Commission is prohibited from enforcing anti-trust laws, or any law not specifically exempted by Utah legislature. Conversely, it would be reasonable that the Commission is to objectively find, when not prohibited specifically by statute, for issues to be consistent with the laws of the land, whether those laws be state or federal.

Again, it is undisputed that Utah Code Ann. § 17B-2a-406(2) provides the Commission jurisdiction over TUID's electrical service. Without addressing any other utility service, if the means by which the electrical service is provided, contingent upon the use and purchase of other utility services, then the Commission does have authority to consider the dependency and comingling of the electrical service with other utilities.

In the present case, Complainant is not able to have other utilities without purchasing electrical service. The mere fact that there is at least one other utility that Complainant is contingent upon in receiving to have electrical service does not prevent the Commission from jurisdiction regarding TUID's electrical service. This is not to be confused by the fact that the Commission would then be granted jurisdiction over other utilities, rather the jurisdiction provided to the Commission by statute allows for the Commission to have jurisdiction in determining if there is an anti-trust issue with the electrical service.

TUID argues that the Commission would only have the authority to address anti-trust issues if specifically provided by statute. *Ibid.*, at p. 8. However, TUID's argument is akin to the Commission having no authority on illegal issues and would have to sign off on anything regardless of its legal status. Further, Utah Code Ann. § 17B-2a-406(5) explicitly provides that

the Commission must provide a certificate of “public convenience and necessity,” which it is likely that an anti-trust claim fails the element of public convenience. Therefore, since the Commission can determine anti-trust issues, at least as to electrical service, Complainant’s anti-trust claim should not be dismissed.

III. § 9.1 OF THE TARIFF

TUID contends that it is in full compliance with § 9.1 of the Tariff and that Complainant’s claims are unsupported by evidence. *See Motion*, p. 8. However, TUID fails to recognize that Complainant’s testimony is evidence that can establish such violation. Further, TUID states that it will comply with the Tariff, although it fails to identify how or when it will comply. *Ibid*. There is no objection by TUID that the Commission has authority, only that it denies not being in compliance. If TUID is not in compliance, but is willing to stipulate to being in compliance, then it would seem that there needs to be a finding of the non-compliance so TUID knows how to be in compliance. Therefore, since there is evidence to support Complainant’s claim and the Commission has authority, Complainant’s claim concerning the violation of § 9 of the Tariff should not be dismissed.

IV. DOCUMENTS VISIBLE AND ACCESSIBLE

Like the previous section, TUID argues that it is in compliance and will stipulate to be in compliance with the requirement for documents to be visible and accessible. *See Motion*, p. 8. TUID also asserts that Complainant provides no evidence, besides her own testimony, and that Complainant is not a resident of TUID, making her claim immaterial. *Ibid*.

However, Complainant provides her own testimony, which is evidence in support of her claim. Also, despite the fact that Complainant does not reside full time in Ticaboo, Complainant is constantly charged fees by TUID and should have the same rights and notices provided by the

Tariff. Further, TUID makes a circular argument that it is in compliance, but is willing to comply nonetheless. Again, how can TUID stipulate to comply if it is already in compliance? The Commission needs to make a finding so that TUID knows what it needs to do to stipulate to be in compliance. Therefore, since TUID states that it will stipulate to compliance, the Commission needs to make a finding for what TUID needs to do to be in compliance and Complainants issue concerning the visibility and accessibility of TUID's documents should not be dismissed.

V. REQUIREMENT FOR PROPERTY OWNERS TO BE LIABLE FOR UTILITIES

TUID argues that Complainant fails to allege that TUID is in violation of any statute or applicable rule regarding the liability of property owners for utilities, despite having tenants, and that the Tariff is clear on the issue. *See Motion*, p. 8. However, it would seem that the requirement for property owners to be liable for utilities, even if there are tenants, conflicts with Utah Code Ann. § 17B-2a-406(5) (certificate of public convenience and necessity) and Utah Admin. Code § 746-200-7(I)(2) (which provides for an affidavit before disconnecting service to avoid means of eviction).

Complainant clearly provides a persuasive argument in her Formal Complaint that liability of the landowners concerning utilities, despite having a tenant, is undoubtedly not a public convenience. This lack of public convenience is especially true when there has to be an affidavit showing that a request to disconnect is not a means of eviction. However, the standby fees issue does make the requirement for an affidavit moot. Nevertheless, there is statute and administrative rules that provides for Complainant to seek relief, as stated *infra*. Therefore, since TUID's requirement for land owners to be liable for utilities, despite having a tenant, is a matter of public convenience and conflicts with the requirement for an affidavit to prevent a means of eviction, the Commission has jurisdiction and the issue should not be dismissed.

VI. ABANDONMENT POLICY

TUID claims that Complainant “does not allege any violations of the tariff or any applicable rule or statute” regarding TUID’s abandonment policy. *See Motion*, p. 9. However, Complainant’s Formal Complaint clearly demonstrates and gives support that the Tariff’s abandonment policy is inconsistent with Utah Admin. Code § 746-200-7(I)(1). Further, TUID claims that the Tariff was reviewed by the Division and there was no issue, although TUID fails to show where there was any follow up or acknowledgement by the Commission concerning the abandonment policy. Therefore, since the abandonment policy conflicts with Utah Admin. Code § 746-200-7(I)(1), and it is undisputed that the Commission has jurisdiction, Complainant’s claim concerning the abandonment policy can be granted relief and should not be dismissed.

VII. DUE PROCESS IN REMOVING METERS

TUID claims that Complainant’s claim that her due process rights were violated due to lack of notice before the removal her meters is beyond the scope of the Commission’s jurisdiction. *See Motion*, p. 9. However, TUID’s removal of Complainant’s meters without notice conflicts with Utah Admin. Code § 746-200-7(F), which provides termination can be without notice, but only for special purposes. Complainant alleges that those special circumstances did not arise and she was never given notice of such special circumstances. Therefore, since it is undisputed that the Commission has jurisdiction, and Complainant’s issue of due process in removing meters is supported by the Utah Admin. Code § 746-200-7(F), Complainant’s issue should not be dismissed.

VIII. TARIFF IS UNLAWFUL

TUID contends that Complainant does not support her claim with any evidence. *See Motion*, p. 9. However, Complainant demonstrated that the Tariff directly conflicts with both the

Utah Admin. Code and the laws of the law, state and federal. Based upon the foregoing, it is clear that the Tariff conflicts and is not consistent with Utah law. Therefore, since Complainant demonstrated that the Tariff is not consistent with the Utah Admin. Code, Utah Code, and Federal Law, Complainant's issues should not be dismissed.

CONCLUSION

Therefore, based upon the foregoing, since Complainant has shown that the Commission has proper authority, jurisdiction, and has alleged with evidence or law, Complainant has alleged claims for which the Commission can grant relief and the Formal Complaint should not be dismissed.

REPLY TO TUID'S RESPONSE TO THE FORMAL COMPLAINT

I. THE COMMISSION'S LIMITED JURISDICTION OVER TUID

TUID claims that the Commission has only limited authorities regarding customer complaints and that since Complainant did not allege that her utility bills "were not in accordance with the Tariff nor does she allege any problems with the utility service provided to her properties," there is nothing the Commission can provide to Complainant for relief. *See Motion*, p. 11.

However, it is undisputed that Utah Code Ann. § 17B-2a-406(2) provides that the Commission has jurisdiction over TUID. Further, it has not been disputed that Utah Administration Code 746-200, *et. seq.*, provides for the administering of an utility service, in this case electrical service, by the Commission. Further, Utah Admin. Code § 746-200-10 states that "[a] residential account holder who claims that a regulated utility has violated a provision of these customer service rules, other Commission rules, company tariff, or other approved

company practices may use the informal or formal grievance procedures. If considered appropriate, the Commission may assess a penalty pursuant to Section 54-7-25.”

Complainant has claimed that TUID has violated the customer service rules and other Commission rules, as well as the company tariff. However, it is not accurate by TUID to state that Complainant can only seek relief for a violation of the Tariff. Therefore, since it is undisputed that the Commission has jurisdiction as to TUID and the Complainant has claimed a violation of administrative customer service rules and other Commission rules, the Commission’s limited jurisdiction includes Complainant’s claims.

TUID also claims that without TUID, Ticaboo would be abandoned. Nevertheless, that does not seem to justify costing individuals hard earned money for something that they do not use and cannot get out from under. It is not undisputed that there has been great effort put forth to “keep the lights on” in Ticaboo. However, TUID’s rationale does not provide that it can act in conflict with the Utah Administration Code. Further, just like TUID argues that the Commission does not have specific authority or jurisdiction over Complainant’s claim since there is not specific language from the Utah legislature to do so, there is no specific language providing for the Commission to allow for TUID to act in direct conflict to administrative rules. The bottom line is that TUID is not acting within the laws of Utah and has not provided any evidence that it has been granted an exemption from the Utah legislature to be immune from the rules, despite TUID’s alleged circumstances.

II. TUID HAS NO LEGAL BASIS FOR STANDBY FEES

TUID claims that standby fees are legal, pursuant to Utah Code § 17B-1-103(2)(j), which TUID claims expressly grants the authority to impose fees for “facilities.” *See Motion*, p. 14. TUID further claims that Complainant has not provided justification as to why standby fees are

not just and reasonable. *Ibid.*, at p. 17. However, TUID fails to show that the standby fees imposed for “facilities” conflicts with Utah Admin. Code § 746-200-7(I)(1)&(2).

Utah Code Ann. § 17B-1-103(2)(j) does provide for there to be an imposing of fees, although there is nothing in that section of code that specifically provides for standby fees. Further, notwithstanding TUID’s right to impose fees, standby fees, as they are imposed by TUID, directly conflicts with the Utah Administrative Code. Utah Code § 17B-1-103 does not provide that fees for “facilities,” as pronounced by TUID, can be imposed even if in direct conflict with an existing rule or law. Likewise, TUID provides no authority by the Commission to grant an exemption to a rule or law that conflicts with standby fees. The issue really concerns how TUID can impose a fee that conflicts with an existing rule or law and how can the Commission, who TUID argues is strictly limited to authority granted by the Utah legislature, allow for TUID to have authority to impose fees that are in conflict with a Utah rule or law? Complainant asserts that neither can be granted without an express exemption from the Utah legislature since there is a conflict with an existing rule or law. Further, Utah statutes and rules do not provide for any exemption.

Complainant disputes TUID’s claim that she misrepresents Utah Code § 17B-1-903, although TUID does not address the conflict that exists with Utah Admin. Code § 746-200-7(I)(1). However, Complainant does not dispute the authority that the Utah Code does provide for TUID to impose fees, just not fees that are in conflict with existing rule or law. Essentially, up and until either TUID is granted an exemption as to standby fees or Utah legislation specifically provides for standby fees, it is unlawful for TUID to impose standby fees. Since it is unlawful for the use of standby fees, the Commission should terminate standby fees, retroacting form the inception of such fees, and adjust Complainant’s subsequent billing.

TUID refers to an Advisory Opinion #101, issued by the Utah State Office of the Property Rights Ombudsman. *See Motion, Exhibit A.* However, there are some very distinguishable elements regarding the Advisory Opinion. To begin, the Advisory Opinion provides in its own disclaimer that it is “an Opinion” and “should not be considered legal advice.” The Advisory Opinion does not address the issue that standby fees directly conflict with an existing rule or law, like in the present issue. The Advisory Opinion concerns a city and not a utility district. The Advisory Opinion was issued based upon water issue, although it tries to be applicable to most utilities, but it is not centered on electrical service. Finally, the Advisory Opinion addresses a \$10 monthly fee for one utility, considered to be a reasonable fee to provide the service or benefit, and not the addition of multiple utility fees.

Obviously, the Advisory Opinion is not binding and has no legal authority, does not address districts, only the city for which it was requested, does not the reasonableness of standby fees for more than on utility, and was prepared for a water system. The biggest distinction is the fact that the Advisory Opinion does not address any conflicts for standby fees with existing rules or laws. Again, since there is conflict between standby fees and the rules, TUID would need to be granted an exemption specifically by the Utah legislature. However, pursuant to TUID’s reasoning, since there is no statute that specifically provides the Commission with authority to grant an exemption, TUID would need an exemption from the Utah Legislature. Therefore, since the Advisory Opinion is distinguishable and does not address conflicts between established rules and standby fees, particularly as to Utah Admin. Code 746-200-7(I)(1), the Advisory Opinion is not applicable to the present issue.

TUID also states that the Commission “has repeatedly and consistently approved standby fees.” *See Motion*, p. 16. However, all of the examples provided by TUID seem to only address

water utilities, not electrical. Further, the rates used for those standby fees are only around \$30 a month, not the over \$150 a month charged by TUID. Based upon TUID's own argument, the standby fees by TUID, at least compared to other examples, is not reasonable and likely does not serve the best interest for the land owners.

TUID does not have expressed authority to charge standby fees, particularly since it conflicts with rule and law. TUID fails to show that standby fees are a significant and measurable benefit to landowners who do not reside full time in Ticaboo. Further, paying over \$150 a month, with \$75.00 for electric service, is not just and reasonable, especially as compared to other standby fees referred to by TUID. Therefore, TUID's standby fees should be terminated, retroacting to the inception of imposing standby fees, and Complainant should be provided proper adjustment to her billing, including as to liens, to reflect the termination of standby fees.

III. ANTI-TRUST

TUID contends that an anti-trust claim requires for the Commission to exceed its limited authority since it would involve other utilities other than just electrical service. *See Motion*, p. 19. However, given the Commission's limited authority over just electrical services, the Commission has the limited authority to require that the purchase of electrical service not be comingled with other utility services. Likewise, due to the current comingling of the utilities, consumers are prevented from the use of solar energy and the like, despite TUID's claim that it supports such alternative uses for energy, since Complainant would still have to pay for two years of electrical service after implementing alternative energy. Nevertheless, since the Commission can limit the anti-trust issue specifically as to electrical service, and it is undisputed that the Commission has jurisdiction over TUID, the anti-trust issue should not be dismissed.

Complainant does not dispute that the anti-trust issue also addresses the use of standby fees. For example, if a consumer wants to switch from electrical energy to solar energy, the standby fees would apply, despite the conflict with Utah Admin. Code § 746-200-7(I)(1), which provides that service be turned off within a certain time after notice of discontinuance. The conflict of standby fees with existing rule or law only gives more support concerning the Complainant's anti-trust issue.

TUID also contends that the Commission's ability to address anti-trust is limited by the authority provided by statute, although TUID fails to show what statute limits the Commission. *Ibid.* TUID states that Utah Code Ann. § 17B-1-103(2)(q) provides TUID such broad authority that it is outside the scope of the Commission's authority to address anti-trust issues. However, just because the statute provides broad authority to TUID, that does not also mean that it is without any limitation, including abiding by the laws of the land, whether that law be state or federal. It seems a stretch by TUID to state that if the statute does not specifically provide or limit TUID, then TUID is immune from all other laws. Conversely, there is nothing provided to TUID by statute that exempts it from all federal and state laws.

The issue is that TUID should not be allowed to require Complainant to purchase electric services if she only seeks other utility services, and the opposite is true concerning any utility. The Commission does have authority to seek anti-trust issues as to the electrical service. Furthermore, the use of standby fees in regard to the anti-trust issues necessitates the injustice to Complainant since both the standby fees and the anti-trust is contrary to existing rule or law. Therefore, the Commission should prevent TUID from comingling electrical services with other utilities and applying standby fee prospectively, and Complainant should have her past billing adjusted.

IV. NOTICE REQUIREMENTS

TUID contends that Complainant's allegation of not receiving proper notice is false, baseless, not supported by evidence, and not proper for a proceeding before the Commission. *See Motion*, p. 21.

Clearly this issue is proper to bring before the Commission since Utah Admin. Code § 746-200-10 provides that a grievance concerning a violation of the rules, "company tariff, or other approved company practices" may be brought by informal or formal complaint. Further, Complainant's allegation is not false and baseless, and is supported by Complainant's own testimony. TUID makes a circular argument by stating that Complainant can't show that she did not receive notices without showing that she did not receive notices. Complainant agrees that is difficult to show something that did not happen, although she will testify that either she received no notice at all or received notice after the fact. There have been months that have gone by that Complainant incurred fees without notice until much later after the imposing of such fees. The fact that she did not receive those notices is at least a violation of the company tariff. A violation of a company tariff is proper to bring before the Commission, pursuant to Utah Admin. Code § 746-200-10. Therefore, Complainant's claim is proper and she can provide her own testimony as to TUID's violation of at least the company tariff, which provides that the Commission can penalize TUID.

V. REQUIRED DOCUMENTS ARE NOT AVAILABLE

TUID contends that Complainant's allegations are false concerning the availability of required documents and that TUID has always made required documents available, despite the District's office location in the District Manager's dining room. *See Motion*, p. 22. However, Complainant has been denied numerous instances upon requesting to view required documents.

Complainant understands the current circumstances of TUID's office, although that does not justify violating at least the company tariff by denying Complainant access to view required documents. Complainant has attempted in good faith to be understanding to the schedule of the District Manager, although TUID has not been accessible even by appointment. The fact is that land owners, such as Complainant, need to be able to have access to the required documents when they do come to Ticaboo, especially when there have not been proper notices. Complainant is optimistic that TUID is willing to enter into a stipulation, although this issue seems necessary to address with the Commission since at least the company tariff has been violated and TUID obviously is not aware of how it is violating the company tariff.

VI. TUID'S REQUIREMENT FOR LANDLORDS TO BE RESPONSIBLE FOR UTILITIES IS NOT JUST AND REASONABLE

TUID contends that "a landlord should bear the economic risks of the rental property" and that "TUID's policy regarding tenant-occupied properties accomplishes this." *See Motion*, p. 24. However, the policy really is just another way to apply standby fees. In order to get the best rate, land owners are limited when they can sign up for electrical services, much like signing up for insurance. Land owners are required to keep paying the utilities fees regardless of whether they have tenants or not. Further, if a tenant leaves, either the landowner is left paying the utilities or is facing standby fees. Either way, this policy seems to conflict with Utah Code Ann. § 17B-2a-406(5) and Utah Admin. Code § 746-200-7(I)(2).

Complainant is retired and has had her properties in Ticaboo prior to TUID's existence. Now, she is expected to pay all types of fees, regardless of her ability to have a tenant. TUID should not be able to force Complainant out of the property she has owned for so long by applying fees after fees. Not only is it inequitable, it is not consistent with statute and administrative rules. That value that is added to her properties by standby fees, as contended by

TUID, is so minimal that there is minimal value in selling the properties. However, TUID's policy and fees does not allow for Complainant to afford paying thousands of dollars in fees. Therefore, TUID's policy is not a just and reasonable approach and the policy should be discontinued, with such discontinuance retroactive to its inception, which would provide for a billing adjustment to Complainants voluminous past fees.

VII. TUID'S ABANDONMENT POLICY IS UNLAWFUL

TUID asserts that the abandonment policy does not violate Utah law and that Complainant has not been damaged by such policy, that she is only stating how TUID should operate. *See Motion*, pp. 25-26. However, TUID's abandonment policy clearly conflicts with Utah Admin. Code § 746-200-7(I)(1)&(2), since it is merely an extension of the standby fees. As a result, Complainant has clearly stated that she has been damaged by the standby fees, which also includes the abandonment policy and requires 24 months before declaring abandonment.

TUID's abandonment policy certainly conflicts with administrative rules or law since it requires a duration of two years before having the opportunity to declare a property abandoned. Even if the property is abandoned, it is the discretion of TUID to determine if there is a structure on the property that fits the requirement to declare for an abandonment. Complainant has had to pay thousands of dollars in fees due to this policy and is suffering from liens on her property. TUID's claim that Complainant has suffered no damages is false. Further, pursuant to Utah Admin. Code § 746-200-10, since TUID is violating a rule, it is proper to bring this issue before the Commission. Therefore, Complainant seeks for the termination of the abandonment policy, retroactive from its inception, and for an adjustment to her billing during that duration.

VIII. COMPLAINANT'S DUE PROCESS RIGHTS REGARDING NOTICE BEFORE REMOVAL OF METERS

TUID contends that Complainant does not provide any legal analysis for the Commission to have authority in assessing her constitutional rights concerning receiving proper notice prior to the removal of her meters. *See Motion*, p. 26. However, pursuant to Utah Admin. Code § 746-200-7(F), TUID can only take Complainant's meter under specific special circumstances without notice. TUID fails to identify whether those special circumstances existed, which Complainant argues no such circumstances were present. Further, TUID fails to identify why the Commission cannot address Complainant's constitutional right of due process. TUID does not identify anywhere in the statute that prohibits the Commission from identifying if TUID's procedures are a violation of Complainant's due process rights, especially since the actions of taking the meters without notice is not consistent with Utah Admin. Code § 746-200-7(F).

Further, TUID contends that the Commission does not have the authority to assess penalties. *Ibid.*, at p. 26. However, Utah Admin. Code § 746-200-100 does provide for the Commission to award penalties for violations of rules and the like, although fines would not be distributed to Complainant, rather "to assist low income Utahns to meet basic energy needs." Nevertheless, since TUID violated the rules, it is proper to bring this issue before the Commission and TUID should be penalized for its violation of the administrative rules.

IX. THE TARIFF IS UNLAWFUL

TUID argues that the Tariff "does not violate any applicable statute or administrative rule" and that the fees owed by Complainant to TUID are just, with any allegation of injustice lacking support. *See Motion*, p. 26. However, the foregoing argument has demonstrated that TUID and the Tariff are not consistent with both statute and administrative rules. In fact, both

TUID and the Tariff are in violation of statute and administrative rules. As a result, since there are violations, the Tariff is unlawful.

Complainant has absorbed thousands of dollars of fees pursuant to the violations of statute and administrative rules. Due to the fees incurred upon Complainant, which are in violation of statute and administrative rules, the fees owed by Complainant are an injustice. Complainant's testimony and all the documents that Complainant is still attempting to retrieve from TUID verifies all of the unjust fees bestowed upon Complainant from requirements that are in violation of administrative rules, statute, and other authorities. Therefore, this claim should not be dismissed.

However, since TUID and the Tariff are in violation of statute and administrative rules, the Commission should terminate the requirements that are violations of statute and administrative rules, retroacting such termination, and adjust Complainant's billing accordingly. The Commission's actions to terminate, including a retroactive termination, and adjustment of billing will provide the proper and effective justice for Complainant.

CONCLUSION

Therefore, based upon the foregoing, Complainant respectfully requests for the Commission to terminate the identified violations of statute and administrative rules, apply the termination retroactively, and find that Complainant's billing be adjusted accordingly, including the release of any liens.

DATED AND SIGNED this 6th day of June, 2016.

SALCIDO LAW FIRM, PLLC

/s/ Jon M. Hogelin

Jon M. Hogelin

Attorney for Complainant

CERTIFICATE OF DELIVERY

I hereby certify that on this 6th day of June, 2016, a true and complete copy of the foregoing was provided to the following, via email:

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