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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Formal Complaint of Marian Seamons against Ticaboo Utility Improvement District	**TICABOO UTILITY IMPROVEMENT DISTRICT'S REPLY TO COMPLAINANT'S OMNIBUS MEMORANDUM** Docket No. 15-2508-01

Ticaboo Utility Improvement District ("**TUID**" or the "**District**"), pursuant to Utah Code Ann. §§ 63G-4-204(1) and Utah Admin. Code R746-100-3 and 4, hereby files its Reply (the "**Reply**") to Complainant's Omnibus Memorandum in Opposition to Motion to Dismiss and Reply to Ticaboo Utility Improvement District's Response to Formal Complaint (the "**Omnibus Memorandum**") filed by Marian L. Seamons with the Public Service Commission of Utah ("**Commission**") on June 6, 2016.

ARGUMENT

As set forth in TUID's Motion to Dismiss, filed with the Commission on April 22, 2016, the relief sought by Ms. Seamons cannot be granted by the Commission and the Complaint should therefore be dismissed.

I. TUID MAY CHARGE STANDBY FEES FOR FACILITIES

A significant portion of both the Complaint and the Omnibus Memorandum are based on a mistaken belief that TUID is not authorized to charge fees for facilities, whether called a "standby fee" or by some other name. Ms. Seamons attempts to interpret Utah Admin. Code R746-200-7(I)(1) as prohibiting standby fees.[1] This rule does not speak to standby fees or fees for facilities, in any way. Utah Admin. Code R746-200-7(I)(1) provides that

> "[a] customer shall advise a public utility at least three days in advance of the day on which the customer wants service disconnected to the customer's residence. The public utility shall disconnect the service within four working days of the requested disconnect date. The customer shall not be liable for the services rendered to or at the address or location after the four days, unless access to the meter has been delayed by the customer."

A plain reading of that subsection makes clear that it applies to active service provided by a utility—the flow of water or power to a customer's premises—and does not address standby fees or facilities fees. Termination of active utility service does not relieve a customer of the obligation to pay standby or facilities fees, which by their very nature, are only charged when a customer is not receiving service. TUID is required to follow those termination procedures and Section 10.03 of TUID's current electric tariff, as filed with the Commission on April 20, 2016 in Docket 16-2508-T01, adopts the language of R746-200-7(I) verbatim. As far as the District is aware, Ms. Seamons has not taken any issue with the timeliness of service disconnection by the District.

The Commission has explained standby fees very clearly. In the combined Dockets 06-071-02 and 06-2417-01, the Commission stated as follows:

> "Standby fees have long been approved for culinary water utilities to provide an adequate revenue stream to these typically small utilities which would otherwise garner no revenue from property not connected to its system even though the system is in place and ready to serve that property. The utility incurs some expense in

[1] Omnibus Memorandum at 2.

> maintaining the ability to serve unconnected property on demand; a reasonable standby fee is permitted in recognition of this expense."[2]

Although the Commission made the statement above in a proceeding involving a water company, the logic applies equally to TUID as a very small utility dependent on standby fee revenue to maintain its ability to provide service on demand to currently unconnected properties.

Utah Admin. Code R746-200, which Ms. Seamons attempts to interpret as prohibiting standby fees, is entitled "Residential Utility Service Rules for Electric, Gas, Water, and Sewer Utilities" and is indeed applicable to all electric, gas, water and sewer utilities—ranging from Questar and Rocky Mountain Power down to the smallest public utility water companies. The Commission has repeatedly approved, and indeed even mandated, standby fees for numerous small public utilities throughout Utah.[3] Ms. Seamons attempts to legally distinguish standby fees for electrical service as charged by TUID from those approved by the Commission for water utilities.[4] This is disingenuous, at best, as the very rules Ms. Seamons relies on to make that argument are equally applicable to all electric, gas, water and sewer utilities.

In addition to Commission precedent supporting the clear legality of standby fees charged by public utilities, the very nature of Ticaboo and TUID make standby fees a necessity. TUID is the smallest Commission-regulated electric utility in Utah, the only off-the-grid public electric utility in the state of Utah, and quite possibly the only public utility in the continental U.S. that is forced to rely solely on diesel generators for power production. Ticaboo itself is an extremely remote location—even for rural Utah—and a significant portion of the platted Ticaboo townsite,

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[2] Report and Order at 4, Docket Nos. 06-071-02 and 06-2417-01, *In the Matter of the Formal Complaint of Edwin and Shirley Rahrer against Wolf Creek Water Company, Inc. and Wolf Creek Water Conservancy, Inc.* (November 6, 2006).
[3] *See* Motion to Dismiss at 16-17.
[4] Omnibus Memorandum at 11-12.

while platted and improved with utility service connections, has yet to be built upon. Historically in Ticaboo, due to the rapid population fluctuations caused by increases and decreases in employment at two nearby uranium mines and seasonal employees seeking to be close to Lake Powell, mobile homes have frequently been moved on and off of the platted lots. Without the availability of electrical service, which requires existing infrastructure and generation capacity, no further development in Ticaboo would be possible and owners of undeveloped properties, such as Ms. Seamons, would see the value of those properties plummet. The standby fees paid by owners of platted lots without a house in Ticaboo allow the District to stand ready to provide electrical service on demand and allow those property owners to each bear a fair share of the costs of doing so.

Even if standby fees were disallowed by Commission rules, TUID would still be able to charge such fees as allowed by statute. As explained in its Motion to Dismiss, TUID is explicitly authorized by statute to charge fees for facilities—also known commonly as standby fees. Although clearly not the case, even if the Commission's rule prohibited standby fees, TUID would still be allowed to charge fees for facilities provided as authority granted by statute cannot be taken away by an administrative rule.[5]

Unlike nearly all utilities regulated by the Commission, TUID is a local district governed by Title 17B of the Utah Code with all of the rights and powers granted therein. Utah Code § 17B-1-103(2)(j) allows TUID to impose fees for facilities provided by TUID. "Facilities" is a term defined in Title 17B to mean

> ". . . structure, building, system, land, water right, water, or other real or personal property required to provide a service that a local district is authorized to provide,

[5] *Rocky Mountain Energy v. State Tax Comm'n*, 852 P.2d 284, 287 (Utah 1993) ("Rules are subordinate to statutes and cannot confer greater rights or disabilities.").

> including any related or appurtenant easement or right-of-way, improvement, utility, landscaping, sidewalk, road, curb, gutter, equipment, or furnishing."[6]

Likewise, TUID is authorized to bill for and collect fees for "commodities, services, *and facilities*".[7] As a local district, TUID is authorized by statute to charge fees for facilities; the Commission cannot make an administrative rule taking away that statutory right.

II. TUID IS REQUIRED TO COMPLY WITH ITS TARIFF

Ms. Seamons alleges that TUID has failed to comply with provisions of its Tariff requiring notices be sent and that certain documents be visible in TUID's offices.[8] While TUID denies the allegations that it has violated these or any other provisions of its Tariff, TUID has offered to stipulate that TUID is indeed bound by the provisions of its Tariff, thus eliminating the need for further proceedings as to these specific allegations.[9]

TUID again asserts that is has complied, and continues to comply, with the provisions of its Tariff. Further proceedings on these points would be an unnecessary expenditure of time and incur unnecessary costs for all parties involved. If the Commission desires to proceed as to these issues, TUID will offer credible testimony to contradict each and every allegation of Ms. Seamons. The Division of Public Utilities, if it so chooses, may send a staff member to Ticaboo to verify that the documents in question are indeed available for public inspection. The Commission could hold a hearing attended by Ms. Seamons, TUID, the Division, and the Office of Consumer Services at which the Commission would receive further testimony about whether notices were sent and documents were available. TUID desires to circumvent an unnecessary and pointless process and

[6] Utah Code § 17B-1-102(6).
[7] Utah Code § 17B-1-901(1) (emphasis added).
[8] Omnibus Memorandum at 14.
[9] Motion to Dismiss at 22.

simply stipulate that TUID is bound by its Tariff provisions, making further discussions on these two allegations pointless.

III. TUID MAY REQUIRE THAT LANDLORDS BE RESPONSIBLE FOR UTILITIES

TUID has not violated its tariff in any way as it relates to the obligations of landlords regarding utility services; indeed, Ms. Seamons has not alleged such a violation in either her Complaint or her Omnibus Memorandum. As such, the Commission should not consider this issue as anything more than a statement of Ms. Seamons' disapproval of the policy and the Complaint should be dismissed.

Although this is not an issue requiring the Commission's attention nor a reason to decline to dismiss the Complaint, TUID desires to clarify the justification for the policy. TUID's policy holding landlords responsible for utilities is within the power granted to TUID, both as a local district and a public utility, and indeed results in just and reasonable rates for all TUID customers. All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.[10] Holding landlords responsible for utilities—particularly in Ticaboo, where many rentals are seasonal—results in "just and reasonable" rates for all customers. As TUID has learned through hard experience, it is often impossible to cost-effectively collect past-due amounts from former residents, inevitably resulting in those costs being borne by the paying customers of TUID. Also, TUID is authorized to "impose fees or other charges for commodities, services, or facilities provided by the district" and to "take action the board of trustees considers appropriate and adopt regulations to assure the collection of all fees

[10] Utah Code § 54-3-1.

and charges that the district imposes."[11] Additionally, the District is further authorized to "perform any act or exercise any power reasonably necessary for the efficient operation of the local district in carrying out its purposes."[12] As a local district and as a public utility TUID can require that property owners be responsible for utility services to rental pproperties.

Ms. Seamons fails to articulate any colorable argument as to why this policy would be prohibited. As support for her position, Ms. Seamons relies on Utah Code § 17B-2a-406(5), which requires that an electric improvement district obtain a certificate of public convenience and necessity prior to initiating service. This is wholly irrelevant to the issue of a landlord's responsibility for utility service and should be disregarded. Additionally, Ms. Seamons attempts to find support for her position in Utah Admin. Code R746-200-7(I)(2), which prohibits a landlord from disconnecting utility service as a means of eviction. That provision is irrelevant to the policy holding landlords responsible for utilities as set forth in the TUID tariff.

IV. DAMAGES ARE NOT AVAILABLE AND PENALTIES ARE INAPPROPRIATE

The Commission does not have the power to assess damages against TUID as requested by Ms. Seamons.[13] Ms. Seamons correctly notes that the Commission can assess penalties against public utilities as authorized in Utah Admin. Code R746-200-100 and that penalties paid by public utilities go toward helping "low income Utahans to meet basic energy needs." Penalties against TUID, however, are inappropriate and unnecessary as TUID is a not-for-profit governmental entity created by Garfield County that is subject to the same budgeting requirements as all other local districts in Utah. TUID is not owned by investors or a parent company and no one involved with the District stands to benefit financially from the District's performance. The District exists to

[11] Utah Code § 17B-1-103(2)(j).
[12] Utah Code § 17B-1-103(2)(q).
[13] Complaint at 16.

provide utility services to Ticaboo and charges rates and fees sufficient to do so. A penalty assessed against TUID would inevitably be passed on to TUID customers in the form of higher rates.

CONCLUSION

TUID again respectfully requests that Ms. Seamons' complaint be dismissed. Ms. Seamons requests relief that cannot be granted by the Commission and the Complaint is apparently an ill-conceived attempt to avoid paying for the availability of utility services and facilities of which she enjoys the benefits. Ms. Seamons owns three of the approximately 43 developed lots in Ticaboo, and must pay for the facilities and services provided by, or available from, the District. To allow Ms. Seamons to avoid her obligation to pay for availability of service would simply shift the responsibility for those costs to everyone else in Ticaboo.

DATED this 21st day of June, 2016.

RESPECTFULLY SUBMITTED,

TICABOO UTILITY IMPROVEMENT DISTRICT

/s/ Adam S. Long
J. Craig Smith
Adam S. Long
Attorneys for Ticaboo Utility Improvement District

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing REPLY TO COMPLAINANT'S OMNIBUS MEMORANDUM was served as indicated on the following on June 21, 2016:

By email and hand delivery:

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