

J. Craig Smith #4143
(jcsmith@smithlawonline.com)
Adam S. Long #14701
(along@smithlawonline.com)
SMITH HARTVIGSEN, PLLC
175 South Main Street, Suite 300
Salt Lake City, Utah 84111
Telephone: (801) 413-1600
Facsimile: (801) 413-1620

Attorneys for Ticaboo Utility Improvement District

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 POST-HEARING BRIEF**

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 Post-Hearing Brief (the “**Brief**”) in accordance with the Order Requiring Post-Hearing Briefing (the “**Order**”) as issued on July 27, 2016 by the Public Service Commission of Utah (“**Commission**”) on June 6, 2016.

INTRODUCTION

The Order directed the parties to address, at a minimum, the following questions in post-hearing briefs:

1. As to **Docket No. 13-2508-T02**:
 - a. Did TUID notice and hold a public meeting for customers to comment on the utility’s proposed tariff changes, including its plan to impose standby fees on vacant lots?

- b. If a public meeting was held, was written notice of the meeting sent by mail to all customers at least 10 days prior to the meeting?
2. As to **Docket No. 15-2508-T01**:
 - a. Did TUID notice and hold a public meeting for customers to comment on the utility's proposed tariff changes, including its plan to impose a per-day penalty for tampering with utility equipment?
 - b. If a public meeting was held, was written notice of the meeting sent by mail to all customers at least 10 days prior to the meeting?
3. Should Ms. Seamons be considered to have waived her right to request review of the Commission's September 10, 2015 order in Docket No. 15-2508-T01 in light of TUID's board meeting being held on August 27, 2016 [*sic*]?

In addition, the Commission encouraged the parties to provide copies of billing statements sent to Ms. Seamons beginning October 1, 2013.

PROCEDURAL BACKGROUND

The proceeding began with the filing of a formal complaint by Ms. Seamons on December 18, 2015 (the “**Initial Complaint**”). Prior to filing the Complaint, Ms. Seamons had filed an informal complaint against TUID, to which TUID had thoroughly responded. As the Initial Complaint was vague, did not allege any tariff violations, and did not specify the relief sought, the Division of Public Utilities (the “**Division**”) recommended that the complaint be dismissed.¹ After that recommendation from the Division, Ms. Seamons retained counsel, moved for leave to file an amended complaint, and eventually filed an amended formal complaint on March 10, 2016 (the “**Complaint**”). The Commission issued an amended briefing schedule on April 6, 2016. TUID

¹ See Memorandum from the Division of Public Utilities (December 29, 2015).

filed its combined motion to dismiss and response to the Complaint on April 22, 2016. Ms. Seamons filed her combined memorandum in opposition to TUID's motion to dismiss and reply to TUID's response on June 6, 2016. TUID filed its reply to Ms. Seamons' memorandum on June 21, 2016. On July 6, 2016 the Commission issued its Order on Motion to Dismiss and Notice of Hearing, which dismissed "Ms. Seamons's allegations as to the legality, in general, of standby fees and as to the legality of the specific rates and policies set forth in TUID's tariff."² That July 6th Order also provided notice of the hearing to be held in this docket on July 27, 2016 and set forth a list of seven specific questions to be the subject of the hearing. Importantly, those questions prepared by the Commission involved only Dockets 13-2508-T01 and 15-2508-T01. At the hearing on July 27, 2016 (the "**Hearing**"), TUID pointed out that the standby fees of which Ms. Seamons has complained were introduced in Docket 13-2508-T02 and informed the Commission that TUID had interpreted the Order dismissing all issues relating to the legality of standby fees and not including specific questions about Docket 13-2508-T02 as meaning the enforceability of standby fees was not an issue for discussion at the Hearing.³ At the Hearing, TUID addressed the enforceability of the tariff that was acknowledged by the Commission in Docket 13-2508-T02 even though that topic was not part of the Hearing according to the Commission's July 6th Order. TUID also requested the opportunity to file a post-hearing brief to address the issues with the tariff changes acknowledged in Docket 13-2508-T02.⁴ After the Hearing, the Commission issued its Order Requiring Post-Hearing Briefing on July 27, 2016.

² Order on Motion to Dismiss and Notice of Hearing at 10 (July 6, 2016).

³ Hr'g. Tr. 94-96.

⁴ *Id.* at 16-17.

ARGUMENT

The question has been raised as to whether TUID timely mailed notices of the TUID board of trustees meetings at which tariff changes were adopted. As has been discussed to significant extent in this docket, TUID is exempt from the ratemaking procedures of Utah Code § 54-7-12 if TUID complies with the following provisions:⁵

- (i) the district is organized for the purpose of distributing electricity to customers within the boundary of the district on a not-for-profit basis;
- (ii) the schedule of new rates or other change that results in new rates has been approved by the board of trustees of the district;
- (iii) prior to the implementation of any rate increases, the district first holds a public meeting for all its customers to whom mailed notice of the meeting is sent at least 10 days prior to the meeting; and
- (iv) the district has filed the schedule of new rates or other change with the commission.

Ms. Seamons alleges that TUID did not comply with (iii) above in either Docket 13-2508-T02 or Docket 15-2508-T01, requiring TUID to hold a public meeting for which notices were mailed to all customers at least 10 days in advance. TUID fully complied with the provisions of Utah Code § 17B-2a-406(6)(a) for the tariff changes adopted on August 29, 2013, on January 15, 2015, and on August 27, 2015. Therefore, TUID's tariffs are legal and must be enforced against all TUID customers, including Ms. Seamons.

⁵ Utah Code § 17B-2a-406(6)(a).

I. TARIFF CHANGES IN DOCKET 13-2508-T02 ARE ENFORCEABLE

The public board meeting was held on August 29, 2013 and the required mailed notices were sent in accordance with Utah Code § 17B-2a-406(6)(a) at least 10 days in advance of that meeting.⁶

At the Hearing, Mr. Shortreed testified that he personally sent those notices to all customers of the District, which includes those Ticaboo residents who would be obligated to pay standby fees under the revised tariff. At the Hearing, Mr. Shortreed testified that he mailed the notices of the public meeting held on August 29, 2013 to discuss the tariff changes—including the imposition of standby fees—that were acknowledged by the Commission in Docket 13-2508-T02.⁷ Mr. Shortreed further testified that he mailed those notices on or before August 15, 2013, which is more than the 10 days in advance as required by statute.⁸ As further evidence, multiple property owners have submitted signed statements stating that each received the mailed notices that Mr. Shortreed sent on behalf of TUID.⁹ Signed statements from Daniel Largent, Jim Bell, Kent Hintze, Margaret Mitchell, and Tom Hill are attached as **Exhibit A**; in those statements, each person states that he or she was (1) aware of the August 29, 2013 public meeting and TUID's intention to adopt the standby fees, (2) received mailed written notice at least 10 days before the meeting, and (3) personally attended the August 29, 2013 meeting at which the tariff changes implementing the standby fees were discussed. Signed statements from Rick Brinkerhoff, John Weil, Elizabeth Lenhardt, Cory Jones, Pamela Auster, David Thompson, Honi Thompson, and Dan Auster are

⁶ The tariff changes adopted at this meeting included the implementation of standby fees and were acknowledged by the Commission in Docket 13-2508-T02.

⁷ Hr'g. Tr. 116.

⁸ *Id.* at 117-118.

⁹ Note that these statements are submitted as unsworn declarations under penalty of perjury as allowed by Utah Code § 78B-5-704 as Ticaboo is located a great distance from the nearest notary public that could notarize an affidavit.

attached as **Exhibit B**; in those statements, each person states that he or she was (1) aware of the August 29, 2013 public meeting and TUID's intention to adopt the standby fees, and (2) received mailed written notice at least 10 days before the meeting. Further, Andria Jones assisted Mr. Shortreed with the mailing of the notices in question since, at the time, Mr. Shortreed was acting as the *de facto* district manager without being paid. The signed statement from Andria Jones is attached as **Exhibit C** in which she states that she (1) was aware of the August 29, 2013 public meeting and TUID's intention to adopt the standby fees, (2) helped Mr. Shortreed mail the notices in question to each TUID customer, and (3) helped mail the notices prior to August 15, 2013. In addition, TUID published notice of the meeting in the local newspaper. A copy of that notice is attached as **Exhibit D**.¹⁰

The public meeting was indeed held as scheduled. Mr. Shortreed testified that the public meeting was held on August 29, 2013 and that the resolution adopting the tariff changes, including standby fees, was adopted at that meeting.¹¹ The minutes of that meeting are attached as **Exhibit E**; those minutes note that TUID received comments from the public prior to adopting the resolution for the tariff changes.¹²

TUID's tariff, as revised on August 29, 2013, is legal and enforceable. TUID has fully complied with the provisions of Utah Code § 17B-2a-406(6)(a) as it relates to the tariff changes adopted on August 29, 2013. Undisputedly, TUID is "organized for the purpose of distributing electricity to customers within the boundary of the district on a not-for-profit basis."¹³ On August 29, 2013, through Resolution 2013-0017, the "the schedule of new rates or other change that results

¹⁰ This notice was also introduced into evidence at the Hearing as Exhibit TUID-021.

¹¹ Hr'g. Tr. 116.

¹² These meeting minutes were also introduced into evidence at the Hearing as Exhibit TUID-022.

¹³ Utah Code § 17B-2a-406(6)(a)(1).

in new rates has been approved by the board of trustees of the district.”¹⁴ As noted above, TUID first held a “public meeting for all its customers to whom mailed notice of the meeting is sent at least 10 days prior to the meeting.”¹⁵ Finally, the District filed the tariff changes with the Commission as part of Docket 13-2508-T02 and the Commission acknowledged the tariff on December 6, 2013.¹⁶ As such, the revised tariff was legal and enforceable.

II. TARIFF CHANGES IN DOCKET 15-2508-T01 ARE ENFORCEABLE

The public board meeting was held on January 15, 2015 and the required mailed notices were sent in accordance with Utah Code § 17B-2a-406(6)(a) at least 10 days in advance of that meeting. At the Hearing, Mr. Shortreed testified that TUID’s practice is to mail notices of public meetings for tariff changes at least 10 days in advance of the meeting and that he followed that practice for the tariff changes that were acknowledged by the Commission in Docket 15-2508-T01.¹⁷ Further, Mr. Shortreed has made an unsworn declaration under penalty of perjury stating that he personally mailed notice of the January 15, 2015 public meeting to all TUID customers and that those notices were sent at least 10 days in advance. Mr. Shortreed’s declaration is attached as **Exhibit F**. That meeting was indeed held on January 15, 2015. The minutes of that meeting— noting discussion of the tariff changes and adoption of the corresponding resolution—and the sign-in sheet from that meeting as attached as **Exhibit G**.

TUID’s tariff, as revised on January 15, 2015, is legal and enforceable. TUID has fully complied with the provisions of Utah Code § 17B-2a-406(6)(a) as it relates to the tariff changes

¹⁴ Utah Code § 17B-2a-406(6)(a)(2); Resolution 2013-0017 was introduced into evidence at the Hearing as Exhibit TUID-023.

¹⁵ Utah Code § 17B-2a-406(6)(a)(3).

¹⁶ The Commission’s acknowledgment letter dated December 6, 2013 was introduced into evidence at the Hearing as Exhibit TUID-025.

¹⁷ Hr’g. Tr. 134.

adopted on January 15, 2015. Undisputedly, TUID is “organized for the purpose of distributing electricity to customers within the boundary of the district on a not-for-profit basis.”¹⁸ As of January 15, 2015, after adoption of Resolution 2015-0005, “the schedule of new rates or other change that results in new rates has been approved by the board of trustees of the district.”¹⁹ As noted above, TUID first held a “public meeting for all its customers to whom mailed notice of the meeting is sent at least 10 days prior to the meeting.”²⁰ Finally, the District filed the tariff changes with the Commission as part of Docket 15-2508-T01 on March 20, 2015.²¹ As such, the revised tariff was legal and enforceable.

After adopting the tariff changes on January 15, 2015, TUID adopted new tariff changes on August 27, 2015 after prolonged negotiations with the Division. These changes were adopted in a public meeting and by resolution of the TUID board of trustees.²² These changes did not increase any rates charged by TUID nor did they increase any fees that would potentially be paid by TUID customers; therefore TUID was not required to send mailed notices pursuant to Utah Code § 17B-2a-406(6)(a)(3).

III. MS. SEAMONS HAS FAILED TO MEET HER BURDEN OF PROOF

The question has been raised as to whether TUID timely mailed notices of the TUID board of trustees meetings at which tariff changes were adopted. As has been discussed to significant extent in this docket, TUID is exempt from the ratemaking procedures of Utah Code § 54-7-12 if TUID complies with the provisions of Utah Code § 17B-2a-406(6)(a).

¹⁸ Utah Code § 17B-2a-406(6)(a)(1).

¹⁹ Utah Code § 17B-2a-406(6)(a)(2).

²⁰ Utah Code § 17B-2a-406(6)(a)(3).

²¹ Refer to Commission Docket 15-2508-T01.

²² The minutes of the August 27, 2015 meeting were introduced into evidence at the Hearing as Exhibit TUID-004.

Ms. Seamons alleges that TUID did not comply with Utah Code § 17B-2a-406(6)(a)(iii) (requiring that mailed notices of the public meeting be mailed to all customers at least 10 days in advance) in either Docket 13-2508-T02 or Docket 15-2508-T01.

“In the typical challenge to agency action, the party challenging the action carries the burden of demonstrating its impropriety.”²³ Under the UAPA, an agency’s factual findings will be affirmed only if they are supported by “substantial evidence when viewed in light of the whole record before the court.”²⁴

At the Hearing, the presiding officer indicated that the burden of proof as to whether the meeting notices in question were mailed was TUID’s burden to prove.²⁵ That is not true. In this case, Ms. Seamons, as the complainant, has the burden to prove that TUID did not mail the required meeting notices and she must do so by “substantial evidence.” She has not met that burden as she has provided no credible evidence that the notices were not mailed. Even if the burden of proof were on TUID, TUID has met that burden and has, in fact, provided ample evidence—well beyond that required by a substantial evidence standard—that the notices in question were mailed and that evidence has not been refuted or controverted by Ms. Seamons.

²³ *Taylor v. PSC*, 2005 Utah App. LEXIS 146, 2, quoting *SEMECO Indus. v. Utah State Tax Comm’n*, 849 P.2d 1167, 1174 (Utah 1993) (Durham, J., dissenting). See *Kelly v. Salt Lake City Civil Serv. Comm’n*, 2000 UT App 235, P30, 8 P.3d 1048 (favorably quoting Justice Durham’s dissent) (*Taylor* is attached as **Exhibit H**).

²⁴ Utah Code Ann. § 63G-4-403(4)(g); accord *Utah Chapter of the Sierra Club v. Air Quality Bd.*, 2009 UT 76, ¶ 13, 226 P.3d 719; *Mandell v. Auditing Div. of the Utah State Tax Comm’n*, 2008 UT 34, ¶ 11, 186 P.3d 335; *Resort Retainers v. Labor Comm’n*, 2010 UT App 229, ¶ 13, (stating factual findings must be “supported by substantial evidence based upon the record as a whole”); *Hymas v. Labor Comm’n*, 2008 UT App 471, ¶ 12, 200 P.3d 218, cert. denied, 2009 Utah LEXIS 75 (Utah, Apr. 1, 2009); *Desert Power, LP v. Pub. Serv. Comm’n*, 2007 UT App 374, ¶ 12.

²⁵ Hr’g. Tr. 118 (“So that’s what I am trying to figure out, is where is that public notice and when was it mailed. So I believe that is your burden to demonstrate, and if all we have got is a customer testimony saying, “Never got one,” and you saying, “I am absolutely sure I mailed that,” then this gets decided on the burden of proof. And it’s your burden.”)

The burden of proof in this case rests with Ms. Seamons as the complainant. Here, Ms. Seamons has provided some testimony claiming that she did not receive the mailed notice that was sent by TUID as part of the tariff changes acknowledged by the Commission in Docket 13-2508-T02.²⁶ Mari Broadbent, the daughter of Ms. Seamons, testified that Ms. Seamons did not receive the notice of the public meeting that was sent by TUID regarding the tariff changes that were acknowledged by the Commission in Docket 15-2508-T01.²⁷ While Ms. Seamons apparently has some physical limitations that make responding to questions difficult, TUID objected to this response and others by Ms. Broadbent on behalf of Ms. Seamons.²⁸ While the Commission is not bound by the rules of evidence, the Commission should nonetheless recognize that hearsay is inherently of less evidentiary value. Ms. Broadbent has not established that she was involved in the payment of the bills for Ms. Seamons' properties in Ticaboo or that she was in any sort of position to know what notices had arrived in Ms. Seamons' mailbox. TUID suggests that these and other statements by Ms. Broadbent should be given an appropriately small amount of evidentiary weight if not outright disregarded by the Commission.

Disregarding the hearsay issues for the sake of argument, the testimony of Ms. Seamons and Ms. Broadbent goes only to the fact that they do not recall seeing the mailed public meeting notices that were sent by TUID for the tariff changes in 2013 and 2015. The testimony of Ms. Seamons and Ms. Broadbent provides scant evidence as to whether or not such notices reached Ms. Seamons's mailbox many months ago and provides no direct evidence whatsoever as to whether the notices were actually mailed. The possibility exists that, even though TUID mailed the notices as required, that such notices were lost in the mail or discarded by Ms. Seamons prior

²⁶ Hr'g. Tr. 20.

²⁷ *Id.* at 22-23.

²⁸ *Id.* at 22.

to being read. While that would be unfortunate, TUID’s obligation is to send such notices to all customers and the statute does not require that TUID ensure that each notice is actually received and read by every single customer. TUID also notes that the testimony of Ms. Seamons, whether from her directly or as hearsay through Ms. Broadbent, should be considered in light of her initial filings in this docket, which were so disorganized as to cause the Division to recommend the Complaint be dismissed.²⁹ The disorganized and unclear filings by Ms. Seamons in this docket must necessarily be taken into account when evaluating the evidentiary value of her testimony as to whether or not she received a single piece of mail in 2013 or in 2015.³⁰ Regardless of the weight given to the testimony of Ms. Seamons and Ms. Broadbent, neither witness offered any testimony as to whether the required notices were *mailed* by TUID as required by statute.

Although Ms. Seamons and Ms. Broadbent did not offer testimony or evidence as to whether the public meeting notices were mailed by TUID, Mr. Shortreed did offer a significant amount of testimony to that very point. The statements attached as **Exhibits A, B, and C** offer further uncontroverted evidence that the notices were mailed as Mr. Shortreed stated. At the Hearing, Mr. Shortreed testified that he mailed the notices of the public meeting held on August 29, 2013 to discuss the tariff changes—including the imposition of standby fees—that were acknowledged by the Commission in Docket 13-2508-T02.³¹ Mr. Shortreed further testified that

²⁹ See Memorandum from the Division of Public Utilities, December 29, 2015 (“The Division recommends that no action be taken because the complaint is incomplete and there is uncertainty of relief sought,” “[t]he issues addressed in the complaint are vague, and/or do not have specific requests for relief,” “[t]he Division has been unable to determine that the complaint involves the violation of a tariff provision or other applicable law or rule,” and “[t]he Division cannot determine from the complaint that any other law or rule has been violated.”).

³⁰ See Utah Code Ann. § 63G-4-403(4)(g) (an agency’s factual findings will be affirmed only if they are supported by “substantial evidence when viewed *in light of the whole record* before the court.”) (emphasis added).

³¹ Hr’g. Tr. 116.

he mailed those notices on or before August 15, 2013, which is more than the 10 days in advance as required by statute.³² Further, as noted above, multiple TUID customers—both Ticaboo residents and absentee property owners—received the notices of the August 29, 2013 meeting and even attended the meeting; this evidence supports Mr. Shortreed’s testimony that the notices were indeed sent.

As to Docket 15-2508-T01, Mr. Shortreed testified that TUID’s practice is to mail notices of public meetings for tariff changes at least 10 days in advance of the meeting and that he followed that practice for the tariff changes that were acknowledged by the Commission in Docket 15-2508-T01.³³ Although the burden of proving that notices were sent does not rest on TUID, this uncontroverted evidence nonetheless proves that the notices were indeed sent. At the evidence provided by TUID is uncontroverted, the Commission can only find that the notices of public meetings to discuss tariff changes were indeed mailed as required by statute and that TUID’s tariff is enforceable against Ms. Seamons and all other TUID ratepayers.

**IV. MS. SEAMONS DID NOT INTERVENE IN DOCKET 15-2508-T01 AND
THEREFORE DID NOT HAVE STANDING TO REQUEST REVIEW OR
REHEARING**

Ms. Seamons had full opportunity to participate in Docket 15-2508-T01 and the fact that TUID held a board meeting on August 27, 2015 did not prejudice Ms. Seamons in any way. Note that Ms. Seamons did not request, and was not granted, intervention in Docket 15-2508-T01 and

³² *Id.* at 117-118.

³³ *Id.* at 134.

therefore could not have requested review or rehearing regardless of any actions taken or not taken by TUID.³⁴

At the Hearing, the attorney for Ms. Seamons questioned whether the TUID board meeting on August 27, 2015 somehow affected the period during which Ms. Seamons could have requested review or rehearing of the Commission's Order Approving Joint Settlement Stipulation that was issued on September 10, 2015.³⁵ As explained at the Hearing, TUID held a board meeting on August 27, 2015 to adopt tariff changes in accordance with the settlement stipulation that TUID had agreed to with the Division. That board meeting was held after the settlement stipulation was signed, but in advance of the Commission's Order Approving the Joint Settlement Stipulation. Both TUID and the Division were confident that the Commission would approve the settlement stipulation and thus TUID took the proactive step and approved the tariff changes subject to the Commission's approval of the settlement stipulation. Note that the settlement stipulation, as approved by the Commission, required that TUID convene a board meeting to adopt the changes "on or before 30 days after approval of this settlement," which does not require that the board meeting occur after Commission approval of the settlement, but merely that it occur *no later than* 30 days after approval.³⁶ The corresponding Commission Order used that same language.

In the Order Approving Joint Settlement Stipulation, as is standard Commission practice, the Commission included the following language:

Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this written Order by filing a written request with the Commission within 30 days after the issuance of this Order.

³⁴ See Order Approving Joint Settlement Stipulation at 4, Docket 15-2508-T01 (September 10, 2015) ("There are no intervenors and no one has objected to the Stipulation.").

³⁵ Hr'g. Tr. 166-170.

³⁶ The Joint Settlement Stipulation was introduced into evidence at the Hearing as Exhibit TUID-001.

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 does not grant a request for review or rehearing within 20 days after the filing of the request, 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 §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

Under both Sections 63G-4-301 and 54-7-15 of the Utah Code Ann. referenced above, a person making a request for review or rehearing of a Commission action must be a "party" to the proceeding.³⁷ As each of these statutes apply here, a "party" is narrowly defined to include intervenors (e.g., any party who filed to requested intervention and was granted intervention in a particular docket) or other persons authorized by statute (i.e, the Division) to participate in the proceeding.

Ms. Seamons neither filed for, nor was she granted, intervention in Docket 15-2508-T01. Accordingly, she lacked standing to request review or rehearing of the Commission's Order Approving Joint Settlement Stipulation.³⁸ The fact that TUID held its board meeting on August

³⁷ See Utah Code Ann. § 63G-4-301(1)(a) ("If a statute or the agency's rules permit parties to any adjudicative proceeding to seek review of an order by the agency or by a superior agency, the aggrieved party may file a written request for review within 30 days after the issuance of the order with the person or entity designated for that purpose by the statute or rule."); *id.* § 63G-4-103(1)(f) ("Party' means the agency or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the presiding officer to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding."); *id.* § -103(1)(i) ("Respondent' means a person against whom an adjudicative proceeding is initiated, whether by an agency or any other person."). See also Utah Code Ann. § 54-7-15(1) ("Before seeking judicial review of the commission's action, any party, stockholder, bondholder, or other person pecuniarily interested in the public utility who is dissatisfied with an order of the commission shall meet the requirements of this section.").

³⁸ *Cf. Ball v. Public Serv. Comm.* (In re Questar Gas Co.), 2007 UT 79, ¶ 57, 175 P.3d 545 (holding, in part, ratepayers, although aggrieved by a rate increase from a Commission order, had no pecuniary interest in the public utility and therefore did not fall within the classes of persons to whom standing is granted).

27, 2015 has no effect whatsoever on Ms. Seamons' ability to request review or rehearing of the Commission's order. If anything, the fact that TUID held a public, properly-noticed board meeting prior to the Commission's Order Approving Joint Settlement Stipulation gave Ms. Seamons increased information about the proceedings and opportunity to take action accordingly. Even after the August 27, 2015 TUID board meeting, Ms. Seamons could have requested intervention in Docket 15-2508-T01. She did not request intervention and thus did not have standing to request review or rehearing. As such, any allegations that she was somehow prejudiced or denied an opportunity to request review or rehearing are absolutely moot. Consistent with Commission precedent, this issue raised by Ms. Seamons at the Hearing should be dismissed.³⁹

**V. THE COMMISSION SHOULD KEEP THIS DOCKET AS A FORMAL
PROCEEDING**

In this case, Ms. Seamons complaint has already been through the informal complaint resolution process facilitated by the Division of Public Utilities.⁴⁰ TUID responded to Ms. Seamons' informal complaint and attempted to resolve Ms. Seamons' alleged concerns. As she was apparently dissatisfied with the results of the informal complaint process despite the efforts of TUID to address her grievances, Ms. Seamons later filed her formal complaint that became this docket. At the beginning of the Hearing the presiding officer noted that this docket is a formal proceeding under the Utah Administrative Procedures Act (Utah Code Title 63G, Chapter 4, the "UAPA"). The presiding officer also noted that her inclination was to convert it to an informal proceeding.⁴¹ The presiding officer also noted that the standard for converting a formal proceeding

³⁹ See Report and Order Denying Mr. Uhlig's Request for Review and Rehearing, Docket No. 13-2195-02 (June 19, 2014) (denying request for review and rehearing by a non-intervenor based on lack of standing).

⁴⁰ Hr'g. Tr. 7.

⁴¹ *Id.* at 7-8.

to an informal proceeding is “whether converting is in the public interest and whether it poses a hardship or an unfair burden on any party.”⁴² TUID objected to converting this docket from a formal proceeding to an informal proceeding.⁴³ TUID restates that objection and requests that the Commission leave this docket as a formal proceeding.

By default, all Commission proceedings are formal unless designated otherwise.⁴⁴ Under Commission rules, consumer complaints *may* be converted to informal proceedings, pursuant to Section 63G-4-202.⁴⁵ Under the UAPA, the Commission may convert a formal proceeding to an informal proceeding if (a) conversion of the proceeding is in the public interest, and (b) conversion of the proceeding does not unfairly prejudice the rights of any party.⁴⁶

This docket should not be converted to an informal proceeding as such an action would not be in the public interest and would unfairly prejudice TUID. Such an action would also be contrary to the Commission’s prior practice in dealing with formal complaints.⁴⁷

Converting this docket to an informal proceeding would not be in the public interest as such a conversion would likely cause TUID to incur additional expenses and necessitate a rate increase. The vast majority of public utilities regulated by the Commission are privately-owned and many are operated on a for-profit basis. In contrast, TUID is a governmental entity—a local district created by Garfield County, run by trustees appointed by the Garfield County Commission, and operating pursuant to Title 17B of the Utah Code. As such, all costs and expenses incurred by TUID to provide utility service and to operate Ticaboo’s utility services are inevitably and

⁴² *Id.* at 9.

⁴³ *Id.*

⁴⁴ *See* Utah R. Admin R746-100-2(G).

⁴⁵ Utah R. Admin R746-100-1(B) (emphasis added).

⁴⁶ Utah Code Ann. § 63G-4-202(3).

⁴⁷ *See* Utah Code Ann. § 63G-4-403(4)(h)(iii).

invariably paid by the customers of TUID, which customers are the very public whose interests the Commission is required to protect. As the presiding officer noted at the Hearing, if this proceeding were to be converted to an informal proceeding and either party desired to take the matter to court, it would go to the district court level for *de novo* review.⁴⁸ As TUID has argued from the very beginning of this docket, many of the issues raised by Ms. Seamons in the Complaint are clearly beyond the Commission's jurisdiction. However, some of the issues raised by Ms. Seamons—notably the questions surrounding standby fees that are the crux of her Complaint—are indeed within the Commission's jurisdiction over a public utility. TUID has expended significant time and money to respond to the portions of the Complaint involving matters within the Commission's jurisdiction. Converting this docket to an informal proceeding would, in all likelihood, require TUID to make similar arguments and defend its actions in district court. Involvement in a lawsuit involving standby fees and other issues that could and should be decided by the Commission would cause TUID to incur significant additional expenses that would necessarily be borne by the paying customers of TUID. Litigation is costly and such costs would almost certainly result in a rate increase to the detriment of TUID's ratepayers, which would not be in the public interest. Instead, the Commission should leave this docket as a formal proceeding and issue an order dispensing with the Complaint.

Converting this docket to an informal complaint would unfairly prejudice TUID as it would cause unnecessary uncertainty, cause TUID to incur additional expenses, and effectively render as moot this already prolonged proceeding. If this docket is converted from a formal proceeding to an informal proceeding, any further action would be a *de novo* review at the district court level, as

⁴⁸ Hr'g. Tr. 7-8.

noted by the presiding officer.⁴⁹ Such a proceeding at the district court level would likely require TUID to fully relitigate the issues surrounding the legality of standby fees and other issues, on which the Commission has already ruled.⁵⁰ Forcing TUID to relitigate those issues would be very costly and would likely necessitate a rate increase to be paid by TUID ratepayers. Further, although no analysis or action is required to keep this docket as a formal proceeding, TUID notes that doing so will not prejudice Ms. Seamons in any way. To the extent the Commission has jurisdiction over the issues raised by Ms. Seamons, she may appeal those decisions through the usual process. To the extent the Commission does not have jurisdiction over the issues raised by Ms. Seamons, she could presumably raise those issues at the district court level after the Commission issues its order in this docket on the portions of the Complain that are, in fact, within the Commission's jurisdiction.

The Commission should not convert this docket to an informal proceeding because doing so would not be in the public interest and would unfairly prejudice TUID. As the Commission is aware, the precise boundaries of the Commission's jurisdiction over TUID as an electric improvement district are, in fact, at issue in this proceeding. To the extent that either party appeals a Commission decision and must, as the presiding officer stated, "argue whether or not the commission correctly identified the boundaries of its jurisdiction," TUID believes that such a determination should indeed come at the appellate court level and that such an appellate review process exists for that very purpose. Converting a formal consumer complaint to an informal proceeding, while allowed by rule, would be an extraordinary action by the Commission—

⁴⁹ *Id.*

⁵⁰ *See* Commission Order on Motion to Dismiss and Notice of Hearing at 10 (July 6, 2016) ("We dismiss Ms. Seamons's allegations as to the legality, in general, of standby fees and as to the legality of the specific rates and policies set forth in TUID's tariff.").

particularly at this point in the formal adjudication process after extensive briefing, motions, and a lengthy hearing. To the best of TUID's knowledge, the Commission has not converted a formal contested complaint to an informal proceeding in recent history and the Commission has no reason to do so now. TUID requests that the Commission keep this docket as a formal proceeding and issue an order accordingly.

BILLING STATEMENTS

Per the Commission's request, billing statements for Ms. Seamons' properties are attached as follows: billing statement for June 2013 (**Exhibit I**), billing statement for July 2013 (**Exhibit J**); billing statement for September 2013 (**Exhibit K**), and billing statement for October 2013 (**Exhibit L**). As standby fees were implemented beginning in September 2013, the bills for June and July 2013 reflect the rates charged before the standby fees were implemented. The bills for September and October 2013 show that Ms. Seamons was indeed billed for standby fees in compliance with TUID's effective tariff. Beginning with the bills sent out for September 2013, all bills included, in bold lettering on the first page, the statement "Standby Fees now required on all properties." The billing statements attached as **Exhibits K** and **L** include this notice. As Mr. Shortreed testified at the Hearing, all customers receive a bill each month.⁵¹ Since Ms. Seamons owns multiple properties, she received a combined "group billing invoice" for all properties.⁵² Ms. Seamons indeed paid, from time to time, the bills for utility services to occupied properties, which shows that she did indeed receive the billing statement from TUID.

As an additional matter, the issue of utility service to Jim and Val Hills (who were tenants in one of Ms. Seamons' properties in Ticaboo—a trailer on lots 4 and 5) needs to be addressed to

⁵¹ Hr'g. Tr. 158.

⁵² *Id.*

correct the testimony offered on that topic by Ms. Seamons and Ms. Broadbent. Both Ms. Seamons and Ms. Broadbent testified that as of August 2013 neither had informed TUID that service was to be disconnected to the Hills.⁵³ However, in a handwritten note sent to TUID in June 2013, Ms. Seamons wrote “Jim and Val are moving out on #3+4 [*sic*] so that needs to be inactive.” That writing by Ms. Seamons is on page three of the document attached as **Exhibit M**. This document directly contradicts the testimony of Ms. Seamons and Ms. Broadbent and their testimony should be weighed accordingly, particularly to the extent such testimony constitutes hearsay from years ago.

CONCLUSION

TUID has, at all times, treated Ms. Seamons and her properties in Ticaboo in accordance with TUID’s tariff. TUID respectfully requests that the Commission issue an order affirming the enforceability of TUID’s tariffs, clarifying that Ms. Seamons is indeed required to pay standby and other fees imposed by TUID, and dismissing the Complaint. To do otherwise would not be a decision supported by the evidence received in this proceeding. Ms. Seamons’ complaint is nothing more than an attempt to avoid paying for the availability of utility services and facilities of which she enjoys the benefits. Ms. Seamons owns multiple properties 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—leading to an extremely unjust and unreasonable result.

⁵³ *Id.* at 78.

DATED this 26th day of August, 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 TICABOO UTILITY IMPROVEMENT DISTRICT'S POST-HEARING BRIEF was served as indicated on the following on August 26, 2016:

By email and hand delivery:

UTAH PUBLIC SERVICE COMMISSION
c/o Gary Widerburg, Commission Secretary
160 East 300 South, Fourth Floor
Salt Lake City, Utah 84111
psc@utah.gov

By email:

Jon M. Hogelin
SALCIDO LAW FIRM PLLC
jon@salcidolaw.com

Patricia Schmid (pschmid@utah.gov)
Justin Jetter (jjetter@utah.gov)
Rex Olsen (rolsen@utah.gov)
Utah Assistant Attorneys General

/s/ Adam S. Long