

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the matter of the complaint of PAUL F. MECHAM,
Complainant,
vs.
UTAH POWER & LIGHT,
Respondent

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DOCKET NO. 03-035-09
REPORT AND ORDER

ISSUED: September 2, 2003

SYNOPSIS

Complainant having failed to show any violation of Respondent's published tariffs or of the applicable statutes and Commission rules, we dismiss.

By The Commission:

On May 7, 2003, Complainant Paul F. Mecham ("Mr. Mecham") filed this formal complaint challenging the legal ability of UP&L to bill him, as part of his utility service, \$0.12 per month for the Electric Lifeline Program. Respondent Utah Power & Light (UP&L) filed its response including a request that the complaint be dismissed on June 9, 2003. Mr. Mecham filed a response to UP&L's request for dismissal on June 10, 2003. On June 25, 2003, the office of the Utah Attorney General, representing the Division of Public Utilities ("DPU"), filed a memorandum containing the recommendation of the DPU. The DPU's recommendation was that the complaint be dismissed because Mr. Mecham had failed to state a claim against UP&L.

There are no disputed facts in this matter. We will therefore address Respondent's request for dismissal based on the pleadings on file.

The charge in question arose out of a general rate case proceeding for UP&L, Docket No. 99-035-10, wherein the Commission found implementation of Lifeline Electric Service Rate to be in the public interest and ordered implementation of the program within 90 days of the date of the Order. Pursuant to that order a stipulation was entered into between all interested parties except one. The tariff under which the charges complained of herein are made was approved in Docket No. 00-035-T07, in a Report and Order issued August 30, 2000, and Erratum Order issued August 31, 2000. Mr. Mecham appeared as a witness for the Division of Public Utilities in Docket No. 99-035-10, advocating against adoption of the Lifeline rate. No appeal of the Commission's decision to implement the program in Docket No. 99-035-10, was filed. Likewise, no appeal was made of the Commission's approval of the tariff in Docket No. 00-035-T07.

Third Party Billing. Mr. Mecham claims that the subject tariff provision violates *Utah Code Ann.* §54-4-37. That provision applies to charges from a "third party" appearing on the bill of a public utility. Section 54-4-37(1)(e)(i) states that "'Third party' means any person other than the account holder and the public utility." The charges complained of are from the public utility; they are part of the public utility's authorized tariff. They are not third party charges, and Mr. Mecham's reliance on this code section is misplaced.

Commission Authority. Mr. Mecham also appears to claim that the Commission exceeded its authority in approving the tariff. That claim also fails. The Commission has the authority to implement such a rate if it finds it to be in the public interest.

FINDINGS OF FACT

1. Complainant is a residential customer of Respondent, an electric corporation certificated by this Commission.
2. In Docket 99-035-10, UP&L was ordered to collect from its Utah customers an amount each month for the Electric Lifeline Program. UP&L has, since then, collected approximately \$0.12 per month from Complainant in accordance with our Order and its Commission approved tariff.

CONCLUSIONS OF LAW

The Commission has party and subject-matter jurisdiction. Complainant has failed to allege facts which would entitle him to relief. The Electric Lifeline Program was properly established and funded by this Commission. The charge is not a third-party charge subject to the provisions of *Utah Code Ann.* §54-4-37. Accordingly, the charges imposed on Complainant are lawful, and Respondent is entitled to collect the same. The complaint must be dismissed.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The complaint of PAUL F. MECHAM against UTAH POWER & LIGHT is dismissed.
2. Any person aggrieved by this Order may petition the Commission for review/rehearing pursuant to the *Utah Administrative Procedures Act, Utah Code Ann.* §63-46b-1 *et seq.* Failure so to do will preclude judicial review of the grounds not identified for review. *Utah Code Ann.* §54-7-15.

DATED at Salt Lake City, Utah, this 2nd day of September, 2003.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary

G#35012