

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)	
MICHAEL FRANCIS NIEMI, Complainant,)	<u>DOCKET NO. 05-035-29</u>
v.)	
UTAH POWER, Respondent)	

In the Matter of the Formal Complaint of)	<u>DOCKET NO. 05-057-07</u>
MICHAEL FRANCIS NIEMI, Complainant,)	
v.)	<u>REPORT AND ORDER</u>
QUESTAR GAS, Respondent)	

ISSUED: August 17, 2005

SYNOPSIS

Complainant having failed to demonstrate that Utah Power & Light Company or Questar Gas Company violated any provision of statute, rule, or tariff, we dismiss.

By The Commission:

PROCEDURAL HISTORY

On May 10, 2005, Complainant Michael Niemi filed a formal complaint claiming Respondent Utah Power (“Utah Power”) refused to terminate his electric service when requested, colluded with Questar Gas (“Questar”) regarding the appropriate date of termination of service, and refused to refund his security deposit. Complainant seeks attorney’s fees, back payments and refund of the security deposit.

Also on May 10, 2005, Complainant filed a formal complaint claiming Respondent Questar refused to terminate his gas service, refused to refund a security deposit, instituted collection action, and continued to bill him for an unoccupied residence. Complainant seeks attorney’s fees, termination of gas service, and cessation of collection action.

On June 6, 2005, Utah Power filed a memorandum in answer to the complaint and requested dismissal, arguing Complainant had failed to allege any violation by Utah Power of its tariff or other statutory or regulatory requirements. Also, on June 6, 2005, the Division of Public Utilities (“Division”) filed a memorandum recommending the complaint be dismissed as its investigation had disclosed no violation by Utah Power of any statute, rule, or tariff.

On June 8, 2005, Questar filed its Answer which also sought dismissal on the ground that Complainant failed to state a claim on which relief can be granted. On June 14, 2005, the Division recommended dismissal of this complaint.

On August 4, 2005, hearing on this matter was held before the Commission's Administrative Law Judge. At hearing, Complainant represented himself and provided sworn testimony, as well as the sworn statements of two witnesses unable to attend the hearing. Utah Power was represented by David L. Elmont. Keven Hoopiiaina, Utah Power Customer and Regulatory Liaison, provided sworn testimony on behalf of Utah Power. Questar was represented by Jenniffer N. Byde. Linda Kizerian, Questar Account Supervisor, testified for Questar. Jennifer Angell, Utah Power Regulatory Liaison, was present at the hearing and testified at Complainant's request.

BACKGROUND, DISCUSSION, AND FINDINGS

A. Background

I. Termination of Service

In his complaint against Utah Power, Complainant stated he was evicted from his residence at 6499 Daffodil Way, West Jordan, Utah, on January 20, 2004. However, in his complaint against Questar and in his testimony at hearing, Complainant stated he was evicted on January 24, 2005. Complainant claims he contacted both Utah Power and Questar by telephone sometime in late January prior to his eviction to request termination of service. Neither Questar nor Utah Power have any record of such a telephone call. Complainant also claims that neither Questar nor Utah Power ever terminated service to his residence.

At hearing, Utah Power produced records indicating Complainant contacted Utah Power on February 24, 2005, requesting termination of electric service. Utah Power states this is the first time Complainant had requested termination of service. Utah Power terminated service to Complainant's residence on February 24, 2005.

Questar claims the first notice it received to terminate Complainant's gas service was contained in a February 9, 2005, letter from Complainant received on February 17, 2005. Questar terminated Complainant's gas

service on February 22, 2005, three business days after receipt of this letter.

Upon termination of service, Utah Power and Questar sent Complainant final bills based on their respective service termination dates of February 24 and February 22, 2005. In response to his formal complaints, both Respondents, attempting to bring the formal complaint proceedings to a close though admitting no error in terminating Complainant's utility service, credited his accounts for all utility usage after January 24, 2005. In fact, Utah Power, relying on Complainant's assertion in his formal complaint that he had vacated the premises on January 20, 2005, credited Complainant's account for usage occurring after January 20, 2005.

Complainant, rather inexplicably, continues to maintain that his gas and electric service at the Daffodil Way address has never been terminated even though he has at no time been billed for any gas or electric service consumed at that residence after February 24, 2005.

II. Security Deposit

Because of bankruptcy proceedings filed by Complainant on August 30, 2004, Utah Power subsequently sought and received from Complainant a security deposit of \$150.00. Utah Power testified that upon receipt of Complainant's request to terminate service, the \$150.00 security deposit and \$2.91 accrued interest were applied to Complainant's outstanding account balance.

Questar testified it had no prior knowledge of Complainant's bankruptcy and had therefore never collected a security deposit from Complainant. Complainant's Questar account records indicate no security deposit was ever collected. Upon receiving proof of the bankruptcy from Complainant on February 24, 2005, Questar credited Complainant's account for all amounts billed up to the August 30, 2004, date of filing.

At hearing, Complainant offered no evidence of improper disposition of security deposits by either Utah Power or Questar.

III. Collusion

Complainant claims Questar and Utah Power colluded in determining the effective date of his

termination of service and that Respondents provided Complainant's private information to each other as well as to third parties involved in his unrelated bankruptcy and foreclosure actions. As proof of this collusion, Complainant points to Questar's admitted contact with Utah Power in which Questar sought information regarding the date Complainant first contacted Utah Power to request termination of service.

Because Complainant claimed to have contacted each utility sometime in late January 2005 to request termination of service, Questar contacted Utah Power in April 2005 to inquire when Utah Power first received Complainant's termination request. Questar testified that had Utah Power confirmed it had been contacted by Complainant in late January, Questar would have given Complainant the benefit of the doubt and honored his claimed termination date of January 24, 2005. However, because Utah Power informed Questar that its first contact with Complainant regarding requested service termination was February 24, 2005, Questar concluded its own records were most likely correct.

Utah Power and Questar testified that neither provided private information to the other, nor to any third party whatsoever. Complainant failed to produce any evidence to the contrary.

IV. Collection Action

Complainant's claims with respect to the collection actions of Utah Power and Questar are, at best, curious. On the one hand, he complains about Respondents' collection actions and asks this Commission to order that they cease. Yet, on the other, he complains that Respondents have not filed any formal collection action and admits that both Respondents promptly suspended collection activities upon the filing of his formal complaints.

Utah Power and Questar confirm that when Complainant's final bill became past due both utilities forwarded the matter to their respective collection agencies. Respondents also confirmed that they suspended these collection activities upon filing of Complainant's formal complaints.

B. Discussion and Findings

Throughout these proceedings, Complainant has repeatedly raised allegations regarding a prior bankruptcy filing and dealings with his previous mortgage company and their attorneys in an apparent attempt to show

how these various parties have acted in collusion with Questar and Utah Power. However, the intended object of such collusion remains unclear and, in any event, appears irrelevant to these complaint proceedings.

Reduced to their basic elements, these formal complaints are based upon the claim that Utah Power and Questar failed to terminate Complainant's service when first requested to do so, resulting in Complainant being improperly billed for service after January 24, 2005. However, Complainant failed to produce any evidence beyond his own assertions that he contacted both Questar or Utah Power to request termination of service on or before January 24, 2005. In contrast, Respondents' detailed customer service records and testimony indicate Complainant did not contact either party to terminate service until mid- to late February 2005. In addition, Questar and Utah Power have both credited Complainant's accounts for utility service consumed after January 24, 2005 (or, in the case of Utah Power, January 20, 2005), effectively rendering moot Complainant's claim of over billing by providing Complainant the only relief the Commission could have ordered had we determined Respondents had acted improperly.

With respect to the issue of security deposits, Complainant failed to produce any evidence indicating that Questar collected a security deposit from him. Since none was collected, his complaint that said deposit has not been returned to him is without merit. Utah Power did collect a security deposit, but credited the deposit and interest to the outstanding balance on Complainant's account at the time of final billing as permitted by Electric Service Schedule No. 9 of its tariff. We find nothing improper in this action.

We likewise find without merit Complainant's claim that Respondents colluded to arrive at a mutual service termination date. The evidence indicates Respondents separately arrived at different initial service termination dates based upon their respective customer service records. In addition, even though both Respondents have now credited Complainant's account based on his claim that he requested termination coincident with his eviction, Utah Power and Questar continue to recognize different termination dates based on the different dates contained in the two complaints. We fail to see in these differences any evidence of collusion. Questar admits to having contacted Utah Power to find out when Complainant first requested service termination from Utah Power, but we cannot conclude that such an inquiry was in any way improper. Finally, there is simply no evidence in the record to support Complainant's

claim that Utah Power and Questar shared personal or private information about Complainant with each other or some other third party.

Finally, we find nothing in Respondents' initial collection actions or their subsequent suspension of those actions in violation of their statutory or regulatory responsibilities. As with Complainant's allegations regarding the dissemination of private information, Complainant is free to pursue action in another forum if he believes Respondent's collection activities were unlawful. However, we find no violation of matters over which this Commission has jurisdiction and therefore conclude that neither Utah Power nor Questar has violated any statute, rule or tariff obligation in this or any of the matters brought before the Commission by Complainant.

Based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters the following proposed

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The complaint of MICHAEL FRANCIS NIEMI against UTAH POWER is dismissed.
2. The complaint of MICHAEL FRANCIS NIEMI against QUESTAR GAS is dismissed.
3. Pursuant to *Utah Code Annotated* §§ 63-46b-12 and 54-7-15, agency review or rehearing of this order

may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of *Utah Code Annotated* §§ 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 17th day of August, 2005.

/s/ Steven F. Goodwill

Administrative Law Judge

Approved and Confirmed this 17th day of August, 2005, as the Report and Order of the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

G#45386(Docket No. 05-035-29)
G#45387(Docket No. 05-057-07)