- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of Dee Dillman and Marie Ginman against Rocky Mountain Power	)	DOCKET NO. 08-035-84
	)	REPORT AND ORDER

ISSUED: January 14, 2009

SYNOPSIS

This matter is before the Commission on Dee Dillman and Marie Ginman's (collectively the Dillmans) formal complaint against Rocky Mountain Power (Company). After the Dillmans' unlicensed contractor damaged a power line, the Dillmans requested the Company reconnect the line. The Company reconnected the line and charged the Dillmans for labor and equipment costs. The Dillmans disputed the bill and later filed their complaint with the Commission, arguing that the charges for labor and equipment were unjust and unreasonable. The Company moved to dismiss the complaint arguing that the Commission lacked jurisdiction. With this Order, the Commission finds it has jurisdiction over the Complaint, denies the Company's Motion to Dismiss, finds the charges reasonable, and makes other orders relevant to other related issues.

By The Commission:

BACKGROUND

On May 15, 2008, the Dillmans hired unlicensed contractors[1] to perform tree-trimming work near the power line to their home. A contractor caused a portion of the tree to fall on the power line resulting in damage to the line. The Dillmans called the Company and requested it reconnect power to the Dillmans' home. After a troubleshooter for the Company assessed the situation, and isolated the live wire, he called a dispatch crew to repair the damaged wire. Because of the extent of damage to the wire, the dispatch crew had to replace the 40-year-

[1] Mr. Dillman stated that he "had some people that were looking for work" perform the tree trimming. They were not licensed contractors.

old wire with a modern one. The Company's connection was only a temporary connection, pending the Dillmans' upgrade of the weatherhead. The Company billed the Dillmans for the labor and equipment used by the dispatch crew at the Dillmans' home, a total of $1,249.38. The Dillmans disputed the amount of charges billed to them. They have alleged that company representatives told them there would be no charge for the repairs. The Company, however, has stated that its representatives only stated that they would not bill for the wire, but would bill for the labor and equipment costs. The Dillmans refused to pay any portion, claiming that they should not have to pay for any portion of the expenses. Because the Dillmans' contractor was unlicensed, they have not made a claim against him/them. Additionally, the Dillmans have refused to submit the claim for payment by their homeowner's insurance. The Dillmans' filed a formal complaint with the Commission and requested it order the Company to cease any collection efforts, and order the Company to perform certain work on the Company's property and on the Dillmans' property. The Dillmans requested a hearing on their Complaint.

The Company moved for dismissal of the Dillmans' Complaint, arguing that the Commission did not have jurisdiction to determine whether the charges for the repairs were just and reasonable. The Division of Public Utilities also argued that the Commission lacked jurisdiction to determine whether the charges were just and reasonable and recommended dismissal.

A hearing was held before the Administrative Law Judge of the Commission on December 10, 2008. The Dillmans appeared *pro se*, and had an expert witness, an inspector for

Salt Lake City. Ms. Barbara Ishimatsu was counsel for the Company and entered her appearance. The Company also had three employees testifying on its behalf.

After the hearing, but before the Commission issued a Report and Order, the Company proceeded to charge the Dillmans additional charges and late fees on the outstanding bill in the amount of $63.72. On December 22, 2008, the Company sent a "past Due Reminder" demanding the Dillmans pay the total amount of $1,313.10. Additionally, the Company sent a letter to the Dillmans stating if they did not make "necessary electrical repairs to [their] weatherhead and service attachment point by January 12, 2009" the Company would terminate their service.

ANALYSIS

Company's Motion to Dismiss

On November 10, 2008, the Company moved the Commission dismiss the Complaint, arguing the Commission lacked subject-matter jurisdiction pursuant to Utah Code Ann. § 54-4-9(3). That section states in part: "No request for agency action shall be entertained by the commission concerning the reasonableness of any [utility company] rates or charges" unless the request is signed by "not less than 25 consumers or purchasers." *See id.* The Company claims that because the Dillmans' complaint stemmed from the charges made by the Company for reconnect, that the Commission may not determine if the charges are reasonable.

The Commission, however, declines to grant the Company's Motion. The Commission has "power and jurisdiction to supervise and regulate every public utility in this state,. . . ." *Utah Code Ann.* § 54-4-1. The Commission is vested with power and jurisdiction to

ensure compliance with those statutes governing public utilities. Regarding public utilities' charges for product or services rendered, Utah Code Section 54-3-1 states as follows:

> All charges made, demanded or received by any public utility . . for any product . . ., or for any service rendered or to be rendered, shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful. . . .

The Commission does have jurisdiction to determine whether the charges are just and reasonable and so the Company's Motion is denied.

The Complaint

The Dillmans filed their complaint on October 20, 2008. Their complaint essentially contained five main allegations, namely that: 1) because there was no damage to the power line, they should not have been charged for reconnect; 2) the work done was beyond the scope of what was reasonable and the charges were excessive; 3) the work was not done to code; 4) the company waived any right to charge for services rendered; and 5) there was no proof that the bills submitted by the Company were for work on the Dillmans' home.

Damage to the Power Line

The first issue to resolve is whether the Company may properly charge the Dillmans for the services in reconnecting the power line. The Company typically does not charge the customer to reconnect a line or repair a damaged line when the felling is not caused by the customer. The Company does charge customers to repair property damaged by the customer. The Company's Regulation's state in part: "In the event of loss or damage to the Company's property, arising from neglect, carelessness, or misuse by the Customer, the cost of necessary

repairs or replacement shall be paid by the Customer." There is no dispute that the power line in this case was felled by the Dillmans' contractor's "neglect, carelessness, or misuse . . . ."

The remaining question is whether the felling of the line caused damage. Mrs. Dillman stated that there was no damage to the line. Mr. Dillman also stated that there was no damage to the line, i.e. "There was no pinching that occurred . . . There was no large branches . . . that could have caused crushing. There was no kinking or other kind of things that would have caused damage to the wire . . . I saw no damage whatsoever to the wire . . . ." Because there was no damage to the wire, he cited that as the reason why the reconnection of the power line should have been "relatively simple" and "how short time . . . less than an hour . . . [it should have taken] to reconnect that." Aaron Carillo, the Company journeyman troubleshooter, who first responded to the report of a downed power line, however, testified that the power line was damaged, specifically, "that the wire was bent . . . the jacket had been taken away off the wire, and some strands were broken." He stated that after he inspected the line, he "noticed the wire was damaged and there was no way that we could reconnect that wire" and that they "would have to upgrade it." Carillo also testified that the wire was very old[2], but that even if the wire had been the modern type, "it still would have needed to be replaced by the impact from the tree that fell down on it."

Carillo's testimony is more reliable. Although Mr. Dillman appears to have more experience with electrical service connections than the average homeowner, Carillo's

[2] Larry Young (Young), Carillo's supervisor, and lead manager for the Wastach Restoration Center, testified the power line was "at least . . . 40 years old."

professional experience and actions in responding to the downed line tend to show that the power line was in fact damaged when the Dillmans' contractor felled the tree on the power line. Carillo has been employed as a troubleman since October 2002. During his six years as troubleman, Carillo is one of the first on the scene to respond to calls of power lines felled for various reasons. He is trained to determine what is needed to restore power when a line is felled, and is the one the Company entrusts to determine whether there is damage to a line. In his opinion, there was damage to the power line, enough that even if the line had been the modern No. 2 Triplex, it would still have required replacement. Further, Carillo's own actions lend credence to the fact that the line was damaged. Initially, the Company received a report that the line was simply disconnected by a felled tree. Carillo testified that he has made and can make repairs by himself it possible. He thought he would "be able to make the repairs [him]self" as he apparently had done in the past and would do in situations where the felled line was not damaged. Upon further inspection, however, he noticed that he could not do the repairs alone, because of the damage to the line and the conditions surrounding the site. He requested a four-man crew[3] to the site to repair the line because the damage and work was more than he could do. It is more likely that Carillo requested the assistance because there was actually damage to the line. It seems less likely that the Company or Carillo made repairs in an effort to simply make capital improvements at the Dillmans' expense, as the Dillmans suggest. Because there was

[3] Young testified that the four-man crew was comprised of all independent contractors who were employees of Wasatch Electric. They were based out of the Wasatch Restoration Center, a "24/7 restoration shop [that handles] all of the outages or power quality issues that happen between the point of the mountain and Centerville."

damage caused by the Dillmans' felling of the line, the Commission must then determine whether the charges for repair were just and reasonable.

Reasonableness of the Work and Charges

The Dillmans' second allegation is that the work and subsequent charges were not just and reasonable. The Dillmans admit that they did ask the Company to reconnect the wire. The Dillmans state that they only asked the Company to reconnect the wire and not replace it. Because of the damage, however, the Company witnesses testified that the wire had to be replaced. However, the Dillmans and their expert repeatedly stated that the work should have been a "relatively simple" procedure that should have taken Carillo "less than an hour." Carillo and Larry Young, however, both testified that repairing the damaged wire at this site was not a simple procedure. Carillo stated that because of the length of the service line and the conditions of the property, "as far as being a fairly simple job, I don't know where that comes into play. I mean, it's not a simple job—not at all." When Carillo first arrived at the scene, he encountered a still energized wire which Mr. Dillman himself described as a "dangerous condition." Upon arrival, he isolated the wire at the pole to de-energize it. Because of the length of the service drop (Carillo stated he needed about 200 feet for the repairs), however, he realized he was not able to repair it himself. Carillo stated that the service was "abnormally long" and that he did not carry that amount of wire, nor did crews keep that much wire on their vehicles. The crews had to travel from their then-current locations, to the Wasatch Restoration Center, retrieve the needed length of wire, then return to the Dillmans' home. That time of travel was billed to the

Dillmans. Carillo also testified that the house was on the east bench of the Avenues and that the steep terrain made the work more difficult than usual. Additionally, there was a lot of debris in work site due to other felled tree branches. He stated that even though the work was basic, lineman-type work, it required the four man crew. Even the Dillmans' own expert, Richard Lloyd Barnes (Barnes), an inspector for Salt Lake City, agreed that the Dillmans' service drop was "longer than normal." In total, the Company billed the Dillmans 2.5 hours of work for time spent in gathering all materials needed to repair the line by replacing and repairing the wire. This included the time for four laborers at 2.5 hours of time and equipment used at 2.5 hours of time. The time spent is reasonable given the conditions.

One objection raised by the Dillmans to argue the charges were unreasonable was that the work could have been done by a two-man crew, and that a four-man crew was excessive. Additionally, the Dillmans complained that some of the equipment billed to them was not even used at the site. Company witnesses did not dispute that some of the equipment used was not used at their home. The Dillmans point to a July 23, 2008 letter sent by field claims representative, Russell Salmon, wherein Salmon stated that he had apparently spoken with Carillo shortly after the repairs. Salmon had "indicated that it was a job two men could probably have done, provided we had a two man crew available." The Dillmans contend that had the Company simply used a two-man crew, the charges would not have been as high. Young and Carillo, however, both testified that Salmon mis-spoke, because there exist no two-man crews. The reason, Young stated, was that their crews are emergency response crews that "need to be able to respond to—from . . . a car hit pole, primary dig-in, or even to replacing a long service.

They have to be equipped to do anything at any point in time." Not only do the crews need the adequate man-power to properly respond to emergency situations, but also the appropriate equipment. Young testified that the Dillmans were billed for the typical equipment of a four-man emergency response crew. That even though the crew might not need all the equipment, the Company is nonetheless billed by the contractor for it. For that reason, the Dillmans were charged for the equipment and the labor costs.

The charges for the labor and equipment to the Dillmans are reasonable. It was the Dillmans' contractor who caused the damage requiring the company to replace and repair the line. Because it was an emergency situation, the Company was required to send out its four-man work crew to make the repairs. Even if, as the Dillmans contend, the work could have been done by a two-man work crew, there are only four-men crews available to respond to the situation their contractor caused. Therefore, the amount of the charges appear just and reasonable.

The Dillmans have also contended that "a regular electrician could have reconnected service at the splice for under $200," a cost far below the $1,249.38 the Company charged—further proof that the Company's charges were not just and reasonable. The Dillmans, however, did not show that an electrician could have done the same work for less than $200. They did not present any statements from electricians, nor did they have any electrician testify that such work could have been done for less than $200. In fact, Carillo and Young both testified that a "regular electrician" could not have done the same work because the work is "completely different. Young also testified that a regular electrician is "not qualified to work on

our lines. They are not licensed to do that in most states I'm aware of." It appears that only Company contractors or employees could have done the necessary repairs.

Finally, there is other evidence that the company was not simply trying to exaggerate the charges for the Dillmans. Company witnesses testified that normally, in other cases where customers have damaged the line, they have been billed for the time incurred by the troubleman (in this case Carillo) and also for the wire. Salmon and Young both testified, and the billing shows, that the Dillmans were not charged for Carillo's time nor for the wire, charges which could have reasonably been charged to the Dillmans.

Code Compliance

The Dillmans complained that the temporary connection done by the Company was not done to code. There is little doubt the work is not done to code. The Dillmans' expert pointed out some of the deficiencies with the Company's temporary connection of the line. Barnes stated that the line was not properly connected to the weatherhead, and that the only way to correct the problem would be to undo the splice work, properly place the wire spacer over the wire, then properly reassemble the weatherhead.

However, there is also little doubt that the connection was meant to serve only as a temporary remedy. The Dillmans wanted the temporary power restored and stated that they would be having repairs or upgrades made so the temporary connection would ultimately be made permanent. Carillo testified, that he recognized the temporary work was not up to code. Responding to Mr. Dillmans' questioning, he stated " . . . . I do have input on the anchor. And

that's what I'd spoken with you about, is that your service wasn't up to code. And at that time you were going to need to install a new weatherhead, and you were going to have to have that guide back to your roof, just as your inspector said . . . we were just providing you with temporary power until you could get your repairs made." Carillo further testified that when he agreed to connect temporary power, he "made [his] judgment call to see that there was no immediate danger and . . . could hook the power up temporarily while [the crew] was doing [their] work, and at that time he could get an electrician and they could call us back for disconnect repairs while they did their work." Therefore, the reason why it was not done to code was because it was meant to be temporary until the Dillmans made needed upgrades they said they would make and needed to be made. Even Barnes testified that the condition of the weatherhead did not meet code, but that the Dillmans had the responsibility to repair that equipment. The Dillmans are responsible for repairing the weatherhead before the Company makes permanent repairs to any company property connecting the line to the weatherhead. It would not be the Company's responsibility to make repairs to the Dillmans property and the Commission will not order the Company to make such repairs.

The Company's Alleged Waiver

The Dillmans also contended the Company waived any right to charge them for the labor. The Dillmans repeatedly stated that Company representatives told them there would be no charge for any expenses incurred by the Company in replacing the damaged power line. Company witnesses, however, stated that they only said there would be no charge for the wire

itself, but that they would have to pay for expenses incurred for the dispatch crew. This seems to be the reasonable interpretation given the witnesses work experience and given that the Dillmans' contractor caused the damage. It is also consistent with previous evidence submitted by the parties. Carillo testified that he first asked Mr. Dillman who his contractor was, to be able to bill the cost to the contractor. When Mr. Dillman stated they were not there and that he did not have a phone number, Carillo testified that he told Mr. Dillman there would be a charge, and that he would have to "settle that up with his contractor." That was consistent with Young's testimony, that normally they would have billed the damages to the contractor. But with no licensed contractor here, the Company had to bill the Dillmans. Additionally, it appears that as far back as August 6th, the Company had been consistent in telling the Dillmans that even though they did not have to pay for the wire, they did have to pay for the labor and equipment. Mrs. Dillmans' letter of August 19, 2008 to the Commission states that after a conversation with Salmon, Salmon agreed that a company representative did tell them the wire was free of charge. When she asked if she should tear up the bill, Salmon apparently responded that "no you still have to pay it." He reiterated that they were not charged for the cost of the wire—the cost of the material itself, but were charged for the labor and equipment. Mrs. Dillmans' confusion regarding charges seemed especially evident during the hearing during a short exchange between Mrs. Dillman and Salmon. Upon cross-examining Salmon, Mrs. Gillman stated "when we spoke, you told me at least three times that the reason you were not *charging for the wire* was because Mr. Carillo had told my husband that there would be *no charge for the wire* upgrade at least three times." Salmon agreed that they were not being billed *for the wire.* Mrs. Dillman

seemed surprised when Salmon agreed and she said "we're on the same page." He reiterated that they had been told by Carillo and himself that they would have to pay for labor and equipment. Salmon said that Carillo had told Mr. Dillman that either they or their contractors had to pay for the damages, and that since Mr. Dillman "wouldn't give up contractor information . . . he said he was going to have to bill Mr. Dillman." It appears likely the Dillmans misunderstood the Company representatives, interpreting the statement that there would be no charge for the wire to mean the Company would not charge for any of the restoration expenses.

The Dillmans also point to a string of e-mail exchanges between Mrs. Dillman and an online customer service representative to show the Company may not charge them. These e-mails, however, are not enough to show that the Company waived its right to bill for damage done to the power line. In response to Mrs. Ginman's first e-mail regarding costs to reconnect a downed power line, the company representative responds "It depends on whether it is a primary voltage, secondary voltage . . .or service. . . . What's the situation? . . . . *The length of the wire figures in as well, and why the line is downed.*" In response, Mrs. Ginman's email, was not consistent with other statements she made regarding the cause for the downed line. She said "Let's say a roof ladder fell and took down a 50 foot long service line (the line from the house to the pole). It is a general question and all I need a ball park figure [sic]." Based on that, the company representative responds, "I believe there would be no charge to just hook it up again . . . ." Mrs. Ginman does state later that the downed line was the "homeowner's fault" and in response, the company representative states that "even if it is customer's fault, there should be

no charge." However, the representative does clarify that "if the tree limb has pulled equipment away from our pole, and materials have been ruined on the pole, *it may be possible that some charges would apply*. I have no idea of cost, *as it would depend on the pole hardware damage that was done*." Therefore, even without knowing all the details, the company representative conditioned her response, stating essentially that whether there would be charges depended on the particular circumstances. The e-mails do not show the Company intended to waive its right to bill the Dillmans for their damages.

Billing Evidence for Work Performed

The Dillmans also stated that they have never received sufficient evidence showing that the detailed billing showing charges for the laborers and equipment was actually for work performed at their home. Witnesses Carillo, Salmon and Young all testified that the detailed billing represented work done by the dispatch crew at the Dillmans' home. Additionally, the Company provided evidence on December 16, 2008 to the Commission that the detailed billing was in fact due to work done on the Dillmans' home. That evidence is a screen shot of the call log initiated by the Company dispatcher pursuant to the outage report. The Company also submitted the work order numbered 5185270 created when Carillo determined he needed a dispatch crew to make repairs. That work order references Carillo as the troubleman, lists the Dillmans' address and contains the tracking number for the outage report. The daily time sheet (Daily Job Journal) for the independent contractors based on that work order lists the Dillmans' residence as job #3, and their hours (2.5) are consistent with those billed to the Dillmans. The testimony given at the hearing and the subsequently filed documents establish

that the detailed billing sheet submitted reflects the expenses incurred by the Company in repairing the power line at the Dillmans' home.

Therefore, the Commission concludes that the fees of $1,249.38 charged to the Dillmans for the restoration of power are just and reasonable. The Dillmans, however, may face a hardship paying the entire amount on demand if this is not covered by their homeowner's insurance or for other reasons. The Company should enter into a Residential Deferred Payment Agreement with the Dillmans allowing them to continue to receive service, while still paying on their obligation, and also allowing them sufficient means to pay for permanent upgrades to their weatherhead and service.

Additional Fees and Attempts to Terminate Service

The Company proceeded to charge the Dillmans additional charges and late fees on the outstanding bill in the amount of $63.72. On December 22, 2008, the Company sent a "past Due Reminder" demanding the total amount of $1,313.10. This attempt by the Company to charge additional charges on an amount disputed in a formal complaint, and still pending decision, is improper. The Company may not charge additional fees or late charges on the $1,249.38 owed by the Dillmans so long as the Dillmans are abiding by the terms of this Report and Order.

The Commission does have some concern regarding statements made by Company employees that could have caused the Dillmans to believe that they were in fact being improperly charged. Salmon's letter of July 23, 2008 clearly communicated to the Dillmans that

there were, in fact, two-man dispatch crews that could have done the work, had they been available. Based on this incorrect representation, i.e. that there were two-man crews, the Dillmans disputed their charges, arguing that they should have only been billed for a two-men crew. Additionally, the e-mails from the Company representative, although placing qualifications on the answers given, did suggest at various points that there would be no charge. The representations from the representative could have provided further basis for the Dillmans to dispute the charges and stall permanent repairs. These representations from the Company might have encouraged the Dillmans to dispute the charges for longer than necessary, putting off permanent repairs until final resolution was reached. The Commission finds that for the Company to issue an ultimatum a few weeks after the hearing for the Dillmans to make "necessary electrical repairs to [their] weatherhead and service attachment point by January 12, 2009" or face termination in the middle of winter, is not just and reasonable. This is especially so given the fact that the Company installed the temporary work-around for electrical service and has left it in place from May to December 2008. The Dillmans must be given adequate time to make the permanent repairs to the weatherhead and service attachment. The Commission finds that the Dillmans should complete such repairs 45 days from the date of issuance of this order. If the Dillmans find the 45 days to be unreasonable, they may submit, in writing, their reasons for claiming the 45 days are unreasonable and the Commission may extend that time if it finds the Dillmans' reasons merit extension. The Dillmans should, however, remember that the connection made by the Company was and is only a temporary resolution. Additionally, the

Dillmans should limit their written response to the reasonableness of the 45 days, and not to re-argument of matters previously submitted in their Formal Complaint.

ORDER

Therefore, given the findings above, the Commission Order as follows:

1. The Company's Motion to Dismiss is denied;

2. The Dillmans shall pay the amount of $1,249.38 to the Company;

3. The Company shall enter into a Residential Deferred Payment Agreement with the Dillmans allowing them to continue to receive service, while still paying on their obligation;

4. The Dillmans shall make permanent repairs to the weatherhead and service attachment 45 days from the date of issuance of this order. If the Dillmans find the 45 days to be unreasonable, they may submit, in writing, their reasons for claiming the 45 days are unreasonable and the Commission may extend that time if it finds the Dillmans' reasons merit extending that time.

5. If the Dillmans do not make necessary repairs within the time frame ordered by the Commission, the Company may petition the Commission for a Request of Termination of Service pending repairs.

Pursuant to Utah Code § 63G-4-301 and 54-7-15, an aggrieved party may request agency review or rehearing of this Order by filing a written 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 does not 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 §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 14th day of January, 2009.

/s/ Ruben H. Arrendondo
Administrative Law Judge

Approved and Confirmed this 14th day of January, 2009, as the Report and Order of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

G#60292