

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Complaint of DAN F. BENCK,)
Complainant)
vs.)
QUESTAR GAS CO.,)
Respondent)

DOCKET NO. 01-057-06
REPORT AND ORDER

ISSUED: September 28, 2001

SYNOPSIS

The Administrative Law Judge dismissed the complaint, having determined that Complainant failed to prove any violation of Respondent's published tariffs, the Commission reversed.

Appearances:

DAN F. BENCK *in propria persona*

Jonathan M. Duke For QUESTAR GAS CO.

By the Commission:

PROCEDURAL HISTORY

Pursuant to notice duly served, the above-captioned matter came on regularly for hearing the 11th day of July, 2001, before A. Robert Thurman, Administrative Law Judge, at the Commission Offices, Heber Wells Office Building, Salt Lake City, Utah. Evidence was offered and received, and the Administrative Law Judge, having been fully advised in the premises, now enters the following Report, containing proposed findings of fact, conclusions of law, and the Order based thereon.

FINDINGS OF FACT

1. Dan F. Benck (Complainant) is a residential customer of Questar Gas Co. (Respondent), a gas corporation certificated by this Commission.
2. This dispute centers around a \$122.50 billing for the month of December, 2000, for gas service rendered at 2448 W. 6830 South. The bill was rendered on or about January 17, 2001, at which time Complainant contacted Respondent alleging the bill was too high. Respondent then checked the meter (in March) at the service address and found it was not registering. Respondent then replaced the meter and adjusted the January, 2001, bill based on estimated usage. Complainant does not dispute the adjustment for the January, 2001, bill.
3. Complainant testified that the service premises were unoccupied for substantially all of December, and that for most or all of the month, the major gas appliance, a furnace, was inoperable owing to a defective igniter. This testimony was corroborated by Respondent to the extent that Respondent's records show a defective igniter was replaced on February 27, 2001.
4. In addition to the furnace, there is a gas-fired swimming pool heater at the service premises, as well as a water heater. Complainant is not sure whether his clothes dryer is gas-fired.

DISCUSSION

This case boils down to a single factual issue, *i.e.*: was the gas usage for December, 2000, registered on Respondent's meter accurate? In deciding this issue, we are constrained by two legal considerations. First, the case must be decided on a preponderance of the evidence -- in layman's terms, on the probabilities inherent in the evidence. Second, in these matters, the Complainant has the burden of persuasion, meaning that the Complainant's evidence must be weighty enough to tip the scales in Complainant's favor as against the Respondent's evidence. These considerations may be alternate ways of expressing essentially the same concept.

In the instant case, we have the evidence of the meter itself. It is a mechanical device and has no emotional bias either for or against either party. Subsequent to the period in question, it undisputedly failed, but there is no undisputed evidence it was defective during the period in question.

Opposed to this evidence is Complainant's assertion, corroborated by the service call in February, that the major gas user, the furnace was inoperative and the premises unoccupied.

We take it that Complainant's assertion is true, but that does not foreclose the possibility that there may have been leaks in the system (On at least two occasions Complainant called on Respondent to check for leaks) or that Complainant's memory may be faulty as to when the pool heater was turned off.

On balance, we find it improbable to the vanishing point that Respondent's meter would be registering high and then promptly die. It follows that we consider the best evidence to be the meter reading for the period in question. Accordingly, we conclude Complainant has failed to meet his burden of proof, and we must decide the factual issue in Respondent's favor.

CONCLUSIONS OF LAW

The Commission has party and subject-matter jurisdiction. Complainant has failed to prove facts which would entitle him to relief under Section 54-7-20, UCA 1953, as amended. That statute entitles a customer to reparations only upon a showing of charges beyond Respondent's published tariff, or a discriminatory application of the tariff. The facts shown by Complainant do not indicate such overcharge or discrimination.

Respondent is, under the law, not only allowed but required to charge in accordance with its tariff in order to prevent invidious discrimination among customers. 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:

- The complaint of DAN F. BENCK against QUESTAR GAS CO. be, and the same hereby is, dismissed.
- If DAN F. BENCK wishes to proceed further, DAN F. BENCK has 20 days from the date of this Order in which to file with the Commission a written petition for review or reconsideration. Failure so to do will forfeit the right to appeal to the Utah Supreme Court.

Dated at Salt Lake City, Utah, this 28th day of September, 2001.

/s/ A. Robert Thurman
Administrative Law Judge

ORDER REVERSING ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge proposed the Order above based on the proposed Findings of Fact. The Commission reverses the Administrative Law Judge and enters this substitute Order based on the same Findings of Fact and the record developed before the Administrative Law Judge.

DISCUSSION

In this case, Respondent argues that the meter correctly reflected the December usage prior to its subsequent failure. Its witness acknowledges that during the period prior to failure, a gas meter can register consumption incorrectly; it can both under- and over-report actual usage. Complainant argues that the meter incorrectly measured December consumption. Complainant's position is that the 182 cubic feet of natural gas usage indicated for that period of time is not consistent with likely gas consumption during that period. Complainant testifies that during the period in question, the premises were vacant and unused. Complainant further testified that the premises' space heating furnace did not operate properly during the time period. He would go to the premises and find them cold and was unable to get the furnace to operate and start to provide heat. Respondent's evidence corroborates that Complainant's space heater was not functioning properly. Its repair records show that its repair technician found the furnace inoperable and replaced the furnace's igniter after the disputed period. Complainant also testified that the other gas appliance, used for heating a pool, was shut down prior to the disputed period. Respondent did not challenge Complainant's testimony concerning occupancy or the operation of the appliances. It is reasonable to conclude that the gas consumption during this period is limited to the operation of the water heater during the contested period.

We do not find it likely that gas leakage can account for the gas consumption. The volume indicated is a substantial amount for gas leaking during the contested period. Another gas appliance, a water heater, apparently was able to function during the contested period without igniting any portion of this large quantity of gas. The record does not provide an explanation for why a significant gas leak would exist during the contested period, but apparently cease to exist and no longer leak gas subsequent to the contested period. Respondent's repair records show no gas leak repairs after the contested period.

On the record developed before the Administrative Law Judge, we conclude that the meter incorrectly registered Complainant's gas consumption during the disputed period. Respondent's reference to historical usage, periods when the premises were occupied and the furnace was in use, likely is not reflective of the circumstances testified to by the Complainant, vis., that the premises were unoccupied and the furnace not functioning. It is reasonable to conclude that the gas consumption during this period is limited to the operation of the water heater.

CONCLUSIONS OF LAW

The Commission has party and subject matter jurisdiction. Respondent has not established that the charges for the disputed period of December are accurate.

ORDER

1. The parties are instructed to determine the gas consumption likely to have occurred during December, consistent with the factual circumstances reflected in this Order (consumption limited to use of a water heater, with no consumption from the space heating appliance or the pool heating appliance).
2. Failure of the parties to reach an agreement on gas consumption as directed shall be resolved through mediation by the Division of Public Utilities or further proceedings before the Commission.

Either party has 20 days from the date of this Order in which to file with the Commission a written petition for review or reconsideration. Failure to do so will forfeit the right to seek judicial appeal and review of this Order.

Dated at Salt Lake City, Utah, this 28th day of September, 2001.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary