

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)
South-Forty RV Park against Rocky) DOCKET NO. 12-035-78
Mountain Power) CANCELLATION OF HEARING
) AND ORDER OF DISMISSAL
)

ISSUED: June 28, 2012

SYNOPSIS

The Commission enters this Order granting Rocky Mountain Power's motion to dismiss.

By The Commission:

CANCELLATION OF HEARING

Notice is hereby given that the hearing previously scheduled in this matter for Tuesday, July 17, 2012, beginning at 9:00 am, is hereby cancelled.

ORDER OF DISMISSAL

I. INTRODUCTION

Rocky Mountain Power, a division of PacifiCorp ("Company"), seeks to dismiss the formal complaint filed by South-Forty RV Park ("South-Forty") for failure to state a claim upon which relief may be granted. The Company cites Utah Electric Service Schedule No. 6 and its tariff in support of its motion. In addition, the Company provided a copy of its contract with South-Forty.

II. ISSUE AND STANDARD OF REVIEW

Rule 12(b)(6) of the Utah Rules of Civil Procedure, which is incorporated by reference by Utah Admin. Code R746-100-1(C), permits a party to file a motion to dismiss for

“failure to state a claim upon which relief can be granted.” Utah R. Civ. P. 12(b)(6). In ruling on a motion to dismiss for failure to state a claim, the Commission construes the complaint in the light most favorable to the complainant and indulges all reasonable inferences in his favor. Cf. Munteer v. Utah Power & Light Co., 823 P.2d 1055, 1058 (Utah 1991).

III. BACKGROUND

1. South-Forty is a RV trailer park in Marysvale, Utah, that operates seasonally from April to October.

2. On March 26, 2008, South-Forty entered into a five-year General Service Contract (“Contract”) with the Company for electrical service at its RV park. See PacifiCorp’s Answer and Motion to Dismiss, Confidential Exhibit B, Filed May 23, 2012.

3. The Contract provides: “Billings will be based on Rate Schedule No. 6 and superseding schedules.” Id. at 2, ¶ 4. The Contract also states, “[South-Forty] agrees to: . . . Comply with all of Company’s tariffs, procedures, specifications and requirements.” Id. ¶ 7(c).

4. South-Forty has two meters that are billed on Utah Electric Service Schedule 6. See PacifiCorp’s Answer and Motion to Dismiss at 2, ¶ 2.

5. On January 9, 2012, South-Forty contacted the Company to inquire about having its two Schedule 6 meters switched to seasonal billing. See id. at 3, ¶ 4. The Company responded by explaining that South-Forty could leave its billing the way it is, in which case it would continue to pay a \$50.00 monthly service fee (or \$500 total for both meters) during the five months it is closed, or it could switch to “seasonal billing,” which would require a \$600 upfront fee with a one year contract.

6. The Company explained to South-Forty that the Company has equipment and facilities to maintain and a customer service charge is assessed to all customers with seasonal billing even if no power is used. See id. at 3, ¶ 5; id. at 4, ¶ 8. The Company also explained that the customer service charge is set by tariff and cannot be waived. See id. at 4, ¶ 8.

7. On February 8, 2012, South-Forty filed a complaint against the Company to dispute the Company's ability to charge a service fee during the time in which the Company is closed and not consuming power. See Letter from South-Forty, to the Commission (April 16, 2012). See also PacifiCorp's Answer and Motion to Dismiss at 3, ¶ 5.

8. On April 23, 2012, South-Forty filed a formal complaint with the Commission. See Letter from South-Forty, to the Commission (April 16, 2012). South-Forty's complaint alleges two issues: First, the Company is charging for two meters during a five month period from November 1 to March 31 when South-Forty is closed. See id. Second, the Company is charging South-Forty for phase three electric instead of phase one electric. See id. Regarding the first issue, South-Forty argues "there is no reason to be charged for meters that are not being read or used [when South-Forty is closed]...." Id. Regarding the second issue, South-Forty requests a credit.¹ See id.

9. On April 23, 2012, the Commission sent an action request to the Division to analyze South-Forty's complaint. See Action Request, dated April 23, 2012. The Commission requested a response due date from the Division of May 23, 2012. See id.

¹ This issue is resolved by South-Forty's acknowledgment that phase three and phase one electric are charged the same amounts. See infra Paragraph 10.

10. On April 30, 2012, South-Forty filed a letter with the Commission. See Letter from South-Forty, to the Commission (April 24, 2012). South-Forty acknowledges in this letter that phase three and phase one electric are both charged the same amounts. See id.

11. On April 30, 2012, the Division filed its response to the Commission's action request. See Division Memo, filed April 30, 2012. The Division memo analyzes South-Forty's complaint and recommends dismissal of it because the Company has not violated any rule, law, or tariff. See id. at 3.

12. On May 3, 2012, the Commission issued a notice of hearing. See Notice of Hearing, issued May 3, 2012.

13. On May 23, 2012, the Company filed an answer and motion to dismiss the complaint. See PacifiCorp's Answer and Motion to Dismiss, filed May 23, 2012.

14. On May 24, 2012, the Commission sent a notice of filing of answer and motion to dismiss the complaint. See Notice of Filing of Answer and Motion to Dismiss, filed May 24, 2012. This notice stated: "In accordance with Rule R746-100-4 of the Utah Administrative Code, South-Forty [] has until 5:00 p.m. MST, Thursday, June 7, 2012 to file a response to the Company's filing." Id.

15. On May 29, 2012, the Company filed a certificate of service on its answer and motion to dismiss. See Certificate of Service, filed May 29, 2012. The certificate of service states that the Company served the parties in this docket with a copy of the pleading on May 29, 2012. See id.

16. Based on the May 29, 2012 filing by the Company, on May 30, 2012, the Commission issued an amended notice of filing of answer and motion to dismiss. See Amended Notice of Filing of Answer and Motion to Dismiss, issued May 30, 2012. This notice extended South-Forty's response deadline to Wednesday, June 13, 2012. See id.

17. South-Forty's deadline to submit a response to the Company's motion to dismiss expired on June 13, 2012, and South-Forty filed no response.

IV. ANALYSIS

A. *Procedurally, the Company is entitled to Dismissal Based on South-Forty's Default*

The Utah Administrative Code provides that when a party fails to file a response to a pending motion, the Commission may presume there is no opposition. See Utah Admin. Code R746-100-4(D). The Company filed its motion to dismiss South-Forty's complaint on May 23, 2012 and then served the certificate of service on May 29, 2012.² See PacifiCorp's Answer and Motion to Dismiss, filed May 23, 2012, and Certificate of Service, filed May 29, 2012. South-Forty's response time expired on June 13, 2012 and no response was filed. Pursuant to R746-100-4(D), the Commission presumes there is no opposition, and thus the Company is entitled to dismissal based on South-Forty's default.

² “[A] Certificate of Service must be attached to all pleadings filed with the Commission, certifying that a true and correct copy of the pleading was served upon each of the parties in the manner and on the date specified. A filing is not complete without this certificate of service.” Utah Admin. Code R746-100-3(D).

B. Substantively, the Company is entitled to Dismissal Based on the Company's Tariff and Contract with the Customer

1. Rate Schedule No. 6

South-Forty alleges the Company should not be allowed to charge a \$50.00 monthly service charge on two meters between the months of April and October when South-Forty is closed, regardless of what the Company's schedules allow. The Division's memo addressing this issue notes that "[t]he [C]ompany . . . explained to [South-Forty] that all customers are required to pay the basic charge associated with the appropriate rate schedules; therefore, the company cannot waive those fees just for [South-Forty]."³ Division's Memo at 2 (emphasis added). The Division's memo further states:

The Company's tariff clearly indicates that for [S]chedule 6, the minimum bill is the 'Customer Service Charge plus appropriate Power and Energy Charges.' The customer charge is intended to cover the cost the Company incurs, and the Commission has approved, in providing, or being ready to provide, service to that customer as long as the[] [customer is] connected to the system regardless of how much energy the[] [customer] consume[s]. . . . [T]hese costs include meter and meter reading, preparing and providing a bill, and administrative costs. As long as the customer remains connected to the system, these costs are incurred by the Company and should be recovered from [the] customer.

Id. The Division determined the Company violated no rule, law, or Company tariff, and recommended the Commission dismiss the complaint. See id. at 3.

³ Indeed to do so would violate the statutory prohibition against making or granting any preference or advantage to any person. See Utah Code Ann. § 54-3-8(1)(a) (2010).

2. General Service Contract

The March 26, 2008 General Service Contract (the “Contract”) between South-Forty and the Company provides that “[b]illings will be based on Rate Schedule No. 6 and superseding schedules.” Contract at 2, ¶ 4. As noted above, the tariff for Rate Schedule No. 6 supports charging the \$50.00 monthly service charge per meter. Therefore, the Contract itself supports South-Forty’s obligation to abide by the tariff.

The Contract also states, “[South-Forty] agrees to: . . . Comply with all Company’s tariffs, procedures, specifications and requirements.” Id. ¶ 7(c). Although not specifically argued by either the Company or the Division, South-Forty’s actions giving rise to its complaint could be viewed as a breach of its contractual obligation to comply with all Company tariffs; specifically, Schedule No. 6.

The aforementioned contractual provisions bolster the Company’s and Division’s claims that no violation of tariff, law, or rule exists, and that dismissal of the complaint should be granted.

ORDER

For the foregoing reasons, this matter is dismissed.

DATED at Salt Lake City, Utah this 28th day of June, 2012.

/s/ Melanie A. Reif
Administrative Law Judge

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Approved and confirmed this 28th day of June, 2012, as the Cancellation of
Hearing and Order of Dismissal of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
D#229002

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order 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 Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of June, 2012, a true and correct copy of the foregoing was served upon the following as indicated below:

By U.S. Mail:

Terri Peterson
South Forty RV Park
1170 N. Highway 89
PO Box 279
Marysvale, UT 84750

By E-Mail:

Rocky Mountain Power
Attention: Barbara Ishimatsu (Barbara.Ishimatsu@pacificorp.com)
201 South Main Street, Ste. 2300
Salt Lake City, UT 84111

By Hand-Delivery:

Division of Public Utilities
160 East 300 South, 4th Floor
Salt Lake City, UT 84111

Office of Consumer Services
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111

Administrative Assistant