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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Ami Hines,	:
	:
Complainant,	:
	:
vs.	:
	:
Rocky Mountain Power,	:
	:
Respondent.	:
	:
	:
	:

Docket No. 13-035-146

**ROCKY MOUNTAIN POWER'S
ANSWER AND
MOTION TO DISMISS**

Rocky Mountain Power, a division of PacifiCorp (the “Company”), pursuant to Utah Code Ann. §§ 63G-4-204(1) and Utah Admin. Code R746-100-3 and -4, provides its Answer to the complaint filed by Ami Hines (“Complaint”). In addition, the Company moves that the Complaint be dismissed in its entirety, with prejudice, because Rocky Mountain Power has not violated any provision of law, Commission order or rule, or Company tariff.

I. PRELIMINARY MATTERS

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II. BACKGROUND

1. Ms. Hines resides at [REDACTED] and has been the customer of record at the location since November 2012. Ms. Hines is a tenant of this location, and not the property owner. The Salt Lake County's Assessor's Office lists Mr. David Russo as the owner of this property.

2. Rocky Mountain Power's demand side management program, Cool Keeper, ("Cool Keeper" or "the Program") helps manage the demand for electricity during the hottest summer months, when electricity is the most expensive to produce and distribute. Under this program, participating customers give Rocky Mountain Power the ability to decrease the output of their central air conditioning unit ("A/C unit") via a

radio-controlled switch, in exchange for a credit, that appears on the customer's November statement. For any individual customer, the Program may not be operated more than four hours between 2 p.m. and 8 p.m. Weekends and holidays are excluded and participation is free. Participants receive an annual credit applied to their electric bills.

3. The Cool Keeper switch is a radio-controlled device that switches an A/C unit on and off in response to commands from a central controller. The switch is much like a second "smart" thermostat that is remotely programmable, has a memory, and can override the existing thermostat's control of the A/C unit's compressor.

4. According to the records of Converge, the Cool Keeper Program administrator, Ms. Hines enrolled by telephone on January 29, 2013.

5. On July 19, 2013, Ms. Hines contacted Rocky Mountain Power to request the Cool Keeper device be removed. Ms. Hines stated that she was unaware the Cool Keeper device was in place and was without air conditioning for a 24 hour period.

6. On August 5, 2013, Ms. Hines contacted Rocky Mountain Power concerning her monthly electric bill. Ms. Hines asserted the Cool Keeper device caused her A/C unit to work harder, thereby increasing her electric bill.

7. On August 5, 2013, Ms. Hines escalated her concerns to the Utah Division of Public Utilities stating that she was involuntarily enrolled in a program that resulted in excessive power charges. Ms. Hines said that her A/C unit's blower broke in July 2013 and the repairman had informed Ms. Hines that the Cool Keeper switch was shutting off the Freon to her unit three times per day, causing the unit to "work harder."

8. The Company explained to Ms. Hines that the device does not strain the A/C units by causing it to run longer but rather reduces the output of the A/C unit to help reduce the electrical load during peak times when electrical demand is at its highest. Per Ms. Hines wishes, the Cool Keeper device was removed by Converge, on August 6, 2013. The Cool Keeper switch was subsequently tested and found to be working properly.

III. MOTION TO DISMISS

9. The Company moves under Utah Rules of Civil Procedure, Rule 12(b)(6) for an Order dismissing the Complaint. In support of this motion, the Company states the Complaint fails to establish the Company violated Commission rules, Company tariffs or that its actions are unjust.

10. The Complaint alleges that (1) the Company involuntarily enrolled Ms. Hines in the Cool Keeper; (2) the control switch damaged Ms. Hines' A/C unit blower; and (3) the Program resulted in an unusually high electric bill due an increased output from her A/C unit. To Ms. Hines' first claim, the Company responds that Ms. Hines has been removed from participation in the Cool Keeper, therefore this claim is moot. To Ms. Hines' next claim the Company responds that the Commission has no jurisdiction to award the monetary damages sought by Ms. Hines. To Ms. Hines third claim Company responds that Ms. Hines electric usage remained consistent before and after the device was removed, and that the radio-switch does not strain A/C units. The Complaint presents no factual allegations that rise to the level of a violation of Company rules, tariffs or any other Utah law.

11. First, the Complaint states that Ms. Hines was involuntarily enrolled in the Cool Keeper Program. The Company's program administrator, Comverge, has a record of Ms. Hines' telephone enrollment on January 29, 2013. However, if Ms. Hines was enrolled in error, she has subsequently been removed from the program. Therefore, this claim is moot and there is no further relief that may be granted for this claim. *See Utah Transit Auth. v. Local 382 of Amalgamated Transit Union*, 2012 UT 75, ¶ 24 (2012) ("The defining feature of a moot controversy is the lack of capacity for the court to order a remedy that will have a meaningful impact on the practical positions of the parties."). Further, Ms. Hines is not entitled to any damages for involuntary enrollment because the Company has not charged any rate, toll, or fair in excess of the schedules, rates and tariffs on file with the Commission. Utah Code Ann. § 54-7-20; *see also Denver & R.G.R. Co. v. Pub. Utilities Comm'n of Utah*, 272 P. 939, 940 (Utah 1928) ("power of the commission to order reparations is limited to cases where charges have been made in excess of the schedules, rates, and tariffs on file with the commission, or discriminations made under such schedules.").

12. Second, the Complaint requests reimbursements for (1) Ms. Hines' electric bill between January 29, 2013 and July 19, 2013 and (2) compensatory damages for a broken A/C unit blower. Ms. Hines rates are governed by Electric Service Schedule No. 3 (attached as Exhibit A). The Company is authorized by the Commission to charge the rates set out in its schedules and tariffs and may not charge a rate greater or less than the authorized amount. Utah Code Ann. § 54-3-7. Ms. Hines does not allege in her complaint that the Company has charged an unlawful rate – that is, one that is not

authorized by the Commission. Rather, Ms. Hines alleges that her bill increased due to her enrollment in Cool Keeper.

13. Cool Keeper is governed by Electric Service Schedule No. 114 (attached as Exhibit B). Under this Schedule, participation is free. Ms. Hines has not been charged for participating in the Program and she has not been charged rates that vary from those authorized by the Commission. As such, Ms. Hines' complaint fails to state a claim for relief and it should be dismissed as a matter of law. Further, as more fully described in the Answer below, Ms. Hines' electric bills have been consistent prior to and after the removal of the Cool Keeper device.

14. Lastly, the Commission lacks jurisdiction to provide Ms. Hines the relief requested. The Commission only has the power specifically granted to it by the legislature. *Williams v. Public Service Comm'n*, 754 P.2d 41, 50 (Utah 1988) (internal citations omitted). The only statutory provision allowing for compensation is section 54-7-20, providing for rate reparations when charges have been in excess of tariff schedules or have been unjust, unreasonable, or discriminatory. Ms. Hines has presented no factual allegations in her Complaint that the Company has charged a rate other than that authorized by the Commission in Electric Service Schedule No. 3. The Commission has not been granted the power to award the type of compensatory damages Ms. Hines seeks, and her Complaint should be dismissed in its entirety.

ANSWER

In the event the Company's Motion to Dismiss is not granted, the Company answers the Complaint as follows:

15. The Complaint alleges that Ms. Hines was involuntarily enrolled in the Cool Keeper Program. Rocky Mountain Power denies this allegation. Company has records from Comverge, signing Ms. Hines for the Cool Keeper program on January 29, 2013 per a telephone enrollment. As of August, 6 2013, Ms. Hines was taken off the program.

16. The Complaint alleges that enrollment in the Cool Keeper program resulted in excessive power charges. Rocky Mountain power denies this allegation. Ms. Hines electric bill demonstrates that the rates charged are in compliance with Electric Service Schedule No. 3. The Cool Keeper program does not cost anything to participate in. On selected hot summer weekday afternoons when demand for electricity increases, the Cool Keeper device turns off the A/C unit's compressor. In November, Cool Keeper participants receive a credit on their Rocky Mountain Power bill each year they participate.

17. The Complaint alleges that the device increased her use of electricity from January 29, 2012 through July 19, 2013, resulting in higher than anticipated electric bills. (Please refer to Confidential Exhibit C for an explanation of how rates are calculated.) Rocky Mountain Power denies this allegation. The Cool Keeper device was activated on the following dates at the times specified in the table:

Date	Start hour	End hour
7/1/2013	15:00	16:00
7/1/2013	17:00	18:00
7/2/2013	14:30	15:00
7/2/2013	15:55	17:25
7/9/2013	16:25	18:25
7/18/2013	16.00	16.34
7/19/2013	15:00	17:00
7/22/2013	15:30	17:30
8/16/2013	16.00	17.20

Thus, the Cool Keeper device was inactive between the months of January through June and Ms. Hines is not entitled to reimbursement of her electric bill during those months. Ms Hines is also not entitled to reimbursement for her electric bill during the months of July and August because the Cool Keeper device *reduces* the output of the A/C unit. The device has no impact on the Freon levels in an A/C unit and does not cause A/C units to work harder.

18. Ms. Hines electric usage has remained consistent before and after the device was removed. The monthly billing statements Ms. Hines received for July 2013 was [REDACTED] and August 2013 was [REDACTED]. (Please refer to Confidential Exhibit D for a copy of Ms. Hines' electric bills and a description of Ms. Hines' electric usage.) During this time, Ms. Hines' average electricity use was between [REDACTED] and [REDACTED] kWh per day. Rocky Mountain Power obtained two additional meter reads after the Cool Keeper device was removed on August 6, 2013. The first meter read was on August 15, 2013, and the second meter read was on September 4, 2013. The meter recorded a total of [REDACTED] kWh used in 20 days. This equates to [REDACTED] kWh per day which has remained consistent after the device was removed and the A/C unit was repaired.

19. The Complaint claims the Cool Keeper device damaged the A/C blower. Company denies this allegation. The electronic switch does not impact the operation of the A/C unit. The device simply reduces the units output for a period of time. The Cool Keeper device at issue in this case was tested and found to be within working limits. Further, Ms. Hines has not presented any actual invoices of damages to her equipment. Damage claims are non-jurisdictional so in the event the Cool Keeper device caused damage, the Commission could not grant Ms. Hines the relief she seeks. Lastly, Ms.

Hines, nor the owner of the A/C unit, has submitted a property damage claim to the Company.

CONCLUSION

WHEREFORE having fully answered Complainant's complaint and finding no violation of law, Commission rules, or Company tariffs to base an award of the relief requested, the Company prays for the dismissal of the Complaint with prejudice.

Dated this 26th day of September 2013.

Respectfully submitted,

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Attorneys for Rocky Mountain Power