

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Formal Complaint of )  
Richard Rawlinson against Rocky ) DOCKET NO. 14-035-84  
Mountain Power ) ORDER DISMISSING COMPLAINT  
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ISSUED: August 28, 2014

SYNOPSIS

The Commission dismisses the complaint against Rocky Mountain Power for failure to state a claim upon which relief can be granted.

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ORDER OF DISMISSAL

I. BACKGROUND

1. On July 2, 2014, Richard Rawlinson (Mr. Rawlinson) filed a formal complaint against Rocky Mountain Power, a division of PacifiCorp (Company).<sup>1</sup> Mr. Rawlinson alleges he is entitled to a rebate for the purchase and installation of two furnaces.

Mr. Rawlinson is seeking \$900 in relief, which he explains constitutes two \$250 rebates for two furnaces and two \$200 rebates for two condensing units.

2. On July 15, 2014, in response to a Commission action request, the Division of Public Utilities (Division) filed a memorandum recommending the Commission dismiss the complaint.<sup>2</sup> The Division provides the following comments and recommendation:

The guidelines outlined on the Company's Home Energy Savings Program application are supported by Rocky Mountain Power's tariff, which was approved by the Public Service Commission of Utah (P.S.C.U. No. 49, Schedule No. 111).

<sup>1</sup> See Formal Complaint of Richard Rawlinson, filed July 2, 2014.

<sup>2</sup> See Division Memorandum, filed July 15, 2014.

These guidelines, allowing a rebate for the appliances Mr. Rawlinson purchased and had installed, require that all documentation must be postmarked within 90 days of work completed date. The guidelines also outline that appliances are installed by a participating or qualified program trade ally. Because the terms and conditions of these guidelines were not met by Mr. Rawlinson, the Division recommends that the complaint be dismissed.<sup>3</sup>

3. On August 6, 2014, the Company filed an answer and motion to dismiss Mr. Rawlinson's complaint.<sup>4</sup> In summary, the Company argues that dismissal is appropriate because Mr. Rawlinson has failed to allege a violation of law, commission rule or order, or Company tariff.<sup>5</sup>

4. On August 7, 2014, the Commission issued a courtesy notice, notifying Mr. Rawlinson of the Company's motion.<sup>6</sup> The notice states, in part: "In accordance with Utah Admin. Code R746-100-4, Mr. Rawlinson has until 5:00 p.m., Thursday, August 21, 2014, to file a response to the Company's filing."<sup>7</sup> A copy of this notice was sent to Mr. Rawlinson and the Company.<sup>8</sup>

5. On August 20, 2014, Mr. Rawlinson filed a response to the Company's motion.<sup>9</sup> Mr. Rawlinson's response states as follows: "I hereby submit for filing my Answer and

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<sup>3</sup> Id. at 2.

<sup>4</sup> See Rocky Mountain Power's Answer and Motion to Dismiss, filed August 6, 2014.

<sup>5</sup> See id. at 6.

<sup>6</sup> See Notice of Filing of Answer and Motion to Dismiss, issued August 7, 2014.

<sup>7</sup> Id.

<sup>8</sup> Id. at 2.

<sup>9</sup> See Letter from Mr. Rawlinson, to the Commission, filed August 20, 2014.

Motion to Not Dismiss and to Continue in the above referenced matter. ....”<sup>10</sup> Nothing further was filed with this response other than a certificate of service.<sup>11</sup>

6. The deadline for responding to the Company’s motion to dismiss has elapsed.<sup>12</sup>

## II. 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.”<sup>13</sup> 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.<sup>14</sup>

## III. DISCUSSION

### *Mr. Rawlinson Has Failed to State a Claim Upon Which Relief Can Be Granted*

Viewing the facts in the light most favorable to the complainant, Mr. Rawlinson has failed to specify “the law or a rule or order of the commission” the Company allegedly violated.<sup>15</sup> Even assuming the truth of all the facts Mr. Rawlinson alleges, the Commission sees no apparent violation in his complaint. Further, Mr. Rawlinson’s one-line response, stating that “I hereby submit for filing my Answer and Motion to Not Dismiss and to Continue in the above

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<sup>10</sup> Id.

<sup>11</sup> See id. at 2.

<sup>12</sup> See Notice of Filing of Answer and Motion to Dismiss, issued August 7, 2014 (setting response deadline of “5:00 p.m., Thursday, August 21, 2014”). See also Utah Admin. Code R746-100-4(D).

<sup>13</sup> Utah R. Civ. P. 12(b)(6) (LexisNexis 2010).

<sup>14</sup> Cf. Munteer v. Utah Power & Light Co., 823 P.2d 1055, 1058 (Utah 1991).

<sup>15</sup> Utah Code Ann. § 54-7-9(2) (LexisNexis 2010).

referenced matter[,]” is not responsive to the Company’s motion to dismiss, claiming in part Mr. Rawlinson has failed to allege a violation of law, commission rule or order, or Company tariff.

“Absent a response or reply, the Commission may presume . . . there is no opposition.”<sup>16</sup>

Further, the Division explains in its recommendation that the Company’s tariff supports dismissal of this matter. Accordingly, we dismiss Mr. Rawlinson’s complaint for failure to state a claim upon which relief can be granted.

#### IV. ORDER

For the foregoing reasons, the Commission grants the Company’s motion to dismiss Mr. Rawlinson’s complaint.

DATED at Salt Lake City, Utah, this 28<sup>th</sup> day of August, 2014.

/s/ Melanie A. Reif  
Administrative Law Judge

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<sup>16</sup> See Utah Admin. Code R746-100-4(D).

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Approved and confirmed this 28<sup>th</sup> day of August, 2014, as the Report and Order of the Public Service Commission of Utah.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary  
DW#259997

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 CERTIFY that on the 28<sup>th</sup> day of August, 2014, a true and correct copy of the foregoing was served upon the following as indicated below:

By U.S. Mail:

Richard Rawlinson  
83 West 200 North  
Wellsville, UT 84339

By E-Mail:

Data Request Response Center ([datarequest@pacificorp.com](mailto:datarequest@pacificorp.com))  
PacifiCorp

Dave Taylor ([dave.taylor@pacificorp.com](mailto:dave.taylor@pacificorp.com))  
Yvonne Hogle ([yvonne.hogle@pacificorp.com](mailto:yvonne.hogle@pacificorp.com))  
Daniel Solander ([daniel.solander@pacificorp.com](mailto:daniel.solander@pacificorp.com))  
Megan McKay ([megan.mckay@pacificorp.com](mailto:megan.mckay@pacificorp.com))  
Autumn Braithwaite ([autumn.braithwaite@pacificorp.com](mailto:autumn.braithwaite@pacificorp.com))  
Rocky Mountain Power

By Hand-Delivery:

Division of Public Utilities  
160 East 300 South, 4th Flr.  
Salt Lake City, Utah 84114

Office of Consumer Services  
160 East 300 South, 2nd Flr.  
Salt Lake City, Utah 84114

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Administrative Assistant