

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of Kelly Margetts against Rocky Mountain Power	<u>DOCKET NO. 15-035-19</u>
In the Matter of the Formal Complaint of Kelly Margetts against CenturyLink	<u>DOCKET NO. 15-049-04</u> <u>ORDER DISMISSING COMPLAINT</u>

ISSUED: June 8, 2015

FINDINGS OF FACTS

1. On February 20, 2015, Kelly Margetts (Mr. Margetts) filed a formal complaint against Rocky Mountain Power, a division of PacifiCorp (Rocky Mountain Power), and CenturyLink (CenturyLink). Mr. Margetts alleges that Rocky Mountain Power and CenturyLink interfered with his ability to use Grace Court, a public road, between the dates of January 15 and February 3, 2015. Mr. Margetts further alleges that the interference complained of was not authorized by a permit authorized by the Salt Lake City Department of Transportation. Mr. Margetts seeks relief for present and future damages related to the alleged misconduct complained of.¹

2. In reviewing the complaint, the Commission discovered that CenturyLink was neither aware of, nor had been given an opportunity to respond to the complaint as part of the Division of Public Utilities' (Division) informal review process.² Accordingly, on February 27, 2015, the Commission issued an order staying the deadlines for responsive pleadings until

¹ See Formal Complaint of Kelly Margetts, filed February 20, 2015.

² See Letter to Chris Parker, Division of Public Utilities, from Gary L. Widerburg, Commission Secretary (Feb. 24, 2015).

CenturyLink had been informed of and provided an opportunity to respond to the complaint as part of the Division's informal review process.³

Sometime thereafter, CenturyLink was notified and a representative of CenturyLink responded to the complaint.⁴ Based on the notification to and response from CenturyLink, the Commission lifted the February 27, 2015, stay.⁵

3. On March 2, 2015, the Division filed a memorandum recommending the Commission reject Mr. Margetts' complaint if further evidence of a violation is not provided. The Division's recommendation is based, in part, on the following analysis:

It is not apparent that Rocky Mountain Power or CenturyLink has violated any Commission Administrative Rules, Utah Law, court ruling, Commission ruling or the Companies' Tarriffs [sic]. In addition, Mr. Margetts has been informed during his numerous phone calls to the Division that his complaint and request for compensation are not regulated. He was also advised to contact the City of Salt Lake. *Therefore, the Division recommends that this complaint be dismissed unless Mr. Margetts provides evidence demonstrating Rocky Mountain Power and CenturyLink's failure to comply with relevant rules, tariffs, or laws.*⁶

4. On March 27, 2015, Mr. Margetts filed multiple motions, including a motion to deny dismissal.⁷ At the time of this filing, neither Rocky Mountain Power nor CenturyLink had filed a motion to dismiss. On April 16, 2015, Mr. Margetts filed a certificate of service showing service of this filing to Rocky Mountain Power and CenturyLink.⁸

³ See Order Staying Deadlines for Responsive Pleadings, issued February 27, 2015.

⁴ See Informal Complaint Report, filed February 27, 2015.

⁵ See Order Lifting Stay and Notice of Filing and Comment Period, issued March 19, 2015.

⁶ Division Memorandum, filed March 2, 2015 (emphasis added).

⁷ See Motion for Paper Correspondence, etc., filed March 27, 2015.

⁸ This filing was at the request of the Commission. See Letter to Mr. Margetts, from Gary L. Widerburg, Commission Secretary (Apr. 7, 2015).

5. On April 1, 2015, CenturyLink filed a response and motion to dismiss (CenturyLink's Motion to Dismiss). In part, CenturyLink states as follows:

CenturyLink is perplexed why it is included in this formal complaint by Mr. Margetts. In his formal complaint Mr. Margetts does not identify how CenturyLink was involved or responsible with respect to the allegations, other than CenturyLink's name was mentioned in the complaint. *Therefore, the complaint fails to state a claim against CenturyLink.* ...Because of the lack of sufficient detail in the complaint, CenturyLink has no knowledge as to why it was included in the complaint and therefore denies all allegations against it by Mr. Margetts.⁹

[Further,] CenturyLink concurs with the Division's recommendation. *This complaint must be dismissed because Mr. Margetts has failed to demonstrate that CenturyLink has violated any Commission rule, orders or applicable state law, or that CenturyLink has violated its Price List on file with the Commission.* Mr. Margetts is seeking damages which cannot be awarded by the Commission and Mr. Margetts has failed to state any claim for reparations upon which the Commission can grant relief.¹⁰

Upon receiving CenturyLink's April 1, 2015 filing, the Commission issued a notice of filing setting forth a deadline of April 16, 2015, for Mr. Margetts to file a response to CenturyLink's Motion to Dismiss.¹¹

6. On April 13, 2015, CenturyLink filed a supplemental response requesting to deny Mr. Margetts' various motions filed on March 27, 2015.¹² CenturyLink argues, in part, that

⁹ CenturyLink's Response and Motion to Dismiss at 2-3, filed April 1, 2015 (emphasis added).

¹⁰ Id. at 3-4 (emphasis added & footnote omitted)

¹¹ See Notice of Filing of Answer and Motion to Dismiss, issued April 1, 2015.

¹² See CenturyLink's Supplemental Response and Request to Deny Mr. Margetts' Various Motions, filed April 13, 2015.

“[t]he issues raised by Mr. Margetts are all outside the scope of the Commission’s jurisdiction, and the Commission should not spend any additional resources to address the Complaint.”¹³

7. On April 15, 2015, Rocky Mountain Power filed an answer and motion to dismiss (Rocky Mountain Power’s Motion to Dismiss).¹⁴ Rocky Mountain Power avers, in pertinent part:

In January 2015, a new business entity located near Mr. Margetts’ residence requested new electrical service.... [This request required a trench and conduit, which] necessitated redirecting traffic on the one-way alley located directly behind Mr. Margetts’ residence.¹⁵

On January 15, 2015, the contractor hired by the business entity proceeded with the trenching and conduit work.¹⁶ [Rocky Mountain Power obtained the proper permits from Salt Lake City Corporation (the City) before the work was conducted.]¹⁷

[Additionally, Rocky Mountain Power] moves under Utah Rules of Civil Procedure [(U.R.C.P.)] 12(b)(6) for an Order dismissing the Complaint [because Mr. Margetts] *fails to establish the Company violated Commission rules, Company tariffs or that its actions are unjust.*¹⁸

With respect to Mr. Margetts’ first claim, . . . the contractor for the new business entity barricaded the one-way alley, not the Company, and . . . the closure of the alley was done in accordance with all City of Salt Lake regulations or ordinances.¹⁹

With respect to Mr. Margetts’ second claim, . . . all correct permits were obtained in accordance with direction from the City of Salt

¹³ *Id.* at 1.

¹⁴ *See* Rocky Mountain Power’s Answer and Motion to Dismiss, filed April 15, 2015. This filing amended Rocky Mountain Power’s April 3, 2015, filing, which did not include Mr. Margetts in the certificate of service.

¹⁵ Rocky Mountain Power’s Answer and Motion to Dismiss at 2, ¶ 2.

¹⁶ *Id.* at ¶ 3.

¹⁷ *Id.* As Rocky Mountain Power explains, it obtains the permits in its normal business practice at the City’s request because “the Company is the end user after the electrical conductor is installed and energized.” *Id.*

¹⁸ *Id.* at 3, ¶ 4. (emphasis added).

¹⁹ *Id.* at 3, ¶ 6.

Lake. During the course of the investigation, [Rocky Mountain Power] contacted the Utah Department of Transportation and was advised [that] an additional permit should have been obtained for the contractor. [Rocky Mountain Power] relayed this information to the City of Salt Lake, and in the future it will be added to the list of required permits.²⁰

With respect to Mr. Margetts' third claim, [Rocky Mountain Power] restates [that it] did not barricade the alley near Mr. Margetts' property or otherwise restrict access [thereto].

Finally, the Commission lacks jurisdiction to provide Mr. Margetts any of 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).... The only statutory provision allowing for compensation is section 54-7-20, [which] provid[es] for rate reparations when charges have been in excess of tariff schedules or have been unjust, unreasonable, or discriminatory. Mr. Margetts has presented no factual allegations . . . that [Rocky Mountain Power] has charged a rate other than that authorized by the Commission.... [Further,] [t]he Commission [does not have the authority] to award the type of compensatory damages Mr. Margetts seeks, and his Complaint should be dismissed....²¹

Upon receiving Rocky Mountain Power's April 15, 2015, filing, the Commission issued a notice of filing setting forth a deadline of April 30, 2015, for Mr. Margetts to respond to Rocky Mountain Power's Motion to Dismiss.²²

8. On April 16, 2015, Mr. Margetts filed various motions.²³ In part, Mr. Margetts moves to strike his earlier motions; namely his motion for paper correspondence, motion for 180-day stay, motions for discovery, motion to deny dismissal, and motion for summary

²⁰ *Id.*

²¹ *Id.* at 3-4, ¶ 7.

²² See Amended Notice of Filing of Answer and Motion to Dismiss, issued April 23, 2015.

²³ See Motion to Strike, etc., filed April 16, 2015.

judgment.²⁴ Mr. Margetts also moves to continue and for an order from the Commission requiring Rocky Mountain Power and CenturyLink to follow proper protocol to help prevent service problems in the future.²⁵

Mr. Margetts' April 16, 2015, filing does not respond to CenturyLink's Motion to Dismiss.

Upon receiving Mr. Margetts' motions, the Commission issued a notice of filing setting forth a deadline of May 1, 2015, for Rocky Mountain Power and CenturyLink to file a response to Mr. Margetts' motions.²⁶

9. On April 24, 2015, CenturyLink filed a notice of non-opposition to its motion to dismiss.²⁷

10. On April 30, 2015, CenturyLink filed a response to Mr. Margetts' April 16, 2015, motions.²⁸ CenturyLink asserts that the Commission should deny all of Mr. Margetts' motions except his motion to strike.²⁹

Regarding Mr. Margetts' motion to continue, CenturyLink asserts that "[a]s stated in CenturyLink's previous filings,³⁰ the Commission does not have jurisdiction over the use of public streets and public right-of-way by public utilities and does not have jurisdiction to award

²⁴ See *id.* at 1. We interpret and treat this part of Mr. Margetts' filing as a motion to withdraw the motions listed above.

²⁵ See *id.* at 1-4.

²⁶ See Notice of Filing of Motions, issued April 17, 2015.

²⁷ See Notice of Non-Opposition to CenturyLink's Motion to Dismiss, filed April 24, 2015.

²⁸ See CenturyLink's Response to the Various Motions Filed by Kelly Margetts on April 16, 2015, filed April 30, 2015.

²⁹ CenturyLink essentially reads Mr. Margetts' motion to strike in a manner similar to the Commission's "motion to withdraw" reference above.

³⁰ See CenturyLink's April 1, 2015, and April 13, 2015, filings in this proceeding.

damages. ...Mr. Margetts is not entitled to any relief based on Commission rules or CenturyLink's Price List on file with the Commission. Therefore Mr. Margetts is not entitled to any service credits. ...CenturyLink respectfully requests that the Commission deny this motion since CenturyLink has not violated any Commission rule or order, and is acting consistent with its Price List."³¹

Regarding Mr. Margetts' motion for order from the Commission, CenturyLink argues that "[e]ven if the Commission did have jurisdiction over this issue, Mr. Margetts' motion is deficient in that it provides no evidence that CenturyLink failed '*to follow correct protocol and procedure.*' It is also an undisputed fact that CenturyLink had no construction activity on Grace Court or in the nearby area during the January 15, 2015 to February 3, 2015 time frame that is specified in Mr. Margetts' complaint or the April 16, 2015 motions. ...Mr. Margetts' allegations are mere speculation. The complaint and the motions are essentially requesting that the Commission spend considerable time and resources to address a perceived and potential issue and not an actual complaint. The Commission should deny this motion. ...The Commission has given Mr. Margetts opportunities to state a claim for which the Commission could grant relief. However, he has failed to do so and the Commission should immediately dismiss his complaint."³²

11. On May 1, 2015, Rocky Mountain Power filed a supplemental response and request to deny Mr. Margetts' various motions, and a motion to dismiss, restating its answer and

³¹ *Supra* n.28 at 2-3 (footnote omitted).

³² *Id.* at 3-4.

motion to dismiss, filed April 15, 2015.³³ Rocky Mountain Power adds that “. . .Mr. Margetts’ electric service was in no way interrupted[,] nor did the Company deny Mr. Margetts use of his electric facilities.”³⁴ “[Rocky Mountain Power] has apologized to Mr. Margetts for any inconvenience he experienced resulting from the excavation work done by the [c]ustomer digging the trench.”³⁵ “[Rocky Mountain Power] followed the permitting process with the City of Salt Lake and did not barricade access to Mr. Margetts’ property; rather, the [c]ustomer’s contractor provided a temporary alternative route during the course of the [c]ontractor’s work.”³⁶ In addition, Rocky Mountain Power requested dismissal for the same reasons as those stated in its earlier motion to dismiss.³⁷

12. On May 6, 2015, Mr. Margetts filed a final response.³⁸ In this filing, Mr. Margetts requests an “Order from the [Commission] instructing [Rocky Mountain Power] to follow all protocol with all permits in the future before . . . work begin[s], continue[s] or expand[s]...”³⁹ With respect to CenturyLink, Mr. Margetts requests an order from the Commission to place CenturyLink on notice that it too is required to follow “correct permitting and protocols[.]”⁴⁰

Mr. Margetts May 6, 2015, filing does not address CenturyLink’s or Rocky Mountain Power’s Motions to Dismiss.

³³ See Supplemental Response and Request to Deny Mr. Margetts’ Various Motions, filed May 1, 2015.

³⁴ *Id.* at 1, ¶ 2.

³⁵ *Id.* at 2, ¶ 3.

³⁶ *Id.* at 2, ¶ 4.

³⁷ *Id.* at 2, ¶¶ 5-6.

³⁸ See Final Response, filed May 6, 2015.

³⁹ *Id.* at 1.

⁴⁰ *Id.*

13. The time having now elapsed for filing of responsive pleadings in this matter, Mr. Margetts' complaint and the parties' motions are now ripe for decision.

CONCLUSIONS OF LAW

I. CenturyLink's Motion to Dismiss

CenturyLink moves for dismissal of Mr. Margetts' complaint for failure to state a claim upon which relief can be granted. In addition, CenturyLink moves for dismissal because Mr. Margetts has failed to demonstrate that CenturyLink has violated any Commission rule, order or applicable state law, or that CenturyLink has violated its Price List on file with the Commission.

Under Utah Administrative Code R746-100-4(D), a "[r]esponse [to a motion]. . . shall be filed within 15 calendar days . . . of the service date of the pleading.... Absent a response or reply, the Commission may presume that there is no opposition."⁴¹ Mr. Margetts' deadline for responding to CenturyLink's Motion to Dismiss was April 16, 2015.⁴² On April 16, 2015, Mr. Margetts filed a pleading,⁴³ however, in that pleading he did not respond to CenturyLink's Motion to Dismiss.⁴⁴ Accordingly, pursuant to rule R746-100-4(D) of the Utah Administrative Code, we presume there is no opposition to CenturyLink's Motion to Dismiss.

Additionally, "the Division recommends that this complaint be dismissed unless Mr. Margetts provides evidence demonstrating . . . CenturyLink's failure to comply with relevant rules, tariffs, or laws."⁴⁵ Mr. Margetts has made no such showing. Indeed Mr. Margetts'

⁴¹ Utah Admin. Code R746-100-4(D).

⁴² See *supra* at 3, ¶ 5.

⁴³ See *supra* n.23.

⁴⁴ See *id.*

⁴⁵ See *supra* n.6.

complaint fails to establish that CenturyLink had any connection to the work that gave rise to his complaint. Therefore, for the reasons explained here, we grant CenturyLink's Motion to Dismiss.

II. Rocky Mountain Power's Motion to Dismiss

Rocky Mountain Power moves for dismissal of Mr. Margetts' complaint under U.R.C.P. 12(b)(6) for failure to state a claim upon which relief can be granted. In support of its motion, Rocky Mountain Power argues that Mr. Margetts' complaint fails to establish a violation of Commission rule or order, or company tariff. As noted above, the Division agrees with this argument and "recommends that this complaint be dismissed unless Mr. Margetts provides evidence demonstrating Rocky Mountain Power[s] . . . failure to comply with relevant rules, tariffs, or laws."⁴⁶ Mr. Margetts has not established the requisite proof to support his complaint. At most, he has shown that Rocky Mountain Power lacked a permit from the Utah Department of Transportation; however, as Rocky Mountain Power notes that error has been corrected going forward and the company has apologized to Mr. Margetts for any inconvenience he experienced resulting from the excavation work done by a contractor who dug the trench in preparation for electric service to be installed for a neighboring business owner. The Commission does not regulate the permits a utility is (or is not) required to obtain in the context presented in this docket.

Further, Mr. Margetts failed to respond to Rocky Mountain Power's Motion to Dismiss. Instead, Mr. Margetts filed various motions, none of which address the issues raised by Rocky Mountain Power. As set forth above, in Utah Administrative Code R746-100-4(D), a "[r]esponse

⁴⁶ *See id.*

[to a motion]. . . shall be filed within 15 calendar days . . . of the service date of the pleading.... Absent a response or reply, the Commission may presume that there is no opposition.”⁴⁷ Based on Mr. Margetts failure to respond to Rocky Mountain Power’s Motion to Dismiss, we presume there is no opposition to the motion. Accordingly, for the reasons explained here, we grant Rocky Mountain Power’s Motion to Dismiss.

ORDER

For the foregoing reasons, the Commission grants both CenturyLink’s and Rocky Mountain Power’s motions to dismiss Mr. Margetts’ complaint.

DATED at Salt Lake City, Utah, this 8th day of June, 2015.

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#266731

⁴⁷ Utah Admin. Code R746-100-4(D).

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 8th day of June, 2015, a true and correct copy of the foregoing was served upon the following as indicated below:

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Kelly Margetts
921 South 400 East
Salt Lake City, UT 84111

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