

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of
Marian Seamons against Ticaboo Utility
Improvement District

DOCKET NO. 15-2508-01
ORDER ON MOTION TO DISMISS
AND NOTICE OF HEARING

ISSUED: July 6, 2016

I. Procedural background.

On December 18, 2015, Marian Seamons (Ms. Seamons) filed with the Public Service Commission of Utah (Commission) a formal complaint against Ticaboo Utility Improvement District (TUID), a public electric utility. On March 10, 2016, Ms. Seamons filed an amended formal complaint by and through counsel Jon M. Hogelin.

On April 22, 2016, TUID, represented by counsel J. Craig Smith, responded to the amended complaint and filed a motion to dismiss it. The parties have fully briefed TUID's motion to dismiss.

II. Facts.

1. TUID is the sole provider of electric and water utility services in Ticaboo, which is an unincorporated townsite located in Garfield County, Utah.
2. TUID is a political subdivision of the State of Utah. It was formed by Garfield County to operate as a local district, pursuant to Utah Code Title 17B.
3. TUID holds a certificate of public convenience and necessity from the Commission to operate as an electric utility district.
4. TUID's operations in providing culinary water, sanitary sewer, and garbage collection services are exempt from Commission jurisdiction.

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5. Ms. Seamons owns eight platted lots within TUID's service area.
6. Ms. Seamons does not live in Ticaboo. At certain relevant times, one or more tenants have rented her property.
7. At all relevant times, TUID has had infrastructure in place to deliver electricity to Ms. Seamons's properties.
8. TUID's current tariff was approved by the Commission on September 10, 2015 in Docket No. 15-2508-T01.
9. TUID's current tariff includes a \$75 monthly standby fee for electric service.
10. TUID charges the following standby fees for its nonregulated services:
 - a. water service: \$39.00;
 - b. wastewater service: \$28.00; and
 - c. garbage service: \$12.00.
11. TUID does not allow a residential customer to contract for electric and water services separately.¹ In order to get either, the customer must contract for both. The total for all standby fees is \$154.00 per month, or \$1,848 per year. Where Ms. Seamons owns eight platted properties, her annual standby fees total \$14,784.
12. TUID does not allow a residential customer to terminate electric service on request. The customer is required to pay standby fees for at least 24 months following the date of a termination request. In addition, TUID requires a customer to continue paying standby fees until it approves the application to terminate, which TUID may unilaterally choose

¹ Customers who require water solely for livestock are not required to contract for TUID's other services. All other customers are required to pay for all services TUID is prepared to perform, regardless of the customer's specific needs.

not to do. Finally, if TUID considers that a residential customer's account is not paid in full, the customer is not permitted to terminate service.

13. TUID does not allow a tenant to contract for electric service; all residential contracts are required to be in the name of the property owner.²

14. Ms. Seamons has not paid in full the standby fees assessed to her by TUID. Therefore, TUID has filed liens against her properties.

15. By statute, as discussed more fully below, prior to implementing new rates, TUID is required to hold a meeting with the TUID board of directors to approve the new rates. TUID is also required to hold a public meeting for all customers, who are entitled to receive written notice of the meeting at least 10 days in advance.³

16. Under TUID's tariff, the utility is required to provide each customer with a customer information pamphlet on an annual basis. In addition, TUID is required to display the customer information pamphlet prominently in its business office.

III. Parties' Positions.

Ms. Seamons's complaint identifies eight issues for Commission consideration. TUID argues that each issue must be dismissed. In brief, the parties' positions are as follows.

² We note, however, that the tariff is internally inconsistent on the matter of tenant account. Specifically, Section 02.01(16), which defines "Customer," does not exclude a tenant, but allows "any person" to contract for service. In addition, Section 09.01 states: "[A]ll *Customers who are tenants* and not the owners of the property on which they desire service shall provide a security deposit as described in Schedule RC at the time of connecting to the District's system." (Emphasis added.)

³ The statute may be read as allowing a single meeting. If customers are properly notified of the board meeting in which new rates are approved, the public meeting requirement would be satisfied.

1. Ms. Seamons argues that TUID's standby fees are illegal. TUID argues that the Commission has no jurisdiction to determine the legality of TUID's rates, including standby fees.
2. Ms. Seamons argues that antitrust laws prohibit TUID from requiring a property owner to pay, at a minimum, standby fees for all services in order to subscribe to one. TUID argues that the Commission has no jurisdiction to interpret or enforce federal antitrust laws.
3. Ms. Seamons alleges that TUID has failed to mail or deliver to her a copy of the customer information pamphlet described in TUID's tariff. Similarly, Ms. Seamons alleges that TUID has failed to display the pamphlet prominently in its business office, as required under the tariff. TUID argues that it has complied with its tariff in full and at all times. TUID further stipulates that it will comply in the future with its obligation to make customer information readily available.
4. Ms. Seamons alleges that she was not notified that TUID was considering amending its tariff to include standby fees until approximately six months after the fees were implemented. TUID argues that it has held all required public meetings and properly notified Ms. Seamons of such. TUID further stipulates that it will comply in the future with all notice requirements.
5. Ms. Seamons argues that TUID should be required to accept a tenant as a customer rather than requiring the property owner to be the customer of account on a rental property. TUID argues that Ms. Seamons has failed to identify any applicable statute

or rule that would prohibit the utility from declining tenant contracts. TUID further notes that its tariff language restricting tenant contracts has been previously reviewed by the Division of Public Utilities (Division) and approved by the Commission.

6. Ms. Seamons argues that Commission rule R746-200-7(I)(1) invalidates TUID's policy of requiring a property owner to pay standby fees for at least 24 months before permanently abandoning service. TUID argues that the rule Ms. Seamons cites does not in fact prohibit its abandonment policy. TUID also reiterates its jurisdictional argument. Where TUID considers that the Commission lacks jurisdiction to regulate its rates, TUID also considers itself to be exempt from Commission rules that govern rates, including standby fees.⁴ Finally, TUID emphasizes that its abandonment policy has been previously reviewed by the Division and approved by the Commission.
7. Ms. Seamons alleges that TUID removed taps from her property without first notifying her, thereby violating her Constitutional right to due process. TUID argues that the Commission has no jurisdiction to adjudicate an alleged violation of Constitutional rights, including the right to due process.
8. Ms. Seamons alleges that the Division found TUID's tariff to be illegal in 2015 and that the Commission adopted that finding. TUID argues that Ms. Seamons

⁴ We note that TUID has incorporated the administrative rule into two separate sections of its tariff, and interpret its argument to be that TUID is exempt from Commission rules governing rates unless TUID has incorporated those rules into its tariff. Section 01.03 of the tariff states: "The District hereby incorporates the terms of Residential Utility Service Rules (R746-200) into the Tariff." In addition, Section 10.03 states: "A Customer shall advise the District at least three days in advance of the day on which the Customer wants utility service disconnected. The District will disconnect the service within four working days of the requested disconnect date. The Customer shall not be liable for the services rendered to or at the address or location after the four days, unless access to the property and/or meter(s) has been delayed by the Customer."

misunderstands the 2015 docket; that the tariff has never been found to be illegal; and that the tariff is not illegal.

IV. Analysis.

A motion to dismiss "should be granted ... only if it is clear that a party is not entitled to relief under any state of facts which could be proved in support of its claim."⁵ We address TUID's jurisdictional argument as a threshold question.

Title 17B governs the creation and operation of local districts to provide specified public services, including electrical utility service. TUID is a local district subject to Title 17B. TUID cites to Utah Code § 17B-2a-406(6)(a) as support for its position that this Commission has no jurisdiction over its rates, which include standby fees. Section 17B-2a-406(6)(a) states:

Section 54-7-12 does not apply to rate changes of an electric improvement district if:

- (i) the district is organized for the purpose of distributing electricity to customers within the boundary of the district on a not-for-profit basis;
- (ii) the schedule of new rates or other change that results in new rates has been approved by the board of trustees of the district;
- (iii) prior to the implementation of any rate increases, the district first holds a public meeting for all its customers to whom mailed notice of the meeting is sent at least 10 days prior to the meeting; and
- (iv) the district has filed the schedule of new rates or other change with the commission.

Section 54-7-12, which is referenced in Section 17B-2a-406(6)(a), sets forth the procedure that a regulated utility must follow in order to petition the Commission for a rate

⁵ *Am. W. Bank Members, L.C., v. State*, 342 P.3d 224, 230 (Utah 2014) (quoting *Colman v. Utah State Land Bd.*, 795 P.2d 622, 624 (Utah 1990)).

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change. Therefore, as long as TUID complies with the four conditions set forth in Section 17B-2a-406(6)(a), it is not required to seek Commission approval of its rates, and the Commission has no authority to change or disallow a rate.

Under these statutory provisions, the question of whether the Commission has jurisdiction over TUID's current standby fees, including the policies under which the fees are applied, cannot be answered until we examine TUID's last tariff docket, 15-2508-T01, to determine whether TUID complied with Section 17B-2a-406(6)(a). The history of Docket No. 15-2508-T01 is as follows:

1. March 20, 2015: TUID filed tariff sheets revising its electric service regulations and rate schedules.
2. April 13, 2015: The Division filed comments in the docket, recommending that the tariff be rejected because the Division considered that TUID had not complied with Section 17B-2a-406(6)(a). Specifically, the Division noted that the tariff had an effective date of March 14, 2014, approximately 10 months prior to the January 15, 2015 meeting of the TUID board of directors in which the tariff was approved, and approximately one year prior to the date on which TUID filed the tariff with the Commission.⁶ Therefore, the Division considered that TUID's proposed rates were not exempt from the Commission's review and adjudication. The Division also expressed concern about three new policies included in the tariff:
 - a. The Division objected to language prohibiting a tenant from entering into a contract for utility service. The Division noted that most of the residents in TUID's service area had surface leases on Utah state lands, and that the state would likely refuse to take responsibility for the lessees' utility service.
 - b. The Division objected to the requirement that a customer pay standby fees for two years before being allowed to terminate service entirely. The Division considered this requirement to be contrary to Utah Administrative Code R746-200-7(I)(1), which states that a utility must disconnect service within four days of a

⁶ There was some evidence that the TUID board had approved portions of the revised tariff at earlier dates (March 21, 2014 and April 17, 2014), but the Division still considered that TUID could not make the tariff effective retroactive to board approval, prior to submitting it to the Commission, and prior to the Commission's making it available to the public for at least 30 days.

termination request.

- c. The Division considered that a not-for-profit public utility should not be permitted to charge a \$1,000 per-day fine for tampering/unauthorized reconnection.
3. May 14, 2015: TUID responded to the Division's comments. In sum, TUID explained that the restriction against tenant contracts was acceptable to the state School and Institutional Trust Land Administration (SITLA), which owned the surface leases at issue. TUID also noted that standby fees were first included in the tariff in Docket No. 13-2508-T01 and that the Division made no objection at that time. Finally, TUID argued that it had complied with Section 17B-2a-406(6)(a). In addressing the Division's concerns about timing, TUID pointed out eight prior dockets where the Commission had approved electric district tariffs with effective dates retroactive to the date of Commission approval.
4. August 21, 2015: TUID and the Division filed a joint settlement stipulation. In relevant part, the stipulation provided that TUID would, within 30 days of the order date, hold a new meeting of the board. The tariff effective date would be July 25, 2014. No retroactive rates would be charged. The tampering/unauthorized reconnection charge would be \$100 per day. A landlord would be allowed to have multiple tenant accounts. A problem with one tenant account would not be a basis for action against any other tenant account. A tenant would have a right to notice from TUID before disconnection and would also have the right to bring the account current.
5. September 10, 2015: The Commission issued an order approving the joint settlement stipulation and requiring TUID to file its revised tariff with the Commission within 15 days of holding the new board meeting as agreed.

Having reviewed the record of Docket No. 15-2508-T01, the Commission is unaware of evidence in the relevant docket records that the board meeting was held or that the revised tariff was filed. If TUID failed to comply with the September 10, 2015 order, then its current tariff may be invalidated, and Ms. Seamons may be entitled to relief.⁷ Therefore, we are unable to rule on the jurisdictional question without taking additional evidence.

⁷ Although the stipulation and accompanying order did not address the issue of a public meeting, Section 17B-2a-406(6)(a)(iii) requires one before any rate increase may be implemented. Therefore, there is a further question as to whether TUID noticed and held a meeting following the September 10, 2015 order, whether as part of a board meeting or separately.

Further, Ms. Seamons contends that she was not given notice (either in 2013 or in 2015) of the TUID public meetings where revised rates were presented to customers. The Commission must take evidence on this contention in order to rule on it. If Ms. Seamons has not been given the opportunity to participate in the political process through which TUID is statutorily authorized to set rates, then she may be entitled to relief from the Commission.

As to Ms. Seamons's due process argument, it is not necessary to address whether the Commission may take jurisdiction over a Constitutional claim. The Commission's rules set forth notice and other procedural requirements that a public utility must follow in order to terminate service in the absence of a customer request.⁸ If TUID has failed to comply with those rules, then Ms. Seamons may be entitled to relief.

Ms. Seamons's allegations regarding the customer information pamphlet also involve a fact dispute as to which the Commission must take evidence. The obligation to provide the pamphlet is set forth in Utah Administrative Code R746-200-1, which rule TUID has incorporated into its tariff. Therefore, if it is found that TUID has failed to provide and/or display the pamphlet, then Ms. Seamons may be entitled to relief.

TUID is correct that standby fees are legal. The Commission has regularly approved and required standby fees in the tariffs of regulated utilities. Further, Utah Code § 17B-1-103(2)(j) allows a local district to charge "fees or other charges for commodities, services, or facilities provided by the district." While the statute does not use the specific term "standby fee," a tap is a facility for which a fee may be charged.

⁸ See Utah Administrative Code R746-200-7. We note that Section 01.03 of TUID's tariff incorporates the Commission's rules governing termination of service.

TUID is also correct that its tariff has never been found by the Division or the Commission to be illegal. In Docket No. 15-2508-T01, the Division raised concerns about certain policies that appeared to conflict with Commission rules, or that appeared to be against public interest. The Commission acknowledged those concerns in reviewing the procedural history of the docket. However, in the process of negotiating a stipulated tariff with TUID, the Division resolved or withdrew those concerns. In approving the tariff, the Commission found the rates and policies set forth to be legal.

We emphasize that TUID's tariff, which is legal as to its rates and policies, may be enforced against Ms. Seamons only if TUID has fully complied with the Commission's September 10, 2015 order and with Section 17B-2a-406(6)(a).

ORDER

Given the foregoing, TUID's motion to dismiss is **GRANTED** in part and **DENIED** in part. We dismiss Ms. Seamons's allegations as to the legality, in general, of standby fees and as to the legality of the specific rates and policies set forth in TUID's tariff. The hearing in this matter, which is noticed below, will take place as to the following issues:

1. When the Commission approved the joint settlement stipulation in Docket No. 15-2508-T01, TUID was ordered to hold a board meeting within 30 days of September 10, 2015, or no later than Saturday, October 10, 2015. Did TUID comply with that order?
2. If TUID held the board meeting as ordered in Docket No. 15-2508-T01, did it also file its revised tariff with the Commission within the ensuing 15 days?

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3. Did TUID hold public meetings for customers as required under Utah Code § 17B-2a-406(6)(a)(iii), both as to Docket No. 13-2508-T01 and as to Docket No. 15-2508-T01? If so, was Ms. Seamons properly notified of the public meetings pursuant to Utah Code § 17B-2a-406(6)(a)(iii)?
4. When did TUID first begin to charge Ms. Seamons standby fees?
5. Does TUID allow contracts with tenants? If so, are Ms. Seamons's tenants entitled to similar consideration?
6. Has TUID mailed a customer information pamphlet to Ms. Seamons as required under the tariff and by Commission rule?
7. Has TUID removed taps from Ms. Seamons's property? If so, what were the circumstances under which the taps were removed?

DATED at Salt Lake City, Utah, July 6, 2016.

/s/ Jennie T. Jonsson
Administrative Law Judge

Approved and confirmed July 6, 2016 as the Order of the Public Service Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#285891

NOTICE OF HEARING

The hearing in this docket will be conducted by the Administrative Law Judge for the Public Service Commission on **Wednesday, July 27, 2016, beginning at 9:00 A.M.** The hearing will be held in the **Fourth Floor Hearing Room 451, Heber M. Wells Bldg., 160 East 300 South, Salt Lake City, Utah.**

Individuals wishing to participate in the hearing by telephone should contact the Public Service Commission two days in advance at (801) 530-6716 or (toll free) 1-866-PSC-UTAH (1-866-722-8824) to receive a bridge number and participant passcode. Participants attending by telephone should then call the bridge number five minutes before the conference, entering the passcode followed by the # sign to ensure participation.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during the hearing should notify the Commission at 160 East 300 South, Salt Lake City, Utah, 84111, (801) 530-6716, at least three working days prior to the hearing.

DATED at Salt Lake City, Utah, July 6, 2016.

/s/ Jennie T. Jonsson
Administrative Law Judge

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#285891

CERTIFICATE OF SERVICE

I CERTIFY that on July 6, 2016, a true and correct copy of the foregoing was served upon the following as indicated below:

By U.S. Mail:

Marian Seamons
1707 S 50 E
Orem, UT 84058

Jeffs and Jeffs
90 N 100 E
Provo, UT 84601

By E-Mail:

sharonmarian@yahoo.com

Chip Shortreed (chipshortreed@ticabooid.com)
Ticaboo Utility Improvement District

J. Craig Smith (jcsmith@smithlawonline.com)
Adam S. Long (along@smithlawonline.com)
Smith Hartvigsen PLLC

Jon M. Hogelin (jon@lakeyhogelin.com)
Benjamin Lakey (ben@lakeyhogelin.com)
Lakey Hogelin, PLLC

Patricia Schmid (pschmid@utah.gov)
Justin Jetter (jjetter@utah.gov)
Rex Olsen (rolsen@utah.gov)
Assistant Utah Attorneys General

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By Hand-Delivery:

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

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

Administrative Assistant