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**BEFORE THE PUBLIC SERVICE COMMISSION
OF UTAH**

BRINGARD MILLWORKS LC,	:	BRINGARD MILL'S REPLY TO ROCKY MOUNTAIN POWER'S ANSWER AND OPPOSITION TO MOTION TO DISMISS
Complainant,	:	
v.	:	
ROCKY MOUNTAIN POWER,	:	Docket No. 17-035-66
Respondent.	:	Before the Public Service Commission of Utah
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Complainant Bringard Millworks LC, by and through counsel, Reply to Respondent's Response and Answer Respondent's Motion to Dismiss as follows:

PARTIES, JURISDICTION AND VENUE

Bringard Millworks LC (“Bringard”), Complainant, pursuant to Utah Code Ann. §63G-4-204(1) and Utah Admin. Code R746-1-203, R746-1-301 and R746-1-206 hereby replies to Rocky Mountain Power’s (“RMP”) Answer as well as provides its Response to RMP’s Motions to Dismiss.

DISPUTED ALLEGATIONS

Bringard disputes the following allegations contained in RMP’s Answer and Motion to Dismiss. References to paragraphs are to numbered paragraphs in ROCKY MOUNTAIN POWER’S ANSWER AND MOTION TO DISMISS.

1. RMP asserts in paragraph 2 that Mr. Wade Winegar is a Manager of Bringard Mill and Molding. Bringard Mill and Molding was an entity that was dissolved by the State of Utah on January 15, 2013. Mr. Winegar has never been a Manager of that entity or associated with it. He is a Manager of Bringard Millworks LC which has requested several times that RMP properly reflect this entity on its billing records at the subject property but so far, RMP has failed to accurately reflect the correct name of the entity on the account.

2. RMP implies in paragraph 3 that CT’s are not part of the metering system stating “Although a conduit connects the CTs to the revenue meter, the CT itself is not a meter.” While a CT is not a “meter” if one defines meter very narrowly as the rotating disks, the only purpose

for the CT's is to measure the amount of electricity used by a customer and is part of the metering system, which is comprised of the components needed to measure electrical usage. The CT's are not only connected by a conduit to the meter, but by wires in that conduit that run to the meter itself and drive the meter's registration of electricity used. The CT's serve no functional purpose other than as part of the meter and ANSI considers them part of the metering system. What appears to be clear is the meter was inaccurately measuring the electricity being used because part of the meter was not working.

3. In paragraph 7, RMP attempts to define "backbill" (and then continually use that erroneous definition) as an "amount" rather than what is stated in the regulation. "A "backbill" is **that portion of a bill**, . . . which represents charges **not previously billed** for service that was actually delivered to the customer during a period before the current billing cycle." (Emphasis added. R746-310-8 (A.1)). A backbill, by definition, is part of a utility bill, not an amount thought of, discussed by, or intended to be put on a utility bill at some point in the future. While RMP states the amount of the backbilling "calculated" by the company, no such bill was issued until October 30, 2017 and then revised a day later on October 31, 2017. These are the first, and only, "backbills" issued by RMP.

4. Further in paragraph 7, RMP erroneously states a backbill (assuming it had been issued in time, which it was not) may reach back for 24 months. RMP fails to recognize other *very* clear sections in the regulations dealing with bill adjustments for the exact issue at hand,

failure to correctly register electricity. Specifically in the regulation entitled “BILL

ADJUSTMENTS FOR METER ERROR AND FAILURE TO REGISTER:

If any meter fails to register correctly the amount of electric power or energy used by the Customer, the amount of such use will be estimated by the Company from the best available information. If a meter does not register, the Company may bill the customer for the estimated power and energy used but not registered for a period not exceeding three months. . . . (Emphasis added. Electrical Service Regulation No. 7R.4, para. 4(b)).

The meter at the subject property failed to correctly register the electricity delivered and this section, being more specific than general “billing adjustments”, limits how far RMP can go back to adjust billing.

5. In paragraph 8, RMP again refers to an “amount” as a backbill, which it is not. Throughout the process of attempting to gain information from RMP, Bringard has been told nine differing amounts owed ranging from over \$84,000.00 to \$22,577.07. Bringard has also been given various stories as to why and how RMP could bill this amount legally. When one theory did not work, RMP would change their theory. Mr. Winegar’s frustration was over an ever changing position which appeared to change in order to collect an amount of money rather than based in fact and regulations.

6. In paragraph 9, RMP states “. . . Mr. Winegar rejected the offer and wanted to discuss Rocky Mountain Power’s Electric Service Regulation No. 7 regarding billing adjustments for error and failure to register. The Company advised Mr. Winegar that Bringard’s electric meter tested within accuracy limits and the adjustment was due to the damaged CT

wiring. . . .” What RMP fails to mention is that Bringard was directed by RMP to Electric Service Regulation No. 7 and No. 8 who stated these sections authorized RMP to demand the amounts they were claiming and authorized them to do so. When Bringard reviewed the sections they were directed to by RMP and then pointed out the limits these sections also contained, RMP’s theory of their authority to collect the amounts demanded changed, as they have several times since, in an apparent attempt to collect an amount they want, regardless of the regulations they themselves have cited.

7. In paragraph 10, RMP states Mr. Winegar countered with an offer of \$5,000.00 which the Company declined. During the time Bringard was communicating with RMP asking for a consistent, final theory on their authority to backbill Bringard for the amounts RMP wanted, RMP directly asked Bringard to make an offer of what it was willing to pay, which Bringard did. This seemed to be an attempt to avoid the question of what authorized them to collect at all considering the prior regulations to which Bringard was directed.

8. In paragraph 11, RMP again confuses the term “backbill” by claiming they “initiated” the backbill. In actuality, the backbill is *dated* October 31, 2017 yet they refer to this as the “24-month payment plan” since that date does not fit their timeline they want for a backbill.

RESPONSE TO RMP's MOTION TO DISMISS

9. RMP alleges Bringard has failed to establish RMP violated rules, tariffs or that its actions were unjust yet the evidence they themselves present clearly points to an exact opposite conclusion.

10. It is clear that RMP, according to their own timeline, discovered the meter was failing to register correctly the amount of electric power used on July 28, 2017. No backbill was issued until October 31, 2017, more than three months after RMP knew of the problem, contrary to Electric Service Regulation No. 8R.3, paragraph 8(c) which states “The Company shall not render a backbill more than three months after the Company actually became aware of the circumstance, error, or condition that caused the underbilling. . . . (Emphasis added).

11. Despite the tortured definitions used by RMP, it is obvious through the clear definitions given in the regulation what a “backbill” is and the date on the backbill is October 31, 2017. RMP violated PSC regulations by issuing a backbill beyond the 3 months, which is prohibited in the Regulation.

12. Next, RMP asserts that Mr. Winegar “was aware of the amount” while he was attempting to understand RMP’s ever changing position on their authority to bill or the nine different amounts RMP claimed was owed at one time or another. That Mr. Winegar may have been aware of the different proposed amounts is irrelevant to whether RMP followed the regulation. The regulation doesn’t vaguely state that the customer “should be aware of the

amount”, it states a backbill must be rendered. The simple fact is, RMP did not render a backbill in the time required by the regulations, they violated the PSC regulations when they rendered it after the 3 months had passed and any Motion to Dismiss should be denied.

13. RMP further claims that, arguendo, had they had issued the backbill in a timely fashion, they are not limited to backbilling for 3 months as stated in the regulation. RMP alleges that the regulation for failing to correctly register electricity only applies to “adjustments due to a stopped, fast, or slow meter.” Yet the Regulation, as published on their own website, is far more inclusive and includes the matter at hand, and for good reason.

14. It is entitled “BILL ADJUSTMENTS FOR METER ERROR **AND FAILURE TO REGISTER**”. (Emphasis added). It has two subsections. The first subsection deals with meter error (fast or slow) and so states. The second subsection is entitled “Failure to Register”.

It states:

If any meter *fails to register correctly* the amount of electric power or energy used by the Customer, the amount of such use will be estimated by the Company from the best available information. If a meter does not register, the Company may bill the customer for the estimated power and energy used but not registered *for a period not exceeding three months.* If the Company finds that the meter has been tampered with, the Customer shall pay for such estimated usage together with the expense for restoring the Company’s equipment to its normal operating condition and correcting Company billing records. (Emphasis added). Electric Service Regulation No. 7R.4, 4(b).

15. This regulation clearly defines and envisions a functioning meter, that for one reason or another, is not correctly registering the amount of electric power being used. It states

this in the opening definition. For that amount of electricity used but not registered, the regulation allows RMP to estimate usage and then bill the customer for the estimated energy for a period not exceeding three months. While RMP states, and would have the Commission believe, this regulation only applies to fast, slow or stopped meters, that is not what the regulation clearly states. It states “if any meter fails to register correctly” clearly implying some registration can take place. Fast and slow meters are addressed in the prior subsection (a) and have their own, independent restriction on how long RMP can backbill (6 months).

16. Again, RMP attempts a tortured set of definitions to arrive at a result they want rather than directly addressing the language of the regulation. If their suggested standard of regulatory interpretation is adopted, it makes the regulations whatever RMP wants them to be for the moment, as evidenced by their changing positions in dealing with Bringard in the case at hand.

17. Finally, if RMP wants to timely issue a backbill, it must notify the Customer which notice shall be followed by a written explanation of the reason for the backbill and shall be sufficiently detailed to apprise the customer of circumstances of the error or condition. Despite several requests for this, RMP failed to provide this information.

Argument

18. RMP illegally backbilled Bringard for \$22,577.07 contrary to Electric Service Regulation No. 8R.3, paragraph 8(c) which states:

Limitations on Rendering a Backbill

The Company shall not render a backbill more than three months after the Company actually became aware of the circumstance, error, or condition that caused the underbilling. This limitation does not apply to fraud, and theft of service limitations. (Emphasis added).

RMP had 3 months to render a backbill to Bringard after they discovered the metering problem on July 28, 2017. It was almost 2 months before Bringard was even contacted for the first time about any amount. Bringard reasonably inquired as to what regulations allowed them to estimate usage. The regulation that allows for backbilling does not say ‘speak to, inform, talk about, negotiate or otherwise, but requires a backbill be issued within the 3 months by stating the Company “shall not” issue one later than 3 months. They failed to render a backbill until October 31, 2017. Redefining a “backbill” to claim it means an “amount” rather than what the regulations states, “[a] “backbill” is that portion of a bill, . . .” does not solve the problem and RMP should be bound by the clear definition contained in the regulation.

19. RMP had until October 28, 2017 to render a backbill yet they failed to do so. The date on the backbill they reference is October 31, 2017. The language of the regulation is clear that “The Company shall not render a backbill” beyond October 28, 2017. For RMP to do so violates the regulation and the Commission should Order them to rescind the backbill.

20. Further, arguendo, had RMP timely issued a backbill, they would be limited to issuing it for an estimate of 3 months of unbilled energy not registered on the meter.

21. Electric Service Regulation No. 8R.3, paragraph 8 deals in general with RMP's legal authority to adjust bills. This section defines a backbill, sets a requirement to notify the Customer with certain required written information (which they failed to do), and sets other general limitations on adjusting bills.

22. A more specific regulation to the circumstances of this matter is found in Electric Service Regulation No. 7R.4 and entitled BILL ADJUSTMENTS FOR METER ERROR AND FAILURE TO REGISTER. It puts further restrictions on RMP's ability to adjust a bill if a meter is running fast or slow OR if a meter fails to register correctly the actual amount of power used. The regulation in section (a) puts a time limit of six months on fast or slow meters. In section (b), it sets a time limit of three months on meters that, for whatever reason, fail to correctly register the amount of power used and authorizes RMP to estimate that usage that was not billed.

23. When a meter does not register power consumption correctly, the Commission has limited the Company from going back for 2 years. The reasoning seems clear. A company that is being billed and relying on that bill for their costs of operation should not face a large loss when, through no fault of theirs, the electric bill is inaccurate. One likely reason for the Commission putting more specific restrictions when a meter fails to correctly register energy consumed is that Bringard assumes their billing to be correct. There is no reason to suspect an error. Bringard cannot go back to its customers and "backbill" them for these charges to cover

their now increased costs. This appears to be a reason the Commission has put a cap of 3 months on how far RMP can go back, estimate usage and backbill.

24. Finally, RMP is required pursuant to Electric Service Regulation No. 8R.3(b), “Notice”, to provide notification that “shall be” followed by, or include a written explanation of the reason for the backbill that shall be received by the customer before the due date and be sufficiently detailed to apprise the customer of the circumstances, error or condition that caused the backbill. RMP failed to do this thus creating confusion as to what happened, why they were attempting to collect for longer than allowed and why they continued to change amounts and claimed authority to do so.

CONCLUSION

25. If a plain reading is made of the regulations, it is clear RMP failed to render a backbill within the time required, according to their own facts of knowing of the incorrect metering on July 28, 2017 and then not issuing the backbill until October 31, 2017. RMP would have the Commission hold that a discussion, negotiation or other future intention of backbilling is sufficient to comply with the regulation. But this is not what is clearly stated in the regulation. The Commission should Order RMP to withdraw its backbill issued to Bringard.

26. Further, even if RMP had timely issued a backbill, the regulation limits RMP to being able to backbill for only 3 months estimated usage when a meter fails to register correctly

the amount of electricity delivered. RMP violates the Commission's regulations when it attempts to backbill for longer than 3 months.

27. Finally, RMP failed to provide the requisite notice as required by regulation within the time set, despite several requests by Bringard to provide it with a written explanation.

28. The Commission should summarily Order Rocky Mountain Power to withdraw its backbill based on a logical reading of the regulations and the undisputed facts.

DATED this 25th day of January, 2018.

/S/ Wade S. Winegar
Wade S. Winegar
Attorney for Complainant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached BRINGARD MILL'S REPLY TO ROCKY MOUNTAIN POWER'S ANSWER AND OPPOSITION TO MOTION TO DISMISS in Docket No. 17-035-66 before the Public Service Commission of Utah, was served upon the parties listed below via E-mail, on the 25th day of January, 2018.

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