

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Complaint of )  
WESTSIDE DIXON ASSOCIATES, )  
L.L.C., )  
Complainant )  
vs. )  
UTAH POWER & LIGHT )  
COMPANY, )  
Respondent )

DOCKET NO. 00-035-01

REPORT AND ORDER

ISSUED: June 28, 2000

Appearances:

J. Kent Holland For Westside Dixon Associates, L.L.C.  
Mark E. Hindley " Utah Power & Light Company

By the Commission:

PROCEDURAL HISTORY

Complainant, Westside Dixon Associates, L.L.C., filed its complaint on January 4, 2000, and Respondent, Utah Power & Light Company, filed its answer, together with a motion to dismiss, on February 3, 2000. Pursuant to notice duly served, the matter came on for hearing on Thursday, April 20, 2000, at 9:00 a.m., before A. Robert Thurman, Administrative Law Judge for the Commission, at the Commission offices, 160 East 300 South, Salt Lake City, Utah. Evidence was offered and received. The Administrative Law Judge, having been fully advised of the issues in this matter, now enters the following Report, containing proposed Findings of Fact, Conclusions of Law, and the Order based thereon.

FINDINGS OF FACT

1. Complainant has converted a warehouse located at 159 West and 300 South, Salt Lake City, Utah into condominiums.
2. The original warehouse was constructed in the early 1900s.
3. Complainant was required to obtain a building permit for the construction of the condominiums, which it or its agents obtained on or about July 1, 1998.
4. The individual condominium units have separate space heating, water heating, ventilation, and cooling systems. There is no central boiler or central chiller servicing all of the condominium units.
5. A master metering system for metering electrical service to the condominiums is in place. Master metering is the practice of metering and billing the electric usage of multiple tenants/individuals through one utility meter.
6. Complainant's metering system is also a sub-metered system. Sub-metering is the practice where the tenant/individual is metered and billed by an entity other than the utility. In this case, Complainant has contracted with Relms, Inc., a

Utah corporation, to provide the sub-metering and billing services for the condominiums.

7. Neither Complainant nor any of its agents made a written request to Utah Power for permission to master meter or sub-meter the condominiums.

8. During construction of the condominiums, Utah Power supplied electrical power to the construction company, Culp Construction Company ("Culp").

9. On or about December 6, 1999, Culp requested that Utah Power discontinue its service because the project had been substantially completed, and notified Complainant to request permanent power.

10. On or about December 10, 1999, Utah Power's counsel wrote a letter to Complainant's counsel informing Complainant that its metering system was not allowed under the Commission's rules. Utah Power affirmed its commitment to provide power to the condominiums if Complainant allowed Utah Power to install its own meters.

11. Complainant refused to allow Utah Power to install its own meters. On or about December 21, 1999, Utah Power wrote a letter to Complainant informing it that power to the condominiums would be disconnected on January 3, 2000. The basis for termination was that Complainant's metering system to the condominiums did not comply with Rule 746-210 and Utah Power's Electric Service Regulation No. 7.

12. On January 4, 2000, Complainant filed a formal complaint with the Commission. Because Complainant filed a formal complaint, Utah Power did not discontinue service to the condominiums.

#### CONCLUSIONS OF LAW

1. The Commission has party and subject matter jurisdiction over this matter.

2. Rule 746-210, which adopts the Public Utility Regulatory Policy Act ("PURPA") standard regarding master metering, states in part that "master metering of electric service in the case of new buildings shall be prohibited or restricted to the extent necessary to carry out the purpose of this Title."

3. This general prohibition against master metering applies in this case because the Complainant's condominium building is a "new building." The term "new building" is defined as a structure "for which a building permit was obtained on or after August 1, 1984." Rule 746-210-3(A). Because Complainant was required to obtain a building permit to convert the warehouse into condominiums, which it did on or about July 1, 1998, the building is a "new building."

4. The exception in Rule 746-210-2(2) to the prohibition against master metering does not apply in this case because each separate condominium unit in Complainant's complex has separate space heating, water heating, ventilation, and cooling systems, and are not served by central boilers or chillers.

5. The exception in Rule 746-210-3<sup>(1)</sup> to the prohibition against master metering does not apply to this case for the following reasons.

A. To be entitled to the exemption, Complainant was required to make a "written request" to Utah Power showing that it fell within the scope of this exception. Complainant failed to submit a written request, let alone an analysis showing that it fell within the scope of the exception.

B. For this exemption to apply, an applicant has the "burden of proof" to "demonstrate that the long-run benefits of individual metering to the electric consumer are less than the costs of purchasing and installing separate meters." The rule, as set forth in footnote 1, provides a formula for determining the customers' cost/benefit ratio. Complainant made no attempt to apply the formula as therein set forth.

Additionally, as a matter of law, Complainant is unable to meet this burden because Complainant itself (through Relms) has installed individual meters (i.e., the sub-meters), and is therefore unable to satisfy the required cost-benefit analysis,

the meters having already been installed, thereby obviating any possible savings between master-metered and separate-metered service. Complainant attempted to meet the burden by claiming savings derived from service taken under a commercial or industrial rate would be passed on to tenants. However, under Respondent's tariff, Complainant would not be eligible for such a rate. Accordingly, there would be no savings to pass on.

C. Complainant did not meet its burden of proof required to fall within this exception.

6. Complainant has made no argument that falls within any other exceptions in Rule 746-210 and the Commission finds that no other exception applies.

7. Because Complainant is not covered under any exception in Rule 746-210, Complainant is not allowed to sub-meter. Rule 746-210-5.

8. In sum, Complainant is not entitled to relief under Rule 746-210 and Utah Power's Electric Service Regulation No. 7. Under these provisions, Complainant is not entitled to master meter or sub-meter the Building. Accordingly, Respondent is not only allowed, but is required, to refuse to provide electrical service to Complainant until Complainant properly meters its condominiums.

### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The complaint of Westside Dixon Associates, L.L.C., against Utah Power & Light Company be, and the same is, dismissed.
2. If Westside Dixon Associates, L.L.C., wishes to proceed further, Westside Dixon Associates, L.L.C., may file a written petition for review within 20 days of the date of this Order. Failure to do so will preclude the right to appeal to the Utah Supreme Court.

DATED at Salt Lake City, Utah, this 28th day of June, 2000.

/s/ A. Robert Thurman  
Administrative Law Judge

Approved and Confirmed this 28th day of June, 2000, as the Report and Order of the Public Service Commission of Utah.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

1. R746-210-3. Exemptions Requiring a Cost-Effectiveness Test.

Cases not covered under "automatic exemptions" will be granted an exemption if the benefit-to-cost ratio is less than one (1) with respect to separate metering using the cost effectiveness test guidelines described below. The burden of proof rests with the person requesting exemption and the evidence required to sustain that burden must demonstrate that the long-run benefits of individual metering to the electric consumer are less than the costs of purchasing and installing separate meters. Written requests to the utility for an exemption will be given consideration based upon the following criteria and conditions:

\* \* \*

B. The benefits shall be quantified in dollars of savings and shall reflect the difference in electricity use which results when separate metering is utilized rather than master-metering. The lump sum savings shall reflect a present worth analysis using as a discount rate the percentage interest rate of long-term debt such as the utility's latest long-term bond issue, or a mortgage rate, and a

period equal to the estimated life of the building. Such analysis, including its preparation and expense, shall be the sole responsibility of the customer.

C. The customer's determination of benefit shall be based on electric service supplied by the utility at electric service rates and regulations approved by the Commission, including but not limited to, regulations that prohibit resale of electric service to any other person or entity unless taking service under rate schedules that specifically provide for reselling.

D. The cost shall be quantified in dollars and shall reflect the current difference in installed cost between master and individual metering. The lump sum differential cost reflecting the purchase and installation of separate meters versus a single meter shall be prepared by the utility. The preparation of the differential costs of meter bases and building wiring shall be the sole responsibility of the customer; and

E. The benefit-to-cost ratio shall equal the present worth of benefits described in paragraph (b) divided by the current (present worth) costs described in paragraph (d).