

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In Re Complaint of)
RICHCRAINE CORPORATION,)
Complainant)
vs.)
UTAH POWER & LIGHT CO.,)
Respondent)

DOCKET NO. 00-035-02

REPORT AND ORDER

ISSUED: August 7, 2000

SYNOPSIS

Complainant having failed to show any violation of Respondent's published tariffs or of the applicable statutes and Commission rules, we dismiss.

Appearances:

Jason D. Boren For RICHCRAINE CORPORATION

Jill M. Pohlman " UTAH POWER & LIGHT CO.

By the Commission:

PROCEDURAL HISTORY

Complainant above-named filed its complaint January 10, 2000, and Respondent filed its answer, together with a motion to dismiss, February 9, 2000. Customer complaints being designated informal proceedings under Commission rules, and there appearing to be no disputed factual issue necessary to the resolution of this matter, we deem it ripe for disposition without hearing or submission of further evidence. The Administrative Law Judge, having been fully advised in the premises, now enters the following Report, containing proposed Findings of Fact, Conclusions of Law, and the Order based thereon.

FINDINGS OF FACT

1. Complainant is a commercial customer of Respondent, an electrical corporation certificated by this Commission.
2. Complainant alleges that Respondent misled it as to the savings to be realized by entering into an energy conservation contract in connection with renovation of a commercial building owned by Complainant.
3. In its answer, Respondent asserts that the contract in question is the subject of litigation in the Second Judicial District Court, Weber County, Utah.

DISCUSSION

For purposes of deciding Respondent's motion to dismiss, we must consider the allegations contained in the complaint and answer in the light most favorable to Complainants. Our findings above do so.

We begin our analysis with the premise that the Commission is a creature of the Utah Legislature and can exercise *only* [\(1\)](#)

the authority specifically delegated by the Commission's enabling statutes or fairly infer able from the explicit grant. In regard to *monetary* disputes between a public utility and its customers, the Commission's *only* authority to order the payment of money, or abatement of charges, derives from § 54-7-20, UCA 1953, as amended, which in pertinent part provides:

When complaint has been made to the commission concerning any rate, fare, toll, rental or charge for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an amount for such product, commodity or service in excess of the schedules, rates and tariffs on file with the commission, or has charged an unjust, unreasonable or discriminatory amount against the complainant, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection.

As the Utah Supreme Court has construed this statute, the Commission's *sole* authority regarding monetary relief is to determine whether a utility has deviated from its published tariffs⁽²⁾ and afford refunds if it has. The Commission does have authority, of course, to deal with other non-monetary disputes.

In the instant case, the substance of the complaint relates to fraud or negligence, not deviations from Respondent's tariff. Unfortunately for Complainants, our jurisdiction simply does not extend to affording relief under such theories, and therefore an evidentiary hearing on them would be an exercise in futility. Additionally, since the matter is already being litigated, even if we were otherwise convinced of our jurisdiction, we would decline to interfere in pending litigation.

CONCLUSIONS OF LAW

The Commission has party jurisdiction; subject matter jurisdiction is lacking. Complainant has failed to allege facts which would entitle them to relief under Section 54-7-20, UCA 1953, as amended. That statute entitles a customer to reparations only upon a showing of charges beyond Respondent's published tariff, or a discriminatory application of the tariff. The facts alleged by Complainant do not indicate such overcharge or discrimination. Accordingly, Respondent's motion to dismiss must be granted, and the complaint must be dismissed.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

The complaint of RICHCRAINE CORPORATION against UTAH POWER & LIGHT CO. be, and the same hereby is, dismissed.

If RICHCRAINE CORPORATION wishes to proceed further, RICHCRAINE CORPORATION may file a written petition for review within 20 days of the date of this Order. Failure so to do will preclude the right to appeal to the Utah Supreme Court.

DATED at Salt Lake City, Utah, this 7th day of August, 2000.

A. Robert Thurman, Administrative Law Judge

Approved and Confirmed this 7th day of August, 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. *Basin Flying Service v. PSC*, 531 P.2d 1303 (Utah 1975).

2. *Denver & RGR v. PUC*, 73 Utah 139, 272P. 939 (1928); *American Salt Co. v. W.S. Hatch Co.*, 748 P.2d 1060 (Utah 1987)