

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)	
RANDAL S. BOUCHARD,)	<u>DOCKET NO. 00-035-07</u>
)	
Complainant,)	
)	
vs.)	<u>REISSUED REPORT AND ORDER</u>
)	
UTAH POWER & LIGHT CO. /)	
PACIFICORP,)	
)	
Respondent)	

ISSUED: August 25, 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:

Jill M. Pohlman For Utah Power & Light Co. / PACIFICORP

By The Commission:

PROCEDURAL HISTORY

Our original Order in this matter pertained to a similar complaint involving the identical parties. Accordingly, that Order is vacated and the following substituted therefor:

Complainant above-named filed his complaint June 8, 2000, and Respondent filed its answer, together with a motion to dismiss, July 10, 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

- Complainant is a residential customer of Respondent, an electric corporation certificated by this Commission.
- Complainant alleges, and for purposes of deciding Respondent's motion to dismiss, we find that Respondent's subcontractor severely damaged Complainant's cottonwood tree on his property in the course of trimming foliage away from Respondent's power line. Complainant seeks compensation for the damaged tree.
- In its answer, Respondent asserts that it was necessary to trim the tree as a safety measure and that, in any event, the Commission has no jurisdiction to afford the other relief sought.

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* the authority specifically delegated by the Commission's enabling statutes or fairly inferable from the explicit grant.⁽¹⁾ In regard to *monetary* disputes between a public utility and its customers, the Commission's *only* authority to award monetary relief 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 thereof, with interest from the date of collection.

As the Utah Supreme Court has construed this statute, the Commission's *sole* authority to award monetary relief is to determine whether a utility has deviated from its published tariffs⁽²⁾ and afford refunds if it has.

In the instant case, Complainant has not alleged that Respondent has deviated from its tariffs; rather the claim is that Respondent has trespassed and committed waste on Complainant's property. In legal terms that constitutes a tort, and adjudicating such a dispute is clearly outside the scope of our authority.

The point is that no matter how compelling Complainant's evidence might be, we would still have no authority to afford him relief. While it is possible a claim such as his would be justiciable by a court of law,⁽³⁾ it is not justiciable by us.

Nevertheless, the Commission is concerned by the conduct alleged in the Complaint and intends to investigate Respondent's policies in regard to trimming land owners' vegetation. Should such investigation culminate in proceedings to adopt new rules governing vegetation trimming, Complainant will be notified and afforded the opportunity to participate in such proceedings.

CONCLUSIONS OF LAW

The Commission has party jurisdiction; subject matter jurisdiction is lacking. Complainant has failed to allege facts which would entitle him 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.

Respondent's motion to dismiss must be granted, and the complaint must be dismissed.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

- The motion of UTAH POWER & LIGHT CO. / PACIFICORP, to dismiss the complaint of RANDAL S. BOUCHARD be, and it is, granted, and this matter be, and it is, dismissed.
- If RANDAL S. BOUCHARD wishes to proceed further, RANDAL S. BOUCHARD may file a written petition for review within 20 days of the date of this Order. Failure to do so will forfeit the right to appeal to the Utah Supreme Court.

DATED at Salt Lake City, Utah, this 25th day of August, 2000.

/s/ A. Robert Thurman
Administrative Law Judge

Approved and Confirmed this 25th 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).
3. *See American Salt Co. v. W.S. Hatch Co., id.*, at 1067 (Concurring opinion).