

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal)
Complaint of Rod Mitchell vs.)
Utah Power)

DOCKET NO. 03-035-06
REPORT AND ORDER

ISSUED: January 8, 2004

By The Commission:

PROCEDURAL HISTORY

Complainant Rod Mitchell filed his formal complaint in this matter asserting that he had been improperly billed by Utah Power for his electric service. Utah Power filed a letter response to the complaint requesting dismissal of the complaint. The Division of Public Utilities ("DPU") filed comments recommending that the complaint be dismissed. The Division filed an additional memorandum containing the results of a meeting between Mr. Mitchell, Utah Power representatives, and DPU representatives at Mr. Mitchell's apartment complex.

A hearing was held in this matter. Mr. Mitchell appeared and offered testimony and argument. Utah Power was represented by David Elmont, and presented the testimony of Blaine Bjarnson, a metering manager for Utah Power.

DISCUSSION AND FINDINGS

The facts in this matter are largely undisputed. Mr. Mitchell began service from Utah Power on May 1, 2002, at apartment 314 in his apartment complex. On December 3, 2002, Utah Power discovered that it had been billing Mr. Mitchell for power consumption in apartment 313, and the resident of apartment 313 had been being billed for power consumption in apartment 314. On December 4, 2002, Utah Power notified Mr. Mitchell that because of "crossed meters" his next bill from Utah Power would include a debit of \$132.40. As a result of Mr. Mitchell questioning that charge, this dispute began.

This matter is a very good example of how a customer complaint should NOT be handled. The series of errors outlined below should cause Utah Power considerable concern. Throughout Mr. Mitchell's dealings with Utah Power, Utah Power consistently tried to disclaim responsibility for the crossed-meter situation. One of the items submitted with Mr. Mitchell's complaint is the log created when Mr. Mitchell contacted the DPU. That log contains the written response of Utah Power to the informal complaint. Twice in that brief response Utah Power asserted that it is the responsibility of the contractor/builder/owner to number the meter bases, not Utah Power's. In other words, Utah Power asserted that the cause of this billing problem was incorrectly numbered meter bases. At the hearing Mr. Mitchell testified that this was the position of Utah Power consistently.

In Utah Power's written response to Mr. Mitchell's formal complaint filed with this Commission, Utah Power took the same position. The company asserted that it had determined that the building owner failed to correctly label the meter bases in question. The Company denies responsibility for the mislabeled meter bases as the develop/owners are the responsible parties to correctly and permanently label the meter bases to identify the tenant addresses.

The letter then quoted Utah Power's Electric Service Regulation No. 7, Section 1 as follows:

When multiple meters are installed at a location with multiple units, it is the developer/owner's responsibility to permanently, and correctly, label each meter base for the associated service address.

Responding to these assertions by Utah Power Mr. Mitchell testified that he repeatedly informed Utah Power that the meter bases were correctly labeled. According to the report filed by the DPU, at the meeting held on June 3, 2003, with

Utah Power representatives, Mr. Mitchell, and the DPU it was established that the meter bases were, in fact, correctly labeled. The error in this case was caused by incorrect meter serial numbers having been entered into Utah Power's billing system. The meter that sits in the base labeled as the meter for apartment 314 did, in fact, serve apartment 314. However, the meter serial number for that meter was connected to apartment 313 in Utah Power's billing system, and the meter serial number for the meter in the base marked for apartment 313 was connected to apartment 314 in the billing system. We find those factual allegations to be correct.

Mr. Mitchell reasonably thought that since he had established that the claim of Utah Power that this error was due to an error by the builder/owner, as Utah Power had repeatedly asserted, was not true then that should resolve this matter.

Utah Power took the position in the hearing, for the first time in this dispute, that regardless of whether the meter bases were correctly labeled or not, and regardless of whether this error was solely caused by errors by Utah Power, that Mr. Mitchell is still obligated to pay for the power consumed in apartment 314. According to Utah Power, the Commission rules do not contain any provision addressing fault, therefore it does not matter whether Utah Power was at fault.

It is the long-established policy of this Commission that customers should pay for the power they consume. That policy is reflected in Commission rules. Rule R746-310-8 allows a utility to, in circumstances such as this, to render a "backbill" to a customer "for service that was actually delivered to the customer during a period before the current billing cycle." That rule also limits the time period over which a backbill may be assessed to two years, unless there has been fraud on the customer's part. The public policy behind that rule is sound, customers should pay for power they consume. And the two-year limit provides protection to customers and motivation to the utility to remedy any incorrect billings within that time-period.

Utah Power's position, first asserted in the hearings in this matter, is correct - there is no provision in the rules addressing fault. A customer is to pay for the power they consume. The policy and rules are sound, and their application in this case is fair from an economic standpoint. But Utah Power's handling of this matter leaves much to be desired and a future review of the rules to address situations such as this may be appropriate. Through repeated representations from Utah Power, Mr. Mitchell was led to believe that if the incorrect billing was the result of an error on the part of Utah Power, that would end this dispute. As a result Mr. Mitchell expended time and effort to prove, and did indeed prove that the error was caused solely by Utah Power, not by mislabeling of the meters by the developer/contractor. Not until the hearing in this matter did Utah Power take the position that even if it were at fault, Mr. Mitchell is still obligated to pay the backbilled amount. If Utah Power had taken that position to begin with, instead of trying to put any fault for its errors on others, this complaint matter may not have even have occurred.

Were this a court with broad equitable powers, a ruling in favor of Mr. Mitchell may be appropriate. However, we are constrained to make a determination of whether Utah Power acted in accordance with its tariff, and applicable Commission rules. We find that it did so, and reluctantly therefore cannot afford Mr. Mitchell relief from the backbill amount in this case. Rule R746-310-8 does provide that Mr. Mitchell should be allowed to pay the backbill amount "without interest over a time period at least equal in length to the time period over which the backbill was assessed." Accordingly, Utah Power is to allow Mr. Mitchell to pay the backbill amount interest-free over a time period at least as long as the seven-plus month backbill period.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Utah Power is to allow Rod Mitchell to pay, interest-free, the disputed amount over a period at least as long as the backbill period.
2. All other aspects of Rod Mitchell's complaint against Utah Power are dismissed.
3. Any person aggrieved by this Order may petition the Commission for review/rehearing pursuant to the *Utah Administrative Procedures Act, Utah Code Ann. §63-46b-1 et seq.* Failure so to do will preclude judicial review of the grounds not identified for review. *Utah Code Ann. §54-7-15.*

DATED at Salt Lake City, Utah, this 8th day of January, 2004.

/s/ Doug Tingey
Administrative Law Judge

Approved and Confirmed this 8th day of January, 2004, as the Report and Order of the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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