

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal)
Complaint of)
D.E. WILLIAMS,)
Complainant,)
v.)
UTAH POWER,)
Respondent)

DOCKET NO. 05-035-18
REPORT AND ORDER

ISSUED: July 20, 2005

SYNOPSIS

Complainant having failed to demonstrate that Utah Power & Light Company violated any provision of statute, rule, or tariff, we dismiss.

By The Commission:

PROCEDURAL HISTORY

On March 18, 2005, Complainant D.E. Williams filed a formal complaint claiming Respondent Utah Power failed to provide clear and concise information regarding a deferred payment plan he had entered into with Utah Power, resulting in Complainant's failure to abide by the terms of the payment plan and subsequent receipt of notice that Utah Power intends to terminate his electric service. Complainant seeks a new deferred payment plan with Utah Power in lieu of termination of his electric service.

On April 18, 2005, Respondent filed a memorandum in answer to the complaint and requested dismissal, arguing Complainant had failed to allege any violation by Utah Power of its tariff or other statutory or regulatory requirements.

On May 12, 2005, the Division of Public Utilities ("Division") filed its analysis and recommended dismissal. The Division pointed out Complainant had entered into two successive deferred payment plans with Respondent and defaulted on both of them. The Division further argued that Respondent had violated no provision of statute, rule or tariff..

On May 14, 2005, Complainant filed a memorandum in response to the Division's recommendation in

which he repeated his belief that Respondent's failure to provide a clearly written billing statement outlining the terms of his payment plan violated the letter and spirit of the tariff, rules, and statutes governing Respondent's operations. Complainant also reiterated his desire to enter into another deferred payment plan with Respondent.

On June 16, 2005, hearing on this matter was held before the Commission's Administrative Law Judge. At hearing, Complainant represented himself and provided sworn testimony. Respondent was represented by Carole Rockney. Both Ms. Rockney and Keven Hoopiaina, Utah Power Customer and Regulatory Liaison, provided sworn testimony on behalf of Respondent.

At hearing, Complainant alleged his monthly bills from Utah Power had failed to clearly indicate that he had entered into a Time Payment Plan or the amount that he should pay toward such a Plan. Neither party having these bills available for examination, the Administrative Law Judge requested Utah Power provide copies of Complainant's monthly statements from September 2004 through May 2005 to both the Commission and Complainant; instructed Complainant that he would have fifteen days from receipt of the statements to challenge their authenticity or content; and instructed both parties that, absent such challenge, the statements would be entered into the record of these proceedings.

On June 24, 2005, the Commission received the requested monthly statements from Utah Power. Following several failed attempts to contact Complainant by telephone to confirm his receipt of the statements, on June 27, 2005, Commission staff mailed copies of the statements to Complainant. To date, Complainant has submitted no response or challenge to the authenticity of the statements provided by Utah Power. There being no objection, these statements were duly entered into the record as evidence in this proceeding.

FACTUAL BACKGROUND AND DISCUSSION

A. Factual Background

On September 8, 2004, Complainant and Respondent entered into a deferred payment plan intended to eliminate the \$366.08 arrearage then owing on Complainant's Utah Power account. According to the Time Payment Plan memorandum dated September 8, 2004, which was mailed to Complainant but which he claims to have never

received, Complainant was to pay Respondent over a twelve month period approximately \$24.00 per month plus the current monthly charges for his electric service. On September 8, 2004, Complainant made an initial payment to Utah Power in the amount of \$100.00. However, Complainant thereafter made no further payment under this plan. Complainant asserts he made no payments because he was confused by the terms of the agreement and was awaiting a clearly written statement from Respondent spelling out those terms.

In November 2004, Complainant, having been notified that his electric service would be terminated due to default on the deferred payment plan, sought review by the Division of Public Utilities. On November 30, 2004, Complainant and Respondent entered into a second deferred payment plan intended to avert termination of Complainant's electric service. As noted in the Time Payment Plan memorandum dated November 30, 2004, Complainant was to pay Utah Power approximately \$38.00 per month plus current monthly charges for a period of twelve months. Just as he claims happened with the memorandum detailing the first Time Payment Plan, Complainant asserts he never received a copy of the November 30, 2004, Time Payment Plan. As of November 30, 2004, Complainant's past due account for electric service had grown to \$458.70.

On December 10, 2004, Complainant made an initial payment under this second deferred payment plan of \$90.38. However, as had occurred with the first payment plan, Complainant thereafter made no payments to Respondent. Complainant asserts that, as before, this failure was caused by his confusion regarding the terms of the payment plan and expectation that clearly written payment plan terms would be mailed to him. As of hearing in this matter, Complainant had made no payment to Utah Power since December 10, 2004, and his past due balance had grown to \$653.97.

B. Discussion

This complaint arises from Utah Power's notice to Complainant of its intent to terminate his electric service for default in his deferred payment plans and from Utah Power's refusal to enter into a third deferred payment

plan. Complainant generally claims that he is able and willing to make payments on a new deferred payment arrangement and that his failure to do so in the past was not intentional but was the result of his expectation that he was not required to make any payments until he had received a written “agreement” delineating his payment obligations. Complainant admits he received monthly bills from Utah Power but claims those bills did not clearly identify what he was required to pay under either of the payment plans into which he had entered. Complainant believes it is not right for Utah Power to arbitrarily refuse to enter into another payment plan and terminate his service simply because he failed to understand the terms of his previous payment plans.

Utah Power, on the other hand, notes that it mailed copies of both Time Payment Plan arrangements to Complainant and that his monthly bills clearly indicated the nature of the time payment plan and the amount due that month to fulfill the payment agreement. Utah Power also notes Complainant was orally advised by Utah Power customer service personnel on approximately November 20, 2004, that failure to abide by the terms of the payment plan would result in termination of service.

Commission Rule 746-200-5.A.5 requires the terms of the deferred payment plan to be set forth in a written agreement and a copy provided to the customer. Rule 746-200-5.B further states

If an applicant or account holder breaches a condition or term of a deferred payment agreement, the public utility may treat that breach as a delinquent account and shall have the right to disconnect service pursuant to these rules, subject to the right of the customer to seek review of the alleged breach by the Commission, and the account holder shall not have the right to a renewal of the deferred payment agreement.

Part 6 of Utah Power’s Electric Service Regulation No. 10 reiterates both the requirement that a written copy of the agreement be provided to the customer and the utility’s right to terminate service upon breach of the agreement with no right of the customer to renewal of the agreement.

In this case, two Time Payment Plans were mailed to Complainant, each indicating service may be disconnected for failure to make the required deferred payment plan payments. In addition, contrary to Complainant’s assertions at hearing, the monthly statements issued on Complainant’s account on September 22, 2004, and December 23, 2004, both clearly state “Time Payment Plan” in bold font at the top of the statement and indicate the “Payment Plan

Amount” to be paid on Complainant’s account in addition to the amount due for Complainant’s currently monthly service.

We see nothing in the record to lead us to conclude that the written documentation regarding Complainant’s deferred payment plan obligations was confusing or missing required information. Instead, we find that Utah Power provided Complainant two opportunities to pay past due amounts on his account via a Time Payment Plan, that the documentation and terms pertaining to those plans were in accordance with Utah Power tariff and Commission rule, and that Complainant failed on both occasions to abide by the terms of those plans. We therefore conclude that Utah Power has violated no statute, rule or tariff obligation in this matter.

Based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters the following proposed

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The complaint of D.E. WILLIAMS against UTAH POWER is dismissed.
2. Pursuant to *Utah Code Annotated* §§ 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission’s final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of *Utah Code Annotated* §§ 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 20th day of July, 2005.

/s/ Steven F. Goodwill
Administrative Law Judge

Approved and Confirmed this 20 day of July, 2005, as the Report and Order of the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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