

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of) DOCKET NO. 06-035-20
Frank and Virginia Johnson vs. Utah)
Power and Light) REPORT AND ORDER DISMISSING
) COMPLAINT

ISSUED: May 22, 2006

By The Commission:

PROCEDURAL HISTORY

On January 30, 2006, Complainants Frank and Virginia Johnson filed a Complaint against Respondent Utah Power and Light Company (“Utah Power” or “Company”) alleging Utah Power has failed to abide by prior Commission order by refusing to re-establish electric service to Complainants’ property. Complainants seek Commission order requiring Utah Power to establish electric service to their property at no cost to themselves.

On March 1, 2006, Utah Power filed its Motion to Dismiss and Answer seeking dismissal of the Complaint on the ground that Utah Power has violated no statute, Commission rule, or tariff in its dealings with Complainants.

On March 2, 2006, the Division of Public Utilities (“Division”) filed a memorandum recommending the Commission schedule a hearing in this matter.

Pursuant to duly issued notice, hearing was conducted by the Administrative Law Judge of the Public Service Commission of Utah on April 20, 2006. Utah Power was represented by David L. Elmont of Stoel Rives. Rob Stewart, Utah Power tariff consultant, and Lance Walker, Utah Power operations manager, testified on behalf of Utah Power. Frank and

Virginia Johnson appeared and testified on their own behalf. Gary Hubbs also provided sworn testimony in support of Complainants.

BACKGROUND, FINDINGS, AND CONCLUSIONS

Complainants own property in Thistle, an area located in Spanish Fork Canyon, Utah County, that was flooded in 1983 when a mudslide caused water to backup behind a natural earthen dam. Prior to the flood, Complainants' property, then owned by Virginia Johnson's sister, was serviced by Utah Power. The Johnsons bought their property five or six years ago from an individual in Las Vegas who had purchased the property from Virginia Johnson's sister some time after the 1983 flood. Mr. Johnson is a contractor who intends to build and sell a "spec" home on the property. Soon after the purchase, Mr. Johnson spoke to Tony Holmstead, a Utah Power estimator who no longer works for the Company, who told Mr. Johnson that Utah Power would re-establish electric service to his property at no cost to the Johnsons. However, a number of years later when Mr. Johnson formally requested Utah Power connect his electric service, the Company indicated it would do so in accordance with its Regulation 12 line extension policy and charge the Johnsons accordingly.

The Johnson's base their Complaint on their interpretation of our Order on Reconsideration ("Reconsideration Order") issued in Docket No. 97-035-02 on September 25, 1997 in which the Commission required Utah Power to re-establish electric service to Thistle property owners Gary and Sandy Hubbs. It is therefore necessary that we briefly review the pertinent facts from that docket. As waters rose behind the natural dam in 1983 and began inundating Thistle, Utah Power removed transformers from the area to reduce safety and health

hazards in accordance with its Regulation 3. Among the transformers removed were those used to provide service to the property of Maurice and Leah Jackson. Due to subsequent thefts and a fire, in 1988 Utah Power removed the remaining de-energized portions of its distribution system from Thistle. Having decided not to rebuild on their property, the Jacksons sold their property to Gary and Sandy Hubbs. The Jacksons had been told by the Utah Power crew removing their transformers that Utah Power would restore service at no charge and apparently represented this statement to the Hubbs in conjunction with the sale. For a variety of reasons, land owners in the Thistle area were not permitted back into the area to rebuild until 1993 or 1994. In 1996, the Hubbs requested restoration of electric service, but Utah Power, invoking its Regulation 12 line extension policy, informed the Hubbs that said line extension would cost the Hubbs \$25,000.

By Order issued June 6, 1997 (“Order”), the Commission dismissed the Hubbs’ formal complaint, relying upon Utah Power’s Regulation 3 to conclude that Utah Power had properly removed the facilities. However, on reconsideration, the Commission noted Utah Power’s Regulation 10 imposes upon Utah Power an obligation to re-establish service at locations where it has terminated service due to health and safety concerns arising from an emergency beyond the control of the customer without requiring the customer to pay a “re-establishment fee”, including any fees specifically enumerated in Utah Power’s Schedule 300. We therefore concluded the Hubbs could invoke Utah Power’s obligation to re-establish service either as successors to the Jacksons or in the interests of administrative efficiency.

Utah Power argues Complainants' reliance on our Reconsideration Order is misplaced. Utah Power points out the Commission faced "a narrow issue"¹ in Docket No. 97-035-02 stated as follows:

[W]hen natural occurrences, beyond the control of the customer and utility, cause an emergency wherein the utility removes its facilities, due to health and safety hazards, how should those facilities be restored, when the emergency is passed and conditions permit the reinstallation of the utility's facilities?²

Utah Power argues this narrow issue is not the one now before the Commission since the emergency passed at least a dozen years ago, Complainants only purchased the property a few years ago, and Complainants have never been customers of Utah Power in the Thistle area.

We agree. In reaching the decision announced in our Reconsideration Order, we explicitly limited the issue under consideration to whether the customer should have to pay for the restoration of electric service when that service has been terminated by the utility due to an emergency caused by some force of nature. We essentially concluded the Hubbs stood close enough in time and title to the customers whose service had been terminated that it was reasonable to require Utah Power to restore service at no expense to the Hubbs. Because similar facts are not in evidence in the docket now before us, we decline to view the Reconsideration Order as the binding precedent advocated by Complainants.

The Hubbs purchased their property and requested re-establishment of electric service shortly after residents were permitted to return to the Thistle area. In contrast, the

¹Reconsideration Order, p. 3.

²*Id.*

Johnsons purchased their property only five or six years ago, almost twenty years after the emergency giving rise to termination of service; they did not request electrical service until almost a decade after the area was re-opened to residents. Whereas the Hubbs had purchased the property from someone who had been a Utah Power customer in Thistle prior to the flood and who had been told by Utah Power personnel that the Company would re-establish electric service to that property, the Johnsons are far removed in both time and title from the Utah Power customers who owned the property at the time of the flood and did not inquire regarding establishment of electric service until after they had purchased the property.

Given these facts, it would be unreasonable for this Commission to validate the tenuous link Complainants claim to the flood of 1983 or their resulting claim of right under our Reconsideration Order. Simply put, the flood and the unique situation it created ended long ago. When the Johnsons bought their property a few years ago it did not have electric service. It is therefore reasonable to treat the Johnsons like every other similarly situated customer within Utah Power's service territory by requiring that any extension of service to their property be governed by Utah Power's Regulation 12 line extension policy. Since we conclude Utah Power has violated no statute, rule or tariff, we dismiss the instant Complaint.

Wherefore, 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 filed herein is dismissed.

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2. Pursuant to Utah Code §§ 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 §§ 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 22nd day of May, 2006.

/s/ Steven F. Goodwill
Administrative Law Judge

Approved and Confirmed this 22nd day of May, 2006, 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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