

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)
Jeff J. Burt against Rocky Mountain) DOCKET NO. 12-035-02
Power) ORDER DISMISSING ACTION

ISSUED: March 29, 2012

SYNOPSIS

The Commission enters this Order dismissing Mr. Burt’s formal complaint for mootness, lack of standing, and lack of jurisdiction.

By The Commission:

I. BACKGROUND

A. *Mr. Burt’s Complaint Filed With The Commission*

1. On March 22, 2011, Rocky Mountain Power, a division of PacifiCorp (the “Company”), disconnected electrical service at 11313 High Mesa Drive in Sandy City, Utah (“High Mesa address”), for nonpayment. See Informal Complaint Report at 1. Afterwards, two unauthorized meter connections were attempted, and on July 20, 2011 the Company removed the meter. See id. at 1-2.

2. On August 1, 2011, Jeff J. Burt (“Mr. Burt”) filed an informal complaint against the Company for allegedly refusing to reestablish power at the High Mesa address, based on an unpaid balance due, which in part Mr. Burt claimed was not his. See id.

3. The Company researched Mr. Burt’s informal complaint and found that the power had been in Mr. Burt’s children’s names and, although Mr. Burt claimed he never

lived at High Mesa address, the Company asserts its records and communication with the property owner confirm Mr. Burt lived on site and his name was on the lease. See id. at 2.

4. On September 22, 2011, a Company representative responded as follows to Mr. Burt's informal complaint:

Based on my review of your situation (lease agreements and account records)[,] and in accordance with co-habitation rules, [the Company] is requiring the debts to be paid before your request for service can be completed....

Id. at 2.

5. On January 12, 2012, Mr. Burt filed a formal complaint against the Company. See Formal Complaint, filed January 12, 2012. Mr. Burt alleges the Company denied power to his tenant, David Sitek ("Mr. Sitek"), at the High Mesa address, based on arrearages owed by Mr. Burt's children. See Formal Complaint Form at 1. The complaint form lists only one complainant -- Mr. Burt. See id. Mr. Sitek is not listed as a complainant, nor did he sign the complaint, and Mr. Burt does not otherwise purport to represent Mr. Sitek. See id.¹

6. Mr. Burt requests that the power be immediately restored at the High Mesa address in the name of Mr. Sitek. See id. Additionally, Mr. Burt requests "\$10,000 in damages from lost rents." Id.

¹ No lease establishing Mr. Sitek's alleged tenancy is attached either; nor is there an affidavit signed by Mr. Sitek to prove up facts asserted by Mr. Burt.

7. On January 12, 2012, the Commission sent an action request to the Division of Public Utilities (“Division”) to review Mr. Burt’s formal complaint. See Action Request.

8. On February 10, 2012, the Division recommended the Commission dismiss Mr. Burt’s complaint. See Memo from Division, to Commission, dated February 10, 2012. The Division based its recommendation “on information provided by [the Company], [the] lease agreement and confirmation from the property owner that Mr. Burt had lived at High Mesa and benefitted from the service....” Id. at 2. The Division determined that no tariff or commission rule was violated, and accordingly recommended dismissal of the complaint. See id.

9. On February 10, 2012, the Company filed an answer and motion to dismiss. See Pacificorp’s Answer and Motion to Dismiss, filed February 10, 2012. The Company’s filing was served on Mr. Burt on February 10, 2012. See id., Certificate of Service.

10. On February 27, 2012, Mr. Burt filed a response to the Company’s motion to dismiss. See Complainant’s Opposition to Respondent Motion to Dismiss, filed February 27, 2012. Mr. Burt’s response was served on the Company on February 27, 2012. See Certificate of Service, filed February 29, 2012.

11. On March 26, 2012, the Company noted it would not be filing a reply to Mr. Burt’s response to the Company’s motion to dismiss. See E-mail from Company, to Commission (March 26, 2012; 4:59 MST).

B. The Eviction Action Filed Against Mr. Burt

12. While this docket was pending before the Commission, an action for eviction against Mr. Burt was pending in the Third District Court. See Hansen v. Burt, Case No.

110916069, Third District Court, Salt Lake County, filed July 8, 2011. The Commission takes administrative notice of case no. 110916069, including but not limited to a certified copy of the docket, copies of the Amended Complaint, Return of Service,² and Findings of Facts and Conclusions of Law, entered March 23, 2012.

13. In case no. 110916069, Plaintiff Gregory Hansen (“Mr. Hansen”) sought to evict Defendant Jeff J. Burt (“Mr. Burt”) from property Mr. Burt leased from Mr. Hansen at the Mesa High address. See Amended Complaint at 2, ¶ 6. According to Mr. Hansen, Mr. Burt and Mr. Hansen entered into the lease agreement for the Mesa High address in March 2011. See id. See also Rental Agreement, attached as “Exhibit A” to Amended Complaint.

14. Mr. Hansen alleges Mr. Burt violated the lease terms and engaged in alleged criminal activities at the Mesa High address. See Amended Complaint at 2, ¶ 6, and at 3, ¶ 11.

15. On March 14, 2012, the Third District Court held a hearing and in a minute entry from that hearing found Mr. Burt in violation of the lease, granted Mr. Hansen immediate occupancy, and ordered Mr. Burt to move. See Minute Entry, Case No. 110916069. The Court also ordered Mr. Hansen’s counsel to prepare and file Findings of Fact and Conclusions of Law within 5 days.

16. On March 23, 2012, the Third District Court entered Findings of Facts and Conclusions of Law. See Findings of Fact and Conclusions of Law, entered March 23, 2012. Based on the Court’s findings the Court ordered immediate occupancy of the premises to be

² The Return of Service shows Mr. Burt was served at the Mesa High address on July 11, 2011.

returned to Mr. Hansen. See id. at 3. The Court’s decision to evict Mr. Burt was based on several alleged violations of law. See id.

DISCUSSION

A. Mootness

In light of the District Court decision, Mr. Burt has no rights of possession or ownership in the High Mesa address and, therefore, no right to request electrical service at that address. Accordingly, Mr. Burt’s request to have electrical service restored at the High Mesa address is moot.

B. Standing

The Commission cannot grant relief to a nonparty. Inasmuch as Mr. Burt seeks to restore service in someone who is not a complainant in this matter, the Commission cannot grant the relief sought. See Butler v. Wilkinson, 740 P.2d 1244, 1263 (Utah 1987) (“A court may not grant relief to a nonparty.”).

C. Jurisdiction

“It is the district court, not the Commission, that has jurisdiction to consider claims for damages for wrongful disconnection or other torts committed by a public utility.” McCune v. Mountain Bell Telephone, 758 P.2d 914, 916 (Utah 1988). Therefore, the Commission lacks jurisdiction to consider Mr. Burt’s damages claim.

ORDER

For the foregoing reasons, this matter is dismissed.

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DATED at Salt Lake City, Utah, this 29th day of March, 2012.

/s/ Melanie A. Reif
Administrative Law Judge

Approved and confirmed this 29th day of March, 2012, as the Order Dismissing
Action of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
D#220227

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order 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 Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of March, 2012, a true and correct copy of the foregoing was served upon the following as indicated below:

By U.S. Mail:

Jeff J. Burt
1549 Emerald Hills Drive
Bountiful, UT 84010

By E-Mail:

Rocky Mountain Power
Attention: Barbara Ishimatsu (Barbara.Ishimatsu@pacificorp.com)
Autumn Braithwaite (Autumn.Braithwaite@pacificorp.com)

By Hand-Delivery:

Division of Public Utilities
160 East 300 South, 4th Floor
Salt Lake City, Utah 84111

Office of Consumer Services
160 East 300 South, 2nd Floor
Salt Lake City, Utah 84111

Administrative Assistant