

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Formal Complaint of )  
June and Robert Shane House of Fuell ) DOCKET NO. 12-057-17  
against Questar Gas Company ) ORDER OF DISMISSAL  
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ISSUED: February 1, 2013

SYNOPSIS

The Commission enters this Order granting Questar's motion to dismiss.

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By The Commission:

ORDER OF DISMISSAL

I. INTRODUCTION

Questar Gas Company ("Questar") seeks to dismiss the formal complaint filed by June and Robert Shane Fuell, House of Fuell ("Mr. & Mrs. Fuell") for failure to state a claim upon which relief can be granted.

II. BACKGROUND

1. On November 7, 2012, Mr. & Mrs. Fuell filed a formal complaint against Questar, claiming payments they made have not been credited to their account. See Formal Complaint, filed November 7, 2012.

2. Specifically, Mr. & Mrs. Fuell allege that Questar has failed to credit their account with these payments: (1) \$195.00 paid on May 17, 2012; (2) \$224.85 paid on September 6, 2012; and (3) \$354.24 paid on October 28, 2012. See id. Mr. & Mrs. Fuell do not allege facts supporting how (e.g., cash, check, money order, cashier's check, etc.) these payments were

allegedly made. See id. Nor do they provide evidence supporting that the payments were made with legitimate funds.

3. Mr. & Mrs. Fuell further allege, “We have asked for written confirmation that . . . [Questar has] not received any funds, but . . . [Questar has] not signed anything stating such.” Id.

4. On November 8, 2012, in response to the Commission’s action request, the Division of Public Utilities (“Division”) submitted a memorandum recommending the Commission dismiss the complaint. See Division Memo, filed November 8, 2012. The Division’s memo states the following in support of its recommendation:

**Complaint Analysis:**

On July 9, 2012, Mrs. June DeJong [Fuell] filed an informal complaint with the Division[]. Mrs. DeJong [Fuell] (who has also corresponded with Questar[] and the [Division] as June Fuell) claims that she sent payment to Questar[] on May 17, 2012 for \$195.00. However, she says her gas account was not credited for the payment, resulting in a shut-off notice received on, or about, July 5, 2012. Mrs. DeJong [Fuell] was informed by Questar[] that the money order for \$195.00 that was remitted for her account was returned by the issuing bank to Questar[] on May 19, 2012[,] stamped “REFER TO MAKER” and “RETURN UNPAID NON-TREASURY ITEM.”

Mrs. DeJong [Fuell] would like Questar[] to provide her with an affidavit from the bank and Questar, each signed by corporate executives, confirming that the funds were unavailable on the money order remitted. Mrs. DeJong [Fuell] is also demanding that Questar[] follow the law “established by public policy or face the appropriate criminal charges.”

**Complaint Response:**

. . . Questar[’s] Consumer Affairs employee . . . responded to Mrs. DeJong [Fuell’s] complaint. [Questar’s Consumer Affairs employee] states that Questar[] was in compliance with its process to terminate service for non-payment, and referred Mrs. DeJong [Fuell] to the bank that issued the returned money order.

Questar[] complied with . . . [Commission] Rule R746-200-7-B[,] which states[:] “Residential utility service may be terminated for . . . a. Nonpayment of a delinquent account,” and . . . [Commission] Rule R746-200-7-G[,] which states[:] “At least 10 calendar days before a proposed termination of residential utility service, a public utility shall give written notice of disconnection for nonpayment to the account holder.” Nothing in the [Commission] rules, Questar tariffs, or other law of which the Division is aware requires [Questar] to provide a signed affidavit as requested [in the complaint].

**DPU Comments & Recommendation**

The Division recommends that since [Questar] was not in violation of the [Commission] rules to terminate service, nor is [Questar] responsible for providing a signed affidavit from [its] executives and the issuing bank for a[] . . . money order [that was returned for insufficient funds], that this complaint against Questar[] be dismissed.

Id. at 1-2.

5. On November 30, 2012, Questar filed an Answer and Motion to Dismiss (“Motion”). See Answer of Questar Gas Company and Motion to Dismiss, filed November 30, 2012. Questar argues its Motion should be granted because it has “acted in compliance with all applicable federal, state, tariff, and Commission requirements, and [Mr. & Mrs.] Fuell have presented no claim for which relief may be granted.” Id. at 1.

6. Questar alleges in its Motion that, on or about May 18, 2012, Mr. & Mrs. Fuell remitted a money order in the amount of \$195.00 which was subsequently returned by the bank, stamped “REFER TO MAKER” and “RETURN UNPAID NON-TREASURY ITEM.” Id. at 2, ¶¶ 2-3. Questar further alleges the money order remitted listed no financial institution or third party business. See id. at ¶ 2.<sup>1</sup> Questar alleges that a \$20 returned check fee<sup>2</sup> was assessed to the

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<sup>1</sup> A copy of the money order is attached as Exhibit A to Questar’s Motion. See Answer of Questar Gas Company and

account and, after unsuccessful attempts to reach Mr. & Mrs. Fuell, termination of service ensued. See id. See also id. at 2-3, ¶ 4, and 3-4 ¶ 9.

7. On or about September 6, 2012, Questar alleges it received a letter from Mr. & Mrs. Fuell along with a copy of their August 22, 2012 billing statement which included the following hand-written information in the remittance portion of the statement: “MONEY ORDER/PAY TO THE ORDER OF THE UNITED STATES TREASURY/CHARGE THE SAME SUM SAID TO THE QUESTAR GAS/CREDIT THE MOMORY [SIC] OF ACCOUNT [REDACTED SOCIAL SECURITY NUMBER/EIN NUMBER].” Id. at 4-5, ¶ 12. Mrs. Fuell signed the statement and included a reference to the “UCC”.<sup>3</sup>

8. On or about October 23, 2012, Questar notified Mr. & Mrs. Fuell that in order to avoid termination of service, Questar must receive \$254.24.<sup>4</sup>

9. On or about November 1, 2012, Questar alleges it received a money order, dated October 28, 2012. See id. at 6, ¶ 16. Questar alleges the money order was printed on bond paper stamped with the seal of “Society of the Sojourner / House of Fuell.” Id. A copy of the money order is attached as Exhibit H to Questar’s Motion. See id., Exhibit H. The money order is addressed to “QUESTAR GAS[,] Kevin Hadlock, dba CFO” and is in the amount of \$354.24. Id. It is signed by June Fuell and contains the following information: “June Fuell[,] a foreign state[,] w/out the United States . . . .” Id.

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Motion to Dismiss, filed November 30, 2012.

<sup>2</sup> Questar alleges this fee was later reversed. See id. at 3, ¶ 5.

<sup>3</sup> A copy of Mrs. Fuell’s letter and monthly billing statement with hand-written note are attached as Exhibit D to Questar’s Motion. See id., Exhibit D. The record is not clear on what relevance Mrs. Fuell’s “UCC” reference may or may not have in this matter, as neither the Fuells nor Questar argue this point; thus, we disregard it.

<sup>4</sup> A copy of Questar’s letter is attached as Exhibit G to Questar’s Motion. See id., Exhibit G.

10. Questar alleges it terminated service to Mr. & Mrs. Fuell on or about November 7, 2012. See id. at 6, ¶ 17.<sup>5</sup> Questar further alleges that on or about November 9, 2012, Mr. & Mrs. Fuell made a payment via certified funds at a Questar “Pay Station” at a Smith’s Food and Drug Store, and thereafter their service was restored. See id. at 7, ¶¶ 18-19.

11. On December 3, 2012, the Commission issued a courtesy notice, notifying the parties of Questar’s Motion. See Notice of Filing of Motion to Dismiss, issued December 3, 2012. The notice stated, in part: “In accordance with Rule R746-100-4 of the Utah Administrative Code, . . . [Mr. & Mrs. Fuell] have until 5:00 pm MST, Monday, December 17, 2012, to file a response to Questar’s motion.” Id. A copy of this notice was sent to Mr. & Mrs. Fuell and Questar. See id.

12. On December 17, 2012, Mr. & Mrs. Fuell filed a response to Questar’s Motion. See Move to Quash, Motion to Dismiss, filed December 17, 2012. In this responsive pleading, Mr. & Mrs. Fuell did not address the allegations set forth in Questar’s Motion to Dismiss, but instead request to “meet in person” and “face [their] accusers.” Id. at 1. Mr. & Mrs. Fuell request that their account be credited for the amounts stated in their formal complaint. See id. Mr. & Mrs. Fuell claim that the Commission’s Administrative Law Judge is authorized “as a back-up withholding agent for the IRS” to require Questar to “complete and return any of the requested information . . . .” Id. Mr. & Mrs. Fuell claim that Questar’s motion is of no effect because it is not signed under “penalty of perjury.” Id. Mr. & Mrs. Fuell further claim that a Wells Fargo officer has been unwilling to sign an affidavit that the May 2012 money order was returned unpaid because Wells Fargo has “in fact received funds from the Treasury and are [sic]

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<sup>5</sup> This is the same date Mr. & Mrs. Fuell filed their formal complaint against Questar. See supra at 1, ¶ 1.

not willing . . . to perjure themselves [sic].” Id. at 2. Mr. & Mrs. Fuell request \$30,000 in damages for having to respond to “Questar[’s] inquiries, . . . frivolous replies as well as going with out [sic] heat for an entire weekend.” Id. Finally, in a letter addressed to Questar which is attached to their response, Mr. & Mrs. Fuell assert that their account “is a prepaid account” and if their alleged prior payments are not credited to their account, Questar should provide proof as to who is receiving the funds. See id.

### III. STANDARD OF REVIEW

Rule 12(b)(6) of the Utah Rules of Civil Procedure, which is incorporated by reference by Utah Admin. Code R746-100-1(C), permits a party to file a motion to dismiss for “failure to state a claim upon which relief can be granted.” Utah R. Civ. P. 12(b)(6). In ruling on a motion to dismiss for failure to state a claim, the Commission construes the complaint in the light most favorable to the complainant and indulges all reasonable inferences in his favor. Cf. Munteer v. Utah Power & Light Co., 823 P.2d 1055, 1058 (Utah 1991).

### IV. DISCUSSION

#### *A. The Fuells Have Failed to State a Claim Upon Which Relief Can Be Granted*

Viewing the facts in the light most favorable to the complainants as we are required to do, Mr. & Mrs. Fuell have failed to submit any proof that they have made the payments to Questar which they allege. Indeed, the exhibits submitted with Questar’s Motion indicate Mr. & Mrs. Fuell have attempted to submit documents purporting to constitute payment,<sup>6</sup> but which do

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<sup>6</sup> These documents include (1) a purported “money order” without any payor financial institution information, (2) a hand-written note purporting to serve as payment, and (3) a purported “money order” printed on bond paper which contains no payor financial institution information. These homemade, or otherwise concocted documents, do not constitute legal tender.

not constitute legal tender, and, as such, do not constitute legitimate payment.<sup>7</sup> Mr. & Mrs. Fuell failed to rebut the information filed by Questar. Accordingly, Mr. & Mrs. Fuell's complaint is without merit, and we dismiss it for failure to state a claim upon which relief can be granted.

Further, the Commission dismisses Mr. & Mrs. Fuell's request to order or otherwise require Questar to meet, sign under penalty of perjury, or otherwise provide an affidavit from its bank. The Commission and its Administrative Law Judge have no authority to grant the forms of relief requested. Nor is Questar responsible for providing a signed affidavit from its bank. Questar has already provided adequate proof that the money order was returned for insufficient funds. If evidence of payment exists, the onus is now on Mr. & Mrs. Fuell to prove it. It is not Questar's responsibility to prove the negative;<sup>8</sup> thus, Mr. & Mrs. Fuell's request is ill-founded. Moreover, there has been no showing that Questar has violated any rule, statute, or tariff. Indeed, the Division's recommendation highlights this point, and Mr. & Mrs. Fuell do not refute it. Accordingly, and as stated above, Mr. & Mrs. Fuell's complaint is without merit, and we dismiss it for failure to state a claim upon which relief can be granted.

*B. The Commission Lacks Jurisdiction to Address The Fuell's Damages Claim*

Regarding Mr. & Mrs. Fuell's damages claim, the Commission does not address it for lack of 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

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<sup>7</sup> The only legitimate payment Mr. & Mrs. Fuell have made is the payment they made in the form of certified funds on or around November 9, 2012 at a Questar Pay Station. Mr. & Mrs. Fuell do not contest Questar's treatment of this payment; therefore, we do not address it.

<sup>8</sup> Indeed, if Mr. & Mrs. Fuell have evidence that the money order(s) were paid, they need to obtain proof of that from the financial institution which allegedly paid the money order. However, as noted earlier in this order, the money orders contained no payor financial institution information; thus, what Mr. & Mrs. Fuell are attempting in this docket is a logical and factual impossibility. It is axiomatic that one cannot pull money out of thin air; or, in the case, out of a document purporting to be a money order with no payor from which funds are to be paid to the payee.

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utility.” McCune v. Mountain Bell Telephone, 758 P.2d 914, 916 (Utah 1988). Accordingly, we dismiss Mr. & Mrs. Fuell’s damages claim for lack of jurisdiction.

ORDER

For the foregoing reasons, this matter is dismissed.

DATED at Salt Lake City, Utah this 1<sup>st</sup> day of February, 2013.

/s/ Melanie A. Reif  
Administrative Law Judge

Approved and confirmed this 1<sup>st</sup> day of February, 2013, as the Order of Dismissal of the Public Service Commission of Utah.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary  
D#241587



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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 1<sup>st</sup> day of February, 2013, a true and correct copy of the foregoing was served upon the following as indicated below:

By U.S. Mail:

June and Robert Shane Fuell  
House of Fuell  
207 Plumtree Lane, Apt. 2i  
Midvale, UT 84047

By E-Mail:

Aminda I. Jurgenson ([aminda.jurgenson@questar.com](mailto:aminda.jurgenson@questar.com))  
Questar Gas Company

Patricia Schmid ([pschmid@utah.gov](mailto:pschmid@utah.gov))  
Justin Jetter ([jjetter@utah.gov](mailto:jjetter@utah.gov))  
Paul Proctor ([pproctor@utah.gov](mailto:pproctor@utah.gov))  
Utah Assistant Attorneys General

By Hand-Delivery:

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

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

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Administrative Assistant