

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)
Rosalie P. Mills against Questar Gas) DOCKET NO. 13-057-12
Company) ORDER DISMISSING COMPLAINT

ISSUED: November 19, 2013

SYNOPSIS

The Commission dismisses Ms. Mills’s complaint against Questar Gas Company for failure to state a claim upon which relief can be granted, and for lack of jurisdiction to address the forms of relief Ms. Mills requests.

By The Commission:

ORDER OF DISMISSAL

I. BACKGROUND

1. On September 25, 2013, Rosalie P. Mills (“Ms. Mills”) filed a formal complaint in this docket against Questar Gas Company (“Questar” or “Company”), requesting a Questar employee be fired and that Questar provide an apology for the way in which it has handled Ms. Mills’s account after her gas was turned off for nonpayment even though Ms. Mills had allegedly provided Questar with a medical letter.¹

2. On October 23, 2013, Questar filed a response requesting the Commission dismiss Ms. Mills’s complaint for failure to state a claim upon which relief can be granted (“Company’s Motion”).² Questar claims that although Ms. Mills contacted Questar on approximately June 24, 2013, to request a medical letter form be sent to her doctor, the

¹ See Formal Complaint of Rosalie P. Mills, filed September 25, 2013.

² See Answer of Questar Gas Company and Motion to Dismiss, filed October 23, 2013.

completed form was not received by Questar until July 10, 2013 – one day after service had already been terminated on July 9, 2013 for nonpayment, and then service was restored pursuant to Commission rules.³ Questar also claims that after it received Ms. Mills’s completed medical letter, she was offered but declined a special payment agreement on approximately August 2, 2013, leaving a balance due of \$689.77.⁴ Further, according to Company records, Questar received a \$200.00 payment commitment from the American Red Cross Residential Energy Assistance through Community Help (“REACH”) program, and afterwards waived the security deposit requirement; however, Questar received no payments before the medical letter expired on August 11, 2013.⁵ Questar claims that Ms. Mills thereafter made a payment of \$136.00 on about August 14, 2013; however, because Questar had not yet received the REACH commitment, Ms. Mills’s account again went into termination status, resulting in Questar sending a ten-day “Urgent Notice” to Ms. Mills, requiring immediate payment of the outstanding balance of \$574.79 to avoid termination.⁶ On about September 11, 2013, Questar terminated service to Ms. Mills for nonpayment.⁷ One day later, on about September 12, 2013, the Home Energy Assistance Target Program (“HEAT”) made a commitment to pay \$200.00, which was later increased to \$244.00.⁸ On about September 13, 2013, Ms. Mills provided receipt numbers for two payments totaling \$134.00, and on about September 16, 2013, Questar restored service to Ms. Mills’s residence.⁹ Questar claims both payment commitments from REACH and HEAT

³ See id. at 3, ¶¶ 7-10.

⁴ See id. at 3-4, ¶ 11.

⁵ See id. at 4, ¶ 12.

⁶ See id. at 4-5, ¶¶ 13-15.

⁷ See id. at 5, ¶ 15.

⁸ See id. at ¶ 16.

⁹ See id. at ¶ 17.

have now been received and Questar has credited Ms. Mills's account \$41.00 for a Utah Energy Assistance Credit, resulting in a \$31.04 credit balance.¹⁰ Questar alleges it has not violated any of its tariffs or Commission rules in this matter.¹¹

3. On October 24, 2013, in response to a Commission action request, the Division of Public Utilities ("Division") filed a memorandum recommending the Commission schedule this matter for a hearing.¹² The Division provides the following conclusion in support of its recommendation:

Ms. Mills' [s] formal complaint doesn't provide specific dates concerning her issues. As a result, the Division cannot determine which time frame is being referred to in reference to the informal complaint. The Division recommends the Commission schedule a hearing to resolve and clarify the issues Ms. Mills has with the Company.¹³

4. On October 24, 2013, the Commission issued a courtesy notice, notifying Ms. Mills of the Company's Motion.¹⁴ The notice states, in part: "In accordance with Utah Admin. Code R746-100-4, Ms. Mills has until 5:00 p.m., Monday, November 4, 2013, to file a response to the Company's filing."¹⁵ A copy of this notice was sent to Ms. Mills and the Company.¹⁶

5. Ms. Mills filed no response to the Company's Motion, and the deadline for doing so has expired.¹⁷

¹⁰ See *id.* at ¶ 18.

¹¹ See *id.* at ¶ 19.

¹² See Division Memorandum, filed October 24, 2013. The Division filed its recommendation less than twenty-four hours after Questar filed its Motion. It is not clear from the Division's memo whether it considered the Company's Motion when making its recommendation.

¹³ *Id.* at 3.

¹⁴ See Notice of Filing of Answer and Motion to Dismiss, issued October 24, 2013.

¹⁵ *Id.*

¹⁶ *Id.* at 2.

¹⁷ See *id.* at 1. See also Utah Admin. Code R746-100-4(D).

II. 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.”¹⁸ 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 her favor.¹⁹

III. DISCUSSION

A. Ms. Mills Has Failed to State a Claim Upon Which Relief Can Be Granted

Viewing the facts in the light most favorable to the complainant, Ms. Mills has failed to specify “the law or a rule or order of the commission” Questar allegedly violated.²⁰ Further, Ms. Mills failed to respond to Questar’s Motion, claiming in part she failed to state a claim upon which relief can be granted. “Absent a response or reply, the Commission may presume . . . there is no opposition.”²¹ Accordingly, we dismiss Ms. Mills’s complaint for failure to state a claim upon which relief can be granted.

B. The Commission Lacks Jurisdiction to Require the Relief Ms. Mills Requests

Ms. Mills asserts the relief she requests is to (1) remove a Questar employee from her position, and (2) require Questar to apologize for the way it has handled her account. The Commission does not have jurisdiction to grant the forms of relief Ms. Mills requests. Therefore, we dismiss her claim for lack of jurisdiction.

¹⁸ Utah R. Civ. P. 12(b)(6) (LexisNexis 2013).

¹⁹ *Cf. Munteer v. Utah Power & Light Co.*, 823 P.2d 1055, 1058 (Utah 1991).

²⁰ Utah Code Ann. § 54-7-9(2) (LexisNexis 2010).

²¹ *See* Utah Admin. Code R746-100-4(D).

IV. ORDER

For the foregoing reasons, the Commission grants Questar's motion to dismiss.

DATED at Salt Lake City, Utah, this 19th day of November, 2013.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#248894

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 CERTIFY that on the 19th day of November, 2013, a true and correct copy of the foregoing was served upon the following as indicated below:

By U.S. Mail:

Rosalie P. Mills
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By E-Mail:

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