

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of) DOCKET NO. 13-057-15
Chris Raver against Questar Gas) ORDER DISMISSING COMPLAINT
Company)
)

ISSUED: December 31, 2013

SYNOPSIS

The Commission dismisses Mr. Raver’s complaint against Questar Gas Company as moot and for lack of jurisdiction.

By The Commission:

ORDER OF DISMISSAL

I. BACKGROUND

1. On October 21, 2013, Chris Raver (“Mr. Raver”) filed a formal complaint in this docket against Questar Gas Company (“Questar” or “Company”), requesting termination of Questar employees and reinstatement of his account without a security deposit after his gas was turned off, in late August 2013, for nonpayment after Questar allegedly failed to provide a 48-hour notice to him.¹

2. On November 19, 2013, in response to a Commission action request, the Division of Public Utilities (“Division”) filed a memorandum recommending the Commission dismiss Mr.

¹ See Formal Complaint of Chris Raver, filed October 21, 2013. Mr. Raver alleges that security footage of his residence shows that no 48-hour notice was provided by Questar during the timeframe which Questar alleges it provided notice. See, e.g., Exhibits B and D attached to Formal Complaint, filed October 21, 2013. However, Mr. Raver never provided the alleged footage to support his claim in this docket.

Raver's complaint.² The Division provides the following conclusion in support of its recommendation:

Because the factual dispute resulted from a claimed lack of notice, the Company's waiver of the [security deposit] removed the only remedy within the Commission's jurisdiction in connection with this complaint. The Division therefore recommends that the formal complaint against the Company be dismissed.³

3. On November 20, 2013, Questar filed a response requesting the Commission dismiss Mr. Raver's complaint for failure to state a claim upon which relief can be granted ("Questar's Motion").⁴ Questar claims it acted in accordance with its tariff and Commission rules in providing natural gas to Mr. Raver, and Mr. Raver's account is currently in good standing with gas service being provided to Mr. Raver's residence.⁵

Questar alleges Mr. Raver's account fell into delinquent status in the winter of 2012 and 2013, with an outstanding balance due of \$83.64.⁶ On or about March 21, 2013, Questar sent Mr. Raver an "Urgent Notice" letter requiring payment within ten days to avoid termination of service.⁷ On or about April 9, 2013, Questar posted Mr. Raver's residence with a 48-hour notice, notifying Mr. Raver that payment for the outstanding balance must be received within 48 hours to prevent termination of service.⁸ On or about April 29, 2013, Questar

² See Division Memorandum, filed November 19, 2013.

³ Id. at 2. To clarify, the Division's memorandum refers to waiver of a connection fee, but Mr. Raver's complaint clearly states the relief he is requesting includes reinstatement of his service without a "security deposit" and he makes no mention of a connection fee. See Formal Complaint of Chris Raver at 1-2.

⁴ See Answer of Questar Gas Company and Motion to Dismiss, filed November 20, 2013.

⁵ See id. at 10.

⁶ See id. at 2, ¶ 2.

⁷ See id. at 2, ¶ 4.

⁸ See id. at 2-3, ¶ 6.

terminated service to Mr. Raver's residence.⁹ Thereafter, on or about April 30, 2013, Mr. Raver contacted Questar to contest whether Questar provided a 48-hour notice before terminating his service.¹⁰

On or about May 1, 2013, Questar agreed to waive a security deposit from Mr. Raver, and Questar and Mr. Raver entered into a deferred payment agreement, wherein Mr. Raver agreed to pay the outstanding balance in 12 installments of \$14.00 each, in addition to the current month's charges.¹¹ Mr. Raver did not follow through with his payment obligation to Questar under this agreement,¹² and on or about June 13, 2013, Questar sent an "urgent notice" to Mr. Raver notifying him that "[his] gas service may be terminated for failure to pay according to the terms of the deferred payment agreement"¹³ As of June 2013, Mr. Raver owed Questar an outstanding balance of \$149.27.¹⁴

On or about June 15, 2013, Mr. Raver made a \$50.00 payment to Questar.¹⁵ On or about July 31, 2013, Questar phoned Mr. Raver to let him know a payment of the past due amount of \$116.02 was required to avoid termination of service.¹⁶ Mr. Raver made no payment in response to this call.¹⁷ On or about August 13, 2013, Questar posted Mr. Raver's residence again with a 48-hour notice, notifying him that payment for the outstanding balance must be

⁹ See *id.* at 3, ¶ 7.

¹⁰ See Questar's Motion at 3, ¶ 8; and *id.* Exhibit C.

¹¹ See *id.* at 3, ¶ 9.

¹² See *id.* at 3, ¶ 9(c).

¹³ See *id.* at 4, ¶ 11, Exhibit D.

¹⁴ See *id.* at 3, ¶ 10.

¹⁵ See *id.* at 4, ¶ 12.

¹⁶ See Questar's Motion at 4, ¶ 13.

¹⁷ See *id.*

received within 48 hours to prevent termination of service.¹⁸ On or about August 28, 2013, Questar terminated service to Mr. Raver's residence.¹⁹ Thereafter, Mr. Raver contacted Questar to again contest whether Questar provided a 48-hour notice before terminating his service.²⁰

On or about August 29, 2013, Questar conducted an internal investigation and verified with its employee that a 48-hour notice was posted.²¹ Questar also found no evidence to doubt the information provided by its employee (i.e., that no other complaints were made by others in Mr. Raver's neighborhood).²² On or about September 6, 2013, Mr. Raver contacted Questar initially to discuss restoration of gas service; however, he became combative and insisted Questar do another investigation as to why he allegedly was not served a 48-hour notice.²³ Based on Mr. Raver's communication with Questar's representatives on or about September 6, 2013, Questar directed Mr. Raver that further communication with the Company must be in writing.²⁴ Thereafter, Mr. Raver demanded a payment arrangement to restore service to his residence.²⁵

Because Mr. Raver had already defaulted on the June 2013 deferred payment plan with Questar, he was ineligible for a second deferred payment plan.²⁶ On or about September 6, 2013, Mr. Raver filed an informal complaint with the Division of Public Utilities ("Division").²⁷

¹⁸ See id. at 4-5, ¶ 14.

¹⁹ See id. at 5, ¶ 15. At the time of termination, Mr. Raver owed Questar a total amount of \$139.67. See id.

²⁰ See id., ¶ 16. See also supra n.1.

²¹ See id., ¶ 17.

²² See Questar's Motion at 5, ¶ 17; and id. Exhibit G.

²³ See id. at 5-6, ¶ 18.

²⁴ See id. at 6, ¶ 19.

²⁵ See id.

²⁶ See id., ¶ 21.

²⁷ See id., ¶ 22.

Mr. Raver's informal complaint alleged "his service from Questar . . . has been shut off for a week, and he is unable to get the Company to respond."²⁸

On or about September 9, 2013, Questar provided Mr. Raver with information to contact the Utah State Referral Line by dialing 211 to see if he might qualify for assistance through agencies in his area.²⁹ On September 10, 2013, Mr. Raver sent Questar an email stating that a member of an ecclesiastical group agreed to make a donation on his behalf; however, Questar has no record of a pledge.³⁰ On or about September 11, 2013, Questar sent Mr. Raver a letter in response to his informal complaint filed with the Division, stating, in part:

Questar . . . is agreeable to communicating with you to establish natural gas service . . . ; however, the highly disrespectful tone and offensive language during your calls with at least eight Questar . . . employees have prompted the Company to direct account communications through written correspondence.

. . . Although Questar received your most recent payment of \$1.00^[31] . . . , the payment amount was insufficient to restore gas service.

Generally, due to the June 2013 default of the deferred payment arrangement . . . established on your account in May 2013, to restore natural gas service to [your] [p]roperty, Questar . . . would require payment in full of the account balance of \$138.67, a connection fee of \$15.00, and a security deposit of \$73.00 for a total of \$226.67. Because of the June 2013 default . . . , your account is ineligible for a [deferred payment arrangement] at this time.

²⁸ Questar's Motion at 6, ¶ 22, Exhibit J.

²⁹ See id. at 7, ¶ 23, Exhibit K.

³⁰ See id. at 7, ¶ 24.

³¹ On or about September 10, 11, 16, 17, 18, 19, 20, 23, and 25, Mr. Raver made separate \$1.00 payments to Questar. See id. at 7, ¶¶ 25-26; id. at 8, ¶¶ 28, 30-31; and id. at 9, ¶¶ 32-35. However, the payment made on or about September 25, 2013, was returned for insufficient funds and Questar charged Mr. Raver a \$20.00 returned check fee. See id. ¶ 35. The returned check fee arose after this letter was sent.

However, Questar . . . is willing to enter into a [s]pecial [p]ayment [a]rrangement . . . with you to reduce the up-front cost in restoring service

Under the terms of this offer, Questar . . . requires a payment of one-half of the account balance in the amount of \$71.15, in addition to the security deposit of \$73.00, provided you agree to pay all current bills for gas service when due, plus three equal monthly installments of approximately \$24.00 for the remaining account balance. However, in the event of default (i.e. failure to pay the current bill and monthly installment on or before the due date), your account shall be subject to termination.

Questar . . . will waive the connection fee of \$15.00. In addition, you may pay the security deposit in three equal monthly installments, provided that the first of the three payments is made at this time. Therefore, to restore gas service to [your] [p]roperty, Questar . . . requires a minimum payment of \$96.15 and [an] agreement to the terms of the [special payment arrangement].³²

On or about September 17, 2013, Mr. Raver responded to Questar's offer "special payment arrangement" offer with a counteroffer.³³ Mr. Raver's counteroffer proposes the following: "[T]he outstanding balance of \$138.67 will be divided into 12 equal payments of ap[proximately] \$11.55 . . . and the security deposit will be divided into three equal payments of ap[proximately] \$24.33. [T]he connection fee will be wa[i]ved[,] making the total payment due upfront ap[proximately] \$35.88. . . ."³⁴ On or about October 7, 2013, Questar again offered Mr. Raver a special payment arrangement.³⁵ On or about October 18, 2013, Mr. Raver made a payment of \$50.00.³⁶

³² See *id.* at 7, ¶ 27, Exhibit M.

³³ See *id.* at 8, ¶ 29.

³⁴ See Questar's Motion a 8, ¶ 29, Exhibit N.

³⁵ See *id.* at 9, ¶ 36. The terms of the special payment arrangement are similar to the offer made by Questar on September 11, 2013, and also includes a \$20.00 returned check fee.

³⁶ See *id.*, ¶ 39.

On or about October 21, 2013, Mr. Raver filed a formal complaint against Questar in this docket.³⁷ On or about October 21, 2013, Questar discussed the terms of a special payment arrangement with Mr. Raver and Questar offered to waive the security deposit (amounting to \$75.00) provided Mr. Raver agreed to automatic payment (termed “Auto Pay”).³⁸ Questar also offered to waive the connection fee (amounting to \$15.00) as courtesy gesture to Mr. Raver in light of his concern that Questar did not properly post his residence with an 48-hour urgent notice in August 2013.³⁹ On or about October 22, 2013, Questar sent Mr. Raver a letter memorializing the terms of the special payment arrangement discussed with him on or about October 21, 2013.⁴⁰ Questar’s letter states, in part: “The [special payment arrangement] requires an immediate payment of \$38.82, with the remaining balance of \$68.82 being divided into three equal monthly installments . . . , payable upon your upcoming, November, December, and January gas bills. Failure to pay the . . . [p]ayments when due will be considered a default of this agreement, and your gas service will be subject to termination.”⁴¹

On or about October 22, 2013, Mr. Raver made a payment of \$38.82,⁴² and Questar restored Mr. Raver’s service.⁴³ Questar reports Mr. Raver’s account is current as of the date the Company filed its Motion.⁴⁴ Questar alleges it has not violated any of its tariffs or Commission rules in this matter.⁴⁵

³⁷ See *id.* at 10, ¶ 40. See also *supra* 1, ¶ 1.

³⁸ See Questar Motion at 10, ¶ 41.

³⁹ See *id.*

⁴⁰ See *id.*, Exhibit Q.

⁴¹ *Id.*

⁴² See Questar Motion, Exhibit A at 2.

⁴³ See *id.* at 10, ¶ 43.

⁴⁴ See *id.*

⁴⁵ See *id.* at ¶ 45.

4. On November 21, 2013, the Commission issued a courtesy notice, notifying Mr. Raver of the Company's Motion.⁴⁶ The notice states, in part: "In accordance with Utah Admin. Code R746-100-4, Mr. Raver has until 5:00 p.m., Thursday, December 5, 2013, to file a response to the Company's filing."⁴⁷ A copy of this notice was sent to Mr. Raver and the Company.⁴⁸

5. Mr. Raver filed no response to Questar's Motion, and the deadline for doing so has expired.⁴⁹

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."⁵⁰ 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.⁵¹

III. DISCUSSION

A. Mr. Raver Has Failed to Oppose Questar's Motion

Viewing the facts in the light most favorable to the complainant, Mr. Raver failed to respond to Questar's Motion, claiming in part that he failed to state a claim upon which relief can be granted. "Absent a response or reply, the Commission may presume . . . there is no opposition."⁵² Accordingly, we dismiss Mr. Raver's complaint.

⁴⁶ See Notice of Filing of Answer and Motion to Dismiss, issued November 21, 2013.

⁴⁷ Id.

⁴⁸ Id. at 2.

⁴⁹ See id. at 1. See also Utah Admin. Code R746-100-4(D).

⁵⁰ Utah R. Civ. P. 12(b)(6) (LexisNexis 2013).

⁵¹ Cf. Mounteer v. Utah Power & Light Co., 823 P.2d 1055, 1058 (Utah 1991).

⁵² See Utah Admin. Code R746-100-4(D).

B. The Relief Mr. Raver Requests is Either Moot or not Within the Commission's Jurisdiction to Grant

Mr. Raver requests the following relief: (1) reinstatement of a payment arrangement without a security deposit, and (2) termination of two Questar employees. According to Questar's unopposed Motion, the issue of reinstatement has been resolved through a special payment arrangement, which includes a waiver of the security deposit. Accordingly, Mr. Raver's first claim for relief is moot. Regarding Mr. Raver's second claim for relief, the Commission does not have jurisdiction to grant that request. Accordingly, we dismiss Mr. Raver's second claim for relief for lack of jurisdiction.

IV. ORDER

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

DATED at Salt Lake City, Utah, this 31st day of December, 2013.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary

dw#249604

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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 CERTIFY that on the 31st day of December, 2013, a true and correct copy of the foregoing was served upon the following as indicated below:

By E-Mail:

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