

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of Brittnie Boberg against Questar Gas Company	<u>DOCKET NO. 15-057-08</u> <u>ORDER</u>
--	---

ISSUED: September 22, 2015

I. Procedural History.

On July 8, 2015, Brittnie Boberg (Ms. Boberg) filed a formal complaint against Questar Gas Company (Questar).

On August 3, 2015, the Utah Division of Public Utilities, having reviewed the complaint, recommended that a hearing be scheduled to evaluate the evidence and adjudicate the disputed issues.

On August 10, 2015, Questar filed an answer to Ms. Boberg's complaint.

On August 13, 2015, the Administrative Law Judge for the Public Service Commission of Utah (Commission) issued a notice setting the matter for hearing on September 11, 2015, beginning at 9:00 A.M.

The hearing was held as scheduled. Ms. Boberg appeared personally and was assisted by her father, Darron Boberg, both of whom offered testimony. Questar was represented by Leora Price. Elia Lopez testified on behalf of Questar.

II. Findings of Fact.

1. On or about February 1, 2015, Ms. Boberg moved into an apartment located in Provo, Utah, where at least one other person resided.
2. As of February 1, 2015, the Questar account for Ms. Boberg's address was in the name of Ms. Boberg's roommate.

3. In or about April of 2015, the roommate moved out of the apartment. Prior to moving, the roommate had allowed the Questar account to become delinquent.
4. Questar did not disconnect service at Ms. Boberg's apartment prior to the date on which the roommate moved out.
5. On May 6, 2015, Questar sent a notice to Ms. Boberg's address, advising that the account was past due.
6. On May 11, 2015, Ms. Boberg telephoned Questar, acknowledged having received the past due notice, and requested that service be placed in her name. During the telephone conversation, the Questar representative informed Ms. Boberg that she would be required to bring the account current. At the time, Ms. Boberg did not dispute Questar's representations regarding Ms. Boberg's responsibility to pay off the past due account.
7. On June 11, 2015, Ms. Boberg again telephoned Questar to discuss the past due amount. Questar instructed Ms. Boberg to provide a copy of her lease in order to demonstrate the date she moved into the apartment.
8. On June 12, 2015, Questar received a copy of Ms. Boberg's lease, which began on February 1, 2015. Questar therefore adjusted Ms. Boberg's account to reflect charges accumulated at the address since February 1, 2015.

III. Conclusions of Law.

1. In its answer and at hearing, Questar argued three legal theories on which it demands past due charges from Ms. Boberg:

a. During the May 11, 2015 telephone conversation between Ms. Boberg and a Questar representative, Ms. Boberg affirmatively agreed to assume the roommate's account and satisfy the past due charges. Therefore, Ms. Boberg may be pursued for all amounts due.

b. Questar's tariff provides, in relevant part:

In the absence of a signature, the delivery of natural gas service by [Questar] and the acceptance of service by the customer will be deemed to constitute an agreement by and between [Questar] and the customer for delivery and acceptance of natural gas service under the terms of this tariff.

Under this language, Questar argues that it had an agreement with Ms. Boberg as of February 1, 2015, when she began receiving natural gas service at her apartment.

c. Commission rule R746-200-3(B)(1) provides, in relevant part:

An applicant is ineligible for service if at the time of application, the applicant is cohabiting with a delinquent account holder, whose utility service was previously disconnected for non-payment, and the applicant and delinquent account holder also cohabited while the delinquent account holder received the utility's service, whether the service was received at the [applicant's] present address or another address.

Questar argues that Ms. Boberg was cohabiting with her roommate during the time the roommate's account was delinquent. Therefore, Questar considers that Ms. Boberg may be denied service under the rule, until and unless she brings the delinquent account current.

The Commission addresses each argument in turn.

A. Verbal contract.

2. A utility has two primary mechanisms through which to collect from a delinquent account holder.
3. First, according to specific limitations set forth in rule, the utility may deny service in order to motivate the account holder to bring the account current. Questar has not elected to use that mechanism in this case. However, the case presents the question of whether a utility is permitted to deny service on the basis of a verbal contract, and the Commission addresses that question.
4. The rules that govern when a utility may discontinue service do not acknowledge or provide for verbal contracts. Nor does Questar's tariff. Therefore, the Commission has no legal basis within its jurisdiction from which to conclude that Questar may terminate Ms. Boberg's service by relying on her May 11, 2015 statements. Consequently, the Commission concludes that Questar may not.
5. The second mechanism through which a utility may collect from a delinquent account holder is to file suit in a court of law, obtain a judgment, and then seek to execute on the judgment. Questar has not yet elected to use that mechanism in this case, and the Commission declines to take jurisdiction over the question of whether it may. Whether the May 11, 2015 conversation between the parties evidences a meeting of the minds and satisfies the other requisites for a valid verbal contract is matter for the

courts.¹ The Commission does not authorize or oversee a utility's collection efforts unless those efforts involve discontinuation or denial of service, which is not the case here.

B. Questar's Tariff.

6. The Commission does not read Questar's tariff as broadly as does Questar. The application of the tariff depends on the meaning of the term "signature," which is not defined in the tariff or in a regulation under the jurisdiction of the Commission. Where Ms. Boberg's roommate was the account holder of record at all relevant times prior to May 11, 2015, the Commission concludes that the roommate was also the signature of record under Questar's tariff.² Therefore, the Commission concludes that Questar did not have an agreement with Ms. Boberg—either under the tariff or through signature—until May 11, 2015.
7. It is possible that Questar intends for its tariff to create an agreement with any individual who benefits from service at any time and at any location. Such a broad reading is untenable, as it arguably would allow Questar to demand payment from any person who spends any length of time in a home or other building that receives

¹ The Commission notes, however, that a verbal agreement to answer for the debt of another is void as a matter of law under the Utah Statute of Frauds. *See* Utah Code Ann. § 25-5-4(1):

The following agreements are void unless the agreement, or some note or memorandum of the agreement, is in writing, signed by the party to be charged with the agreement: ...
(b) every promise to answer for the debt, default, or miscarriage of another[.]

² At hearing, the presiding officer equated the term "signature," as used in Questar's tariff, with the defined term "account holder." Utah Administrative Code R746-200-2(A). Questar did not challenge the presiding officer or argue that the terms have different meanings. The Commission sees no other reasonable meaning for the term "signature."

service. The tariff must be confined to its plain language, which allows for an agreement to be assumed only in the case where the utility has no account holder of record.

C. Cohabitation Rule.

8. Utah Administrative Code R746-200-3(B)(1) sets forth three distinct circumstances, all of which must be present before Questar may deny service to an applicant:
 - a. At the time of application, the applicant must be cohabiting with a delinquent account holder.
 - b. Prior to the date of application, the delinquent account holder's utility service must have been disconnected for non-payment.
 - c. The applicant and the delinquent account holder must have cohabited while the delinquent account holder received service.

9. In this case, the first two conditions stated in the rule are not met. The delinquent account holder, Ms. Boberg's roommate, had moved out of the apartment prior to Ms. Boberg's application date of May 11, 2015, and Questar had never disconnected service to the apartment for non-payment. Therefore, Questar may not use R746-200-3(B)(1) to deny Ms. Boberg service or to require Ms. Boberg to bring the delinquent account current.³

ORDER

Questar Gas Company's tariff does not obligate Ms. Boberg to pay past due amounts accrued prior to May 11, 2015 under her roommate's account. Commission rule R746-200-

³ The Commission does not rule on the question of whether Ms. Boberg and her roommate may be considered to have cohabited while the roommate received service. The term "cohabit" is not defined in any applicable regulation, and it is not necessary to define the term in order to find R746-200-3(B)(1) inapplicable to this case.

DOCKET NO. 15-057-08

- 7 -

3(B)(1) does not obligate Ms. Boberg to pay past due amounts accrued prior to May 11, 2015 under her roommate's account. If Questar Gas Company wishes to pursue collection on the basis of Ms. Boberg's verbal statements, it must do so in a court of law.

DATED at Salt Lake City, Utah, this 22nd day of September, 2015.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#269450

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 22nd day of September, 2015, a true and correct copy of the foregoing was served upon the following as indicated below:

By E-Mail:

Brittnie Boberg (brittniejoy1@gmail.com)
c/o Darron Boberg (darron@utahaddictioncenters.com)

Colleen Larkin Bell (colleen.bell@questar.com)
Jenniffer Nelson Clark (jenniffer.clark@questar.com)
Armindia I. Spencer (arminda.spencer@questar.com)
Counsel for Questar Gas Company

Patricia Schmid (pschmid@utah.gov)
Justin Jetter (jjetter@utah.gov)
Rex Olsen (rolsen@utah.gov)
Utah Assistant Attorneys General

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