

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Complaint of)	
UTAH CONSTRUCTION & DEVELOPMENT, INC.,)	<u>DOCKET NO. 00-057-09</u>
)	
Complainant,)	
)	
vs.)	<u>REPORT AND ORDER</u>
)	
QUESTAR GAS COMPANY,)	
Respondent)	

ISSUED: March 27, 2001

SYNOPSIS

Complainant having failed to show any violation of Respondent's published tariffs or of the applicable statutes and Commission rules, we dismiss.

Appearances:

Mark Poulson	For	Utah Construction & Development, Inc.
Jonathan M. Duke	"	Questar Gas Company

By The Commission:

PROCEDURAL HISTORY

Pursuant to notice duly served, this matter came on regularly for hearing the 22nd day of February, 2001, before A. Robert Thurman, Administrative Law Judge, at the Commission Offices, Heber M. Wells Building, Salt Lake City, Utah. Evidence was offered and received, and the Administrative Law Judge, having been fully advised in the premises, now enters the following Report, containing proposed findings of fact, conclusions of law, and the Order based thereon.

FINDINGS OF FACT

1. Complainant is a commercial customer of Respondent, a gas corporation certificated by this Commission.
2. Complainant is the general contractor for a project commissioned by the Salt Lake County Parks Department for the construction of a swimming pool and building enclosing it. The service has always been in the name of the Salt Lake County Parks Department (Parks), but Parks has always acted as a conduit, passing the gas bills along to Complainant via Parks invoices. With this understanding, we will, for convenience, refer to billings as though they went directly to Complainant. Parks initiated gas service for the building with a turn-on date of November 24, 1999.
3. For the period November 24, 1999 to December 17, 1999, Respondent calculated (estimated) Complainant's usage and billed \$163.21. From December 18, 1999, to January 19, 2000, based on a meter read, Respondent billed \$2,034.62. On February 7, 2000, Respondent replaced the construction meter with a permanent meter. On February 17, Respondent billed Complainant \$1,619, apparently based on the actual read of the old meter as of February 7, 2000, and an estimate thereafter. The bills are not in dispute up to this point.⁽¹⁾

4. For the ensuing three months, March, 2000, through May, 2000, Respondent billed \$181.33, \$133.07, and \$106.09, respectively, based on calculations.⁽²⁾ For March and May, the meter reader noted that he or she could not gain access.⁽³⁾ There is no explanation as to why the meter was not read in April. Complainant disputes that the reader would have encountered any difficulty with access during business hours any of the three months.

5. The meter was read June 19, 2000, and usage for the four-month period March 20, 2000, through June 19, 2000, was found to be far in excess of the calculated amounts. Respondent submitted adjusted bills of, respectively, \$3,671.42, 3,406.66, \$3,207.83, and \$2424.69. Complainant turned the project over to Parks in June, 2000, and that is the last month for which Complainant is responsible for the gas service.

6. Complainant's owner testified that had he realized gas usage was that high during the three-months of March, April, and May, he could have taken steps to curtail usage. When pressed, the only steps he could mention were to ensure that doors and windows were closed and that thermostat settings were maintained at the lowest practicable level. He testified further that no part of his bid on the project was predicated on gas usage as low as that originally billed, although his allowance in the bid was not as high as the adjusted billings.

7. Respondent attributes the extremely low calculations in the original billings to the fact that the project was brand new with no prior history on which to base estimates.

8. Respondent has agreed to abate interest charges accruing during the period of low estimates and to enter into a Deferred Payment Agreement (DPA) with Complainant.

DISCUSSION

The Commission's jurisdiction to resolve monetary disputes between utilities and their customers derives from Section 54-7-20, U.C.A. 1953, as amended, which provides in pertinent part:

54-7-20 Reparations -- Courts to enforce commission's orders -- Limitation of action. (1) When complaint has been made to the commission concerning any rate, fare, toll, rental, or charge for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an amount for such product, commodity, or service in excess of the schedules, rates, and tariffs on file with the Commission, or has charged an unjust, unreasonable, or discriminatory amount against the complainant, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection.

The evidence adduced by Complainant does not reflect that Respondent has deviated from its tariffs, nor does it show that Respondent applied the same discriminatorily against Complainant. Complainant does not argue that the June meter reading, albeit late, was inaccurate.

Complainant has suggested that we apply the doctrine of promissory estoppel. We believe the above-quoted statute, which speaks only in terms of reparations for overcharges, precludes our use of the doctrine. However, even if it were applicable, Complainant has failed to show a mandatory element, namely detrimental reliance. Complainant did not incorporate the low bills in its bid on the project, and the only steps it has suggested it could have used to curtail usage are steps any prudent customer would have taken in any event.

While we appreciate the hardship Complainant encounters in finding itself liable for a \$14, 000 bill in a lump sum, we must note also that Complainant has had the full benefit of the commodity and further had the benefit of the time value of the money during the three-month interim. Respondent's offer to accord Complainant a DPA should ameliorate some of the hardship.

To afford Complainant the relief it seeks would amount to discrimination in its favor to the detriment of other customers. Such discrimination is expressly forbidden by statute. The Complaint should, therefore, be dismissed.

CONCLUSIONS OF LAW

The Commission has party and subject-matter jurisdiction. Complainant has failed to prove facts which would entitle it to relief under Section 54-7-20, U.C.A. 1953, as amended. That statute entitles a customer to reparations only upon a showing of charges beyond Respondent's published tariff, or a discriminatory application of the tariff. The facts proven by Complainant do not indicate such overcharge or discrimination.

Respondent is, under the law, not only allowed but required to charge in accordance with its tariff in order to prevent invidious discrimination among customers. Accordingly, the charges imposed on Complainant are lawful, and Respondent is entitled to collect the same. The complaint must be dismissed.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

- The complaint of UTAH CONSTRUCTION & DEVELOPMENT, INC., against QUESTAR GAS COMPANY be, and the same hereby is, dismissed.
- If UTAH CONSTRUCTION & DEVELOPMENT, INC., wishes to proceed further, UTAH CONSTRUCTION & DEVELOPMENT, INC., has 20 days from the date of this Order in which to file with the Commission a written petition for review or reconsideration. Failure so to do will forfeit the right to appeal to the Utah Supreme Court.

Dated at Salt Lake City, Utah, this 27th day of March, 2001.

/s/ A. Robert Thurman
Administrative Law Judge

Approved and Confirmed this 27th day of March, 2001, as the Report and Order of the Public Service Commission of Utah.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

1. Narrative based on Hearing Exhibit 5.
2. Id.
3. Hearing Exhibits 2 and 3.