

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)
Stephen Justesen against Questar Gas) DOCKET NO. 09-057-17
Company) ORDER OF DISMISSAL
)

ISSUED: April 26, 2010

By The Commission:

This matter is before the Commission on the formal complaint of Stephen Justesen against Questar Gas Company (Questar). The complaint concerns a dispute over obligations arising out of a “Rental Property Owner Approval to Leave Service On” (Agreement) covering property at 108 South 500 West, Salt Lake City (Property)¹.

The Administrative Law Judge of the Commission held a hearing on the matter on February 3, 2010. Andre Litster represented Questar Gas Company (Questar or Company). Linda Kizerian testified on behalf of the Company. David R. Irvine was counsel for Mr. Justesen. Also attending with Mr. Irvine was Jim Dabakis, a business associate of Mr. Justesen.

The Agreement in General

The type of Agreement at issue here was designed to remedy a common challenge rental property owners faced when leasing to tenants: ensuring gas service remains during gaps in service between the time a previous tenant discontinues service and when a new tenant commences service. The Agreements provide that when there is a gap in service, Questar notifies the owner if the tenant’s service is terminated, and allows the owner to obtain service in his name if desired. Questar transfers the service in the owner’s name until a new tenant requests service. The Agreements do not ensure the owner serves as a guarantor for unpaid tenant bills—

¹ Justesen originally signed the Agreement with Mountain Fuel, predecessor to Questar.

that is, the owner is not liable for unpaid bills of the tenant under the Agreement. It is only liable for the times when no tenant holds service and the service is placed in the owners' name. If the tenants take service continually (i.e. there is no gap), then the owner never takes service in his name. If there is a gap, however, the owner is billed until a new tenant requests service.

The Agreement remains in effect until the owner cancels in writing. In Mr. Justesen's case, the Agreement specifically stated:

The undersigned . . . directs [Questar] to continue gas service from the time a tenant requests service to be discontinued until a new tenant signs for service. This agreement will continue in force until cancelled. The undersigned must notify [Questar] by certified mail or in person of any sale of the property that would effect this agreement.

Questar Gas, Hearing Exhibit 1. The Agreement further stated:

[Questar] agrees to leave natural gas service on in Property Owner's name at the service address from the time a tenant requests that service be discontinued until a new tenant signs for service. . . . Until a new tenant has arranged for service in its name, Property Owner will continue to be billed for service. . . . this agreement will remain in effect until Property Owner cancels the agreement in writing. Notice of cancellation must be by certified mail or personal visit to a [Questar] office.

Id.

Questar alleges as follows regarding the number of owners using similar Agreements as Mr. Justesen:

Over at least the last three decades, tens of thousands of [owners] have benefitted from this service, including Mr. Justesen. As of December 2, 2009, the Company had record of 42,695 active Landlord Agreements involving service at 136,086 separate locations. Some [owners] have hundreds of Landlord Agreements on file.

Questar Answer and Motion to Dismiss, p.2.

Instead of signing the Agreement, an owner may opt to maintain service in his name, and bill tenants directly for usage. Additionally, the owner may elect to commence service in his name when a gap begins. However, the owner must pay a connection fee each time service is reinstated in his name if this Agreement is not used. Thus the Agreement allows the owner to avoid repeated connection fees. It also, as Questar contends, protects the owners' property when tenants move out in winter months, where freezing temperatures can cause water pipes to freeze and break absent heating. The Agreements do not have to be signed each time a tenant enters, but remains in force until cancelled.

Questar pointed to previous Commission order finding these types of Agreements to be in the public interest. It quoted the Commission's order in *In re Application of Mountain Fuel Supply Co., Report and Order on Rate Design and Cost Allocation*, Docket No. 82-057-15, at 14 (Dec. 21, 1983).

Mountain Fuel currently offers to owners of residential rental properties the convenience of leaving gas service on at a rental unit in those cases where the property owner has signed an agreement with Mountain Fuel that he will be responsible for any gas usage that takes place during the interim period between a prior tenant and the next tenant. This procedure has eliminated disputes among old tenant, new tenant, landlord and Mountain Fuel concerning the responsibility for usage during the interim period before a new tenant takes up residence. The alternatives of physical disconnection and reconnection are costly if performed by the Company and otherwise problematic if attempted by the tenant or landlord. We find that it is in the public interest to continue this program for rental property owners.

Mr. Justesen's Dispute

On March 20, 1997, Mr. Justesen signed the Agreement for natural gas service at the Property. His Agreement was admitted as Questar Hearing Exhibit 1. Under the box titled "PROPERTY OWNER NAME", Mr. Justesen listed himself ("Stephen M. Justesen") as the owner. The form contains no indication that he was signing on behalf of any other party or business entity.

On November 6, 1997, Mr. Justesen signed a signature card for natural gas service for the Property. This form is used by tenants to obtain service. The card lists Snap Productions—not Stephen Justesen, as the tenant. Because the service terminated in the previous tenant's name at the same time it began in Snap Production's name, the terms of the Agreement did not take effect, i.e. it never went into his name. Mr. Justesen states he sold the property in July 2002. In July 2002, Snap Productions also requested that service be terminated. However, when a field technician was sent to terminate the service, the technician's report states that Mr. Justesen requested that the service should not be transferred into his name, but that the service should remain in the tenant's name. The technician recorded, under a space provided for special instructions, the following note: "DO NOT PUT IN PO [Property Owner] NAME. PO IS STEPHEN OF SNAP PRODUCTIONS." It appears that Mr. Justesen himself requested that the service remain in the tenant's name (Snap Productions). Therefore, the service remained in the name of Snap Productions until a new tenant requested service at the Property on July 9, 2002. About April 8, 2008 the tenant requested service be terminated. Because there was no subsequent tenant requesting service, Questar, per the terms of the Agreement,

commenced gas service in Mr. Justesen's name. He was billed for service between April 8, 2008 and August 2, 2008. When a fire caused damage to the Property, the fire department requested Questar shut-off service and that occurred August 2, 2008. Questar was unable to locate Mr. Justesen for payment of the bill and as of August 7, 2008 he owed \$684. Questar left a collection notice at the Property stating that his account would be terminated for non-payment. Because Questar was unable to identify another party occupying the premises during the billed period, it sent the arrearage to collections. On November 20, 2008, the collection agency sent a demand letter to Mr. Justesen for \$693.10. He called Questar to dispute the collection and was informed that the amount was for service provided to him under the Agreement. Per his request, his service was terminated during his call. He also explained that he no longer owned the premises. Mr. Justesen's attorney later sent a letter to the collection agency demanding collections cease. That letter also contained a copy of a purported letter Mr. Justesen wrote in 2002, requesting Questar end his Agreement and service to the Property. The letter, however, was merely a photocopied letter with no post-mark, no proof of delivery, nor any other marking showing when it was sent or delivered. The letter was dated about the same time when he sold the building—June 2002, but Questar had no such record of a letter being received.

On February 23, 2009, Mr. Justesen filed an informal complaint, but after investigation, it was closed and he was informed of his right to file a formal complaint. Instead, he filed a claim in small claims court against Questar. That claim was dismissed for failure to exhaust administrative remedies. Mr. Justesen took his issue to the media,

involving “Get Gephardt”, which aired a segment on October 2, 2009. Mr. Justesen’s associate later called Questar’s counsel threatening to involve state legislators in the matter. In November 2009, Mr. Justesen finally filed a formal complaint. At the time of the complaint, he owed \$690.83 plus collection and court costs, interest, and attorney fees.

Mr. Justesen asks the Commission to order Questar to cease its efforts to collect the amount from him. He also asks the Commission to “begin an investigation into rental property agreement issue that Questar uses with an eye toward some degree of fairness for small business.” He also asks the Commission to “pay [him] compensation” for its bizarre efforts to collect on [the] bill”

The Division of Public Utilities made a recommendation to the Commission as follows:

The Division was unable to determine where Mr. Justesen went to notify Questar in person since their offices were closed to walk-in traffic in 1995 and 1996 as a way to cut costs. Questar did not terminate service due to a request from the account holder which would have been Snap Productions, rather there was a request to put service in the name of Axis Productions on July 9, 2002, indicating that Mr. Justesen did not give notice to Questar to terminate the gas service for the building.

Questar’s tariff 9.05 which was approved by the Public Service Commission reads: “A rental property owner who has signed an agreement to leave service on between tenants must notify the company in writing to change such an arrangement”. The Division did not find Questar to be in violation of this tariff; however, the dispute is with the copy of the handwritten note Mr. Justesen claims he gave to Questar to cancel the agreement and Questar’s claim that they did not receive the note. Even if Questar would have received the note, that would not have cancelled the agreement because the property owner card was in Stephen Justesen’s name not the business name.

Mr. Justesen's Agreement

Although the demand for payment after Mr. Justesen sold the underlying Property almost eight years ago seems unfair on its face, the Commission does not find that Questar violated any statute, rule, or tariff with regards to Mr. Justesen's individual agreement. Mr. Justesen signed the Agreement in his name alone. He did not sign in the name of Snap Predictions, Tomahawk Productions or any other of the entities with which he was associated. Mr. Justesen himself, therefore, was required to contact Questar and terminate the Agreement. If there was sufficient evidence of his termination of the Agreement, then clearly the Company's attempts to collect on the debt would be improper. Mr. Justesen claims he terminated the Agreement per its own provisions, i.e. by hand-delivering, a copy of which was attached to his complaint. But even assuming the letter were to serve as sufficient notice of termination of the Agreement, the problem with the letter is that—besides Mr. Justesen's own word—there is no authentication that it, in fact, was delivered. He has no proof of mailing. He has no date stamp. There is nothing on the letter itself that shows it was ever delivered or received by Questar. The photocopy is of a letter which could have been written at any time. Without more evidence of authenticity, the Commission cannot accept that as proof of termination.

Unfortunately for Mr. Justesen, adding to the doubt the Commission has about the authenticity of the letter, are the circumstances under which he says it was delivered. Ms. Linda Kizerian, a consumer affairs employee of Questar, under cross-examination by Mr. Justesen's attorney, testified at the hearing related to the specific provision in the Agreement that states: "Subject to the preceding paragraphs, this

agreement will remain in effect until Property Owner cancels the agreement in writing. Notice of cancellation must be by certified mail or personal visit to a Mountain Fuel office.” Ms. Kizerian stated the Questar offices were closed to the public “in the second half of 1999.” *Transcript*, p.27, l. 16. Therefore, termination by personal visit was no longer available. In 2002, it appears that security guards were manning the desks at the Questar office. Upon further questioning, Ms. Kizerian stated what likely would have happened in 2002 had Mr. Justesen tried to hand-deliver the letter:

Q. [Mr.Irvine]: So if, if Mr. Justesen delivered the letter, as he claims he did, he would have given it to one of your security people?

A. No, they wouldn't have taken it. For—

Q. How do we know that?

A. Because they don't take any gas account information. There's too much of a chance that they would get busy. They would lose it. They don't call employees out into the offices. The offices are closed. We have in, I believe in both offices, a phone. They can call and speak to a call center rep. To the best of my knowledge, that's what they ask people to do.

Q. But you're telling me that if someone chooses to make that personal delivery, it cannot be accepted?

A. What would happen is the guard would say, This is concerning your gas account, right? Yes. There's a phone right there. You can call and speak to one of our representatives and they'll advise you what to do. And he could have canceled it simply over the phone.

Transcript, p.26, ll.14-25, p. 27, ll.1-2, p. 28, ll.6-15.

Despite the fact that the Company in 1999 closed its offices to the public, implemented a call center to allow customers to call in terminations, manned the front entry with security guards to direct customers to call in their termination, and apparently did not permit customers to enter offices beyond the front desk, Mr. Justesen claims that apparently Company personnel broke with practices that had been in place for three years

when it came to his matter. Mr. Justesen's recollection of what happened when he apparently hand-delivered the letter is as follows:

Q. [Mr. Irvine] Would you tell us how you went about delivering that letter, and to whom you delivered it?

A. [Mr. Justesen] I, I took it to their office and I -- for some reason it seems like at that time their office was on North Temple. . . . I can't, you know, I can't tell you who I actually gave it to or anything like that, but I did take it to the office. . . .

Q. Could you give us a little more detail about what happened when you walked in the front door?

A. . . . I just remember I went and I took the letter to probably a receptionist, and she directed me where to take it to. And I met with someone and I gave them the letter saying that I was terminating. And I went and I said, you know, I want to terminate my service. I've got a letter. I spoke to someone on the phone, they told me to come down. They said that I had to do it in writing. *That I couldn't, you know. I called on the phone, hoping I could just terminate it via the telephone call. But they didn't -- they said, You have to come down.* And again, I wish I could tell you more specific than that. But it was 13 years ago, and I honestly don't remember much about that.

Q. Is it possible that you delivered the letter to a security officer?

A. No. It wouldn't -- no, it would not have been a security officer. *It would have been either somebody in accounting or in that department that processes new accounts or terminates accounts. But, you know, it wasn't -- definitely it wasn't a receptionist and it wasn't a security officer. It was, it was the current person that was in charge of terminating the accounts, or that processes those kind of requests.*

Transcript, p.46, ll.2-25, p. 47, ll. 1-16 (emphasis added). Therefore he claims that he was told he *could not* terminate service over the phone—despite the fact that the Company implemented a call center to do precisely that—handle terminations and other matters telephonically. Additionally, despite the fact that the Company did not let customers enter beyond the front desk, he claims he was taken to someone in the accounting department—someone who terminates these types of Agreements. Mr. Justesen's explanation, however, seems unlikely.

Finally, the Commission believes there is evidence Mr. Justesen knew about the effects of the Agreement at the time he was selling the Property. The Company's technician recorded that when he was dispatched to shut off service in tenant Snap Production's name, and transfer the service to Mr. Justesen's name as property owner, Mr. Justesen directed the technician to leave the service in the tenant's name. The record shows he knew there was a distinction between the tenant and owner Agreements and their effect on who was billed. He might have simply forgotten to terminate the owner Agreement.

The terms of the Agreement are clear. Mr. Justesen was to contact the Company and terminate the Agreement via mail or in person. There is not sufficient evidence that he did either. Therefore, he is bound to pay the amount owing on the service provided to him at the Property.

The Agreement Generally

Mr. Justesen also asks the Commission "begin an investigation into rental property agreement issue that Questar uses with an eye toward some degree of fairness for small business." The Commission declines to do so at this time. Although Mr. Justesen's frustration at having to pay a bill for a building he sold almost 8 years ago is understandable, the Commission decision, expressed in the December 1983 order cited above, is an effort at balancing the desire to maintain rates for the public at rates as low as possible, the right of the Company to earn an adequate rate of return, and specifically, the needs of individual landlords who provide service to tenants. As mentioned previously, the dispute between old tenant, new tenant, and landlord as to who is

responsible for interim usage between the time an old tenant ends and new tenant commences service can arise. These Agreements, however, serve to minimize dispute and allocate risk to those who can most control it. In this case, at least, it was Mr. Justesen, as landlord, who had the responsibility to monitor the use of the Agreement and the provision of gas service under its terms. He was ultimately responsible to inform the Company that he was terminated the Agreement.

Because, as the Company has stated, “as of December 2, 2009, the Company had record of 42,695 active Landlord Agreements involving service at 136,086 separate locations” and because “some landlords have hundreds of Landlord Agreements on file,” the Commission does not think it proper to make the Company monitor the land records for each of its 40,000 landlord customers. It would not only be burdensome, but likely add significant costs to other ratepayers who should not be made to bear the costs of an Agreement or Agreements from which they receive no benefit. Although the landlord has some risk, as evidenced by this matter, he also receives benefits from the Agreement, e.g. he avoids incurring the connection fee repeatedly as the service is connected and re-connected, he is able to maintain service in between tenants, continuous service allows the landlord to prevent damage to pipes in the winter, etc. In exchange for those benefits, he must be aware of the terms of the Agreement, e.g. pay the bills in a timely manner, notify the Company when he desires to terminate service, etc. Therefore, the Commission finds that the Agreement strikes an appropriate balance between competing interests.

Mr. Justesen also suggests this type of contract is an adhesion contract, which the Commission takes to mean as being unconscionable to enforce. Even if the contract were an unconscionable adhesion contract, finding the contract to be an unconscionable adhesion contract would be an equitable determination which the Commission does not have power to make. *See In the Matter of the Complaint of Union Telephone Co. v. Qwest Corporation*, 2005 Utah PUC LEXIS 255, *3 (holding that “this Commission does not possess equitable powers.”)

Although the Commission finds the utility did not violate its tariff, Commission Rules, or statutes governing the provision of service by the utility, Mr. Justesen may have other remedies available to him in civil court. For example, if he believes the contract is an unconscionable adhesion contract, a trial court could provide equitable remedies not available in the Commission. See e.g. *Shaw v. Bailey-McCune Co.*, 355 P.2d 321 (Utah 1960); *Atkin Wright & Miles v. Mountain States Tel. & Tel. Co.*, 709 P.2d 330 (Utah 1985). He may also have other remedies available against the actual user (tenant) of the gas for the period of use, for example cross-claiming against the actual user for the amount owing, and perhaps other attorney’s fees and court costs. Mr. Justesen’s remedies in this forum, however, are limited.

ORDER

For the foregoing reasons, Mr. Justesen’s Complaint is dismissed with prejudice. Pursuant to Sections 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the Commission within 30 days after the issuance of this 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

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Commission does not grant a request for review or rehearing within 20 days after the filing of the request, 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 Sections 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 26th day of April, 2010.

/s/ Ruben H. Arredondo
Administrative Law Judge

Approved and confirmed this 26th day of April, 2010, as the Order of Dismissal of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#65856