

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)
Drew Christenson vs. Questar Gas Company) DOCKET NO. 10-057-01
) REPORT AND ORDER
)

ISSUED: May 3, 2010

By The Commission:

This matter is before the public service Commission on Drew Christenson's formal complaint against Questar Gas Company (Questar or company). Mr. Christenson owns property in Vernal, Utah, at 50 East 750 North #3. This is apparently one unit among the complex owned and/or operated by Mr. Christenson. Mr. Christenson, however, resides in Sandy, Utah. Service at the apartment was terminated at the request of the account holder (who was not Mr. Christenson) on July 6, 2009 and no service was registered until September 24, 2009, when meter reads were taken. On October 28, 2009, another meter read indicated unauthorized usage at the property where the meter had been sealed. On November 5, 2009, a company technician was dispatched to plug the meter. At the time the unauthorized service occurred, no tenant occupied it.

The company contacted the Uintah County Assessor's office and identified Mr. Christenson as the owner of the property. The company sent him a bill in November 2009, for the unauthorized gas usage and associated fees. The bill was for \$13.97 of natural gas, \$15 connection fee, a \$5.00 missing seal fee, and a \$50.00 plug fee, plus taxes for a total of \$85.49.

Mr. Christenson contacted the company to complain about the bill, including the meter seal charge and plug fee. Those charges were removed as a one-time courtesy. An

updated bill for \$30.49 was sent to Mr. Christenson and he paid the bill in full. Mr. Christenson requested that for any future notices for termination of service at the complex be directed to his office. He also asked that Questar “enter into an agreement to avoid this same issue again.” See *Christenson Complaint*, ¶ 22. In response to his request for notice and an agreement to avoid these issues in the future, the company sent him a copy of its Landlord Agreement to sign. However, Mr. Christenson declined to sign the agreement, because he felt it did not adequately represent or protect the interests of the landlord, and, as he stated, protected mostly the company’s interests.

The company moved to dismiss Mr. Christenson’s complaint. It argued that it could not provide Mr. Christenson notice of the tenant’s cancellation of service without a landlord agreement on file as it would reveal confidential customer information without the customer’s permission. The company also contends that even though Mr. Christenson claims he is not a customer because he never signed an agreement with Questar, he is a customer. It argued as follows:

Questar Gas has established that it has complied with the applicable provisions of its Tariff and Commission rules with regards to theft of gas at the Property and the subsequent billing of Mr. Christenson. Although Mr. Christenson has argued that he is not a customer of Questar Gas because he has never signed an agreement with Questar Gas, the owner of residential property is a customer when gas is supplied to that property, even absent a contract for gas service. “‘Customer’ means a person, firm, partnership, company, corporation, organization, or governmental agency supplied with gas by a gas utility subject to Commission jurisdiction.” *Utah Admin. Code* § R746-320-1 (2009). “[The Company’s] tariffs, previously approved by this Commission, empower [the Company] to backbill the owner of premises where unauthorized usage occurs.” *Report and Order*, PSCU Docket No. 90-057-04, at 2 (April 27, 1990).

Questar Gas Answer and Motion to Dismiss, p.5.

The Division of Public Utilities (Division), in its February 2010 recommendation, recommended the Commission hold a hearing on the matter and also commented as follows:

...the Division cannot find any administrative rule, Utah law, court ruling, Commission ruling or Questar tariff, that the Division is aware of, that addresses or is no point with this complaint. The Utah gas tariff quoted by Linda Kizerian of Questar Gas is ambiguous as best and has no intrinsic or objective application to the complaint at hand. The Division cannot find in Questar's tariff any provision stating that the owner of property is responsible for unauthorized gas use when he has not been a customer of that property.

Division Recommendation, February 4, 2010, p.2.

The Administrative Law Judge of the Commission held a hearing on March 9, 2010. Andre Litster was counsel for the company. Linda Kizerian testified on behalf of the company. Mr. Drew Christenson appeared *pro se*. Ross Hudson, customer service specialist with the Division was also present and presented a supplement to his recommendation. He also submitted the supplemental recommendation in writing. *See Division Comments, March 9, 2010.* The Company was permitted to file a post-hearing response to the Division supplemental recommendation. *See Response of Questar Gas Company to the Statement of the Division, March 18, 2010.*

ANALYSIS

Our Rules define the term "customer" as: "a person, firm, partnership, company, corporation, organization, or governmental agency supplied with gas by a gas utility subject to Commission jurisdiction." *Utah Admin. Code. § R746-320-1 (2009).* The company's tariff defines "customer" as "an [i]ndividual, firm, or organization, classified as either residential, commercial or industrial customer purchasing and/or transporting natural gas from the Company

at each point of delivery, under each rate classification, contract, or schedule.” *Questar Tariff, page 11-3*. Theft of gas is also dealt with by the tariff. “Theft of gas occurs when a person obtains gas utility services, which are available only for compensation, by deception, tampering or other means designed to avoid the payment due for such utility services. Persons who obtain gas utility services through such means may be subject to civil suit or criminal prosecution.” *Tariff, 7-2*.

In this matter, the Commission does not agree with the company that Mr. Christenson is a “customer”, absent a contract for service, and absent any evidence that he obtained the gas service by “deception, tampering, or other means designed to avoid” payment for the gas service, merely because he is the property owner. Questar cited to three previous orders of the Commission to support its contention that “the owner of a residential property is a customer when gas is supplied to that property, even absent a contract for gas service.” *Questar Gas Answer and Motion to Dismiss, p.5*. The facts underlying at least two of those orders distinguish them from this matter.

The company pointed to *Hargrave v. Mountain Fuel Supply Company, Docket No. 87-057-22, Report and Order of March 30, 1988*, citing language where the Commission stated “[The Company’s] tariffs, previously approved by this Commission, empower [the Company] to backbill the owner of premises where unauthorized usage occurs.” *Hargrave Report and Order, p.2*. The *Hargrave* report and order, upheld company action where the company transferred arrearages owing on one of the property owner’s properties to another. *See Id. at ¶2*. The ALJ, however, did raise facts sufficient to lead the Commission to find the

property owner was the person responsible for the theft of the gas service. For example, the Commission's then-ALJ found that:

- although the “property was ostensibly vacant,” usage occurred at various times, which was “highly unusual” ¶ 4;
- the property owner “refused to inform Mountain Fuel who was occupying the premises during the period in question,” ¶ 3, on this occasion in question and at least “one other occasion” ¶ 4;
- a “pattern of unauthorized usage during ostensible vacancies at several rental properties showing a connection with” the property owner, *Id*;
- the pattern emerged after the company implemented a reconnection fee charged to property owners when they transferred service to their name when tenants vacated properties; and

Finally, the ALJ summarized that in the *Hargrave* matter, there was “a single individual benefitting, under highly suspicious circumstances, from all the services rendered at the several addresses.” *Id. at p.5*. The property owner there was ordered to pay for the theft of services.

The company also cites to *Finch v. Mountain Fuel Supply, Docket No. 87-057-02, Report and Order, April 8, 1987*, for support that a property owner is liable for unauthorized usage at the property. In that matter, Mr. Finch, had a neighbor unauthorizedly turn on the gas service for him, and he used gas for about four months “without signing for gas service or establishing an account with Mountain Fuel.” *Id. ¶ 2*. After discovering the unauthorized usage,

the company plugged the meter, forcing Mr. Finch to apply for service. Before commencing service, the company required him to pay for the plugged meter fee and cost of seal, in addition to the unauthorized usage. *See Id. at ¶4*. Mr. Finch refused to pay for any of the charges. The Commission found that the charges were “substantiated by the evidence”, *Id. ¶ 3*, and ordered Mr. Finch to pay amounts owing. This matter, however, also dealt with theft of the gas service by the property owner, who also happened to be a customer.

In this case, similar circumstances do not exist as in *Hargrave* and *Finch*. In *Hargrave* and *Finch*, theft by the property owner occurred. Here the evidence does not show that Mr. Christenson stole the gas service. In fact the company does not contend he stole the gas service. *Transcript, p.23, ll.4-7*. It appears the former tenant may have entered the apartment after she vacated it—a criminal act of itself, *Transcript, p. 15, ll.22-25*, and stole gas service unauthorizedly—another criminal act, *Id. at p.16, ll.1-7*. Unlike in *Hargrave*, Mr. Christenson has not refused to inform the company of the name of the tenant, but is simply unaware of exactly where she is. *Transcript, p.25, ll. 9-11*. He has not benefitted from rents during the time the usage occurred, and in fact is owed two to three thousand dollars in rent which he has been unable to collect. *Transcript, p.16, ll.11-16*. Mr. Christenson also owns several units in Vernal, *Transcript, p.17, ll.3*, but unlike the property owner in *Hargrave*, who avoided paying any amounts on all units, Christenson is current on all accounts for his units. *Transcript, p.17, ll.7-11*. Unlike in *Hargrave* and *Finch*, where the property owners avoided payment, Mr. Christenson contacted the company upon receipt of the notice, and even though he disputed the amount, he

paid it. Here there is no pattern of unauthorized usage or other circumstances evincing Mr. Christensen stole the gas service.

The company also pointed to *Wright v. Mountain Fuel Supply Company, Docket No. 90-057-04, Report and Order, April 27, 1990*, for support. In that matter, the property owner was not accused of theft of service. He was billed for unauthorized usage, even absent a contract for services. There the report and order stated that the company's "tariffs, previously approved by this Commission, empower [the company] to backbill the owners of premises where unauthorized usage occurs." *Id. at p.2*. However, the Commission does not find a similar provision in the current tariff that would allow the company to bill a property owner for unauthorized service without a contract for service, as a "customer." Absent any evidence that the owner obtained the gas service by "deception, tampering, or other means designed to avoid" payment for the gas service, the tariff does not provide for this.

The company contends the property owner may be characterized as a customer, because the property is "supplied with gas", ultimately benefitting the property owner who received the benefits of rent payments. In summary, it contended as follows:

Rental property owners do not have to use natural gas to provide heat, hot water, or other services to their tenants; however, when gas service is provided, the property owner benefits because the property is made habitable or usable using the means the property owner decided to use . . . Assuming the property is otherwise fit for occupancy, the responsibility to remedy the failure of heat or hot water, if not caused by some default or bad action by the tenant, falls squarely on the property owner. *Id.* §§ 57-22-4(4), 57-22-6. It is therefore both reasonable and just, and within the meaning of the Tariff, to define the rental property owner as a "customer" in the absence of an identifiable occupant, and for the Company to charge the property owner for gas used and the associated fees necessary for gas service to be restored. Providing gas service to the property benefits the property and therefore the property owner.

See Response of Questar Gas Company to the Statement of the Division, March 18, 2010, p.3.

However, our Rule defines customer as simply a “person” and the tariff as “an individual”, and make no mention that if the gas is unauthorizedly supplied to a property owner, that the property owner is liable for that usage even absent a contract for services. In fact, the company’s own tariff, in the definition of customer, refers to the definition of “account” as a “record of gas service as established by the Company *upon acceptance of a customer’s application* for meter turn-on.” *Tariff, p.11-1.* The tariff itself mentions the acceptance of a customer’s application—tending to show the need for an existence of a contract for services, as a qualification to be considered a “customer.”

The company also states that the property owner may benefit from the gas service in times when unauthorized use occurs, such as during the winter time, when cold weather may cause pipes to freeze and burst, and that therefore the billing of unauthorized service is justified. The Commission, however, does not find support for this rationale in the tariff. In fact, in instances where the property owner does not wish to have gas service, even in winter, it would not be appropriate to make the property owner strictly liable for theft of service. For example, in this case, Mr. Christenson stated that instead of gas service in the winter, his property manager places electric heaters in the units. He stated the reconnection fee was “just not worth it. We put the electric heaters in there and pay the electric bill.” *Transcript, p.27, ll.9-19.* It would not be consistent with the tariff to bill a property owner for unauthorized usage, where it appears the property owner specifically avoids having to use gas service, but because of the criminal act of a

third party, is liable for unauthorized usage merely because he owns the property where the theft occurred.

Mr. Christenson requested the Commission order the company to enter into an agreement to avoid this type of occurrence from happening in the future. He also requested notice if a tenant cancels his gas in one of his units. Questar policy, however, prevents the revelation of confidential customer information without the customer's permission. *See Questar Gas Answer and Motion to Dismiss*, ¶ 11. The company did send Mr. Christenson a Landlord Agreement which he refused to sign. There is no alternative agreement provided by the company.

ORDER

For the foregoing reasons, the company's Motion to Dismiss is denied. The company is ordered to repay to Mr. Christenson amounts he paid for the unauthorized gas usage.

Absent his willingness to sign the Landlord Agreement, Mr. Christenson's request for an order for an alternative agreement or other notice in the future is denied.

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 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

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requirements of Sections 63G-4-401 and 63G-4-403 of the Utah Code and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah this 3rd day of May, 2010.

/s/ Ruben H. Arredondo
Administrative Law Judge

Approved and confirmed this 3rd day of May, 2010 as the Report and Order 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#66453