

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Formal Complaint of )  
Russell Riggs against South Central ) DOCKET NO. 09-052-01  
Communications ) ORDER OF DISMISSAL  
)  
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ISSUED: February 9, 2010

By The Commission:

This matter is before the Commission on the formal complaint of Russell Riggs against South Central Communications (Company).

This matter initially started when Mr. Riggs requested phone service to his house in Hatch, Utah. Mr. Riggs' house is about 1,000 feet from the nearest phone pedestal. Mr. Riggs first spoke with a Company field installer about installing a phone line to his house. The field installer apparently quoted him the price of about \$300 to \$400 to install the line. The field installer also apparently told Mr. Riggs that the Company would pay for the first 300 feet of line and that he thought the trenching work would take about 3-4 hours. Mr. Riggs was informed he had to complete the paperwork to request the line and he did so. After initially being contacted by the Company and told his phone would be installed within a week, the Company did not contact him for about three weeks.

When he did not hear from the Company, Mr. Riggs spoke with the field installer the next time he saw him. The field installer apparently informed Mr. Riggs that the Company desired to have its engineer investigate the proposed installation before it commenced work. In December 2008, the Company informed Mr. Riggs that the cost of installation would be \$3,709. Mr. Riggs called the Company to propose other alternatives in an effort to bring down costs but

the Company apparently remained committed to the installation as initially recommended by the Company.

Mr. Riggs filed an informal complaint with the Division in April 2009. The Division contacted the Company and the Company stated it would contact Mr. Riggs to attempt and remedy the situation. The Company did not contact Mr. Riggs and in May 2009, more than 30 days after the filing of the formal complaint, Mr. Riggs filed his formal complaint in June 2009. The Company did not dispute that it did not “make reasonable efforts to complete any investigation and resolve the dispute within 30 calendar days” as required by R746-200-8.

On or about June 17, 2009, the Company sent the Commission a copy of minutes taken during a settlement discussion between Company engineers Dennis Johnson and Todd Breinholt. The minutes stated that the Company and Mr. Riggs had reached an agreement. The Company agreed to install service to the corner of Mr. Riggs’ property. Mr. Riggs agreed to be responsible to install wire from the corner of his property to his house, and would be responsible for maintaining that section of wire. The Company, in fact, installed the service wire to the corner of Mr. Riggs’ property. However, Mr. Riggs has not taken phone service from the Company.

On July 1, 2009, the Division of Public Utilities (Division) filed its recommendation. It detailed the progression of the formal complaint. Ultimately, it recommended a hearing stating that the Company did not give a reason for not responding to Mr. Riggs’ complaint within 30 days. The Division also stated that the Company has not shown that there has been full adherence to their tariff.

The Commission set a hearing in this matter for August 2009. That hearing was continued to allow the Company time to address Mr. Riggs' additional concerns. The hearing was continued to October 2009 but was also continued because Mr. Riggs had not served the Company a copy of his original complaint as required by U.C.A. 63g-4-201(3)(a) and (b). The Commission postponed the hearing to allow the Company at least 30 days to file an answer to the formal complaint. The hearing was re-set for January 13, 2010.

Mr. Riggs raised additional concerns regarding the costs to install service wire to his property, versus the installation costs to another of the Company's customers—the Barneys.

Mr. Riggs stated as follows:

Since my contact with [The Company] I have learned that they have installed a new phone line to another resident on the edge of Hatch this past month. I contacted Lewis Barney . . . and questioned him as to his costs involved. [The Company] ran approximately 2079 feet of cable and installed two new connection pedestals for a cost of under \$2500. More than 1100 feet of cable than my original request and . . . \$1200 less. If you subtract the first 300 feet as free, that leaves 1779 feet of trench and cable, and two additional pedestals at a cost of \$1.40 per foot. How can they then charge me over \$6.00 per foot for the same service? It doesn't appear to me that [The Company] treats all of their potential customers equally.

*Riggs' Complaint*, ¶ 4.

The Company gave its explanation for the discrepancy in costs estimates in its *Supplemental Response*. (The details of the estimate calculations are contained in that Response. The Commission only summarizes the explanation here.) The Company stated that at the time they estimated the Barney residence cost, it was using a cost factor of \$2.10 average per linear foot. The closest pedestal to the Barney residence was 1397 feet. The Company multiplied the distance (1397) by the cost factor (\$2.10) resulting in an amount of \$2,934, and added the \$500

standard boring rate for a total of \$3,435. It then divided that amount by distance (1397) to arrive at the \$2.46 per foot for total cost to construct. Since the Company provides the first 300 feet at their expense, the total linear footage of construction is 1097 feet of construction at \$2.46 per foot, totaling \$2,697 for the Barney residence.

The Company reevaluated its actual trenching costs and found that the cost per linear foot had increased due to several factors. One factor was the cost of trenching: the Company would have to pay a contractor the then-market rate of \$8.50 per foot. Additionally fuel costs and labor rates had increased since the Company last evaluated its costs per linear foot. Based on its actual costs for trenching, and other factors, the Company estimated its actual average cost for trenching was \$4.80, not \$2.10 per linear foot.

For the Riggs' installation, the Company decided it did not need a trenching contractor and so used a cost estimate per linear foot of \$4.50. The Company then multiplied the 1042 linear feet for the Riggs' installation by \$4.50 to get \$4,689, plus 8 hours of labor at \$65 an hour for a total of \$5,209. It then divided \$5,209 by 1042 feet to get \$4.99 per foot. The Company additionally reduced the amount of linear feet by its customary 300 feet, resulting in 742 feet of construction at a cost of \$4.99 per foot for a price of \$3,709.

The Company contends these estimates, and the resulting discrepancy between the Barney installation and the Riggs installation cost estimates were not unreasonably discriminatory, but reasonably cost-based estimates.

On January 13, 2010, the Administrative Law Judge of the Commission conducted a hearing. Mr. Riggs was present and also testified. Testifying for the Division was

Division of Public Utilities' (Division) customer service specialist Ross Hudson. Kira Slawson was counsel for the Company. Todd Breinholt, outside plant engineer for the Company, testified on behalf of the Company. The Commission dealt with two issues at the hearing. The first dealt with the discrepancies between the Riggs and Barney estimated costs. The second dealt with the Company's failure to abide by R746-200-8 and respond to the Riggs complaint within 30 days.

*Cost Discrepancy*

Utah law prohibits public utilities from engaging in disparate treatment of similarly situated customers, Utah Code Ann. § 54-3-8 (2003) and requires that a utility's charges be 'just and reasonable,' id. § 54-3-1. Utah law recognizes, however, that not all customers are similarly situated. 'The scope [of the] definition of "just and reasonable" may include, but shall not be limited to, the cost of providing service to each category of customer, economic impact of charges on each category of customer . . . .' *Bradshaw v Wilkinson Water Co.*, 2004 UT 38, ¶ 14. Therefore, Mr. Riggs needed to establish not merely that the Company charged him more than they did the Barneys. He needed to show that the discrepancy in charges violated a statute, Commission Rule or Company tariff and was unreasonably discriminatory.

Mr. Riggs has failed to establish any violation based on pricing. At the hearing, it became clear that the Company provided a significant financial benefit to Mr. Riggs in attempting to reach a settlement. The Company *only billed Mr. Riggs \$56* for laying the wire to the pedestal at the corner of his property. In fact, since Mr. Riggs has not yet taken service from the Company, he has yet to be billed for that amount. Mr. Riggs did not dispute this at the hearing. Mr. Riggs' concern, repeatedly raised at the hearing, was the methodology by which

the Company determined the costs for the Barney installation versus the costs for his installation. He concerns with the methods, however, all dealt with in-house accounting procedures.<sup>1</sup> Nonetheless, none of the resulting costs—except for \$56—were borne by Mr. Riggs. He did not dispute that the Company, in an effort to settle his dispute and in an attempt to accommodate his request for service, bore the remainder of the actual costs for his installation, which resulted in a cost of \$2,589. Therefore, out of the actual cost of \$2,589 for installing the pedestal to his property, Mr. Riggs will *bear \$56 (about 2% of the total)* and the Company will *bear \$2,533 (about 98% of the total)*. The Company represented to the Commission that it did not intend to bill Mr. Riggs any portion of the remaining \$2,533. This is clearly a financial benefit to Mr. Riggs and in no way violates any statute, Commission Rule or Company tariff. Nor does it establish that the Company treated Mr. Riggs in an unreasonably discriminatory manner.

*Violation of R746-200-9*

The Company did not dispute that it did not respond to Mr. Riggs complaint within 30 days and made no excuse for its failure. Mr. Breinholt did say that the Company has a small staff, and that it can be difficult to deal with the day-to-day tasks of operating the Company while addressing complaints. Mr. Breinholt did, however, state that the Company implemented new safeguards to ensure that such an oversight does not occur again. He stated that he would be responding to customer complaints, and detailed the Company's procedures for in-taking customer complaints, assessing the issues, responding to the customer concerns, and if

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<sup>1</sup> The Commission makes no finding or ruling regarding the in-house accounting procedures, whether proper or improper.

needed, the Division in a timely manner. The Division commented that although the Company representatives had several time demands, they should have still responded to the customer and the Division's inquiries. It even noted that R746-200-9 allows the Commission to impose a fine for violations such as these.

The Commission, however, is satisfied the Company has taken reasonable steps to ensure that it does not violate R746-200-8 in the future. Additionally, because the Company did not respond in a timely manner, it was required to expend monies in hiring counsel to respond to Mr. Riggs, investigate the underlying circumstances, filing written responses to his complaint, and represent the Company at the hearing. Additionally, the Company expended time and money by having its personnel travel to and attend the hearing, instead of tending to Company operations. The Commission finds the consequences to the Company for failing to respond in a timely fashion serve as a sufficient deterrent to future violations, and declines to impose additional penalties.

There was also concern by the Division that the Company violated its tariff, specifically Sheet 45, by failing to bring Mr. Riggs' complaint before the Company's board of directors. However, sheet 45 of the tariff only states the Company "may" refer the matter to the board, it is not required to do so. Therefore, it did not violate its tariff by not raising Mr. Rigg's complaint before the board.

#### ORDER

For these reasons, Mr. Riggs' 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

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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 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 9<sup>th</sup> day of February, 2010.

/s/ Ruben H. Arredondo  
Administrative Law Judge

Approved and confirmed this 9<sup>th</sup> day of February, 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#65161