

Decision No. R23-0722

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23F-0170EG

PAUL HILTON,

COMPLAINANT,

V.

BLACK HILLS ENERGY,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
DISMISSING COMPLAINT**

Mailed Date: October 24, 2023

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I. STATEMENT

1. On April 7, 2023, Paul Hilton (Complainant or Mr. Hilton) filed a formal Complaint (Complaint) against Black Hills Energy (Black Hills). The Complaint generally

alleges that: (1) no gas has been used at the house located at 901 Maple Ave, Rocky Ford, CO 81067 (Complainant's home) since it was purchased by Complainant on November 22, 2021; (2) Complainant's bill balance is inaccurate; (3) Complainant never authorized the splitting of his Black Hill utility account into separate electric and gas accounts; (4) Complainant used \$1,631.00-worth of electricity, but paid over \$2,500.00 for the same; (5) On July 21, 2022, Complainant paid \$530.06, which was transferred to an account not owned by Complainant; (6) June 10, 2022, a balance of \$417.07 was improperly transferred to Complainant's account from an account not owned by Complainant; (7) on September 21, 2022, a balance of \$1,074.90 was improperly transferred to Complainant's account from an account not owned by Complainant; (8) On Mach 20, 2023, Complainant's electrical service was disconnected; (9) Complainant had never been late on his Black Hills utility bills; (10) and Complainant never authorized his participation in a budget billing plan and was charged a budget billing termination fee of \$906; and (11) Complainant never applied for the Low-Income Home Energy Assistance Program (LHEAP).

2. On April 10, 2023, the Commission issued its Notice of Hearing (Notice) and Order to Satisfy Answer. The Notice noticed the evidentiary hearing in this matter was noticed for June 26, 2023, at 9:00 a.m.

3. By Decision No. R23-0244-I, issued April 11, 2023, the Commission prohibited Black Hills from discontinuing utility service to Complainant.

4. On April 19, 2023, this matter was referred to an Administrative Law Judge (ALJ) by minute entry.

5. On May 1, 2023, Answer of Black Hills Energy (Answer) was filed by Respondent. The Answer, generally states that Black Hills: (1) denies that no gas has been consumed at Complainant's home; (2) admits that Complainant's service was disconnected for non-payment, but (3) denies that the balance on Complainant's account is inaccurate; (4) denies that Complainant did not authorize the splitting of his Black Hill account into separate electric and gas accounts; (5) denies that Complainant paid for more than what he was charged; (6) denies that Complainant paid Black Hills \$530.02; (7) admits that a balance of \$417.07 was transferred to Complainant account, but (8) state that though such transfer was proper and Black Hills is willing to waive the same; (9) deny that the transfer of the balance of \$1,074.90 to Complainant's account was improper and (10) state that the transfer was the result of separating the Complainant's accounts and moving the balance of the electric bills to Complainant's new electric account; (11) denies that Complainant has never been late paying his utility bills; (12) denies that Complainant never authorized his participation in a budget billing plan, and (13) state that the \$906 figure referenced by Complainant in the Complaint is not a termination fee, but rather it represents the total deferred/actual balance on Complainant's account now due and required to be paid in full; and (14) state that it does not control the enrollment into LHEAP and only acts if LHEAP funds are awarded to qualified Black Hills customers and (15) admits having manually enrolled Complainant in Black Hills Energy Affordability Program (BHEAP) based on Complainant's LHEAP's eligibility.

6. By Devision No. R23-0355-I, issued May 26, 2023, the ALJ, among other things, established procedures and rescheduled the evidentiary hearing in this matter for July 24, 2023, at 9:00 a.m.

7. At the scheduled time and place, the hearing was convened in this matter. Mr. Hilton testified on his own behalf. Gas Service Technicians, Patrick Medina, John Nettick, Jonathan Buford, and Manager, Utility Customer Experience, Pauli Springer, testified on behalf of Black Hills. Hearing Exhibits 100 - 117, 200-211, and 213-214 were identified, offered, and admitted into evidence during hearing. At the conclusion of the hearing, each party was afforded an opportunity to provide an oral closing statement.

8. Pursuant to § 40-6-109, C.R.S., the Administrative Law Judge hereby transmits to the Commission the record of this proceeding, a written recommended decision containing findings of fact and conclusions of law, and a recommended order.

II. FINDINGS, DISCUSSIONS, AND CONCLUSIONS

A. Factual Findings

9. In November 2021, Mr. Hilton purchased Complainant's home.

10. On December 1 and 6, 2021, Black Hills began providing electrical and natural gas services, respectively to Complainant at Complainant's home under account nos. 5846970986 and 641536939.¹

11. In early December 2021, Mr. Hilton requested Black Hills to start electric and gas services at Complainant's home.

12. On December 6, 2021, Patrick Medina, a Black Hills technician, turned on gas service at Complainant's home and checked the gas meter and for gas leaks.² Mr. Medina determined that the meter was in working condition and no leaks were detected.³ The technician

¹ See Hearing Exhibits 100, 103, 104, 106, 114, and 204.

² See Hearing Exhibit 200.

³ See *id.*

tried but was unable to access the furnace at Complainant's home and therefore did not light its pilot light.⁴

13. In March 2022, Mr. Hilton installed in Complainant's home a gas-operated wall furnace.

14. On September 16, 2022, Mr. Hilton called Black Hills.⁵ During this call, a Black Hills representative explained to Mr. Hilton that by splitting the gas and electric services into two separate accounts, Mr. Hilton could avoid disconnection of service.⁶ Mr. Hilton then authorized the splitting of his gas and electric services with Black Hills into two separate accounts.⁷

15. On September 21, 2022, Complainant's combined gas and electric account with Black Hills, (no. 5846970986), was split into two accounts, where account no. 5846970986 represented the gas-only account and account no. 641536939 represented the electric-only account.

16. As of September 21, 2022, the past due amount on Mr. Hilton's electrical service account (no. 641536939) was \$1,074.19 account.

17. On September 21, 2022, consistent with Complainant's participation in Black Hills' Budget Billing Plan,⁸ \$1,074.19 were debited from account no. 5846970986 and credited

⁴ *See id.*

⁵ *See* Hearing Exhibit 206. Ms. Springer testified that because Mr. Hilton was on Black Hills' Budget Billing Plan at the time his electrical service was due for a disconnection, no additional arrangements could have been made between by Mr. Hilton and Black Hills to avoid the disconnection (other than fully paying the amount due to Black Hills). By splitting his gas and electric accounts, Mr. Hilton, was afforded with the option of maintaining his gas service as is, and applying Black Hills' Budget Billing Plan, a payment arrangements plan, or BHEAP towards Complainant's electrical bill, and thereby avoiding disconnection of service. The splitting the accounts also provided Mr. Hilton with a seemingly clearer way to track his usage, charges, and payments for each of the utility services provided to him by Black Hills.

⁶ *See* Exhibit 206.

⁷ *See id.*

⁸ Ms. Springer testified that Black Hills' Budget Billing Plan is a billing option allows Black Hills' customers to avoid the high payments during seasonal peaks, by instead spreading the charges to consistent monthly payments, based on average historical monthly usage. *See* Hearing Exhibit 208 at 2.

to account no. 641536939, bringing the balance of Mr. Hilton's electrical service account to \$0.00⁹ No disconnection of service took place at that time.

18. As of Mach 20, 2023, the past due amount on Mr. Hilton's electrical service account (no. 641536939) was \$1,409.50.¹⁰

19. On or about February 27, 2023¹¹, Black Hills sent to Mr. Hilton a disconnection notice due to Complainant's non-payment of his electrical service bill.¹²

20. On March 20, 2023, Black Hills shut off the electricity at Complainant's home due to Mr. Hilton's non-payment of his past due amount of 906.50.¹³ On the same day, Mr. Hilton, paid Black Hills \$258¹⁴ and his electrical service was restored. This payment was the last payment Complainant remitted to Black Hills as of the date of the evidentiary hearing in this Proceeding.

21. Between March 20, 2023, Black Hills and the date of the evidentiary hearing in this Proceeding, Complainant's home had uninterrupted gas and electric services.

22. On March 24, 2023, John Nettik , a Black Hills technician, following a complaint by Mr. Hilton, inspected gas system at Complainant's home to determine whether a properly working gas meter was installed at Complainant's home.¹⁵ After examining the gas meter at Complainant's home, Mr. Nettik determined that a properly working gas meter was installed at

⁹ See Hearing Exhibit 204 at 2, 6, 10, 14, 18, and 19 and Hearing Exhibit 205.

¹⁰ See Hearing Exhibit 204 at 11, 15, and 19.

¹¹ Ms. Springer testified that a disconnection notice was sent to Mr. Hilton on February 24, 2023. However, the disconnection notice depicted in Hearing Exhibit 213 is dated February 27, 2023.

¹² See Hearing Exhibit 213.

¹³ See Hearing Exhibit 204 at 11 and 19.

¹⁴ Of Mr. Hilton's \$258 payment, \$196 were applied towards Mr. Hilton's electrical bill balance, and \$62 were applied towards Mr. Hilton's payment deposit which was required by Black Hills, as a part of the reconnection process. See *id.* at 23. Mr. Hilton's payment of \$258 on March 20, 2023 posted to his account on the following day, March 21, 2023. See Hearing Exhibit 204 at 11 and 15.

¹⁵ See Hearing Exhibit 201 at 2.

Complainant's home and Complainant's home had gas service.¹⁶ At Complainant's home, Mr. Nettik identified a gas-operated wall furnace. Mr. Nettik noted that the thermostat at Complainant's home was set to about 60 degrees Fahrenheit and that the pilot light of the wall furnace was lit. Mr. Nettik further noted that Complainant was concerned about the usage and price of Complainant's gas service.¹⁷

23. On April 5, 2023, Jonathan Buford, a Black Hills technician, following a complaint by Mr. Hilton, , inspected gas system at Complainant's home to determine whether there were any gas leaks.¹⁸ Mr. Buford determined that the gas meter at Complainant's home was working properly and did not identify any gas leaks at Complainant's home.¹⁹ At Complainant's home, Mr. Buford identified a gas-operated wall furnace whose pilot light was lit. Mr. Buford noted that the thermostat at Complainant's home was set to approximately 65 degrees Fahrenheit.

24. Black Hills' records, combined with the testimony of Messrs. Medina, Nettik, and Buford and Ms. Springer show that between 28, 2021 and May 24, 2023, gas was regularly being consumed at Complainant's home, except during two time periods: one beginning on July 26, 2022 and ending on October 2022 and the other beginning on May 24, 2023 and ending on June 23, 2023.²⁰

25. Hearing Exhibit 214, combined with the testimony of Ms. Springer, shows that between December 1, 2021, and June 26, 2023, electricity was regularly being consumed at Complainant's home in the amounts reflected in Hearing Exhibit 214.²¹

¹⁶ See *Id.* at 3.

¹⁷ See *Id.*

¹⁸ See Hearing Exhibit 202 at 1.

¹⁹ See *Id.* at 2.

²⁰ See Hearing Exhibits, 200, 201, 202, 204, and 205.

²¹ See Hearing Exhibit 214.

26. Between December 1, 2021, and April 25, 2023, Black Hills billed Complainant a total of \$4,626.72 for gas and electric services.²² Complainant made payments on his accounts in a total amount of \$2,031.04.²³

27. Complainant's alleged payment of \$530.06 on July 21, 2022²⁴ is not a payment that was remitted by Complainant. Rather, this figure reflects the balance of Complainant's Energy Assistance funds less \$89.94 that were applied towards Complainant's gas utility balance.²⁵ The remaining Energy Assistance funds balance of \$530.06 was appropriately applied towards Complainant's electrical utility balance.²⁶

28. The Energy Assistance payments, each in the amount of \$355.26, on November 30, 2023, and March 1, 2023, were appropriately applied by Black Hills to Complainant's account no. 5846970986.²⁷

29. On June 10, 2022, Black Hills transferred to Complainant's account a balance \$417.07 for a utility bill that was not in Mr. Hilton's name after Black Hills had been unable to collect from the named account holder. Ms. Springer testified that the reason this balance was transferred to Complainant's account was because during the time in question, Complainant enjoyed the utility services in question as a roommate of the account holder. Ms. Springer further testified that, while its tariff allows it to impose such charge, Black Hills was willing to waive the same.²⁸ On July 20, 2023, Black Hills applied \$417.07 towards Complainant's gas utility account.²⁹

²² See Hearing Exhibit 204.

²³ See *id.*

²⁴ See Compl. at 1.

²⁵ See *id.* and Hearing Exhibit 105.

²⁶ See *id.*

²⁷ See Hearing Exhibit 204 at 3, 7, 11, and 12.

²⁸ See *id.* at 12 and Response at 7.

²⁹ See Hearing Exhibit 204 at 4 and 12.

30. On January 6, 2022, Complainant enrolled through Black Hills website to Black Hills' Budget Billing Plan and the automatic withdrawal payment option.³⁰

31. Ms. Springer testified that LEAP is a Federally-administered and -funded assistance program wholly independent of Black Hills.³¹ BHEAP, on the other hand, is a program administered by Black Hills whose goal is to assist make utility services more affordable customers who meet certain criteria.³²

32. After receiving notice that Complainant was approved for LEAP benefits, on January 17, 2022, Black Hills sent Complainant a letter advising Complainant that he is eligible for, and was enrolled into, BHEAP.³³ The letter states that BHEAP participants are automatically enrolled in Black Hills's Budget Billing Plan, unless previously enrolled for the same, and awarded program credits to assist with utility payments.³⁴ The letter further states that in order to remain eligible for BHEAP benefits, Complainant must pay his bill each month and will be removed as a BHEAP participant if service is disconnected.³⁵

33. Complainant was never charged a \$906.50 disconnection fee by Black Hills. Rather, this figure represents the difference between the total balance due on Complainant's electrical account as of March 20, 2023, \$1,409.50, and the cumulative budget billing balance on Complainant's account \$503 as of the same date.³⁶

³⁰ See Hearing Exhibit 207.

³¹ See Hearing Exhibits 209 and 210.

³² See Hearing Exhibits 209 at 1.

³³ See *id.*

³⁴ See *id.*

³⁵ See *id.* at 2 and 210 Hearing Exhibit 210 at 3.

³⁶ See Hearing Exhibit 204 at 15 and 19.

34. Upon the disconnection of service for non-payment on March 20, 2023, Black Hills, consistent with its tariff on file with the Commission, removed Complainant from Black Hills' Budget Billing Plan, and the full balance for his actual usage became due and payable.³⁷

35. Ms. Springer testified that while Black Hills' removal of Complainant from Black Hills' Budget Billing Plan was appropriate and consistent with its tariff, Black Hills was willing to reinstate the Budget Billing Plan for Complainant.

36. On several instances during the times pertinent herein, Complainant failed to make either any or full payment for his gas and electrical utility services.³⁸

37. As of July 20, 2023, Complainant did not have a balance due on his gas utility account, and as of June 27, 2023, Complainant owed \$950.34 on his electric utility account.³⁹

38. Due to Complainants' non-payment, Black Hills removed Complainant from its Budget Billing Plan, consistent with Black Hills' tariff on file with the Commission.⁴⁰

B. Discussion and Conclusions

39. As the Complainant, Mr. Hilton has the burden of proof to establish its case by preponderance of the evidence.⁴¹ This standard requires a finder of fact to determine whether existence of a contested fact is more probable than its non-existence.⁴² A party meets that burden of proof when the evidence, on the whole and however slightly, tips in its favor.⁴³

³⁷ See Hearing Exhibit 204 at 15 and 19 and Hearing Exhibit 208 at 2.

³⁸ See generally Hearing Exhibits 103, 106, 204, and 213.

³⁹ See Hearing Exhibit 204 at 8, 16, 20, and 24. Exhibit 204 shows that, as of July 20, 2023, Mr. Hilton had a \$115.48 credit on his account. See *id.* at 8. The \$950.34 owed by Complainant on his electrical utility bill is comprised of \$765.34 of past due charges and \$185 deposit owed by Complainant for the disconnection of Complainants electrical utility service due to Complainant's non-payment. See *id.* at 16 and 24.

⁴⁰ Hearing Exhibit 204 at 8 and 16, and Hearing Exhibit 208 at 2.

⁴¹ See § 13-25-127(1), C.R.S.; Rule 1500 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1

⁴² *Swain v. Colorado Department of Revenue*, 717 P.2d 507 (Colo. App. 1985).

⁴³ *Id.*

40. As the factual findings herein show, Complainant failed to meet the burden of proof with respect to each of the actionable allegations advanced by Complainant in this Proceeding. Specifically, as applicable herein, the record in this Proceeding reflects that: gas had been regularly consumed at Complainant's home; no gas leaks were detected at Complainant's home; On March 20, 2023, Complainant's electrical service was disconnected due to Complainant's non-payment; Black Hills' accounting, transfers, and charges applied to Complainant's gas and electric utility accounts are accurate and consistent with Black Hills' tariff on file with the Commission; Complainant authorized the splitting of his Black Hills account into separate electric and gas utility accounts; Black Hills fully refunded Complainant's utility account \$417.07 for the balance transfer that Complainant alleged was improperly applied to Complainant's utility account; Complainant authorized his participation in BHEAP and Black Hills' Budget Billing Plan; and Complainant's participation in LHEAP is not administered, or otherwise controlled, by Black Hills.

41. Based on the foregoing, the Complaint will be dismissed, as ordered below.

42. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. It Is Order That:

1. The Complaint captioned above, filed April 7, 2023, by Paul Hilton, is dismissed.
2. Proceeding No. 23F-0170E is closed.
3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

4. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
- b) If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

5. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

Rebecca E. White,
Director