

Decision No. R14-0002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13F-1203EG

CATHLEEN FOX,

COMPLAINANT,

V.

PUBLIC SERVICE COMPANY OF COLORADO,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
GRANTING MOTION TO DISMISS
COMPLAINT AS MOOT, AND DISMISSING FORMAL
COMPLAINT WITHOUT PREJUDICE**

Mailed Date: January 2, 2014

I. STATEMENT

A. Background

1. On November 8, 2013, Ms. Cathleen Fox (Complainant) filed a Formal Complaint against Public Service Company of Colorado (Respondent) alleging that Respondent's electric bills for an apartment owned by Respondent were unreasonably high given the size of the apartment. Complainant alleges that given the fact that the property in question is a 900 square foot apartment, the electric rates are unreasonably high. As a result, Complainant requests that Public Service conduct an investigation into the electric charges at issue.

2. On November 13, 2013, Commission Director, Mr. Doug Dean served an Order Setting Hearing, as well as an Order to Satisfy or Answer (Order) on Respondent,

which provided that Respondent had 20 days from service of the Order to satisfy the matters contained in the Complaint or to answer the Complaint. Also, Director Dean issued a Notice of Hearing on the Complaint for January 6, 2014.

3. On November 13, 2013, the Commission, at its regularly scheduled Weekly Meeting, referred this Formal Complaint to an Administrative Law Judge for resolution.

4. On November 26, 2013, Respondent filed a Notice of Satisfaction of Complaint and Motion to Dismiss (Motion). Respondent argues that the relief sought by Complainant, which requests that “Xcel to do further investigation to figure out why KW hrs are so high,” has been satisfied by Respondent in that the requested investigation has been completed by Complainant. The Motion states that the Complaint fails to allege that Respondent has committed any violation pursuant to § 40-6-108(a), C.R.S., and as a result, no cause of action exists under which Complainant is entitled to relief. Respondent requests that the Complaint be dismissed as moot because the relief requested by Complainant has been provided by Respondent.

5. Complainant had until December 10, 2013 to file a response to Respondent’s Motion. No response was filed.

II. FINDINGS OF FACT

6. The Complaint provides information regarding Complainant’s belief that the electric utility charges of Public Service for an apartment unit located at 15483 E. 13th Avenue, Unit 303, Aurora, Colorado were unreasonably high. According to Complainant, the electric usage for this 900 square foot unit is unusually high given its size. Complainant alleges that she hired an electrician to evaluate the electric usage at the apartment in question. According to the Complainant, the electrician indicated that the kilowatt usage in the apartment should not result

in the usage indicated on the Respondent's utility bills. Complainant attached what are purported to be electric utility bills issued by Respondent for the unit in question for the months of June through October, 2012, and July, 2013.

7. Complainant further alleges that the high usage problems continue to exist. Complainant notes that the current renter has not used the air conditioner in the apartment for several months (it is not clear if the renter has not used the air conditioner for two or three months) and the bills for the apartment remain high. The last sentence of Complainant's Formal Complaint states as follows: "I want Xcel to do further investigation to figure out why KW hrs are so high."

8. In its Motion, Respondent states that on September 9, 2013 it removed the meter at the 13th Avenue location and installed a new electric meter at that property. The new meter was tested for accuracy and was found to be operating at a 100.01 rating on a full load and 99.99 rating on a low load. The results of the meter test were attached to the Motion as Exhibit A.

9. Respondent further states that on September 21, 2013, the original meter was removed and tested for accuracy and was found to be operating at a 99.75 rating on a full load and 99.44 rating on a low load. The results of this meter test were attached to the Motion as Exhibit B. Respondent represents that the results of both meter tests indicate that they are accurate within 2 percent.

10. Additionally, on November 15, 2013, a representative of Respondent was sent to the unit in question and that the representative confirmed that the meter number on Complainant's property was the meter being billed to her account. Exhibit D attached to the

Motion is a photograph showing the correct meter number which is being billed to the unit in question.

11. On November 18, 2013, Respondent sent a Senior Meterman to the unit address in question. That Meterman conducted what is known as a “trace test” to make certain that electric energy usage in the unit in question could be traced to the meter used to measure the electricity usage at that property. According to Respondent, the test was conducted with the current tenant present and with Complainant on the phone. According to Respondent, electricity from the apartment in question was traced to the meter being used to measure the property’s electricity usage.

12. Finally, Respondent indicated that on November 25, 2013, it contacted Complainant to schedule a load investigation at the unit in question. While Respondent represents that it does not typically conduct such investigations in this situation, Respondent indicated it wished to provide additional information to Complainant. According to Respondent, such a test will record the load generation from the unit in question, even though the exact conditions during the time of the bills in question cannot be duplicated. As of the date of this Decision, no test results have been reported.

13. For these reasons, Respondent requests that the Complaint be dismissed.

III. CONCLUSIONS

14. Pursuant to 4 *Code of Colorado Regulations* (CCR) 723-1-1302(a), Commission’s Rules of Practice and Procedure, a formal complaint is to “set forth sufficient facts and information to adequately advise the respondent and the Commission of the relief sought ...”

15. The last sentence of the Complaint expressly state: “I want Xcel to do further investigation to figure out why KW hrs are so high.” Respondent has satisfied this request for relief.

16. It is apparent from the information provided by Respondent, it has thoroughly tested Complainant’s unit and meter to determine if any alleged irregularities exist regarding electricity usage at the unit in question. Given that Complainant’s request for relief was for Respondent to conduct further investigations in order to determine if any alleged irregularities existed regarding the unit in question, it appears that Respondent has fully satisfied Complainant’s request.

17. Rules 3300 through 3306 of the Commission’s Rules Regulating Electric Utilities address the installation, location, accuracy, and testing of meters. Given the information provided by Respondent, it is apparent that it is in compliance with those Rules. Respondent has conducted all required meter tests in conformance with Rule 3305 and provided the results of those tests in conformance with Rule 3306. The accuracy of the original meter and the replacement meter are also within the parameters required pursuant to Rule 3302(b), which requires that “[n]o service watt-hour meter that has an error in registration of more than plus or minus two percent, either at light load or at heavy load shall be placed in service. Whenever a meter is found to exceed these limits, it shall be adjusted or replaced.”

18. As indicated above, the replacement meter was found to be operating at or near 100 both at full load and low load, while the original meter was found to be operating within a one percent rating at both full and load loads. Additionally, Respondent provided the written documentation required under Rule 3309 to Complainant explaining the method of reading

the meter. Therefore, it is found that Respondent has not violated and is in fact fully in compliance with Rules 3300 through 3309.

19. It is found that the actions of Respondent in investigating and reporting the results of the alleged irregularities complained of by Complainant renders the Complaint moot since the relief sought has been satisfied. Indeed, if the matter were allowed to proceed to litigation and a final decision, as the relief sought has now been satisfied, there can be no practical legal effect on the existing controversy. *See, City and County of Denver v. Eat Out, Inc.*, 75 P.3d 1141 (Colo. App. 2003) (central issue in determining mootness is whether a change in the circumstances that prevailed at the beginning of litigation has forestalled the prospect for meaningful relief).

20. As noted previously, Complainant failed to respond to Respondent's Motion. Under Commission Rule 1400(d), a failure to file a response may be deemed as a confession of the motion. In other words, Complainant's failure to file a reply to Respondent's Motion may be deemed an acceptance by Complainant of the claims and representation made by Respondent within that Motion.

21. Clearly Respondent has responded to, and satisfied the request for relief of Complainant. As such, the Formal Complaint is now rendered moot. Give the lack of a response contesting the representations made by Respondent in its Motion, those representations and claims will be accepted as true and accurate.

22. Given that Respondent has satisfied Complainant's request for relief, the Formal Complaint will be dismissed as moot. However, since the results of the load investigation proposed by Respondent have not been made available to the Commission as of the date of this Decision, the Formal Complaint will be dismissed without prejudice in the event the

load investigation reveals some unforeseen issue with the electric usage and measurement at apartment in question which cannot be resolved between the parties.

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

IV. ORDER

A. The Commission Orders That:

1. The Notice of Satisfaction of Complaint and Motion to Dismiss Complaint filed by Public Service Company of Colorado is granted in part consistent with the discussion above.

2. The Formal Complaint filed by Cathleen Fox against Public Service Company of Colorado is dismissed without prejudice.

3. The evidentiary hearing scheduled for January 6, 2014 is vacated.

4. The proceeding is now closed.

5. 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.

6. 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.

7. 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)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director