

Decision No. R14-0346

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14F-0081E

VALERIE C. HARRIS-PANTALEO,

COMPLAINANT,

V.

BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY, LP,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
DISMISSING COMPLAINT AND CLOSING PROCEEDING**

Mailed Date: April 1, 2014

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I. STATEMENT

1. On January 21, 2014, Valerie C. Harris-Pantaleo (Complainant) filed a Complaint against Black Hills/Colorado Electric Utility Company, LP (Black Hills or Respondent). That filing commenced this proceeding.

2. On January 22, 2014, the Commission served its Order to Satisfy or Answer on Respondent and scheduled an evidentiary hearing for March 7, 2014.

3. On January 29, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ)

4. On February 11, 2014, Black Hills filed its Answer and Motion to Amend the Caption.

5. Complainant and Respondent are the only parties to the proceeding. Complainant appeared *pro se* and Black Hills appeared and participated through counsel.

6. At the scheduled time and place, the hearing was called to order. No objection was raised to Black Hills Motion to Amend the Caption and it was granted. During the course of the hearing, testimony was received from Mr. Guy Hummel for the Complainant and Mr. Patrick Rodrigues on behalf of Respondent. Exhibit 2 was identified, offered, and not admitted into evidence, Exhibits 5 through 16 were stipulated to and admitted, Exhibits 17 and 18 were identified, offered, and admitted into evidence.

7. Pursuant to § 40-6-109, C.R.S., the ALJ 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 OF FACT

8. Black Hills is a Colorado public utility, as defined in § 40-1-103(l)(a), C.R.S.

9. Ms. Valerie Harris-Pantaleo has been a customer of Black Hills and resides at 57941 Highway 50, Pueblo Colorado. The residence is on a ranch and contains two buildings.

10. Electric power was supplied to Ms. Harris-Pantaleo by Aquila Inc. (Aquila) until Aquila was purchased by Black Hills in 2008.

11. Mr. Guy Hummel is the brother of Ms. Harris-Pantaleo and has resided with her since 2007. Mr. Hummel has worked as a truck driver.

12. Mr. Patrick Rodrigues is a customer service associate who has been employed by Black Hills since 2008. In this position Mr. Rodrigues deals with issues that arise in customer accounts.

13. On March 4, 2002, Carl Pantaleo¹ entered into a ground lease agreement with Kirkland Construction. Baxter Kirkland represented Kirkland Construction. This agreement was extended by Ms. Harris-Pantaleo and Mr. Kirkland on November 16, 2004 and amended on February 24, 2006. *Hearing Exhibit 16.*

14. The extension agreed to by Kirkland Construction and Ms. Harris-Pantaleo is silent as to any responsibility for the payment of electric power.

15. Black Hills Account No. 3096302285 is associated with Ms. Harris-Pantaleo and was closed on August 9, 2013. *Hearing Exhibit 5.* This account is for service supplied to the residence at 57941 Highway 50, Pueblo Colorado. There is currently \$620.68 owed on Black Hills Account No. 3096302285. *Hearing Exhibit 6.*

16. Black Hills Account No. 540417104 is also associated with Ms. Harris-Pantaleo and service ended on June 4, 2012. *Hearing Exhibit 5.* The address for this account is unknown but it is for an entity named Quality Cattle. This account is \$396.39 in arrears. *See Hearing Exhibit 7.*

¹ Carl Pantaleo is the deceased husband of Ms. Harris-Pantaleo.

17. Aquila/Black Hills Account No. 3810538703 is associated with Kirkland Construction. The address associated with Account No. 3810538703 is 1600 Colorado 209/Pueblo, Colorado. This account has been under Kirkland Construction since September 13, 2005.² *Hearing Exhibit 8.*

18. Ms. Harris-Pantaleo's Aquila/Black Hills Account No. 3096302285 was associated with the address at 1600 Colorado 209/Pueblo, Colorado from August 11, 2000 until September 13, 2005. *Hearing Exhibit 9.*

19. On September 12, 2005, Baxter Kirkland was added by Aquila to Ms. Harris-Pantaleo's Aquila/Black Hills A No. 3096302285 and listed as a tenant. *Hearing Exhibit 13.*

20. On May 27, 2012, Ms. Harris-Pantaleo contacted Black Hills to inquire as to what names were on Black Hills Account No. 3096302285. She was advised that her name was listed as the primary customer on the account and that Baxter Kirkland was listed as a secondary/tenant. *Hearing Exhibit 10.* Baxter Kirkland was added to A No. 3096302285 the day before Kirkland Construction became responsible for the electricity at 1600 Colorado 209/Pueblo, Colorado and also the day Ms. Harris-Pantaleo's service agreement ended at 1600 Colorado 209/Pueblo, Colorado. *Hearing Exhibit 13.*

21. On May 29, 2012, Black Hills sent a letter to Ms. Harris-Pantaleo confirming this information. *Hearing Exhibit 11.*

² Between January 17, 2006 and January 25, 2006 there was not a service agreement in effect.

22. Baxter Kirkland has never resided at Ms. Harris-Pantaleo's residence

23. On June 7, 2012, Ms. Harris-Pantaleo called Black Hills and asked to have Baxter Kirkland removed from Black Hills Account No. 3096302285. Baxter Kirkland was removed from Black Hills Account No. 3096302285 on June 7, 2012. *Hearing Exhibit 13.*

24. The amount due on Black Hills Account No. 540417104 is \$396.39. *Hearing Exhibit 7.*

25. The amount due on Black Hills Account No. 3096302285 is \$620.68. *Hearing Exhibit 6.*

26. Ms. Harris-Pantaleo has been without electric service since August of 2013.

III. DISCUSSION AND CONCLUSIONS

27. The Commission has jurisdiction over this Complaint pursuant to § 40-6-108, C.R.S.

28. Except as otherwise provided by statute, the Administrative Procedure Act imposes the burden of proof in administrative adjudicatory proceedings upon "the proponent of an order."³ As to claims in the Complaint, Complainant is the proponent of the order because he commenced the proceeding and is the proponent of the order as to the Complaint.⁴ Rule 1500 states: "The burden of proof and the initial burden of going forward shall be on the party that is the proponent of a decision, unless previously agreed to or assumed by a party. The proponent of the order is that party commencing a proceeding..."⁵

³ § 24-4-205(7), C.R.S.

⁴ Rule 1500 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

⁵ Rule 1500, 4 CCR 723-1.

29. Complainants bear the burden of proof by a preponderance of the evidence as to claims stated in the Complaint.⁶ The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Department of Revenue*, 717 P.2d 507 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole, slightly tips in favor of that party.

30. “In civil cases, the burden of proof is on the plaintiff to prove the elements of the case by a preponderance of the evidence. This burden of proof does not shift during the proceeding, although it may be aided by a presumption or a shift of the burden of going forward with the evidence once the plaintiff has established a *prima facie* case.”⁷

31. The Complainant asks that Baxter Kirkland be found responsible for all or some of the money owed on her accounts with Black Hills and that electric power be restored to her residence.

32. The Complainant does not allege the Black Hills electric bills are incorrect, only that since Baxter Kirkland was listed as a secondary on her bill and Kirkland Construction entered into a ground lease agreement with the Complainant, that Mr. Kirkland or Kirkland Construction should be held responsible at least in part for the delinquent Black Hills bills.

33. Mr. Hummel testified to significant spikes in the Complainant’s electric bill which would periodically occur.

⁶ Section 13-25-127(1), C.R.S.; Rule 1500 of the Rules of Practice and Procedure, 4 CCR 723-1.

⁷ Decision No. C08-1182 issued November 14, 2008, citing § 13-25-127, C.R.S. and *W. Distributing Co. v. Diodosio*, 841 P.2d 1053 (Colo. 1992).

34. Upon questioning by the ALJ, Mr. Hummel was unsure if there was any correlation between work done by Kirkland Construction and the spikes in the Complaint's Black Hills bill.

35. An examination of the bills for Account No. 3096302285 from September 13, 2000 until October 3, 2005⁸ show that Ms. Harris-Pantaleo was not billed in any year during the months of November, December, January, or February. *See Hearing Exhibit 17 and Appendix A attached to this Decision.*

36. Further examination of these bills shows that each March Ms. Harris-Pantaleo was billed for a 154-day period rather than the 30 to 35-day period on all other bills. Further, the March 2005 bill was cancelled (*see Hearing Exhibit 17, p. 8*) and combined with the April 2005 bill resulting in a bill of \$433.49. *Hearing Exhibit 17, p. 7.*

37. It appears from the evidence presented that any fluctuation in the amount of Ms. Harris-Pantaleo's electric bill can be explained by this billing pattern. There is no evidence that any billing fluctuation was caused by work done by Kirkland Construction.

38. The only bills that have been examined are those from September 13, 2000 until October 3, 2005. No bills from any other time period were offered or admitted into evidence.

39. It is important to note that even if sufficient evidence was presented that indicated that an increase in the Complainant's electric bill was due to the actions of Kirkland Construction that would not relieve the Complainant of responsibility for the Black Hills Account No. 3096302285. She was the primary customer on the account and is therefore responsible for the bill.

⁸ The time period of Ms. Harris-Pantaleo's Account No. 3096302285 was for 1600 Colorado 209/Pueblo, Colorado.

40. The Complainant also asks that power be restored to her residence. Complainant presents no legal reason as justification for request.

41. The conditions for restoration of service can be found at *Rule 3409 of the Rules Regulating Electric Utilities*, 4 CCR 723-3 as follows:

- (a) Unless prevented from doing so by safety concerns or exigent circumstances, a utility shall restore, without additional fee or charge, any discontinued service which was not properly discontinued or restored as provided in rules 3407, 3408, and 3409.
- (b) Unless prevented by safety concerns or exigent circumstances, a utility shall restore service within 24 hours (excluding weekends and holidays), or within 12 hours if the customer pays any necessary after-hours charges established in tariffs, if the customer does any of the following:
 - (I) Pays in full the amount for regulated charges shown on the notice and any deposit and/or fees as may be specifically required by the utility's tariff in the event of discontinuance of service.
 - (II) Pays any reconnection and collection charges specifically required by the utility's tariff, enters into an installment payment plan, and makes the first installment payment, unless the cause for discontinuance was the customer's breach of such an arrangement.
 - (III) Presents a medical certification, as provided in Rule 3407(e)(IV).
 - (IV) Demonstrates to the utility that the cause for discontinuance, if other than non-payment, has been cured.

42. There is no evidence that service was improperly discontinued.

43. There is no evidence the Complainant has paid the full amount due on Account No. 3096302285 or Account No. 540417104.

44. There is no evidence that the Complainant has entered into an installment payment plan with Black Hills.

45. A medical certificate has not been presented as provided in *Rule 3407(e)(IV)*, 4 CCR 723-3.

46. Without any of these conditions being met, the undersigned ALJ is unable to order Black Hills to restore service to the Complainant.

47. The Complainant has failed to meet her burden in this proceeding.

48. The parties are encouraged to work together and enter into an installment plan to rectify the situation so that electric service can be restored to Ms. Harris-Pantaleo. This situation has existed far too long.

49. Pursuant to § 40-6-109(2), C.R.S., the ALJ recommends that the Commission enter the following order.

IV. ORDER

A. The Commission Orders That:

1. Black Hills/Colorado Electric Utility Company, LP is named as the Respondent in Proceeding No. 14F-0081E.

2. Commission administrative personnel shall amend the Commission's records to reflect that Black Hills/Colorado Electric Utility Company, LP is the Respondent in Proceeding No. 14F-0081E.

3. Commission administrative personnel shall amend the Commission's records to reflect that the caption for Proceeding No. 14F-0081E is changed as set out above in this Decision.

4. The formal complaint filed by Valerie C. Harris-Pantaleo against Respondent Black Hills/Colorado Electric Utility Company, LP on January 21, 2014, is dismissed and Proceeding No. 14F -0081E is 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 § 40-6-109, 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 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 basic findings 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 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

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge