

Decision No. R14-1322

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14F-0971EG

STEVE HORWITZ,

COMPLAINANT,

V.

PUBLIC SERVICE COMPANY OF COLORADO,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING MOTION TO DISMISS
AND VACATING HEARING**

Mailed Date: October 31, 2014

I. STATEMENT

1. On September 26, 2014, Complainant Steve Horwitz, filed a Complaint against Public Service Company of Colorado (Public Service).¹

2. By Decision No. R14-1186-I issued September 29, 2014, interim relief was granted on an expedited basis because it appeared disconnection was imminent. Public Service was ordered to provide service pending a hearing, subject to a condition.

¹ The Complaint named “Xcel” as the Respondent. Public Service conducts utility business in Colorado as a wholly-owned subsidiary of Xcel Energy, Inc., a public utility holding company. As a result, Public Service is the proper designation for the Respondent in this matter.

3. The Commission does have the authority to prohibit discontinuance of service pending resolution of a proceeding involving a dispute over utility charges upon such terms as the Commission deems reasonable, including the requirement that the complainant post a bond. *See* Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3-3408(b)(X) and Rules Regulating Gas Utilities and Pipeline Operators 4 CCR 723-4-4408(b)(X).

4. By Decision No. R14-1186-I, sufficient grounds were found to prohibit Public Service from discontinuing utility service subject to conditions. However, it was also noted that a requirement to post a bond may be reconsidered as additional information becomes available.

5. On September 29, 2014, the Commission served its Order to Satisfy or Answer on Respondent and set an evidentiary hearing for December 11, 2014.

6. Based upon additional information Administrative Law Judge Adams modified the interim relief granted in Decision No. R14-1186-I.

7. By Decision No. R14-1195-I issued October 1, 2014, Mr. Horwitz was required to post a \$5,000 bond to Public Service on or before October 10, 2014 at noon and paying all charges billed after the date of the Interim Decision for gas and electric service at the service address of 1955 S. Bannock, Denver, Colorado 80210 during this proceeding in order to prevent Public Service from discontinuing utility service.

8. During the Commission's weekly meeting held October 1, 2014, the matter was referred to an administrative law judge for disposition

9. On October 9, 2014, Mr. Horwitz filed his Motion to Dismiss Contingency [*sic*] for Steve Horwitz Posting a \$5,000.00 Bond to Public Service on or Before Oct. 10, 2014.

10. By Decision No. R14-1195-I, issued October 1, 2014, the Motion to Dismiss Contingency [*sic*] for Steve Horwitz Posting a \$5,000.00 Bond to Public Service on or Before Oct. 10, 2014 was denied.

11. On October 14, 2014, Public Service filed its Motion to Dismiss (Motion). As grounds Public Service argues that the Complainant is seeking an award of monetary damages and a determination of causation. Public Service argues that the Commission is without jurisdiction to grant the relief requested by the Complainant. Further, Public Service argues that the claims are barred by Public Service's tariff as a matter of law.

12. Based upon a review of the Commission's files it has been determined that the Complainant has failed to file a response to the Motion.

13. Complainant's response to the Motion was due on October 28, 2014. No response was filed on or before that date. In addition the Complainant did not file a request for an extension of time to respond to the Motion.

14. Complainant's failure to so respond to the Motion shall be deemed a confession of the Motion to Dismiss. *Rule 1400 of the Rules of Practice and Procedure*, 4 CCR 723-1. The Complainant failed to meet his burden to show the Commission has jurisdiction in this matter.

15. Based upon the forgoing circumstances, the above captioned Formal Complaint shall be dismissed.

16. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order

II. ORDER

A. The Commission Orders That:

1. The Motion to Dismiss filed by Public Service Company of Colorado on October 14, 2014 is granted.

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

3. The hearing set in this matter for December 11, 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

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director