

Decision No. R97-1156-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 97F-435EG

LYNN MICHAEL,

COMPLAINANT,

v.

PUBLIC SERVICE COMPANY OF COLORADO,

RESPONDENT.

INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
LISA D. HAMILTON-FELDMAN
DENYING MOTION TO DISMISS

Mailed Date: November 3, 1997

I. STATEMENT, FINDINGS, AND CONCLUSIONS

A. The formal complaint in this matter was filed by Lynn Michael against Public Service Company of Colorado ("PSCO"), on September 25, 1997. PSCO filed its Motion to Dismiss and Answer on October 28, 1997. Hearing is scheduled to take place in Denver on November 26, 1997.

B. The gravamen of Ms. Michael's complaint is that PSCO's billing practices have resulted in her being liable, as her daughter's PSCO guarantor, for bill amounts incurred at a previous address and then transferred to her daughter's present address. PSCO's Motion to Dismiss asserts that this is essen-

tially a contractual dispute having to do with the terms of the guaranty agreement signed by Ms. Michael, and that it is therefore outside the scope of the Commission's jurisdiction. PSCO also asserts that Ms. Michael lacks standing to pursue this complaint and that she has failed to state a claim upon which relief can be granted.

C. If the allegations of the complaint are construed in the light most favorable to the Complainant, as is required by Rule 12 of the Colorado Rules of Civil Procedure, PSCO's Motion to Dismiss must be denied. Ms. Michael's complaint can be interpreted as complaining about PSCO's billing practices regarding transferring delinquent amounts from one account to another, and as complaining about the information provided to her about this practice before she agreed to act as a guarantor. These matters concern PSCO's tariffs and billing practices and are therefore within the jurisdiction of the Commission.

D. Ms. Michael's standing to pursue this complaint is established by the statement on the guaranty agreement: By signing that agreement, Ms. Michael stated that she understood that her own utility service could be discontinued if the account she was guaranteeing became delinquent. She could have no more personal stake than her own service. The motion to dismiss for lack of standing is therefore denied.

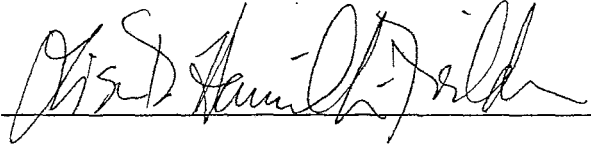
E. As to PSCO's assertion that Ms. Michael has failed to state an actionable claim, the standard for granting such a motion is high, and has not been met by PSCO's pleadings in this case. If Ms. Michael is able to establish at hearing the allegations she has made in her complaint, she may be entitled to relief under the rules governing the complaint process. See *Denver & R.G.W.R.R v. Wood*, 476 P. 2d 299 (Colo. App. 1970). The motion to dismiss on that ground is therefore also denied.

II. ORDER

A. It is Ordered That:

1. The Motion to Dismiss filed by Public Service Company of Colorado on October 28, 1997, is denied. Hearing will proceed as scheduled on November 26, 1997.
2. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

A handwritten signature in dark ink, appearing to read "David Hamilton", is written over a horizontal line.

Administrative Law Judge