

Decision No. R14-0660-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14F-0129E

ANN MARIE DAMIAN AND JOHN M. TAYLOR, JR.,

COMPLAINANTS,

V.

MOUNTAIN PARKS ELECTRIC, INC.,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
ADDRESSING ISSUES RAISED
AT PREHEARING CONFERENCE**

Mailed Date: June 16, 2014

I. **STATEMENT**

A. Background

1. On February 12, 2014, Ann Marie Damian and John M. Taylor, Jr. (Complainants) filed a Formal Complaint against Mountain Parks Electric, Inc. (Respondent). Complainants allege that Respondent's increase of its Time of Use rates, as well as other rates, was improper and without proper notice to its customers resulting in unfair prejudice to Complainants. Complainants also allege that the off-peak hours originally established by Respondent were improperly curbed. Finally, Complainants allege that Respondent improperly elected members to its Board of Directors without a proper quorum of co-operative members in attendance at annual meetings where the elections took place. Complainants provide no claim for specific relief in the Formal Complaint.

2. On March 4, 2014, Respondent filed its Answer to the Complaint in the form of a Response. Respondent denied any allegations of wrongdoing on its part. Respondent asserted several defenses including failure of Complainants to comply with statutory requirements regarding cooperative electric associations; that the Commission may not impose requirements on Respondent regarding member voting rules; that the Complaint is barred by applicable statutes of limitation and “any other applicable rule of equity for failure to timely pursue these claims;” and, that the Complaint is barred by *res judicata* and collateral estoppel because the issues raised have been decided in a previous Commission proceeding. Respondent also sought to recover its costs and reasonable attorney’s fees.

3. On March 14, 2014, Respondent filed a Motion to Dismiss Complaint and Request for Attorney’s Fees (Motion). Respondent argued that the Complaint should be dismissed pursuant to the doctrine of collateral estoppel since Complainants are attempting to relitigate the exact same issues litigated and adjudicated in a previous Commission proceeding. Respondent also sought an award of attorneys’ fees because Complainants had filed complaints before four different tribunals without a grant of the relief sought. Under such circumstances, Respondent urged the Commission to award costs and attorneys’ fees to it for defending this action.

4. On April 8, 2014, Complainants filed a response to the Motion opposing dismissal of the Complaint and requesting attorneys’ fees and costs incurred as a result of the response to the Motion.

5. Interim Decision No. R14-0594-I, issued June 3, 2014 denied Respondent’s Motion and set a prehearing conference in this proceeding for June 12, 2014. In addition to setting a prehearing conference, the Interim Decision advised Complainants to be prepared to

argue why the various claims for relief sought in the Formal Complaint were within the jurisdiction of the Commission. The Interim Decision did not address Respondent's request for attorneys' fees.

6. At the scheduled date and time the prehearing conference was held. Appearances were entered by Complainants and Respondent.

7. After hearing argument from the parties regarding the claims for relief sought by Complainant, it was determined that claims for relief 3, 4, 6, and 7 of the Complaint were beyond the jurisdiction of this Commission and would therefore be dismissed. It was further found that claims 1, 2, and 5 of the Complaint were jurisdictional claims within the statutory confines of § 40-9.5-106(2), C.R.S., and could therefore move forward to adjudication.¹

8. Respondent indicated that based on the finding regarding the scope of this proceeding that it intended to file an additional motion seeking the award of attorneys' fees and

¹ While the Complaint did not formally enumerate the claims for relief, it was determined that the claims could be identified as follows:

First Claim for Relief: The ratio of on peak hours versus off peak hours currently established by Respondent has resulted in an increase in rates which is prejudicial against some residential customers under the Time of Use (TOU) rate class.

Second Claim for Relief: The four percent increase in rates paid by TOU customers during 2013 and 2014 to date should be refunded to the TOU customers as the increase in rates is discriminatory.

Third Claim for Relief: Any future rate increase should be voted on by all member-owners of Respondent through mailed ballots as to whether patronage capital credits will be used first before a rate increase is imposed.

Fourth Claim for Relief: Respondents failed to provide customers with 30 days' advance notice of the increase in TOU rates.

Fifth Claim for Relief: Complainants demand that the original off-peak hours be restored to all customers who purchased ETS heaters before January 1, 2005, which hours are 11:00 a.m. to 5:00 p.m. and 10:30 p.m. to 6:00 a.m. year-round.

Sixth Claim for Relief: Complainants demand ballots be provided to Respondent members for everything that will affect them in any way, including all Board of Director elections and monetary decisions regarding funds that Respondent expends.

Seventh Claim for Relief: Complainants demand that a third party count ballots and provide results to Respondent and its members.

costs. Respondent was given until the close of business on June 18, 2014 to file such a pleading. A responsive pleading to Respondent's motion will be due on June 25, 2014.

9. In the event the Respondent's motion seeking fees and costs is granted, Complainants will have the opportunity to determine whether it is feasible for them to move forward with the Complaint and file an appropriate pleading regarding their intentions. In the event the Respondent's motion is denied, a date for a subsequent prehearing conference will be set at which time a procedural schedule, including a date for an evidentiary hearing will be established.

10. This proceeding will be in abeyance until a decision on the request for attorneys' fees and costs by Respondent is issued.

II. ORDER

A. It Is Ordered That:

1. Claims for Relief identified as Claim Nos. 3, 4, 6, and 7 of the Formal Complaint are dismissed.

2. The scope of this Complaint proceeding shall be pursuant to Claims for Relief identified as Claim Nos. 1, 2, and 5.

3. Any motion and supporting briefs for the award of attorneys' fees and costs by Respondent Mountain Parks Electric, Inc. shall be filed no later than June 18, 2014.

4. Response briefs by Complainants Ann Marie Damian and John M. Taylor, Jr. to Respondent's motion and supporting briefs for the award of attorneys' fees and costs shall be filed no later than June 25, 2014.

5. This proceeding shall be in abeyance pending a decision on Respondent's motion for attorneys' fees and costs.

6. This Decision is effective immediately.

(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