

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Jerel Ross)
d/b/a Yap Auction, Grand Island)
v. NorthWestern Energy, Sioux)
Falls, South Dakota, alleging)
unsubstantiated charges and)
denial of service.)
)
) Entered: March 10, 2015

BY THE COMMISSION:

APPEARANCES:

For the Complainant:

Galen E. Stehlik
Lauritsen, Brownell, Brostrom & Stehlik, P.C., L.L.O.
724 W. Koenig St.
P.O. Box 400
Grand Island, NE 68802

For the Respondent:

Andrew S. Pollock
Rembolt Ludtke
3 Landmark Centre
1128 Lincoln Mall, Suite 300
Lincoln, NE 68508

For the Commission:

Nichole A. Mulcahy
Angela Melton
1200 N Street
Suite 300
Lincoln, NE 68508

B A C K G R O U N D

On November 13, 2014, Jerel Ross d/b/a Yap Auction, ("Complainant") of Grand Island, Nebraska, filed with the Nebraska Public Service Commission ("Commission") a Formal Complaint against NorthWestern Energy ("NorthWestern" or "Respondent"), Sioux Falls, South Dakota. Complainant alleges that NorthWestern improperly billed Complainant for four (4) months of natural gas service previously leased by the Complainant but subsequently vacated pursuant to a settlement agreement with the property owner. Respondent timely filed an Answer to the Formal Complaint.

A Hearing on this matter was held on January 26, 2015, at 10:00 a.m. CST in the Community Meeting Room, City Hall, 100 East 1st Street, Grand Island, Nebraska.

E V I D E N C E

Mr. Jerel Ross, the president and co-owner of Yap Auction, offered testimony on behalf of Yap Auctions. Mr. Ross testified that he visited NorthWestern's Grand Island offices on July 1, 2013, and spoke with customer service associate Maria Rodriguez. Mr. Ross stated he told Ms. Rodriguez Yap Auction was moving to a new location on West 4th Street ("4th Street") from its current location at 801 West Anna Street ("Anna Street").¹ He further stated he informed Ms. Rodriguez that Yap Auction would be vacating the Anna Street property prior to August 1 and he would return to NorthWestern's office and tell them when they vacated the Anna Street premises.²

Mr. Ross testified that on July 31, 2013, he returned to NorthWestern's Grand Island office to discontinue the gas service at Anna Street in Yap Auction's name. Mr. Ross further testified he again spoke with Ms. Rodriguez and advised her that he no longer needed natural gas service at the Anna Street location.³ Mr. Ross stated he also went to the city building in Grand Island on July 31, 2013, to discontinue the electric service at the Anna Street location and had no trouble transferring the electric utility account at Anna Street from Yap Auction to the owner of the property, Coad Miller.⁴

Mr. Ross next testified that he returned to NorthWestern's Grand Island office on December 13, 2013, when he found out NorthWestern had not discontinued billing Yap Auction for the natural gas service at Anna Street. He stated he spoke to Mr. Paul Frombgen, a customer service associate for NorthWestern, and informed him Yap Auction had vacated the Anna Street location on July 31, 2013, and he had notified NorthWestern on that date to discontinue service. Mr. Ross further testified that Mr. Frombgen told him that he had no record of his request to discontinue service on July 31, 2013.⁵

Mr. Ross also testified regarding a dispute between Yap Auction and the landlord and owner of the Anna Street property, Coad Miller. Mr. Ross stated that as a result of litigation

¹ See Application FC-1364 Transcript 10:2 - 11:5, (Hereinafter, "TR Page number:Line number").

² TR 10:15-20.

³ TR 12:22 - 13:10 and TR 13:19 - 14:9.

⁴ TR 19:7-24.

⁵ TR 20:20 - 21:19.

between his business and Mr. Miller, the parties had reached agreement resolving the dispute. Pursuant to the agreement, Yap Auction was to vacate the Anna Street property by August 1, 2013.⁶ A copy of the settlement agreement between Yap Auction and Coad Miller was entered into the record as Exhibit No. 4.

Ms. Katherine Ross, co-owner of Yap Auction with her husband, Jerel Ross, and bookkeeper for the company, also testified. Ms. Ross handles the books for the business including paying the bills.⁷ Ms. Ross stated she asked Mr. Ross on July 31, 2013, to terminate the utility services at Anna Street on behalf of Yap Auction with the city and NorthWestern. According to Ms. Ross, Mr. Ross returned that same day and reported, "We are all done."⁸

Ms. Ross testified Yap Auction continued to get two (2) statements from NorthWestern one for the 4th Street property and one for the Anna Street property, but she did not pay attention to the Anna Street statements as it was no longer Yap Auction's concern.⁹ She went on to state that in October 2013, she made a payment on the Anna Street account, believing she was paying the final bill for the Anna Street account.¹⁰

Ms. Ross further testified regarding the consolidation of the Anna Street and 4th Street gas bills by NorthWestern in March of 2014. She stated she received a March statement from NorthWestern and talked to a NorthWestern representative about payment options. Ms. Ross confirmed she realized at some point after the call with NorthWestern in March that the \$934.57 outstanding balance on the Anna Street property had been combined with Yap Auction's 4th Street account and Yap Auction disputed the Anna Street portion of the bill.¹¹

NorthWestern offered the testimony of four individuals at the hearing on behalf of NorthWestern, Paul Frombgen and Maria Rodriquez, Devonne Ksiazkiewicz, and Tricia Davis.

Mr. Paul Frombgen, a customer service associate for NorthWestern in its Grand Island offices, testified on behalf of NorthWestern. Mr. Frombgen testified he spoke with Mr. Ross in NorthWestern's Grand Island offices on July 1, 2013. Mr. Frombgen stated that Mr. Ross set up a new account at the 4th Street property. When asked if he wanted to terminate the Anna

⁶ TR 5:17 - 6:23; TR 8:7-22.

⁷ TR 36:5-14.

⁸ TR 37:18 - 38:1.

⁹ TR 38:12 - 39:3.

¹⁰ TR 39:4-17.

¹¹ TR 43:9 - 44:21.

Street account, Mr. Ross responded that he would call back at a later date to terminate the service.¹²

Mr. Frombgen further testified he did not see or speak to Mr. Ross on July 31, or August 1, 2013,¹³ and only saw Mr. Ross when he visited the NorthWestern offices on December 13, 2013, when he spoke to Ms. Rodriguez.¹⁴ Mr. Frombgen stated he next spoke with Mr. Ross on March 25, 2014, when he again visited the NorthWestern offices. Mr. Frombgen reported Mr. Ross was upset and restating he had terminated service at Anna Street on August 1, 2013. Mr. Ross further brought a copy of a settlement agreement between Yap Auction and the owner of the Anna Street property, Coad Miller, that day.¹⁵

Ms. Maria "Angie" Rodriguez, a customer service associate for NorthWestern located in its Grand Island offices, testified on behalf of NorthWestern. Ms. Rodriguez testified she met Mr. Ross for the first time when he visited the NorthWestern offices in Grand Island on December 13, 2013.¹⁶ Ms. Rodriguez stated she did not speak to Mr. Ross on July 1, 2013, but recalls him speaking to Mr. Frombgen on that date.¹⁷ Ms. Rodriguez testified that she was in training for NorthWestern in Huron, South Dakota, the week of July 31 and August 1, 2013, and did not see nor speak to Mr. Ross those days.¹⁸

Ms. Rodriguez stated she spoke with Mr. Ross on December 13, 2013, in NorthWestern's offices at which point Mr. Ross indicated he had told Mr. Frombgen to terminate service at the Anna Street property on August 1, 2013. Ms. Rodriguez testified she told Mr. Ross she could find no record of his August 1, 2013 request and terminated the Anna Street account from Yap Auction's name on December 13, 2013, as requested.¹⁹

Ms. Devonne Ksiazkiewicz, a customer service associate supervisor for NorthWestern, offered testimony on behalf of NorthWestern. Ms. Ksiazkiewicz testified she spoke to Mr. Ross on the phone on January 6, 2014, and he informed her that the deal between him and Coad Miller had fallen through and provided her Mr. Miller's phone number.²⁰ Ms. Ksiazkiewicz stated she spoke to Mr. Ross on the phone again on January 8, 2014, where Mr. Ross stated he had requested the Anna Street service out of

¹² TR 53:10 - 57:2.

¹³ TR 88:2-9.

¹⁴ TR 84:11 - 85:5.

¹⁵ TR 85:7 - 86:10.

¹⁶ TR 107:8-12.

¹⁷ TR 107:13-21.

¹⁸ TR 108:16-23.

¹⁹ TR 109:12 - 110:22.

²⁰ TR 128:20 - 130:18.

his name on August 1, 2013, and asked her to contact Mr. Miller to see if he would be willing to take responsibility for the Anna Street gas service charges starting August 1, 2013. Ms. Ksiazkiewicz testified she informed Mr. Ross that NorthWestern could not get involved in a dispute between him and Mr. Miller. She further testified she could find no record of an August 1, 2013 contact by Mr. Ross and talked with both Mr. Frombgen and Ms. Rodriguez regarding Mr. Ross's statements, and they both confirmed they had no recollection or record of Mr. Ross visiting the NorthWestern offices on August 1, 2013.²¹

Ms. Tricia Davis, who provides support functions for NorthWestern customer interactions for Nebraska, South Dakota, and Montana, also testified on behalf of NorthWestern. Ms. Davis testified she searched all the calls recorded at NorthWestern's contact center and could find no call from Mr. Ross on July 31 or August 1, 2013, regarding the Anna Street Property.²² Ms. Davis went on to confirm that Ms. Rodriguez was in training in Huron, South Dakota, the week of July 31, 2013.²³

NorthWestern also offered as exhibits copies of statements for the Anna Street and 4th Street accounts, billing and payment ledgers for both accounts and Account Task and Service Order Histories of both accounts.²⁴

O P I N I O N A N D F I N D I N G S

The State Natural Gas Regulation Act ("SNGRA")²⁵ gives the Commission full power, authority and jurisdiction to regulate jurisdictional utilities in Nebraska and directs such powers be liberally construed to include, "all incidental powers necessary to carry into effect the provisions of the act."²⁶ Such powers include the authority to handle disputes between a jurisdictional utility and its customers.²⁷ NorthWestern is a jurisdictional utility pursuant to SNGRA and therefore disputes with its customers are under the regulatory purview of the Commission.²⁸

The Complainant, as the moving party in the proceeding, bears the burden of proof that the Respondent violated Nebraska law, Commission orders or rules and regulations, or the utilities terms and conditions of service filed with the

²¹ TR 130:23 - 131:12.

²² TR 138:6-16.

²³ TR 147:4-25.

²⁴ See Application FC-1364 Transcript, Exhibits 5 - 14.

²⁵ See Neb. Rev. Stat. § 66-1801 et. seq.

²⁶ Neb. Rev. Stat. § 66-1804(2).

²⁷ Neb. Rev. Stat. § 66-1805(1)(f).

²⁸ Neb. Rev. Stat. § 66-1802(13) & (15).

Commission. The issue before the Commission is whether Mr. Ross, as the account holder, gave reasonable and proper notice on behalf of Yap Auction to NorthWestern that the Complainant was no longer in possession of the Anna Street property and therefore not responsible for the gas usage at the property starting August 1, 2013.

Mr. Ross maintains Yap Auction vacated the Anna Street property in August 1, 2013, and gave notice to NorthWestern in an office visit on either July 31, or August 1, 2013. However, NorthWestern presented substantial documentary and witness testimony to support their position that notice was not given until December 2013.

Yap Auction received four (4) more gas bills for the Anna Street property, in addition to the statements for gas service at the 4th Street location. However, no one from Yap Auction made inquiries regarding the Anna Street bills until December 13, 2013. The only contact with NorthWestern regarding the Anna Street account from August to December 13, 2013, was a payment made by Yap Auction via check on the Anna Street account in October 2013.²⁹

On December 13, 2013, and during subsequent phone calls and visits to NorthWestern, Mr. Ross discussed the defunct deal between him and Mr. Coad Miller, the owner/landlord of the Anna Street property. Mr. Ross made repeated attempts to get NorthWestern to contact Mr. Miller and see if he would pay for the gas usage on the Anna Street property after August 1, 2013. On his March 25, 2014 visit, Mr. Ross brought a copy of a settlement agreement signed by him and Mr. Miller into the NorthWestern offices.³⁰ There is no evidence NorthWestern had received a copy of the agreement prior to March 2014.

The Commission cannot make a determination as to whether Mr. Miller may be liable for the natural gas usage subsequent to August 1, 2013, as he is not a party to this matter. Furthermore, the enforcement of the settlement agreement between him and Mr. Ross is beyond the scope of this proceeding.

Mr. Ross was the account holder of record with NorthWestern on the Anna Street property, and as such, was in the best position to know when his business was no longer in possession of the property. Mr. Ross was also, as the responsible party, in the best position to avoid the harm of the outstanding bill for gas service by timely terminating his account with the utility.

²⁹ FC-1364 Transcript, Exhibits 15 & 17.

³⁰ FC-1364 Transcript, Exhibit 4.

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The dissent argues reasonable notice by the account holder is a secondary consideration when the utility was subsequently informed that the account holder had vacated the premises. We disagree. The landlord was not a party to this proceeding, and provided no evidence on the record. A utility should not be required to bill a third party when informed months later by an account holder that the account holder believes the third party is responsible for the outstanding bill. To make such a finding would be unreasonably burdensome to the utility and position the utility as an arbiter between parties to a private agreement.

Therefore, upon consideration of all the evidence, we find that Yap Auction has not met its burden to prove that North-Western acted in violation of statute, Commission order, rule, regulation, or tariff provision. The weight of the evidence is in the Respondent's favor and therefore we find the complaint should be dismissed with prejudice.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Formal Complaint FC-1364, be and is hereby dismissed with prejudice

MADE AND ENTERED at Lincoln, Nebraska this 10th day of March, 2015.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Tim Schram

//s//Frank E. Landis
//s//Gerald L. Vap

COMMISSIONERS DISSENTING:

//s//Rod Johnson

Crystal Luwades

Chairman

Gusd Flap

ATTEST:

Steve Meradith

Executive Director

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Commissioners Rhoades and Johnson, dissenting:

We respectfully dissent. The majority finds that the Complainant account-holder is responsible for the outstanding balance on the Anna Street property at issue. We disagree with the majority's conclusions and would instead have sustained the complaint against the Respondent utility.

Mr. Ross offered into evidence a settlement agreement executed in August of 2013 by both Mr. Ross and property owner and former landlord, Coad Miller.³¹ The settlement agreement clearly states that Mr. Ross vacated the property by August 1, 2013. It further states that Mr. Miller released the Rosses from any obligation under the lease agreement between the parties, including all sums of money, accounts, actions, suits, and proceedings, claims and demands whatsoever. Therefore, since Mr. Ross vacated the property and was released by Mr. Miller pursuant to the settlement agreement from any and all responsibility for the property, it was the sole responsibility of the property owner to pay for the services used at the address after the settlement agreement was executed.

In addition, the Respondent submitted documents stating Mr. Ross notified them of his intent to disconnect service at the Anna Street property at the beginning of July.³² NorthWestern admitted receiving a change of address upon Mr. Ross vacating the property, and acknowledged receiving a copy of the settlement agreement showing Mr. Ross was no longer responsible for the property effective August 1, 2013.³³ There were multiple opportunities for the utility to identify the party responsible for the Anna Street services after August 1, 2013. Once presented with the settlement agreement, NorthWestern should have acknowledged that Mr. Miller was the one using and benefiting from gas service and should have used the appropriate collection remedies against the user of the service. Accordingly, we would have sustained Docket No. FC-1364 against the utility and found the Complainant not responsible for the outstanding balance on the Anna Street property.


Crystal Rhoades


Rod Johnson

³¹ FC-1364 Transcript, Exhibit 4.

³² FC-1364 Transcript, Exhibit 5; TR 53:10 - 57:2.

³³ FC-1364 Transcript, Exhibit 12, p.2.