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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UCB 21

HALL BOULEVARD MARKET & DELI,)
)
 Complainant,)
)
 vs.)
)
 PORTLAND GENERAL ELECTRIC)
 COMPANY,)
)
 Defendant.)

ORDER

**DISPOSITION: REQUEST FOR RESTORED SERVICE DENIED;
COMPLAINT DENIED**

On July 19, 2004, Hall Boulevard Market and Deli filed a complaint against Portland General Electric Company (PGE) for improper disconnection of service and requested that service be restored. On July 20, 2004, PGE responded that it was not willing to restore service.

On July 21, 2004, a hearing was held to consider whether to restore service while the complaint was investigated. The hearing was held by telephone. Participating on behalf of Hall Boulevard Market were the owner Hamid Raffei and bookkeeper Jeanice Wilford. Participating on behalf of PGE were attorney Barbara Halle and employees George Kuiawa and Terri Bowman. The parties agreed to discuss further whether arrangements could be made to restore service. Another telephone conference was held July 28, 2004. Mr. Raffei and Ms. Wilford again participated. Travis Benn participated on behalf of PGE.

Based on the evidence in the record, we make the following findings. In January, 2004, Hall Boulevard Market filed for bankruptcy. While they are working to repay their past debts, the slate was wiped clean for purposes of this case, and the accounts in this docket began in February. Because of the bankruptcy, PGE required a \$1200 deposit, to be divided into three \$400 payments, due on March 22, April 19, and May 19, 2004. In addition, power and light charges would continue to accrue as Hall Boulevard Market used PGE service.

The parties agreed that Hall Boulevard Market submitted \$519.80 on April 21, which was applied to the first \$400 deposit installment, and \$400 on May 7, which was applied to the second \$400 deposit installment. The parties dispute whether a third payment was made. Ms. Wilford says that a third payment of \$400 was made in late June; PGE says that no third payment was made, but statements issued by PGE show that it was paid and credited to the account. PGE also billed Hall Boulevard Market for ongoing power usage, which totaled approximately \$3100 by the time service was terminated on July 8, 2004. Ms. Wilford admitted that Hall Boulevard Market owed money on the account.

A past due notice was sent in May, stating that \$1449.24 must be sent to PGE by June 4, 2004, or service would be shut off. Ms. Wilford asserts that notice was nullified by a bill that was sent shortly thereafter which showed that Hall Boulevard Market owed \$2440.90. Both parties agreed that a five-day notice was sent indicating that \$400 must be paid by July 6, 2004, or power would be shut off. PGE also asserts that at that time, an additional past due notice was sent indicating that \$2040.90 was due for power usage. Power was shut off July 8, 2004. Ms. Wilford asserts that someone from Hall Boulevard Market attempted to speak with the PGE employee who shut off service, and offered to pay \$400. The employee said more than \$2000 was owed, and service was disconnected.

Mr. Raffei continued to keep the store open, and customers commented that the lights were not functioning. According to Mr. Raffei, one regular customer came in to the store and said he would reconnect the power, but that Mr. Raffei would have to pay \$1700 the next day. Mr. Raffei said that he thought the man was from PGE, but the man did not wear a PGE uniform or have anything that identified him as a PGE employee. Mr. Raffei did not make any payments. The next day, a PGE employee saw the lights on in the Hall Boulevard Market, disconnected the power again, and added a lock ring to prevent reconnection.

According to PGE, Hall Boulevard Market owes \$2664.34 for power usage, after deducting \$800 in deposit payments that were made, plus an additional \$1200 deposit, \$80 for an unauthorized reconnection, and \$30 for reconnection to the system, for a total of \$3974.34.

Applicable Law. Admittedly, the administrative rules are not clear regarding the requirements for non-residential energy utility service. There are clear rules governing deposits to establish credit in residential energy service, OARs 860-021-0200, 860-021-0205 and residential and non-residential telecommunications service, OAR 860-021-0206, but no parallel provisions for non-residential energy utility service. PGE's tariff, which is on file with the Commission, fills in the gaps. "A deposit equal to a maximum of two month's billings for Company charges is required when the Applicant or consumer . . . [h]as sought any form of relief under the federal bankruptcy laws." PGE tariff E-17, p. D-9 (eff Feb 5, 2003). Disconnection for nonpayment of the deposit must be made in accordance with the procedures in OAR 860-021-0505. PGE tariff E-17, p. D-11 (eff Feb 5, 2003). The tariff provides a brief grace period to pay the deposit. *Id.* It appears that PGE was even more

generous with Hall Boulevard Market and allowed it to pay the deposit in three installments, 30 days apart, similar to the deposit rule for residential service, as a way to establish credit.

The rules for disconnection also are not a model of clarity. OAR 860-021-0305(1)(a) provides that utility service may be disconnected for failure to establish credit by failing to pay a deposit, as prescribed by OAR 860-021-0206. While the deposit in this case relates to electric service, and not telecommunications service as governed by OAR 860-021-0206, the disconnection provision still appears to apply. Utility service can also be disconnected for "failure to pay Oregon tariff or price-listed charges due for services rendered (OAR 860-021-0405 or OAR 860-021-0505); or by meter-tampering, diverting service, or theft of service." OAR 860-021-0305(5). Under that rule, the disconnection notice procedures appear to apply only to failure to pay and not to meter-tampering or other reasons for disconnection.

Under OAR 860-021-0505(2), an energy utility must provide written notice to the customer five days in advance. The notice must state the reason for disconnection, the earliest possible date for disconnection, the amount necessary to be paid to avoid disconnection, and some explanation offering relief options to the customer. OAR 860-021-0505(3). The utility employee who goes to the premises to disconnect the power "must make a good-faith effort to personally contact the customer." OAR 860-021-0505(6). While the utility employee who disconnects *residential* utility service must "be empowered to accept reasonable partial payment of the overdue balance," OAR 860-021-0405(9), there is no similar requirement for the employee who disconnects *non-residential* utility service.

Service can be restored while a complaint is pending if service was not terminated for theft of service or failure to establish credit, and if the customer was terminated for non-payment but "makes adequate arrangement to avoid future loss to the utility," such as an offer to pre-pay monthly utility bills. OAR 860-021-0015(7).

Conclusions. First, as to restoration of service, Hall Boulevard Market was disconnected the second time on July 9, 2004, for unlawful reconnection, which resulted in a theft of service. Further, after the July 21, 2004 conference, PGE attempted the offer to restore service if Hall Boulevard Market provided a \$1000 deposit prior to reconnection to guard against future losses, among other conditions. Hall Boulevard Market refused to pay that deposit and declined to make a counter-offer. Because Hall Boulevard Market was disconnected the second time for theft of service and it refuses to pay a deposit to guard against future losses to PGE, it failed to meet the requirements under OAR 860-021-0015(7) and it is not entitled to restored service.

Second, regarding the merits of the complaint, PGE's notices were not very clear. It sent its first past due notice for \$1449.24 in May, then sent another regular bill. In late June, PGE sent a past due notice for \$2040.90, at nearly the same time it sent a shut off notice for \$400. When the PGE employee came to shut off the power, Mr. Raffei offered \$400 to keep the power connected, but he was refused because he owed more. He continues

to receive bills showing a credit for \$400 paid in late June or early July, and PGE still argues that payment was never made. Even in the light most favorable to PGE, the notices were not clear.

The fact remains, however, that the employee who initially terminated service was not required to accept payment towards the bill under the administrative rules. Mr. Raffei had received two past-due notices and one shut-off notice and made no attempt to contact PGE until his service was terminated. Under a strict interpretation of the rules, the first disconnection was valid. Even if the circumstances surrounding the first disconnection were murky, the second disconnection for meter-tampering and theft of service was clearly valid without notice under OAR 860-021-0305(5). Therefore, the complaint is denied.

ORDER

IT IS ORDERED that:

1. The request for restored service is denied, and
2. The complaint is denied.

Made, entered, and effective _____.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.