

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

BULLDOG'S ENTERPRISES, INC. d/b/a :
BULLDOG'S ROADHOUSE :
2015 Declaration Drive :
Independence, KY 41051-7983, :

Case No.

Complainant,

vs.

CLASS ACTION COMPLAINT

DUKE ENERGY KENTUCKY, INC :
139 EAST 4TH STREET :
ATTN: TERI O'NEILL EA025 :
CINCINNATI, OH 45202 :

Respondent.

Comes now the Complainant in the above-captioned action, by and through counsel, and states as follows:

I. THE PARTIES

1. At all times relevant, Bulldog's Enterprises, Inc. was a corporation incorporated and doing business in the Commonwealth of Kentucky as Bulldog's Roadhouse, with a location at 2015 Declaration Drive, Independence, Kentucky.

2. At all times relevant, Duke Energy Kentucky Inc. was a wholly-owned subsidiary of Duke Energy Ohio, Inc. Duke Energy Ohio, Inc. was a wholly-owned subsidiary of Cinergy Corp., which is a wholly-owned subsidiary of Duke Energy Corporation, Inc. which operated as an energy company in the Americas, including the United States. Duke Energy Kentucky, Inc. supplies the energy requirements of commercial users in the Commonwealth, such as the Complainant.

II. JURISDICTION AND VENUE

3. This Commission has original jurisdiction in this matter, under K.A.R. 278.260.

III. THE FACTS

4. On or about May 24, 2010, Complainant received a letter from Respondent's "Customer Service Department" stating that Respondent's electric meter at Complainant's "was not registering properly for the time period of 4/21/10 through 4/30/10," which led to the meter being replaced on April 30, 2010.

5. The letter went on to state that under Kentucky law, Respondent was permitted to re-bill commercial accounts "for the portion of the electric usage that did not register . . . immediately prior to the date the defective meter was removed."

6. As a result, Respondent stated that it had recalculated and re-billed Complainant's account for the time period of 4/21/10 through 4/30/10, "based on a review of [Complainant's] usage patterns before and/or after installation of the new meter."

7. Upon information and belief, thousands of Respondent's commercial customers are subject to such meter malfunctions annually.

8. Moreover, the relevant Public Service Commission ("PSC") regulation, 807 K.A.R. 5:006(10), permits Respondent to utilize a meter which is up to 2% fast without replacing the meter and correcting the overbilled customer's account.

9. As a result of malfunctioning meters, and K.A.R. 5:06(10) and similar regulations, Respondent is allowed to overbill customers like Complainant.

10. Complainant closed this location for retail customers on June 1, 2010.

11. Despite the location being closed, and virtually no utilities being used, Respondent billed Complainant over \$3,600.00 for June and over \$3,800.00 for July.

12. Such billings establish either that Respondent's meter at this location is still malfunctioning, or Respondent's policy for estimating bills is fatally and fraudulently flawed, or both.

13. Upon information and belief, Respondent treats all similarly situated commercial accounts in the same manner.

IV. REQUEST FOR CLASS CERTIFICATION

14. Complainant incorporates the foregoing paragraphs as if fully rewritten herein.

15. Respondent has tens of thousands of commercial customers utilizing its meters, of which thousands malfunction annually.

16. Respondent manages estimates of bills resulting from such malfunctions pursuant to 807 K.A.R. 5:006(10), or similar provisions in other jurisdictions, which allows for meter error of up to 2%.

17. Respondent's commercial accounts that close are subsequently overbilled for utilities they did not use.

18. It is clear that the class of Complainants is so numerous that joinder of all members will be impracticable.

19. Because all of the Complainants and class members are similarly situated, there are questions of law or fact common to all the parties.

20. The claims or defenses of all the representative numbers are typical of all parties of the class.

21. The representative parties will fairly and adequately protect the interests of the class.

22. The prosecution of separate actions by each member of the class would create inconsistent or varying adjudications with respect to individual members of the class.

23. The questions of law or fact common among the class members predominate over any questions affecting only individual members.

24. As a result of the foregoing, Complainant requests class status.

V. CAUSES OF ACTION

A. Count One: Fraud

25. Complainant incorporates the foregoing paragraphs as if fully rewritten herein.

26. Respondent's policy of billing closed locations based upon estimates derived from prior months' utility usage, and Respondent's management of malfunctioning meters (which permits it to overbill customers such as Complainant and all those similarly situated) constitutes fraud.

27. As a result of the actions of Respondent, the Complainant individually and as representative of all Respondent's customers similarly situated, has suffered personal injury.

B. Count Two: Breach of Contract

28. Complainant incorporates the foregoing paragraphs as if fully rewritten herein.

29. When entering into an agreement with Respondent to supply utilities to its business, Complainant and all those similarly situated, reasonably expected to be billed accurately for only the utilities they actually consumed.

30. Respondent's management of such customer's accounts in a way that permits it to overbill such customers, constitutes breach of contract.

31. As a result of Respondent's breach of its contract with Complainant and all customers similarly situated, Complainant has suffered personal injury.

C. Count Three: Good Faith and Fair Dealing

32. Complainant incorporates the foregoing paragraphs as if fully rewritten herein.

33. Respondent breached its obligations of good faith and fair dealing in its transactions with Complainant, and all those customers similarly situated.

34. As a result of the actions of Respondent, the Complainant individually and as representative of all Respondent's customers similarly situated, has suffered damages.

D. Count Four: Violation of K.R.S. § 367.170

35. Complainant incorporates the foregoing paragraphs as if fully rewritten herein.

36. Respondent's actions toward Complainant and all those customers similarly situated, constituted unfair, false, misleading, or deceptive acts or practices in the conduct of its business.

37. Respondent's actions were unconscionable.

38. As a result of the actions of Respondent, the Complainant individually and as a representative of all Respondent's customers similarly situated, has suffered damages.

E. Count Five: Unjust Enrichment

39. Complainant incorporates the foregoing paragraphs as if fully rewritten herein.

40. By managing malfunctioning meters in the way that it does, allowing it to bill for utilities that were not actually used, Respondent has been unjustly enriched to the detriment of Complainant and all those customers similarly situated.

41. As a result of the actions of Respondent, the Complainant individually and as a representative of all Respondent's customers similarly situated, has suffered damages.

VI. PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests judgment in its favor and against Respondent on all counts for:

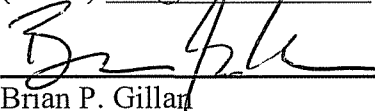
- a. Compensatory damages;
- b. Punitive damages;

- c. Reasonable attorney's fees;
- d. Its costs and expenses;
- e. Trial by jury on all issues so triable; and
- f. Any and all other relief to which Complainant is entitled.

Respectfully submitted,



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