

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

WILLIAM FOX	)	
	)	
COMPLAINANT	)	
	)	CASE NO.
V.	)	2020-00116
	)	
LOUISVILLE GAS AND ELECTRIC COMPANY	)	
	)	
DEFENDANT	)	

ORDER

This matter arises upon a complaint filed by William Fox (Mr. Fox) against Louisville Gas and Electric Company (LG&E). Mr. Fox alleged that LG&E had overbilled his business, Soup Coop, LLC. (Soup Coop) for electric and gas service by placing the account in the wrong customer class. Mr. Fox requested a refund for the amount he believed he was overbilled.

BACKGROUND

Mr. Fox began taking service from LG&E for electric and gas service for his businesses in 2009.<sup>1</sup> Mr. Fox moved the business location to 138 Buchanan Street, Louisville, Kentucky in 2012 and continued the electric and gas service.<sup>2</sup> Mr. Fox owns and operates five businesses out the building, including the business Soup Coop. Soup

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<sup>1</sup> William Fox Complaint at unnumbered page 2.

<sup>2</sup> William Fox Response to Commission Order (filed June. 12, 2020) at unnumbered page 4.

Coop takes raw tomatoes and makes tomato soup for JGumbos Restaurants.<sup>3</sup> All five businesses share one electric and gas meter. Mr. Fox receives the monthly bill and divides it into five equal parts, regardless of the actual electric or gas usage of each of the five business.<sup>4</sup>

From 2009 until August 15, 2019, the account was in the name of William Fox. On that date, the account was placed in the name of Soup Coop. On December 14, 2019, Mr. Fox requested the account be placed back in his name.<sup>5</sup>

The previous occupant of the building located at 138 Buchanan Street, Louisville Kentucky, was classified as General Service for its electric rate and Commercial Gas Service for its gas rate.<sup>6</sup> It is LG&E's policy for the new occupant of a building to initially be classified under the same rate schedules of the previous occupant if businesses appear to be similar.<sup>7</sup> When Mr. Fox's account was moved to 138 Buchanan Street in 2012, the electric account was kept as General Service and the gas account was classified as Commercial Gas Service because it appeared Soup Coop would be a similar business to the previous occupant.<sup>8</sup>

In July 2013, LG&E conducted a rate validation review of Mr. Fox's electric account as required by LG&E electric tariff Original Sheet No. 101.1.<sup>9</sup> LG&E reviewed 12 months

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<sup>3</sup> *Id.* at unnumbered page 3.

<sup>4</sup> William Fox Response to Commission Staff's Second Request for Information (filed Apr. 26, 2021) at unnumbered page 2.

<sup>5</sup> LG&E's Answer (filed Apr. 16, 2020), at unnumbered page 3, Item 3.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

of usage data and found Mr. Fox consistently had usage over the General Service electric rate limits.<sup>10</sup> LG&E then placed Mr. Fox's account into the Time of Day Secondary (TODS) rate class based on the electric usage at the premises.<sup>11</sup> The electric rate schedules of LG&E are volumetric based, not based on the classification of the business as commercial or industrial.<sup>12</sup>

LG&E also reviewed the gas account at the same time. The gas account was changed to the Industrial Gas Service (IGS) classification based on LG&E's interpretation of Original Sheet No. 15 of the LG&E gas tariff.<sup>13</sup> LG&E's gas tariff defines industrial customers as:

[C]ustomers involved in activities using gas primarily in a process or processes which either involve the extraction of raw materials from earth, or a change of raw or unfinished materials into another form or product through the application of heat or heat treating, steam agitation, evaporation, baking, extraction, drying, distilling, asphalt production, vehicular fueling of internal combustion engines, and for other similar uses.<sup>14</sup>

LG&E believed Mr. Fox's account should be in this rate schedule because Soup Coop is a large wholesale food producer making soup in a plant setting to be sold in

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> LG&E's Answer at unnumbered page 4, Item 3.

<sup>13</sup> *Id.*

<sup>14</sup> LG&E Gas Tariff, Original Sheet No. 15.

restaurants.<sup>15</sup> LG&E conducted two additional rate validation reviews and found that the business should remain in the IGS rate schedule.<sup>16</sup>

Mr. Fox continues to be billed in the TODS rate class for electric service and IGS rates for gas service. On February 28, 2020, Mr. Fox filed a complaint with the Commission stating his accounts were in the wrong rate classes and he had been overbilled for seven years.<sup>17</sup> Mr. Fox requested a refund for the amount he believed he was overbilled. Mr. Fox claimed he could not calculate the amount that should be refunded for electric service.<sup>18</sup> Mr. Fox also requested a refund of \$50,191.38 that he believed he was overbilled for gas service.<sup>19</sup>

#### DISCUSSION

Commission regulation 807 KAR 5:001, Section 20(4)(a) requires the Commission to determine whether a complainant established a *prima facie* case. A complaint established a *prima facie* case when, on its face, it states sufficient allegations that, if uncontroverted by other evidence, would entitle the complainant to the relief requested. The party filing a complaint has the burden of proving his claim.

Further 807 KAR 5:001, Section 20(4)(1)(a) states, if a determination is made that the complaint fails to establish a *prima facie* case, the complainant must be provided the opportunity to amend the complaint within a specified time. If the complaint is not timely amended to set forth a *prima facie* case, the complaint is dismissed.

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<sup>15</sup> LG&E's Answer at unnumbered page 4, Item 3.

<sup>16</sup> *Id.*

<sup>17</sup> William Fox Complaint at unnumbered page 2.

<sup>18</sup> William Fox Response to Commission Order (filed June 12, 2020) at unnumbered page 8.

<sup>19</sup> *Id.*

Here, Mr. Fox has failed to provide evidence that his accounts were placed in the incorrect rate class by LG&E. Mr. Fox claims that the accounts should have been in the previous rate class, but relies on incorrect reasoning on why the accounts should have remained. LG&E provided an explanation that the electric service was changed based on volumetric reasons, not type of business.<sup>20</sup> LG&E further explained that that the gas account was changed because the business is a wholesale food supplier whose activities of turning tomatoes, a raw material, into tomato soup through the application of heat, meet the definition of “Industrial Customer” found in LG&E’s gas tariff.<sup>21</sup>

Mr. Fox was given opportunity to amend his complaint to establish a *prima facie* case several times. In addition to filing a response to the Commission’s June 8, 2020 Order, and a response to Commission Staff’s Request for Information, Mr. Fox filed three additional responses after LG&E’s Answer, and he never stated any facts or provided additional information that would establish a *prima facie* case that he was placed in the incorrect customer class.

The Commission finds that the Complaint does not state a *prima facie* case.

IT IS THEREFORE ORDERED that:

1. Mr. Fox’s Complaint fails to state a *prima facie* case and is dismissed.
2. The case is closed and removed from the Commission’s docket.

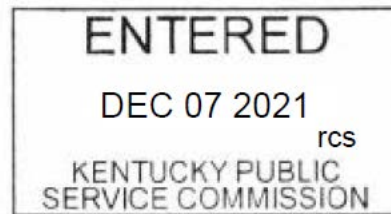
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<sup>20</sup> LG&E Answer to Complaint at unnumbered page 3.

<sup>21</sup> *Id.*

By the Commission

Commissioner Marianne Butler did not participate in the deliberations or decision concerning this case.



ATTEST:

  
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