

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SANDRA K. HISER)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 95-316
)	
LOUISVILLE GAS AND ELECTRIC COMPANY)	
)	
DEFENDANT)	

O R D E R

On July 19, 1995, Sandra K. Hiser filed a formal complaint with the Commission alleging Louisville Gas and Electric Company ("LG&E") wrongfully terminated service to her residence at 6809 Stone Hill Road in Louisville, Kentucky. Ms. Hiser further alleged that LG&E sought payment of \$2,919.44 for arrearages owed by Hiser Realty Company, Inc. ("Hiser Realty"), a corporation in which she neither owned stock nor served as an officer.

LG&E answered the complaint on August 7, 1995 generally denying the allegations and averring that Ms. Hiser was personally responsible for the debt since she had formerly been an employee of Hiser Realty, was authorized to sign checks on behalf of the corporation, and benefitted from the service provided to Hiser Realty at 6809 Stone Hill Road since at all times in dispute, it was her personal residence.

A public hearing was held on the complaint on January 10, 1996. Ms. Hiser appeared pro se and LG&E appeared represented by counsel.

After a review of the record in this case including the hearing transcript, the Commission finds the following facts to be pertinent. When service was initiated to 6809 Stone Hill Road in 1987, the applicant for service was Hiser Realty.¹ All bills for service from the time service was initiated in 1987 until April 1994 were sent to Hiser Realty at P.O. Box 58068, Louisville, KY 40258. LG&E does not dispute that Hiser Realty was the applicant for service.

Ms. Hiser testified that the residence was used as a model home by Hiser Realty from 1987 until 1994. During that time the home was used as a personal residence for the Hiser family, and office space was furnished to Hiser Realty. Hiser Realty used one room upstairs in the house for an office and used the basement to maintain contracts and blueprint stands for Hiser Realty construction employees. In exchange for this arrangement, Hiser Realty agreed to pay the electric service account with LG&E. Although Ms. Hiser was unable to provide a copy of the written agreement with Hiser Realty, she did provide brochures and sufficient testimony to demonstrate the house was advertised as a model home during the period in question. No bills were sent to 6809 Stone Hill Road until the account was placed in Sandra Hiser's name in April 1994.

Ms. Hiser applied for service in her name after she found that Hiser Realty had fallen behind in its payments for electric service. In Ms. Hiser's words, she "took control" because Hiser Realty was experiencing difficulties. Ms. Hiser testified that at the time

¹ Kendall Hiser is Sandra K. Hiser's husband and signed Hiser Realty's application for service with LG&E as president of the corporation. Hiser Realty changed its name to HRC General Contractors, Inc. which was administratively dissolved on November 1, 1995.

she applied for service, she was not told that the Hiser Realty account balance would be transferred to her personal account or that she would, in any way, be responsible for the corporation's outstanding balance. Ms. Hiser received a letter from LG&E dated April 14, 1994 advising her that her application was "incomplete" and, if not completed by May 6, 1994 service might be discontinued without further notice. No mention was made by LG&E in that notice that the Hiser Realty balance was a problem or that the balance would be transferred to her account. Service was maintained in Ms. Hiser's name until the service was terminated by LG&E on May 25, 1994 without further written notice and before Ms. Hiser received the first bill in her name. Ms. Hiser subsequently received a bill from LG&E which showed that an outstanding final balance on the Hiser Realty account of \$2,919.44 had been transferred to her account.

Upon receipt of the bill reflecting transfer of the Hiser Realty balance, Ms. Hiser met with the supervisor in LG&E's Broadway Customer Service Office and offered LG&E payment of \$300 to place the service in her name. LG&E refused the offer of payment and Ms. Hiser was told the service would not be reconnected until she paid at least \$1,500 to apply to the Hiser Realty arrearage. Hiser Realty then offered LG&E a corporate promissory note or a personal promissory note (from Kendall Hiser) and a partial payment plan if the corporate arrearage was taken off Sandra Hiser's bill for 6809 Stone Hill Road. LG&E refused Hiser Realty's offer and continued to demand payment from Ms. Hiser for the arrearage. Ms. Hiser paid LG&E \$1,050 which LG&E accepted

on the condition that Sandra Hiser agree to a partial payment of \$100 per month on the arrearage. LG&E would not acknowledge that the payment was being made by Ms. Hiser personally and not Hiser Realty, nor would LG&E agree to put in writing that Ms. Hiser would further be denied service for nonpayment of the Hiser Realty debt.

The question presented to the Commission in this case is whether LG&E can hold Ms. Hiser legally responsible for arrearages for service provided to a corporation, Hiser Realty. It cannot. It is a well settled legal principle that individuals, and in this case, a third party unrelated to the corporation, are not responsible for the debts of a corporation. This is especially true where the individual was never an officer, director, or shareholder of the corporation. LG&E alleges that under a "benefit of service" theory, Ms. Hiser was the beneficiary of the service and is therefore responsible for the debt. This argument, however, is unpersuasive.

Hiser Realty was the initial applicant and legally contracted with LG&E for service. Hiser Realty owned the property from the time service was initiated until the property was transferred to Sandra Hiser by deed dated December 12, 1994. Sandra Hiser has consistently maintained to LG&E personnel that she is not legally responsible for the corporation's debt.² Irrespective of whether Sandra Hiser lived in the house, Hiser Realty contracted for service and all bills were rendered to Hiser Realty at its business address. On May 25, 1994 when Hiser Realty offered LG&E a corporate promissory

² Ms. Hiser testified that she offered LG&E proof in the form of a written statement from Hiser Realty that she was never an officer or stockholder of the corporation. Ms. Hiser did not produce this statement at the hearing, nor did LG&E's witness recall seeing the statement.

note and partial payment plan and asked that the arrearage be removed from Ms. Hiser's account, LG&E refused the offer from the legally responsible party and instead used "benefit of service" criteria to force Ms. Hiser to pay the arrearage.

LG&E refused the offer from Hiser Realty because the order had been given to resolve the dispute based upon "benefit of service." However, Hiser Realty benefitted from the service provided by LG&E during the period in which the arrearage accrued and is the entity legally responsible for the debt. Obviously, the offer from Hiser Realty should have been accepted by LG&E. No efforts have been made by LG&E to collect from Hiser Realty since the arrearage balance was transferred to Ms. Hiser's account.³

While "benefit of service" criteria has never been accepted by this Commission as a policy suitable for all utilities to follow in collecting past due accounts, it is considered by the Commission on a case-by-case basis where applicable.⁴ In this case, "benefit of service" and the threat of or actual termination of service cannot be used to coerce Sandra Hiser to pay a debt she is under no legal obligation to pay. Absent a judgment from a court of competent jurisdiction that Sandra Hiser is responsible for the

³ Hiser Realty maintains 12 other accounts with LG&E which at the time of the hearing in this case, reflected unpaid balances for service. Apparently LG&E has made no effort to collect on these accounts either.

Although LG&E testified that average monthly usage at 6809 Stone Hill Road runs \$200 to \$300 per month, no explanation was given by LG&E to explain why the arrearage balance on the Hiser Realty account was allowed to accrue to \$2,919.44 without terminating service to Hiser Realty and attempting to collect the balance from the corporation.

⁴ Administrative Case No. 276, Joint Liability of Husband and Wife for Payment of Utility Bills. Final Order dated September 24, 1984.

corporate debt, LG&E should cease all actions to collect the corporate arrearage from her.

LG&E's application of "benefit of service" criteria with no consideration of whether the customer can be held legally accountable for payment of the debt is most disturbing to the Commission for several reasons. First, LG&E would consider the customer's legal status as a corporation only in instances where no benefit from service could be found. This policy is legally unsupportable.

Second, Commission Regulation 807 KAR 5:006, Section 14, provides that a utility may refuse or terminate service to a customer who is indebted to a utility for service furnished or other tarified charges until that customer has paid his indebtedness. In this case, Ms. Hiser was not indebted to LG&E for service furnished at the time Hiser Realty's outstanding balance was transferred to her account. LG&E's actions in transferring the indebtedness to Ms. Hiser's account and subsequently terminating that service for nonpayment of the arrearage violates the above-cited regulation.

Third, termination or refusal of service based upon "benefit of service" criterion is not included in LG&E's tariff as a condition of service. KRS 278.160 provides that a utility shall file its tariffs with the Commission "showing all rates and conditions for service established by it and collected or enforced." LG&E cannot lawfully impose this criterion unless the Commission specifically approves the criterion as a reasonable requirement and allows LG&E to include the same in its tariff.

At the time of the May 25, 1994 meeting, LG&E indicated that it could not accept less than \$1,500, or 50 percent of the arrearage to restore service and agree to a partial

payment plan with Ms. Hiser. LG&E testified that it generally requires 50 to 60 percent of the 60 to 90 day old balance before service will be restored. The requirement that LG&E collect and the customer pay such a percentage is not contained in LG&E's tariff. As collection of 50 to 60 percent of the outstanding balance is a requirement LG&E has established as a condition of restoring service to a disconnected customer and, pursuant to KRS 278.160, is required to be part of LG&E's tariff, LG&E should seek approval of a tariff setting out conditions for obtaining or retaining service. The Commission makes no finding herein that this condition is either reasonable or unreasonable, but such a requirement must be included in LG&E's tariff to be enforceable.

The record herein reflects that the May 25, 1994 partial payment agreement between LG&E and Ms. Hiser was apparently never put in writing contrary to 807 KAR 5:006, Section 13, which requires any partial payment plan extending longer than 30 days to be in writing. LG&E should review its practices concerning these payment arrangements to ensure compliance with the regulation.

Partial payment plans are to be "negotiated" between the customer and the utility and should ideally be premised upon the customer's ability to pay. The record in this case is replete with instances where payment of approximately half the outstanding arrearage was demanded from Ms. Hiser as were weekly payments on the remaining arrearage. In Ms. Hiser's words, LG&E has forced her to "make promises she cannot keep."⁵

⁵ Ms. Hiser has "agreed" to make partial payments of \$100 monthly, and \$125 and \$200 weekly after paying varying amounts demanded by LG&E to prevent the scheduled termination of service from occurring.

Ms. Hiser testified that she wrote LG&E a letter dated May 2, 1995 asking LG&E to resolve this dispute. That letter was addressed to the Adjustment Department where it was treated as a "high bill" complaint. LG&E sent an employee to the residence to discuss the high bill with Ms. Hiser. LG&E's report indicates that Ms. Hiser would come in to the office to discuss the bill. It is apparent from the face of Ms. Hiser's letter that her complaint was not related to a high bill but was, instead, a complaint that she was not responsible for the Hiser Realty arrearage. Why this complaint was not referred to Customer Service immediately, specifically credit and collections, is not clear. However, it was ultimately referred to the appropriate area at LG&E.

Commission Regulation 807 KAR 5:006 requires LG&E to respond in writing to customer complaints which are not resolved, notifying the complainant of his right to file a complaint with the Commission. There is no evidence in the record demonstrating that LG&E complied with this requirement, although Ms. Hiser did file a formal complaint with the Commission on July 19, 1995. LG&E should review its handling of Ms. Hiser's May 2, 1995 letter to ensure its practices comply with the regulation.

IT IS THEREFORE ORDERED that:

1. Any and all payments made by Ms. Hiser since April 12, 1994 shall be applied to the 6809 Stonehill Road account balances accruing after April 12, 1994. The payment of \$1,050 paid by Ms. Hiser, which was credited to the Hiser Realty account before service was placed in her name, shall be credited to the 6809 Stonehill Road account balances accruing after April 12, 1994 in the name of Sandra Hiser. Any and all late charges applied to Ms. Hiser's account after April 12, 1994 which accrued as a

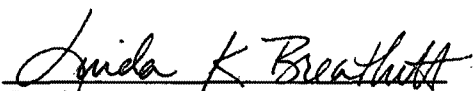
result of the transfer of the corporate arrearage shall be removed and the account balances shall be recomputed. LG&E shall provide the recomputed bill to Ms. Hiser and file a copy with the Commission within 15 days of the date of this Order.


2. Any balances which may remain due and owing to LG&E on Ms. Hiser's account after she is credited with the payments noted above shall be subject to partial payment requirements set forth in 807 KAR 5:006. Any subsequent partial payment plan must be agreed to in full by both LG&E and Ms. Hiser, premised upon Ms. Hiser's ability to pay, and shall be in writing.

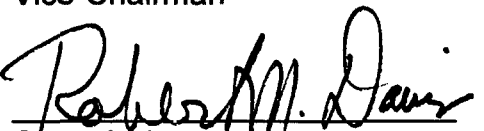
3. LG&E shall pursue whatever legal remedies are available to it to collect the \$2,919.44 Hiser Realty account from the legally responsible party.

Done at Frankfort, Kentucky, this 23rd day of May, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director