

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NORMA JEAN KUMMER)	
)	
COMPLAINANT)	
)	
v .)	CASE NO. 95-362
)	
LOUISVILLE GAS & ELECTRIC COMPANY)	
)	
DEFENDANT)	

O R D E R

On August 17, 1995, Norma Jean Kummer ("Complainant") filed a formal complaint against Louisville Gas & Electric Company ("LG&E") pursuant to KRS 278.260 and 807 KAR 5:001, Section 12. In the complaint, the Complainant stated that LG&E was holding her responsible for charges of \$1,288 that her son, Michael Kummer, had incurred for services rendered by LG&E at an address that was not her residence. The Complainant requested that LG&E be required to refund \$800.00 which she had been compelled to pay, and to remove the remaining \$488.00 from her account. The Complainant wants LG&E to pursue her son and his girlfriend, who also lived at the residence, for the amounts owed. On September 1, 1995, the Commission ordered LG&E to satisfy or answer the complaint.

LG&E responded on September 21, 1995, generally denying the allegations contained in the complaint. It is LG&E's position that the Complainant is personally responsible for the amount in question as she is the beneficial owner of the property at

1914 Heaton Road, having inherited it from her mother, Ms. Margaret Flood. The Complainant, according to LG&E's answer, was the "Executor and/or personal representative of the estate of Ms. Margaret Flood and as such allowed Michael Kummer to occupy 1914 Heaton Road while allowing utility service to remain in the name of Margaret Flood."¹ As the personal representative or heir, LG&E argues that the Complainant is responsible for the debts of the estate to the extent of property received.² As the beneficial owner of the property, the Complainant benefitted from the service used by her son. It is LG&E's further opinion that it at all times acted within the scope of, and in full compliance with, its tariff and the regulations of the Commission.

A hearing was held on November 30, 1995. The Complainant appeared pro se and LG&E appeared represented by counsel.

After consideration of the record in this proceeding, including the transcript of the hearing, the Commission finds the following facts to be pertinent to its decision.

The complaint arises from a dispute over who should be responsible for the arrearage of \$1,288.40 which accrued due to service rendered by LG&E at 1914 Heaton Road. This address was the residence of the Complainant's mother, Margaret Flood, who passed away November 29, 1993. Some six months prior to her death, Ms. Flood transferred ownership of the residence to the Complainant, although the utilities

¹ The account in question was actually in the name of W. B. Flood until March 2, 1995.

² While LG&E cited KRS 396.070 in support of this proposition, it later notified the Commission that the statute relied upon had been replaced by KRS 396.185 and KRS 396.195.

remained in the name of Ms. Flood. The Complainant was also the executor and heir of Ms. Flood's estate. The Complainant's son, Michael Kummer, lived off and on with his grandmother at 1914 Heaton Road for approximately 10 years, remaining there for approximately one year after her death. While some utilities were transferred to his name after Ms. Flood's death, gas and electric service, unbeknownst to the Complainant, remained in the name of Ms. Flood. On December 6, 1994, LG&E disconnected these services due to nonpayment of an arrearage of \$1,288.40.³

After Mr. Kummer's service was terminated and he moved out, the Complainant's daughter, Nancy Kummer, applied for service at 1914 Heaton Road. LG&E refused to provide service at that address until \$800.00 was paid on Ms. Flood's account to reduce the arrearage of \$1,288.40.⁴ Furthermore, LG&E informed the Complainant and Nancy Kummer that if payment was not made, service might also be interrupted at 3418 Park Row Drive, the Complainant's, and Nancy Kummer's, residence.⁵ LG&E refused to reinstate service at 1914 Heaton Road as the Complainant was regarded as the responsible party. LG&E's representative assumed that "as a customer service to [the Complainant]," a partial payment of \$800 was accepted by LG&E at that time.⁶ No such policy is contained in LG&E's tariff. There appears to be no real policy regarding the

³ At the time of Margaret Flood's death, the account at 1914 Heaton Road had a balance of \$583.05. That balance fluctuated over the next year until reaching the amount due at the time of termination.

⁴ Transcript of Evidence at 29-30.

⁵ Transcript of Evidence at 17.

⁶ Transcript of Evidence at 50-51.

amount of partial payment which will be accepted by LG&E in such a situation, nor was the partial payment made by the Complainant part of a written agreement as required by 807 KAR 5:006, Section 13(2).

The fact that Mr. Kummer was the beneficiary of the service provided by LG&E at 1914 Heaton Road is not in dispute. The Complainant provided an affidavit from Mr. Kummer in which he accepted responsibility for the amount owed. LG&E only questioned the relevancy of this fact.⁷ The question presented to the Commission in this proceeding is whether LG&E could lawfully refuse service to Nancy Kummer at 1914 Heaton Road until the Complainant paid off the arrearage for service provided to her son in Ms. Flood's name at that address. Related questions are whether LG&E can lawfully terminate service or transfer the balance to the Complainant at 3418 Park Row Drive for the arrearage remaining at 1914 Heaton Road; and whether LG&E can lawfully collect the arrearage from Nancy Kummer who now resides at 1914 Heaton Road.

Ms. Flood, or at least W. B. Flood, was the initial applicant for service at 1914 Heaton Road, and owned the property until the property was transferred to the Complainant in 1993, some six months before Ms. Flood's death. After the transfer Ms. Flood continued to live at 1914 Heaton Road, and the utilities remained in her name. While Mr. Kummer also resided at 1914 Heaton Road during this period, neither the Complainant nor her daughter lived at 1914 Heaton Road until Nancy Kummer moved to that address in February 1995. The Complainant has consistently maintained to

⁷ Transcript of Evidence at 17.

LG&E personnel that she is not legally responsible for the debt of Mr. Kummer, nor does Mr. Kummer deny that he is the legally responsible party. The Complainant paid \$800.00 for LG&E to restore service at 1914 Heaton Road only to avoid damage to the house during the winter months and, possibly, because of the threat by LG&E to terminate service to her personal residence.

The Complainant was unaware that her son had not placed the LG&E service in his name. All bills were sent to 1914 Heaton Road and the Complainant had no reason to believe that the bills were not being paid. ". . . I assumed that, you know, if Mike kept it on, it had to have been paid or they (LG&E) would have cut it off, because we can't get ours over \$200 before they cut it off . . ." ⁸ However, because of the system employed by LG&E to determine when to disconnect service, nothing was done about the arrearage at 1914 Heaton Road until a disconnect for nonpayment order was issued by LG&E on November 29, 1994, which resulted in service being disconnected on December 12, 1994. ⁹

LG&E argues that the Complainant should pay the bill because she benefitted from the service used by her son. While "benefit of service" criteria has never been accepted by the 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

⁸ Transcript of Evidence at 39.

⁹ Transcript of Evidence at 47.

applicable.¹⁰ In this case, "benefit of service" and the refusal to restore service cannot be used to force the Complainant to pay a debt that she has not been shown to be under a legal obligation to pay. According to 807 KAR 5:006, Section 14(1)(d), "a utility shall not be required to furnish new service to any customer who is indebted to the utility for service furnished . . . until that customer has paid his indebtedness." Such is not the case here. Any prior debt of a third party, with which debt the customer has no connection, has no relevance to the customer's right to obtain or retain utility service. See Koger v. Guarino, 412 F.Supp. 1375 (E.D.Pa. 1976); Craft v. Memphis Light, Gas and Water Division, 534 F.2d 684 (6th Cir. 1976); Davis v. Weir, 497 F.2d 139 (5th Cir. 1974).

Although KRS 396.185 and KRS 396.195, which LG&E cites in support of its actions, do address the question of liability of personal representatives or heirs for the debts of an estate, LG&E has not pursued relief under these statutes. Absent a judgment by a court of competent jurisdiction in a proceeding brought by LG&E thereunder, there has been no showing that either the Complainant, or her daughter, is indebted to LG&E. Absent such a showing, pursuant to 807 KAR 5:006, Section 14(1)(d), LG&E had no legal right to refuse service to either of them at 1914 Heaton Road. Whether the Complainant as the personal representative or heir of Ms. Flood's estate is liable for the debt in question is not for the Commission to determine, but rather for a court of competent jurisdiction.

¹⁰ Administrative Case No. 276, Joint Liability of Husband and Wife for Payment of Utility Bills. Final Order dated September 24, 1984.

LG&E should not have attempted to collect the arrearage on Ms. Flood's account which resulted from the service provided to Mr. Kummer by refusing service to the Complainant at 1914 Heaton Road, nor by threatening to terminate service at 3418 Park Row Drive. Furthermore, LG&E cannot lawfully collect the arrearage on Ms. Flood's account from Nancy Kummer. While she now resides at 1914 Heaton Road, she cannot be held responsible for service provided at that location prior to her establishing an account with LG&E for service to that location.

IT IS THEREFORE ORDERED that:

1. Absent a judgment from a court of competent jurisdiction that the Complainant is responsible for the arrearage resulting from service supplied to Mr. Kummer in the name of Ms. Flood at 1914 Heaton Road, LG&E shall cease all actions to collect the arrearage from the Complainant.

2. The \$800.00 payment made by the Complainant toward the arrearage resulting from service supplied to Mr. Kummer in the name of Ms. Flood at 1914 Heaton Road shall be credited to the account of the Complainant. Furthermore, the \$488.40 which was transferred to the Complainant's 3418 Park Row Drive account by LG&E shall be removed as well.

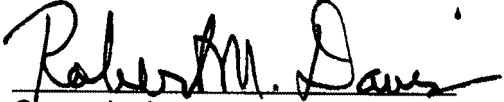
3. LG&E shall pursue whatever legal remedies are available to it to collect the \$1,288.40 in question from the responsible party.

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


PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director