

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF LOUISVILLE GAS)
AND ELECTRIC COMPANY S PREPAID) CASE NO. 2002-00232
GAS AND ELECTRIC SERVICE)

O R D E R

On March 28, 2003, the Commission issued an Order approving an expansion of Louisville Gas and Electric Company s (LG&E) prepaid meter program subject to certain conditions. Metro Human Needs Alliance and People Organized and Working for Energy Reform (MHNA/POWER) filed a petition for rehearing of that decision on April 17, 2003. On April 22, 2003, Kentucky Association for Community Action, Inc. and Community Action Council for Lexington-Fayette, Bourbon, Harrison and Nicholas Counties, Inc. (KACA/CAC) also petitioned for rehearing. LG&E responded to the petitions on April 25, 2003. MHNA/POWER filed on April 30, 2003 a reply to LG&E s response and a motion to strike portions of that response. LG&E filed a response thereto on May 2, 2003. The Attorney General of the Commonwealth of Kentucky (AG), an intervenor, did not request rehearing or respond to the rehearing petitions.

Both MHNA/POWER and KACA/CAC take exception to numerous aspects of the March 28, 2003 Order. As stated in LG&E s response to the petitions, MHNA/POWER and KACA/CAC basically present on rehearing the same arguments they advanced throughout this proceeding. They offer no new evidence and no compelling reasons to reconsider the approval set forth in the March 28, 2003 Order. However, we do find it

appropriate to clarify an apparent inconsistency in two prior Commission Orders and to increase LG&E's semi-annual reporting requirement to ensure that the prepaid meter program can be properly monitored. Except for these modifications, the petitions for rehearing should be denied. We address the following arguments contained in the rehearing petitions on an individual basis.

Statutory Deadline

MHNA/POWER argues that the provisions of KRS 278.190, which authorize the Commission a maximum of 10 months to issue a decision in a case involving a change in rates, are not applicable in this instance. It bases this argument on there having been no suspension of LG&E's proposed tariff, as LG&E did not propose an effective date for the tariff as provided for in KRS 278.180. MHNA/POWER claims that the absence of a statutory deadline permitted the Commission to delay its decision indefinitely beyond 10 months to await LG&E's completion of tests on the new prepay AMPY meters. MHNA/POWER also notes the apparent conflict between the January 28, 2003 Order, which found a 10-month statutory deadline to be applicable, and the October 17, 2002 Order, which found no deadline to be applicable.

The issue of a statutory deadline was presented for the first time in a footnote to the post-hearing brief of MHNA/POWER.¹ Due to the oblique manner in which the issue was presented, it was overlooked and, thus, not addressed in the March 28, 2003 Order. As LG&E states in its response to the rehearing petitions, the Commission previously cited the 10-month statutory period set out in KRS 278.190 in its January 28, 2003 Order denying a MHNA/POWER request to hold this case in abeyance

¹ See MHNA/POWER Brief, Footnote 2.

indefinitely. Thus, it was the January 28, 2003 Order, not the March 28, 2003 Order, that contained the finding that the 10-month statutory period applied in this case. Pursuant to KRS 278.400, any request for reconsideration of the January 28, 2003 Order should have been filed 20 days thereafter. Despite the untimeliness of this issue, we will clarify the matter here.

MHNA/POWER misinterprets KRS 278.190 by arguing that the statutory time limit is not applicable unless the new rate has an effective date pursuant to KRS 278.180. The Commission finds no merit in this argument. The provisions of KRS 278.190 apply to every schedule stating new rates, irrespective of whether the schedule bears an effective date under KRS 278.180. The provisions of KRS 278.180, if elected by a utility, permit new rates to become effective earlier than the 10-month deadline set forth in KRS 278.190.

MHNA/POWER's reading of the statutes is at odds with its interpretation over a number of decades. KRS 278.190(3) applies to any new rates that are filed with the Commission, not just to new rates that both bear an effective date under KRS 278.180 and have been suspended. KRS 278.180(1) establishes the minimum notice a utility must provide before implementing new rates. If proper notice is given, the new rates will become effective before the 10-month review period in KRS 278.190(3) expires. However, the application of KRS 278.190(3) is not affected by the inclusion or omission of an effective date on new rates. The Commission has a maximum of 10 months from the date a new rate is filed to decide the matter.

Regarding the Commission's inconsistent findings on the application of a statutory deadline, the October 17, 2002 Order found no deadline based on the

mistaken belief that LG&E had not filed a schedule of new rates. This mistake arose from the text of the Commission's July 29, 2002 Order, which stated that we were initiating an investigation of a report filed by LG&E. No mention was made of a new schedule of rates. This inadvertent error was corrected by our January 28, 2003 Order where the existence of the 10-month statutory deadline was noted. However, even assuming no statutory deadline existed in this case, the Commission finds no basis to hold this case in abeyance. The Commission has an existing regulation governing testing of electric meters, 807 KAR 5:041, Sections 15, 16, and 17. All electric meters, including the prepay meters at issue here, must comply with these standards prior to their installation. Thus, the prepay meters will be properly tested prior to being placed in service.

Burden of Proof

In our Order, we presented our conclusion that LG&E had adequately refuted the intervenors' testimony as to the cost-effectiveness of the program. This conclusion, MHNA/POWER now contends, somehow shifted the burden of proof to the intervenors. It argues that accepting LG&E's assumptions as to the costs of the program, while not requiring LG&E to prove that the program can be operated without cost to other ratepayers, shifts the burden of proof to those who oppose the program. MHNA/POWER further claims that the Commission's conclusion on this issue is based merely upon the fact that LG&E put evidence into the record that opposed the intervenors' positions. This is inaccurate. The Commission reviewed the evidence submitted and determined that the positions and assumptions taken by LG&E and its arguments in support thereof were more persuasive than the positions and arguments

advanced by the intervenors. The Commission found that LG&E carried its burden of proof. That burden was not shifted to MHNA/POWER.

Discrimination in Standards for Reconnection

MHNA/POWER claims that distinctions between credit policies for prepaid customers, as opposed to those applied to credit customers, are unwarranted and discriminatory. It states that there is no rational reason not to give credit customers, who have lost service for failing to pay, the same right as prepaid customers to have service restored with only 30 percent of their future payments applied toward their arrearages. KRS 278.170(1) governs issues of discrimination as to utility rates or service, prohibiting unreasonable preference or advantage or unreasonable difference among customers who receive a like or contemporaneous service under the same or substantially the same conditions. KRS 278.170(4) provides that the commission may determine any questions of fact arising under this section. The Commission has concluded as a matter of fact that there are clear differences in conditions between credit customers and prepaid customers. Accordingly, there is nothing unreasonable in the difference between the policies applicable to these groups of customers.

MHNA/POWER argues that, because only 30 percent of prepay customers payments go toward their arrearages, credit customers service should be restored when they pay only 30 percent of their arrearages. The Commission finds no merit in MHNA/POWER s argument. Prepay customers, like credit customers, must also pay 100 percent of their arrearages. However, prepay customers meet this obligation by having 30 cents of every dollar that is prepaid go toward their arrearage balances.

Because they are prepaying for energy service, they cannot accumulate additional arrearages, unless they allow arrearages to accumulate during the seasonal non-disconnect period. If that does occur, prepay customers automatically become credit customers and will be subject to the same rules as credit customers. Thus, prepay customers present LG&E with significantly less risk of incurring additional arrearages than do credit customers. The differences between prepay customers and credit customers as to when service is received and payment is made, and the impact that those differences have on LG&E's risk of receiving payment for the future service it provides, establish clear and rational reasons for the resulting differences in credit and reconnection policies.

Standard of Review

MHNA/POWER argues that the Commission employed a different, less stringent standard of review in this instance than it did in Case No. 2001-00323 when it reviewed the Home Energy Assistance Program proposed by LG&E and low-income intervenors.² It characterizes the March 28, 2003 Order as having accepted unproven assertions of cost savings, the possibility of perfect operation of prototype equipment, and absurd claims that the prepay program is voluntary. It chastises the Commission for making no effort to have costs of the program recovered from shareholders, apparently in reference to the Commission's decision in Case No. 2001-00323.

² Case No. 2001-00323, Joint Application of Louisville Gas and Electric Company, Metro Human Needs Alliance, People Organized and Working for Energy Reform, Kentucky Association for Community Action, and Jefferson County Government for the Establishment of a Home Energy Assistance Program.

There was not a different, or less stringent, standard of review employed in this proceeding. The low-income energy assistance program as designed created a direct subsidy within the residential class of participants by non-participants. Significantly, participation was based solely on the customer's level of income, rather than any factor related to electric usage. In this case, there are only allegations of a subsidy of participants by non-participants. In any event, participation is open to all residential customers; there is no income criteria to qualify. Even if a subsidy does occur as a result of the prepay program, it would occur after-the-fact because assumptions about costs or participation levels are not borne out. As evidenced by our decision to approve the expansion of the program, MHNA/POWER's allegations that the program will be subsidized by LG&E's ratepayers were unpersuasive.

In Case No. 2001-00323, there was no question that ratepayers would be subsidizing the proposed Home Energy Assistance Program via the charges that would require them to bear 100 percent of the program's costs. The Commission's decision in that proceeding called for sharing costs between ratepayers and shareholders. In approving expansion of the prepay meter program here, we concluded that the program should be self-supporting and cost-effective. If, however, it turns out otherwise, due to greater costs or less participation than expected, the excess costs will not be borne entirely by ratepayers. They will be shared between ratepayers and shareholders via LG&E's Earnings Sharing Mechanism, which produces, under a worse-case scenario, a result similar to what the Commission attempted to achieve in Case No. 2001-00323.

Scope of Commission Authority

KACA/CAC argues that the directive in the March 28, 2003 Order that LG&E and intervenors work cooperatively to pursue changes to the Commonwealth's annual Low Income Home Energy Assistance Plan (LIHEAP) filing with the federal government is arbitrary and goes beyond Commission authority. The ordering paragraph in our March 28, 2003 Order had three purposes. First, it was a response to low-income intervenors' concerns that customers participating in the prepay program might risk losing their eligibility for LIHEAP crisis funds. Second, it was a response to statements by MHNA/POWER and KACA/CAC, who had complained that they had not been involved in the development of the prepay program and that they should be included in developing utility programs affecting low-income customers. Third, it was to impose upon LG&E a requirement that it participate in this endeavor. Having offered this explanation, we recognize that if the intervenors choose not to work with LG&E to resolve an issue they raised, we have no authority to require them to do so.

We must, however, explain that, though we cannot require the intervenors to participate with LG&E in this matter, we are convinced that their participation is the best way they can assist in safeguarding the low-income customers who the intervenors fear may lose eligibility for LIHEAP crisis funds. Their work to ensure that there is no loss of eligibility for LIHEAP crisis funds, which they believe may occur, will not be mistaken for acquiescence in the program. If the low-income intervenors oppose working with LG&E to pursue possible changes to Kentucky's annual LIHEAP plan, with which they are more familiar than LG&E, it may be of little value for LG&E to pursue modifications on its own. While LG&E and the low-income intervenors are encouraged to pursue such

modifications, either working separately or together, the Commission recognizes the limitations of its authority under KRS Chapter 278.

Timeliness of KACA/CAC s Petition

Pursuant to KRS 278.400, any party to a Commission proceeding may, within 20 days of service of the Commission s Order, request a rehearing. The statute further provides that service of a Commission Order is complete 3 days after the date of mailing. KACA/CAC now seeks rehearing of the Commission s March 28, 2003 Order. As shown in the Commission s certificate of service, the Order was mailed to all parties on March 28, 2003. Allowing 3 days for mailing, plus 20 days for requesting rehearing, establishes the rehearing due date as April 20, 2003. Since that date was a Sunday, the deadline was the following Monday, April 21, 2003. The rehearing petition of KACA/CAC was not filed until April 22, 2003. Although the petition was untimely, the Commission recognizes the importance of the issues raised and their similarity with those raised by MHNA/POWER. Consequently, this Order addresses the merits of the issues raised in the petition filed by KACA/CAC.

Misstatements in MHNA/POWER s Petition

MHNA/POWER s petition contains a number of exaggerations, inaccuracies, and misstatements. Most require no comment. However, we find that, in some instances, a response is necessary so that we can avoid confusion as to actual findings made in our March 28, 2003 Order.

On page 7 of its petition, in its discussion of LIHEAP issues, MHNA/POWER states that [T]he Commission would have intervenors advocate finessing federal and state law to accommodate LG&E s marketing desires. The Commission, of course,

neither stated nor suggested that anyone should attempt to finess any laws, state or federal. In response to concerns expressed by both MHNA/POWER and KACA/CAC that prepay customers might not be eligible to receive LIHEAP funds, we adopted the AG's suggestion that LG&E and the intervenors work to modify the language in Kentucky's annual LIHEAP plan to allow prepaid gas or electric service to be treated in a similar manner to prepaid purchases of bulk fuels such as propane, wood and coal. It is difficult to see how the discussion of this issue on pages 18-19 of our Order, or the finding and order related thereto, could be interpreted as suggesting that anyone should advocate finessing federal or state laws.

On page 15 of the petition, regarding additional information that LG&E should be required to file in its periodic reports on the prepay program, MHNA/POWER states that, "The Commission believes that one of the major benefits of the program is energy savings. It then goes on to describe energy use data that LG&E should be required to file in its reports. It is unclear why MHNA/POWER concluded that this is a belief of the Commission. Our March 28, 2003 Order includes nothing -- not in the analysis, not in the findings, not in the ordering paragraphs -- reflecting any conclusions or beliefs as to energy savings attributable to the prepay program."

MHNA/POWER Motion to Strike

MHNA/POWER moves to strike two sentences included in LG&E's response to the petitions for rehearing which referred to the testimony filed by Paul Taylor of Ampy. It claims the testimony is irrelevant to the issue of meter development and testing being addressed by LG&E, since it was admitted by agreement of the parties solely for the purpose of supporting LG&E's request for confidential treatment of meter cost

information. LG&E, in response to the motion to strike, states that while the second sentence disputed by MHNA/POWER was derived from the Taylor testimony, the first sentence was from the Commission's February 19-20, 2003 hearing. It also contends that the Taylor testimony was made part of the record in this proceeding and that MHNA/POWER had merely agreed to waive the right to cross-examination on the testimony. Thus, it is part of the record and can be relied upon by the parties and the Commission.

The Taylor testimony is part of the record, although it was relied upon primarily in reaching our decision on the confidentiality issue cited by MHNA/POWER. As we are not persuaded by MHNA/POWER's rehearing request that expansion of the prepay meter program be delayed until further testing of the metering technology has been completed, we find that its motion to strike should be denied as moot.

Information and Reporting Requirements

MHNA/POWER points out that Appendix B of the March 28, 2003 Order, which lists the information that LG&E is to include in its periodic reports on the prepay program, was not entirely consistent with the body of the Order concerning the program's impact on LG&E's bad debt expense. As shown on page 20 of the Order, bad debt reductions was identified as one component of the information to be included in those reports.³ Appendix B of the Order should have required that LG&E's reports include a schedule comparing bad debt write-offs during the reporting period with the write-offs during the previous 6 months along with an analysis of how the operation of the prepay meter program impacted the level of new bad debts and the amount written-

³ The omission of bad debt reductions from Appendix B was an oversight.

off during the reporting period. LG&E will be required to included this in its semi-annual reports.

In addition to the information on bad debt reductions that was omitted from the reporting requirements imposed on LG&E in the March 28, 2003 Order, based on a review of the rehearing petitions of MHNA/POWER and KACA/CAC, the Commission concludes that LG&E s semi-annual reports should include additional detail on costs incurred in relation to the program. This will expand Item 2 of Appendix B, which required A schedule, identifying, by category and amount, all costs of the prepaid meter program for the reporting period. This schedule should include, but not be limited to, direct and allocated labor costs of employees involved in operating and administering the prepaid meter program, the costs of program-related training, and the costs of program-related service calls. LG&E should supplement this cost information with an analysis of any embedded costs that are reduced due to employees that regularly work with customers on payment issues being required to do less of such work due to the prepaid meter program, as is expected by LG&E.⁴

We find that a further modification to the information included in LG&E s reports on the program, as requested in MHNA/POWER s petition, is appropriate. That modification is actually an addition to what was listed in Appendix B to the March 28, 2003 Order. This addition requires that LG&E report on the effectiveness of, and any problems with, the new AMPY metering equipment. LG&E should identify if there are any breakdowns, repairs, and replacements, and the related costs it incurs that are not

⁴ Pages 18-19 of The Responsive of William Steven Seelye, February 7, 2003.

covered under the equipment warranties or recoverable from AMPY under the terms of such warranties.

FINDINGS AND ORDERS

Based on the motions for rehearing, the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. The petitions of MHNA/POWER and KACA/CAC requesting a rehearing of the March 28, 2003 Order approving the expansion of LG&E's prepaid metering program for gas and electric service are denied, except as noted herein.

2. Our denial of the petitions for rehearing renders moot MHNA/POWER's motion to strike a portion of LG&E's response to the petitions.

3. LG&E's semi-annual reports on the prepaid metering program should, in addition to the information identified in Appendix B of the Commission's March 28, 2003 Order, also include the expanded information identified in the Information and Reporting Requirements section of this Order.

4. While the Commission maintains its belief that LG&E, MHNA/POWER and KACA/CAC should work together to pursue modifications to Kentucky's annual LIHEAP plan filed with the federal government agencies that administer the LIHEAP program, we recognize that we cannot force the intervenors to participate.

5. The October 17, 2002 Order should be modified to reflect the applicability of the 10-month time limitation set forth in KRS 278.190(3).

IT IS THEREFORE ORDERED that:

1. The petitions for rehearing of MHNA/POWER and KACA/CAC are denied, except as noted herein.

2. MHNA/POWER s motion to strike portions of LG&E s response to the petitions for rehearing is moot.

3. The information contained in the semi-annual reports that LG&E will file on its prepaid metering program shall be expanded as described in the Information and Reporting Requirements section of this Order.

4. The Commission s March 28, 2003 Order is modified to the extent that any requirement for intervenors to work cooperatively with LG&E is deleted.

5. The Commission s October 17, 2002 Order is modified to reflect that the 10-month statutory time limitation set forth in KRS 278.190(3) is applicable in this case.

Done at Frankfort, Kentucky, this 7th day of May, 2003.

By the Commission

ATTEST:


Executive Director