

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ROBERT T. GALLAGHER)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2004-00451
)	
KENTUCKY UTILITIES COMPANY)	
)	
DEFENDANT)	

O R D E R

On November 15, 2004, Robert T. Gallagher (“Complainant”) filed with the Commission a formal complaint against Kentucky Utilities Company (“KU”) alleging that KU was acting unreasonably by requiring an additional deposit of \$65 after his electric service had been disconnected. Complainant requests that the Commission find that his account is “grandfathered in”¹ and that he not be required to pay the additional deposit.

KU filed its answer on December 28, 2004. KU admits that it requested an additional deposit of \$65 from Complainant. KU asserts that, pursuant to Original Sheet No. 87 of its tariff, it rightfully sought the additional deposit by reason of Complainant’s unsatisfactory payment history. After reviewing the record, the Commission finds that

¹ Complaint at 2.

the complaint fails to state a claim upon which relief may be based and, accordingly, the complaint should be dismissed.

BACKGROUND

On September 7, 2004, Complainant's electric service at 121 Johnston Boulevard, Lexington, Kentucky was disconnected for nonpayment. After service was disconnected, Complainant paid the arrearage and applicable late fees, and service was restored. Complainant, however, refused to increase his deposit from \$50 to \$115 as requested by KU. Complainant claimed he refused to pay the additional deposit because "KU already had a \$50 deposit on my account which they have never used and any additional amount is unnecessary."²

KU asserts that it properly increased Complainant's deposit pursuant to Original Sheet No. 87 of its tariff. Original Sheet No. 87 of its tariff states in pertinent part:

Generally, deposits will be required from all customers not meeting satisfactory credit and payment criteria. . . . Satisfactory payment criteria with the Company may be established by paying all bills rendered, having no disconnections for nonpayment, having no late notices, having no defaulted credit arrangements, having no returned payments, having no meter diversion or theft of service.

KU asserts that when Complainant's service was disconnected for nonpayment, he no longer met the "satisfactory" payment criteria as described above, and, therefore, KU then was able to assess Complainant for the full amount of the residential service deposit contained in its tariff.

² Id.

Prior to July 1, 2004, the maximum deposit for KU residential customers was \$50.³ On June 30, 2004, the Commission issued an Order in Case No. 2003-00434⁴ in which it approved, as a settlement between all parties to the case, various rate and tariff changes for KU. Among those changes was an increase in the maximum deposit for residential service from \$50 to \$115. The amount was calculated pursuant to 807 KAR 5:006, Section 7(1)(b),⁵ and is the tariffed rate which KU is permitted to charge pursuant to KRS 278.160.

At an informal conference held on March 22, 2005 at the Commission's offices and attended by representatives from the Attorney General's Office, Louisville Gas and Electric Company, KU and Commission Staff, KU explained how it determined when an existing customer needed to increase its deposit. KU asserted that any time after July 1, 2004, when a customer who had been a KU customer prior to July 1, 2004 had been disconnected for nonpayment, the customer was required to pay the increased deposit amount upon reconnection. Essentially, the reconnected customer is considered a new customer. KU further stated that in order to re-establish satisfactory payment history, a KU customer must maintain 36 continuous months without delinquent payments, late notices, or disconnections for nonpayment.

³ Kentucky Utilities Company's Tariff Original Sheet 25.1-C, P.S.C. No. 12 (Cancelled.)

⁴ Case No. 2003-00434, An Adjustment of the Electric Rates, Terms and Conditions of Kentucky Utilities Company (Ky. PSC June 30, 2004).

⁵ (b) Equal deposits. The utility may establish an equal deposit amount for each class based on the average bill of customers in that class. Deposit amounts shall not exceed two-twelfths (2/12) of the average bill of customers in the class where bills are rendered monthly, three-twelfths (3/12) where bills are rendered bimonthly, or four-twelfths (4/12) where bills are rendered quarterly.

DISCUSSION

KRS 278.260(1)⁶ grants the Commission jurisdiction over cases in which a utility's actions are "unreasonable, unsafe, insufficient, or unjustly discriminatory." KRS 278.280 grants the Commission authority to correct any "unreasonable or improper practice" of a utility. Upon violation, the Commission has the power under KRS 278.280(1)⁷ to prescribe remedial action through "order, rule or regulation."

Complainant alleges in his complaint that KU's actions are unnecessary. Complainant does not allege that the additional deposit requirement is unreasonable,

⁶ KRS 278.260(1) provides, in pertinent part, as follows:

The commission shall have original jurisdiction over complaints as to rates or service of any utility, and upon a complaint in writing made against any utility by any person that any rate in which the complainant is directly interested is unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with or without notice, to make such investigation as it deems necessary or convenient. The commission may also make an investigation on its own motion. No order affecting the rates or service complained of shall be entered by the commission without a formal public hearing.

⁷ KRS 278.280(1) provides as follows:

Whenever the commission, upon its own motion or upon complaint as provided in KRS 278.260, and after a hearing had upon reasonable notice, finds that the rules, regulations, practices, equipment, appliances or facilities or service of any utility subject to its jurisdiction . . . are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices . . . or methods to be observed . . . and shall fix the same by its order, rule or regulation.

unsafe, insufficient, or unjustly discriminatory. Assuming, *arguendo*, that Complainant is alleging that the additional deposit is unreasonable, his argument would fail.

The increased deposit amount went into effect on issuance of the June 30, 2004 Order; therefore, Complainant's argument as to the rate issue is without any basis in law. KU is, after all, simply enforcing a properly tariffed, Commission-approved deposit policy, as it is required to do pursuant to KRS 278.160.

KU, moreover, is treating the Complainant the same as similarly situated customers. To treat him differently than similarly situated customers would violate KRS 278.170.

Complainant is bound by the same rules, rates, and charges to which all customers of KU are bound. Granting the relief Complainant seeks would be a violation of KRS 278.160 and KRS 278.170. The Complainant, therefore, states no claim upon which relief may be based.

IT IS THEREFORE ORDERED that this case is dismissed with prejudice and is removed from the Commission's docket.

Done at Frankfort, Kentucky, this 14th day of October, 2005.

By the Commission

ATTEST:


Executive Director