

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SHAWN AND KATHERINE GILLEN)	
)	
COMPLAINANTS)	
)	
v.)	CASE NO. 2005-00062
)	
KENTUCKY UTILITIES COMPANY)	
)	
DEFENDANT)	

O R D E R

On February 2, 2005, Shawn and Katherine Gillen (“Complainants”) filed a formal complaint against Kentucky Utilities Company (“KU”) requesting that the Commission order KU to remove an arrearage of \$606.86 from Complainants’ account. KU, in its answer, asserted that it properly assessed the charges, but was willing to “establish a liberal payment plan”¹ to allow the Complainants to pay off the arrearage.

BACKGROUND

In early January 2005, Complainants received from KU a bill for \$912.23, of which \$606.86 was from a previous balance and \$305.37 was from the previous billing period. Prior to this bill, Complainants’ monthly bill averaged less than \$100.

Upon receipt of this bill, Complainants contacted KU, inquiring as to the reason for such an abrupt and uncharacteristically large bill. KU allegedly informed

¹ KU’s Answer at 4.

Complainants that starting in February 2004, KU was adjusting the Complainants' bill because KU mistakenly believed the meter readings to be incorrect because of the abnormally high usage. KU also allegedly informed Complainants that the unbilled balance had been halved due to KU's actions in incorrectly adjusting the readings.

Complainants assert that upon receiving the higher electricity bill, they took several measures to further curtail their electricity consumption. Complainants discovered that both their washing machine and HVAC system were operating inefficiently and repaired them. Additionally, in response to the findings of an energy audit, Complainants installed additional insulation and a vapor lock. Complainants assert that had KU informed them of the high usage when it was first detected, they would have taken the energy saving steps sooner.

KU admits that on January 7, 2005 it rendered unto the Complainants a bill for \$912.23, of which \$305.37 was for Complainants' consumption from December 3, 2004 to January 5, 2005. The remainder of the balance was approximately one-half of the charges remaining for Complainants' previously unbilled consumption from January 7, 2004 to December 2, 2004. KU asserts that the total unbilled liability from January 7, 2004 to December 2, 2004 is \$1,097.37.

KU admits that KU customer representatives adjusted Complainants' June 4, 2004, September 3, 2004, and November 3, 2004 meter readings by lowering the amount to be billed based on the belief that the meter readings were inaccurate because they were significantly higher than Complainants' historical usage. KU admits that it never informed Complainants of these adjustments.

On December 14, 2004, KU replaced Complainants' meter. A subsequent test revealed that the removed meter was 100.1 percent accurate, well within the Commission tolerances for meter accuracy. Although not stated, it appears it was at this time KU concluded that the meter was reading correctly and assessed Complainants the unbilled balance. This complaint followed.

DISCUSSION

Pursuant to KRS 278.160, a utility must charge its filed rates to all of its customers. If a utility does not have a certain charge or rate on file, and no other statute or Commission regulation is applicable, the utility cannot charge the rate. Kentucky courts have found that, even in the presence of a tort committed by a utility, the utility must collect its filed rates and charges.

In Boone County Sand and Gravel v. Owen County Rural Electric Cooperative Corporation, 779 S.W.2d 224 (Ky. App. 1989), Owen County RECC brought an action against Boone County Sand and Gravel to recover amounts that had been underbilled. Boone County Sand and Gravel counterclaimed for damages because it had adjusted its overhead for the amount it was being charged by complainant.

Boone County Sand and Gravel alleged that the underbilling was caused by an incorrect multiplier used by Owen County RECC on its bills. Twice during a 13-month period, Boone County Sand and Gravel inquired as to the accuracy of the bills. Both times Owen County RECC assured Boone County Sand and Gravel that the billing was correct and Boone County Sand and Gravel adjusted its overhead accordingly. In doing so, Boone County Sand and Gravel incurred damages by paying an inflated price for stock when buying shares back from shareholders.

The Court of Appeals found that Owen County RECC was entitled to collect the amount underbilled, despite having been negligent in underbilling Boone County Sand and Gravel. The Court of Appeals relied upon KRS 278.160(2) which requires that a utility must charge all customers the same amount for services rendered. Additionally, the Court of Appeals found that equitable estoppel does not apply in the case because the application of equitable estoppel would, in effect, mean that Boone County Sand and Gravel would be receiving service for a lesser rate than other customers, in violation of KRS 278.160(2) and KRS 278.170.

Boone County Sand and Gravel is clearly applicable to the case at hand. Assuming, arguendo, that KU did act negligently or fraudulently in adjusting Complainants' bill, it would have no bearing on this complaint case. Without violating KRS 278.160, or setting retroactive rates, the Commission does not appear to have the power to grant the relief Complainants seek.

The Commission, however, is deeply troubled by KU's action regarding the adjustment of Complainants' bills without notifying Complainants or further investigating the meter readings. KU has offered a liberal payment plan to the Complainants without specifying over how long the payment plan would span, although intimating that it would offer a period of time of approximately a year. The Commission finds that fairness and equity demand that the payment plan be spaced equally over a period of time not less than 2 years.

IT IS THEREFORE ORDERED that:

1. KU shall establish a partial payment plan for the arrearage. The payment plan shall be of equal payments for a period of time of not less than 2 years. The

provisions of 807 KAR 5:006, Section 13, shall govern all other aspects of the partial payment plan.

2. For the reasons discussed herein, this complaint is dismissed and is removed from the Commission's docket.

Done at Frankfort, Kentucky, this 12th day of April, 2006.

By the Commission

ATTEST:


Executive Director